

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #01/15

LEASE CANCELLATION PROCEDURES

Adopted by Resolution #1164/15 of the Fond du Lac Reservation Business Committee on June 3, 2015.

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**CHAPTER 1
AUTHORITY; PURPOSE; SCOPE**

Section 101 Authority

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, as reserved under the Treaty of LaPointe, 10 Stat. 1109, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; under Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; and under the common law of the United States.

Section 102 Purpose

The purpose of this Ordinance is to establish a uniform process for cancellation of leases and other agreements issued by the Band.

Section 103 Scope

- (a) This Ordinance applies to:
- (1) Leases and other agreements that expressly indicate that this Ordinance shall govern eviction or lease termination; and
 - (2) Leases and other agreements that the Reservation Business Committee has declared by resolution to be subject to this Ordinance.
- (b) This Ordinance does not apply to leases or other interests subject to the foreclosure proceedings contained in Fond du Lac Ordinance #05/05, Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Fond du Lac Section 184 Loan Program.
- (c) The procedures and remedies contained in this Ordinance shall supplement existing policies and shall not preclude the application of any other lease termination or eviction procedure still in effect.

Section 105 Reservation of Rights

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance.

All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the powers of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

**CHAPTER 2
DEFINITIONS**

Section 201 **Definitions**

For the purposes of this Ordinance, the following definitions shall apply:

- (a) **“Band”** means the Fond du Lac Band of Lake Superior Chippewa.
- (b) **“Damages”** means payments owed by the lessee for unpaid rent or lease fees, for damages to the premises, or for other money due under the lease.
- (c) **“Eviction”** means removal of a person from property by legal action.
- (d) **“Lease”** means the agreement establishing that the lessee has a right to occupy the premises. As used in this Ordinance, the term “lease” does not include Leases subject to the foreclosure proceedings contained in Fond du Lac Ordinance #05/05, Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Fond du Lac Section 184 Loan Program.
- (e) **“Lease cancellation”** means Band action to end a lease.
- (f) **“Lessee”** means a person or entity who has acquired a legal right to possess premises through a lease.
- (g) **“Premises”** or **“leased premises”** means the land or building described in the lease.
- (h) **“Tribal Court”** means the Fond du Lac Band of Lake Superior Chippewa Tribal Court.

CHAPTER 3
GROUNDS FOR LEASE CANCELLATION AND DAMAGES

Section 301 Grounds for Lease Cancellation

The Tribal Court may grant the Band's request for a lease cancellation against a lessee based on the following grounds:

- (a) Failure to make rent payments or other payments required under the lease, provided that the lessee has been given at least 30 days notice of the violation; or
- (b) Any other breach of the lease.

Section 302 Grounds for Damages

The Tribal Court may grant the Band's request for damages if the damages are the result of the lessee's breach of the lease.

CHAPTER 4
TRIBAL COURT PROCEEDINGS

Section 401 Jurisdiction of the Tribal Court

The Fond du Lac Tribal Court shall exercise exclusive jurisdiction over proceedings brought under this Ordinance. The Tribal Court shall hear all actions under this Ordinance in accordance with the Fond du Lac Civil Code, Fond du Lac Ordinance #04/92, as amended, except where the specific provisions of this Ordinance require otherwise.

Section 402 Commencement of an Action

The Band may commence an action under this Ordinance by filing a complaint under the civil code. The complaint shall state the facts and the relief sought, and shall describe the premises. The Band may be represented by an attorney or an authorized Band employee.

Section 403 Notice of Hearing

After a complaint is filed, the Tribal Court shall schedule a hearing and issue a notice of hearing to the Band and the lessee. The hearing shall be scheduled within 10 days of the date the is filed.

Section 404 Service of the Petition and Notice of Hearing

The Band shall serve the complaint and notice of hearing upon the lessee at least 3 business days before the hearing date. Service shall be completed as follows:

- (a) By personal service of the complaint and notice of hearing on any lessee; or
- (b) If service cannot reasonably be completed through personal service, by posting the complaint and notice of hearing at a residence on the leased premises.

The Band shall complete an affidavit of service and file the affidavit with the Tribal Court.

Section 405 Answer by the Lessee

The lessee shall be exempt from the requirement in the civil code to file an answer. Unless the lessee affirmatively admits an allegation, the lessee shall be presumed to have denied all allegations in the complaint. The hearing shall not be delayed in order to give the lessee time to file an answer.

Section 406 Burden of Proof

At the hearing, the Band shall have the burden of establishing by a preponderance of the evidence one of the grounds for lease termination or that damages are owed.

Section 407 Order and Judgment

Withing 3 days after the hearing, the Tribal Court shall issue an order and judgment containing the following:

- (a) Findings of fact;
- (b) If lease cancellation was requested, an order granting the lease cancellation or a statement that a ground for lease cancellation was not established; and
- (c) If damages were requested, an order establishing the damages owed by the lessee or a statement that damages were not established.

Lease cancellations shall be effective immediately.

Section 408 Repossession of Property

Immediately upon lease cancellation, the Band may take possession of the leased premises. Personal property shall be disposed of in accordance with the lease and applicable policies.

CHAPTER 5
EFFECTIVE DATE; AMENDMENTS; SEVERABILITY

Section 501 Effective Date

The provisions of this Ordinance shall become effective immediately upon adoption by the Reservation Business Committee.

Section 502 Amendment or Recission

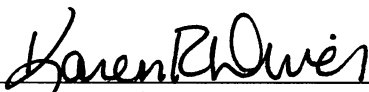
The Reservation Business Committee may amend this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.

Section 503 Severability


If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #01/15 was duly presented and adopted by Resolution #1164/15 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on June 3, 2015, on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer