

LOWER ELWHA COURT OF APPEALS



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LOWER ELWHA HOUSING  
AUTHORITY

Petitioner/Appellant,

v.

CHRISTINA FRANCIS,

Respondent/Appellee,  
\_\_\_\_\_

NO: 2020-CV-LEHA-0002-COA

Counsel for the Parties:

Justin Kover for the Lower Elwha Housing Authority

Stephanie Hyatt for Christina Francis

**Opinion by Fletcher, C.J.**

This Court **REVERSES** the trial court's order of January 15, 2021 that dismissed the Lower Elwha Housing Authority's Petition for Unlawful Detainer against Christina Francis. We **REMAND** to the Lower Elwha Tribal Court for further proceedings consistent with this Order and Opinion.

## OPINION

The primary question in this appeal is notice. Did the Appellant, the Lower Elwha Housing Authority (“LEHA”), provide adequate notice to Respondent, Christina Francis, that she was guilty of unlawful detainer under the Lower Elwha Eviction Procedures Code § 1.04(a). We conclude that the Respondent did receive adequate notice.

### **I. Factual and Procedural Background**

As this appeal comes to us on the granting of a motion to dismiss, all allegations made by the plaintiff, LEHA, are assumed to be true. On remand, of course, LEHA as plaintiff will be required to prove the relevant facts to the trial court.

On February 28, 2011, LEHA executed a Dwelling Lease Agreement (“Lease”) with Francis. On February 9, 2020, the Clallam County Sheriff’s Office and Lower Elwha Police Department executed a search warrant at the property. Police discovered stolen personal property and arrested a person residing with Francis in the home.

On April 20, 2020, LEHA scheduled a hearing with an eye toward terminating Francis’ lease. Section 17 of the Lease provides that the LEHA can terminate the lease if the tenant or other person in the control of the tenant engages in criminal activity under Title 5 of the Lower Elwha Klallam Law and Order Code. Because of COVID-19, the hearing was a zoom meeting, scheduled for April 30. LEHA’s written notice to Francis stated the intent to terminate the lease, along with the charges against her, and a copy of the police report. The notice also informed Francis of her rights to examine the evidence, cross-examine witnesses, and retain counsel. The notice informed her that if she objected to the termination, she must attend the hearing and present evidence and arguments. The notice advised that if Francis failed to appear, LEHA

could evict Francis without further notice. Tribal police served Francis with this notice on April 20, 2020.

Francis failed to appear for the April zoom hearing. On May 6, 2020, LEHA issued a notice of termination to Francis and directed to leave by May 18. Tribal police served Francis with this notice on May 6. Francis did not vacate the premises.

On June 8, 2020, a little more than a month later, LEHA then filed an Unlawful Detainer petition with the Tribal Court. A bench trial in tribal court resulted in a judgment for Francis, dated August 28, 2020. LEHA had argued that no notice is required under the Lower Elwha Eviction Procedures Ordinance (“EPO”) § 1.04(a). The trial court ruled that LEHA’s interpretation of EPO § 1.04 – allowing eviction of a tenant without any notice – was incorrect and dismissed the petition. Judgment for Respondent, No. 2020-CV-LEHA-001, at 4 (Aug. 28, 2020). The court stated that although LEHA may have had a meritorious case for eviction based on Francis’s criminal activity, there was not sufficient evidence that LEHA had properly served process on Francis. *Id.* at 6. LEHA did not appeal this judgment.

LEHA served another notice of termination on Francis on November 30, 2020 and directed Francis to vacate by December 6, 2020. Tribal police served Francis with notice on December 2, thus giving her four days to vacate. Francis again did not vacate the premises.

On December 11, 2020, LEHA filed a second Petition for Unlawful Detainer against Francis. LEHA relied on EPO § 1.04(a) to justify its claims. On December 17, the parties met on zoom for an initial hearing. Francis was represented by counsel and announced an intention to file a motion to dismiss. The parties met again on January 11th, 2021, for oral arguments on the motion to dismiss. Francis asserted that this latest notice to vacate was in violation of a fourteen-day notice period required under Section 18 of the Lease.

On January 15th, the trial court again ruled for Francis. LEHA again asserted that no notice was needed under EPO § 1.04. The trial court had again rejected the argument. Order Granting Respondent's Motion to Dismiss, No. 2020-CV-LEHA-002, at 3 (Jan. 15, 2021). The trial court found Section 18 operative and ruled LEHA had not met the 14-day period. *Id.* at 6.

On February 16, 2021, LEHA filed a notice to appeal the trial court's January 15 order granting Francis's motion to dismiss. On March 29, 2021, per the order of Chief Judge Fletcher, we accepted the appeal.

This appeal is governed by Section 7.1(3) of the Lower Elwha Judicial Code and Court Procedures, which provides: "The Court of Appeals shall limit its review to: (1) the record of the proceedings from the Tribal Court, (2) errors of law and procedure raised by the appellant in his or her written brief, and (3) oral argument presented at a hearing before the Court of Appeals."

## **II. Analysis**

From the inception of this case, LEHA has always stated its intent to invoke the provision in the EPO that allows for the eviction of a tenant without notice. EPO § 1.04; Petition for Unlawful Detainer ¶¶ 3, 5-7. We conclude that the adequately alleged facts that could, if proven, should result in a trial court holding that Francis is guilty of unlawful detainer and that LEHA fulfilled its obligations under the EPO.

EPO § 1.04 provides:

A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:

a) Without the requirement of any notice:

. . .

3) After an Indian Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved. . . .

Assuming that the facts alleged by the LEHA are true, the LEHA terminated Francis' lease on May 6, 2020. Once the LEHA terminated the lease, the LEHA was entitled to bring a petition for unlawful detainer under § 1.04(a)(3).

The trial court's dismissal of that petition was improper. The trial court invoked Section 18 of the lease, concluding, "Pursuant to Paragraph 18 of the Dwelling Lease Agreement, [Francis] was entitled to 14 days' [sic] notice of termination. She did not get it, the notice was defective, and this case must be dismissed." Order Granting Respondent's Motion to Dismiss, No. 2020-CV-LEHA-002, at 7. Section 18 (or Paragraph 18) states:

NOTIFICATION OF TERMINATION: Except where a shorter period of time may be authorized under the provisions of the Evictions Procedures Ordinance of the Lower Elwha Klallam Law and Order Code, the LEHA must provide the Tenant with a fourteen day Notice of Termination in order to terminate this lease. Any notice of termination shall state the reason for the termination.

Because a shorter time is authorized under the provisions of the Evictions Procedures Ordinance (i.e., Section 1.04(a)(3), which allows termination without further notice when an administrative hearing has been provided, as occurred here), the 14 day notice provision of Section 18 is not applicable to the initiation of actions under Section 1.04(a)(3). LEHA gave Francis a notice of termination twice – once on May 6, 2020 and a second time on November 30, 2020. The first notice of termination

came on the heels of a LEHA administrative termination hearing to which Francis had 10 days notice and to which she did not appear. Therefore, no further notice of termination was required.

The trial court paid no heed to the fact that Francis did not appear to object to the termination of her lease. Usually, a tenant's failure to appear is sufficient to forfeit the tenant's rights to object to a termination. *Cf.* Lower Elwha Housing Authority, Grievance Procedures for Residents and Housing Applicants § 11 ("If a party fails to appeal for a hearing then it may be ruled as a forfeiture by default."). Francis had 10 days notice of that administrative hearing, which we find likely satisfies minimum due process requirements. Moreover, Francis did not invoke her right to grieve the termination of her lease under LEHA's grievance procedures. *Id.* § 4(a): "Any resident or applicant may file a grievance concerning any decision or action of the LEHA staff or management (or a failure of the LEHA staff or management to make a decision or take an action) which adversely affects the applicant or resident." Francis had 20 days to file this grievance. *Id.* § 4(b). On the record before us, we see no evidence that Francis invoked this procedure.

The trial court was incorrect to dismiss the petition for unlawful detainer on the ground that the LEHA did not provide notice under Section 18 of the Dwelling Lease Agreement.

*Matthew L. M. Fletcher*

Matthew L.M. Fletcher, Chief Justice

*Electronic Approval by: [Signature]*

Concurring:

Philip E. Katzen, Justice

Alan C. Stay, Justice

Dated: November 8, 2021