

TITLE 10

LANDLORD AND TENANT ORDINANCE

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PREAMBLE AND FINDINGS

1. Tribal custom and traditions for real property in the pre-European invasion era provided for the communal sharing of land, with more emphasis placed on the well-being of the group than an individual. Currently however, the nexus of property use by the Tribe, and Tribal members follows more closely to the modern trends of American Law. This notion makes it imperative for the Tribe to establish well-tailored laws to maintain the property rights of the Tribe, and tribal members.
2. There are various housing entities on the Flandreau Reservation, and on other lands under the Flandreau Santee Sioux Tribe's jurisdiction that must be regulated to ensure that these structures are reliable, safe, sanitary, and maintained. The relationship between landlord and tenant is a key component of modern housing, and this ordinance intends to provide a legal foundation to cultivate long-lasting, positive relationships between these parties.
3. Previously, the condition of housing made available for Indians was poor, with unsanitary, unsafe, and overcrowded dwelling accommodations. The Flandreau Santee Sioux Tribe has remedied this by first adopting an eviction code in 1987, and complying with federal and local procedures to provide quality, low cost housing.
4. Adequate housing promotes Tribal Members to live in and around the Flandreau Reservation. Keeping members close strengthens the Tribal community, and allows young members to grow in this culturally and traditionally rich heritage.
5. The Tribe must also promulgate this ordinance to protect the Tribe's assets. Great amounts of Tribal money have been expended on the construction and maintenance of Tribally-owned housing complexes, and weak foundation of law could lead these state-of-the-art complexes to become run-down slums. These buildings must survive countless numbers of tenants so as to achieve the long-term goal of benefit both current, and future members of the Tribe
6. Avenues for the timely procedures of renting, payment of rents, and eviction are critical components of an effective Landlord/Tenant ordinance. Although it is well established that the lease agreement is the primary controlling document of the Landlord and Tenant ordinance, this ordinance provides the proper method for using the Flandreau Santee Sioux Tribe Tribal Court's judicial process when resolving claims.

PART I

GENERAL PROVISIONS, SCOPE, AND JURISDICTION

10-1-1 Title

This ordinance shall be known and cited as the Landlord and Tenant Ordinance of the Flandreau Santee Sioux Tribe.

10-1-2 Specific Repealer

This Ordinance replaces the previous Title 10 of the FSST Tribal Law and Order Code, entitled “Eviction Code of the Flandreau Santee Sioux Tribe of the Flandreau Reservation, South Dakota” in entirety. Any agreements founded on the previous Title 10 will become governed by this Title upon the passage of this ordinance. Title 10A of the FSST Tribal Law and Order Code entitled “HOUSING AUTHORITY” will not be revoked, changed, or altered by the passage of this Title.

10-1-3 Purpose; Rules of Construction

- (a) This Title shall be liberally construed and applied to promote its underlying purposes and policies.
- (b) Underlying purposes and policies of this Title are:
 - (1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;
 - (2) to encourage landlords and tenants to maintain and improve the quality of housing;
 - (3) to provide a consistent basis of law that the Tribe can utilize when leasing property to member and non-member tenants; and
 - (4) to make laws regarding leases on tribal land consistent with modern practices in real estate while keeping in mind the customs and traditions of the Tribe.

10-1-4 Construction Against Implicit Repeal

This Title is intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent Executive Committee action if that construction can be reasonably avoided.

10-1-5 Administration of Remedies; Enforcement

- (a) The remedies provided by this Ordinance shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.
- (b) Any right or obligation declared by this Ordinance is enforceable by action unless the provision declaring it specified a different and limited effect.

10-1-6 Jurisdictional Application

This Ordinance applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within the jurisdiction of the Flandreau Santee Sioux Tribe. An individual need not be a member of the Tribe or Native

American to subject to this ordinance. All disputes that arise from a rental agreement requiring adjudication must be settled in the Flandreau Santee Sioux Tribe Tribal Court.

10-1-7 Conflicts of Law

- (a) United States Government. If any provisions of the United States Constitution, statutes, regulations, or other law clearly are in conflict with this Title, the United States law will govern.
- (b) State of South Dakota. To the extent that any laws of the State of South Dakota have been made applicable to the Flandreau Reservation, if there is a conflict between such laws and this Title, this Title shall govern and shall pre-empt the application of State laws. These State laws may be read as advisory, but must not contradict this Title.
- (c) Flandreau Santee Sioux Tribe Laws. If this Title directly conflicts with an existing tribal law, case, or policy, this Title will control. If this Title conflicts with tribal laws or ordinances which have been enacted to comply with the Department of Housing and Urban Development or other agencies of the United States, such tribal laws will govern over this Title.
- (d) Supplementary Principles of Law Applicable. Unless displaced by the provisions of this Title, the other tribal principles of law or equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, or other validating or invalidating cause supplement its provisions.

10-1-8 Exclusion from Application of Title

Unless created to avoid the application of this Title, the following are not governed by this Title:

- (a) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
- (b) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;
- (c) transient occupancy in a hotel, motel, campgrounds, or park;
- (d) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;
- (e) occupancy by an owner of a condominium unit; or
- (f) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

10-1-9 Tribal Court Jurisdiction and Service of Process

- (a) The Flandreau Santee Sioux Tribe Tribal Court may exercise jurisdiction over any landlord with respect to any conduct on Flandreau Santee Sioux Tribe lands by this Title, or with respect to any claim arising from a transaction subject to this Title. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court by service of process in the manner provided by this section.
- (b) Service of process may be made for a matter arising out of this Title in accordance with the Tribal Law and Order Code Article 4, Chapter 2, et seq.
- (c) If a hearing is required because of any provision of this Title, the Tribal Court's procedures for a civil claim will be followed, with the exception that all judgments must be rendered within five (5) business days of the closing of the hearing.

PART II

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

10-2-1 Definitions

Subject to additional definitions contained in subsequent sections of this Title which apply to specific sections or parts thereof, and unless the context otherwise requires, in this Title,

- (a) "action" includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which the rights are determined, including an action for possession;
- (b) "building or housing codes" includes any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit;
- (c) "dwelling unit" means a structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household;
- (d) "good faith" means honesty in fact in the conduct of the transaction concerned;
- (e) "Indian" means a person who is recognized as being an Indian or Alaska Native by any Tribe, or the United States government and includes those who qualify through blood-quantum or ancestry;
- (f) "Indian Housing Authority," or "Housing Authority" means the entity established under the laws of the Tribe, the laws of the State of South Dakota, or otherwise for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe;

- (g) "landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part;
- (h) "organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity;
- (i) "owner" means one or more persons, jointly or severally, in whom is vested (1) all or part of the legal title to property or (2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagee in possession;
- (j) "person" includes an individual or organization;
- (k) "premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;
- (l) "rent" means all payments to be made to or for the benefit of the landlord under the rental agreement;
- (m) "rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under FSST § 10-5-2 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;
- (n) "reservation" means the Flandreau Reservation of the Flandreau Santee Sioux Tribe;
- (o) "single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit;
- (p) "tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;
- (q) "Tribal Lands" means all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Flandreau Santee Sioux Tribe, and any and all areas which may constitute the Indian Country of the Tribe under applicable provisions of Tribal law and the law of the United States of America;
- (r) "Tribe" means the Flandreau Santee Sioux Tribe.

10-2-2 Obligation of Good Faith

Every duty under this Title and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Title imposes an obligation of good faith in its performance or enforcement.

10-2-3 Unconscionability

- (a) If the court, as a matter of law,
 - (1) find a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or
 - (2) a settlement in which a party waives or agrees to forego a claim or right under this Title or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.
- (b) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

10-2-4 Notice

- (a) A person has notice of a fact if
 - (1) He has actual knowledge of it;
 - (2) He has received written notice of it; or
 - (3) From all the facts and circumstances known to him at the time in question, he has reason to know that it exists.

A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

- (b) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when
 - (1) it comes to his attention; or
 - (2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or
 - (3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

- (c) "Notice," knowledge of a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

PART III

RENTAL AGREEMENTS

10-3-1 Terms and Conditions of Rental Agreement

- (a) A landlord and tenant may include in a rental agreement terms and conditions not prohibited by this Title or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties. A rental agreement will provide for the relationship between landlord and tenant, and will be granted the remedies contained within it by the Tribal Court.
- (b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling.
- (c) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day-to-day.

10-3-2 Effect of Unsigned or Undelivered Rental Agreement

- (a) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.
- (b) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.
- (c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.
- (d) No oral terms or conditions may supplement a lease in this section.

10-3-3 Prohibited Provisions in Rental Agreements

- (a) A rental agreement may not provide that the tenant:
 - (1) agrees to waive or forego rights and remedies under this Title;

- (2) authorizes any person to confess judgment on a claim arising out of the rental agreement;
 - (3) agrees to pay the landlord's attorney's fees; or
 - (4) agrees to exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for the liability or the costs connected therewith.
- (b) A provision prohibited in subsection (a) included in the rental agreement is unenforceable only as to that provision.

PART IV

LANDLORD OBLIGATIONS

10-4-1 Security Depositions; Prepaid Rent

- (a) A landlord may not demand or receive security, however denominated, in an amount or value in excess of one (1) month's periodic rent. In the case of an apartment complex that is not based on the fair market value for rent, but is subsidized by either a United States or Tribal Governmental program, the security deposit may not exceed five hundred dollars (\$500.00).
- (b) Upon termination of the tenancy, property or money held by the landlord as security may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with FSST § 10-5-1 all as itemized by the landlord in a written notice delivered to the tenant together with the amount due thirty (30) days after termination of the tenancy and delivery of possession and demand by the tenant.
- (c) If the landlord fails to comply with subsection (b), or if he fails to return any prepaid rent required to be paid to the tenants under this Title, the tenant may recover the property and money due him together with damages in an amount equal to the amount wrongfully withheld.
- (d) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Title.
- (e) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

10-4-2 Disclosure

- (a) A landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before commencement of the tenancy the name and address of:
 - (1) the person authorized to manage the premises; and

- (2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.
- (b) The information required to be furnished in this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.
- (c) A person who fails to comply with subsection (a) becomes an agent of each person who is landlord for:
 - (1) service of process and receiving and receipting for notices and demands; and
 - (2) performing the obligations of the landlord under this Title and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

10-4-3 Landlord to Deliver Possession of Dwelling Unit

At the commencement of the term a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and FSST § 10-4-4. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in FSST § 10-8-1.

10-4-4 Landlord to Maintain Premises

- (a) A landlord shall
 - (1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
 - (2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
 - (3) keep all common areas of the premises in a clean and safe condition;
 - (4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;
 - (5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and
 - (6) supply running water and reasonable amounts of hot water at all times and reasonable heat during months requiring it, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an

installation within the exclusive control of the tenant and supplied by a direct public utility connection.

- (b) If the duty imposed by paragraph (1) of subsection (a) is greater than any duty imposed by any other paragraph of that subsection, the landlord's duty shall be determined by reference to paragraph (1) of subsection (a).
- (c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.
- (d) The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:
 - (1) the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;
 - (2) the work is not necessary to cure noncompliance with subsection (a)(1) of this section; and
 - (3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.
- (e) The landlord may not treat performance of the separate agreement described in subsection (d) as a condition to any obligation or performance of any rental agreement.

10-4-5 Limitation of Liability

- (a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this Title as to events occurring after written notice to the tenant of the conveyance. However, he remains liable to the tenant for all security recoverable by the tenant under FSST §10-4-1 and all prepaid rent.
- (b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this Title as to events occurring after written notice to the tenant of the termination of his management.

PART V

TENANT OBLIGATIONS

10-5-1 Tenant to Maintain Dwelling Unit

A tenant shall:

- (a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (b) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
- (c) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;
- (e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;
- (f) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so;
- (g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises, while using the premises only for the purpose as described in the lease agreement; and
- (h) not sublet, assign, or give up any portion of their lease to a third party without the written approval of the landlord.

10-5-2 Rules and Regulations

- (a) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:
 - (1) its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;
 - (2) it is reasonably related to the purpose of which it is adopted;
 - (3) it applies to all tenants in the premises in a fair manner;
 - (4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;
 - (5) it is not for the purpose of evading the obligations of the landlord; and
 - (6) the tenant has notice of it at the time he enters into the rental agreement, or when it is adopted.

- (b) If a rule or regulation is adopted after the tenant enters into the rental agreement that works a substantial modification of his bargain it is not valid unless the tenant consents to it in writing.

10-5-3 Access

- (a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
- (b) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.
- (c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impractical to do so, the landlord shall give the tenant at least twenty-four (24) hours' notice of his intent to enter and may enter only at reasonable times.
- (d) A landlord has no other right of access except:
 - (1) pursuant to court order;
 - (2) as permitted by FSST § 10-7-2 and FSST § 10-7-3(b); or
 - (3) unless the tenant has abandoned or surrendered the premises.

10-5-4 Tenant to Use and Occupy

Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises no later than the first day of the extended absence. An absence is deemed "extended" if it is for more than fourteen (14) days.

PART VI

TENANT REMEDIES

10-6-1 Noncompliance by the Landlord – In General

- (a) Except as provided in this Title, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with FSST § 10-4-4 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied in fifteen (15) days, and the rental agreement shall terminate as provided in the notice subject to the following:

- (1) If the breach is remedial by repairs, the payment of damages or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.
 - (2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.
- (b) Except as provided in this Title, the tenant may recover actual damages and obtain injunctive relief for noncompliance by the landlord with the rental agreement or FSST § 10-4-4.
 - (c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under FSST § 10-6-1(a).
 - (d) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under FSST § 10-4-1 and all prepaid rent.

10-6-2 Failure to Deliver Possession

- (a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in FSST § 10-4-3, rent abates until possession is delivered and tenant may:
 - a. terminate the rental agreement upon at least seven (7) days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security; or
 - b. demand performance of the rental agreement by the landlord and, if the tenant elects, obtain possession of the dwelling unit from the landlord or any person wrongfully in possession and recover the actual damages sustained by him.
- (b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than two (2) months' periodic rent or twice the actual damages sustained, whichever is greater.

10-6-3 Self-Help for Minor Defects

- (a) If the landlord fails to comply with the rental agreement or FSST § 10-4-4, and the reasonable cost of compliance is less than One Hundred Dollars (\$100.00), or an amount equal to one-half (1/2) the periodic rent, whichever amount is greater, the tenant may recover damages for the breach under FSST § 10-6-1(b) or may notify the landlord of his intention to correct the condition at the landlord's expense. If the landlord fails to comply within fourteen (14) days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

- (b) A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

10-6-4 Wrongful Failure to Supply Heat, Water, Hot Water, or Essential Services

- (a) If contrary to the rental agreement or FSST § 10-4-3 the landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas, or other essential service, the tenant may give written notice to the landlord specifying the breach and may:
 - (1) take reasonable and appropriate measures to secure reasonable amounts of heat, hot water, running water, electric, gas, and other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or
 - (2) recover damages based upon the diminution in the fair rental value of the dwelling unit; or
 - (3) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.
- (b) In addition to the remedy provided in paragraph (3) of subsection (a) the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent.
- (c) If the tenant proceeds under this section, he may not proceed under FSST § 10-6-1 or FSST § 10-6-3 as to that breach.
- (d) Rights of the tenant under this section do not arise until he has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

10-6-5 Fire or Casualty Damage

- (a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:
 - (1) immediately vacate the premises and notify the landlord in writing within ten (10) days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or
 - (2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

- (b) If the rental agreement is terminated the landlord shall return all security recoverable under FSST § 10-4-1 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

10-6-6 Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Service

If a landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than two (2) months' periodic rent or twice the actual damages sustained by him, whichever is greater. If the rental agreement is terminated the landlord shall return all security recoverable under FSST § 10-4-1 and all prepaid rent.

PART VII

LANDLORD REMEDIES

10-7-1 Noncompliance with Rental Agreement; Failure to Pay Rent

- (a) Except as provided in this Title, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with FSST § 10-5-1 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice. If the breach is not remedied in fourteen (14) days, the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement.
- (b) If rent is unpaid when due and the tenant fails to pay rent within fourteen (14) days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.
- (c) Except as provided in this Title, the landlord may recover actual damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or FSST § 10-5-1.

10-7-2 Failure to Maintain

If there is noncompliance by the tenant with FSST § 10-5-1 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen (14) days

after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for actual and reasonable cost or the fair and reasonable value thereof as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment.

10-7-3 Remedies for Absence, Nonuse and Abandonment

- (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of fourteen (14) days pursuant to FSST § 10-5-4 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.
- (b) During any absence of the tenant in excess of fourteen (14) days, the landlord may enter the dwelling unit at times reasonably necessary.
- (c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

10-7-4 Waiver of Landlord's Right to Terminate

Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by him that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

10-7-5 Landlord Liens; Distress for Rent

- (a) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before the effective date of this Title.
- (b) Distraint for rent is abolished.

10-7-6 Remedy after Termination

If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

10-7-7 Recovery of Possession Limited

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption

of heat, running water, hot water, electricity, gas, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted by this Title.

PART VIII

PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

10-8-1 Periodic Tenancy; Holdover Remedies

- (a) The landlord or tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten (10) days before the termination date specified in the notice.
- (b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least sixty (60) days before the periodic rental date specified in the notice.
- (c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession.

10-8-2 Landlord and Tenant Remedies for Abuse of Access

- (a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case the landlord may recover actual damages.
- (b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

PART IX

RETALIATORY CONDUCT

10-9-1 Retaliatory Conduct Prohibited

- (a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
 - (1) the tenant has complained to a governmental agency or board charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or
 - (2) the tenant has complained to the landlord of a violation under FSST § 10-4-4; or

- (3) the tenant has organized or become a member of a tenant's union or similar organization.
- (b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in FSST § 10-6-6 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within [1] year before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
- (c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:
 - (1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his consent; or
 - (2) the tenant is in default in rent; or
 - (3) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.
- (d) The maintenance of an action under subsection (c) does not release the landlord from liability under FSST § 10-6-1(b).

PART X

EFFECTIVE DATE; SAVINGS CLAUSE; SEVERABILITY

10-10-1 Effective Date

This Title shall become effective on the date it is approved by resolution of the Flandreau Santee Sioux Tribe Executive Committee

10-10-2 Savings Clause

Transactions entered into before the effective date of this Title, and not extended or renewed on and after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this Title as though the repeal or amendment had not occurred.

10-10-3 Severability

If any provision of this Title or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this Title which can be

given effect without the invalid provision or application, and to this end the provisions of this Title are severable.

PART XI

TATEWIN APARTMENT COMPLEX

10-11-1 Premises Described

The Tatewin Apartment Complex is owned and operated by the Flandreau Santee Sioux Tribe, and provides safe, affordable, and modern accommodations for Tribal Elders. The complex began taking tenants in 2009 and became fully operational in 2010. This Title applies to all leases entered into between the Flandreau Santee Sioux Tribe and tenants at this facility. If any buildings or additions are joined to the Tatewin Apartment Complex, this Part will also apply to leasing for those buildings.

10-11-2 Management of the Tatewin Apartment Complex

The Flandreau Santee Sioux Tribe is the sole owner of the Tatewin Apartments, however, the management of the property will be conducted by the Tatewin Board. The Tatewin Board's delegated powers are that of a landlord or property manager, and the Flandreau Santee Sioux Tribe Executive Committee reserves its rights to dispose of any property of the Tatewin Apartments, to approve capital expenditures of more than \$5,000 that are needed by the facility, to pass any ordinance or resolution that could directly or indirectly affect the Tatewin Apartments, to approve personnel changes at the Tatewin Apartment Complex, and to handle all other matters that are typically reserved to the owner of property.

10-11-3 Eligibility for Residence at the Tatewin Apartments

- (a) To be eligible to reside at the Tatewin Apartment complex, an individual must follow all application procedures of the Tatewin Board, and must:
 - (1) be an enrolled member of the Flandreau Santee Sioux Tribe;
 - (2) be certified with "On-Reservation Status" in accordance with Title 19 of the Flandreau Santee Sioux Tribe Law and Order Code; and
 - (3) be sixty-two (62) years of age at the time when the individual will move into the apartment.
- (b) There will be no exceptions to this age and membership requirement as this apartment complex was funded and designed to house only elder members of the Flandreau Santee Sioux Tribe. Any tenants who are now living in the Tatewin Apartment Complex that do not meet these eligibility requirements will be exempt from this section, and may continue as tenants of the Tatewin Apartment Complex.

This Ordinance was passed by the Executive Committee on the 13th day of September, 2012, by Resolution # 12-68.