

Legal Opinion: GCH-0079

Index: 2.245

Subject: PH Due Process Determination: Iowa

October 5, 1992

DUE PROCESS DETERMINATION

for the

STATE OF IOWA

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ANALYSIS

I. Jurisdiction: State of Iowa.

II. Elements of Due Process

Section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d(k), as amended by section 503(a) of the National Affordable Housing Act of 1990, Pub. L. 101-625, approved November 28, 1990), provides that:

For any grievance concerning an eviction or termination of tenancy that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any drug-related criminal activity on or near such premises, the agency may . . . exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process . . . .

The statutory phrase "elements of due process" is defined by HUD at 24 CFR Section 966.53(c) as:

. . . an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

- (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
- (2) Right of the tenant to be represented by counsel;

- (3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have; and
- (4) A decision on the merits.

HUD's determination that a State's eviction procedures satisfy this regulatory definition is called a "due process determination." The present due process determination is based upon HUD's analysis of the laws of the State of Iowa to determine if eviction procedures under those laws require a hearing with all of the regulatory "elements of due process," as defined in Section 966.53(c).

HUD finds that the requirements of Iowa law governing a forcible detainer action in the district courts of Iowa under Iowa Code Annotated (I.C.A.) Chapters 631 and 648, and Chapter 562A (the Uniform Residential Landlord and Tenant Act, "U.R.L.T.A."), and the Iowa Rules of Civil Procedure (I.R.C.P.), include all of the elements of basic due process, as defined in 24 CFR Section 966.53(c).

### III. Overview of Iowa Eviction Procedures

In Iowa there are two methods for a landlord to recover possession of real property from a tenant. A landlord may bring either: (1) a forcible detainer action in the district court pursuant to I.C.A. Chapter 648, or (2) a forcible detainer action by a small claim proceeding in the district court pursuant to I.C.A. Chapter 631. Both forms of forcible detainer are subject to the U.R.L.T.A. (I.C.A. Chapter 562A).

Under the U.R.L.T.A., upon termination of the rental agreement, the landlord may bring a forcible detainer action in the district court pursuant to I.C.A. Chapters 631 or 648. A landlord may commence an action based on nonpayment of rent or material noncompliance with the rental agreement by the tenant, or against any person wrongfully in possession after termination of the rental agreement or rental term (I.C.A. Sections 562A.27, 648, and 631).

I.C.A. 562A.27 provides that:

Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement . . . , 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 days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section . . .

Section 648.1 provides that:

A summary remedy for forcible . . . detention is allowable:

1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.
2. Where the lessee holds over after the termination of the

lease.

3. Where the lessee holds contrary to the terms of the lease . . . [and]
5. For the nonpayment of rent, when due.

I.C.A. 631.1 provides that "[t]he district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1 subsections 1, 2, 3 and 5."

The forcible detainer action is also subject to the I.R.C.P. The I.R.C.P. govern the practice and procedure in all courts of the state, except where the rules or statutes provide otherwise (I.R.C.P. Rule 1).

A forcible detainer action is subject to Article I, Section 9 of the Iowa State Constitution, which provides that "no person shall be deprived of life, liberty, or property without due process of law." The Iowa Supreme Court has found this clause to be identical in scope and purpose to the Fourteenth Amendment of the United States Constitution. Therefore, when interpreting the Iowa due process clause, the Iowa Supreme Court will look to the United States Supreme Court's interpretation of the Fourteenth Amendment for guidance. *Chicago Title Ins. Co. v. Hudd*, 256 N.W.2d 17, 23 (Iowa 1977); *Davenport Water Co. v. Iowa State Commerce Commission*, 190 N.W.2d 583, 593 (Iowa 1971).

#### IV. Analysis of Iowa Eviction Procedures for Each of the Regulatory Due Process Elements

The following analysis considers whether each element of HUD's regulatory due process definition is satisfied in an action for forcible detainer commenced in the Iowa district courts (including the court sitting in small claims). The small claims procedure under I.C.A. Chapter 631 appears to be an abbreviated form of the forcible detainer action under I.C.A Chapter 648. The primary distinction is that the small claims procedure provides a condensed timetable to expedite the eviction. Thus a small claims action is the preferred action for a landlord seeking quick eviction. The analysis notes differences between procedures in the "regular" district court versus the district court sitting in small claims.

- A. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction (24 CFR Section 966.53(c)(1))

##### Notice to Terminate Tenancy

Prior to commencing a forcible detainer action in the Iowa district courts, a landlord must first notify the tenant in accordance with the U.R.L.T.A. that the landlord intends to terminate the tenancy. Specifically, I.C.A. 562A.27(1) provides that:

Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement . . . , 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 days after receipt of the notice if the breach is not

remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section . . .

I.C.A. 562A.27(1) states that if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months:

the landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

For an unlawful detainer in the regular district court, I.C.A. 648.3 provides that:

Before action can be brought . . . three days' notice to quit must be given to the defendant in writing.

The thirty day written notice under I.C.A. 562A.27 is separate and distinct from the three-day notice to quit under I.C.A. 648.3.

#### Notice at Commencement of Action

In addition to the notice to terminate tenancy, the I.C.A. and the I.R.C.P. require that a forcible detainer action brought in the district court must be commenced by the filing of a petition served on the defendant. I.R.C.P. Rule 48 (for any detainer action), and I.C.A. Chapter 648 (for a detainer action in the regular district court). I.R.C.P. Rule 69(a) states that the petition must contain: (1) a short and plain statement of the claim which shows that the pleader is entitled to relief; and (2) a demand for judgment.

I.R.C.P. Rule 49 also requires that the defendant be given notice of the petition:

The original notice shall contain the name of the court and the names of the parties, be directed to the defendant . . . and the time within which these rules require the defendant to serve, and within a reasonable time thereafter file, a motion or answer, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the petition . . .

Finally, I.R.C.P. Rule 56.1 establishes the procedures for personal service of the petition on a defendant. Alternatively, in those instances where personal service cannot be obtained, the petition may be served by publication in accordance with I.R.C.P. Rule 60.

In small claims court, all actions are commenced by filing of an original notice with the clerk (I.C.A. 631.3). I.C.A. 631.4(2)(b) provides that the "[o]riginal notice shall be served personally upon each defendant as provided in rule 56.1 . . . which service shall be made at least five days prior to the date set for hearing."

#### Notice: Conclusion

Hence, the U.R.L.T.A. notice of termination requirements under I.C.A.

562A.27(1), and the rules governing the contents and delivery of the petition satisfy the HUD due process requirements set forth at 24 CFR Section 966.53(c)(1) regarding adequate notice to the defendant. Adequate notice of the grounds for terminating the tenancy and for eviction is also required by the due process clause of the Iowa Constitution (Article I, Section 9).

B. Right to be represented by counsel (24 CFR Section 966.53(c)(2))

The right of a defendant in civil matters to be represented by counsel is implied throughout the rules of civil procedure. See, for example, I.R.C.P. Rule 49 (plaintiff's petition should clearly indicate the name and address of the plaintiff's attorney); Rule 52 (an attorney may take an acknowledgement of service and may mail a copy of the original notice when mailing is required or permitted).

I.R.C.P. Rule 65 governs appearances by counsel in district court proceedings. Rule 65 specifically states:

An attorney making an appearance shall, either by filing written appearance or by signature to the first pleading or motion filed by the attorney, clearly indicate the attorney or attorneys in charge of the case and shall not sign in the name of the firm only. Such appearance shall entitle the attorney to serve as provided in I.R.C.P. 82.

I.C.A. 631.4 specifically provides that any person may be represented by an attorney in small claims court.

There are no provisions which limit the right to be represented. Thus, the parties in a district court proceeding (small claims and otherwise) have a right to be represented by counsel. The right to be represented by counsel is also afforded by the due process clause of the Iowa Constitution (Article I, Section 9).

C. Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses (24 CFR Section 966.53(c)(3))

I.R.C.P. Rule 191 establishes the procedure to be followed in the course of trial proceedings in the regular Iowa district courts (not including small claims court). Rule 191 states:

After the jury is sworn, the trial shall proceed in the following order:

- (a) The party having the burden of proof on the whole action may briefly state his claim, and by what evidence he expects to prove it;
- (b) The other party may similarly state his defense and evidence;
- (c) The first above party must then produce his evidence, to be followed by that of the adverse party;
- (d) The parties will be confined to rebutting evidence, unless

the court in furtherance of justice, permits them to offer evidence in their original case;

- (e) But one counsel on each side shall examine the same witness, unless otherwise permitted by the court

Rule 191 gives the defendant an opportunity to present any defenses and to refute evidence presented by the plaintiff.

For a forcible detainer action in small claims court, I.C.A. 631.11(1) provides that a small claims hearing shall be simple and informal and shall be conducted by the court itself, without regard to technicalities of procedure. I.C.A. 631.11(2) provides that the "court shall swear the parties and their witnesses, and examine them in such a way as to bring out the truth." The parties may participate either personally or by an attorney. This procedure provides the opportunity for refutation of the landlord's case.

For a forcible detainer action, either in regular district court or in small claims court, each party or the party's counsel has the right to cross-examine witnesses. *Pond v. Anderson*, 241 Iowa 1038, 44 N.W.2d 372, 376 (1950).

The right to refute evidence presented by the plaintiff is guaranteed by the due process clause of the Iowa Constitution (Article I, Section 9). Thus, Iowa law guarantees a defendant the opportunity to refute the plaintiff's evidence and to confront and cross-examine witnesses.

- D. Opportunity to present any affirmative legal or equitable defense which the tenant may have (24 CFR Section 966.53(c)(3))

In a forcible detainer action in the regular district court (excluding small claims court), I.R.C.P. Rule 72 provides that the defendant is required to file an answer which "may contain as many defenses, legal or equitable, as the pleader may claim." There are no limits on the defenses which may be raised by the defendant in the district court forcible detainer proceeding.

For a forcible detainer action in small claims court, I.C.A. 631.5 provides that a "defendant may appear in person or by an attorney, and by the denial of a claim a defendant does not waive any defenses." The statute does not limit the right of a tenant to raise any available defense in this proceeding.

For an unlawful detainer action in the regular district or small claims proceeding, the Iowa law permits a defendant to raise any available defenses to the PHA's claim for possession, whether the defense is equitable or legal in character.

- E. A decision on the merits (24 CFR Section 966.53(c)(4))

Iowa law requires a decision on the merits. The court is required to examine the issues, whether of law or fact, and to make a finding on the merits. Specifically, I.R.C.P. Rule 179 states:

The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; and direct an appropriate judgment . . .

In addition, I.R.C.P. Rule 219 defines the term "judgment" to mean "every final adjudication of any of the rights of the parties in an action."

I.C.A. 631.11(4) provides that a judgment shall be rendered, based upon applicable law and upon a preponderance of the evidence.

A defendant in a action of forcible detainer in the Iowa district courts is entitled to a decision on the merits. A decision on the merits is also required by the due process clause of the Iowa Constitution (Article I, Section 9).

#### V. Conclusion

Iowa law governing a forcible detainer action in the district court requires that the tenant have the opportunity for a pre-eviction hearing in court which provides the basic elements of due process as defined in 24 CFR Section 966.53(c) of the HUD regulations.

By virtue of this due process determination under section 6(k) of the U.S. Housing Act of 1937, a PHA in Iowa may evict a public housing tenant pursuant to an action for forcible detainer in the district courts (either by a proceeding in the regular district court pursuant to I.C.A. 648 or by a proceeding in the small claims court pursuant to I.C.A. 631), for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the PHA, or any drug-related criminal activity on or near the premises. The PHA is not required to first afford the tenant the opportunity for an administrative hearing on the eviction.