

## 11. Amendment and Withdrawal of a Notice to End Tenancy

May-20

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

This policy guideline addresses amendment, withdrawal and waiver of a notice to end tenancy.

### A. LEGISLATIVE FRAMEWORK

The requirements for ending a tenancy are set out in sections 45 to 50 of the *Residential Tenancy Act* (RTA) and sections 37 to 43 of the *Manufactured Home Park Tenancy Act* (MHPTA).

A notice to end tenancy must comply with the form and content requirements under section 52 of the RTA and section 47 of the MHPTA and provide the right amount of notice based on the section of the legislation under which the tenancy is being ended.

Section 68 of the RTA and section 61 of the MHPTA provide that if a notice to end a tenancy does not comply with section 52, an arbitrator may amend the notice if satisfied that

- the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- in the circumstances, it is reasonable to amend the notice.

### B. AMENDING A NOTICE TO END TENANCY

In determining if a person should have known particular information that was omitted from a notice to end tenancy, an arbitrator may consider whether a reasonable person would have known this information in the same circumstances. In determining whether it is reasonable in the circumstances to amend the notice, an arbitrator may look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

### C. WITHDRAWAL OF NOTICE TO END TENANCY

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

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### D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.

#### ***Withdrawal of notice to end tenancy for landlord’s use***

If a landlord and tenant agree to withdraw a notice to end tenancy for landlord use under section 49, the tenant is not entitled to compensation for the notice. The tenant must repay any compensation that was paid as a result of the notice.

### E. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
A	am	Added section heading and reference to notice of rent increase	Dec-2017
B	am	Added section heading and organized existing content to align with heading	Dec-2017
C	am	Added section heading and organized existing content to align with heading	Dec-2017

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D	am	Added section heading, organized existing content accordingly and included recommendation that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.	Dec-2017
E	am	Added section heading and organized existing content accordingly. Added into criteria for establishing intent to waive whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing. Simplified descriptions of express or implied consent to waive. Added subsection on withdrawal of notice for landlord's use to provide guidance on compensation.	Dec-2017
F	new	Added section heading and removed remedy not available under the current legislation	Dec-2017
Title	am	Added "to end Tenancy" in title of guideline	Nov-2019
All	Am	Revised for clarity	May-2020

Change notations

am = text amended or changed

del = text deleted

new = new section added