

## 11. Amendment and Withdrawal of Notices

Jan-04

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*This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also 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 Guideline may be revised and new Guidelines issued from time to time.*

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### Notice to End Tenancy

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) set out the requirements<sup>1</sup> for giving a Notice to End Tenancy. The Legislation<sup>2</sup> allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest

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<sup>1</sup> *Residential Tenancy Act*, s. 45 - 50 & 52; *Manufactured Home Park Tenancy Act*, s. 37 - 43 & 45

<sup>2</sup> RTA, s. 68(1); MHPTA, s. 61(1)

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intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.

Also, as a general rule it may be stated that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given.

In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional. A Notice to End Tenancy given by the landlord must also be in the form approved by the Director of the Residential Tenancy Office.

**Notice of Rent Increase**

Where a Notice of Rent Increase has been given by the landlord, the Notice may be withdrawn as long as the tenant has not applied for arbitration of the rent increase, or acted on the notice to his or her detriment. For example, where a landlord withdraws a Notice of Rent Increase after having given the Notice to the tenant with the expectation or intention that the tenant will vacate, and the tenant has made arrangements to vacate the premises because of the amount of the rent increase, the tenant may still have a valid claim for moving expenses and other compensation, as permitted in the Legislation<sup>3</sup>.

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<sup>3</sup> RTA, s. 51; MHPTA, s. 44