

**File No. 1849**  
**Board Order No. 1849-1**

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**April 12, 2016**

**SURFACE RIGHTS BOARD**

**IN THE MATTER OF THE PETROLEUM AND NATURAL GAS  
ACT, R.S.B.C., C. 361 AS AMENDED**

**AND IN THE MATTER OF  
BLOCK A OF THE NORTH ½ OF SECTION 25 TOWNSHIP 88 RANGE 20 WEST OF  
THE 6<sup>TH</sup> MERIDIAN PEACE RIVER DISTRICT, EXCEPT: PART ON PLAN BCP34469  
PARCEL A (L19264) OF THE SOUTH ½ OF SECTION 25 TOWNSHIP 88 RANGE 20  
WEST OF THE 6<sup>TH</sup> MERIDIAN PEACE RIVER DISTRICT  
PARCEL B (L19264) OF THE SOUTH ½ OF SECTION 26 TOWNSHIP 88 RANGE 20  
WEST OF THE 6<sup>TH</sup> MERIDIAN PEACE RIVER DISTRICT  
(The "Lands")**

**BETWEEN:**

**Ernest John Wiebe and  
Margaret Rose Wiebe**

**(APPLICANTS)**

**AND:**

**Canadian Natural Resources Ltd.**

**(RESPONDENT)**

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**BOARD ORDER**

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Heard by written submissions last received March 28, 2016

Thor Skafte, for the Applicants Ernest and Margaret Wiebe  
Daron K. Naffin and Tim Myers, for the Respondent Canadian Natural Resources Ltd

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## **INTRODUCTION AND ISSUE**

[1] Ernest and Margaret Wiebe filed an application with the Board for the review of rent payable under eight surface leases with Canadian Natural Resources Limited (CNRL). The applications with respect to seven surface leases were not resolved and the Board's mediator referred the disputes to arbitration. CNRL submits the Board does not have jurisdiction to consider applications for rent review with respect to five of the surface leases.

[2] The only issue before me in this preliminary application is whether the Board has jurisdiction to hear an application for rent review with respect to the surface leases for the following well locations:

1-25-88-20-W6M

A1-25-88-20-W6M

11-25-88-20-W6M

1-26-88-20-W6M

6-26-88-20-W6M

## **FACTS**

[3] Ernest and Margaret Wiebe own the Lands subject to the surface leases in issue. They purchased these Lands from the former owner, Leonard Matteson, in December, 2012. Prior to purchasing the Lands, the Wiebes rented the Lands from Mr. Matteson for their farming operations. The Wiebes have been farming the Lands since the spring of 1996.

[4] The Wiebes also own and farm other lands in the vicinity. In the late spring and early summer of 2012, Mr. Wiebe had telephone conversations with Ashley Scriba, the surface landman for CNRL, respecting review of rent payable under surface leases with CNRL on the lands owned by the Wiebes. During their conversations, Mr. Wiebe was told that Leonard Matteson was negotiating the rent payable under five leases on the Lands owned by him, which at the time was rented by the Wiebes. These are the five leases in issue in these proceedings.

[5] Mr. Wiebe informed Ms. Scriba that he had made an offer to purchase the Lands from Mr. Matteson and that he did not feel it was right that Mr. Matteson was negotiating leases on property that he was in the process of selling to him. Mr. Wiebe did not think it was right that as lessor of the Lands he did not get to provide input into the negotiations.

[6] Ms. Scriba suggested that as she was in the process she would go ahead with negotiating with Mr. Matteson, but that as soon as Mr. Wiebe took possession of the Lands, they would review the five leases. Mr. Matteson signed rent renewal agreements with CNRL for the five leases on August 3, 2012.

[7] Mr. Matteson agreed to revised annual rent of: \$6,500 for location 1-25-88-20-W6M effective December 1, 2012; \$3,196 for location A1-25-88-20-W6M effective September 11, 2013; \$5,500 for location 11-25-88-20-W6M effective July 29, 2013; \$4,726 for location 1-26-88-20-W6M effective January 11, 2013; and \$3,613 for location 6-26-88-20-W6M effective October 23, 2012.

[8] Mr. and Mrs. Wiebe took possession of the Lands on December 18, 2012.

[9] In the spring of 2013, Mr. Wiebe contacted Ms. Scriba with respect to rent review of the five leases on the Lands purchased from Mr. Matteson. He was told by Ms. Scriba

that CNRL was engaged in another rent review dispute with other landowners, namely Terrance and Donna Iverson, and that they would wait for the outcome of the Surface Rights Board arbitration of that case and pay the Wiebes in accordance with the Board's decision.

[10] On January 8, 2014, the Board rendered its decision in *Iverson v. Canadian Natural Resources Limited*, SRB Order 1797-1.

[11] In February, 2014, Mr. Wiebe received a call from Paul Brown, land agent from Vertex Land Services who had been authorized by Ms. Scriba to set up a date to review his rents. Mr. Wiebe and Mr. Brown met on February 20, 2014 at the Wiebe's home. They discussed all of the leases, not just those on the property originally owned by the Wiebes, but also the five on the Lands purchased from Mr. Matteson. Mr. Brown indicated he could not pay in accordance with the *Iverson* decision and said his hands were tied. Mr. Wiebe and Mr. Brown discussed what CNRL would be willing to pay but when Mr. Wiebe asked if he could sign up that very day, Mr. Brown said "No, he would have to get authorization from CNRL first".

[12] On July 7, 2014 Mr. Wiebe met with Ms. Scriba and two other individuals at the Wiebe farm. Mr. Wiebe pointed out various issues with weed control and maintenance on the lease areas.

[13] During the summer of 2014, Mr. Wiebe was told by Ms. Scriba that Calgary head office would have to make a decision on his file. On September 15, 2014, Mr. Skafte and Mr. Wiebe flew to Calgary to meet with Mr. Scott Reed, the senior supervisor landman at the time. It is not clear from Mr. Wiebe's evidence whether this meeting was about the rent reviews, the claims for damages relating to poor weed control and other maintenance issues, or both. In any event, Mr. Wiebe and Mr. Skafte were told that the team in Fort St. John would be the ones to make a decision.

[14] Mr. Wiebe commenced his application to the Board for rent review in February 2015. He has not commenced an application for damages. The rent review applications did not resolve through the mediation process and on September 14, 2015, the Board's mediator referred them to arbitration.

[15] The Board conducted a pre-arbitration conference call on October 14, 2015 for this file and for file 1850 and scheduled both rent review applications for arbitration in early February 2016. By letter dated December 16, 2015, CNRL sought to have Mr. Wiebe's rent review applications dismissed on the grounds that they were not properly before the Board. The Board convened a telephone conference call to discuss on December 23, 2015 and determined that the arbitration should be adjourned to July 2016, and scheduled a written submission process to resolve any jurisdictional issues in advance of the arbitration.

## **ANALYSIS**

[16] The parties' rights and the Board's authority with respect to the review of annual rent payable under a surface lease are set out in sections 165 and 166 of the *Petroleum and Natural Gas Act*. The key provisions for the purpose of this application may be summarized as follows.

[17] Subsection 165 (2) provides that a right holder who holds a right of entry under a surface lease or the landowner whose land is subject to the right of entry may serve notice on the other party in a prescribed manner requiring negotiation of an amendment to the rental provisions in the surface lease. Subsection 165(3) provides that notice to renegotiate the rental provisions in a surface lease may not be served prior to the fourth anniversary of the effective date of the surface lease or the effective date of the most recent amendment to the surface lease.

[18] Subsection 166(1) provides that if the parties are unable to agree to a rental amendment within a prescribed time of the notice under subsection 165(2) having been given, either party may apply to the Board to resolve the disagreement.

[19] The right to seek an amendment to a rental provision in a surface lease is limited to the right holder and the landowner. In accordance with the definitions of “landowner” and “owner” set out in section 141(1) of the *Petroleum and Natural Gas Act*, a “landowner” for the purposes of a rent review is the person registered in the land title office as the registered owner of the land or as its purchaser under an agreement for sale. An occupant of land, such as a tenant, does not have any rights with respect to the review of rent payable under a surface lease. Although Mr. Wiebe was actually farming the Lands at the time of the last rent review, and had made an offer to purchase, he was not the “landowner” within the meaning of the *Petroleum and Natural Gas Act* and, therefore, had no rights at the time the rent reviews were being negotiated by Mr. Matteson.

[20] Mr. Wiebe’s evidence that Ms. Scriba told him that once he became the owner of the Lands CNRL would revisit the rent reviews is not contradicted by CNRL and I accept it. However, although Ms. Scriba may have said CNRL would review the rents, that offer did not conform with the legislative scheme providing that a party to a surface lease may not give notice to renegotiate rental provisions prior to the fourth anniversary of the most recent amendment. Even if CNRL could be said to be estopped from relying on the legislative scheme in refusing to renegotiate with Mr. Wiebe (which was not argued in any event) the Board’s jurisdiction cannot be invoked in the absence of a valid notice to renegotiate having been given under section 165(2) and the prescribed time from receipt of the notice having elapsed under section 166(1).

[21] The right to apply to the Board is dependent on persons giving and receiving notice under section 165(2). Section 165(3) provides that “notice under subsection (2) may not be served before the fourth anniversary of the later of” the effective date of the lease

or the effective date of the most recent amendment. So even if the parties agreed to consensually renegotiate rent outside of the legislative time frame, their failure to consensually agree to a revised rent outside of the legislative time frame does not give rise to any jurisdiction in the Board to resolve that dispute.

[22] The rental provisions of the five surface leases in question were renegotiated by the parties to those surface leases, namely Mr. Matteson and CNRL, in accordance with the provisions of the *Petroleum and Natural Gas Act* and effectively amended as of the dates agreed by those parties. Mr. and Mrs. Wiebe took possession of the Lands with recently renegotiated surface leases in place. Their right to serve notice requiring negotiation of the rent paid under each of those leases did not arise until the fourth anniversary of the effective date of each renewal. In accordance with section 165(3) of the *Petroleum and Natural Gas Act*, Mr. and Mrs. Wiebe could not serve notice to negotiate the rent payable for each location until the dates set out below:

<b>Location</b>	<b>Effective date of last renewal</b>	<b>Fourth anniversary date on which notice under section 165(3) may be served</b>
1-25-88-20-W6M	December 1, 2012	December 1, 2016
A1-25-88-20-W6M	September 11, 2013	September 11, 2017
11-25-88-20-W6M	July 29, 2013	July 29, 2017
1-26-88-20-W6M	January 11, 2013	January 11, 2017
6-26-88-20-W6M	October 23, 2012	October 23, 2016

[23] As the applications relating to the five locations above have not been initiated in accordance with the time frame set out in the *Petroleum and Natural Gas Act* for rent review, the Board does not have jurisdiction to hear them.

**CONCLUSION**

[24] The rent review applications with respect to locations 1-25-88-20-W6M, A1-25-88-20-W6M, 11-25-88-20-W6M, 1-26-88-20-W6M, and 6-26-88-20-W6M are not properly before the Board and the Board does not have jurisdiction to arbitrate at this time.

DATED: April 12, 2016

FOR THE BOARD



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Cheryl Vickers, Chair