

**File No. 1697**  
**Board Order # 1697-1**

---

**January 20, 2011**

**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**

**PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15  
WEST OF THE 6<sup>TH</sup> MERIDIEN PEACE RIVER DISTRICT**

**(The "Lands")**

**BETWEEN:**

**George Merrick and Irene Merrick**

**(APPLICANTS)**

**AND:**

**EnCana Corporation**

**(RESPONDENT)**

---

**BOARD ORDER**

---

[1] Mr. and Mrs. Merrick apply to the Board for mediation and arbitration services in their dispute over renegotiation of rental provisions in a surface lease with EnCana Corporation (EnCana) respecting occupation and use of the Lands. EnCana disputes the Board's jurisdiction, arguing that the application is premature. The issue before me, therefore, is whether the Board has jurisdiction to provide mediation and arbitration services in this dispute.

[2] This is the Merrick's second application for mediation and arbitration services in their attempt to review the rent in their surface lease with EnCana, and EnCana's second objection to the Board's jurisdiction. The Merricks first applied to the Board in June 2009. The provisions of the *Petroleum and Natural Gas Act* then in force provided that notice to renegotiate rent could be given four years after completion of the last renegotiation, and that if rental provisions were not renegotiated, an application could be made to the Board eight months after giving the notice. As the completion of the last renegotiation of the surface lease was September 2006, the Board found, under the legislation then in force, that notice of rent renegotiation could not be given until September 2010, and that the earliest the Merricks could apply to the Board was May, 2011 (*Merrick v. EnCana*, Order 1618-1).

[3] The *Petroleum and Natural Gas Act* was amended effective October 4, 2010. The provisions respecting rent review, sections 165 and 166 of the *Petroleum and Natural Gas Act*, now provide that a notice requiring rent renegotiation may be served after the fourth anniversary of the effective date of the most recent amendment to the rental provisions. If the rent is not renegotiated, a party may apply to the Board 60 days after the date of the notice to negotiate. The complete text of sections 165 and 166 is set out at Appendix "A".

[4] The objection in this case arises out of a misconception of what is the effective date of the most recent amendment to the rental provisions. Mrs. Merrick identifies July 19, 2007 as the effective date of the most recent amendment to the lease in her application to the Board. Accepting that July 19, 2007 is the effective date of the most recent amendment, EnCana objects to the Board's jurisdiction. If July 19, 2007 were the effective date of the most recent amendment, then the Merricks' application would be premature. The Merricks would not be able to serve notice to negotiate until July 19, 2011, and could not apply to the Board until September 19, 2011. However, I find that July 19, 2007 is not the effective date of the most recent amendment to the surface lease.

[5] The surface lease between the Merricks and EnCana was signed July 19, 1997. The last renegotiation was completed in September 2006, and provided a revised annual rent retroactive to 2003. The annual rent has not been revised subsequently. The effective date of the most recent amendment to the rental provisions is, therefore, July 19, 2003, not July 19, 2007. Under the current provisions of the *Petroleum and Natural Gas Act*, notice to negotiate could have been served as early as July 19, 2007 (had those provisions been in force).

[6] The Merricks provided notice to negotiate (for the second time) to EnCana on October 19, 2010. Their application to the Board is dated December 23, 2010.

[7] The Board has jurisdiction to provide mediation and arbitration services in the dispute over renegotiation of the rental provisions in the lease between the Merricks and EnCana respecting occupation and use of the Lands.

Dated: January, 20, 2011

FOR THE BOARD



---

Cheryl Vickers, Chair

## APPENDIX "A"

### **Negotiation of amendment to surface lease or order**

**165** (1) This section and section 166 apply despite

(a) the terms of a surface lease or order containing rental provisions made at any time before or after the coming into force of this section, or

(b) anything done under the surface lease or order before or after that time.

(2) Subject to subsection (3),

(a) a right holder who holds a right of entry under a surface lease or order of the board, or

(b) the landowner whose land is subject to the right of entry

may serve notice on the other party, in the form and manner established by the rules of the board, requiring a negotiation of an amendment to the rental provisions in the surface lease or order.

(3) A notice under subsection (2) may not be served before the 4th anniversary of the later of the following:

(a) the effective date of the surface lease or order to which the notice relates;

(b) the effective date of the most recent amendment to the rental provisions in the surface lease or order agreed to by the parties or ordered by the board, if any.

### **Parties do not agree to amendment of surface lease or order**

**166** (1) If persons giving and receiving a notice under section 165 (2) do not agree to an amendment of the rental provisions in the surface lease or order to which the notice relates within 60 days after receipt of the notice, either party may apply to the board to resolve the disagreement.