

NOOKSACK TRIBAL COURT
NOOKSACK INDIAN TRIBE
DEC 22 2016
TIME: 3:22 AM / PM
FILED BY: _____ CLERK: [Signature]

IN THE NOOKSACK TRIBAL COURT
FOR THE NOOKSACK INDIAN TRIBE
DEMING, WA

NOOKSACK INDIAN HOUSING
AUTHORITY ("NIHA"),

Plaintiff,

vs.

MARGRETTY RABANG,
5913 JOHNNY DRIVE
DEMING, WA 98244,

Defendant.

Case No. 2016-CI-HSG-009

ORDER FOLLOWING SHOW CAUSE
HEARING

This matter came before the Court on a Hearing following this Court's Order to Show Cause why the Defendant is not in contempt for not allowing entry to the premises.

On December 15, 2016, after notice and hearing, this Court entered an Order Allowing Entry, Order of Eviction and Writ of Restitution pursuant to Nooksack Tribal Code, Title 45. In relevant part, that order specifically authorized NIHA to enter and inspect their property located at 5913 Johnny Drive, Deming, WA 98244 on December 19, 2016 between the hours of 11:00 a.m. and 3:00 p.m. for the purposes of reviewing the condition of NIHA's rental property in order to supplement its claim for damages.

On December 19, 2016, at approximately 3:30, following its attempt to enter and inspect the premises as called for in the order authorizing entry and inspection, NIHA sought an ex parte Motion and Order to Show Cause Re: Contempt and Order Authorizing Entry based upon the declaration of NIHA employee Andy Garcia.

Based upon the motion and declaration, on December 19, 2016 this Court issued the Order to Show Cause requiring the Defendant, Ms. Rabang, to appear on December 22, 2016 at 9:30 a.m. to show cause why she should not be held in contempt. The Order to Show Cause was served on December 20, 2016 as evidenced by the declaration of service on file with this Court.

ORDER FOLLOWING SHOW CAUSE HEARING

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1 At the hearing, NIHA was represented by Rickie W. Armstrong, Office of Tribal
2 Attorney. Ms. Rabang did not appear at the hearing. The Court pointed out that in view of the
3 provisions of Nooksack Tribal Code §10.05.030 (b) and (c) Ms. Rabang would not be found in
4 default and that the hearing would be reset.

4 Having heard oral argument the Court hereby enters the following:

5 **FINDINGS OF FACT**

- 6 1. This Court has jurisdiction pursuant to the Nooksack Tribal Constitution, and Title 45 of the
7 Nooksack Tribal Code;
8 2. The Defendant was properly served with the Ex Parte Motion for and Order to Show Cause;
9 3. The Defendant did not appear at the hearing;
10 4. The Defendant was aware of the Court's verbal order of December 14, 2016 authorizing entry
11 by NIHA and the date for eviction. Defendant was also served with a copy of the Order
12 Allowing Entry, Order of Eviction and Writ of Restitution;
13 5. The Order Allowing Entry, Order of Eviction and Writ of Restitution was sufficiently clear as
14 to the Defendant's obligation to permit entry to inspect;
15 6. An NIHA representative arrived at the subject property located at 5913 Johnny Drive during
16 the time authorized in the Order (on December 19, 2016 between the hours of 11:00 a.m. and
17 3:00 p.m.) but was refused entry.
18 7. Ms. Rabang failed to provide any valid defense to her refusal to grant the Plaintiff entry into
19 the residence as authorized in the order;
20 8. On December 19, 2016 the NIHA filed its Ex Parte Motion for Order to Show Cause Re:
21 Contempt and Order Authorizing Entry.
22 9. On December 19, 2016 the Court entered the Order to Show Cause Re: Contempt and Order
23 Authorizing Entry. The hearing was set for Thursday, December 22, 2016 at 9:30 a.m.
24 10. Defendant was served with a copy of the Order to Show Cause Re: Contempt and Order
25 Authorizing Entry on December 21, 2016.
11. Nooksack Tribal Code §10.05.030 (b) provides, in pertinent part, as follows:

(b) The Court **shall** set and publish a schedule for regular court sessions. Motions shall be heard on the following days **only**:

- ...
ii. Civil motions, including Guardianships, Custody matters, and Parenting Plans, **shall** be heard on the second and fourth Wednesday of the month.
...

(Emphasis added).

12. Nooksack Tribal Code §10.05.030 (c) provides, in pertinent part, as follows:

(c) Motions may be heard on a special setting, but special settings shall be the exception, not the rule, and shall be permitted only under extraordinary circumstances. A party seeking to have a motion heard on a special setting must first obtain the agreement of the non-moving party before requesting a special setting from the clerk.

(Emphasis in original).

CONCLUSIONS OF LAW

13. The court has jurisdiction over the parties and the real property in question pursuant to Art. I of the Constitution and Bylaws of the Nooksack Indian Tribe of Washington, Nooksack Tribal Code §§10.05.030 – 060, and Nooksack Tribal Code, Title 45.02.

14. Based upon the mandatory language of Nooksack Tribal Code §§10.05.030 (b) and (c) the hearing on the Order to Show Cause was improperly set for Thursday, December 22, 2016. At the time of the entry of the Order to Show Cause the first statutorily authorized date for the hearing was Wednesday, January 11, 2017. The exception allowing for a special setting required Defendant's agreement.

ORDER

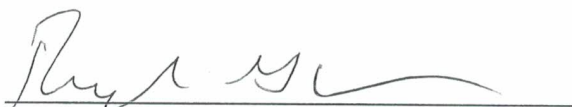
NOW THEREFORE, based on the FOREGOING Findings of Fact and Conclusions of Law the Court now orders as follows:

1. The hearing on the Motion to Show Cause is reset for Wednesday, January 11, 2017 at 1:00 p.m.
2. The Order Allowing Entry, Order of Eviction and Writ of Restitution, dated December 15, 2016 is hereby amended to require Defendant and all members of her household to vacate the property located at 5913 Johnny Drive, Deming Washington 98224 no later than December 28, 2016 at 5:00 p.m.
3. In the event that Defendant and all members of her household do not so vacate by December 28, 2016 at 5:00 p.m. Defendant and all members of her household shall thereafter be subject to forcible eviction by the Nooksack Police Department or any other authorized law enforcement agency or officials in order to restore Plaintiff to, and put Plaintiff in, full possession and control of the premises and property located at 5913 Johnny Drive, Deming, Washington 98224.

1 **ORDERED** this 22nd day of December, 2016.

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NOOKSACK TRIBAL COURT



Raymond G. Dodge
Chief Judge