

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Landlord R.R. was served on October 15<sup>th</sup>, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing on October 10<sup>th</sup>. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### **Preliminary Matters**

The following issues were resolved in my interim decision dated November 15<sup>th</sup>, 2023:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act (in part)
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This decision is in addition to, and does not displace, the interim decision.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Of the remaining claims, the priority claim is an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act.

The Tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the matters at issue in the rent reduction claim. During the hearing, I attempted to canvas the claim for repairs to the water system. Ultimately, however, I believe I received insufficient evidence to fairly adjudicate that claim. I therefore exercise my discretion to dismiss all of the Tenant's claims with leave to reapply except that for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act.

### **Issues to be Decided**

Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed to but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 1, 2023, with a monthly rent of \$2,900.00, due on first day of the month, with a security deposit in the amount of \$1,450.00 and a pet damage deposit in the amount of \$1,450.00.

LM entered into a tenancy agreement with the RR with respect to a property which is 12.6 acres in total, of which the majority is a large hay field. The parties dispute whether the hay field is part of the property covered by the tenancy agreement.

RR testified that the hay field has been leased to another party who harvests the hay, for which he is paid \$2,000 per year, and produced two lease agreements for the hay field. The first such agreement indicates it ran from 2020 through 2023 and provided for a 2 year renewal option; the second such agreement was signed on June 28<sup>th</sup>, 2023, covers 2024 and 2025, and indicates that 6 acres are leased. RR testified that he told LM that he would have no access to the hay field. RR submitted that the rental agreement only covered the house, and submitted into evidence a picture of the

Facebook listing of the rental property with the heading “3 Beds 2 Baths – House : \$2,900/month”.

LM denied that RR told him that the hay field was not included in the property rented. LR submitted into evidence a picture from the Facebook listing of the rental property which shows an aerial view of the property with an overlaid indication of the property limit and the property size given as 12.63 acres. LM also submitted another image from the Facebook listing showing a picture of a barn and the heading “Two Barns”. LM finally submitted a text exchange with RR dated May 29<sup>th</sup> in which LM asked if he would be the only tenant and if the “whole place” would be his. RR responded “I’m only land owner.”

LM testified that he only became aware that another party was leasing the hay field on July 28<sup>th</sup>, after the tenancy had commenced. LM testified that the hay field would yield about 9 bales per cut, and that four cuts would be possible each year. LM testified that two cuts had occurred since he moved in, on August 12<sup>th</sup> and October 1<sup>st</sup>, generating a total of 19 bales of hay. LM testified that such bales are sold for \$350 to \$400 each. LM testified that he had intended to cut and sell the hay himself.

LM also testified that the loss of the hay field hurt his dog breeding business, because under the land use bylaws, he is only allowed to have 8 dogs on the property, whereas if he had the use of the hayfield, he would be permitted 32. LM testified that he has had to board some of his dogs with families, increasing his expenses.

LM submitted a copy of the tenancy agreement, including an addendum.

## **Analysis**

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

### **Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed to but not provided?**

Under section 65 of the Act, a tenant may apply to reduce rent payable both prospectively and retrospectively in an amount equivalent to the reduction in the value of a tenancy agreement.

Here, the first question is whether the approximately 8.6 acres of the property referred to as the hay field constitutes part of the property rented to the Tenant.

Under the Act, “residential property” is defined as including both “a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located” and “the parcel or parcels on which the building, related group of

buildings or common areas are located”. Both parties agree that LM is the only tenant on the parcel of land.

I find that the tenancy agreement covers the entire property. LM and RR presented conflicting testimony as to whether RR informed LM prior to the beginning of the tenancy that the hay field would not be included in the property rented. Firstly, the tenancy agreement does not indicate any such restriction, instead simply listing the residential address of the property. The addendum to the tenancy agreement makes LM responsible for maintenance and water leaks inside and outside the house. It also directs LM to keep “your place clean and the environment around” such that it will look good for the neighbours. There is no term in the addendum restricting LM’s responsibilities to a portion of the property.

Finally, the Facebook listing provided an aerial picture of the entire property, listing the acreage; it also included a picture of a barn, which RR now claims is not part of the rental property either. The inclusion of such information in the listing of the rental property produces a clear implication that the tenancy extended to the entire property. Considering the evidence as a whole, I find that LM has produced sufficient evidence to show that, on a balance of probabilities, no restriction of the rental property was made, and the hay field is part of the rental property.

Section 65(1) of the Act states:

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

[...]

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

[...]

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

RTB Policy Guideline 22 states an arbitrator may order that past or future rent be reduced :

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

LM claims a reduction in rent of \$1,000 per month. I found LM’s submissions as to the value of the hay produced by the field to be relevant. That is the current and most obvious use of the hay field. LM testified that the hay field would produce four cuts in a year, each cut producing about 9 bales, which would sell for \$350-\$400, testimony that

was not disputed by the Landlord. Even taking a conservative view of the evidence would put the gross revenue from the hay field at about \$12,000 per year. However, if the tenant were to undertake this himself, he would have to spend time and incur expenses to cut, bale and sell the hay. I thus find that \$700 a month is an appropriate amount by which to reduce the monthly rent.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in tenant BB's favour in the amount of \$4,200.00 to compensate tenant BB for the reduction in the value of the tenancy agreement from July through December 2023 and order that rent is to be reduced by \$700 each month – including January 2024 – until the Landlord notifies the tenant that he has full, exclusive and unimpeded use of the hay field.

### **Is the Tenant entitled to recover the filing fee for this application from the landlord?**

The Tenant was already successful recovering the filing fee for the primary application, 910129270, because he was successful in setting aside a 10 Day Notice to End Tenancy. The current hearing also joined an application that had been submitted earlier, 910126816. Although both applications included a claim for a reduction in rent, I find that both applications were reasonable and necessary, as the 10 Day Notice was only given after the first application was made. As the Tenant was successful in the principal claim in application 910126816, I find that the tenant is entitled to recover the \$100.00 filing fee in respect of that application under section 72 of the Act.

### **Conclusion**

I grant the tenant a Monetary Order in the amount of **\$4,300.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for a retroactive reduction of rent under section 65 of the Act	\$4,200.00
authorization to recover the filing fee for application 910126816 from the landlord under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$4,300.00</b>

I order that this amount may be deducted from future rent payments of rent until the monetary order has been exhausted. The Tenant is provided with this Order in the above terms and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order that rent shall be reduced by \$700 each month until the Landlord notifies the Tenant that he has full, exclusive and unimpeded use of the hay field.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 17, 2023

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Residential Tenancy Branch