



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding LITTLE OAK REALTY LTD. PROPERTY MANAGEMENT  
DIV and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, RP, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

One of the named tenants attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing, and represented the other named tenants. An agent for the landlord also attended, gave affirmed testimony and provided evidentiary material. The parties were given the opportunity to question each other and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Have the tenants established that repairs should be made by the landlord to the rental unit or property?

- Have the tenants established that the landlord should be ordered to comply with the Act, regulation or tenancy agreement, specifically with respect to a rental increase?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on October 1, 2022 and reverted to a month-to-month tenancy after September 30, 2023 and the tenants still reside in the rental unit. Rent in the amount of \$4,850.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. Prior to the commencement of the tenancy the landlord collected a security deposit from the tenants in the amount of \$2,425.00 as well as a pet damage deposit in the amount of \$2,425.00, both of which are still held in trust by the landlord. The rental unit is a single family home, and a copy of the tenancy agreement has been provided for this hearing by both parties.

The tenant further testified that a hot tub is included in the tenancy agreement, but won't turn on. It has never worked but was not noticed by the tenants until a few months after moving in. It was not mentioned at any point and was not included in the move-in condition inspection report.

Also included in the tenancy agreement is a riding lawn mower, which the tenants knew at the beginning of the tenancy that it didn't work but were told it would be repaired. The tenants sent 4 emails to the landlord about it and spoke to a landlord during an inspection on May 3, 2023. The tenants have had to cut an acre of grass with a push mower, and the landlord has not made any attempt to repair it.

The patio door lock didn't work, and still doesn't. If someone pulled hard enough on it, they could open it from the outside.

The tenants claim a rent reduction of \$500.00 per month for the landlord's failure to make the repairs and loss of use.

With respect to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenant testified that the landlord told the tenants that a rent increase was sent to them by "snail mail" but the tenants have not received it. The landlord said that it was to be effective January 1, 2024, but the first the tenants heard of it was in an email on January 23, 2024, and the increase is to \$5,019.75 per month. The tenants seek an order that the landlord serve a Notice of Rent Increase and remove late fees. The landlord told the tenants that he didn't have to prove that he served it.

The first that the tenants heard of a water bill was on November 17, 2023 when the landlord emailed the tenants with a ledger showing the water bill outstanding. The tenant asked for a copy and received it on January 23, 2024, which was 1 year and 4 months after moving in. The bill was \$350.45 for 2 billing periods, and a penalty on the bill is over \$20.00. The owner paid the bill late. The tenants put the utilities in their name in accordance with the tenancy agreement, but cannot do so with the water bill. The tenants received 2 more bills on February 20 and February 21, 2024, and now there are 4 outstanding bills. Water is not included in the tenancy agreement, but the tenants ask that any late fee be removed.

**The landlord's agent** testified that neither the lawn mower nor the hot tub were working at the beginning of the tenancy. The landlord's agent got the tenancy agreement, written by a different property manager. The landlord's agent "wouldn't roll over on it," and would never have put that in the tenancy agreement. The landlord's agent doesn't agree with it, nor does the owner.

The patio door lock was repaired, and the repair person didn't have the correct parts. There are lots of alternatives; the tenants could put another lock on or a hockey stick in it. If ordered, the landlord would pay for it, but it's not the main entry to the home.

With respect to a reduction in rent, the landlord's agent testified that a leaky roof and washer/dryer were repaired, and the landlord shouldn't be penalized for the hot tub or lawn mower.

On September 13, 2023 a Notice of Rent Increase was signed and mailed to the tenants on September 21, 2023 by regular mail with an effective date of January 1, 2024. The landlord gets reductions for bulk mail and has provided a copy of the receipt for bulk mail of 270 pieces.

With respect to the water bills, the tenants are responsible for payment of them. Each home is metered and bills are sent to the registered owner, who sends it to the landlord's agent and then it is recorded on a ledger. It shouldn't be a surprise to the tenants. The landlord is prepared to remove the late fees out of good will. The landlord's agent believes they are sent out every 3 months for this property to the owner by email.

#### SUBMISSIONS OF THE TENANT:

The tenant received the first water bill 13 months after it was due, as well as 2 more on February 20 and 21 after they were due. The tenant pays bills on time and does not feel that late fees should be charged to the tenants. If the tenant had a rent increase, it would have been paid. On Christmas Eve the tenant told the landlord about a leaky roof,

which was not repaired until February. Water came through the pot lights and the tenants couldn't use lights. The washer has been leaking since the tenants moved in and was not repaired until February 14, 2024. A repair technician said that the dryer was a fire hazard and it took 12 months for the landlord to repair it.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The Notice of Rent Increase was sent to the tenants. The landlord has not served a notice to end the tenancy for not paying the rent increase because they are good tenants. The tenants should have expected the water bills, and the landlord is willing to waive the late fees for that. The onus to get the bills to the property manager is on the owner.

#### Analysis

Firstly, with respect to the rent increase, I have reviewed the Canada Post documentation provided by the landlord, and I accept the testimony of the landlord's agent that it was sent to the tenants on September 21, 2023. The *Residential Tenancy Act* specifies that documents may be served by regular mail, other than special documents, such as a Notice of Dispute Resolution Proceeding.

**88** All records, other than those referred to in section 89 [*special rules for certain records*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) [Repealed 2023-47-97.]

(j) by any other means of service provided for in the regulations.

The regulations specify that such documents may be served by email if the receiving party has agreed to service in that manner.

I have also reviewed the Notice of Rent Increase, and I find that it is lawful and in the approved form. Therefore, I dismiss the tenant's application for an order that the landlord comply with the *Act* with respect to the rent increase.

the *Residential Tenancy Act* states that an agent of a landlord is defined as a landlord. Whether or not the owner or the current property manager agrees, or would have included the hot tub or the riding lawn mower on the tenancy agreement, a person acting for the landlord did so. A landlord may not remove a service or facility unless the landlord gives the tenant 30 days notice of the removal in writing, and must decrease the rent accordingly. A landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant even if the tenant knew of a breach of that section of the *Act* at the beginning of the tenancy.

I accept the testimony of the tenant that neither the hot tub nor the riding lawn mower has worked since the beginning of the tenancy. I also accept that a push mower was contemplated in the tenancy agreement, considering that there is an acre of grass to cut. I have also considered the amount of time it would take to cut the grass with a push mower, and I find that the 2 facilities combined would constitute a reduction in rent of \$500.00 per month.

I order the landlord to repair or replace the hot tub and riding mower, and I order that rent be reduced by \$500.00 per month, being \$250.00 for each of the 2 items until they are repaired or replaced by the landlord. I also order that the tenants be reimbursed \$500.00 per month for the months of October, 2022 to April, 2024, being 19 months, or \$9,500.00.

However, I also consider the rent increase, which the tenants have not paid, and I reduce the amount by \$169.75 for each of 4 months, January through April, 2024 for a total of \$679.00.

I also find that the landlord has been very tardy with respect to required repairs, and I order the landlord to make repairs when they are required.

I further order that the landlord have the patio door lock repaired or replaced. To state that the tenants have alternatives, such as to repair the lock themselves or put a hockey stick in the door is not acceptable for repairs and maintenance required by the landlord.

I accept the submission of the landlord's agent that the onus is on the owner to provide the water bills in a timely manner. However, the landlord's agent is the landlord, and I order that no late fees be charged to the tenants to date, and that the landlord provide the bills to the tenants in a timely manner. If the landlord does not do so, the tenants will not be required to pay any late fees.

Since the tenants have been partially successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$9,021.00 (\$9,600.00 + \$100.00 - \$679.00 - \$9,021.00) and I order that the tenants be permitted to reduce rent until that sum is realized, in addition to the deduction of \$250.00 per month or partial month for each of the 2 facilities until the riding lawn mower and hot tub are repaired or replaced. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$9,021.00, and I order that the tenants be permitted to reduce rent until that sum is realized.

I further order that the rent increase to \$5,019.75 is lawful and deemed to have been served properly on the tenants.

I further order that the landlord make repairs to the rental unit or property in a timely manner when required.

I further order that the landlord provide water bills to the tenants in a timely manner, and if the landlord fails to do so, the tenants will not be required to pay late fees.

I order the landlord to repair or replace the hot tub and riding mower, and I order that rent be reduced by \$250.00 per month or partial month, for each of the 2 items until they are repaired or replaced by the landlord.

I further order that the landlord have the patio door lock repaired or replaced immediately.

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

Dated: April 10, 2024

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Residential Tenancy Branch