



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Simpson v Ember Resources Inc, 2023 ABLPRT 900209

Date: 2023-06-08

File No.: RC2021.1686

Decision No.: LPRT2023/SR900209

Municipality: Kneehill County

In the matter of a proceeding commenced under section 36 of the *Surface Rights Act*, RSA 2000, c S-24 (the “*Act*”)

And in the matter of land in the Province of Alberta within the:

SE ¼ -1-30-25 W4M as described in Certificate of Title No. 991 200 230 +1 (the “*Land*”), particularly the area granted for a well site and access road, Alberta Energy Regulator Licence No. 0236666 (the “*Site*”).

Between:

Ember Resources Inc.

Operator,

- and -

Christina Simpson,

Applicant.

Before: Romeo A. Rojas (the “*Panel*”).

Appearances by written submissions:

For the Applicant: Mitchell R. P. Barry, Norman L. Tainsh Professional Corporation

For the Operator: Tara Rout, Owen Law

DECISION AND REASONS

[1] The Applicant, Cristina Simpson, filed an application under section 36 of the *Act* seeking recovery of unpaid compensation due under a surface lease agreement for the above Site dated April 20, 2000 (the “Surface Lease”). The Applicant claims a total amount of \$2,205.00 of outstanding compensation for the 2020 anniversary date of the Surface Lease. The solemn declaration forming part of the application was signed by Mitchell R.P. Barry, a lawyer representing the Applicant, rather than the applicant herself.

[2] The Tribunal issued a Notice of Proceedings to Ember Resources Inc. (“Ember”) on June 13, 2021, requesting that Ember provide any written response it wished to provide within 30 days. On June 21, 2021, Ember wrote to the Tribunal to advise that it had retained Owen Law as its legal counsel and to request a 60-day extension to the deadline to file its response. The Tribunal granted Ember’s request on June 30, 2021.

[3] On July 22, 2021, Owen Law provided written submissions to the Tribunal on behalf of Ember.

ISSUES

[4] The issues before the Panel are:

- a) Does the application, as submitted, meet the requirements of Rule 14 of the Surface Rights Board Rules (the “Rules”) and allow the Panel to carry out its obligations under section 36 of the *Act*?
- b) If the application does not meet the above requirements, should the Panel consider it?

DECISION

[5] The Panel decides:

- a) The application does not meet the requirements of Rule 14 or otherwise allow the Panel to carry out its obligations under section 36 of the *Act*.
- b) The Panel finds that waiving compliance with Rule 14 and considering the application is not feasible in the circumstances. The application is therefore dismissed for incompleteness. The Applicant is invited to submit an application that complies with Rule 14.

ANALYSIS

[6] The Tribunal’s jurisdiction to hear applications under the *Act* is found in section 5(a)(iv) of the *Land and Property Rights Tribunal Act* (SA 2021 C-L2.3) (the “*LPRT Act*”), which provides that: “*The Tribunal has jurisdiction...to hold hearings, proceedings and inquiries, hear complaints and determine disputes...with respect to any matter referred to in the Surface Rights Act.*” To assist the Tribunal in exercising its jurisdiction, section 6(1) of the *LPRT Act* states that: “*In addition to the powers and duties given under the existing legislation, the Tribunal shall have the power to make rules respecting its practices and procedures and to regulate its own process.*”

[7] The Tribunal has adopted the *Surface Rights Board Rules* (the “Rules”) to apply to proceedings under the *Act*. Rule 14(2) provides that an application must include a completed form where one is

prescribed by the Tribunal. This requirement is mandatory, although the Tribunal has discretion under Rule 6 to waive or vary a requirement if there is a reason to do so. Rule 7 outlines the effect of non-compliance with the rules, which may include an order dismissing the application or deeming the application to be withdrawn.

[8] The Tribunal has prescribed a form for first-time applications under section 36 of the *Act* entitled “Recovery of Compensation” (the “Prescribed Form”). The Prescribed Form consists of four parts:

- a) Part 1 (Contact Information), which requires the applicant(s) to provide contact information for the applicant(s), the landowners (if different from the applicant), and the applicant’s agent (if any). It also provides a space for the applicant to authorize its agent in writing to act on the applicant’s behalf.
- b) Part 2 (Recovery of Compensation), which requires a land description, the date of the original agreement, what the agreement is for, the compensation rate, and the payment requested. It also has a section entitled “Condition of Leased Area” which requests more detailed information on the site and the lands on which it is located.
- c) Part 3 (Supporting Documentation), which requests that certain types of supporting documentation be included in the application.
- d) Part 4 (Declaration), which requires that the applicant make a solemn declaration as to the accuracy of the information contained in the Form and supporting documents.

[9] Part 4 of the Form provides the following instructions to the applicant(s): “*It is important that you fill out the statements in this part of the application accurately and completely and that ALL the persons entitled to the compensation sign the application form. Personal representatives are not permitted to sign the application on behalf of the applicant(s)*” [underline added].

[10] The solemn declaration that the applicant(s) are asked to provide states that:

I DO SOLEMNLY DECLARE THAT:

1. *The surface lease agreement, consent of occupant agreement, or Tribunal order described in Part 2 of this application is still in effect;*
2. *I am (choose one):*
 - *the person entitled to annual payments under that agreement or order;*
 - *one of the persons jointly entitled to payments under that agreement or order;*
 - *a representative of the corporation entitled to the annual payments under that agreement or order, and I have personally informed myself of the relevant and material records and information pertaining to the corporation's application;*
3. *I (or corporation I am representing) have not, nor has anyone on my behalf (or on the corporation's behalf) received any of the annual compensation claimed in Part 2 of this application form.*
4. *I understand that I am responsible for providing evidence in support of my claim.*
5. *I understand that this form is part of the evidence I am asking the Tribunal to rely upon.*

6. *I understand that by signing this form I am confirming that I have not provided incorrect information or false or misleading evidence.*

7. *I understand that if I have provided false or misleading evidence in support of my application the Tribunal may make any order it considers appropriate including dismissing my claim, rescinding any order awarding compensation and making me responsible to pay costs.*

[11] The Prescribed Form then provides space for each applicant to sign the solemn declaration.

[12] The Prescribed Form is intended to provide the Tribunal with information that meets the requirements of the *Act* and the Rules, and that the Tribunal needs to exercise its obligations and discretion under the *Act*. In particular, sections 36(3) and 36(4) of the *Act* provide that a submission to the Tribunal under that section must include written evidence of non-payment from the person entitled to receive the money – i.e., the applicant – and that the Tribunal must base its decision on that evidence:

(3) *Where any money payable by an operator under a compensation order or surface lease has not been paid and the due date for its payment has passed, the person entitled to receive the money may submit to the Tribunal written evidence of the non-payment.*

(4) *On receiving the evidence, if the Tribunal considers that it satisfactorily proves the non-payment, the Tribunal shall send a written notice to the operator demanding full payment.* [underline added]

[13] The Panel finds that the Prescribed Form includes a solemn declaration and insists that it be signed by the applicant, rather than a representative, to ensure compliance with sections 36(3) and (4) of the *Act*. The solemn declaration converts the information contained in and appended to the Prescribed Form (regardless of who completed it) into the written evidence of the person entitled to receive payment under the surface lease or right of entry order, as required by section 36(3) of the *Act*, and on which the Panel must rely to decide the application.

[14] In the present application, the Applicant did not complete the solemn declaration. Instead, it was signed by the Applicant's agent. While the Tribunal may exercise its discretion to waive or vary any of the Rules, including the requirement for a completed Form under Rule 14(2), the Panel finds this is not an appropriate circumstance in which to do so. The Tribunal can waive or vary a requirement of the Rules, but it cannot waive vary the requirements of the *Act* – in this case, the requirement under section 36 of the *Act* that the submission include the written evidence of the applicant. As such, the Panel finds that it cannot waive the requirement that the solemn declaration that forms part of the Prescribed Form be signed by the Applicant.

[15] The Panel therefore dismisses the application for failure to comply with the *Act* and the Rules. The Applicant is invited to re-submit a duly completed application.

Dated at the City of Calgary in the Province of Alberta this 8th day of June 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Romeo A. Rojas, Member