



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THANDI ENTERPRISES 1985
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDL, MNDCL, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

1. A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
2. A monetary order for damages caused by the tenant or the tenant's guests pursuant to sections 7 and 67;
3. A monetary order for damages or compensation pursuant to section 67; and
4. Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants attended the hearing and were represented by co-tenant, ML (the "tenant"). The landlord was represented by director, AT. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package on behalf of all the co-tenants and had no issues with timely service of documents. The landlord acknowledged service of the tenant's evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

At the commencement of his testimony, the landlord testified that he wants to move on with his life and the only portion of the application that he seeks to pursue is rent for the month of July 2021 in the amount of \$2,000.00. The original amount sought in the application was for \$2,363.79 however the landlord acknowledges receiving the \$363.79 from the tenants which represented unpaid utilities. Accordingly, I dismiss the landlord's application seeking compensation for damages and the landlord's application seeking compensation for other money owed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord retain the tenants' security deposit?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The parties attended two previous arbitrations and the file numbers are recorded on the cover page of this decision. At the first arbitration on May 26, 2021, the following settlement was recorded:

1. The landlord and tenants mutually agreed to end the tenancy on July 31, 2021.
2. The parties agreed that rent for June 2021 would be \$4,000.00.
3. The parties agreed that the rent for July 2021 would be \$2,000.00.
4. This application is now closed.

At the second arbitration on May 25, 2022, the tenants sought a return of the security deposit and pet damage deposit and a monetary order. The second arbitrator granted this order with a monetary order for \$6,500.00.

The landlord testified that the original tenancy agreement was a fixed term with an end date of September 30, 2021. The tenants had applied to the Residential Tenancy Branch in previous applications to get out of the fixed term lease. The tenants vacated the rental unit before the end of July and didn't pay any rent for the month of July, despite the landlord's agreement to reduce the rent for that month from \$4,400.00 to \$2,000.00 at the hearing on May 26, 2021.

The tenant gave the following testimony. He acknowledges that rent for the month of July was not paid. The tenant testified that the reason his family had to leave before the end of July was because the actions of the landlord's father forced them out. The rental unit is a house located on farmland and the house has a separate self-contained corner suite where the landlord's father resides. The tenant testified that the landlord's father had outbursts and was banging around and screaming at them. The police were called on June 24, 2021 and the police advised both parties to try and be amicable to one another. The tenant alleges that they wanted to stay until the end of the tenancy on July 31st, however the actions of the landlord's father made them unwilling to stay. They "scrambled to get out" and the landlord's father even followed the movers to find out where they were moving to.

Analysis

In the settlement agreement dated May 26, 2021, the parties agreed that rent for July 2021 would be \$2,000.00. The arbitrator notes in the agreement that the landlord and the tenants both acknowledged that they understood they were not required to enter into [this] agreement and that they understood **the agreement was final and binding**. As such, both parties are bound to the terms of the settlement as recorded, without exception.

Section 26 of the Act states

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

There are only 4 circumstances where a tenant is not required to pay rent in full. They are:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));

3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.

Despite the tenants' argument that their discomfort with the landlord's father was sufficient reason for leaving the rental unit early and not paying rent, I find that reason does not fall into any of the above-mentioned circumstances. I find that the tenants are required to fulfill their obligations to pay rent for the month of July, 2021 in the (reduced) amount of \$2,000.00 as they agreed in the settlement on May 26, 2021 and in accordance with section 26 of the Act. In testimony, the tenant acknowledged that they did not pay the landlord the \$2,000.00 rent for the month of July. Consequently, the landlord is awarded a monetary order for \$2,000.00.

The issue of the security deposit and pet damage deposit was previously determined by the arbitrator in the decision dated May 25, 2022. As such, the landlord's application seeking to retain the security deposit and pet damage deposit is dismissed without leave to reapply.

The landlord's application was successful and the filing fee of \$100.00 is awarded to the landlord.

Conclusion

I award the landlord a monetary order in the amount of \$2,100.00.

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: February 14, 2023

Residential Tenancy Branch