



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kim Gin & Sons Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$329.00 for loss of December 2014 rent revenue?

May the landlord retain the security deposit in satisfaction of the claim?

Background and Evidence

The tenancy commenced on December 13, 2013; rent in the sum of \$850.00 was due on the first day of the rental period, which fell on the 1st day of each month.

The tenant gave the landlord written notice in November 2013 that he would end the tenancy effective December 20, 2014. A letter supplied as evidence set out the notice and provided the tenant's forwarding address.

The tenant paid rent up to the day he vacated the unit; all of December 2014 rent was not paid. The landlord said that they could not place a new tenant in the unit effective

December 20, 2014, as they would normally paint the unit at the end of a tenancy. The landlord began to seek out a new tenant in early January and was able to locate a new occupant effective January 23, 2015.

The landlord has claimed the balance of December 2014 rent owed by the tenant.

The tenant believed that he was required to give 30 days' notice to end the month-to-month tenancy and that rent would only be due up to the last day of his occupancy.

Analysis

Section 45(1) of the Act sets out how a month-to-month (periodic) tenancy may end:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(Emphasis added)

The tenant believed that the one month period of time was calculated based on a period of days vs. month. I find that the legislation reflects different term options; as set out in the tenancy agreement signed by the parties. In this case the landlord and tenant signed an agreement setting out the monthly term, with the first day of the term being the 1st day of each month. A term using days was not selected or agreed to.

I find, based on the terms of the tenancy agreement that rent was to be paid on a monthly basis, on the 1st day of each month and that notice given could not end the tenancy earlier than one month after the date it was given. Therefore, I find that notice given in mid-November was effective at the end of the next month of the term; December 31, 2014.

Pursuant to section 26 (1) of the Act the tenant was required to pay all of the rent that was due on December 1, 2014; but failed to do so. Therefore, I find that the landlord is entitled to compensation in the sum of \$329.00 for the balance of December 2014 rent that was owed on the 1st day of December. The tenant did not possess the right to withhold part of the rent; even if he wished to vacate eleven days earlier than the end of the month.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$379.00, in satisfaction of the monetary claim.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenant is entitled to return of the balance of the security deposit; \$46.00.

Based on these determinations I grant the tenant a monetary Order in the sum of \$46.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$329.00 for the balance of December 2014 rent.

The landlord is entitled to filing fee costs.

The landlord may retain the amount owed from the security deposit.

The balance of the deposit is Ordered returned to the tenant.

This decision is final and binding and 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: March 25, 2015

Residential Tenancy Branch

