



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 840144

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

Nicole Tamara Therrien, Tenant(s),

Applicant(s)

And

Harold Manak, Landlord(s),

Respondent(s)

Regarding a rental unit at: 4002 Logie Court, Kelowna, BC

Date of Hearing: March 24, 2016, by conference call.

Date of Decision: March 29, 2016

Attending:

For the Landlord: No Appearance

For the Tenant: Nicole Therrien
James Therrien

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing in person on September 20, 2016 in accordance with Section 89 of the Act. The Landlord did not attend the hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Background and Evidence

On May 1, 2015 the Tenant viewed the rental unit and agreed to rent the unit on a month to month basis with monthly rent of \$2,695.00 payable on the first day of each month. On the same date the Tenant paid to the Landlord \$1,400.00 as a security deposit and \$500.00 as a pet deposit. No written tenancy agreement was signed. The tenancy was originally to start on July 1, 2015 however in order to accommodate the Landlord the Parties agreed a few days later to a tenancy start date of August 1, 2015.

The Tenants circumstances changed and on June 1, 2015 the Tenant sent a letter to the Landlord informing that they would not be moving in to the unit. The Tenant also gave this letter to the Landlord in person on June 3, 2015. The letter requested return of the security and pet deposits and also provided the Tenant’s mailing address for its return. The Landlord has not returned the security and pet deposit and had not made an application to claim against the deposit.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Based on the undisputed evidence of the Tenant I find that the tenancy ended on June 3, 2015 when the Tenant gave notice that it was not going to move into the unit on August 1, 2015 as agreed. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's mailing address, I find that the Landlord is required to pay the Tenant double the combined security and pet deposit plus zero interest in the amount of **\$3,800.00**.

The Tenant is also entitled to return of the \$50.00 filing fee for a total entitlement of **\$3,850.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$3,850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 29, 2016



R. Weitzel, Arbitrator
Residential Tenancy Branch