



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

The tenant seeks recovery of his security deposit. Both parties appeared at the hearing of this matter and gave evidence under oath.

Issues(s) to be Decided

Is the tenant entitled to the orders sought?

Background and Evidence

The tenant gave evidence that he has provided the landlord with his forwarding address on one of the landlord's "Information Sheets" which he delivered to the landlord along with a notice of his intention to vacate on April 30, 2010. The information sheet was provided is evidence and it is undated. The tenant testified that he vacated the rental unit on April 30, 2010 but his security deposit was not returned. The tenant says he called the landlord several times, at one point he was told the cheques were issued on the 13th of each month so he waited to receive his cheque but no cheque arrived. Finally he says he was advised that they had not returned the deposit because they had not received the tenant's forwarding address in writing on the move-out inspection report. The tenant acknowledges that he did not list his forwarding address on the move-out inspection report. The tenant says he did not provide his address on the move-out report because he had already provided his forwarding address on the information sheet which, he says, was delivered to the landlord on March 31, 2010. The tenant submitted an unsworn witness statement from the other tenant stating that

he witnessed this tenant submit the information sheet which included the forwarding address into the manager's mailbox on March 31, 2010. The tenant testified that after a number of telephone conversations with the landlord's head office staff during which he was continually advised they did not have his forward address he spoke to the corporate landlord's supervisor, Andrew. The tenant submits that Andrew informed the tenant that he had a cheque ready for him but it had not been mailed because they had not received his forwarding address. The tenant testified that Andrew informed him that they could clear up the matter by sending the cheque to him now if he would supply his forwarding address. The tenant says he received the cheque on June 2, 2010 in the sum of \$442.26. The cheque, submitted in evidence, is dated May 13, 2010.

The landlord says they had no forwarding address for the tenant. The landlord testified that they did receive the tenants' notice to vacate but no information sheet was with that notice. The landlord says they never had a forward address but as soon as they were provided with one they returned the security deposit.

Analysis

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenant of the forwarding address. In this case I find that the tenant has failed to prove that he gave his forwarding address in writing to the landlord. In fact, in his own evidence in several instances he was advised

by the landlord that they did not have his forwarding address and he still did not send it to them in writing. He supplies a witness statement where the witness says he observed the tenant put the information sheet containing the forwarding address in the landlord's mail box. However the witness did not attend the hearing to be cross-examined, the witness is a co-tenant along with this tenant and the statement is not sworn. Although the Rules of Procedure do not require witness statements to be sworn, unsworn statements do not have to be given as much weight as a statement that would be sworn. In this case, I give the statement little weight.

The final result in this hearing is that the testimony of the tenant and the landlord is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here.

Conclusion

The tenant has received the deposit and applicable interest. The tenant's application for recovery of double that deposit is dismissed. Because the tenant has not been successful in this application I decline to award the landlord recovery of the filing fee paid for this application.