



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

The former landlord is seeking to obtain a ruling or finding that a security deposit was not paid to the former landlord. The tenant did not appear at the hearing.

The former landlord testified that the tenant was personally served with the hearing documents on June 19, 2012 at the rental unit. I was satisfied the tenant has been sufficiently served with notification of this hearing and I proceeded to hear the landlord's application in the absence of the tenant.

As a matter of record, the applicant advised that his father was the former registered owner of the property and the applicant was acting as the former landlord's agent pursuant to a power of attorney. For purposes of the decision, the applicant agent and the former registered owner are collectively referred to as the "former landlord".

Issue(s) to be Decided

Was a security deposit paid to the former landlord?

Background and Evidence

The tenancy commenced in July 2002 for a monthly rent of \$1,100.00. A written tenancy agreement was not produced.

In February 2012 the tenant was informed that the residential property had been sold. In March 2012, during a previous dispute resolution proceeding, the tenant sought return of an \$1,100.00 security deposit from the former landlord. The former landlord denied the tenant had paid a security deposit. As the tenancy had not ended the Dispute Resolution Officer specifically stated in her decision that she was making no finding as to whether a security deposit had actually been paid and informed the parties that they retained the right to make a subsequent application to deal with this matter.

The tenant also informed the purchaser of the property that he had paid a security deposit. When the property was subsequently transferred to the new owner \$1,100.00 was withheld from the sales proceeds and is being held in trust pending a finding or decision of the Residential Tenancy Branch.

The former landlord provided copies of several deposit slips that the tenant had provided as evidence for the previous dispute resolution proceeding including deposit slips are for the months of July, August, September, October, and December 2002. Each deposit slip indicates that \$1,100.00 was deposited into the former landlord's bank account.

The former landlord stated that during the previous hearing the tenant had indicated that a security deposit was paid in August 2002. The deposit slip for August 2002 looks quite different than the slips generated for the deposits in July, September, October and December 2002 and has a reference line that says: "Re: deposit".

The former landlord is of the position that the deposit slip provided for August 2002 indicates the monthly rent was paid for August 2002; however, in an effort to resolve this dispute the former landlord has requested the tenant provide a second deposit for August 2002 to demonstrate that a security deposit was deposited. Another deposit slip has never produced by the tenant.

Analysis

A party that makes an application has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

A security deposit is money paid by a tenant to a landlord that is held as security for any liability or obligation of the tenant respecting the residential property. The Act limits the amount that may be collected by a landlord for a security deposit to one-half of the monthly rent. The Act also limits when a landlord may require a security deposit from the tenant to the time a tenancy agreement is entered into.

Upon the evidence before me, I find, based on the balance of probabilities, that a security deposit was not paid by the tenant to the former landlord. I make this finding for the following reasons:

1. The tenant did not appear at the hearing to refute the former landlord's position;

2. There is no more than one deposit slip for each month a deposit slip was produced.
3. Each deposit slip is for the amount of the monthly rent;
4. The deposit of \$1,100.00 is inconsistent with the maximum payable for a security deposit;
5. The reference line "RE: DEPOSIT" is not in itself conclusive evidence that the funds were for a security deposit and are just as likely to indicate a person was making a deposit to another person's account.

Conclusion

I have found that a security deposit was not paid to the former landlord of the subject property.

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: July 25, 2012.

Residential Tenancy Branch