



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on, or about, October 27, 2019 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agreed that the tenancy began in 2018; that it ended on June 30, 2019; and that there is no written tenancy agreement.

The Tenant stated that:

- he paid a security deposit of \$850.00, although he cannot recall the date it was paid;

- the security deposit was paid in cash, for which he did not receive a receipt;
- he did not pay cash for anything else during this tenancy; and
- he has submitted no proof of the \$850.00 payment.

The Landlord stated that the Tenant did not pay a security deposit.

Analysis:

There is a general legal principle that places the burden of proving a claim on the person who is claiming compensation for damages. In these circumstances, the burden of proving that a security deposit was paid rests with the Tenant who is seeking the return of the deposit.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

It is important to note that the testimony of the two parties does not stand on equal ground. This is because one party carries the added burden of proof. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail. In these circumstances, the burden of proof rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that a security deposit was paid. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a receipt or bank statement, that corroborates the Tenant's testimony that a security deposit was paid or that refutes the Landlord's testimony that one was not paid.

As there is insufficient evidence to establish that a security deposit was paid, I dismiss the Tenant's application to recover the deposit.

I find that Tenant has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution is dismissed, without leave to reapply.

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 03, 2020

Residential Tenancy Branch