

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Is the Tenant entitled to the monetary compensation sought?

### Background and Evidence

The Tenant was renting a basement suite in the Landlord's residential property. On or about April 15, 2009, there was a fire in the dwelling. The Tenant had to move out as the building could not be occupied.

The Tenant was paying a monthly rent of \$825.00. The Tenant now claims **\$400.00** for the return of rent for one half of the month, which she had paid for in advance.

The Tenant claims the Landlord had offered her the money a couple of times, but has not returned the funds.

The Agent for the Landlord claimed the Tenant had refused to sign a release of some sort, and that the Tenant had no renters' insurance.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the tenancy agreement was frustrated due to the fire. There was no evidence before me that suggested either party was at fault for the fire. As neither party is at

fault, and the change in circumstances is such that the contract could no longer be fulfilled, the contract was therefore frustrated.

I found there was no merit in the submissions of the Landlord regarding the Tenant's lack of insurance. Furthermore, I found the argument about an insurance release to be irrelevant.

The Landlord is entitled to the rent up to the time of the contract was frustrated. The Tenant is entitled to the return of the rent paid for the period following the time the contract was frustrated.

I award the Tenant the sum of **\$450.00**, comprised of a half of one month of rent and the \$50.00 paid for the filing fee. I grant the Tenant an order under section 67 for the balance due of **\$450.00**. This order may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: December 03, 2009.

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Dispute Resolution Officer