

## **DECISION**

Dispute Codes      CNE, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed on the following facts. The rental unit is located in a rooming house in which there are nine rooms. Early in 2009 the tenant moved into the rental unit from another room in the same building. The tenant had paid a \$150.00 security deposit for the first room he rented and this security deposit was transferred to his credit at the rental unit. In the room next door to the tenant lived another tenant (the “Neighbour”) against whom multiple noise complaints were made to the landlord. Sometime during the evening of July 10 or early morning of July 11, a fire started in the Neighbour’s room. The residential property has been vacant and uninhabitable since that time.

The tenant claimed that when he moved into the rental unit, he paid the landlord an additional \$85.00 to bring the total security deposit to \$235.00. The tenant testified that borrowed the money from his friend who was called during the hearing to serve as a witness. The tenant’s friend declined to participate in the hearing. The tenant testified that he lost most of his belongings as a result of smoke damage and seeks a monetary award for the return of his security deposit, the return of his rent for the period from July 11 – 31, compensation for goods and food lost during the fire and recovery of the cost of washing his smoke damage clothing.

The landlord denied that the tenant gave him an additional \$85.00 and testified that he only has a \$150.00 security deposit. The landlord acknowledged that the tenant was entitled to the return of the rent paid for that part of July in which the rental unit was uninhabitable.

### Analysis

The landlord is not the tenant's insurer. The tenant was responsible to obtain insurance coverage for his belongings and the landlord cannot be held liable for any loss as a result of the tenant's failure to insure his goods. If the landlord had been negligent and had known that the Neighbour or his guests were likely to start fires, liability may have fallen to him, but in this case there is no evidence that the landlord should have known that the Neighbour who was noisy would start or allow his guest to start a fire. I dismiss the tenant's claim for the loss of his belongings in the fire and the cost of laundering his clothing.

I find that the tenancy was frustrated when the fire rendered the residential property uninhabitable and that the tenant is entitled to recover the rent paid for July 11 – 31. At a per diem rate of \$15.22, I find that the tenant is entitled to recover \$319.62 and I award him that sum.

I find that the tenant has not proven that he paid more than \$150.00 for a security deposit. I find that the tenant is entitled to recover the security deposit and I award him \$150.00.

Although the tenant claimed recovery of the filing fee, the filing fee was waived for his application and therefore no order is appropriate.

### Conclusion

I grant the tenant a monetary order under section 67 for \$469.62 and order the landlord to pay this sum to the tenant forthwith. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 11, 2010

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