

## **DECISION**

Dispute Codes      O

### Introduction

This is an application filed by the Tenant for a monetary order for the return of the security deposit, loss of use of the basement during the tenancy equal to ½ of the monthly rent (\$900.00), moving expenses and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties have attended the hearing and the Landlord has acknowledged receiving the Tenant's documentary evidence. The Landlord has submitted no documentary evidence. I am satisfied that both parties have been properly served with the notice of hearing and evidence package as deemed under the Act.

It was clarified by both parties at the beginning of the hearing that the Tenant has vacated the rental unit at the beginning of June 2012 and that the security deposit was returned to the Tenant. The Tenant stated during the hearing that he was only seeking the \$900.00 an amount equal to ½ of the monthly rent for the loss of the basement and the inconvenience of accessing the laundry from an exterior door. The Tenant has provided a new address which shall be added to the Tenant's application.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

This Tenancy began on May 1, 2012 on a fixed term tenancy for 1 year until April 31, 2012 as shown by the submitted copy of the tenancy agreement. The monthly rent was \$1,800.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$900.00 was paid.

Both parties agreed that the Tenant had access to the rental unit starting on April 12, 2012 to begin moving in and that the Tenant moved out of the rental unit on June 1, 2012 and that the security deposit was returned to the Tenant.

The Tenant states that he lost the use of the basement for storage purposes when the Landlord began renovating the unfinished basement at the beginning of the Tenancy.

The Tenant states that he knew the Landlord was going to renovate the basement, but that he didn't think it would be so soon in the tenancy. The Tenant states that the only two uses for the unfinished basement was for future storage of items from his work and for the use of the laundry from an exterior door. The Tenant states that he lost the use of the entire basement and is seeking an amount equal to ½ of the monthly rent of \$900.00. The Landlord disputes this stating that the Tenant knew about his proposed changes/renovations to the unfinished basement area. The Landlord also states that the Tenant was also going to help make improvements to the property. The Landlord also states that as the basement was empty and unfinished that no real value can be assigned to it.

### Analysis

The onus or burden of proof is on the party making the claim, in this case the Tenant is responsible as he has made an application. 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 their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. With conflicting testimony provided by both parties, I find on a balance of probabilities that Tenant has failed to establish that he suffered a loss for the unfinished basement area. It was not disputed by the Tenant that there would be ongoing construction to the basement during his Tenancy. The Tenant stated that he "did not think that it would be so soon". The Landlord's testimony that there was no loss as the unfinished basement was predominantly empty for storage and not a living space. The Tenant's application is dismissed without leave to reapply.

### Conclusion

The Tenant's application is dismissed.

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: June 05, 2012.

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Residential Tenancy Branch