



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RE/MAX Mid Island Realty Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is an application to retain the full security deposit of \$375.00.

### Background and Evidence

The applicant testified that:

- The tenant signed a one-year lease that ran from October 29, 2012 to November 30, 2013.
- The tenant broke the lease and vacated the rental unit on January 31, 2013.
- They attempted to re-rent the unit but were unable to do so until March 1, 2013 and therefore lost the full rental revenue of \$750.00 for the month of February 2013.
- They are therefore requesting an order allowing them to keep the full security deposit of \$375.00 to cover a portion of their lost rental revenue.
- Their abandoning any claim over and above the amount of the security deposit.

The respondent testified that:

- She had to breach the tenancy due to having suffered for many months with no heat.
- The heat is controlled from the upstairs unit, and the upstairs tenants were messing around with the heat and as a result she had no heat.
- The landlord did not adequately deal with the problem, supplying only a couple of small electric heaters that did not properly heat the rental space.
- She also had troubles with the taps in the bathroom and as a result was unable to even shower in the rental unit.
- There was also a urine smell in the rental unit, and she found out that there had previously been a sewer backup into the unit and suspects that's what caused the urine smell.
- As a result of these breaches of the tenancy agreement she decided to end the tenancy and notified the landlords on December 21, 2012 in writing.
- She therefore believes that she should have her full security deposit of \$375.00 returned.

In response to the tenant's testimony the landlord testified that:

- The tenant never made her aware of any of these alleged problems, and in fact she was unable to even contact the tenant until after December 8, 2012 when she served the tenant with the Notice to End Tenancy for nonpayment of rent. At that point the tenant still owed \$180.00 from November 2012, and owed the full December 2012 rent of \$750.00.
- Suddenly after receiving the Notice to End Tenancy, the tenant now had a list of problems she wanted rectified.
- I had my handyman deal with the problems as soon as we were able to make contact with the tenant.
- When we finally made contact with the tenant we did discover that the heat was off and therefore the tenant was supplied with electric heaters.
- Handyman was in the rental unit until the unit heated up, and was back in the unit on other occasions and those electric heaters were keeping the rental unit quite warm.
- The handyman also fix the problem with the shower as he did find that the taps were very difficult to turn off and on, however the shower did function and the taps were able to be turned off and on.
- There had been a sewage backup into the unit two years ago however it was completely and properly repaired by a restoration company.
- She believes they acted reasonably to rectify any problems encountered by the tenant and does not believe that the tenant had the right to end the tenancy without proper notice.

### Analysis

It is my decision that the tenant has not met the burden of proving that the landlord failed to rectify a breach of a material term of the tenancy agreement.

The tenant did indicate to the landlord that there was a problem with the heat, however the landlord supplied electric heaters to the tenant, and I find no evidence to show that the tenant ever inform the landlord that those electric heaters were insufficient.

Further although the tenant claims she was unable to use the shower in the rental property, I am not convinced that the tenant ever relayed that information to the landlord, and once the landlord was aware of a problem with the taps in the shower, it's my finding that the landlord dealt with that problem in a reasonable manner.

The landlord must also be given reasonable access by the tenant to rectify any issues in the rental unit, and I'm not convinced that in this case the tenant did give the landlord reasonable access or stay in contact with the landlord on a regular basis.

It's my finding therefore that the tenant did not have the right to end the tenancy before the end of the lease and I will allow the landlords claim.

### Conclusion

I hereby order that the landlord may retain the tenants full security deposit of \$375.00.

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: May 28, 2013

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Residential Tenancy Branch

