



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on or about March 16, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

### Background and Evidence

In January 2015 the parties agreed that the tenant was to rent a cabin from the landlord commencing February 1, 2015. The agreement was not in writing. On January 12, 2015 the tenant paid a security deposit of \$250 and received a receipt. On January 22, 2015 the tenant paid \$500 for rent for February.

At the end of January the tenant was involved in a party and after consuming alcohol and drugs he ended up giving the keys to a third party. The tenant's mother testified the tenant was abducted during this time. He ended up spending the night in jail.

The next day the tenant contacted the landlord and they met at the cabin. The tenant revealed to the landlord he had given the key to a third party. The landlord testified this was his worst nightmare. The landlord was aware of a scam going around where a tenant with good references would rent a rental unit and then allow someone else with poor references to move in causing significant damage.

The landlord testified he gave tenant a choice. He could move in but the landlord would take immediate steps to evict him and would not give him a reference because what he had done was illegal. Alternatively, the landlord would return the \$500 rent, kept the security deposit to cover for his loss of rent and the tenant would not move in. The landlord testified the tenant agreed to the former. The landlord returned the rent for February. The parties signed a receipt dated January 30/15 that stated "Feb /15 rented returning \$500 in full. I RH agree to leave the premises immediately and forfeit my damage deposit of \$250. The landlord testified the tenant's mother was present when this occurred.

The tenant's mother testified the document was signed under duress and the tenant did not know what he was signing. The rental unit was not damaged as the tenant did not move in. In late February the tenant discovered that he had a large brain tumor. The landlord responded he had no way of knowing that the tenant had a brain tumor. Further, the tenant's mother was present and had a full opportunity of stopping any agreements if they were not fair. He testified he has lost a ½ month rent as a new tenant did not move in until the middle of February.

The tenancy on February 1, 2015 as the tenant did not move in.

The tenant(s) provided the landlord with his/her their forwarding address in writing on or about February 24, 2015.

### Analysis

#### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

The tenants paid a security deposit of \$250 on January 12, 2015. I determined the tenancy ended on February 1, 2015 as the tenant did not move in. I further determined the tenants provided the landlord with his forwarding address in writing on February 24, 2015.

However, I determined the parties agreed in writing that the tenant would forfeit the security deposit to the landlord. I do not accept the submission of the tenant this agreement should be set aside. Valid consideration has been given. The tenant failed to prove that interaction between the parties amounted to legal duress. Both parties were facing pressure and a reasonable decision was reached. The tenant failed to present sufficient evidence that the presence of the brain tumor caused a lack of capacity. One can sympathize with the tenant's situation and the stress in dealing with a brain tumor. However, neither the tenant nor the landlords were aware of this situation when the tenant agreed to forfeit the damage deposit. The tenant's mother was present when it was signed and it was opened to her to take issue with this agreement. She did not do so. The landlord relied on the written agreement that the

tenant forfeited the security deposit and did not file an Application for Dispute Resolution. The landlord had a legitimate claim for half of a months rent.

As a result I determined the tenant has failed to establish a claim for a monetary order. I ordered the application be dismissed without liberty to re-apply.

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: August 20, 2015

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Residential Tenancy Branch

