



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EMV Holdings Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF, O

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This six-month fixed term tenancy commenced November 1, 2012. The monthly rent of \$1050.00 was due on the first day of the month as was the monthly parking fee of \$45.00. The tenant paid a security deposit of \$525.00.

The tenant wanted to renew her tenancy agreement upon the expiry of this agreement. The landlord was not prepared to enter into a new agreement with this tenant and relied upon the clause in the tenancy agreement that stated: "At the end of this time the tenancy is ended and the tenant must vacate the rental unit."

The tenant disputed the landlord's position by filing an application for dispute resolution with the Residential Tenancy Branch. The hearing on her application was conducted on May 9, 2013.

Pending the outcome of the hearing the tenant paid a half month's rent and parking for the period of May 1 to May 15, which was accepted by the landlord for use and occupancy only. She did not pay anything for the period May 16 to May 31.

A decision holding that the tenancy ended on April 30 was issued on May 14. At the request of the landlord the decision was faxed to it on May 15. The tenant's copy was sent to her by ordinary mail. The landlord did not serve the tenant with a copy of the decision and the tenant testified that she received it from Canada Post on May 23.

The landlord issued this application for dispute resolution on May 16 and served it on the tenant by Express Post. The records of Canada Post show the item was delivered on May 21. Unlike Registered Mail, when an Express Post item is delivered the postal service does not obtain a signature from anyone nor do they create a delivery certificate.

However, on May 21 the tenant sent the landlord a text message that said in part: "I've received your notice of dispute hearing . . . I have not received a decision from the RTB regarding the previous dispute I filed. . . please let me know if you would like to schedule any viewings of the suite and I will happily cooperate."

The landlord started advertising the unit on May 23. The landlord testified that as of the date of the hearing they had not received any inquiries. Their experience is that it is usually easy to rent the units in this building. In fact, the corner units are wait-listed. It is also their experience that they get more response in the first seven to ten days of the month. It is their intention to rent the unit as soon as possible.

The tenant testified that after the hearing on May 9 she started looking for a new place. On May 20 she signed a tenancy agreement and had occupancy as of May 26.

The tenant moved out of the rental unit. After she was finished she left the keys in the mail box on the evening of May 27. The tenant never gave the landlord written notice of her moving date although she had inquired about using the elevator on May 26.

The landlord found the keys in the mailbox when he went to work in the morning of May 28. This hearing was conducted at 10:30 that morning.

In addition to arrears of rent and loss of rental income for June the landlord also claimed \$96.32 for blind cleaning. Although the landlord had not yet viewed the rental unit he stated that the tenancy agreement requires the blinds to be professionally cleaned and since they had not received any proof that the blinds had been cleaned, such as a receipt, he expected they had not been cleaned. The tenant stated that during the move-in inspection she was told by the landlord that since her tenancy was only for six months, professional cleaning was not required. She also testified that she had cleaned the blinds herself and they were clean. The landlord responded that if he was going to contradict the tenancy agreement he would have done so in writing.

#### Analysis

##### *Landlord's Claim for the Balance of the May Rent and Parking Fee*

At the beginning of the hearing the tenant agreed to this claim.

*Landlord's Claim for Loss of June Income*

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

I find that the tenant is responsible for any loss of income experienced by the landlord for June. I also find that the landlord has been taking steps to minimize any potential damage or loss, as required by section 7(2) of the *Residential Tenancy Act*, by advertising the unit as soon as it became clear that it would be appropriate to so.

However, as of the date of the hearing the landlord was not able to say what its' genuine monetary costs for June were. It is entirely possible that the unit may be rented with a possession date sometime in June thereby reducing or even eliminating the landlord's actual loss. Accordingly, this claim is dismissed with leave to re-apply once the landlord's actual loss for June has been established.

*Landlord's Claim for Blind Cleaning*

The addendum to the tenancy agreement states: "Blinds/Drapes: Clean or Laundry". The tenancy agreement does not specify that the blinds must be professionally cleaned or laundered; only that they be clean or laundered. As the landlord had not seen the condition of the blinds prior to the hearing he was not able to testify as to their condition. This claim is dismissed with leave to re-apply if the blinds were not left reasonably clean as required by section 37(2) of the *Act*.

*Filing Fee*

As the landlord had to file this application for dispute resolution in order to obtain payment of the balance of the May rent I find that the landlord is entitled to reimbursement from the tenant of the \$50.00 filing fee it paid for the application.

Conclusion

I find that the landlord has established a total monetary claim of \$597.50 comprised of one half month's rent in the amount of \$525.00; one half month's parking fee in the amount of \$22.50; and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$525.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$72.50. If necessary, this order may be filed in the Small Claims Court 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: June 18, 2013

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Residential Tenancy Branch