



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing dealt with the landlords' two applications for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for a monetary order for unpaid rent, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the filing fee.

The landlords and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The tenants confirmed receipt of the landlords' applications.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters-

The landlords submitted they did not receive the tenants' evidence. The tenants testified they served the landlords by registered mail on November 21, 2023. After providing the tracking number, I searched the Canada Post tracking system, which showed the item was mailed on December 1, 2023, and a notice card was left for the landlords on December 4, 2023, the day before the hearing.

As the tenants' testimony conflicted with the date of mailing shown on the Canada Post website, I find the tenants submitted insufficient evidence that they served the landlords with their evidence so that it is received at least 7 clear days of the hearing and it is excluded as a result.

I note that the tenants uploaded evidence to the RTB portal on June 25, 2023 regarding the secondary application, without proof that the evidence was served to the landlords on that date.

#### Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenants comprised of monthly rent owed and to recover the cost of the filing fee?

#### Background and Evidence

A written tenancy agreement filed in evidence shows that a tenancy began between the original landlords and the tenants, on September 15, 2022, for a fixed-term through August 31, 2023, monthly rent of \$1850 due on the first day of the month, and a security deposit of \$900 being paid by the tenants.

The landlords stated they purchased the residential property from the original landlords, the sale for which closed at the end of March 2023, when they took ownership.

The landlords' total monetary claim contained in the two applications is \$4625, comprised of unpaid rent of \$1850 for April and May each, and ½ the monthly rent for June, 2023. The landlords retained the tenants' security deposit for the purposes of this dispute.

In application #1 filed on May 17, 2023, the landlords wrote the following:

*We purchased our new home at the end of March 2023. Existing tenancy agreement in place. Contract specifies payment on the first of every month. Tenant has not paid April*

*or May 2023 rent. Tenant advised (i) would be late but would pay by May 15, 2023 (ii) then sent cheque via registered mail (even though our realtor asked for it to be sent by e-transfer and provided e-address) (iii) lost or couldn't find registered mail slip upon request of track slip(iv) unwilling to provide new cheque/pay.*

In application #2 filed on June 5, 2023, the landlords wrote the following, with redactions of personal or identifying information:

*We bought (residential property address) at end of March 2023. Existing tenancy agreement in place for basement suite. Contract specifies payment on the 1st of every month. Tenants have not paid any rent to date but requested deposit back. Tenant initially advised they would be late on payment, then that they had sent 2 cheques for April&May rent via registered mail but couldn't find tracking slip and later said they had sent cash not cheque in mail. They signed agreement to leave on June 15 but left June 3rd.*

The parties signed a mutual agreement to end the tenancy, with the tenants agreeing to vacate the rental unit by June 15, 2023, and they chose to vacate on June 3, 2023, without ever paying rent to the landlords. The mutual agreement was filed in evidence.

The landlord submitted they communicated by text message many times with the tenants about paying rent, yet the tenants never did.

In response, the tenants testified that they did pay rent, when they left cash in the landlords' mailbox, as they were told by the landlords to pay the rent in cash.

Tenant BH said they paid the rent on April 3, 2023.

The landlords stated that they filed copies of text messages between the parties with tenant PWM, starting on April 13, 2023 about the rent payments, and on April 13, 2023, BH sent a text message saying they could not pay the rent.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

In this case, the landlords assumed the existing tenancy when they purchased the tenanted residential property and the terms of the tenancy agreement remained in effect for the tenants and the new owners/landlords, which included payment of rent.

The tenants submitted that they paid the rent in cash, and in particular, BH said the rent was paid on April 3, 2023; however, this testimony directly contradicts BH's text message of April 13, 2023, to the landlord, specifically apologizing for not being able to pay rent by then and that they would not be able to pay rent until May 5, at the earliest, due to payroll issues.

Due to the contradictory testimony and evidence by the tenants, as has been noted in this Decision, I do not find any of the tenants' evidence believable. I find no evidence from the tenants that proved they paid the rent in cash, and the landlords' evidence indicated that the tenants were instructed to not pay the rent in cash, preferring e-transfer.

I accept the landlords' evidence that the tenants owed \$1850 on the first day of the month, but did not pay the monthly rent for April, May or June 1-15, 2023 due under the written tenancy agreement, leaving a rent deficiency of \$4625. I therefore find the landlord has established a claim for unpaid rent owing for **\$4625**, which is unpaid rent of \$1850 for April and May 2023, each, and \$925 for half the month of June 2023.

While the tenants vacated the rental unit by June 3, 2023, I find that was their own choice to move early, and the term of the written mutual agreement ended the tenancy on June 15, 2023. The landlords are granted a monetary award in that amount.

Due to their successful application, I grant the landlords recovery of their filing fee of **\$100**.

To date, the tenants' security deposit of \$900 has accumulated interest of \$16.45

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit and interest of \$916.45, in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order of **\$3808.55** in favour of the landlords as follows:

ITEM	AMOUNT
1. Unpaid rent	\$4625.00
2. Filing fee	\$100
3. <i>Less security deposit and interest</i>	<i>(\$916.45)</i>
<b>TOTAL</b>	<b>\$3808.55</b>

The landlords are provided with a Monetary Order in the above terms and the tenants must be served with this order as soon as possible to be enforceable. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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: December 07, 2023

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Residential Tenancy Branch