

## Residential Tenancies Tribunal

Decision 19-0516-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 pm on 05 August 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated by telephone.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$2600.00;
  - b. An order for a payment of late fees in the amount of \$75.00; and
  - c. An order for vacant possession of the rented premises.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 7, 14, 15 and 19 of the *Residential Tenancies Act, 2018*, section 2 of the *Rental Agreement Notice Regulations* and rule 29 of the *Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenant, [REDACTED] ([REDACTED]), was not present at the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule

29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit with his application showing that he had served ■ with notice of the hearing, by registered mail, and the tracking history shows that that notice was signed for on 04 July 2019. SJ has had 31 days to provide a response. As the ■ was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended his application at the hearing. He stated that he was no longer seeking an order for possession of the rented premises as the tenant moved out at on 17 July 2019. He also stated that she was now seeking rent for August 2019 for a total claim of \$3900.00.

### **Issue 1: Rent - \$3900.00**

#### **Relevant Submissions**

##### The Landlord's Position

8. The landlord stated that he had entered into a verbal rental agreement with the tenant on 01 November 2018. He testified that this tenancy was running on a month-to-month basis and the rent was set at \$1300.00. He also testified that the tenant had paid a security deposit of \$900.00.
9. The landlord stated that tenant did not pay his rent for June 2019, as required, and on 18 June 2019 he issued him a termination notice. A copy of that notice was submitted with his application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 June 2019.
10. The landlord stated that the tenant did eventually vacate the premises and he regained possession of the unit on 17 July 2019.
11. The landlord stated that he is seeking rent for June, July and August 2019, for a total claim of \$3900.00 (3 months x \$1300.00) per month.
12. He stated that he received no rent from the tenant for June or July 2019 and he claimed that the tenant had caused significant damage to the property, which he has still not had repaired. He estimated that it will cost over \$5000.00 to have the repairs carried out and he will not be able to put new tenants in place until that work is completed.

## The Tenant's Position

13. The tenant stated that there was no written rental agreement and he argued that there was no proof that he had entered into a month-to-month agreement with the landlord. Instead, the tenant stated that the agreement was running on a week-to-week basis and the weekly rent was set at \$293.54.
14. With respect to rent for June 2019, the tenant stated that he had paid that rent to the landlord, in cash, and he claimed that the landlord would not provide him with a receipt.
15. With respect to July 2019, the tenant stated that he had vacated on 15 July 2019, not 17 July 2019. He acknowledged that he had not paid any rent for that month, but he argued that he was under no obligation to do so. He pointed out that section 7.(3) of the *Residential Tenancies Act, 2018* states that the landlord is required to provide him with a written notice outlining the terms of their verbal agreement and s. 7.(4) states that his obligation to pay rent is suspended until he is provided with such notice.

## **Analysis**

16. I found the testimony of the landlord to be credible and I accept his claim that he had entered into a verbal agreement with the tenant that he would rent the premises on a month-to-month basis at \$1300.00 per month. I reject the tenant's contention that this tenancy was running on a day-to-day or week-to-week basis and that claim does not square with the fact that he was paying the rent on a monthly basis, as opposed to daily or weekly. I also find it implausible that the tenant would have paid a security deposit of \$900.00 if the weekly rent was only \$293.54.
17. I also accept the landlord's claim that the tenant had paid no rent for June or July 2019. The tenant stated that he had paid his rent for June 2019 but he presented no credible evidence at the hearing to corroborate that claim.
18. Nevertheless, despite my finding that the tenant had not paid rent as required, he is correct in his submission that his obligation to pay rent had been suspended.
19. The relevant subsections of section 7 of the *Residential Tenancies Act, 2018* states:

### ***Provision of rental agreement and information***

*7. (3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.*

*(4) Notwithstanding the terms of a rental agreement, where a landlord has not complied with subsection (2) or (3), the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3).*

20. The Rental Agreement Notice Regulations state:

**Contents of notice**

*2. Where a landlord and tenant enter into an oral or implied rental agreement, the written notice required under subsection 7(3) shall include*

*(a) the legal names of the landlord and the tenant;*

*(b) the landlord's telephone number, electronic address and civic address where documents may be received, delivered or served by the tenant;*

*(c) where the landlord has an agent or another person who is responsible for the residential premises, the name, telephone number, electronic address and civic address of the agent or other person where documents may be received, delivered or served by the tenant;*

*(d) where available, the tenant's telephone number and electronic address where documents may be received, delivered or served by the landlord;*

*(e) the civic address of the rental unit;*

*(f) the date on which the rental agreement was entered into;*

*(g) the statutory conditions in section 10;*

*(h) the date on which the tenancy starts;*

*(i) whether the rental agreement is from week to week, month to month or for a fixed term;*

*(j) where the rental agreement is for a fixed term, the termination date of the tenancy;*

*(k) the amount of rent payable for a specified period and the day within that specified period upon which rent is due;*

*(l) the amount of the security deposit paid and the date on which it was paid; and*

*(m) any other terms and conditions of the rental agreement.*

21. The landlord acknowledged at the hearing that he had not provided the tenant with a written notice of their verbal agreement as required by the *Act*. As such, I have to agree with the tenant that his obligation to pay rent had been suspended and that no rent is currently owing to the landlord.

**Decision**

22. The landlord’s claim for a payment of rent does not succeed.

**Issue 2: Late fees - \$75.00**

23. The landlord has assessed late fees, under section 15 of the *Act*, in the amount of \$75.00.

24. For the reasons set out in the previous section, no rent is currently owing to the landlord. As such, he cannot assess late payment fees.

**Issue 3: Security Deposit**

25. It is not disputed that the tenant paid a security deposit of \$900.00 when he moved into the unit in November 2018.

26. This tenancy ended in mid July 2019. According to section 14.(9) of the *Residential Tenancies Act, 2018* a landlord is required to return the security deposit to the tenant with 10 days after the tenancy ends, unless the landlord has a claim for all or part of the deposit.


27. As the landlord’s claim for rent and late fees has not succeeded, he shall return the full amount of the security deposit to the tenant.

**Summary of Decision**

28. The tenant is entitled to the following:

a) Refund of Security Deposit .....\$900.00

23 December 2019  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal