

## Residential Tenancies Tribunal

Decision 20-0386-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:02 pm on 13 October 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$761.00,
  - 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 15 and 19 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

6. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$2361.29.

## **Issue 1: Rent Owing - \$2361.29**

### **Relevant Submissions**

#### The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant commencing 01 November 2019 and a copy of that executed agreement was submitted with her application. The agreed monthly rent was set at \$800.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$400.00.
8. The landlord submitted rent records with her application showing the payments she had received from the tenant since she moved into the unit. According to these records, the last time the tenant was in good standing was 24 July 2020, at which point she had a rent credit of \$38.71cr. Since that time, no rent has been paid.
9. The landlord is seeking an order for a payment of rent for August, September and October 2020, less the rent credit of \$38.71cr from July 2020. She calculates that she is owed \$2361.29 ( $\$800.00 \text{ per month} \times 3 \text{ months} = \$2400.00$  less \$38.71)

#### The Tenant's Position

10. The tenant did not dispute the landlord's records of the payments that had been made during her tenancy. However, she claimed that in August 2020 she gave notice to the landlord that she was going to be vacating the rental unit and she moved out on 08 September 2020.
11. The tenant testified that she suffers from some sort of medical condition which had made it difficult for her to reside at this property. She claimed that in December 2019 she had put in a request for a transfer to a different unit and she had supplied the landlord with a note from her doctor at that time. The tenant stated that her transfer was pushed back 6 months but by that time the COVID-19 pandemic had struck and her transfer was again delayed.
12. She claimed that her tenancy had reverted to a month-to-month term after that 6-month wait period and she argued that as she had given her notice in August 2020, she does not owe any rent for September or October 2020.

### **Analysis**

13. The lease submitted by the landlord shows that the tenant had entered into a 1-year lease with the landlord that was not set to expire until 31 October 2020. No evidence was submitted by the tenant to corroborate her claim that there was any agreement with the landlord that this tenancy would revert to a monthly agreement 6 months after she had moved in.

14. There was also no evidence submitted by the tenant to establish that she had provided the landlord with a 1-month notice that she was terminating her lease on 08 September 2020. But even if such a notice was sent to the landlord, that notice would be invalid as this tenancy was not set to expire until 31 October 2020.
15. The landlord also testified that she was unaware that the tenant had moved out of the unit and she testified that she has yet to regain possession of that property. I accept that testimony.
16. As the landlord is seeking an order for possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
17. I calculate the amount owing to be \$1902.28 (\$1561.29 for August and September 2020 (\$1600.00 less the rent credit of \$38.71cr) and \$340.99 for October 2020 (\$800.00 x 12 months = \$9600.00 per year ÷ 366 days = \$26.23 per day x 13 days = \$340.99)).

## **Decision**

18. The landlord's claim for a payment of rent succeeds in the amount of \$1902.28.
19. The tenant shall pay a daily rate of rent in the amount of \$26.23, beginning 14 October 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

## **Issue 2: Late Fees**

### **Relevant Submissions**

20. The landlord has assessed late fees in the amount of \$75.00.

### **Analysis**

21. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

#### ***Fee for failure to pay rent***

***15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.***

22. The minister has set the following fees:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

23. As the tenant has been in rental arrears since 02 August 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

### **Decision**

24. The landlord's claim for late fees succeeds in the amount of \$75.00.

### **Issue 3: Vacant Possession of the Rented Premises**

#### **Relevant Submissions**

##### The Landlord's Position

25. With her application the landlord had submitted a copy of a termination notice which she stated was placed under the tenant's door on 14 August 2020.
26. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 27 August 2020.
27. The landlord testified that she had been given no indication that the tenant had moved out of the unit and she pointed out that the keys have not been returned to her.
28. The landlord is seeking an order for vacant possession of the rented premises.

##### The Tenant's Position

29. The tenant acknowledged that she had received the submitted termination notice.
30. She stated that she had moved out the unit on 08 September 2020 after issuing her own termination notice to the landlord in August 2020.

### **Analysis**

31. Section 19 of the *Residential Tenancies Act, 2018* states:

## **Notice where failure to pay rent**

**19. (1)** *Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

*(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and*

*(b) where the residential premises is*

*(i) rented from month to month,*

*(ii) rented for a fixed term, or*

*(iii) a site for a mobile home, and*

*the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

*(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

32. According to the landlord's rent records, on 14 August 2020 the tenant was in arrears in the amount of \$761.29 and had been in arrears since the beginning of that month. No payments have been made since the notice was issued and since then the rent for September and October 2020 has come due.
33. As the tenant had not paid off all of the arrears prior to 27 August 2020 and as the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

## **Decision**

34. The landlord's claim for an order for vacant possession of the rented premises succeeds.
35. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

**Issue 4: Hearing Expenses**

36. As the landlord’s claim has been successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

**Issue 5: Security Deposit**


37. The landlord stated that the tenant had paid a security deposit of \$400.00 on 10 October 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord’s claim has been successful, she shall retain that deposit as outlined in this decision and order.

**Summary of Decision**

38. The landlord is entitled to the following:

- A payment of \$1597.28, determined as follows:
  - a) Rent Owing .....\$1902.28
  - b) Late Fees .....\$75.00
  - c) Hearing Expenses.....\$20.00
  - d) LESS: Security Deposit..... (\$400.00)
  - e) Total .....\$1597.28
- A payment of a daily rate of rent in the amount of \$26.23, beginning 14 October 2020 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

16 October 2020  
\_\_\_\_\_  
Date

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John R. Cook  
Residential Tenancies Tribunal