

## Residential Tenancies Tribunal

Decision 20-0396-05

John R. Cook  
Adjudicator

---

### Introduction

1. The hearing was called at 1:07 pm on 30 September 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as “the landlord”. A letter of authorization is on file.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$1200.00, and
  - b. An order for vacant possession of the rented premises.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 12, 14 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

### Preliminary Matters

7. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. 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 the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord testified that she had served the tenants with notice of the hearing, by e-mail, on 18 September 2020 they have had 11 days to provide a response. A copy of that e-mail was submitted at the hearing and the landlord pointed out that the tenants' e-mail addresses were provided to her on the submitted lease. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

## **Issue 1: Rent Owing - \$1200.00**

### **Relevant Submissions**

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenants on 01 June 2020 and a copy of that executed lease was submitted with her application. The agreed rent was set at \$1200.00 and according to the submitted lease, the tenants had paid a security deposit of \$600.00.
9. The landlord stated that when the tenant's moved into the unit on 01 June 2020, they paid her \$600.00 for the security deposit, \$1200.00 for the first month's rent and an additional \$1200.00 for the last month's rent.
10. The landlord testified that she also received a payment of \$1200.00 on 03 July 2020 for July's rent.
11. She stated that no rent has been paid for August or September 2020. The landlord reasoned that that as September 2020 is their last month residing at the unit and as the last month's rent had already been paid, she is entitled to an award for \$1200.00 for rent for August 2020.

### **Analysis**

12. I accept the landlord's testimony in this matter and I find that the landlord had received \$2400.00 on 01 June 2020 and \$1200.00 on 03 July 2020. I also find that no payments have been received since.
13. Subsection 12.(1) of the *Residential Tenancies Act, 2018* states:

#### ***Future rent***

**12. (1)** *A landlord shall not require a tenant to make, or accept from a tenant,*

*(a) a prepayment of the last week's or the last month's rent; or*

*(b) a single rental payment that is greater than any other regular rental payment required under the rental agreement.*

14. By accepting \$2400.00 from the tenants on 01 June 2020, the landlord had run afoul of s. 12.(1)(a), quoted above.

15. Subsections 14.(1) through 14.(3) of this Act state:

**Security deposit**

*14. (1) A landlord shall not demand from a tenant a security deposit that is*

*(a) more than the amount of rent payable for the first 2 weeks where the residential premises is rented from week to week;*

*(b) more than 3/4 of the amount of rent payable for the first month where the residential premises is rented from month to month; or*

*(c) more than 3/4 of the amount of rent that would be payable for the first month if rent was divided into a monthly payment where the residential premises is rented for a fixed term.*

*(2) Where a landlord receives from a tenant money or other value that is more than the amount of rent payable in respect of the residential premises, the money or value shall be considered to be a security deposit.*

*(3) Where a landlord receives a security deposit that is more than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or may recover the overpayment together with interest on the amount of the overpayment at the rate prescribed in the regulations.*

16. As the monthly rent was set at \$1200.00, any money received from the tenants over-and-above that amount is, according to 14.(2), a security deposit. In addition, then, to the rent for June 2020, the tenants had also paid to the landlord a total of \$1800.00. That amount shall be deemed to be the total security, despite the fact that lease states that the deposit is only \$600.00.

17. However, as the landlord is only permitted to collect a security deposit of \$900.00 (\$1200.00 x 3/4), 14.(3) states that the remaining \$900.00 overpayment may be deducted from any owing rent.

18. Accordingly, I find that the full rent was paid for June and July 2020. For August 2020, although no payments were made during that month, the tenants could apply the \$900.00 security deposit overpayment towards the rent that was owing for that month.

19. That means that the tenants had a balance owing of \$300.00 for August 2020 (\$1200.00 - \$900.00) and they also owed the full \$1200.00 for September 2020—a total of \$1500.00.

### **Decision**

20. The landlord's claim for a payment of rent succeeds in the amount of \$1500.00.
21. As the landlord is also seeking an order for vacant possession of the rented premises, the tenants shall also pay a daily rate of rent in the amount of \$ 39.34, commencing 01 October 2020 ( $\$1200.00 \text{ per month} \times 12 \text{ months} = \$14,400.00 \text{ per year} \div 366 \text{ days} = \$39.34 \text{ per day}$ ).

### **Issue 2: Vacant Possession of the Rented Premises**

#### **Relevant Submissions**

22. With her application the landlord had submitted a termination notice which she stated was sent to the tenants, by e-mail, on 16 September 2020. A copy of that e-mail was also submitted at the hearing.
23. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 27 September 2020.
24. The landlord is seeking an order for vacant possession of the rented premises.

#### **Analysis**

25. 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),**

...

**(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.*

26. On 16 September 2020, when the landlord had issued the termination notice, the tenants had been in rental arrears since the beginning of August 2020. No payments were made before the effective termination date set out in the notice and the balance remained at \$1500.00.
27. As the termination notice was properly served and as it meets all the timeframe requirements set out in this section of the *Act*, it is valid.

### **Decision**

28. The landlord's claim for an order for vacant possession of the rented premises succeeds.
29. The tenants 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 3: Security Deposit**

30. The landlord stated that a security deposit of \$600.00 was paid on 01 June 2020 and receipt of that deposit is acknowledged in the submitted lease.
31. As the tenants had made an overpayment to the landlord on 01 June 2020, and as explained in paragraphs 16 – 18, above, the actual security deposit paid by the tenants was \$1800.00. \$900.00 of that amount was applied towards the rent for August 2020, leaving a remainder of \$900.00.
32. As the landlord's claim has been successful, she shall retain that remaining \$900.00 of the security deposit as outlined in this decision and order.

### **Summary of Decision**

33. The landlord is entitled to the following:
  - A payment of \$600.00, determined as follows:

a) Rent Owing .....\$1500.00

b) LESS: Security Deposit..... (\$900.00)

c) Total Owing to Landlord .....\$600.00

- A payment of a daily rate of rent in the amount of \$39.34, beginning 01 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 tenants 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.

30 September 2020

\_\_\_\_\_  
Date



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