

Residential Tenancies Tribunal

Application 2026-0908-NL

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:09 AM on 09 September 2026 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$4800.00,
 - An order for a payment of late fees in the amount of \$184.00,
 - An order for a payment of other expenses in the amount of \$20.00, and
 - 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 is sections 15, 19 and 35 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Authorities Cited

- *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490. [Saskatchewan River Bungalows]

- Bentley, Christopher, John McNair, Mavis Butkus & Marc Casavant. Williams and Rhodes' Canadian Law of Landlord and Tenant. 6th ed. Toronto: Thomson Reuters Canada, loose-leaf.

Preliminary Matters

6. The tenant was not present or represented at the hearing. I telephoned the tenant at the commencement of the hearing and he informed me that he was out of the country and he would not be participating in the teleconference 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) a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit with her application stating that the tenant was served with the application, by e-mail, on 26 August 2026, and a copy that e-mail was also submitted to this office. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
7. The landlord amended her application at the hearing and stated that she was now seeking an order for a payment of rent totaling \$7200.00. The application was also amended to reflect the fact that her husband, [REDACTED] is a landlord and applicant in this claim.

Issue 1: Rent - \$7200.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 15 March 2026, and a copy of that agreement was submitted with her application. The agreed rent was set at \$2400.00 per month, and it is acknowledged in the agreement that the tenant had paid a security deposit of \$1800.00. Although the lease states that the rent is due on the 15th day of each month, the landlord testified that she had subsequently entered into a verbal agreement with the tenant whereby the rent would be due on the 1st day of each month.
9. With her application, the landlord submitted a copy of rent records. These records show that the tenant had paid a pro-rated rent for the month of March 2026, and that the rent for May, June and July 2026 has also been paid. With respect to the rent for April 2026, the landlord stated that there had been an issue with a faucet in the apartment during that month that the tenant had agreed to repair it at a cost of \$437.00. That amount was to be deducted from the rent, and the tenant was to pay the remaining \$1963.00.

10. The landlord testified that the tenant never did pay that remaining \$1963.00 for April 2026, and she further claimed that no rent had been paid for August or September 2026 either.
11. The landlord is seeking an order for a payment of \$6763.00 (\$1963.00 + \$2400.00 + \$2400.00).

Analysis

12. I accept the landlord's claim that the tenant had not paid his rent as required. I also accept her claim that she had entered into an agreement with the tenant that he would only have to pay \$1963.00 for April's rent in lieu of completing repairs on the broken faucet.
13. Based on the landlord's rent records and testimony, I find that the tenant failed to pay \$1963.00 for April 2026, and that no rent payments were received for August and September 2026. As the landlord is also seeking an order for vacant 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. I calculate the amount owing to be \$5073.10 (\$4363.00 for the period ending 31 August 2026 which includes \$1963.00 for April 2026 and \$2400.00 for August 2026) and \$710.10 for September 2026 (\$2400.00 per year x 12 months = \$28,800.00 per year ÷ 365 days = \$78.90 per day x 9 days)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$5073.10.
15. The tenant shall pay a daily rate of rent in the amount of \$78.90, beginning 10 September 2026, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$184.00

Relevant Submissions

16. The landlord has assessed late fees in the amount of \$184.00.

Analysis

17. Section 15 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.*

The minister has prescribed the following:

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.

18. As the tenant has been arrears since April 2026, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possessions of Rented Premises

20. The landlord stated that because the tenant had fallen into rental arrears in April 2026, she had issued him a termination notice on 06 July 2026, by e-mail, and a copy of that was submitted with her application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent), and it had an effective termination date of 18 July 2026.
21. The tenant did not vacate as required, and when the tenant failed to pay his rent again for the month of August 2026, the landlord issued him a second notice on 14 August 2026, citing the same section of the *Act*. That notice was also sent by e-mail, and it had an effective termination date of 25 August 2026.
22. The landlord stated that the tenant has not moved out of the unit, as required, and she is seeking an order for vacant possession.

Analysis

23. 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.

24. And section 35 of the Act states:

Service of documents

35. (6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

- 25. With respect to the first notice, dated 06 July 2026, according to the landlord's submitted emails, it was sent to the tenant on Monday, at 10:06 PM. Accordingly, it is considered served on the following day, Tuesday, 07 July 2026.
- 26. According to the landlord's rent records, on 07 July 2026, the tenant still owed \$1963.00 for April's rent, and at that time he had not yet paid July's rent, meaning that the total arrears owing on that date amounted to \$4363.00. The landlord testified that the tenant did pay the \$2400.00 owing for July 2026 after he had received the termination notice, but he did not pay the remaining \$1963.00 owing from April 2026 prior to the termination date of 18 July 2026.
- 27. As the tenant was in rental arrears for a period longer than 5 days when the notice was issued on 07 July 2026, and as the total amount of those arrears was not fully paid off prior to the termination date of 18 July 2026, the notice is valid.
- 28. However, after the tenant failed to vacate on 18 July 2026, as per that notice, and when he again failed to pay his rent for August 2026, the landlord issued the tenant a second notice.
- 29. With her application, the landlord submitted an e-mail showing that this notice was sent to the tenant at 8:40 PM on Friday, 14 August 2026. Given that it was sent after 4:00 PM, that means that is only considered to have been served on

Monday, 17 August 2026. But as a s. 19 notice is a 10-day notice, the earliest the landlord could have terminated the tenancy on that date would have been 28 August 2026, and not 25 August 2026 as stated in her notice. Accordingly, that notice is not valid.

30. What, then, is the status of the first notice issued on 06 July 2026? Is it enforceable? Or had the landlord waived her right to enforce it by issuing the second notice?

31. In William & Rhodes Canadian Law of Landlord and Tenant it is stated:

As a general rule it may be stated that the giving of a second notice to quit does not operate as a waiver of a notice already given; but in certain circumstances the proper inference may be that there was an intention to create a new tenancy after the expiration of the first: Lowental v. Vanhoute, [1947] K.B. 342. [1947] 1 All E.R. 826. (p. 12-1050)

32. Although in some circumstances the issuance of a second notice may support an inference that the landlord intended to create a new tenancy after the expiration of the first, I am not satisfied that such an inference should be drawn in the present case.

33. Firstly, the notice dated 14 August 2026 is invalid, and it is therefore void and of no effect. Accordingly, it was incapable of terminating the tenancy. In my view, it was likewise incapable, without more, of extinguishing or impairing rights that had already accrued to the landlord under the valid notice of termination dated 06 July 2026. It is as if the notice had not been issued at all.

34. Secondly, I also find that the landlord had not waived her right to rely upon the first notice. Waiver requires a clear and unequivocal intention to relinquish a known legal right. As the Supreme Court of Canada explained in *Saskatchewan River Bungalows*, waiver requires both knowledge of the right in question and conduct demonstrating a conscious intention to abandon it. The intention to waive must be demonstrated by conduct that is objectively inconsistent with the continued assertion of the right.

35. The evidence before me does not establish that the landlord withdrew the July notice, communicated an intention not to rely upon it, or otherwise elected to abandon the rights acquired under that notice. Nor was there any evidence to establish that the landlord intended to create a new tenancy. To the contrary, the landlord's conduct throughout was consistent with an ongoing effort to terminate the tenancy and recover possession of the premises because of the tenant's arrears of rent.

36. As the notice dated 06 July 2026 is valid, and as the landlord had not waived her right to enforce that notice, her claim for an order for vacant possession of the rented premises succeeds.

Decision

37. The landlord's claim for an order for vacant possession of the rented premises succeeds.
38. 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 4: Security Deposit

39. The landlord stated that the tenant had paid a security deposit of \$1800.00 on 15 March 2026, 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 attached order.

Issue 5: Other Expenses - \$20.00

40. The landlord paid a \$20.00 fee to file this application. According to section 47.(1) of the *Residential Tenancies Act, 2018*, the director may make an order:

(q) requiring an unsuccessful party to an application to pay costs to a successful party to an application.

As the landlord's claim has been successful, the tenant shall pay these costs.

Summary of Decision

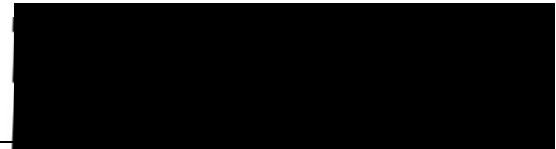
41. The landlord is entitled to the following:
 - A payment of \$3368.10, determined as follows:

a) Rent Owing	\$5073.10
b) Late Fees	\$75.00
c) Costs	\$20.00
d) LESS: Security Deposit	(\$1800.00)
e) Total	<u>\$3368.10</u>
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$78.90, beginning 10 September 2026 and continuing to the date the landlord obtains possession of the rental unit,

- 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.

22 September 2026

Date



John R. Cook
Residential Tenancies Tribunal