SIGNED.

COUNTRACT

Dated: August 25, 2008

JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

In re:	Chapter 13
MICHAEL DEAN RICHARDSON,	No. 4:07-bl-01773-JMM MEMORANDUM RECISION RE:
Debtor.	ADMINISTRATIVE REXT CLAIM

Before the court is a landlord's motion for recognition of a portion of its unpaid rent claim as an administrative expense (Dkt. #34). After consideration of the facts and the law, the court's decision follows:

FACTS

- 1. On or about September 29, 2006, the Debtor agreed to be bound as an assigneetenant of an existing lease with Westcliff Investments, L.L.C. ("Westcliff").
- 2. The original signator to the lease of non-residential real property was Debtor's predecessor, Legal Ease of Nevada, L.L.C.
- 3. Sometime in February, 2007, Debtor vacated the premises, and closed the business that he had been operating from the leased premises.

- 4. From the affidavits submitted by John R. Erickson and Nicole Jones, and the admission in the Debtor's pleadings, it is clear that the Debtor never gave notice of his intent to vacate the premises and stop paying on the lease with Westcliff.
 - 5. According to the lease, such notice was to have been given to Westcliff.
 - 6. Debtor's notification to Legal Ease was ineffective to bind Westcliff.
 - 7. Debtor filed a chapter 13 bankruptcy petition on September 13, 2007.
 - 8. Westcliff has filed an administrative claim for \$7,976.79.
- 9. By December 18, 2007, the Debtor had not filed either a motion to assume, or to reject, the Westcliff lease. Thus, on that date, Westcliff sought such relief in this court. The amount sought, in Westcliff's motion, as an administrative claim was \$7,976.79. This amount covers the unpaid rent from September 13, 2007, through December 18, 2007, and matches the calculations set forth in the proof of claim.
- 10. On December 31, 2007, the Debtor sought leave to reject the lease, and an order to that effect was entered on February 4, 2008.

LAW

In a chapter 13 case, a debtor has up to 120 days (or confirmation of a plan) to decide whether to assume or reject a lease of non-residential property. 11 U.S.C. § 365(d)(4)(A)(i), or it is deemed rejected.

Failure to pay such post-perition rent constitutes an administrative expense. *In re Pacific-Atlantic Trading* Co., 27 F.3d 401 (9th Cir. 1994). This expense is not lessened by factual determination as to whether the estate derived any benefit therefrom. *Id*.

Westeliff is therefore entitled to an administrative expense claim in the amount sought in its pleading and its administrative proof of claim in the sum of \$7,976.79.

Such administrative expense claim shall be entitled only to the priority accorded it by statute, 11 U.S.C. § 503, and not have any "super-priority" status, such that it has precedence over any other administrative claims.

1	RULING
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3	Westcliff's administrative claim for \$7,976.79 in post-petition rent shall be allowed.
4	11 U.S.C. § 503. A separate order will be entered.
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6	DATED AND SIGNED ABOVE.
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8	COPIES served as indicated below on the date signed above:
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