



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERS INLET ENTERPRISES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided testimony that the tenant was personally served with the notice of hearing package on May 17, 2019. The landlord stated that the tenant was served with the submitted documentary evidence by placing it in the tenant's mailbox, but cannot provide a date. I accept the undisputed testimony of the landlord and find that the tenant was properly served with the notice of hearing package in person on May 17, 2019. I also accept the landlord's undisputed testimony that the submitted documentary evidence was placed in the tenant's mailbox. Both parties are deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 1, 2016 on a fixed term until December 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated January 5, 2016. The landlord stated that the tenancy then became a month-to-month tenancy beginning January 1, 2017. The monthly rent began at \$1,150.00 payable on the 1st day of each month. A security deposit of \$550.00 was paid on December 3, 2013.

The landlord seeks an order of possession and a monetary claim of \$5,905.00 which consists of unpaid rent for:

\$935.00	Unpaid Rent, January
\$1,235.00	Unpaid Rent, February
\$1,235.00	Unpaid Rent, March
\$1,295.00	Unpaid Rent, April
\$1,265.00	Unpaid Rent, May

On March 29, 2019, the landlord served the tenant with the 1 Month Notice dated March 29, 2019 by leaving it in the mailbox with a witness. The 1 Month Notice sets out an effective end of tenancy date of April 29, 2019 and that it was being given as:

- the tenant is repeatedly late paying rent.

The details of cause state:

R.M. has been paying her rent late for more than one year and to the date she owes \$3,405 (January, February and March). She was served with an order of possession back in November, 2018 but was given a second chance to pay the outstanding balance. She hasn't been able to fulfill the agreement and pay what she owes.

The landlord provided undisputed testimony that the tenant was only late paying partial rent in January 2019 of \$570.00 on January 23, 2019. It was clarified with the landlord that no other rent was paid since and that the tenant has not been late paying any other rent. The landlord did not provide any details of what the current monthly rent is. The landlord also confirmed that no notice(s) to end tenancy for unpaid rent have been issued.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I find that as the landlord has only provided one instance of a late rent payment for January 2019 that the landlord has failed to prove that the tenant has been “repeatedly late paying rent”.

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payment of Rent states in part,

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

The landlord has failed to prove on a balance of probabilities that the tenant was repeatedly late paying rent. The 1 month notice dated May 29, 2019 is set aside and cancelled.

On the landlord’s request for a monetary claim for unpaid rent of \$5,905.00, I find that the landlord has failed to establish a claim. Although the landlord provided undisputed testimony that the tenant failed to pay rent (as detailed below), the landlord has failed to provide any basic fundamentals, specifically what the monthly rent is.

\$935.00	Unpaid Rent, January
\$1,235.00	Unpaid Rent, February
\$1,235.00	Unpaid Rent, March
\$1,295.00	Unpaid Rent, April
\$1,265.00	Unpaid Rent, May

The landlord did provide some information that \$935.00 in rental arrears existed for January 2019 and that \$570.00 was paid on January 23, 2019, but has failed to provide any details of how these amounts were calculated. The only details in evidence is a tenancy agreement for a monthly rent of \$1,160.00 for the period January 1, 2016 to December 31, 2016. With all these discrepancies, I find that the landlord has failed to justify the monetary claim. I also note that the landlord had confirmed that no 10 Day Notice(s) for Unpaid Rent have been issued by the landlord.

Conclusion

The landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 02, 2019

Residential Tenancy Branch