



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLDEN SPRUCE INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR, FF, CNR

Introduction

These matters were originally heard by another Arbitrator whereby the landlord was granted an order of possession and that that tenancy was terminated. The tenant filed an Application for Review Consideration and was successful in having the matters reheard.

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Should the original decision and order be confirmed, set aside or amended?

Background and Evidence

The landlord testified that the tenants' rent cheque for July 2017 came back from the bank as "NSF". The landlord testified that he served the tenant a 10 Day Notice to End

Tenancy for Unpaid Rent or Utilities on July 15, 2017 by registered mail. The landlord testified that he feels that deemed service provision of section 90 of the Act should apply, and deem that the tenant was served on July 20, 2017. The landlord testified that the tenant had until July 25, 2017 to pay the rent. The landlord testified that the tenant paid the rent on July 26, 2017 and that is one day beyond the legislated timeline and that the tenancy should end.

Counsel submits that although the postal carrier attempted to serve the tenant the landlords' registered mail on July 19, 2017, the tenant provided proof that she was at a dental appointment at that exact time on that day. Counsel further submits that due to some anomaly, the landlords' registered mail package was not available for pickup until July 21, 2017, not July 20, 2017. Counsel further submits that the five days should commence from July 21, 2017 which was the earliest that the tenant could have picked up the mail and would have until July 26, 2017 to pay or dispute the matter; in this case the tenant did both. Counsel submits that deemed service is rebuttable and that the tenant has provided sufficient evidence of that. Counsel further submits that the rent was paid in full on July 26, 2017 and all other rent since then has been paid on time with no loss or prejudice to the landlord. Counsel submits that the notice should be set aside and the tenancy to continue.

Analysis

Residential Tenancy Policy Guideline 12 addresses the issue before me as follows.

In the event of disagreement between the parties about the date a document was served and the date it was received, an arbitrator may hear evidence from both parties and make a finding of when service was effected.

*The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done.¹¹ For example, the Supreme Court found in *Hughes v. Pavlovic*, 2011 BCSC 990 that the deeming provisions ought not to apply in that case because Canada Post was on strike, therefore unable to deliver Registered Mail.*

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The tenant has challenged the deeming provision. Through some administrative error at Canada Post and through no fault of the tenant, the landlords' registered mail package was first available for pickup on July 21, 2017, the tenant provided documentation to support that. I find that this error should not unfairly penalize the tenant. In the result, I find that the tenant first received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 21, 2017 and had until July 26, 2017 to either pay the rent or file an application to dispute the notice. As the tenant paid the rent in full on July 26, 2017, the notice is of no effect or force and is set aside.

Conclusion

The original decision and order are set aside; it is of no effect or force. The tenancy continues.

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: January 29, 2018

Residential Tenancy Branch