



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Saffron Living Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an Order of Possession for unpaid rent, pursuant to section 55 of the *Act*.

Although I left the teleconference hearing connection open until 1:55 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M., the tenant did not attend this hearing. The landlord representative RG ("the landlord") attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the Notice of Hearing (the Materials) by registered mail on December 17, 2019, in accordance with section 89 of the *Act* (the tracking number is reproduced on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the Materials on December 22, 2019.

Issue to be Decided

Is the landlord entitled to an Order of Possession for non-payment of rent?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The landlord testified the tenant was already living in the rental unit when it was purchased in 2017. There is no written tenancy agreement. Monthly rent is \$1,600.00 and it is due on the first day of the month. There is no security deposit.

The landlord testified the tenant did not pay November rent and a 10 day Notice to End Tenancy (the Notice) was issued on November 10, 2019 and served by registered mail on November 14, 2019 (the tracking number is reproduced on the cover of this decision). The registered mail was returned unclaimed. A copy of the same Notice was posted on the front door of the rental unit on December 06, 2019.

The Tenant paid \$3,200.00 on December 11, 2019. On January 05, 2020 the Tenant paid \$1,600.00 and there are no arrears. The tenant did not vacate the rental unit.

The landlord submitted the Notice and the Proof of Service form (RTB-34).

Analysis

I have reviewed all the documentary evidence and deem the tenant served with the Notice on November 19, 2019 in accordance with sections 89 (2)(b) and 90(a) of the Act. The policy guideline 12 on service provisions states that the tenant's failure to claim the registered mail does not prevent me from deeming the tenant received the mail.

Where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find the Notice is valid pursuant to section 52 of the Act. Although the tenant paid arrears on December 11, 2019, this was not soon enough to cancel the Notice as I deem he received the Notice on November 19, 2019. The tenant has not disputed the Notice and is conclusively presumed under sections 46(5) and 53(2) of the Act to have

accepted that the tenancy ended on the corrected effective date of the Notice, November 29, 2019.

Conclusion

I grant an Order of Possession to the landlord effective **five days after service of this order** on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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, 2020

Residential Tenancy Branch