



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GILMORE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 66; cancellation of the landlord's 10 Day Notice pursuant to section 46; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Preliminary Issue

The tenant testified that he received the 10 Day Notice to End Tenancy on September 10, 2016. The tenant filed his application for dispute resolution on September 29, 2016. The tenant testified that it just didn't come to his attention that he should file an application – that he wasn't sure what to do. Section 66 of the *Act* provides that an arbitrator **may extend a time limit in only exceptional circumstances**. The tenant has indicated that it did not occur to him to file sooner; this does not provide exceptional circumstances to justify extending the 5 day time limit for the tenant to apply.

Based on the evidence provided to me, there is no evidence that the tenant paid the outstanding rent within 5 days of receiving the landlord's 10 Day Notice. The tenant also did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. I have found there are no exceptional circumstances to justify extending the time limit for the tenant. In accordance with section 46(5) of the *Act*, the tenant's failure to take either action within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the

premises by September 18, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession pursuant to section 55(1).

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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: October 12, 2016

Residential Tenancy Branch