



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTRAL PARK CITIZEN SOCIETY  
CROSBY PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPC CNC

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to sections 47 and 55;

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- b) To cancel a Notice to End Tenancy for cause.

### SERVICE

Both parties attended the hearing. The tenant disputed when he was served the Notice to End Tenancy but the landlord provided sworn evidence that he signed for its receipt on May 25, 2013 and the tenant also stated this on the Application he filed. I find the landlord's evidence credible that the tenant was served as stated. Each party confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that they have good cause to terminate the tenancy or has the tenant demonstrated that they are entitled to relief?

Neither party has requested filing fees.

### **Background and Evidence:**

Both parties attended the hearing. I find the tenant was out of time in filing the application; he had 15 days from May 25, 2013 and he filed it on June 21, 2013. Nevertheless, both parties were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in August 2011, subsidized rent is \$320 a month and a security deposit of \$269 was paid.

The landlord provided evidence that they served the Notice to End Tenancy for the following reasons:

- (a) The tenant or his guests significantly interferes or unreasonably disturbs other occupants or the landlord;
- (b) The tenant engages in illegal activity that adversely affects the quiet enjoyment, security, safety or well-being of other occupants or the landlord and jeopardizes their lawful rights; and
- (c) The tenant has breached a material term of the tenancy agreement and has not corrected it within reasonable time after notice to do so.

The landlord provided evidence from 3 tenants citing constant harassment, verbal altercations, excessive noise and music and threatening, aggressive behaviour. One tenant says she has to spend a lot of time away from home because she feels so threatened and the landlord said they had to move an adjoining tenant to another unit. A third tenant says she feels constant anxiety due to this tenant's behaviour. A number of warning letters were sent to the tenant but the landlord said he has not responded appropriately. The police have been called twice by one tenant because she felt threatened by him but no charges were laid as there was no physical violence and the conversation was in Spanish so there were no witnesses who could recount the threats. The tenant was also accused of smoking illegally as he signed a lease that included a No Smoking term.

The tenant's advocate argued strenuously for him. She contended he has stopped smoking and has a doctor's letter stating this. She pointed out that a police file number was given incorrectly by the landlord but she did agree that there is a police file concerning the tenant. She also pointed out that the landlord had a duty to investigate complaints and the tenant had made some against his neighbours. The landlord acknowledged that one digit of the police file was given incorrectly and said that they had investigated the tenant's complaints and sent letters to the other tenants involved. However, they pointed out that the two principal complainants had lived in the building for about 12 years and 3 years respectively and had made no other complaints about any other tenants. The landlord said that this is a seniors' building and they have to ensure the safety and peaceful enjoyment of the tenants and this tenant had threatened this peaceful enjoyment for about two years since he entered the tenancy and did not change his behaviour although warned.

In evidence is the Notice to End Tenancy for cause and many letters and complaints from other tenants. In evidence also are letters from the tenant's advocate in 2012 and 2013 complaining about the behaviour of a neighbouring tenant and asking management to investigate.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis**

**Order of Possession:**

The onus is on the landlord to prove on the balance of probabilities that they have good cause to end this tenancy. I find the landlord's evidence persuasive and credible and prefer it to the tenant's evidence as it is supported by letters from three separate tenants detailing the problems. It is also supported by the fact that another tenant had to call the police twice because she felt threatened and the landlord had to move an adjoining tenant to another unit. I find that whether or not the tenant is no longer smoking is not relevant as his other behaviour as detailed is sufficient cause to end the tenancy.

Furthermore, I find the tenant was out of time to file his Application as section 47 of the Act states that he has 15 days from receipt of the Notice to End Tenancy and he did not file it until 27 days after receiving it. Although his advocate argued ably for the tenant, I find the evidence on the balance of probabilities supports the landlord's reasons to end the tenancy. For these reasons I dismiss the Application of the tenant. The tenancy is at an end.

After discussion, the parties agreed that an Order of Possession would be issued effective August 31, 2013.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply. I find the landlord entitled to an Order of Possession effective August 31, 2013 as agreed.

No filing fees were requested so none are awarded.

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 24, 2013

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Residential Tenancy Branch

