



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 259 POWELL LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 10, 2012, a copy of which was submitted into evidence. The Notice indicated that the reasons for terminating the tenancy were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and engaged in illegal activity that is, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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

Should the One Month Notice to End Tenancy for Cause be cancelled?

### **Background and Evidence**

The tenancy began in March 2013 and the rent is \$475.00.

The landlord testified that there was an incident that occurred on September 3, 2013 in which the caretaker heard a late-night commotion in the hall. According to the landlord, when the caretaker opened his door two individuals threatened his personal safety by saying, "*Close the door if you know what's good for you*".

The tenant denied that these individuals were in any way connected with him.

The landlord testified that on September 18, 2013, the tenant was observed smoking in the hallway and his suite, despite a term in the tenancy agreement prohibiting this.

The tenant acknowledged that he does smoke in his suite but this was due to the fact that he was specifically told it was alright to do so by the former building manager. The tenant agreed that he will cease this practice.

The landlord testified that on September 24, 2013 they sent a letter warning the tenant that his suite was identified as a potential cause for pest problems and also demanded that the tenant remove a lock he installed on the door. The landlord testified that the tenant did not respond and a second letter was sent on October 3, 2013. Copies of these communications were in evidence.

The tenant testified that after he received the letters, he did give the landlord a key to the door lock.

According to the landlord the tenant has a habit of permitting "street people" to stay as guests in his room and to use the common areas including the communal bathrooms. The landlord pointed out that the complex is not set up as a transient hotel and other residents are concerned and uncomfortable with this situation. The landlord acknowledged that the tenant is entitled to permit guests and his own visitors, provided their conduct does not interfere with others.

The tenant stated that he does welcome visitors for social reasons and feels that they should not be categorized or judged by their appearance and other people's prejudices.

### **Analysis**

The One-Month Notice to End Tenancy for Cause indicates that the tenancy is being terminated as the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

The Notice also indicates that the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and

(g) does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

I find that the landlord has not proven that the individuals who accosted the caretaker on September 3, 2013 were in any way associated with the tenant.

However, I find that the testimony from both parties confirmed that the tenant was seen smoking in an area not permitted under the tenancy agreement. However, I find that this problem was promptly dealt with by the tenant and the landlord.

With respect to the tenant's action in installing a lock, I find that this was rectified by the tenant when he gave the landlord the key.

With respect to the allegations that the tenant or his guests are responsible for vermin infestations, I find that this was not proven.

In regard to guests of the tenants, I find that, while a tenant is responsible for conduct of his or her guests, section 30 (1) of the Act, prohibits a landlord from unreasonably restricting access to a residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by that tenant.

Section 28 of the Act also protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant agreed that he will discuss with the landlord, any specific concerns that come up in regard to the conduct of guests who visit him.

I find that the conduct alleged by the landlord, would not sufficiently meet the threshold to qualify as a valid basis for terminating this tenancy.

I find that the tenant is now aware that smoking is not permitted and that he is obligated to follow the Act and tenancy agreement, just as the landlord is.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause is inadequately supported by evidence, and must be cancelled.

In light of the above, I hereby order that the One-Month Notice to End Tenancy dated October 30, 2013 is now cancelled and of no force nor effect.

### **Conclusion**

The tenant is successful in the application and the One Month Notice to End Tenancy for Cause is cancelled.

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: December 16, 2013

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Residential Tenancy Branch

