



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding General George R. Pearkes Senior Citizens Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OP

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?  
If not, is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy agreement signed by the parties on June 13, 2013 indicates the tenancy started on June 15, 2013 and the tenant is obligated to pay rent of \$500.00 monthly in advance on the first day of the month. The landlord is a non-profit housing society and the rental property is designated for seniors and persons with disabilities.

The landlord's representative gave evidence that she served the tenant with a Notice to End Tenancy for Cause (the "Notice") by placing the Notice in the mail slot of the tenant's door on April 25, 2014. Section 90 provides that a notice served in this manner is deemed to be received by the tenant three days later, on April 28, 2014. The Notice specifies the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord

The landlord gave evidence that the most significant reason for ending the tenancy is that the tenant has unreasonably disturbed other tenants in the rental building. The landlord's evidence is that the housing complex is mostly tenanted by seniors and it "shuts down early". The landlord's evidence is that the tenant makes a lot of noise at night and has a lot of visitors at night. She says the visitors often bang on the windows and doors of other tenants looking for the tenant in this application.

The landlord also gave evidence that other tenants, especially elderly women, feel intimidated by the tenant because of his "forceful nature". She said she spoke to the tenant early in his tenancy and he told her he would curb his company at night and ensure his visitors knew his apartment number. The landlord states there was no change after this conversation, and so she wrote the tenant a warning letter.

The landlord provided a copy of the warning letter dated November 22, 2013 in which the tenant was advised that there had been complaints about "the noise resulting from your nightly activities". The letter states in part "There have been numerous complaints about your keeping midnight hours; talking loudly on the phone so as to disturb your neighbors, using your vehicle continuously throughout the night, having steady visitors knocking loudly so as to disturb others". The letter also states "Also be advised that a neighbor has reported to the office asking you to stay off of her property."

The landlord gave evidence that she started getting more complaints about the tenant in about January 2014. She said the tenant's neighbours made the following complaints:

- that the tenant parked his car on the roadway, in such a way that an ambulance would not have been able to get through;
- that the tenant on one occasion drove on another tenant's lawn;
- that the tenant was outside smoking wearing only a towel;
- that the tenant knocks or rings the doorbell persistently at neighbours' doors until they come to the door;
- that the tenant makes suggestive or sexual remarks;

The landlord's evidence is that she has had about a dozen complaints about the tenant, counting complaints from building staff. She said that noise at night continued to be a problem until the Notice was served, but it has been better since.

The landlord provided copies of letters from four other tenants regarding disturbance by the tenant in this application:

- Tenant 1 wrote that the tenant asks her for things on her patio, cut bushes and trees on the property, and drives around the complex at too high speeds day and night.
- Tenant 2 wrote that she is uncomfortable when the [male] tenant goes outside wearing only a towel and comes to neighbours' doors wearing only a bathrobe. She also wrote that the tenant helps himself to things from peoples' yards.

- Tenant 3 wrote that the tenant makes her nervous because he comes to the door with nothing on but a short bathrobe or a towel, and likes to tell dirty jokes.
- Tenant 4 wrote that the tenant rings her doorbell at all hours of the day and night and will not leave until she comes to the door, and he is often dressed in only a skimpy bathrobe. She wrote that he used a leaf blower in her yard early one morning, and is noisy between 11 p.m. and 8 a.m. by frequently engaging in loud conversations and by having visitors.

The tenant agrees he is up at night, and states it is because of problems with his legs. His evidence is that he goes for dialysis every morning and needs to sleep when he gets there. For that reason, he stays awake at night. The tenant's evidence is that he only has a couple of people over at night to play cards. His evidence is that his neighbour told him that she was also a night owl so he was not too worried about noise at night.

The tenant disputes some of the allegations raised by his neighbours. In response to Tenant 1, his evidence is that he only removed a few small branches of one tree. Regarding driving on another tenant's lawn, he said he may have backed on to her lawn to turn around. He agrees that he asked other tenants for cigarettes but says he always replaced them or paid for them.

The tenant denies that he has made sexual remarks to his neighbours. He said he only recalls one incident where he persistently rang a neighbour's doorbell; it was during the daytime and he does not remember his reason for it. Asked about wearing only a bathrobe or towel outside his rental unit, the tenant said he has his boxers on with a towel over them. He does not recall going to anyone's door dressed like that.

The tenant agrees that he takes his car out at night and says he used to drive just off the property to use medical marijuana. The tenant's evidence is that he is deaf in one ear and so he may not realize how loud he talks. Also, he once slept through his alarm and it disturbed his neighbour by going off for half an hour.

The landlord requests an order of possession, and is willing to extend the effective date of the Notice to June 15, 2014 in order to give the tenant time to move.

### Analysis

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the landlord has specified three causes for ending the tenancy. If the landlord proves at least one of those causes, the Notice will not be cancelled. However, if the landlord does not prove any of the specified causes, then I must cancel the Notice.

In this case, I find the landlord has proven on a balance of probabilities that the tenant has unreasonably disturbed other occupants of the rental building. Several neighbours have raised similar concerns about the tenant and for that reason, I find it is likely that their descriptions of events are accurate. I find the tenant made an unreasonable amount of noise at night over a period of several months, even after both a verbal and written warning from the landlord.

Since the landlord has proven the specified cause “unreasonably disturbed another occupant”, I cannot cancel the Notice. For that reason, the tenant’s application is dismissed.

The landlord has requested an order of possession, and agreed to an effective date of June 15, 2014 to give the tenant some time to move. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

### Conclusion

The tenant’s application is dismissed. I grant the landlord an order of possession effective June 15, 2014.

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: May 30, 2014

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Residential Tenancy Branch

