

APR 29 2009

SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

February 2009 Term

McKeon, P.J., Schoenfeld, Heitler, JJ.

Cabrini Terrace Joint Venture,
Petitioner-Landlord-Respondent,

NY County Clerk's No.
570255/08

-against-

Charles O'Brien,
Respondent-Tenant-Appellant.

Calendar No. 08-453

Tenant appeals from a final judgment of the Civil Court of the City of New York, New York County (Gerald Lebovits, J.), entered March 7, 2008, after a nonjury trial, which awarded possession to landlord in a holdover summary proceeding.

Per Curiam.

Final judgment (Gerald Lebovits, J.),
7, 2008, affirmed, without costs.

The trial court's fact-laden determination that tenant committed a nuisance by creating pervasive and "extreme" odors stemming from filth and debris inside his apartment, a finding based largely upon the court's on-site inspection and considerations relating to the credibility of witnesses, comports with the weight of the trial evidence and is not disturbed. "The service of a notice to cure for

FILED

APR 30 2009

NEW YORK
COUNTY CLERK'S OFFICE

the alternative ground of violation of the lease does not require that a [postjudgment] opportunity to cure be given where, as here, a nuisance is proven and the court has found that the tenant's pattern of behavior over a period of years 'shows no sign of abating'" (*Carnegie Park Assoc. v Graff*, 2003 NY Slip Op 51198[U][2003]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur



I concur



I concur



FILED

APR 30 2009

NEW YORK
COUNTY CLERK'S OFFICE