



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, RP, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to suspend or put conditions on the landlords right to enter the unit or suite pursuant to sections 70.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or

accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except cancellation of the notice to end tenancy for this application.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

DS gave the following testimony. DS testified that he purchased the building in October 2021. DS testified that in the spring of 2022 he did some cleaning and maintenance of the property and noticed used syringes, q-tips, blood strips and needle caps laying near the front and rear entrance of the subject unit. DS testified that he was confused at first and wasn't sure of what these items were. DS testified that he was poked by a needle while doing his cleaning.

DS testified that it continued again and again. DS confronted the tenant, and she told him that she may have inadvertently dumped the needles on the property when shaking

out her rug. DS testified that he gave the tenant three warnings, but the frequency and number of paraphernalia increased since giving the notice. DS testified that he served the tenant with a One Month Notice to End Tenancy for Cause on May 31, 2022 for the following reason:

***Landlord's notice: cause***

***47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:***

- (i) has failed to comply with a material term, and*
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

DS testified that he has not personally seen the tenant throw these items out but finds these items always near her unit. DS requests an order of possession.

RA testified that she is diabetic and does possess items like these but not exactly. RA testified that the colour of the syringes is different from hers and that she does not have any items unaccounted for. RA testified that she does not throw these items out into the yard or anyplace else. RA testified that she and the landlord's manager have been at odds for years and since she took over as manager several months ago, all these unfounded allegations have arisen.

Both advocates submit that the landlord has not provided any evidence to show that the tenant has done any of what he alleges and that the notice should be cancelled.

**Analysis**

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord did not provide any documentation for this hearing, specifically what material term the tenant was breaching. The landlord made allegations that the tenant was leaving used syringes, q-tips, blood strips and needle caps strewn around the property but did not have any firsthand or eyewitness testimony or evidence to support that allegation. Based on the insufficient evidence before me, I hereby cancel the notice, it is of no effect or force.

Conclusion

The One Month Notice to End Tenancy for Cause dated May 31, 2022, is cancelled, it is of no effect or force. The tenancy continues.

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 24, 2022

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Residential Tenancy Branch