



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KARAMAR APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On October 12, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 11-minute teleconference. The Tenant provided a solemn affirmation.

He testified that the Landlord was served with the Notice of Hearing package by registered mail on October 28, 2022 (the registered mail tracking number is noted on the first page of this Decision). He advised that he did not check to see if this package was delivered; however, it was not returned to sender. Furthermore, he stated that he received documentary evidence from the Landlord on November 10, 2022, that was posted on his door. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant’s Notice of Hearing package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on December 1, 2021, that rent was currently established at \$1,265.00 per month, and that it was due on the first day of each month. As well, a security deposit of \$625.00 was also paid.

Furthermore, he submitted that the Notice was served to him on October 3, 2022, by being posted to his door. A copy of this Notice was provided as documentary evidence by the Landlord. The effective end date of the tenancy was noted on the Notice as November 30, 2022.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that the burden of proof is on the Landlord to substantiate the reasons for ending the tenancy. As the Landlord did not attend the hearing or present their evidence to justify why the Notice was served, I am not satisfied that the Landlord

has established any grounds to substantiate service of the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause in relation to this Application, dated October 3, 2022, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: November 24, 2022

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Residential Tenancy Branch