



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, RP

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for an Order for repairs to be completed by the Landlord.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as were the two Tenants. All parties were affirmed to be truthful in their testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenants. The Landlord also confirmed that a copy of their evidence was sent to the Tenants by registered mail to the address of the rental unit. The Tenants stated that they did not receive this package. The registered mail tracking number was submitted in evidence and is included on the first page of this decision. Entering the tracking number on the Canada Post website confirms the package as unclaimed. Refusal to accept or claim a package does not mean it was not served in the correct manner. I accept that the Landlord’s evidence was served to the Tenants in accordance with the *Act* and their evidence will be considered as part of this decision. The Tenants submitted the One Month Notice into evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the One Month Notice to End Tenancy be set aside?

Should an Order be issued for the Landlord to complete repairs?

### Background and Evidence

Both parties were in agreement as to the terms of the tenancy. The tenancy began on August 1, 2015 and a security deposit of \$375.00 was paid at the outset of the tenancy. Current monthly rent is \$799.00.

A One Month Notice was issued by the Landlord on April 25, 2018 and posted to the Tenants' door on the same day. The One Month Notice lists the following reasons for ending the tenancy:

- Tenant or person permitted on the property by the tenant has:
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - Put the landlord's property at significant risk
- Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
  - Jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Further details of the cause were provided on the One Month Notice as follows:  
"Tenants have not removed the unauthorized dog(s) from the unit after the Landlord's request, and Tenants continuously propping the building doors open despite the Landlord's advise not to do so as this represents a serious breach of security for the property and other residents' safety."

The Landlord testified that they first became aware of the presence of a Rottweiler dog in the rental unit in 2016 while watering the garden and noticing the dog on the patio of the rental unit. The Landlord spoke to the Tenants at this time and were informed that the dog was not theirs, but instead was just visiting.

The Landlord provided testimony that they have not seen the dog since, but have heard barking when walking past the rental unit and have also received confirmation from other residents in the building that the Tenants own a Rottweiler.

The Landlord also provided testimony regarding an incident in 2016 where paramedics and police attended the rental unit. The Landlord stated that the Tenants would not allow the police to enter the rental unit as the dog was distressed and would not allow strangers into the rental unit.

Emails from other building residents were submitted into evidence by the Landlord. The emails note that the dog was seen on the Tenants' patio in April or May 2018 as well as dog feces noticed on the patio on May 9, 2018. Another email notes that the dog was seen with the Tenants in 2015.

The emails submitted in evidence also note that the door to the building has been propped open by the Tenants on multiple occasions. Three emails reference the issue with the door. One email states that on April 10, 2018 the door was propped open by the Tenants with a small pebble. The second email notes two dates, March 8 and March 10, 2018 in which the Tenants propped the door open. The third email notes that on April 24, 2018 the door was propped open with cardboard and included a photo of the door with the piece of cardboard holding it open.

On March 13, 2018, the Landlord mailed a warning letter to the Tenants. The warning letter notified the Tenants that they were in breach of the tenancy agreement that states that pets must not be on the residential property without prior written permission from the Landlord. The statement from the tenancy agreement regarding pets was included in the letter. A deadline of March 30, 2018 was provided to remove any pets from the property.

The letter dated March 13, 2018 also noted that the Tenants had been seen propping the side door to the building open. The Tenants were warned that this was a safety concern and that any further incidents would result in a notice to end tenancy.

As the Landlord testified that they continued to be notified by other residents that the Tenants had a dog on the property and that the door was being propped open, they issued the One Month Notice on April 25, 2018. The Landlord testified that they last heard a dog barking from inside the rental unit approximately two months prior to the hearing.

The Tenants testified that they would often look after their brother's dog as he lived across the street, or the dog would be present while their brother was visiting. The Tenants submitted that the brother and his dog moved away from the neighbourhood about one year ago and the dog has not been on the property since.

The Tenants testified that the dog across the hall barks often which may be why the Landlord is hearing barking. They also spoke to the incident in 2016 when the paramedics and police attended the rental unit. They testified that they did not want the police entering their home without a warrant, and that it had nothing to do with a dog being present.

The Tenants also provided testimony regarding the claim that they are propping the side door open. The Tenants agreed that this door is sometimes propped open, but testified that it is not them who is doing so. At times they have entered the building through the propped open door, but are not the ones who have left it open in the first place.

The Tenants stated that they have tried to contact the property manager many times to ask him to come into their rental unit to check for a dog, but that they have not heard back.

The Landlord responded by stating that they did not receive any notice or request from the Tenants in writing to enter the rental unit. The Landlord reported that when they go to the door of the rental unit, the Tenants will not open the door to the unit fully, instead just opening it enough to speak to them through the door.

The Tenants have also applied for a request for repairs to be completed in the rental unit. They testified that they have had problems with their patio door not closing or locking properly and this was recently fixed on May 17, 2018. They submitted that the

door was working for a while after the repairs, but is now no longer locking properly again.

The Landlord testified that they were not aware that there was a problem with the door again, but now that they are aware they will contact the company who did the repairs to let them know there is a problem.

The Tenants also noted that there is damage to the wall in their bathroom following a pipe issue from the rental unit above them. They were told the person doing the repairs would be back to finish the job in April 2018, but stated that this has not happened yet.

The Landlord testified that he would call the company repairing the bathroom wall to have the issue fixed.

As the Landlord became aware of the current repair concerns in the rental unit during the hearing, a settlement discussion took place. The parties were in agreement as to the following settlement in full and final satisfaction of the request for repairs orders.

1. The Landlord will call the company that completed the patio door repairs within one week from the date of this hearing.
2. The Landlord will call the company that is fixing the damaged bathroom wall within one week from the date of this hearing.
3. By June 30, 2018, the Landlord will arrange a time for the repairs to be completed with both companies.
4. The Landlord will notify the Tenants of when the companies will be conducting the repairs, so that the Tenants can be home to let them into the rental unit.

Both parties confirmed understanding of the above outlined voluntary settlement agreement and confirmed that this constitutes full and final settlement of the request for repairs as claimed on this application.

As the parties were not able to come to a possible settlement to resolve the disagreement regarding the One Month Notice, a decision will be outlined below.

### Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

The Landlord and Tenants disagreed as to the presence of a dog in the rental unit and on the property. The Tenants did agree that a dog was present as a guest in the past, but stated that the dog has not been on the property in approximately a year.

The Landlord testified that they saw the dog in 2016 and more recently have heard the dog barking in the rental unit.

The statement regarding pets outlined in the tenancy agreement states that without prior written approval from the Landlord, the tenant must not “keep or allow on the residential property any pets”. Based on this statement, I find that by the Tenants own admission, they were in breach of the tenancy agreement by allowing a dog onto the property during the time their brother’s dog was with them.

However, despite finding that this was concern that occurred in the past, I find insufficient evidence to demonstrate that the dog is still present on the property as a pet of the Tenants or as a visiting dog. The Landlord stated they have not seen the dog in two years. Out of two emails submitted that reference the Tenants owning a dog, one notes seeing the dog in 2015 and the other saw the dog in April or May 2018, as well as noticed dog feces on the patio in May 2018. The other email submitted mentions the tenant with the Rottweiler, but does not speak specifically as to when the dog was seen.

I determine that one email from a resident of the building noting the presence of a dog in 2018 is not sufficient evidence to establish that the Tenants own a dog or continue to regularly have the dog on the property of the rental building. I also find it unlikely, if the dog was still present in the rental unit, that more people would not have seen the dog in the building and around the property, including the property manager. I should note that whether or not the dog is just “visiting” the Tenants, they should be aware that having any dog in the rental unit is a breach of their tenancy agreement with the Landlord.

As noted, although it seems clear that the presence of a dog on the rental property was a concern in the past, I am not able to substantiate that this is a current or ongoing concern that has not been resolved. I note that in accordance with the Residential Tenancy Branch Rules of Procedure, when a tenant applies to cancel a notice to end tenancy, the onus is on the Landlord to prove that the reasons for the notice are valid. In this case, I do not find sufficient evidence from the Landlord to show, on a balance of probabilities, that the Tenants still have a dog on the property.

The One Month Notice also references the claim that the Tenants are propping open the side door to the building, thus causing a safety and security concern for the other residents of the building and the Landlord, as well as a risk to the Landlord's property.

The Landlord submitted three emails from other residents in the building stating that the Tenants have propped the door open. A photo of the door propped open with cardboard was included in one of the emails.

The Tenants provided testimony that they have entered the building through the propped open door, but have not been the ones to prop it open in the first place.

Again, I note that the onus is on the Landlord to prove, on a balance of probabilities, that the Tenants are responsible for propping the door open. Given that the parties provided conflicting testimony regarding who is propping the door open, I look to the evidence and testimony of the Landlord to demonstrate that the Tenants are in fact responsible.

I accept that the emails submitted by the Landlord show that there are other residents in the building who believe the Tenants are responsible for leaving the door propped open. I also accept the testimony of both parties, as well as the photo of the door propped open as evidence that this is a concern in the building. However, I also note that I do not find a photo of the door propped open to be sufficient evidence to demonstrate that it was the Tenants who were responsible, when the Tenants continued to deny responsibility during the hearing. As such, due to insufficient evidence, I am not able to determine that the Tenants are responsible.

However, I do agree that leaving the door propped open is a safety and security concern for the whole building and find that the Tenants should not be encouraging this by using the door when it is propped open, and instead should ensure the building is secured safely when entering or exiting and always using their keys.

Given the above analysis, I find that the Landlord did not prove that the reasons for the issuance of the One Month Notice were valid. Therefore, I find that the One Month Notice dated April 25, 2018 is cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act*.

Regarding the Tenants' claims for repair orders in the rental unit, I find this matter to be resolved as per the settlement agreement that is outlined in this decision.

Conclusion

I **order** the parties to **comply** with the settlement decision as outlined above.

The One Month Notice dated April 25, 2018 is **cancelled and of no force or effect**.  
The tenancy continues until ended in accordance with the *Residential Tenancy 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: June 25, 2018

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Residential Tenancy Branch