Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, FF

Introduction:

A hearing was convened on March 27, 2017 in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied to cancel a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Tenants withdrew the application to cancel a Notice to End Tenancy for Cause, as the rental unit has been vacated.

Tenant #2 stated that on March 02, 2017 the Application for Dispute Resolution, the Notice of Hearing, 35 pages of evidence and a USB were personally delivered to the Agent for the Landlord's business office. The Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On March 03, 2017 the Tenants submitted 45 pages of evidence to the Residential Tenancy Branch. Tenant #2 stated that these documents were personally delivered to the Agent for the Landlord's business office on March 02, 2017. The Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On March 09, 2017 the Landlord submitted 89 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that these documents were personally served to Tenant #2 on March 09, 2017. The Tenants acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On March 13, 2017 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that these documents were mailed to the Tenants on March 10, 2017. The Tenants acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On March 13, 2017 the Tenants filed an Amendment to an Application for Dispute Resolution, in which they increased the amount of their claim to $6,250.00. Tenant #2 stated that these documents were faxed to the Agent for the Landlord's business office on March 13, 2017. The Landlord acknowledged receipt of the Amendment and I will consider the monetary claim for $6,250.00.

On March 13, 2017 the Tenants submitted 2 pages of evidence to the Residential Tenancy Branch. Tenant #2 stated that these documents were faxed to the Agent for the Landlord's

business office on March 13, 2017. The Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral and documentary evidence, to ask relevant questions, and to make relevant submissions. All documents submitted in evidence were reviewed prior to rendering this decision, although the contents of those documents have not all been summarized in this decision.

Preliminary Matter #1

At the close of these proceedings the Tenant stated that she wished to call the person who was visiting the unit in December of 2016, who she expects will testify regarding the noise the Landlord's son made during her visit. This witness is the individual referred to as "K.C." in this decision, who has provided a written declaration.

The Tenant was advised that there was insufficient time to conclude the hearing and she requested an adjournment for the purposes of calling "K.C." as a witness.

Legal Counsel for the Lawyer argued that the adjournment should be declined because:

- the Tenant has submitted ample evidence from this witness;
- the testimony of the witness will not contribute in any meaningful way to this adjudication; and
- an adjournment will prejudice the Landlord by prolonging this on-going dispute.

At the hearing the parties were advised that I will consider the request for an adjournment after the hearing and that the parties would be advised of my decision in writing.

Now that I have had time to consider the evidence I dismiss the Tenant's application for an adjournment. I determined that an adjournment was not necessary because:

- "K.C."'s written declaration is clear and speaks directly to the issue of noise;
- I find it highly unlikely that the witnesses testimony will shed any greater light on the issue of noise;
- as outlined in the analysis, I do not find the opinion of this witness to be of any significant evidentiary value; and
- given the limited value of the opinion of this witness, it would be unfair to the Landlord to prolong what has obviously been a very contentious relationship.

Preliminary Matter #2

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure stipulate that evidence must be presented by the party who submitted it, or by that party's agent.

I note that the documentary evidence submitted by the Tenants raise some relatively minor allegations of disturbances, such as a child walking into their rental unit. As these issues were not raised by the Tenants during the hearing and the Landlord was not, therefore, given the opportunity to respond to the allegations, those matters were not considered when adjudicating this matter. Only issues raised by the parties during the hearing will be considered during this adjudication.

Preliminary Matter #3

On several occasions during the hearing Legal Counsel for the Lawyer referred to a previous Residential Tenancy Branch decision regarding this tenancy, dated March 21, 2017. Various portions of this decision were read aloud by Legal counsel during the hearing. The file number of the previous decision appears on the first page of this decision.

Legal Counsel argued that all of the issues in dispute at these proceedings were resolved by the decision of March 21, 2017. I disagree. Although there are parallels between the issues in dispute at these proceedings and the issues in dispute at the previous proceedings, the previous Arbitrator was not in a possession to determine if the Tenants were entitled to financial compensation.

I have reviewed that decision in its entirety and have considered some of the findings in that decision, as noted in my analysis.

Issue(s) to be Decided:

Are the Tenants entitled to compensation for a loss of the quiet enjoyment of the rental unit and /or withdrawal of parking services?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on October 07, 2016;
- the tenancy ended on March 24, 2017;
- monthly rent was $1,250.00;
- the Landlord lived above the rental unit until December 12, 2016; and
- the Landlord had access to the suite above the unit until December 31, 2016.

The Tenants are seeking compensation for a breach of their right to the quiet enjoyment of the rental unit, in part, because they were disturbed by the Landlord's young son.

In regards to this noise the Tenant stated that:

- the Landlord's son frequently disturbed them by jumping, screaming, and slamming items;
- the Landlord's son is approximately 3.5 years of age;
- the disturbances occurred during the day approximately 5 days per week;
- the Tenants expressed their concern about the noise to the Landlord, via email, on October 07, 2016 and November 10, 2016;
- the Tenants expressed their concern about the noise to the Landlord, in person, on 7 occasions;
- on one occasion when they were expressing their concern in person the Landlord asked what they wanted in a very aggressive manner; and
- they have a witness who can attest to the noise levels in the rental unit.

In response to the noise complaints the Landlord stated that:

- her son, who was approximately 2.5 years of age, jumps, yells, and drops things in a manner that is typical of children that age;

- the Tenants expressed their concern about the noise to the Landlord, via email, on October 07, 2016 and November 10, 2016;
- the Tenants expressed their concern about the noise to the Landlord, in person, on one occasion;
- she did not speak to the Tenants in an inappropriate manner when they raised the noise complaint;
- the Tenant was yelling when they were discussing the complaint so she closed the door, although she did not slam it;
- she makes every effort to control her son's behaviour to reduce any noise;
- she can also hear the children who live in the rental unit; and
- she informed the Tenants that she had a young son prior to the start of this tenancy.

The Tenant submitted a letter from a woman with the initials "K.C.". KC wrote that:

- she was visiting in the rental unit for three weeks during Christmas;
- the Landlord came to the house on one occasion and she could hear the Landlord's son running and screaming; and
- she could hear the Landlord telling her husband to take the child because she could not deal with him.

The Tenants are seeking compensation for a breach of their right to the quiet enjoyment of the rental unit, in part, because they were disturbed by the loud noise in the Landlord's suite on the first two weekends of their tenancy.

The Landlord stated that on one of the weekends she had her brother, his wife, and a neighbour over for dinner and on the other weekend she had a girlfriend visiting. She stated that there was no loud music or television during either social gathering.

The Tenants are seeking compensation for a breach of their right to the quiet enjoyment of the rental unit, in part, because they allege the Landlord increased the heat when she moved out of the rental unit, rendering the unit uncomfortably warm.

The Tenant stated that:

- she emailed the Landlord at 2:30 a.m. to tell her the unit was too hot;
- the Landlord told her that she had closed the vents in her unit when she left and that she would open them again;
- a technician came the following day to inspect the furnace;
- she understood the technician was going to return to repair the furnace;
- the technician did not return to repair the furnace;
- the unit remained too hot until the new tenants moved into the upper suite in January of 2017; and
- she did not inform the Landlord of a continuing problem after the furnace was inspected.

The Landlord stated that:

- her husband closed the vents in her unit when they left, thinking that would provide more heat to the rental unit;
- after receiving the email about the rental unit her husband went to the suite and opened the vents;
- after receiving a second email that the unit was too hot she sent a technician to inspect the furnace;

- the technician informed her the furnace was working properly; and
- she took no further action because the Tenant did not report further problems with the furnace.

The Tenants are seeking compensation for a breach of their right to the quiet enjoyment of the rental unit, in part, because the occupants who moved into the upper unit in February of 2017 have been slamming doors and throwing things at their door.

The Tenant stated that:

- their concerns with these noise complaints were reported to the Landlord, by email, although she cannot recall the date the email was sent;
- this email was not submitted in evidence;
- the Landlord did not respond to the noise complaint; and
- because the Landlord did not respond to the initial complaint the Tenants did not report the disturbances to the Landlord a second time.

Legal Counsel for the Landlord stated that by this time in the tenancy the Tenants were communicating with him in regards to the tenancy and he does not recall receiving notice of this concern until these proceedings were commenced.

The Tenants are seeking compensation for a breach of their right to the quiet enjoyment of the rental unit, in part, because the occupants who moved into the upper unit in February of 2017 removed the Tenants' garbage from the garbage bin and left it on the ground. The Tenants allege that this is the type of behaviour that was typical of the occupants living in the upper unit, much of which they did not report to the Landlord because they believed she would not intervene.

Legal Counsel for the Landlord stated that the Tenants advised him of the incident with the garbage and he told the Landlord to ensure the move out was as smooth as possible.

The Landlord stated that she did not discuss the incident with the garbage with the Tenants and that she simply removed the garbage from the property at no cost to the Tenants. She stated that the occupants of the upper unit removed the garbage from the bins because the bins were overflowing.

The Tenants are seeking compensation for a breach of their right to the quiet enjoyment of the rental unit, in part, because when the Landlord delivered their mail she left it outside on their walkway. The Tenant acknowledged that the Landlord was never asked to deliver the mail in any other way.

The Landlord stated that mail was delivered to the residence by Canada Post and that she would place the Tenants' mail on their doorstep. She stated that she was never asked to deliver the mail in any other way.

The Tenants are seeking compensation because their right to park on the residential property has been restricted.

In support of the claim for parking the Tenant stated that:

- when the tenancy began the Landlord stated that she could park on one side of the paved portion of the driveway;

- there is room for three cars to park on the residential property, providing the two cars on the pavement leave room to park on the gravelled area;
- the Tenant was unable to park on the paved area at least once a day because the space was being taken by the Landlord or a guest of the Landlord;
- the Tenant was unable to park on the gravelled area at least once per week because there was not enough room to access this area;
- the Landlord advised them, via email, that they could no longer park on the paved portion of the parking area and that parking would be permitted on the gravel portion;
- the Tenant was granted a rent reduction of $75.00, effective January 01, 2017, as a result of the change in parking services;
- she continued to pay her full rent on, and after, January 01, 2017 as she did not believe the Landlord had given her proper notice to withdraw the parking service;
- the Landlord attempted to repay the $75.00 “overpayment” by electronic transfer but the payment was not accepted; and
- they were rarely able to park in the gravelled portion of the residential property after the new occupants moved in on February 01, 2017, either because the new occupants were blocking access to the gravel area or because the new occupants had their trailer on the gravelled area.

In response to the claim for parking Legal Counsel for the Landlord stated that:

- when the tenancy began the Tenant had permission to park on the residential property, although she was not assigned a specific parking area;
- there is room for three cars to park on the residential property, one of which must park on a gravelled area;
- the Tenant was always able to park on the residential property except for one occasion during the first few weeks of the tenancy;
- the Landlord advised the Tenant, via email, that they could no longer park on the paved portion of the parking area and that parking would be permitted on the gravel portion;
- the Tenant was granted a rent reduction of $75.00, effective January 01, 2017, as a result of the change in parking services;
- the parking restriction did not take place until February 01, 2017 when the new occupants moved into the upper unit;
- the Tenant continued to pay her full rent on, and after, January 01, 2017; and
- the Landlord attempted to repay the $75.00 “overpayment” by electronic transfer but the payment was not accepted.

I have reviewed the decision from the previous dispute resolution proceeding referred to at the hearing, which is dated March 21, 2017. In the decision the Arbitrator concluded, in part, that:

- she was satisfied that the tenants were provided with notice that restricts their parking access, which was dated November 30, 2016;
- the notice to restrict parking was served in the proper form;
- although the form was sent by email and not in accordance with 88 of the *Act*, she was satisfied it was sufficiently given pursuant to section 71(2)(c) of the *Act*, as the tenants admitted it was received in an email dated December 6, 2016;
- the Tenants must not park on any portion of the paved driveway for the remainder of the tenancy;
- the Tenants’ actions towards the occupants of the upper suite were unjustified, unreasonable and aggressive; and
- the tenancy should end early as a result of the Tenants’ behaviour.

In the written declaration from "K.C.", she declared that there was no safe place to park on the street when she was visiting due to a large accumulation of snow. In a written declaration from the father of one of the Tenants, the father declared that when he was visiting at Christmas the gravelled parking area was completely buried in snow.

The Tenants have claimed compensation for moving costs and for making up lies.

Analysis:

There is a general legal principle that places the burden of proving the merits of a claim on the person who is claiming compensation for damages. In these circumstances, the Tenants bear the burden of proving the Landlord has breached their right to the quiet enjoyment of the rental unit or their right to park on the residential property. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other independent evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim will fail.

It is important to note that where two parties provide conflicting testimony, the parties do not stand on equal ground, because one party must carry the added burden of proof. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

Section 28 of the *Residential Tenancy Act (Act)* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the Tenants' submission that they were disturbed by the noise created by the Landlord's young son, who lived above the rental unit for a period of time. I find, however, that the Tenants have submitted insufficient evidence to establish that the noise was unreasonable.

Black's Law Dictionary, sixth edition, defines reasonable as "fair, proper, just, moderate, suitable under the circumstances". Black's Law Dictionary, sixth edition, defines unreasonable as "irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid".

In determining that the Tenants have failed to establish that the Landlord's son was creating an unreasonable amount of noise, I was heavily influenced by the absence of any evidence to show that the son makes any more noise than is typical of a child of that age.

In determining that the Tenants have failed to establish that the Landlord's son was creating an unreasonable amount of noise, I was further influenced by the undisputed evidence that the Landlord tries to control her son's behaviour and that the Tenants were aware that a young child lived above the rental unit prior to the start of the tenancy.

In determining that the Tenants have failed to establish that the Landlord's son was creating an unreasonable amount of noise, I have placed little weight on the written declaration of the women who was visiting the Tenant in late December of 2016. I have placed little weight on this evidence, in part, because the author is a friend of the Tenants' and cannot be considered an unbiased witness.

It must be left to the unbiased adjudicator to determine whether the amount of noise was unreasonable. I find that the subjective opinion of a biased third party does not help, to any significant degree, establish that the amount of noise was unreasonable. To establish that noise levels were unreasonable in these circumstances, I would require a recording that allows me to make an independent assessment.

As the Tenants have failed to establish that the Landlord's son was creating an unreasonable amount of noise, I find that they are not entitled to compensation for noise disturbances.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord spoke inappropriately to the Tenants when they expressed their concern to her about the noise her son was making. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's testimony that the Landlord spoke in a very aggressive manner or to refu the Landlord's testimony that she did not speak to
the Tenants in an inappropriate manner when they discussed the noise complaint.

As the Tenants have failed to establish that the Landlord spoke to them in an inappropriate manner, I find that they are not entitled to compensation for the manner in which the Landlord spoke with them when they discussed the noise.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord was making an unreasonable amount of noise on the first two weekends of their tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's testimony that the noise was unreasonable or to refute the Landlord's testimony that there was no an unreasonable amount of noise.

As the Tenants have failed to establish that the Landlord unreasonable amount of noise on the first two weekends of their tenancy, I find that they are not entitled to compensation for the alleged noise disturbances.

In adjudicating the allegations of noise I accept that the Tenants found the noise levels unacceptable. A certain amount of noise must be accepted and tolerated in shared accommodation, however, particularly in homes where children reside. I find that a tenant living in the lower unit of a shared accommodation, particularly one that does not have concrete floors, should expect that they will hear noise from the upper unit.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord intentionally increased the heat in the rental unit. In reaching this conclusion I was heav influenced by the undisputed testimony that a technician inspected the
furnace after the Tenants reported the rental unit was too hot. I find it highly unlikely that a Landlord would hire a technician to inspect a furnace if the Landlord had intentionally increased the heat in an attempt to disturb the Tenants.

I find that the Landlord responded appropriately to the two reports the Tenants made regarding the heat. Even if the heat remained excessively high after the technician inspected the furnace, there could be no reasonable expectation that the Landlord would continue to investigate the source of the problem, as the Tenants did not advise the Landlord that the problem had not been rectified.

As the Tenants have failed to establish that the Landlord intentionally increased the heat in an

attempt to disturb the Tenants or that the Landlord did not respond appropriately to reports of a problem with the heat, I find that they are not entitled to compensation for any problems with the heat.

I find that the Tenants have submitted insufficient evidence to establish that they informed the Landlord they were being bothered by the upstairs occupants slamming doors and throwing things at their door. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the email, which corroborates the Tenants submission that this problem was reported by email and by Legal Counsel's submission that he does not recall receiving anything regarding that concern prior to the commencement of these proceedings.

As there is insufficient evidence to establish that the Tenants informed the Landlord they were being bothered by the upstairs occupants slamming doors and throwing things at their door, I cannot conclude that the Landlord had an obligation to speak to the upstairs occupants about this matter. As the Landlord had no reasonable opportunity to address this matter, I find that the Tenants are not entitled to compensation for these alleged disturbances.

On the basis of the undisputed evidence I find that the occupants of the upper unit removed some of the Tenants' garbage that the Tenants had left in communal garbage bins. I find that this did not have any significant impact to the Tenants as the Landlord simply removed the garbage from the property at no cost to the Tenants. I therefore find that the Tenants are not entitled to compensation for this incident.

Residential Tenancy Branch Policy Guideline #6, with which I agree, suggests that a landlord may be held responsible for the actions of other tenants only if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

On the basis of the Tenant's testimony, the documentary evidence, and the decision from the previous dispute resolution proceeding referred to at the hearing, dated March 21, 2017, there can be no doubt that there was a conflict between the Tenants and the occupants who moved into the complex in February of 2017.

I find that the Landlord was aware of the problem between the parties and that the Landlord took decisive action to intervene. Specifically, I find that the Landlord filed an Application for Dispute Resolution in which she applied for an early end to this tenancy as a result of their conflict with the occupants of the upper unit. On the basis of the decision from the previous dispute resolution proceeding referred to at the hearing, dated March 21, 2017, I find that a Residential Tenancy Branch Arbitrator has determined that the Tenants had acted unreasonably and aggressively towards other occupants of the residential complex and that, as a result, their tenancy should end.

As the Landlord took reasonable steps to intervene in the conflict between the Tenants and the occupants of the upper suite, I cannot conclude that the Tenants are entitled to any compensation from the Landlord for any disturbances caused by the upper occupants.

As there is no evidence that the Tenants ever asked the Landlord to deliver their mail in any way other than leaving it on their door step, I cannot conclude that they are entitled to any compensation as a result of the manner it was delivered.

I find that the Tenants submitted insufficient evidence to show that their tenancy included the right to a paved parking space. In reaching this conclusion I was heavily influenced

by the absence of evidence to corroborate the Tenant's testimony that they were promised a pave space or that refutes the Landlord's submission that the agreement was that they could park somewhere on the residential property, either on the paved area or the gravel are It is clear from emails exchanged between the parties after the tenancy began, which were submitted in evidence, which they disagreed on where the Tenants were permitted to park on the property.

I find that the Tenants submitted insufficient evidence to show that they were frequently unable to park on the paved or gravelled area of the residential property prior to January 01, 2017. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's submission they were unable to park on the paved area at least once a day and they were unable to park on the gravelled area at least once per week because there was not enough room to access this area and the absence of evidence that refutes the Landlord's submission that there was only one occasion prior to January 01, 2017 in which there was no parking available on the property.

I find that the Tenants submitted insufficient evidence to show that they were frequently unable to park on the gravelled area of the residential property after February 01, 2017. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate th Tenants' submission they were unable to park on the gravelled area of the property after February 01, 2017 because the occupants of the upper suite had a trailer parked in that area or were otherwise blocking their access.

In adjudicating the matter for parking I have viewed the photographs submitted in evidence by the Tenants. I find that 11 of the 13 photographs submitted in evidence were taken when there was snow on the ground. I accept that these photographs establish that there was not room to park three vehicles on the residential property while there was snow in the yard.

Although no evidence was presented regarding how long the third parking space was blocked by snow, I find it reasonable to conclude that the parking space was unavailable in December of 2016. As the Tenants still had the right to park on the paved area in December of 2016 and the upper suite was vacant for the majority of December, I cannot conclude that the snow significantly interfered with their right to park on the residential property during that month.

I also find it reasonable to conclude that the third parking space was unavailable in January of 2017 due to snow. As the Tenants were the only people living in the residential complex in January and they still had the right to park on the paved area in January, I cannot conclude that the snow significantly interfered with their right to park on the residential property during that month.

As the Tenants argued that their inability to park on the property after February 01, 2017 was related to the occupants of the upper unit blocking their access to the third space, rather than the space being covered in snow, I cannot conclude that snow significantly interfered with their right to park on the residential property after February 01, 2017.

As the Tenants have failed to establish that snow significantly interfered with their right to park on the residential property at any point during this tenancy, I find they are not entitled to compensation because snow was not cleared from the third parking area.

I find that the remaining 2 photographs are of little evidentiary value as the angle of the images do not assist me in determining if a third vehicle could park on the residential property. To

support a claim of this nature I would expect the Tenants to provide clear photographic evidence to support their claim that parking was frequently unavailable, which would include a series of photographs the dates and times that they could not park somewhere on the property.

In determining that there was insufficient evidence to show that the Tenants were frequently unable to park on the gravelled area of the residential property after February 01, 2017, I was further influenced by the affidavit from one of the occupants of the upper unit, which was submitted in evidence. In this affidavit the occupant attests to the presence of "reasonable parking alternatives, including a gravel driveway beside the parked driveway". I find that this affidavit refutes the Tenants' submission that parking was not available elsewhere on the property after February 01, 2017.

In determining that there was insufficient evidence to show that the Tenants were frequently unable to park on the gravelled area of the residential property after February 01, 2017, I was further influenced by the affidavit from both occupants. On the basis of these affidavits, the testimony of the Tenant at the hearing, and emails submitted in evidence, I am convinced that the Tenants simply did not acknowledge that their right to park on the pavement had been terminated. I find it most likely that there was space to park elsewhere on the residential property after February 01, 2017 but the Tenants were simply insisting on parking on the paved area.

Section 27(2) of the *Act* authorizes a landlord to terminate a non-essential service or facility, if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the decision from the previous dispute resolution proceeding referred to at the hearing, dated March 21, 2017, I find that a Residential Tenancy Branch Arbitrator has determined that the Tenants were sufficiently served with notice that they were no longer permitted to park on the paved area of the residential property, which they received by email on December 06, 2016. As this specific matter has been previously determined, I do not need to make a further finding on that matter.

The previous Arbitrator did not determine specifically when the change in parking terms became effective and I am, therefore, free to do so now. As the Tenant's received the notice restricting parking on December 06, 2016 I find that the notice was effective on January 06, 2017.

On the basis of the notice to reduce the parking facilities I find that the Tenants were entitled to a rent reduction of $75.00. As the Tenants right to park on the pavement was not restricted in January of 2017, I find that they are not entitled to a rent reduction for that month. As their right to park on the pavement was restricted in February and March of 2017, I find that they are entitled to a rent reduction of $150.00 for those months.

On the basis of the undisputed evidence I find that the Tenants have paid their full rent for February and March of 2017 and that they are entitled to recover the parking rent reduction of $150.00 for those months.

As the Tenants have submitted insufficient evidence to establish that their right to park on the residential property was improperly restricted, I cannot conclude that they are entitled to any compensation over and above the aforementioned rent reduction.

On the basis of the decision from the previous dispute resolution proceeding referred to at the hearing, dated March 21, 2017, I find that a Residential Tenancy Branch Arbitrator has determined that the tenancy should end as a result of the actions of the Tenants. I therefore find that the Tenants are not entitled to any compensation arising from how this tenancy ended, including moving costs.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I therefore dismiss their application to recover the fee for filing this Application. Although I have awarded the Tenants a monetary Order of $150.00, I find that the only reason this Order was necessary was because the Tenants refused to accept the rent refund that was offered to them by the Landlord.

Conclusion:

The Tenant has established a monetary claim of $150.00, which represents the rent refund for February and March of 2017, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: March 29, 2017

Residential Tenancy Branch