



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested a monetary order for damage to the unit, site or property, unpaid rent or utilities, compensation for damage or loss, recovery of the filing fee, and an order to keep the security deposit. The Tenant’s Application requested a monetary order for the cost of emergency repairs, compensation for damage or loss, return of the security deposit and pet damage deposit, and recovery of the filing fee.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

Decision of July 11, 2011 on prior applications of the parties

The Landlord and Tenant made previous cross applications for dispute resolution which resulted in a hearing on July 07, 2011 and a decision on July 11, 2011. The decision states that at that hearing the Landlord stated that the Tenant moved out of the rental unit on July 02, 2011. The decision of July 11, 2011 states:

“At the outset of the hearing on the landlord withdrew her application requesting an Order of Possession as the tenants have moved from the rental unit.”

The Tenant was not in attendance at the hearing on July 07, 2011, although she had a cross application and was duly served according to the prior decision. The decision of July 11, 2011, resulting from that hearing, dismissed the Tenant’s application due to her non-attendance. The Landlord made an amended application at the hearing of July 07, 2011 to request lost rental income for the month of July 2011 due to the condition of the rental unit and this matter was heard. The decision denied the Landlord the full amount of the rental income for July and found that the Landlord was only entitled for two days

rent as compensation for rental income loss for the month of July 2011. The decision of July 11, 2011 states:

“With regard to the landlords claim for unpaid rent for July, 2011; the landlord did not make a claim on her application for this sum but requested to recover unpaid rent for July during the hearing due to the condition the tenants left the rental unit in. I have considered this request and find the landlord has provided no evidence to show what condition the tenants left the unit in or what steps they took to mitigate the loss of rent by showing how they advertised the unit again.”

A monetary order dated July 11, 2011 was granted to the Landlord for \$1,215.00 representing rent owed for June 2011 and rental loss for July 2011, and the filing fee. The parties agree that the Tenant has not paid the Landlord the amount of the order.

Tenant CE confirmed that she has received a copy of the decision dated July 11, 2011 as part of the Landlord's Application with regards to the current hearing.

Dismissal of certain items in current Applications due to Res judicata and/or withdrawal

The Landlord's Application of September 30, 2011 is for damage to the unit, site or property, unpaid rent or utilities, and requesting an order to keep all or part of the security deposit and pet damage deposit. At the hearing the Landlord specifically indicated that due to the condition of the rental unit she is seeking the loss of rental income for the balance of the month of July which was denied at the previous hearing (July 07, 2011); compensation for her damages and losses as she paid \$1,343.83 for cleaning, disposal, and the changing of locks; \$25.00 NSF/late fee for the June rent; and the filing fee for the current Application. I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the Landlord's request for the loss of rental income and/or unpaid rent, as the Landlord amended their previous Application to include this amount and this matter was already heard and decided upon at the hearing of July 07, 2011. The Landlord's request for rental income loss and/or unpaid rent is dismissed.

The Tenant's Application of November 29, 2011 is for the cost of emergency repairs, compensation for damage or loss, and return of the security deposit and pet damage deposit. The Tenant's claim for a monetary order for emergency repairs relates to a plumbing repair bill for \$845.60 which they stated they had paid for. At the hearing the Tenant stated that she is withdrawing the cost of emergency repairs from her claim. I also note that the Tenant had made a previous Application for emergency repairs and repairs which were to be dealt with at the hearing on July 07, 2011, and that due to her non-attendance at that hearing, the issues contained in her previous Application were

dismissed without leave to reapply. The Tenant's request for a monetary order for emergency repairs is dismissed.

Issue(s)

Is the Landlord entitled to a monetary order for damage to the unit, site or property, compensation for damage or loss, recovery of the filing fee, and an order to keep the security deposit?

Is the Tenant entitled to a monetary order for compensation for damage or loss, return of the security deposit and pet damage deposit, and recovery of the filing fee?

Background and Evidence

This tenancy began on March 15, 2011. The previous decision of July 11, 2011, found that the Landlord issued a Ten Day Notice to End the Tenancy for unpaid rent on June 07, 2011 by serving this in person on the Tenant. That decision also dismissed the Tenant's Application to cancel the Notice as they did not attend the hearing and found that the rent was not paid by the Tenant within five days of them receiving the Notice; as a result the Notice remained in effect. The Ten Day Notice stated that the tenancy would end by June 19, 2011. The parties agree that the Tenant began moving out of the rental unit on or before July 02, 2011. The parties dispute as to whether the Tenant was fully moved out by July 02, 2011 or not. The previous decision of July 11, 2011 did not grant the Landlord an order of possession, and states the Landlord withdrew their request for an order of possession.

The move out

The Landlord testified that on June 30, 2011 Tenant KE, who was living with Tenant CE, had a heated one-sided conversation with her where he was rude and loud and advised her that they have no intention of paying rent and they are moving out. The Landlord's witness BW testified that she is a property manager and was present at this conversation. BW also stated that the Tenant's had not moved out on June 30, 2011 but were threatening to do so. BW stated that she could see that the Tenant's balcony and surrounding area were a mess. BW stated that no arrangement was made during the conversation with the Tenant to do a move out inspection. The Landlord's witness RC testified that he is an independent contractor who does repairs, cleaning, and related services, and that he was working on the rental unit next door on June 30, 2011 when he overheard Tenant KE loudly telling the Landlord that they were not staying and not paying rent. RC states that in early July other tenants in other rental units told him that they thought the Tenant had moved out. RC states that he told the Landlord on

July 02, 2011 that he had heard a rumor that the Tenant had moved out. The Landlord states that she went to the rental unit on July 02, 2011 to determine what needed to be done. RC states that the Landlord instructed him to change the locks, clean it out, repair, and paint the rental unit. RC states that he did as the Landlord instructed and that he took photos of the condition of the rental unit and all of the items he cleaned out, removed and disposed of. The Landlord confirmed that RC followed her instructions.

The Tenant CE testified that KE is her husband and that he was outside speaking with the Landlord on June 30, 2011, but that she thought they were discussing a picnic table the Landlord wanted removed from the property, and she did not know what else was discussed on that date. The Tenant stated that they had not moved out at that time, but that they had found a place and were planning to start their move into the new place in early July. The Tenant stated that she only has a small car, so she could not move much in it and she was able to borrow her mother's truck a Ford F150 for a brief time on the July long weekend to move some larger items. The Tenant stated that she was still in the process of moving out of the rental unit and cleaning the rental unit when she came back to the rental unit on July 04, 2011 and found the locks changed and that she could not access the unit to obtain the rest of their belongings or undertake the cleaning required. The Tenant stated that she tried to call the Landlord several times but got no answer and that she did not leave a message on voicemail. The Tenant stated that she called the police, but that they also had no luck in reaching the Landlord and that they advised her to file a legal claim against the Landlord, as there was nothing further they could do at that point. The Tenant's witness PR testified that she is the Tenant's mother and that on the July long weekend the Tenant moved some of her belonging with her truck, but they could not take everything in her truck and she could only let them use it for two loads as she needed it for her own use.

The Landlord stated that she received no voicemail from the Tenant or the police so she did not know that they wanted access to the rental unit and she considered the remainder of the items in the rental unit to be junk furniture and garbage that the Tenant did not want. The Landlord stated that she considered the Tenant to have vacated and abandoned the rental unit as of July 02, 2011 based on what she had been told by neighboring tenants. The Landlord stated no move-out inspection occurred with the Tenant as she had abandoned the rental unit. The Landlord stated that she made no attempts to contact the Tenant and that the Tenant made no attempt to contact her. The Landlord stated that her cell phone records show no voicemail from Tenant, however, she confirmed that her cell phone records do not show calls that were hang ups where no voicemail was left. The Landlord stated that she did not provide copies of her cell phone records or any text records to the Tenant as she feels this is confidential. The Landlord stated that she did not store any of the Tenant's items as they were all junk and she ordered that they be disposed of so that the rental unit could be cleaned

and repaired for new tenants. RC stated that he cleaned, repaired and disposed of the items in the rental unit between July 02 and July 07, 2011.

The items left by the Tenant in the rental unit and compensation claimed for the items

The Tenant stated that she had not completed the move by July 02, 2011 and she was coming back to clean and get her other items and do laundry including the bag of clothes she had left at the rental unit. The Tenant stated that her belongings were not junk and that she has reviewed the photos submitted by the Landlord of the items. The Tenant stated that the Landlord did not have permission to lock her out and remove her belongings. The Tenant's witness PR stated that the Tenant's baseball equipment was left at the rental unit as they were coming back for it along with the other items, and she stated that they do not have the bats, gloves or bases now. The Tenant is claiming only the following items and has provided copies of retail ads to purchase similar items. The Tenant stated her value of each item claimed as follows:

- Outdoor Barbeque – used (value new \$89.99 on sale; \$179.99 regular price)
- Large Plastic Bag containing personal clothing in laundry area, which was to be washed (value \$200.00)
- Set of Softball bases used for two seasons (value new for set \$399.99)
- Two baseball bats used for ten games (value new \$299.99 and \$199.99)
- Two baseball gloves used for ten games (value new \$74.99 and \$89.99)
- Solid wood nightstand family heirloom (value new \$249.97)
- Ikea metal frame desk (value new \$254.00)

The Landlord confirms that the above items were in the rental unit, with the exception of the baseball bats and gloves. The Landlord stated the condition of the items was poor and appeared to be junk. The Landlord stated that they feel they had the right to dispose of the contents of the rental unit as it was abandoned and the items were garbage and junk. RC stated that he removed the items between July 04 and July 07, 2011 and that he took all of it to the dump on July 07, 2011 for which he stated he has a receipt. RC stated that the outdoor barbeque was without a propane tank, was rusty with a broken leg, and the burner was all rusted inside. RC stated that the metal desk was not dismantled by the Tenant and some pieces appeared to be missing. RC stated there was a baseball bag in the living room but all it contained were old dusty bases. RC stated that he saw no bats or gloves. RC stated that the nightstand was not all wood and the top had water damage as it was used on the front porch by the Tenant. RC stated that he left the nightstand on the front porch and moved the rusty barbeque to the front porch where they remained until he took everything to the dump on July 07, 2011. RC stated that there was a plastic bag with some clothes, but on top of the clothes there were papers and pens and it appeared to be meant for the garbage. RC

stated there were other items in the rental unit that the Tenant has not claimed that he disposed of as well, a TV and another plastic bag. RC submitted copies of the photos of the rental unit and these items before clearing it out and the Landlord provided these into evidence.

The Tenant's claim for compensation of loss of peaceful enjoyment and harassment

The Tenant stated that during the later part of her tenancy her peaceful enjoyment was disturbed as she being harassed by the Landlord with Notices of eviction and notifications from the Landlord that they would be coming in to do a suite inspection. The Tenant stated that the Landlord even sent her a letter telling her that they would be coming to do a suite inspection accompanied by a bailiff. The Tenant stated that she was extremely stressed and uncomfortable being alone in the rental unit and fearful that she would have nowhere to live. The Tenant stated that her husband had to give up work opportunities in Alberta and they lost this income so that he could stay home and protect her as they were not sure if they would be evicted when the bailiff came with the Landlord. The Tenant is seeking \$1,275.00 to compensate her for damages and losses she suffered for harassment by the Landlord.

The Landlord stated that they had issued a One Month Notice to the Tenant in the past for disturbing the quiet enjoyment of other tenants by having loud parties. The Landlord stated that the One Month Notice was cancelled by a past hearing and decision in May 2011. The Landlord stated that they issued a Ten Day Notice for non-payment of rent in June 2011. The Landlord stated that she wanted a bailiff to accompany her on suite inspections for security and that there were several rental units including a neighboring rental unit that had received the same letter with advance notification of suite inspections the Landlord would be carrying out. The Landlord stated that the bailiff was not going to evict the Tenant, as the Landlord had to wait for a dispute resolution hearing in July 2011. Both the Tenant and the Landlord had filed previous cross applications regarding the Ten Day Notice as stated in the decision of July 11, 2011. The Landlord stated that they were not harassing the Tenant and that the Act allows them to serve Notices on a Tenant and do suite inspections.

The Landlord's claim for late/NSF fee(s)

The Landlord stated that they did not claim the NSF/late fee for the June 2011 rent previously. As page one of the tenancy agreement was missing from my copy of the evidence package the parties read it into evidence. The tenancy agreement states that the Landlord is entitled to a \$20.00 charge for returned cheques plus \$3.00 per day late fee. The Landlord stated that she is claiming the maximum \$25.00 as allowed by the Residential Tenancy Regulation (the "Regulation").

The Tenant stated that she agrees with the Landlord's claim of \$25.00 if the Regulation allows for this and she confirmed that she did not pay the rent for June 2011 and that the tenancy agreement has this clause regarding late and NSF fees.

The Landlord's claim for cleaning, repairs, lock change, junk removal, and carpet cleaning

The Landlord stated that that the Tenant left the rental unit a disaster when they moved out on July 02, 2011 and submitted photos as evidence of the condition of the rental unit. The Landlord's witness RC stated that it took him from July 02, 2011 to July 07, 2011 to restore the suite. RC submitted an invoice to the Landlord for this work which included lock change, repairs, cleaning, junk removal, touch up painting, and carpet cleaning. RC stated that a door frame in the rental unit needed to be repaired as it had a crack, a toilet handle was broken, carpet repair needed to be done as threads were missing from carpet, some light switch covers and dimmer knobs were cracked, some light bulbs were burnt out, and the unit and deck areas were very dirty. The Landlord stated that the Tenant left the rental unit in such poor condition that they should be required to pay the full amount of RC's invoice in the amount of \$1,343.83.

The Tenant stated that she went to the rental unit on July 04, 2011 to remove the rest of her belongings and clean the rental unit when she found the Landlord had changed the locks. The Tenant stated she thought her eviction was going to be dealt with at the July 07, 2011 hearing. The Tenant stated that she did not attend the hearing of July 07, 2011. The Tenant stated that she left some cleaning supplies in the rental unit as well as belongings that did not fit in the first two loads they had moved with her mother's truck. The Tenant stated that you can see some of her cleaning supplies in the photos provided by the Landlord. The Tenant stated that the Landlord made no contact with her and a move-out inspection was not done. The Tenant stated that there was a move-in inspection done and that at the time she reported the carpet had threads missing and stains, and the unit was not in perfect condition. The Tenant stated that the Landlord could have texted or phoned her before assuming they had finished their move, but the Landlord did not. The Tenant stated that she contacted the police after going to the rental unit on July 04, 2011 and finding the locks changed. The Tenant stated that in the Landlord's evidence package and photos submitted there are no photos depicting the carpet with threads missing, the broken toilet handle, the light switch covers and dimmer knobs, and cracked door frame. The Tenant disputes the Landlord's claim as she has not seen evidence of the items they said needed repairing and because she intended to do the cleaning and any repairs needed when she finished moving and before returning the keys and having a move-out inspection done.

Both parties claims for security deposit and pet damage deposit

The Tenant is claiming return of her security deposit in the amount of \$547.50 and pet damage deposit in the amount of \$250.00. The Tenant confirmed that she uses her mother's address for mailing. The Tenant does not wish to disclose her residential address to the Landlord. The Tenant stated that she would like the Landlord to return the security deposit and pet damage deposit in full to her at the mailing address she is using. The Tenant stated that she has not authorized the Landlord to keep these.

The Landlord confirmed that she holds a security deposit of \$547.50 and a pet damage deposit of \$250.00 but states that she is requesting to keep the security deposit and pet damage deposit to offset the damage repair and cleaning that was required in the rental unit. The Landlord stated that she had to apply for a decision granting her permission to use alternate service on the Tenant and serve her at her mother's address before filing this Application as the Tenant did not provide her with a written forwarding address.

Analysis

Section 24 of the Regulation states:

Abandonment of personal property

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
 - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Section 57(2) of the Act states:

What happens if a tenant does not leave when tenancy ended

57 (2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

The Tenant was served with a Ten Day Notice in accordance with section 46 of the Act. The Notice stated that unless outstanding rent was paid within five days the Landlord wanted the tenancy to end on June 19, 2011. The Tenant remained in the rental unit, did not pay the rent, and did not move out by June 19, 2011. The Tenant disputed the Notice and both parties applied for dispute resolution. The Landlord became aware that the Tenant was planning to move when the Tenant's husband KE advised them of this. The Landlord did not contact the Tenant to determine exactly when they would be starting and finishing their move and did not contact the Tenant to set a move-out inspection date. The Landlord concluded on July 02, 2011 that the Tenant had abandoned the rental unit without making any attempt to contact the Tenant. The Landlord did not obtain an order of possession or a writ of possession, prior to changing the locks, removing the Tenant's remaining items, and cleaning out the rental unit. The Landlord and her witness RC, stated that the locks were changed and between July 02, 2011 to July 07, 2011 and that this is when the cleaning and removal from the rental unit occurred. The Landlord withdrew her request for an order of possession at the hearing on July 07, 2011 and informed that Dispute Resolution Officer that the Tenant had moved out and she had possession of the rental unit. The Tenant was not in attendance at the hearing of July 07, 2011. I find that the Landlord did not receive oral or written notice of the Tenant's intention not to return to the residential property, and I find that the circumstances surrounding the giving up of the rental unit are such that the Tenant could reasonably be expected to return to the residential property. The Landlord took action prematurely by changing the locks and removing items from the rental unit for disposal without consulting with the Tenant and without obtaining an order of possession or writ for the rental unit. The Landlord cleaned and repaired the rental unit without giving the Tenant a reasonable opportunity to do so and failed to do a move-out inspection with the Tenant.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed facts. The test of the truth of the story must align with the balance of probabilities and, in the circumstances before me, I find the Tenant's

testimony that she had not finished moving out to be more probable that that of the Landlord for the following reasons:

1. The Landlord's testimony was based on hearsay and rumor from neighbors of the Tenant and not on direct confirmation from the Tenant that they had completed their move on a particular date.
2. The Landlord and her witness RC confirmed that they entered the rental unit on July 02, 2011 and changed the locks without contacting the Tenant to confirm the move was completed, which effectively barred the Tenant from re-entering the rental unit. The Tenant was barred from obtaining their remaining belongings, cleaning the rental unit, and making repairs to the rental unit.
3. The Landlord testified that she considered that the Tenant had abandoned their property, however, she testified that she did not contact the Tenant and that the witness RC stated that he cleaned and repaired the rental unit and removed the items to the dump during the period July 02 to July 07, 2011. The Landlord failed to obtain or request an order of possession at the scheduled hearing on July 07, 2011, and the Landlord did not apply for an expedited decision through Direct Request.
4. The Landlord testified that the Tenants' property was junk, however, I find it probable that the Tenant's possessions remaining in the rental unit were worth more than \$500.00, as detailed below.

I reject the Landlord's argument that the Tenant abandoned personal property and the Landlord had the right to dispose of it. I find that the Landlord took action prematurely and did not receive direction from the Tenant or wait for the outcome of the hearing scheduled for July 07, 2011, which was to hear and determine the Landlord and Tenant's cross applications with regards to the Notice to End the Tenancy and amounts claimed by the parties on those applications.

I find that the Landlord contravened the provisions of Part 5 of the Regulation and section 57(2) of the Act.

Monetary claims of the parties

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a

tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

NSF/Late fee claimed by the Landlord

I find the Landlord is entitled to \$25.00 for an NSF/late fee as this is allowed by the Regulation, is a condition of the tenancy agreement, and the Tenant does not dispute that this is owed to the Landlord for June 2011.

Landlord claim for compensation due to cleaning, repairs, removal and lock change

I dismiss the Landlord's claim for \$1,343.83 as the Landlord changed the locks prematurely, which resulted in the Tenant being unable to enter the rental unit to clean, repair, and removed personal items. Additionally, the Landlord did not do a move out inspection report as required by section 35 of the Act as the Landlord failed to notify the Tenant or provide her with opportunity to do so. The Landlord mistakenly assumed that the Tenant had abandoned the rental unit and had no order of possession and no writ of possession at the time the Landlord undertook the cleaning, repairs, and removal of items.

Security deposit and pet damage deposit

I find that the Tenant is entitled to return of the full amount of the security deposit (\$547.50) and the full amount of the pet damage deposit (\$250.00), however the Tenant is not entitled to double the amounts as the Landlord did not have confirmation from the Tenant of a written forwarding address and request for the deposits to be returned until the Tenant filed her Application on November 09, 2011. I grant the Tenant a monetary order for the security deposit and pet deposit.

Tenant's claim for compensation for loss of personal enjoyment and harassment

I find that the Tenant is not entitled to compensation for a loss of personal enjoyment or harassment, and I dismiss this part of their claim. Section 29 of the Act allows a Landlord to perform inspections of a rental unit. I find that the Landlord provided the Tenant advance written notice that this would be happening, and I find that it is not unreasonable for a Landlord to bring a bailiff or a security person with them when inspecting a rental unit. I also find that the Landlord was within their rights as provided by the Act to issue Notices under the Act to the Tenant. Issuing of Notices under the Act towards this Tenant does not amount to harassment as the Tenant has alleged. The Tenant breached section 26 of the Act by failing to pay her rent when it was due and thus a Notice to End Tenancy was issued by the Landlord. The Tenant had not received a monetary order under the Act granting her permission to withhold the rent.

Tenant's claim for compensation for personal items/belongings

I find that the Landlord did not comply with Part 5 of the Regulation and section 57(2) of the Act; as a result the Tenant suffered a loss pursuant to section 67 of the Act for the following reasons:

In a claim for damage or loss under the Regulation the Applicant (in this case the Tenant) has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Landlord) pay for the loss the Applicant (the Tenant) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Regulation,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Tenant) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

With respect to the third element of the test, in a Supreme Court decision, *Bello v. Ren*, 183 A.C.W.S. (3d) 236, 2009 BCSC 1598, the Court noted that while the nature of the missing property and the value of the items must be proved by the Applicant (the Tenant), the evidence must be weighed taking into account the difficulty a tenant faces in proving what is missing and what it is worth. The Court further noted that this task was made all the more difficult because the Applicant's (the Tenant's) property was unlawfully seized and disposed of by the Respondent (the Landlord).

As part of the evidence submissions which I considered, the Landlord provided photographs of most of the items left in the rental unit by the Tenant. The Tenant provided a list of the items disposed of by the Landlord that were of value to her, and she provided printouts from retailer websites where the same items were for sale brand new. The Tenant did not provide the used value of the items, although she confirmed all of the items were somewhat used.

I find the barbeque has no value due to the poor condition depicted in the pictures and as described by the Landlord. The other items claimed by the Tenant, I find have some value as used items. I find that the Tenant did leave the baseball mitts and bats in the bag, as the pictures provided by the Landlord depict the bag clearly bulging from long

bats and other contents inside. I find that the softball bases are undisputed as both parties acknowledged they were in the rental unit and can be clearly seen protruding out of the zipper in the top part of the baseball bag. I find that the nightstand does appear to be solid wood from the photos depicted, and the photos do depict it being used on the front porch and it is plausible that the top had some water damage, however the top could be refinished to restore it to better condition so I find it had value as a used furniture item. I find that the Ikea desk depicted in the photos is not broken and I do not find that any significant parts are missing from it as this is not depicted in the photographic evidence.

I have carefully considered the detailed information on the items provided by the parties and the estimated cost to replace those items. I have appropriately devalued the items to what it would cost to replace them used rather than new, as the value of used items can be found on many popular websites which sell used items similar to the items the Tenant is claiming.

Calculation of Total amounts of compensation owing

I find that the Landlord is entitled to \$25.00 for an NSF/late fee for June 2011 rent which was not paid by the Tenant when it was due. The \$25.00 owing to the Landlord is offset from the Tenant's entitlements in the calculation below.

I find that the Tenant is entitled to compensation for her claim as follows:

Description of item	Amount
Tenant's Set of Softball bases	\$150.00
Tenant's Two baseball bats	\$200.00
Tenant's Two baseball gloves	\$75.00
Tenant's Solid wood nightstand	\$50.00
Tenant's Ikea metal frame desk	\$50.00
<i>Subtotal</i>	<i>\$725.00</i>
Tenant's Security deposit	\$547.50
Tenant's Pet damage deposit	\$250.00
<i>Subtotal</i>	<i>\$1,522.50</i>
Deduction of \$25.00 NSF late fee owed to Landlord	- \$25.00
Total Owing to Tenant:	\$1,497.50

Conclusion

I hereby grant the Tenant a monetary order in the amount of **\$1,497.50** for service upon the Landlord. This order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 19, 2011.

Residential Tenancy Branch