Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kingsgate Gardens Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-s, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed in the amount of $425.00;
- Compensation for lost rent in the amount of $2,050.00;
- Recovery of the $100.00 filing fee; and
- Authorization to withhold the security deposit towards amounts owed.

The hearing was originally convened by telephone conference call on December 21, 2020, at 1:30 PM, and was attended by an agent for the Landlord (the Agent) and the tenant J.J. (the Tenant), both of whom provided affirmed testimony. The Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding Package in accordance with the Act and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), and the hearing therefore proceeded as scheduled.

The hearing was subsequently adjourned due to issues relating to conflicting delivery information from Canada Posts regarding delivery of the Landlord's documentary evidence to the Tenant, who denied receipt. An interim decision was made December 21, 2020, and the reconvened hearing was set for March 18, 2021, at 9:30 AM. A copy of the interim decision and the Notice of Hearing for the new hearing date and time was sent to each party by the Residential Tenancy Branch (the Branch) by email, as requested by the parties at the hearing, on December 23, 2020. For the sake of brevity, I will not repeat here all of that matters covered, and orders made, in the interim decision. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on March 18, 2021, at

9:30 AM and was again attended by the Agent and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the reconvened hearing I confirmed that the Landlord had re-served their documentary evidence on the Tenant in compliance with my orders in the interim decision. The Agent stated that they had sent it by email as directed, on December 22, 2020, and the Tenant confirmed receipt by email on or about that date. As the Tenant acknowledged receipt of the Landlord's re-served documentary evidence and raised no concerns with regards to receipt or compliance with my orders, I accepted this re-served documentary evidence for consideration. The Tenant also confirmed that they had not exercised their right, as set out in my interim decision, to serve any new evidence on the Landlord in response to the Landlord's re-served evidence.

Although I have reviewed all evidence, testimony, and submissions before me for consideration, in accordance with of the Rules of Procedure and the principles of natural justice and administrative fairness, I refer only to the relevant and determinative facts, evidence, issues, and submissions in this decision.

At the request of the parties, copies of the decision and any orders issued in their favour will be emailed to them at the email addresses provided by them at the hearings.

Issue(s) to be Decided

Is the Landlord entitled to compensation pursuant to section 38(4)(a) of the Act in the amount of $425.00?

Is the Landlord entitled to compensation for lost rent in the amount of $2,050.00 pursuant to sections 7 and 67 of the Act?

Is the Landlord entitled to recovery of the $100.00 filing fee pursuant to section 72(1) of the Act?

Is the Landlord entitled to withhold any portion of the security deposit not already lawfully withheld by them under the Act, towards amounts owed to them by the Tenant pursuant to section 72(2)(b) of the Act?

Preliminary Matters

The tenancy agreement lists two tenants, the respondent in this Application (J.J.) and another tenant (D.W.)., however, only J.J. has been named as a respondent in the Application. Although J.J. argued that A.G. was also a tenant under the tenancy agreement, and an additional document titled “Schedule of Parties” was also submitted by the Landlord with the tenancy agreement, naming a person with the initials A.G. as a tenant, for the following reasons I am not satisfied that A.G. was a tenant under the tenancy agreement. First, A.G. is not named as a tenant in the tenancy agreement, and although the tenancy agreement states that a 3 page addendum forms part of the agreement, nothing indicated as being the 3 page addendum was submitted for my review. As the “Schedule of Parties” is only one page, and does not indicate anywhere that is either the addendum referred to in the tenancy agreement, or a portion thereof, I am not satisfied that it is. Finally, the purpose for submitting the “Schedule of Parties” remains unclear to me, as the Agent did not speak to it at the hearings, it does not appear to be an addendum to the tenancy agreement itself, it does not appear to be signed by the he Landlord or their agent, and the form itself pertains to the addition of additional applicants or respondents to an Application for Dispute Resolution when the Application for Dispute Resolution form does not have enough room to name all applicants or all respondents, not adding additional tenants to a tenancy agreement.

As a result, of the above, I am not satisfied that the “Schedule of Parties” in any way amends or alters the tenancy agreement, and as the tenancy agreement names only J.J. and D.W. as tenants, I find that only J.J. and D.W. were tenants under the tenancy agreement. Although J.J. stated that A.G. was also a tenant under the tenancy agreement, they did not submit any documentary evidence in corroboration of this statement. Based on the above, I am satisfied that only J.J. and D.W. were tenants under the tenancy agreement, and that A.G. was an occupant of the rental unit, rather than a tenant.

Residential Policy Guideline (Policy Guideline) #13 defines co-tenants as two or more tenants who rent the same rental unit or site under the same tenancy agreement. As J.J. and D.W. are both listed as tenants under the same tenancy agreement, I find that they are co-tenants. Policy Generally #13 states that co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” is defined in the Policy Guideline as meaning that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

As the tenancy agreement does not state that J.J. and D.W. are not jointly and severally liable under the tenancy agreement, I therefore find that they are. As a result, I find that the Landlord was entitled to bring the claims in the Application against only J.J., who I have referred to as the "Tenant" throughout this decision.

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed July 24, 2020, states that the one year fixed-term tenancy commenced on September 1, 2019, and was set to continue on a month to month basis after the end of the fixed term on August 31, 2020. The tenancy agreement lists the Landlord named in the Application as the Landlord, and the Tenant as well as a person with the initials D.W. as tenants. The tenancy agreement states that rent in the amount of $2,050.00 is due on the first day of each month, and that a $1,025.00 security deposit was required. Although the tenancy agreement states that a 3 page addendum forms part of the agreement, the addendum was not submitted for my review and consideration.

The parties agreed that the $1,025.00 security deposit was paid, that the above noted terms of the tenancy agreement are correct, that the tenancy ended on August 31, 2020, and that a move out condition inspection and report were completed in accordance with the Act on that date. Although the Tenant acknowledged receipt of the move out condition inspection report, they stated that it was not received until the Landlord's documents in relation to this Application were served on them. The Agent disagreed, stating that it was provided to the Tenant on September 9, 2020, and that the Tenant also took a picture of it at the time of the move out condition inspection. There was no disagreement between the parties that a move in condition inspection and report were properly completed at the start of the tenancy and neither party raised concerns with regards to receipt of the move in condition inspection report by the tenants within the timeframes established in the regulation.

The Agent acknowledged that the Landlord still holds the $1,025.00 security deposit but stated that the Landlord is entitled to withhold $425.00 of the deposit pursuant to section 38(4)(a) of the Act, as the tenants agreed to this in writing on the move out condition inspection report. Although the Tenant acknowledged signing the move out condition inspection report and agreeing in writing that the Landlord could retain $425.00 from the security deposit for damage and cleaning costs, the Tenant stated that the move out condition inspection was an overly critical "white glove" test, which is not the standard required or allowable under the Act. The Tenant stated that upon further consideration, they believe that most of the damage noted by the Landlord on the move out condition

inspection report constitutes reasonable wear and tear and that there were only 1-2 light bulbs burnt out. The Tenant stated that they were originally asked to pay $850.00 for the damage, but negotiated this amount down to $425.00, as $850.00 did not seem right or fair and they could not afford that amount. As a result, the Tenant argued that the Landlord should not be entitled to retain the $425.00 agreed upon in writing on the move out condition inspection report from the security deposit.

The Agent disagreed with the Tenant's characterization of the damage as wear and tear, stating that there were scratches, damaged paint, a damaged toilet seat, missing light bulbs, and that the bathroom and shower had not been cleaned. The Agent stated that although there had been more than $800.00 in damage done to the rental unit, which was in impeccable condition at the start of the tenancy, the tenants negotiated hard to reduce the amount agreed upon for cleaning and damage. As a result, the Agent stated that $425.00 was agreed upon for repairs and cleaning.

The Landlord stated that they also lost $2,050.00 in September 2020 rent, as the tenants had not given proper notice to end the tenancy and had withdrawn their initial improper notice to end tenancy, only to later rely on it for ending the tenancy on August 31, 2020, resulting in an inability for the Landlord to have re-rent the unit in time. As a result, the Landlord sought recovery of this amount from the Tenant.

Everyone agreed that on June 29, 2020, and agent for the Landlord contacted the Tenant by text to inquire if they were going to renew their lease, and that the Tenant had responded on July 1, 2020, stating that they were not. However, the parties disagreed about what happened thereafter and whether the July 1, 2020, text constituted a proper notice to end tenancy under the Act. The Agent stated that after receiving the Tenant's text that they did not plan to renew their lease, they began advertising the rental unit for re-rental on September 1, 2020. Proof of these advertisements was submitted by the Landlord. The Agent stated that despite the Landlord advertising the rental unit for re-rental, the Tenant stayed in contact with the office, as they had not yet secured a new place, and that on August 1, 2020, the Tenant inquired about renting a 1 bedroom unit instead of their current 2 bedroom unit. The Agent stated that there were numerous conversations and back and forth email communications between agents for the Landlord and the Tenant with regards to whether or not the Tenant wanted to move to a one bedroom unit or stay in their current two bedroom unit until a pet friendly 1 bedroom unit came available, as the Tenant now wanted to acquire a pet. Copies of these email communications were submitted for my review and consideration by both parties.

The Agent stated that on August 6, 2020, the Tenant stated in an email that they wished to stay in the rental unit. The Agent stated that at that point, they considered the Tenant's previous intention to end the tenancy to have been withdrawn, and stopped active efforts to re-rent the unit for September 1, 2020. The Agent stated that at the same time, they entered into negotiations with the Tenant to reduce the amount of rent owed for their current 2 bedroom unit until a 1 bedroom pet-friendly unit became available, but ultimately an agreement could not be reached on the amount of the rent reduction. As a result, the Agent stated that on August 18, 2020, the Tenant told them that they would not be staying in the rental unit and would be moving out on August 31, 2020.

The Agent stated that they then requested a new notice to end tenancy from the Tenant via email, as it was now less than 30 days until August 31, 2020, and because they had considered the Tenant's previous intention to vacate the rental unit to have been withdrawn. The Agent stated that the Tenant did not comply, gave no new notice to end tenancy, and vacated on August 31, 2020. The Agent stated that the rental unit was immediately placed back on the market for re-rental after August 18, 2020, and that although the Tenant cooperated with showings, they were badmouthing the Landlord to prospective new tenants. The Agent stated that the rental unit was ultimately re-rented for October 1, 2020, for $2,000.00.

Although the Tenant acknowledged entering into negations to potentially stay in the rental unit at a reduced rate until a different unit became available, they denied ever withdrawing their initial intention to end the tenancy on August 31, 2020, at the end of their fixed term and stated that when the negotiations fell through and no agreement was ultimately reached for them to stay, they lawfully ended their tenancy on August 31, 2020, as initially agreed. Although he Tenant acknowledged that their text was not in the format required by the Act for ending their tenancy, they stated that there was no misunderstanding on the part of the Agent or Landlord that the July 1, 2020, text constituted the Tenant's notice to end tenancy and that they planned to vacate the rental unit as a result on August 31, 2020, at the end of their fixed term. The Agent did not disagree that it was clear the Tenant planned to vacate the rental unit on August 31, 2020, as a result of the July 1, 2020, text, but disagreed that this text constituted a valid notice to end tenancy as required by the Act.

The Tenant pointed to an email from the Landlord on August 10, 2020, with a response to the Tenant's request that rent for their current unit be reduced to $1,850.00, which stated that if the Tenant did not respond ASAP, the Landlord would continue showings of the rental unit. The Tenant stated that this demonstrates the Landlord's

understanding that their initial notice to end tenancy by text was valid and had not been withdrawn and that they were simply entering into negotiations to determine if it would be withdrawn. The Tenant stated that as they did not respond, the Landlord should have kept advertising the rental unit for rental. The Tenant denied badmouthing the Landlord as they stated that they wanted the rental unit to be re-rented as soon as possible, and stated that they cooperated fully with the 2-3 showings scheduled by the Landlord. As a result, the Tenant denied any responsibility for any lost September 2020 rent.

Despite agreeing that they knew that the Tenant planned to end their tenancy on August 31, 2020, as a result of the July 1, 2020, and their acknowledgement that they had started advertising the rental unit for re-rental as a result, the Agent argued that the Tenant had not in fact given proper notice to end their tenancy as required by the Act, and that in any event, they had withdrawn any notice to end tenancy given when they advised the Landlord in witting by email on August 6, 2020, that they planned to stay in the rental unit. As a result, the Agent stated that the Landlord stopped all efforts to rent the unit between August 6, 2020, and August 18, 2020. Further to this, the Agent pointed to an email in the documentary evidence before me sent to the Tenant on August 18, 2020, wherein they advised the Tenant that any previous notice to end tenancy given by them had been revoked when they stated they would be staying on August 6, 2020, and advising them that they could either give a new proper notice to end tenancy, or move at the end of the month but be responsible for any lost rent for September 2020, should the Landlord be unable to re-rent the unit for September. The Agent stated that the Tenant did not give a new proper notice to end tenancy and moved out on August 31, 2020.

As a result of the above, the Agent stated that the Tenant should therefore be responsible for the $2.050.00 in lost rent for September 2020, the amount that was due each month under the Tenant’s tenancy agreement, as they were unable to have the unit re-rented until October 1, 2020, despite their best efforts.

The Tenant reiterated their position that in their August 6, 2020, email they were only negotiation staying, and that they had never requested that the Landlord stop advertising the rental unit. The Tenant also pointed to an email in the documentary evidence regarding a showing on August 7, 2020, stating that the Agent had not been truthful in stating that they had made no efforts to rent the rental unit between August 6, 2020 and August 18, 2020. The Agent responded stating that that had mistakenly scheduled a showing for the Tenant’s rental unit on September 7, 2020, when they had actually intended to show a different unit.

Analysis

Based on the documentary evidence before me and the testimony of the parties at the hearing, I am satisfied that:

- A tenancy to which the Act applies existed between the parties;
- The terms of the tenancy agreement in the documentary evidence before me are accurate;
- The tenancy ended on August 31, 2020;
- Move in and move out condition inspections and reports were completed by the parties or their agents in accordance with the Act and the regulation; and
- The move in condition inspection report was provided to the tenants by the Landlord or their agent in accordance with the timeline set out in the regulation.

Although the Tenant stated that the Landlord had not provided them with a copy of the move out condition inspection report within the timeline set out under section 18(b) of the regulation, the Agent disagreed. For the following reasons, I am satisfied on a balance of probabilities that the Landlord complied with section 18(b) of the regulation and therefore section 35(4) of the Act which states that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. First, at the reconvened hearing the Agent provided affirmed testimony that they had sent copies of the move out condition inspection report to the tenants on September 9, 2020, which is the date the Application was filed. Second, the Agent provided affirmed testimony at the reconvened hearing that the tenants had taken pictures of the completed and signed condition inspection report on August 31, 2020, which the Tenant did not deny. Third, email correspondence in the documentary evidence before me, dated September 1, 2020, from an agent for the Landlord to the Tenant, refers to the condition inspection report and states that a portion of the condition inspection report is attached to the email. As a result, I am satisfied by the Agent, on a balance of probabilities, that the tenants were provided with a copy of the move out condition inspection repost in compliance with section 35(4) of the Act and section 18(b) of the regulation, despite the Tenant's unsupported testimony to the contrary.

Although the Tenant argued that the Landlord should not be entitled to retain $425.00 from the $1,025.00 security deposit as agreed to in writing on the move out condition inspection report, as upon further reflection the Tenant believes this to be unfair, I disagree. Section 38(4)(a) of the Act states that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

The move in condition inspection report lists the condition of the rental unit as good in all regards and the Tenant, as well as the other tenant listed in the tenancy agreement and the occupant A.G., indicated on the move in condition inspection report that they agreed that the report fairly represented the condition of the rental unit. The move in condition inspection report dated September 1, 2019, was signed by the Tenant, another person, and the Landlord. Based on the testimony of the parties at the hearing and the move in condition inspection report, I find as fact that the rental unit was in good condition and that no repairs were required at the start of the tenancy.

The move out condition inspection report states that there are hooks on the entry wall and trim, dents and scratches on the entry closet, scratches on the main door, marks on the dining room wall, main bathroom ceiling, and a damaged toilet seat. It also indicates that new paint is needed in the entryway and living room, that there are missing bulbs in a hallway or stairwell light fixture, and that the main bathroom requires cleaning. The box indicating that the tenants agree that the report fairly represents the condition of the rental unit at the end of the tenancy is checked, and the Tenant J.J. signed that they agree that $425.00 may be withheld from the security deposit by the Landlord. This section is signed, although no signature date is given. There is also a signature for both the Landlord and one of the tenants in the final portion of the form, under the move out section.

Section 21 of the regulation states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Although the Tenant appeared at the hearing and argued that the $425.00 amount agreed to on the move out condition inspection report is unreasonable because the damages referred to in the move out condition inspection report were actually wear and tear, the Tenant provided no corroboratory evidence of this, such as photographs of the rental unit at the time of the inspection which show the condition of the rental unit to be anything other than the condition noted in the move out condition inspection report. As a result, I am not satisfied that the Tenant has a preponderance of evidence to the contrary and find that the move out condition inspection report completed on August 31, 2020, accurately reflects the condition of the rental unit at the end of the tenancy.

As I am satisfied that there was damage to the rental unit and a lack of cleaning in at least one area of the rental unit, I am satisfied that the tenants, including this Tenant, had a liability or obligation to pay the Landlord for cleaning and repair costs to bring the

rental unit up to the standard set out in Residential Tenancy Policy Guideline #1 and section 37(2)(a) of the Act. As the parties agreed in writing on the move out condition inspection report that the amount required to do so was $425.00 and that $425.00 could therefore be withheld from the security deposit as a result, I find that the Landlord is entitled to withhold $425.00 from the security deposit pursuant to section 38(4)(a) of the Act. Further to this, I find that the Landlord was not in fact required to file an Application for Dispute Resolution seeking authorization to withhold this amount, as section 38(4)(a) of the Act allows for the withholding of amounts agreed to in writing from the security deposit, without the need for filing an Application for Dispute Resolution. However, as the Landlord did file an Application for Dispute Resolution seeking retention of this amount under section 38(4)(a), I have made the above noted decision and findings of fact in relation to that claim.

I will now turn to the Landlord's claim for lost September 2020 rent in the amount of $2,050.00. As stated above, I am satisfied that the terms of the tenancy agreement in the documentary evidence before me are correct, and as such, I find that rent in the amount of $2,050.00 was due on the first day of each month under the tenancy agreement. Although the Tenant argued that they gave notice on July 1, 2020, to end their tenancy on August 31, 2020, and therefore lawfully had the right under the Act to end their tenancy on that date, for the following reasons I disagree. First, section 44(1) of the Act states that a tenancy ends only if one or more of the criteria set out under section 44(1) applies, which includes the ending of a tenancy by a tenant, pursuant to section 45 of the Act. Further to this, section 44(3) of the Act specifically states that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Based on the above, and as the tenancy agreement does not contain a move out clause pursuant to section 44(1)(b) of the Act, and no arguments were made that sections 44(1)(c), (d), (e), (f), or (g) apply, I am satisfied that the Tenant was therefore required by section 44(1)(a)(i) and section 44(3) of the Act, to give proper written notice to end their tenancy in accordance with section 45 of the Act, if they wished to end their tenancy on or after August 31, 2020, the end date for their fixed term tenancy agreement.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the

month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Section 45(4) of the Act also states that a notice to end tenancy given under section 45 of the Act must comply with section 52 of the Act.

Section 52 of the Act states that in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, state the effective date of the notice, except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and when given by a landlord, be in the approved form.

Based on the above, I find that in order to end their tenancy on August 31, 2020, the Tenant, or the cotenant, were required to give written notice to the Landlord, on or before July 31, 2020, in accordance with section 52 of the Act. Although the Tenant texted an agent for the Landlord on July 1, 2020, indicating that they would not be renewing their lease, I find that this text does not meet the requirements set out under section 52 of the Act as it is not signed by either of the tenants under the tenancy agreement, does not contain the address of the rental unit, and does not state the effective date of the notice to end tenancy. As a result, I find that neither the Tenant, nor their cotenant, gave proper notice to end their tenancy under the Act for August 31, 2020.

Further to this, I find that the Tenant complicated the matter when they engaged in discussions with the Landlord and/or their agents, about continuing their tenancy, even going as far as to explicitly state in an email on August 6, 2020, “We will stay in our current place with the intention of waiting to hear if a pet friendly 1 bedroom becomes available”. Although there was a disagreement between the parties about whether the declaration in the August 6, 2020, email regarding staying in the rental unit was contingent upon the Landlord’s agreement to a specific rent reduction, or separate from the Tenant’s request for a rent reduction, I find that as a result of this email, and other written communications between the parties, that it was not clear to the Landlord or their agents until August 18, 2020, when the Tenant indicated that they were in fact going to vacate the rental unit on August 31, 2020, as originally planned, that the tenancy would be ending on August 31, 2020.

Ultimately I find that the tenants, including the Tenant named in this Application, never gave proper notice to end the tenancy in accordance with the Act, and therefore did not have a right under the Act to end their tenancy on August 31, 2020. Further to this, I find

that the Tenant further confused the matter of whether or not they were going to be leaving the rental unit on August 31, 2020, regardless of whether they had given proper notice to do so under the Act or not, when they sent the August 6, 2020, email stating that they would stay in the rental unit. As a result, I find that the Tenant breached sections 44 and 45 of the Act when they vacated the rental unit on August 31, 2020, without having first given proper notice to do so in accordance with section 44, 45, and 52 of the Act, as set out above.

Based on the testimony of the Agent at the hearing, the email correspondence submitted regarding showings of the rental unit, and the document submitted by the Landlord showing that the rental unit had been listed for re-rental, I am satisfied that the Landlord acted reasonably to mitigate their loss by attempting to have the rental unit re-rented as quickly as possible, and at a reasonably economic rate. Based on the new tenancy agreement entered into with the new tenant for the rental unit, I am also satisfied that the rental unit was not re-rented until October 1, 2020, resulting in a loss of September 2020 rent by the Landlord. As rent under the Tenant's tenancy agreement was $2,050.00 per month and I have already found that the Tenant was not entitled under the Act to end their tenancy on August 31, 2020, I therefore find that the Tenant, was required to pay $2,050.00 in rent for September 2020. As a result, I grant the Landlord's claim for $2,050.00 in lost rent for September 2020, pursuant to sections 7 and 67 of the Act, and the four part test for awarding monetary compensation set out in Policy Guideline #16.

As the Landlord was successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I also authorize the Landlord to retain the remaining $600.00 balance of the security deposit ($1,025.00, less the $425.00 retained pursuant to section 38(4)(a) of the Act), towards the outstanding amounts owed. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of $1,550.00; $2,050.00 for September 2020 lost rent, plus $100.00 for recovery of the $100.00 filing fee, less the $600.00 remaining balance of the security deposit, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **$1,550.00**. The Landlord is provided with this Order in the above terms and should the Tenant fail to pay this amount as ordered, the Tenant may be served with this

Order, which may be filed in the Small Claims Division of the Provincial Court by the Landlord and enforced as an Order of that Court.

Pursuant to sections 38(4)(a) and 72(2)(b) of the Act, the Landlord is entitled to retain the $1,025.00 security deposit in full.

Although this decision has been rendered more than 30 days after the close of the proceedings, and I apologize for the delay, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated Monetary Order, nor my authority to render this decision and grant the Monetary Order, are affected by the fact that this decision was rendered more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: June 2, 2021

Residential Tenancy Branch