



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1NE COLLECTIVE REALTY INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL, MNSDS-DR

### **Introduction**

This hearing dealt with the Landlord's August 12, 2024, and the Tenants' August 14, 2024, Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

The Landlord applied for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenants applied for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Tenants were deemed served on August 25, 2024, by pre-agreed mail in accordance with section 89(1) of the Act, the third day after the email was sent.

## **Service of Evidence**

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Tenants did not serve the Landlord with any evidence.

## **Preliminary Issue – Amendment**

At the outset of the hearing, Landlord representative J.T. indicated that the Landlord is seeking to amend their application to reduce the amount claimed to the current value of the Tenants' security deposit including interest.

I find that the Landlord's amendment request does not prejudice the claim against the Tenants and therefore allow the amendment request accordingly.

## **Issues to be Decided**

1. Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?
2. Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?
3. Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?
4. Is the Landlord entitled to authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act?
5. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenants under section 72 of the Act?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the Landlord's representative, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 8, 2024, with a monthly rent of \$2,700.00, due on the first day of the month, with a security deposit in the amount of \$1,350.00.

According to Landlord representative J.T., following receipt of an urgent email from the Tenants on August 1, 2024, advising him that they could not move in due to a family emergency, he arranged to meet on August 6, 2024, to return the keys to the unit. The Landlord rerented the unit on August 20, 2024. The Landlord is seeking 20 days of lost rent in the amount of \$1,741.94 in lost rental income. Copies of the email to end tenancy, text messages between the Tenants and the Landlord's representative as well as the new tenancy agreement effective August 20, 2024, were submitted as evidence.

J.T. testified that the Tenants' damaged some drywall, paint and a door stop during the tenancy and also failed to clean the carpets. The Landlord is therefore seeking \$500.00 in compensation for the damages. He stated that no compensation is sought for the carpet cleaning. J.T. testified that the compensation requested for damages to the drywall and paint are based on a verbal quote from a painter. J.T. testified that both move-in and move-out inspections were completed, and that a copy of the move-in report was provided to the Tenants. He stated, however, the Tenants only participated in the move-in inspection and that although the Tenants were offered a move out inspection date of August 7, 2024, they did not attend and made it clear to him that they would not be participating on any other dates and did not provide a forwarding address. Copies of pictures of the unit, text messages between the Tenants and Landlord representative as well as the move-in inspection report were submitted as evidence.

## **Analysis**

### **Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?**

Section 45(2) of the Act reads:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

**(a) is not earlier than one month after the date the landlord receives the notice,**

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

As the Tenants gave the Landlord notice to end the fixed term tenancy with less than one month's notice, the Tenants are in breach of section 45(2)(a) of the Act. I further

find that the Landlord representative has provided undisputed testimony that the Landlord did try to re-rent the unit as soon as possible but were not able to secure a new tenant until August 20, 2024.

Residential Tenancy Policy Guideline PG 3 [Claims for Rent and Damages for Loss of Rent] indicates that the awards to the landlord in cases for loss of rent damages.

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

The Tenants' breach of the tenancy agreement and the Act has led to a loss of rent for the month of August 2024 for the Landlord. To put the Landlord in the same position as if the Tenants had not breached the agreement, I award the Landlord compensation for 19 days of lost rental revenue for the period August 1 to 19, 2024 (\$1,654.90), in the amount of **\$1,363.44**, the current value of the Tenants' security deposit including interest, as per the Landlord's amendment request noted above.

**Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?**

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the undisputed testimony of the Landlord's representative, and on a balance of probabilities, I find that the Landlord has not established a claim for damage to the rental unit or common areas as the Landlord has failed to provide a copy of the move-out inspection report to provide a written account of the condition of the unit at the time the tenancy ended or an invoice to substantiate the value of the damage claimed, the lack of move-out condition report notwithstanding.

Therefore, I find the Landlord is not entitled to a monetary award for damage to the rental unit or common areas under sections 32 and 67 of the Act and dismiss this part of the Landlord's claim without leave to reapply.

**Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?**

Section 45(2)(b) of the Act reads:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

**(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy,** and

(c) 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.

I find the Tenants gave notice to end the fixed term tenancy on August 1, 2024, with an effective date of August 1, 2024.

A fixed term tenancy cannot end on any date earlier than the date specified on the tenancy agreement. There are 3 exceptions to this:

- Both parties agree in writing using a mutual agreement to end tenancy;
- The tenant is fleeing from family or household violence or the tenant has been assessed as requiring long-term care or has been accepted into a long-term care facility;
- As ordered by the arbitrator.

I find that no evidence or testimony has been provided by the Tenants to indicate that one of the three exceptions applies and therefore the Tenants are in breach of section 45(2)(b) of the Act.

As noted above, the Landlord's representative has provided undisputed testimony that the Landlord sought to re-rent the unit as soon as possible and was able to secure a new tenant on August 20, 2024.

As the Landlord has already been made whole for unpaid rent for the period August 1 to 19, 2024, based on the award granted above, I find that the Landlord is not entitled to additional compensation for the Tenants breach of section 45 of the Act as no further

monetary loss was incurred and dismiss this part of the Landlord's claim without leave to reapply.

**Is the Landlord entitled to authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act?**

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As no forwarding address was provided and the Landlord made their application on August 12, 2024, I find that the Landlord did make their application within 15 days of the tenancy ending/the forwarding address being provided.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find, based on the evidence submitted, the undisputed testimony provided and on a balance of probabilities that the Landlord conducted a move-in inspection with the Tenants and a move-out inspection without the Tenants after having offered an inspection date to the Tenants on one occasion and having received an indication from them that they had no intention to attend an inspection at any time following the end of the tenancy, and provided them with copies of both reports as required under the Act.

Under section 38(4) of the Act, I allow the Landlord to retain the Tenants' security deposit in the amount of \$1,363.44, including interest, in full satisfaction of the monetary award and the Tenants' application for a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act is dismissed without leave to reapply accordingly.

**Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenants under section 72 of the Act?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act, however, as the Landlord is not seeking compensation beyond the value of the Tenants security deposit including interest and a monetary award has already been granted in this amount, the cost of the filing fee will not be added to the Landlord's total compensation.

## Conclusion

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is granted.

The Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed without leave to reapply.

The Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed without leave to reapply.

The Landlord's application for authorization to retain all or a portion of the Tenants' security deposit in full satisfaction of the Monetary Order requested under section 38 of the Act is granted.

The Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is granted.

The Tenants' application for a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act is dismissed without leave to reapply.

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

Dated: November 18, 2024

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Residential Tenancy Branch