



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP DEL MAR PROPERTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDCL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied 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.

The Agent for the Landlord stated that on September 19, 2019 the Dispute Resolution Package and the evidence the Landlord to the Residential Tenancy Branch in September of 2019 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Landlord submitted an Amendment to the Application for Dispute Resolution, in which the Landlord's service address was amended. The Landlord stated that the Amendment to the Application for Dispute Resolution was sent to the Tenant, via registered mail, on December 17, 2019. The Tenant acknowledged receipt of this document.

On December 26, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenant a second time, as it duplicates evidence previously submitted to the Residential Tenancy Branch.

On January 06, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was faxed to the Tenant

on January 06, 2020. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On December 30, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on December 30, 2019. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to collect liquidated damages and to keep all or part of the security deposit?

#### Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the parties entered into a signed tenancy agreement, which was submitted as evidence;
- the tenancy agreement indicates that the tenancy is a fixed term tenancy, which will continue as a month to month tenancy at the end of the fixed term;
- the tenancy agreement does not declare when the fixed term will end;
- clause 5 in the tenancy agreement requires the Tenant to pay \$2,200.00 if the Tenant vacates the rental unit prior to the end of the fixed term of the tenancy;
- the agreement stipulates that the tenancy will begin on April 01, 2019;
- the Tenant agreed to pay monthly rent of \$2,200.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,100.00, which has not been repaid;
- on August 01, 2019 the Tenant provided the Landlord with written notice of his intent to end the tenancy at the end of August of 2019;
- the rental unit was vacated on August 27, 2019; and
- the Tenant provided a forwarding address, via email, on August 27, 2019.

The Agent for the Landlord stated that the parties discussed the fixed term of the tenancy agreement and they agreed it would be for one year. She stated that the fixed term of the tenancy was, mistakenly, not entered on the tenancy agreement.

The Tenant stated that they discussed a fixed term of the tenancy agreement, but they did not agree on the duration of the fixed term.

The Landlord is seeking compensation, in the amount of \$550.00, for liquidated damages.

### Analysis

On the basis of the undisputed evidence, I find that the parties entered into a tenancy agreement which has a clause that requires the Tenant to pay \$2,200.00 if the Tenant vacates the rental unit prior to the end of the fixed term of the tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the parties agreed upon an end date for the fixed term of the tenancy. In reaching this conclusion, I was influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the parties agreed there would be a fixed term of one year. Conversely, the tenancy agreement submitted in evidence, which does not declare the end date of the fixed term of the tenancy, corroborates the Tenant's testimony that the parties did not agree on the duration of the fixed term of the tenancy.

On the basis of the undisputed evidence, I find that the Tenant gave notice to end this tenancy and that the tenancy ended in August of 2019.

As the Landlord submitted insufficient evidence to establish the parties agreed upon an end date for the fixed term of the tenancy, I am unable to conclude that the Tenant ended the tenancy prior to the end of the fixed term of the tenancy. I therefore find that the Landlord has failed to establish the right to the liquidated damages referred to in clause 5 of the tenancy agreement. The Landlord's application for liquidated damages is dismissed.

As the Landlord has failed to establish the right to keep any portion of the Tenant's security deposit, I dismiss the Landlord's claim to retain any portion of the deposit and I order it returned to the Tenant.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution and I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I grant the Tenant a monetary Order for \$1,100.00, which represents the return of his security deposit. 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 *Act*.

Dated: January 11, 2020

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Residential Tenancy Branch