



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAISIAH INVESTMENT CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit, as well as compensation for charges related to stop payments on her rent cheques. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord confirmed receipt of all of the tenant's evidence except for one document: a letter dated March 28, 2013. The tenant was of the belief that she provided the landlord with all of the same documents she had given to the Residential Tenancy Branch although she also indicated that it was possible that document was not included in the evidence package provided to the landlord. The tenant submitted that even if the letter was not in the evidence package given to the landlord the letter had been served upon the landlord in March 2013 when she gave notice to end the tenancy. The landlord claimed that the subject letter was not received in March 2013 either. In the circumstances before me, I determined it appropriate to describe the content of the letter to the landlord and provide him the opportunity to respond to the issue of receiving the letter in March 2013 at the appropriate time during the hearing.

### Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit and pet deposit?
2. Is the tenant entitled to compensation for place a stop payment on her rent cheques?

### Background and Evidence

The tenancy commenced October 15, 2009 and after September 30, 2010 the tenancy continued on a month to month basis. The tenant paid a security deposit of \$575.00

and a pet damage deposit of \$575.00. The tenant had been paying rent of \$1,100.00 plus parking of \$35.00 throughout the tenancy until April 2013. In April 2013 the tenant paid rent of \$1,100.00 but did not pay for parking because the tenant stopped using the parking lot on the property. The tenant moved out of the rental unit on April 20, 2013 but left the keys and allowed the landlord unrestricted access to the rental unit as of April 21, 2013 so the landlord could commence renovations in the unit and in exchange the landlord agreed to waive the tenant's cleaning obligations.

The tenant submitted that she provided the landlord with her forwarding address multiple times: in a letter dated March 28, 2013 in which she gave notice to end the tenancy; in an email dated April 20, 2013; and, finally on the Application for Dispute Resolution she filed May 23, 2013. Despite giving the landlord her forwarding address multiple times the landlord has still not returned the deposits to her.

The landlord testified that a forwarding address had not been provided prior to the tenant filing an Application for Dispute Resolution. The landlord denied receiving the March 28, 2013 letter and denied the forwarding address was in an email dated April 20, 2013.

The tenant stated that she deposited the March 28, 2013 letter in the landlord's mail slot at the building where rent cheques and other documents are given to the landlord. The landlord's agent appearing at the hearing confirmed that it was the resident manager's job to retrieve documents from the mail slot and that he was not the resident manager at that time.

The landlord's agent stated that the resident manager was unable or was having difficulty fulfilling all of her duties as the resident manager due to other commitments and that she quit the position in the latter part of April 2013. The landlord's agent stated that a letter dated March 28, 2013 was not in the tenant's file so the agent has taken the position that the letter was not given by the tenant.

The tenant responded by stating that the landlord surely received her notice to end tenancy dated March 28, 2013 (and the forwarding address) as the rent cheque for April 2013 accompanied the letter and the rent cheque was deposited.

When I asked the landlord's agent how and when he found out the tenant was going to move out he responded by stating he found out during a conversation with the resident manager in early April 2013. The landlord was asked if the former resident manager was available to testify during the hearing. The landlord's agent stated that he had not

approached the resident manager about testifying at today's hearing. Nor did the landlord offer to call the former resident manager during the hearing.

With respect to the email of April 20, 2013 I pointed out to the landlord that he had actually responded to the April 20, 2013 email by confirming that the deposits would be in the mail for the tenant shortly. The landlord responded by stating that he had not seen the forwarding address until I pointed it out to him during the hearing because the content of the tenant's email was insufficiently spaced. Below, I have reproduced how the tenant's email appeared (names and address have been omitted to protect privacy):

Hi [Landlord]

Here is my forwarding address for my security deposits. Pet deposit was \$575.00 & damage deposit \$575.00

[street address]

[city and province]

[postal code]

Will that be in the mail shortly.

Thanks,

[Tenant]

As an alternative position, the landlord suggested that the tenant extinguished her right to return of the deposits because she did not participate in a move-out inspection. The tenant acknowledged there was email communication regarding completion of an inspection however, the landlord never proposed a date and time to her. I noted that on April 21, 2013 there was an exchange of emails regarding an inspection. Both parties indicated they could be at the unit with 30 minutes of notice. When I asked the landlord for evidence that the tenant was given at least two opportunities to participate in a condition inspection report, as required under the Act and Residential Tenancy Regulations, the landlord stated that he left it up to the tenant to let him know when she wanted to do the inspection.

Finally, the tenant requested compensation of \$12.50 for putting a stop payment on three rent cheques. The landlord was agreeable to compensating the tenant this amount.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the Application before me.

Section 38 of the Act provides for the return of security deposits and pet deposits. It provides that unless a tenant has extinguished the right to return of a deposit or the tenant lawfully authorized deductions from a deposit, a landlord is required to either return the security deposit and/or pet deposit to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with the above requirement, section 38(6) requires that the landlord must pay the tenant double the security deposit and pet deposit.

I have considered whether the tenant has extinguished her right to the security deposit or pet deposit for the reason presented by the landlord. A tenant extinguishes their right to return of a deposit if the tenant fails to participate in an inspection of the unit with the landlord at the beginning or end of the tenancy despite being provided at least two opportunities to do so by the landlord. Section 17 of the Residential Tenancy Regulations provide for the manner in which the landlord is to meet its burden to offer two opportunities to the tenant. Section 17(1) states: "*A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times*". Subsection 17(2) deals with circumstances where a tenant is unavailable for the dates or times proposed under section 17(1).

In this case, I find the landlord did not propose any specific date or time to the tenant for purposes of conducting a move-out inspection based upon the emails presented to me and the landlord's testimony during the hearing. Thus, I find it was the landlord that violated the Act by failing to offer the tenant at least two opportunities to participate in a move-out inspection. Accordingly, I reject the landlord's submission that the tenant extinguished her right to the deposits.

With respect to a forwarding address, I find, on the balance of probabilities, that the tenant did supply her forwarding address to the landlord by way of the letter dated March 28, 2013. The tenant provided unequivocal submissions that the letter was deposited in the landlord's mail slot on March 28, 2013 along with her rent cheque. The landlord's agent acknowledged that the former resident manager's job included retrieving documents and cheques from the mail slot and that the resident manager had communicated to the landlord that the tenant was moving out. I find the landlord's submission that the March 28, 2013 letter was not in the tenant's file to be insufficient to

contradict the tenant's submissions that she deposited it in the landlord's mail slot when I consider the landlord's testimony that there were issues with the resident manager fulfilling all of her duties and in the absence of any testimony of the former resident manager.

Of further consideration is the landlord's denial that a forwarding address came by way of an email dated April 20, 2013 despite clear documentary evidence showing that the landlord had not only received but responded to the email assuring the tenant she would send the deposits shortly. The landlord's denial, I found, was damaging to his credibility.

Since the letter of March 28, 2013 was deposited in the landlord's mail slot, it is deemed to be received three days later pursuant to section 90 of the Act. Therefore, I consider the letter of March 28, 2013 to be received by the landlord March 31, 2013.

For the above reasons, I conclude that the landlord, which includes any of the landlord's agents or resident managers, has had the tenant's forwarding address since March 31, 2013 for a tenancy that ended in April 2013 and that the landlord has violated the Act by not returning the security deposit or pet deposit to the tenant. Therefore, I find the landlord must pay the tenant double the deposits pursuant to section 38(6) of the Act and I grant the tenant's request for such.

As the landlord was agreeable to compensating the tenant \$12.50 for the stop payment of rent cheques I award the tenant that amount.

Finally, I award the tenant the \$50.00 filing fee paid for this Application.

In light of the above, the tenant is provided a Monetary Order calculated as follows:

Double security deposit (\$575.00 x 2)	\$ 1,150.00
Double pet damage deposit (\$575.00 x 2)	1,150.00
Compensation for stopped rent cheques	12.50
Filing fee	<u>50.00</u>
Monetary Order	\$ 2,362.50

The tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claim) to enforce as necessary.

Conclusion

The tenant was successful in her Application and has been provided a Monetary Order in the sum of \$2,362.50 to serve and enforce as necessary.

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: September 20, 2013

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Residential Tenancy Branch

