



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAISIAH INVESTMENT CORPORATION  
and [tenane suppressed to protect privac

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit; and
- recovery of the filing fee paid for this application from the landlord.

No one appeared for the landlords at the teleconference hearing which lasted 26 minutes. The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As no one appeared at the hearing for the landlords, service of the tenant's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") (collectively the "application hearing package") were considered. In considering the matter of service, the background and evidence are relevant considerations.

### Background and Evidence

The tenant's evidence established that the tenant entered into a one year fixed term tenancy starting on September 1, 2014 and ending on August 31, 2015. The tenancy agreement required the tenant to vacate the rental unit at the end of the fixed term tenancy. The rent was \$650.00 due on the first day of each month. The tenant provided a security deposit in the amount of \$272.50 on April 6, 2014.

The tenant testified that she left the rental unit on or before August 31, 2015 at the end of the fixed term tenancy.

The tenant testified that the address provided for the corporate landlord on the tenancy agreement does not exist. The tenant testified that she discovered the corporate landlord's address did not exist when she tried to serve an earlier application by registered mail. The tenant testified that the registered mailing was returned by Canada Post with the explanation that the "address does not exist".

The tenant testified that landlord J.A. (the "landlord"), who is named in the style of cause, operates his business under the corporate name. The tenant testified that another building manager assisted the landlord with his duties except for handling the security deposits. The tenant was told by the building manager that only the landlord handled the deposits.

The tenant testified that she sent the landlord several emails asking for an address for service to send her forwarding address and she received no response. The email address had been used by the tenant to communicate with the landlord in the recent past. The tenant pressed the building manager for the landlord's address without success. The building manager encouraged the tenant to keep emailing the landlord. The tenant asked the building manager for his last name which he refused

As the tenant persisted in asking for the landlord's address from the building manager, the building manager told her to just text him (the building manager) her new address. The tenant texted her forwarding address to the building manager on October 29, 2015. The tenant supplied a copy of the text exchanges between her and the building manager.

On January 4, 2017, the tenant conducted a registry search of the corporate name shown in the style of cause on January 4, 2017. The tenant submitted the corporate registry search results showing an address for the registered office. The address given for the registered office for the corporation is the same as that given for the records office and the director. The landlord is listed as the director of the corporation. The tenant was not able to confirm the nature of the business that was carried on at the registered office.

The tenant testified that she served the landlord with a copy of her Application and the Notice of Hearing by registered mail on January 10, 2017. The tenant testified that she sent the registered mailing to the address shown on the corporate registry search for the corporate landlord. The tenant provided the Canada Post receipt showing the tracking number to confirm the registered the mailing. The tenant testified that the registered mailing was returned unclaimed.

The tenant is seeking a monetary order for double the security deposit in the amount of \$545.00.

The tenant is also seeking recovery of the \$100.00 filing fee for their Application from the landlord.

#### Analysis – Service of Tenant’s Application

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 89(1)(c) of the *Residential Tenancy Act* allows for service of the application for dispute resolution to be sent by registered mail to the address where the landlord carries on business as a landlord.

Policy Guideline #12 explains the service provisions under the *Act* including serving documents on an incorporated company or society. Pursuant to the policy guideline, the Legislation permits a tenant to serve a document on a landlord at the address at which the landlord carries on business as a landlord. The tenant, however, will need to determine the address at which the landlord carries on business as a landlord before serving. The policy guideline states the following:

*Special attention should be paid to the fact that the tenancy legislation service requirements differ from provisions in the Business Corporations Act or the Society Act. The registered office of a landlord that is an incorporated company or a society, such as a lawyer’s office or accountant’s office, may not necessarily be the address at which the landlord carries on business as a landlord. When these are different, service on the registered office may not be adequate service for the purposes of the Legislation.*

Section 71(2)(c) of the *Act* provides the arbitrator with the authority to order that a document not served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of the *Act*.

I find that the tenant sent her application hearing package to the landlord’s corporate address on January 10, 2017 by registered mail. Even if the tenant is not certain about what business is carried out at the corporate address, I deem that service on the landlord by registered mail to the registered corporate office is sufficient service for purposes of the *Act*, pursuant to section 71(2)(c). In making this determination, I have taken all of the circumstances into account including:

- the landlord provided an insufficient address for service;
- the landlord is non-responsive to the tenant's inquiries; and
- the landlord's address has not been passed onto the tenant.

For the reasons stated above, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed sufficiently served with the tenant's application hearing package on January 15, 2017, the fifth day after the registered mailing.

#### Issues to be Decided

- Is the tenant entitled to a monetary order for the return of double the security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

#### Analysis – Return of Security Deposit

Based on the undisputed documentary evidence and testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

As the landlord was served with the application hearing package and did not attend the hearing, I consider this matter to be unopposed by the landlord. As a result, I find the tenant's application is fully successful as I find the evidence supports the tenant's claim and is reasonable.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

The following provisions of Policy Guideline #17 of the Residential Tenancy Branch's Policy Guidelines are relevant to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*

Section 71(2)(b) of the *Act* provides the arbitrator with the authority to order that a document has been sufficiently served for purposes of the *Act* on a date specified by the Arbitrator.

I find that the tenant sent her forwarding address by *text* which does not comply with the requirement that the information be sent in writing pursuant to section 38(1) of the *Act*. Relying upon section 71(2)(b) of the *Act*, I find, however, that the landlord has been deemed sufficiently served with the tenant's forwarding address by text on October 29, 2015. In making this determination I have taken into consideration a number of factors as follows:

- the difficulties that arose for the tenant in tracking down an address for service for the landlord after the landlord did not provide a valid address on the tenancy agreement;
- the fact that the landlord's address was not being passed on to the tenant and the landlord was non responsive to the tenant's emails;
- the fact that the building manager told the tenant to send her forwarding address to him by text when the tenant pressed the building manager for an address for service for the landlord; and
- the property manager's texts give the impression that he would pass the forwarding address onto the landlord.

I find that the tenancy ended on August 31, 2015. Therefore, I find that the triggering event is October 29, 2015, the date the tenant texted her forwarding address to the landlord. Therefore, I find that the landlord had 15 days after October 29, 2015 to return the security deposit or file an Application for Dispute Resolution to make a claim to retain the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant testified that she has not authorized the landlord to retain

any portion of the security deposit. Under these circumstances, and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable. Therefore, I find that the tenant is entitled to a monetary award in the amount of \$545.00 for double the tenant's security deposit.

As the tenant's application is successful, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Based upon the foregoing, I find that the tenant is entitled to a total monetary order in the amount of \$645.00.

Pursuant to s.71(1)(a) of the *Act*, I authorize the tenant to serve the landlord with a copy of this decision and the monetary Order by registered mail to the address of the corporate registered office.

#### Conclusion

I ORDER that the landlord has been deemed sufficiently served with the tenant's forwarding address on October 29, 2015 by text sent to the property manager.

Pursuant to section 67 of the *Act*, the tenant is granted a monetary Order in the amount of \$645.00 for double the security deposit and the filing fee which must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I ORDER that the tenant may serve a copy of this decision and monetary order on the corporate landlord by registered mail to the address of the corporate registered office.

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: March 6, 2017

---

Residential Tenancy Branch