



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EL LOBO DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

### **Dispute Codes:**

MNSD-DR

### **Introduction:**

This Application for Dispute Resolution was the subject of a direct request dispute resolution proceeding on January 13, 2023. Subsequent to that proceeding a Residential Tenancy Branch Adjudicator granted the Tenant a monetary Order for \$2,500.00.

The Landlord filed an Application for Review Consideration of the January 13, 2023 decision and a Residential Tenancy Branch Arbitrator concluded that a new hearing should be convened.

This hearing was convened to consider the merits of the Tenant's application for the return of the security deposit.

In the Application for Review Consideration decision, the Arbitrator directed the Landlord to serve the Tenant with the Review Consideration Decision and notice of this hearing to the Tenant. The Tenant stated that these documents were sent to her, by registered mail, on February 02, 2023. She stated that she received the documents on February 06, 2023.

In the Application for Review Consideration Decision, the Arbitrator directed the Landlord to serve the Tenant with their current service address. The Tenant stated that she received a business card with the Review Consideration Decision, which she concluded was the service address for the Landlord. The address on the business card

is the same as the return address on the envelope the Landlord, or an agent for the Landlord, mailed to the Tenant on February 06, 2023. On the basis of these documents, I find it reasonable for the Tenant to use the address on the business card and the return address on the envelope as a new service address for the Landlord.

In the Application for Review Consideration Decision, the Arbitrator directed the Tenant to re-serve the Landlord with the original Dispute Resolution Package and the evidence the Tenant originally submitted to the Residential Tenancy Branch. The Tenant stated that she re-served these documents by sending them to the new service address, via registered mail, on February 09, 2023. The Tenant submitted documentation from Canada Post that shows a package was sent on February 09, 2023 and delivered on February 13, 2023. On the basis of this evidence, I find that these documents were served to the new service address provided by the Landlord, or the Landlord's agent, on February 02, 2023.

I find that the original Dispute Resolution Package and the evidence the Tenant originally submitted to the Residential Tenancy Branch have been served to the Landlord in accordance with section 89 of the *Act*. The hearing therefore proceeded in the absence of the Landlord and the evidence was accepted as evidence for these proceedings.

On February 22, 2023 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the new service address for the Landlord, via registered mail, on February 21, 2023. These documents are deemed received on February 26, 2023, pursuant to section 90 of the *Act*.

Residential Tenancy Branch Rules of Procedure stipulate that an Applicant's evidence must be received by the Respondent not less than 14 days before the hearing. As the Tenant's evidence package of February 22, 2023 was not mailed to the Landlord until the 14-day deadline had passed, I find that this evidence package was not served in accordance with the timeline established by the Rules of Procedure. As such, this evidence package was not accepted as evidence for these proceedings.

I note that I will be considering documents related to service that were submitted to the Residential Tenancy Branch on February 22, 2023, as those documents are not considered evidence for the proceedings. Rather, they are documents that establish service, which are not subject to the deadlines established by the Residential Tenancy Branch Rules of Procedure.

The Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. She affirmed she would not record any portion of these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of the security deposit?

Background and Evidence:

The Tenant stated that:

- the tenancy began on February 01, 2021;
- the Landlord did not schedule a condition inspection report at the start of the tenancy;
- a security deposit of \$1,250.00 was paid;
- this tenancy ended on December 31, 2021;
- the Landlord did not schedule a condition inspection report at the end of the tenancy;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- on August 25, 2022, she sent her forwarding address, via registered mail, to the service address for the Landlord that is recorded on the tenancy agreement.

It is clear from the Review Consideration Decision that the Landlord declared a new service address was provided to the Tenant when the parties signed a mutual agreement to end the tenancy.

The Tenant stated that she no longer has a copy of the mutual agreement to end the tenancy and the Landlord did not provide her with one as evidence for these proceedings. She stated that she does not know if a new service address was provided on the mutual agreement to end tenancy but the Landlord did not inform her that there was new service address when the mutual agreement was signed.

Analysis:

On the basis of the undisputed evidence, I find that this tenancy began on February 01, 2021, that it ended on December 31, 2021, and that the Tenant paid a security deposit of \$1,250.00.

On the basis of the undisputed testimony of the Tenant and Canada Post documentation submitted in evidence, I find that on August 25, 2022, the Tenant sent her forwarding address to the Landlord's service address cited on the tenancy agreement. The Canada Post website shows that this package was signed for by an individual with the initials "SJ". The Tenant does not know the identity of the individual who signed for the package.

On the basis of the Review Consideration Decision, I find it is reasonable to conclude that on August 25, 2022 the Tenant sent the forwarding address to an old service address for the Landlord and that the Landlord did not receive the forwarding address that was mailed on that date.

Section 39 of the *Act* stipulates that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished. I find that the Landlord does not have the right to retain the security deposit nor has the Tenant extinguished her right to claim against it, pursuant to section 39 of the *Act*, because on August 25, 2022 she sent her forwarding address to the Landlord's service address cited on the tenancy agreement.

I find there is insufficient evidence to establish that the Landlord properly informed the Tenant that there was a new service address for the Landlord. Even if I accepted that a new service address was written on the mutual agreement to end the tenancy, I find there is no evidence to refute the Tenant's submission that this new address was not

brought to her attention. I therefore find that there was no reasonable expectation that the Tenant would have realized the Landlord had a new service address and the Tenant should not be penalized for sending her forwarding address to the service address listed on the tenancy agreement.

On the basis of the undisputed testimony of the Tenant, I find that the Tenant sent her forwarding address to the Landlord again on February 09, 2023, when she sent it to the new service address that the Landlord, or an agent for the Landlord, sent to her on February 02, 2023. On the basis of the Canada Post documentation, I find that on February 13, 2023 the Tenant's forwarding address was received at the new service address provided by the Landlord or an agent for the Landlord on February 02, 2023.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As the Landlord and/or the Landlord's agent received the forwarding address on February 13, 2023, I find that the Landlord had to either return the deposit or file an Application for Dispute Resolution claiming against it by February 28, 2023. As there is no evidence that the Landlord has returned the deposit or filed an Application for Dispute Resolution claiming against it, I find that the Landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit, which is \$2,500.00.

#### Conclusion:

As I have found that the Tenant has established a monetary claim of \$2,500.00, I find that the monetary Order granted to the Tenant on January 13, 2023 remains in full force and effect.

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 03, 2023

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Residential Tenancy Branch