



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, O

Introduction

This matter dealt with an application by the Tenant to recover an overpayment of rent. The Tenant said he served the Landlord with his application and Notice of Hearing by registered mail on March 3, 2011. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the documentary and oral evidence of the Tenant, I find that the Landlord was properly served with the Tenant's hearing package and the hearing proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Is the Tenant entitled to recover an overpayment of rent?

Background and Evidence

This tenancy started on or about February 1, 2011. Rent is \$375.00 per month payable in advance on the 1st day of each month. The rental unit is a room on the first floor of the rental property. The Tenant shared bathroom and kitchen facilities with two other tenants on that floor. The Landlord resides on the upper floor of the rental property.

The Tenant said he receives a shelter allowance from the Ministry which he paid to the Landlord for February 2011 rent. However, approximately 2 days later the Tenant said his Worker re-admitted him to the psychiatric ward of the hospital where he resided until approximately a week ago. The Tenant said that during that time he was allowed to leave the hospital during the day and discovered that at the end of February 2011 the Landlord had changed the lock to his room. The Tenant said he also discovered that the Landlord had directed the Ministry to pay the Tenant's shelter allowance for March 2011 directly to the Landlord (without his consent). Consequently, the Tenant sought the return of his March 2011 rent payment.

Analysis

The Tenant claimed on his application and in his oral evidence at the hearing that the Landlord "defrauded the government" of his shelter allowance for the month of March 2011. However, the Tenant provided no documentary evidence from the Ministry to

support this very serious allegation. Consequently, the Tenant's application in this matter is dismissed with leave to reapply upon providing sufficient particulars of the alleged fraud.

Conclusion

The Tenant's application is dismissed with 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: March 31, 2011.

Residential Tenancy Branch