



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2324

Appeal PA-040164-1

Ontario Rental Housing Tribunal



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BACKGROUND:

The appellant, as a tenant, applied to the Ontario Rental Housing Tribunal (the Tribunal) for an order finding that his landlord failed to meet the landlord's maintenance obligations under the *Tenant Protection Act, 1997* or failed to comply with health, safety, housing or maintenance standards. The application was heard in July 2002.

The Tribunal Member hearing the application issued an Order under Section 34 of the *Tenant Protection Act* and determined that, among other things:

1. The Tenant testified that the problems went back to when he moved in. However, the Landlord produced a document with the Tenant's signature on it **dated just after he moved in** which stated that the unit was satisfactory and acceptable.

[emphasis added]

According to the appellant, he has resided at the address in question since September 1, 2000, and he testified to this at the Tribunal hearing.

NATURE OF THE APPEAL:

The Tribunal received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from the appellant:

...a copy of a document with my signature on it dated September 01, 2000, September 02, 2000 or September..., 2000 with a statement that the unit was satisfactory and acceptable.

In response to his request under the *Act*, the Tribunal provided the appellant with copies of two documents, both entitled "Tenant Acceptance Agreement" and both dated August 11, 2000. One copy has the word "illegal" handwritten at the bottom; the other is stamped as having been submitted at the hearing referred to above. In its response, the Tribunal informed the appellant that, "[T]hese are the only documents included in the file which are similar to the description provided in your letter. I found no documents meeting your description which were dated in September 2000".

The appellant appealed the Tribunal's decision to this office on the basis that "a document with the Tenant's signature on it dated just after he moved in which stated that the unit was satisfactory and acceptable" should exist.

I sent a Notice of Inquiry to the appellant and the Tribunal informing them that an oral inquiry will be held to determine whether the Tribunal conducted a reasonable search for the record that responds to the request. The oral inquiry was held at this office. The Tribunal was represented by its Freedom of Information Co-ordinator (the Co-ordinator). The appellant was accompanied by his wife and spoke on his own behalf.

DISCUSSION:

Introduction

In appeals involving a claim that responsive records exist, as is the case in this appeal, the issue to be decided is whether the institution involved conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the institution, in this case the Tribunal, will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records that he or she is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request.

The *Act* does not require the institution to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request (see Order PO-1744). A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (see Order M-909).

Representations

During the oral inquiry, the appellant advised that he has viewed the Tribunal file relating to his application twice since the issuance of the Tribunal Member's order. The document sought was not in the file.

According to the appellant, he did not sign a document as described in the Tribunal Member's order on or after September 1, 2000, the date he moved into his apartment. He and his wife did sign a Tenant Acceptance Agreement on August 11, 2000. This is a one-page signed document which states that the Tenants have inspected the apartment and agree to accept the apartment described in the lease. It also describes maintenance activities for which the Landlord is not responsible. Finally, the Agreement addresses the need to reserve a freight elevator and provides the times during which these elevators are available. This document was submitted during the Tribunal hearing in July 2002.

The appellant advised that he has never seen the document described in the Tribunal order and which is the subject of his request. He explained that he did not see it at the hearing, in the Tribunal file or at any other time.

In his submissions, the appellant raised concerns with respect to his application with the Tribunal. The appellant has taken issue with the validity of the Tenant Acceptance Agreement within the context of his application with the Tribunal. This is not an issue within the scope of this appeal and I will not deal with it in this order. The appellant may wish to address this matter directly with the Tribunal.

The Tribunal's Co-ordinator explained that after receiving the appellant's request for information under the *Act*, she reviewed their file and the only documents that resembled the document requested were the two Tenant Acceptance Agreements dated August 11, 2000, copies of which she provided to the appellant.

The Co-ordinator explained that the Tribunal maintains only one file when hearing an application. When an application is received, a file is created and then stored until requested by the Tribunal Member hearing the application, usually a day or so before the hearing. Any written evidence submitted by a party before the hearing is placed in the file while in storage. A Mediator may be involved on the day of the hearing, but he or she does not remove documentation from the file. The file is expected to remain intact throughout the entire process. If the record at issue existed, it would be located in the file and not in any other location. According to the Co-ordinator, if the document had been misfiled, it would not be feasible to search, or reasonable to require a search, through the numerous Tribunal files.

The Co-ordinator did not contact the Tribunal Member who heard the appellant's application because he is no longer a member of the Tribunal and is unavailable to assist. Furthermore, the Member has suffered a stroke and this has affected his ability to communicate.

It is the Co-ordinator's opinion that a document as described in the Tribunal order and in the request does not exist. It is her view that the Tribunal Member incorrectly described the document he was referring to in his order and that he was in fact referring to the August 2000 Tenant Acceptance Agreement.

Findings

As stated earlier, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Based on the information provided by the Tribunal, I am satisfied that the search was conducted by an experienced and knowledgeable employee and included the location where the record could reasonably be expected to be found. In my view, the Tribunal has made a reasonable effort to locate the records. I find that the Tribunal has adequately discharged its responsibilities under section 24 of the *Act* to conduct a reasonable search.

ORDER:

I dismiss the appeal.

Original signed by: _____
Alex Kulynych
Acting Adjudicator

September 21, 2004
