

**IN THE COURT OF APPEAL**

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**BETWEEN:**

An intended appeal of David Smith from an Order of the Chief Commissioner of the Residential Tenancies Commission under Order No. 2005xxxx made on the 20th day of April, 2005.

Richard Roe,  
(Landlord) Respondent

- AND -

David Smith,  
(Tenant) Applicant.

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**AFFIDAVIT OF DAVID SMITH**

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Name: David Smith  
Address: #1-55 Smith Street  
Winnipeg MB Canada R2P 1L3

Phone #: 204 555-0000

**IN THE COURT OF APPEAL**

BETWEEN:

Richard Roe  
(Landlord) Respondent

- AND -

David Smith,  
(Tenant) Applicant.

**AFFIDAVIT OF DAVID SMITH**

I, David Smith, of the City of Winnipeg, in the Province of Manitoba,  
*insert occupation here*, MAKE OATH AND SAY:

1. THAT I am the plaintiff in this matter and as such have personal knowledge of the matters hereinafter referred to by me, except where same are stated to be based on information and belief, and where so stated I verily believe same to be true.
2. I am seeking leave to appeal the granting of an Order of possession against me by The Residential Tenancies Commission on April 20<sup>th</sup>, 2005, in respect to the apartment at #1-55 Smith Street. The order, order number 2005xxxx, is attached and marked as Exhibit "A" to this my Affidavit. The reasons for the decision of The Residential Tenancies

Commission, dated February 20, 2005, are attached and marked as Exhibit "B".

3. On January 10, 2005 I viewed apartment #1 at 55 Smith St. with the landlord Richard Roe.
4. On January 11, 2005, I returned to the apartment with my brother Jon Smith to inspect the apartment and meet with the landlord. At that time, the landlord told me that I could rent the apartment for \$500 a month starting February 1, 2005. The rental term was to be for 12 months. I agreed and we shook hands.
5. All of this was witnessed by my brother, Jon Smith, (page 2 of the Residential Tenancies Commission's reasons for decision, "Exhibit B").
6. I moved into the apartment on February 1, 2005. The first month's rent was due on March 1, 2005. I paid the first month's rent on February 27, 2005. The landlord deposited the cheque on March 2, 2005. I presented this information at the hearing before the Residential Tenancies Commission. The deposited cheque is attached and marked as Exhibit "C".
7. On March 5, 2005, the landlord told me that he was renting the apartment to someone else. He told me that we did not have a tenancy agreement as our agreement was oral and not in writing.

8. There was a hearing before A. Jones, a Residential Tenancies officer of The Residential Tenancies Branch on April 1, 2005. Mr. Jones refused to grant an order of Possession to the landlord. The Order of Possession (Not Granted), being order 2005AAA1, and the written reasons for the decision of Mr. Smith both dated April 1, 2005 are attached and marked as Exhibit "D". The order of Mr. Jones followed a hearing of evidence presented by both the landlord and I in support of our positions.
9. The landlord appealed the decision of the Residential Tenancies Branch and a hearing was held before the Residential Tenancies Commission on April 20, 2005.
10. At the hearing, the Commission agreed with the landlord and held that a tenancy agreement cannot be oral and must be in writing (page 3 of the Residential Tenancies Commission's reasons for decision, "Exhibit B").
11. According to section 1(1) of The Residential Tenancies Act, C.C.S.M. c. R119, a tenancy agreement can be oral.
12. I do verily believe that the decision of the Residential Tenancies Branch that a tenancy agreement cannot be oral, is a mistake of law.
13. I therefore make this Affidavit in support of an application for leave to appeal and if granted, seek the remedies provided in section 178 of The Residential Tenancies Act.

14. I make this Affidavit bona fide.

SWORN before me at the City of )  
Winnipeg, in the Province of Manitoba this ) *applicant's signature here*  
day of , 2005. )

signature

A Deputy Registrar in the Court of  
Appeal

EXAMPLE ONLY