

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 8 AUGUST 2002

This is a determination of two applications made by each of the parties. The tenants, by application dated 29 May 2002 have sought an order seeking the return of their security deposit pursuant to section 113 the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being Demountable 464 Gwendoline Drive, Katherine, 0851 in the Northern Territory of Australia (“the premises”). In addition, the landlords, have applied for compensation pursuant to section 122 of the Act by application dated 29 May 2002.

For the sake of convenience and given the nature of the dispute, the applications of both parties were heard jointly.

A Notice of Inquiry dated 29 July 2002 was posted to the parties. The Inquiry was conducted in Katherine on 8 August 2002, during which evidence was taken from the Landlords and a witness on behalf of the landlord (“the Landlord”). The tenants also appeared (“the Tenant”).

On the basis of the documentary and oral evidence before the Inquiry, I find there is a tenancy agreement within the meaning of and subject to the provisions of the Act on the following terms:

Premises:	464 Gwendoline Drive Katherine NT 0851
Period:	Weekly periodical
Commencement date:	20 January 2002
Rent:	\$150.00 per week
Security Deposit	\$600.00

I note the parties previously had a written fixed term agreement from 19 July 2001 to 19 January 2002 which governs the terms of the periodical tenancy.

The Tenant’s Application

The Tenant’s seek an order for the return of their \$600.00 security deposit on the basis that the condition report was unreasonable and they did not receive the notice of the Landlord’s intention to retain the security deposit by hand or through the post.

In relation to this issue, the documentary and oral evidence of the Tenant before the Inquiry can be summarised as follows:

- The Tenant gave two weeks notice that they would be vacating the premises by letter dated 2 May 2002.
- The Tenant had previously requested the Landlord inspect the premises on a regular basis, however the premises was never subject to regular inspections.

- In their letter dated 2 May 2002 the Tenants requested that the final inspection be carried out on or before 16 May 2002, due to “unforeseen circumstances”. The parties had arranged for the inspection to occur at 10.00am on 16 May 2002. However, the Tenant was unable to get there at that time and arranged with the Landlord for the inspection to occur at 3.00pm.
- The Tenant denies that they arranged for the inspection to occur later at 4.30pm as they had pre-organised for the electricity to be turned off at close of business on that day because of their vacation of the premises.
- The Landlord, in support of its application had submitted a document entitled “Lot 464 Demountable, Inspection 16 May 2002 – 4.30pm with the tenant” which outlines various cleaning and repairs that had to be done to the premises. In relation to this document, the Tenant says she did not agree to the matters contained within the document. Although she signed the document, she says she was “forced” to sign it as she believed that the Landlord would not let her leave until it was signed. The Tenant says at the time it was quite hostile and she knew that they were going to have an argument, so she ended up signing the document. She says she does not agree to the matters outlined without it, however does agree to the amount for the spraying of ticks and fleas.
- The Tenant says they did not receive the Notice of Intention to Retain Security Deposit personally nor did they receive it through the post. They found the letter, which was delivered in an envelope undated and without a stamp, in their letterbox on 23 May 2002.

The documentary and oral evidence of the Landlord before the Inquiry can be summarised as follows:

- The Landlord issued a Notice of Intention to Retain Security Deposit dated 2 May 2002 which indicates that the Tenant’s \$600.00 security deposit is to be retained for making good damage, cleaning the premises which was left in an unreasonably dirty condition as well as paying unpaid charges for electricity, gas or water. Attached to this notice, the Landlord has sworn a Statutory Declaration dated 21 May 2002 in purported compliance with section 112(5) of the Act. In addition, the notice annexes various invoices from C & L Fernandez, Kelly Spraying, Katherine Glass and Aluminium and the Power and Water Authority.
- The Tenant had requested the final inspection occur on 16 May 2002 at 10.00am when the Notice of their Intention to Vacate the Premises dated 2 May 2002 was delivered to the Landlord.
- Two days after the letter of 2 May 2002 was delivered the Tenant requested that the time for the final inspection be changed to 3.00pm on 16 May 2002. The Landlord agreed to this.
- Following this, the Tenant once again requested the final inspection be changed to 4.30pm, however the Landlord does not remember why the request was made for 4.30pm.
- The Landlord admits that when they were doing the document entitled “Lot 464 Demountable” that they had had an argument before the page was signed, however the Landlord says the Tenant signed the document of her own free will.
- The document was written out as both parties were going through the premises.

- The following people were present during the final inspection which was conducted at 4.30pm on 16 May 2002: the Landlords, along with their daughter on behalf of the Landlord. And one of the tenants attended on behalf of the Tenant as her partner was doing afternoon shift.
- The Landlord says as they went through the premises the document was created and identifies everything that had to be repaired or cleaned by the Tenant. The Tenant's response to this was hostile and she kept claiming that everything was 'reasonable wear and tear'.
- A condition report which identifies the status of every room in the premises was not done. The Landlord says they normally do the outgoing inspection by way of a summary document similar to the document entitled "Lot 464 Demountable" which only identifies the issues that need to be addressed by the Tenant.

Section 112 of the Act provides the circumstances in which a Landlord is entitled to retain the Tenant's security deposit at the end of the tenancy agreement. In particular, section 112 provides, my emphasis:

...

- (3) At the end of a tenancy agreement the landlord is **entitled to retain so much of the security deposit paid by the tenant as is necessary to –**
- (a) **make good damage** (other than reasonable wear and tear) to the premises or to ancillary property that occurred during the tenancy and that was caused by a tenant or a person for whose actions a tenant is liable under section 12;
 - (b) replace ancillary property lost or destroyed by the tenant or by a person for whose actions the tenant is liable under section 12;
 - (c) **clean the premises or ancillary property left unreasonably dirty** by the tenant or by a person for whose actions the tenant is liable under section 12;
 - (d) replace locks altered, removed or added by the tenant without the consent of the landlord;
 - (e) **pay for** unpaid rent or for unpaid charges for electricity, gas or water payable by the tenant under section 118;
 - (f) pay an amount required to be paid under section 121; or
 - (g) pay money ordered by the Commissioner or a court to be paid by a tenant but not paid.
- (4) The **landlord is not entitled to retain some** or all of the amount of a **security deposit for a purpose referred to in subsection (3)(a), (b) or (c) unless –**
- (a) a condition report in relation to the premises was accepted by the tenant under Part 5; and

- (b) if the tenant –
 - (i) has given up **vacant possession of the premises – a condition report has been provided to the tenant under section 110; or**
 - (ii) has, in the opinion of the landlord, apparently abandoned the premises – notice has been given to the tenant in accordance with section 110(3) and, if the tenant demanded copies of the condition report within 7 days after notice was given to the tenant under that section, those copies have been given to the tenant.

- (5) Subject to section 113(2), the landlord is not entitled to retain, or to continue to hold under subsection (6), part or all of a security deposit unless, **within 7 business days after the tenant gave up vacant possession** of the premises or has, in the opinion of the landlord, apparently abandoned the premises, the landlord has –
 - (a) **given written notice** in the prescribed form, if any, **of his or her intention to retain or continue holding so much of the security deposit** as is specified in the notice for the purpose specified in the notice;
 - (b) **attached a copy of a statutory declaration** in the prescribed form, if any, **attesting to the truth of the claim that the retention or continued holding of the security deposit is required for the purpose specified in the notice;**
 - (c) attached a copy of a **statutory declaration** attesting that **the receipts, invoices or other documents attached to the declaration relate to –**
 - (i) **the matters in respect of which part or all of the security deposit is being withheld from the tenant; or**
 - (ii) the amount of unpaid rent owing under the agreement or money owing under section 121;
 - (d) in the **case of damage or unreasonably dirty premises or ancillary property – attached copies of receipts, invoices or other documents**, including orders of the Commissioner or a court, specifying the amount required to make good the damage or clean the premises or ancillary property; and
 - (e) returned to the tenant the proportion of security not claimed by the landlord or not to be held under subsection (6).

...

It is clear, section 112(4) of the Act provides that the Landlord is not entitled to retain any part of the security deposit to make good damage or to clean the premises unless the requirements of section 110 of the Act has been met. Namely, the condition report has been accepted by the Tenant at the commencement of the tenancy agreement and the Tenant, upon vacating the premises has been given an outgoing condition report in accordance with section 110.

Section 110 provides, my emphasis:

- (1) A landlord may, **within 3 business days after a tenant has given up vacant possession** of premises to which a tenancy agreement relates, fill out and **sign 2 copies of a condition report and give both copies to the tenant.**

- (2) **The landlord is to fill out the condition report** under subsection (1) **in the presence of the tenant** or a representative of the tenant (who is not the landlord or the landlord's agent) **unless it is not practical to do so or the tenant or the tenant's representative does not appear at the agreed time.**
- (3) A landlord may, within 3 business days after forming the opinion that a tenant has apparently abandoned the premises to which a tenancy agreement relates –
 - (a) fill out and sign 2 copies of a condition report;
 - (b) give notice to the tenant at the last known address of the tenant (which may be the residential premises) specifying the place where the copies may be obtained; and
 - (c) at the request of a tenant made within 7 business days after giving notice under paragraph (b), give both copies to the tenant.
- (4) **A condition report is to –**
 - (a) **specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates;**
 - (b) **itemise, and specify the condition of, any fixture or chattel that is ancillary property; and**
 - (c) contain other prescribed information, if any.
- (5) **A tenant or tenant's representatives may –**
 - (a) **accept a condition report given to him or her under subsection (1) or (3) by signing both copies of the report and returning one to the landlord; or**
 - (b) if the parties are unable to agree as to the contents of the condition report – refuse to accept the condition report.
- (6) If, within 7 business days after 2 copies of the condition report have been given to a tenant under subsection (3), both parties have not accepted the report, the landlord or the tenant may apply to the Commissioner to prepare a condition report in respect of the premises.

In my view, section 110(4) clearly requires a condition report to specifically itemise the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates. The final inspection document submitted by the Landlord does not comply at all with this requirement. I find the Landlord has not complied with section 110 of the Act and accordingly by virtue of section 112(4) of the Act, the Landlord is not entitled to retain the security deposit for the purposes of making good damage, replacing ancillary property lost or destroyed by the Tenant or for cleaning the premises left unreasonably dirty.

In relation to the \$56.00 of the security deposit retained by the Landlord for unpaid electricity charges, I note section 154 of the Act provides, my emphasis:

Unless otherwise provided by or under this Act, a **notice required by or under this Act to be given to a person may be delivered personally to the person or sent by post addressed –**

- (a) in the case of a natural person – **to the person's last-known place of business or residence; or**

- (b) in the case of a body corporate –
 - (i) if it is a company within the meaning of the Corporations Act 2001 – by serving a document in accordance with section 109X of that Act; or
 - (ii) if it is a registered body within the meaning of the Corporations Act 2001 – by serving a document in accordance with section 601CX of that Act.

The Landlord did not deliver the notice personally nor did they send it by post addressed to the Tenant. Instead, the Landlord put the letter in the Tenant's letterbox.

The Tenant concedes they received the Notice in their letterbox on 23 July 2002 but takes issue with the fact that it was not served in accordance with the Act. The intention of section 154 is to ensure reasonable notice has been given to the Tenants and to overcome any uncertainty that may arise with the service of such notices by specifically providing Notices under the Act must be served in one of two ways, personally or by post. I find the Landlord has not complied with this requirement and accordingly is not entitled to retain the \$56.00 claimed for unpaid electricity charges from the Tenant's security deposit.

On the basis of the above, I order that the Landlord return the Tenant's security deposit in the amount of \$600.00 forthwith.

The Landlord's Application

The Landlord has brought an application for compensation pursuant to section 122 of the Act. In summary, the Landlord claims the following amounts in compensation:

1. the removal and replacement of a broken vinyl tile in the kitchen - \$45.00
2. cleaning the windows and stove, including chemicals - \$25.00
3. repairing broken dining setting chair - \$40.00
4. reglazing shower screen - \$508.00
5. reconnection of electricity on 21 May 2002 - \$56.00
6. electricity charges incurred on 22 May 2002 - \$0.42 cents
7. flea and tick spraying of the premises - \$120.00

I note I have before me an ingoing condition report dated 23 July 2001 which has been signed by the Tenant and individually specifies the condition of walls, floors and ceilings of each room of the premises. In addition, I have a copy of the parties old Residential Tenancy Agreement dated 23 July 2001, which has been signed by the Tenants. In that Agreement, one of the conditions agreed by the parties is that the electricity must be left on until the final inspection is completed. If the electricity is not left on, the Tenant will be charged the reconnection fee and the power costs for any work required. In addition, the parties agreed that the Tenants could have one dog on the premises however upon vacating would be required to spray for ticks and fleas by a recognised pest control company and must produce a receipt for this service. Also included in the premises was some furniture, which, of particular significance includes one round dining table with 4 black vinyl chairs. I note the ingoing condition report does not specify the condition of this furniture at the beginning of the tenancy agreement.

I will now deal with each claim of compensation made by the Landlord individually:

The claim for flea and tick spraying

I note that the Tenant initially indicated they would not be disputing the amount of \$120.00 that has been claimed by the Landlord. However, after clarifying what their obligations were under the Act, namely that the Tenants were required to leave the premises in a reasonable condition at the termination of the agreement, it became apparent that the Tenant had decided to dispute this amount.

The evidence of the Tenant during the course of the Inquiry in relation to this issue can be summarised as follows:

- By letter dated 3 June 2002 to Brian Kelleher of the Office of Consumer Affairs, the Tenant indicates that they are prepared to pay for the spraying of the yard.
- The Tenant had two dogs on the premises who both wore flea and tick collars.
- The Tenant was told by the vet that unless other dogs are entering the premises, the collars would ensure that the dogs, as well as the premises in which the dogs reside will be tick and flea free. The Tenant is essentially saying that the tick and flea collars worn by the dogs would also prevent ticks and fleas being within the environment in which the dogs were present.
- The dogs did not ticks or fleas and neither did the property. The Tenant checked the premises both inside and out when they moved out of it.
- The premises was fenced.
- In relation to this collar it was called Exelpet and the Tenant says that their dogs had never had ticks or fleas before.

The evidence of the Landlord can be summarised as follows:

- The parties had agreed when the tenancy was entered into that the Tenant would pay for tick and flea spraying upon vacating the premises. This agreement was documented in the written Tenancy Agreement under special conditions.
- All dogs have ticks and fleas.
- During the final inspection, because of the clause in the written Tenancy Agreement, the Landlord did not look for ticks or fleas, they just assumed the Tenant would have the premises sprayed and they would be entitled to claim for this amount.

Section 51 of the Act provides the Tenant's responsibilities in relation to the cleanliness and damage of the premises. In particular, section 51(2) provides:

- (2) It is a term of a tenancy agreement that **at the end of the tenancy the tenant must give the premises and ancillary property back to the landlord –**
- (a) **in reasonable state of repair; and**
- (b) **in a reasonably clean condition,**
- allowing for reasonable wear and tear.**

There is no provision in the Act which specifically requires tenants with pets to have the premises sprayed for ticks and fleas. I acknowledge that the parties have entered into an agreement with respect to the spraying for ticks and fleas and that the Tenant appears to be renegeing on that agreement.

That being said, section 20 of the Act specifically prohibits any attempts to exclude, modify or restrict the operation of the Act. Any such provision is to the extent of any inconsistency with the Act, null and void. It seems to me to be a reasonable requirement generally that landlords who allow tenants to have pets in their premises require the tenants to have the premises sprayed upon vacating. However, under the Act, the only obligation on the Tenant is to return the premises in a reasonable state of repair and cleanliness having regard to reasonable wear and tear. There is no evidence before me that there were in fact ticks and fleas on the premises so as to require the spraying. In these circumstances, I have no alternative but to dismiss the Landlord's claim for compensation in the amount of \$132.00.

Replacement of the shower screen

The Landlord claims compensation for the supply and replacement of the front and return of the shower screen in the premises.

The evidence of the Landlord in relation to this issue is as follows:

- There was a complete crack to the door of the shower screen which ran diagonally across from the left-hand side to the right-hand side.
- The Landlord does not know how the cracks got there.
- On 9 December 2001 the Tenant reported that the toilet was leaking. The Landlord says that it was leaking because the Tenant had ripped the toilet out of the floor during which 4 tiles had been removed from the floor. The Landlord denies that the Tenant had reported the cracks to the shower screen at this time.
- The demountable is only 3 years old and had been built after the Katherine floods.
- The damage to the shower screen could not amount to reasonable wear and tear because the shower screen is made from really thick glass with security metal embedded in it. In addition the crack runs the full length of the screen and is too big to have been created by anything other than heavy force.
- The demountable is placed on a slant in order to let any water run out of the bathroom. There is no drain in the bathroom but the water runs out the door.
- The Landlord got Katherine Glass and Aluminium to replace the screen. That was the only quote they got in relation to the damage because they have always used that person before and found him to be the cheapest. In any event, there are only two glaziers in Katherine who could repair such damage.

The evidence of the Tenant can be summarised as follows:

- The cracks in the shower screen goes straight across the door rather than diagonally across.
- The crack is due to structural damage as the premises is a transportable demountable which sits on bricks, placed on sand. The demountable is located on flood plains and has not been placed in a 'square' position. The floors and walls of the entrance to the bathroom used to scrape the doorframe. The Tenant says that there are cracks running up and down the walls of the premises which are a result of the positioning of the demountable.
- In relation to the shower screen, the cracks slowly started appearing, starting at the edge of the shower screen and had slowly crept its way across.

- The Tenant mentioned the cracks to the Landlord on Sunday 9 December 2001. He had gone over to the Landlord's premises because the toilet was loose. The Tenant notified the Landlord who came and repaired the toilet. At that time the Tenant mentioned that the cracks were due to the floors not being square, but the Landlord denied this. In support of this contention, the Tenant handed up handwritten notes from his CBD Radio Journal which states on 9 December 2001 "toilet f/up – cracks/floor not level". The Tenant says he made a note because the Landlord was so antagonistic towards him on this date.
- In any event, the Tenant says that the cracks to the shower screen would amount to reasonable wear and tear because of the location of the demountable and what he says is a result of structural damage.

Given the inconsistent evidence from both parties, I found it necessary for me to get expert advice in order to resolve this issue. In my view, sections 141(1)(k) and (3) of the Act enable me to obtain such information. I note the fact that I had to get such advice *prima facie* indicates that the Landlord had not satisfied their onus of proving on the balance of probabilities that the crack in the shower screen was due to the Tenant's breach of the tenancy agreement.

I requested a Officer of the Commissioner from the Office of Consumer Affairs contact a suitable expert. The Officer contacted Darryl Farquharson, a sales representative from Dabsco. Dabsco manufacture shower screens and Mr Farquharsen is involved with measurement, quotes and inspections. Mr Farquharsen has worked in the industry for 16 years, part of this time with his family's business where he was involved in reglazing shower screens.

The following were the questions I raised and the responses obtained from Mr Farquharson:

1. How likely is shower glass reinforced with wire embedded within it to crack such that the crack extends right across the front and side panels? If it helps, the invoice for this damage describes it as "obs wired glass to pivot front and return shower 1800 x 900 x 900"

Very Likely – once a small crack occurs then it is likely over time to extend across the entire width. This will occur during normal usage and the crack could get bigger when the screen is wiped down, with hot then cold water running over it etc. A crack could be there and not even noticeable until dirty and soap scum etc gets in there.

2. In what circumstances would cracking occur? Are such cracks common?

Tiny cracks can develop beneath the rubber seal and not be noticeable for a period of time until they extend beyond the rubber. These sort of cracks are very common – on average he would quote 2-3 times a week on cracked shower screens – they are usually claimed on owners insurance.

3. Is a significant amount of force required for cracking to occur?

Not much force is required to crack a screen, particularly the glass ones reinforced with wire – they crack fairly easily. Usually if someone falling against the screen causes a crack then the screen will show an impact point with the crack running out from that point – crack will usually be a star like in appearance.

4. Is it possible the cracking could be due to the fact that the floor was not square and/or the structure of the premises which was a demountable situated on a flood plain mounted on bricks? What is the likelihood of this possibility?

Very hard to determine what causes cracking – could crack due to the reasons claimed by the tenant if there was enough movement. Most of the cracked screens he sees are not due to mistreatment – it is the type of fitting which suffers this type of wear and tear from time to time. If the crack started somewhere near the handle on the door then it could be because of the door being slammed.

5. Is it possible the crack could get progressively worse? It start small and get big? What is the likelihood of this possibility?

It is possible and very likely that a crack, which starts small, will progressively get larger over time – see 1. above.

6. Out of 3, 4 and 5 which is more likely to occur?

The impression was given that cracks in glass shower screens are very common and not usually caused by excess force, namely people slipping and falling against the shower screen. Flexing in the floor could cause cracking although this type of cracking does not occur very often.

The overall impression gained by the Commissioner's Officer is that this type of cracking occurs frequently but it is very difficult to determine the original cause. The problem appears to be the type that develops cracking and once a tiny crack develops it grows bigger over time through normal usage.

It seems to me given the responses obtained that cracks to shower screen are reasonably common and can be attributed to "reasonable wear and tear" during the course of the tenancy. In any event, based on the evidence before the inquiry, I find the Landlord has been unable to satisfy me on the balance of probabilities that the crack in the shower screen can be attributed any breach by the Tenant of the tenancy agreement.

Accordingly, I dismiss the Landlord's claim of compensation in the amount of \$508.00 being for the crack in the shower screen.

Replacement of vinyl tiles in the floor at the front of the kitchen sink

The Landlord claims the amount of \$45.00 being for the replacement of a vinyl tile to the front of the kitchen sink.

The evidence of the Landlord in relation to this issue can be summarised as follows:

- The premises is fitted with vinyl tiles. The damaged tile in particular looked like a bit had been chipped off and the Landlord says this was caused by dropping something on it.
- The chip was just outside the door of the cupboard under the kitchen sink and had a piece missing, approximately 150mm x 75mm.

The evidence of the Tenant in relation to this issue can be summarised as follows:

- The Tenant says that there was a chip in the vinyl tile floor but it was not that big. The chip was located near the splashback, right under the cupboard door. The chip had always been there even when the tenancy started and was approximately 2x2" with the piece of chip still in the tile.
- The Tenant says that during the course of his tenancy he would have replaced 14 cracked tiles in the premises. In addition, the Tenant says the Landlord has a box full of tiles however concedes that the cost of replacing it would probably amount to \$45.00.

In the absence of any outgoing condition report which specifies the condition of the premises at the time the Tenant vacated, it is very difficult to determine whether or not this damage can reasonably be attributed to the Tenant's breach of the Tenancy Agreement. I note on the document entitled "Lot 464 Demountable" the damage to the vinyl tile is described as follows "vinyl tile damaged/chipped in front of kitchen sink to be replaced". I acknowledge the Tenant's evidence during the course of the Inquiry that she signed the document but her signature does not indicate that she agreed to undertake the work specified. Notwithstanding, the mere fact that all parties during the final inspection conducted on 16 May 2002 recognised that the tile was damaged tends towards the conclusion that such damage needed to be repaired. In addition, the Tenant says that at the beginning of the Tenancy Agreement the chip to the tile was present however, in the condition report dated 23 July 2001 which has been signed by the Tenant, I note that the kitchen floor is described as "vinyl clean". There is no mention of any chips to the vinyl tiles at all. On balance, I prefer the evidence of the Landlord in relation to this issue and find that the Landlord is entitled to compensation for this amount. Accordingly, I order the Tenant pay the Landlord compensation in the amount of \$45.00 being for the replacement of the damaged vinyl tile in front of the kitchen sink.

Cleaning the windows and stove

The Landlord claims compensation in the amount of \$25.00 being the cost of cleaning the windows and stove which had been left unreasonably dirty.

The evidence of the Landlord in relation to this issue is that:

- The Landlord charged \$25.00 for cleaning the windows and stove because it took over an hour to clean.
- The Landlord describes the stove as "yucky, the hotplate was yucky and underneath the hotplate had not been cleaned. There was food and grease lodged underneath it".
- In order to clean the stove, the Landlord says she sprays it with oven cleaner the day before. She then left it for a day and came back and cleaned it which took more than an hour.
- The Landlord says that the amount of \$25.00 is reasonable because she had to buy the oven spray which costs money and she does not do the cleaning for 'nothing'.
- In addition, the Landlord says she also cleaned the windows, however did not spend as much time on this.

In relation to this issue, the evidence of the Tenant is that:

- The Tenant is a qualified cleaner and has been so for 8-9 years.
- She cleans non-stop when she is at home as she has nothing to do.
- The day before they vacated the premises she cleaned it in order to ensure that it was "up to scratch". The Tenant says she cleaned behind the stove and inside the stove, including the stove top. However, the Tenant did not realise that the top of the hotplate lifted up and accordingly did not clean it. The Tenant says that she wanted an opportunity to clean it however the parties were pretty antagonistic so she did not get this opportunity.
- In relation to the windows, the Tenant says that she cleaned the inside of the windows however did not clean the outside because when they moved into the premises the windows on the outside were dirty. That being said, the other Tenant says he was one of the last people at the premises before they moved out and had used a hose to hose the outside of the premises. He concedes that it was probably his fault that the windows had been smeared.

The Tenant has an obligation at the end of the tenancy agreement to return the premises to the Landlord in a reasonably clean condition. The evidence from both parties is conflicting, on the one hand the Landlord says that the stove and windows were unreasonably dirty and on the other hand, the Tenant says that she cleaned the premises although concedes that she did not realise the stove top came up and accordingly did not clean there. In addition, the Tenant concedes that they hosed the windows prior to vacating which may have made them look smeared. In the absence of any outgoing condition report which specifies the condition of the stove or the windows, on balance I prefer the evidence of the Landlord given the concessions that have been made by the Tenant. However, I do not think that \$25.00 for an hour of cleaning is reasonable, particularly when commercial cleaners would not charge \$25.00 per hour and given the Tenant's evidence that she cleaned the majority of the stove, save for the hot plate.

In my view, it appears that the only thing that required cleaning on the stove was the stove top as well as the windows to the premises. I find \$15.00 would be a reasonable amount to allow for the Tenant's failure to clean the stove top and the windows. Accordingly, I order that the Tenant pay the Landlord compensation in the amount of \$15.00 being for the cleaning required to the stove top and to the windows of the premises.

Repairing the vinyl dining chair

The Landlord claims \$40.00 in compensation being the amount required to repair a vinyl dining chair.

In relation to this issue, the evidence of the Landlord is that the dining chair is a steel-tubed chair with timber on the bottom. The bottom of the chair is affixed with screws under the chair which, upon inspection after the Tenants had vacated the premises, appeared to have been damaged. The Landlord says that the screws had been ripped out of the chair and the timber bottom was broken so that you could not sit on it.

In reply, the Tenant says that the chair broke after they tried to sit on it. The Tenant says he tried to fix the chair, however because the chair was old, was unable to do so. Accordingly they replaced the screws, which were rusty but because of the age of the chair, the timber had already rotted so they just slipped the screws back in and put the chair aside. The Landlord refutes this saying that the dining chair was 3 years old and he bought it when he constructed the demountable.

I note the ingoing condition report dated 23 July 2001 makes no reference to the condition of the dining chair despite the fact that it is listed as being included in the written Tenancy Agreement between the parties. The dining chair forms part of the ancillary property to the premises as defined by virtue of section 4 of the Act. Section 51(5) of the Act provides, my emphasis:

- (5) If a **condition report was not accepted by the landlord and the tenant in relation to the premises or ancillary property under Part 5 –**
 - (a) **the tenant is to be taken to have complied with the term of the agreement specified in subsection (1); and**

- (b) **if the tenancy agreement has terminated** or the tenant has, in the opinion of the landlord, apparently abandoned the premises – the premises or **ancillary property are to be taken to have been at the time when the tenant took possession of the premises** under the tenancy agreement, **in the condition they are at the end of the tenancy agreement.**

Accordingly, by virtue of section 51(5) of the Act, in the absence of any condition report with respect to the ancillary property of the premises which is completed in accordance with part 5 of the Act, the Tenant is taken to have complied with the terms of the tenancy agreement as provided by section 51(1). In particular, the Tenant is taken to have notified the Landlord of any damage to the ancillary property and has not intentionally or negligently caused such damage to such property.

On this basis, I dismiss the Landlord's claim for compensation in the amount of \$45.00.

Claim for electricity

The Landlord claims a total of \$56.42 being for the reconnection fee and electricity charges incurred on 22 May 2002.

The Landlord says the parties to the tenancy agreement had agreed that they would leave the power on until the final inspection was conducted. When they attended the premises at 4.30pm on 16 May 2002, they found that the power had been disconnected and accordingly they could not check the electrical appliances. The power was reconnected in order to allow the Landlord to check the electrical equipment and the \$0.42 cents charge was incurred in doing this.

The Tenant says that the power had been disconnected on that day because they had arranged with the Landlord for the final inspection to occur at 3.00pm. The Tenant says that she had pre-organised the power to be disconnected at the end of business hours on that day because she knew that she was vacating the premises. In relation to claim for the final inspection, the Tenant says she initially arranged for it to occur at 10.00am however due to other commitments had to reschedule for 3.00pm. The Tenant says she spoke to the Landlord, who agreed to this, however she never agreed to have the final inspection at 4.30pm because she knew that she arranged for the power to be disconnected. The only reason she was there at 4.30pm on 16 May 2002 was because she was waiting for the Landlord to appear at the arranged time of 3.00pm. In any event, she had just started walking out of the premises when she saw the Landlord's, who live next door, come over to conduct the final inspection. The Tenant is adamant that she did not at any time arrange for the final inspection to occur at 4.30pm. That being said, I note at one point during the Inquiry, one of the Tenants said that they knew that the final inspection was to be conducted at 4.30pm and that during the negotiations with the Landlord, 4.30pm was mentioned as one of the times.

The Landlord says that the final inspection was carried out at 4.30pm on 16 May 2002 at the Tenant's request. The Landlord says initially they had arranged for the inspection to occur at 10.00am however both Tenants had come to their premises and asked them to change this time to 3.00pm. The Tenant then asked the Landlord to change it to 4.30pm, however because the Landlord wanted their daughter to be present, she told the Tenant she would check would with her daughter before confirming this time. The Landlord subsequently checked with her daughter who agreed to the 4.30pm time and the Landlord told the Tenant, that 4.30pm would be fine. The Landlord's daughter gave evidence that she operates a business and 4.30pm is not convenient for her because of her business commitments which required her to be at the business at 5.00pm.

She knew that the inspection would take more than half an hour however agreed to this time because the Tenant's had requested this. The Landlord says at no time did the Tenant notify them that they had arranged to get the electricity to get disconnected.

Given the inconsistent evidence from the parties, on balance, I prefer the evidence of the Landlord. It seemed pretty clear to me during the course of the Inquiry that the Landlord was trying to accommodate the Tenant's request that the final inspection occur on 16 May 2002. I note in the Tenancy Agreement, the parties agreed that the electricity would remain connected until such time as the final inspection had occurred. I am satisfied that the Tenant has breached this condition of the Tenancy Agreement and that the amount claimed by the Landlord is reasonable and is a consequence of the Tenants breach of this term of the Agreement. On this basis, I order the Tenant pay the Landlord compensation in the amount of \$56.42 being for the reconnection of the electricity and electricity charges.

Summary of Orders with respect to the Landlord's compensation claim

By way of summary, I have made the following orders:

1. The Landlord's application for the amount of \$120.00 being for tick and flea spraying is dismissed.
2. The Landlord's application for the amount of \$508.00 being for the replacement of the shower screen is dismissed.
3. The Tenant pay the Landlord compensation in the amount of \$45.00 being for the replacement of the vinyl tile.
4. The Tenant pay the Landlord compensation in the amount of \$15.00 being for the cleaning of the windows to the premises and the stove top.
5. The Landlord's application for the amount of \$40.00 being the costs associated with repairing the dining chair is dismissed.
6. The Tenant pay the Landlord compensation in the amount of \$56.42 being for the reconnection of the electricity and electricity charges to enable the Landlord to complete the final inspection.

In total, I order that the Tenant is to pay the Landlord compensation in the amount of \$116.42, rounded down to \$116.40, the balance of the Landlord's claim for compensation in the amount of \$678.00 is dismissed.

On the basis of the above, I order:

1. The Landlord is to return to the Tenant their security deposit in the amount of \$600.00 forthwith;
2. The Tenant must pay the Landlord compensation in the amount of \$116.40; and
3. The balance of the Landlord's claim for compensation in the amount of \$678.00 is dismissed.

Dated 26 August 2002

Penny Turner
Delegate of the
Commissioner of Tenancies