

## REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

### INQUIRY – 18 OCTOBER 2002

This is a determination of an application dated 7 October 2002 by the Landlord, seeking an order for possession pursuant to section 104 and for compensation pursuant to sections 121 and 122 of the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being 2 Woolla Court, Alice Springs in the Northern Territory of Australia.

A Notice of Inquiry dated 8 October 2002 was hand delivered and posted to the parties. The inquiry was conducted on 18 October 2002 during which evidence was taken from the Landlord (“the Landlord”). There was no appearance by the tenants (“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:	2 Woolla Court, Alice Springs NT 0870
Commencement Date:	5 October 2001
Period:	12 months
Rent:	\$270.00 per week

The Landlord by letter dated 18 September 2002 has purported to terminate a fixed term tenancy by giving 14 days notice to the Tenant in accordance with sections 90 and 101 of the Act (“the termination letter”). The fixed term tenancy governing the parties is due to terminate on 4 October 2002.

The evidence of the Landlord during the course of the Inquiry was that she tried to deliver the termination letter to the Tenant personally on 18 September 2002. However, when she attended at the premises, no one answered the door, accordingly, the Landlord put the termination letter in the letter box. The evidence of the Landlord is that she has not posted the termination letter as she thought it was better that she deliver the termination letter personally.

The Landlord also by letter dated 30 September 2002 sent a further letter to the Tenant which indicated the final inspection for the premises was to be conducted at 11am on Friday, 4 October 2002 and the keys to the premises were to be returned at that time (“the second letter”). The Landlord also indicated her husband rang the Tenant on 30 September 2002 to ensure they had received the second letter and to discuss the outstanding rent. The Landlord has submitted a file note of this conversation. There is no indication from this file note that the Tenant has received the termination letter.

In order to terminate a fixed term tenancy, section 90 of the Act provides, my emphasis:

A landlord may **terminate a fixed term tenancy** that is **due** under the tenancy agreement **to terminate on a particular day** by **14 days notice to the tenant** in accordance with section 101 of termination on that day.

Section 101 of the Act provides the form termination notices should take. In relation to service of notices, 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 asked the Landlord during the course of the inquiry why she had not given the notice in accordance with section 154 of the Act. The evidence of the Landlord was that she did not know notices had to be served in that manner and thought personal delivery would be better than sending it through the post. The Landlord also indicated she had obtained from the office of the Residential Tenancies Unit a booklet titled “A Guide To Renting In The Northern Territory” and followed this book in sending out her termination notice. The Landlord says she is a “lay person” and this was the only resource she relied upon in sending out the notices. There is no reference in this guide to the service of such notices. The Landlord also indicated that the Tenant’s past conduct indicates that he has continually breached the tenancy agreement by his failure to pay rent. There has only been one payment of rent from the Tenant where the Tenant has paid on time and in accordance with his obligations under the tenancy agreement.

I fully understand the Landlord’s frustration and it seems unfair that the Landlord will not be entitled to a possession order due merely to a ‘technicality’ particularly in light of the Tenant’s continual breaches of the tenancy agreement. That being said, it is an accepted principle that tenancy legislation is to be interpreted strictly. The legislature has seen fit to prescribe the manner in which notices under the Act are to be given. I accept the Landlord was trying to give the notice in the manner she considered most appropriate, unfortunately this manner did not accord with the requirements of the Act. The Act does not confer on me a discretion to find that the notice has been given to the Tenant other than in accordance with section 154 of the Act. If it did, I would be satisfied that the Landlord has given reasonable notice to the Tenant.

I have no alternative but to find that the Landlord’s termination letter was not given or served on the Tenant in accordance with section 154 of the Act. Accordingly, I am not satisfied that the tenancy agreement has been validly terminated. I would dismiss this aspect of the Landlord’s claim.

I note, the Landlord indicated she followed the guide issued by the office of the Residential Tenancies Unit. At the end of the day, this guide is merely that a guide, which is supported by a review of the booklet. The Landlord can refer to the guide, but at the end of the day, their obligations will be governed by the Act and she must look to this for its requirements. I note a copy of the Act can be obtained from the Government Printing Office or from the internet on [www.nt.gov.au](http://www.nt.gov.au) under Hansard.

In relation to the Landlord's claim for compensation pursuant to sections 121 and 122, I find the Tenant has failed to pay rent in accordance with the tenancy agreement and as at the date of the inquiry remains in possession of the premises. Under the tenancy agreement, the Tenant has an obligation to pay rent fortnightly in advance in the amount of \$540.00. The Landlord has submitted a rental ledger in support of her claim. This ledger indicates the Tenant has paid a total of \$13,480.00 being with the first payment commencing on 5 October 2001 and the last payment being made on 20 September 2002. According to my calculations, the Tenant should have paid \$14,580.00 as at the date of the inquiry being rent up to and including 17 October 2002. Therefore, I find the amount of \$1,100.00 is owed by the Tenant to the Landlord in compensation, being unpaid rent up to and including 17 October 2002. I note as at 18 October 2002, the Tenant must also pay the Landlord two weeks rent in advance in the amount of \$540.00

Accordingly I order that:

1. The Landlord's application for possession of the premises is dismissed.
2. The Tenant is to pay the Landlord compensation in the amount of \$1,100.00 being unpaid rent up to and including 17 October 2002.

Dated this      day of October 2002

Penny Turner  
Delegate of the  
Commissioner of Tenancies