

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 22 October 2002

This is a determination of an application dated 9 October 2002 by the Landlord seeking an order for possession pursuant to section 104 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 104/1 Dick Ward Drive, Fannie Bay in the Northern Territory of Australia (“the premises”).

A Notice of Inquiry dated 14 October 2002 was posted to the parties. The inquiry was conducted on 22 October 2002 during which evidence was taken from an officer of the Landlord (“the Landlord”). There was no appearance by the tenant (“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:	104/1 Dick Ward Drive, Fannie Bay
Commencement Date:	23 November 2000
Period:	Two (2) years
Rent:	\$114.00 per week
Security Deposit	\$276.00

The Landlord has issued a Notice of Termination dated 1 October 2002 purporting to terminate the tenancy agreement on the basis that the premises is uninhabitable pursuant to section 86 of the Act (“the Notice”). The Notice was served on the Tenant on 2 October 2002 and required the Tenant to deliver vacant possession of the premises on 5 October 2002.

The Tenant has not vacated the premises and the Landlord has brought an application seeking an order for possession on the basis that the premises is unsafe and uninhabitable.

The evidence of the Landlord during the course of the inquiry is as follows:

- There was a fire in the premises approximately 2 weeks before the Notice of termination was served. The fire was in the bedroom and there was also a fire in the lounge room. The fire service was called and attended.
- The fire was allegedly lit by the Tenant’s defacto who was residing in the premises at that time. Northern Territory Police are conducting an investigation into the matter.
- As a result of the fire there was fire and smoke damage throughout the premises. The ceiling is “falling” in.
- The Landlord was unable to provide me with a detailed assessment of the state of the premises as the Tenant has refused to allow the Landlord access to the premises in order for such an assessment to be made.

- The Tenant is also refusing to move out of the premises. The Landlord says the Tenant wants them to relocate him, but due to the fact that he is vicariously liable for the damage caused by the fire, Territory Housing have made a decision not to rehouse the Tenant. The Tenant is appealing this decision through Territory Housing's internal processes.
- The Landlord is concerned the premises is unsafe as the ceiling could fall in at any time.
- There is no power to the premises as it has been turned off at the main. The power cannot be reinstalled until such time as the Landlord can get into the premises to make an assessment of the wiring at the premises.
- There is running water to the premises.
- The Landlord's officer has been in the premises immediately following the fire. He says there is extensive fire damage and in his view it is uninhabitable. He also said he is aware the Tenant is sleeping on the balcony of the premises. The Officer has been a property manager for 3 months.

The evidence of the Landlord during the course of the inquiry is in my view insufficient for me to assess whether the premises is in fact uninhabitable and unsafe as alleged by the Landlord. I foreshadowed I would need a report from an appropriately qualified person, whether it be from the Fire Service or Health department to assist me in making this determination. The Landlord's response is that they have been unable to obtain access to the premises sufficient for them to obtain this assessment.

The Landlord indicated that the fire damage was apparent from outside the premises. Accordingly, I agreed to inspect the premises for myself. In the company of a Commissioner Officer from the office of the Residential Tenancies Unit, I attended the premises on 22 October 2002. From the outside, it was apparent there was certainly fire damage in bedroom one, however, aside from that it was not possible to see or make any assessment as to the state of the rest of the premises.

On site another property manager of the Landlord also gave evidence. The officer says he has been inside the premises on a number of occasions and in his opinion the premises was also unsafe and uninhabitable. There is glass on the floor and the main concern is that the ceiling is hanging down in one of the rooms. He says he holds a trade qualification in carpentry, joinery and painting. The Landlord also says the Tenant has not paid rent since 17 September 2002. The Landlord says the Tenant told him that he was not going to pay rent as the premises is 'not fit to live in'.

In light of all the evidence given by the Landlord, I remain of the view that there is insufficient information for me to assess whether the premises is, on the balance of probabilities unsafe and uninhabitable. On the one hand I have a Tenant whom since the fire has resided in the premises and refuses to move.

On the other hand, I have a Landlord who is obviously of the view the premises is uninhabitable and unsafe and is seeking to terminate the tenancy agreement on this basis. I note there are certainly indications given the Tenant has not paid his rent since about the time of the fire that he agrees the premises is 'not fit to live in'.

That being said, just because the Landlord is of the view that the premises is unsafe and uninhabitable is in my view, not sufficient for me to terminate a tenancy agreement on the basis of section 86. The Landlord acknowledges that they have not been able to get access to the premises sufficient to get a detailed assessment of the state of the premises after the fire. This assessment is made more difficult by the fact that the Tenant has not availed himself to the inquiry. I need to be satisfied that the premises on the balance of probabilities is in fact unsafe and uninhabitable in order to be satisfied that the tenancy agreement has been validly terminated by the Landlord. In this regard, I am of the view I will need a detailed assessment from an appropriately qualified person as to the state of the premises and whether the premises after the fire complies with all the health and safety requirements.

The Landlord says this assessment has not been possible because the Tenant has refused to allow them access to the premises sufficient for this to occur. I am of the view that the Tenant's refusal in this regard is unreasonable in the circumstances.

I am also concerned about the safety issues in the premises and think it is in the Tenant's interest to have the assessment made. I am satisfied I have the power under sections 77, 138(k) and (n) of the Act to make an order allowing the Landlord access to the premises. Accordingly, I order that the Tenant provide the Landlord access to the premises for the purpose of obtaining a detailed report on the habitability and safety of the premises. The Landlord indicated they do not have keys to the premises and may need to remove the locks in order to enter the premises. I am satisfied the Landlord should use whatever force is reasonably necessary in the event access is not provided by the Tenant. Should this be necessary, the Landlord must provide alternative locks and keys to the premises to the Tenant.

For the purpose of allowing access, the Landlord is also to arrange for suitably qualified person to attend at the premises at the time the access order is effective to assess:

- The state of the premises;
- Whether the premises complies with health requirements; and
- Whether the premises complies with safety requirements.

The Landlord will need to make an assessment of the people necessary for this to occur, but I would have thought an appropriate person from the Fire Service and Health department would suffice. A report on the result of this assessment must be submitted to me. The report should also give me an indication of the person's qualifications.

On the basis of the above, I order:

1. The Landlord arrange for suitably qualified person(s) to attend at the premises to assess the state of the premises and whether it complies with all health and safety requirements.
2. The Landlord be permitted to enter the premises for the purpose of order 1 at 10am on Wednesday, 30 October 2002.
3. The Landlord is to submit to the Office of the Residential Tenancies Unit a report outlining the results of its assessment in accordance with order 1.
4. The matter is adjourned to a date to be fixed pending the receipt of the report at order 3.

Given the nature of the orders that have been given by me, I also direct:

- A. The office of the Residential Tenancies Unit arrange for the order and reasons to be personally served on the Tenant.
- B. If it is necessary for the Landlord to change the locks to the premises for the purpose of effecting order 2 than I direct the Landlord provide the keys to the Tenant on that day.

Dated this 23 day of October 2002

Penny Turner
Delegate of the
Commissioner of Tenancies