

## REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

### INQUIRY – 22 OCTOBER 2002

This is a determination of an application dated 11 October 2002 by the Landlord's, seeking an order for compensation pursuant to section 122 of the *Residential Tenancies Act* (NT) ("the Act"). The application is made in respect of premises being 1/256 Casuarina Drive, Nightcliff in the Northern Territory of Australia.

A Notice of Inquiry dated 11 October 2002 was posted to the parties. The inquiry was conducted on 22 October 2002 during which evidence was taken from the Landlord, and her daughter ("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:	1/256 Casuarina Drive, Nightcliff
Commencement Date:	3 March 2000
Period:	Weekly Periodical
Rent:	\$130.00 per week payable one week in advance
Security Deposit	Nil

The Landlord claims compensation being:

- Unpaid rent up to and including 6 October 2002 when the Tenant moved out of the premises in the amount of \$2,226.54; and
- Electricity charges incurred by the Tenant during the course of the tenancy agreement in the amount of 161.40.

The oral and documentary evidence of the Landlord during the course of the inquiry was as follows:

- The parties did not have any written tenancy agreement, it was an oral agreement with no fixed term and was on a "pay and stay" arrangement. The Tenant was meant to pay \$130 per week payable in advance.
- The Tenant moved into the premises on 3 March 2000.
- The Landlord says the Tenant was consistent with his rent payments to begin with but than the Tenant got ill in about September 2001 and started to be in arrears of rent.
- The Landlord indicated she had tried to be compassionate with the Tenant due to his illness and allowed the Tenant to try to catch up on his rental arrears by paying extra amounts of each week.

- It appears in about August 2002 the Tenant was hospitalised and the parties began to dispute the amount of rent outstanding.
- At the request of the Tenant's sister for an independent assessment of the rental arrears, the Landlord had ABI Debt Collection ("ABI") look at their rental book and created a ledger. According to ABI's calculations, the rental owed is \$2,226.54 up to and including 26 September 2002. The Landlord has submitted a copy of the document created by ABI to the inquiry.
- The Landlord has submitted a copy of a letter from the Tenant to ABI dated 1 October 2002 which indicates the Tenant disputes owing \$2,226.54 but says he owes \$960.00 in rent and would forward a cheque.
- The Landlord says the Tenant moved out of the premises on or about 6 October 2002 presumably with the assistance of Palliative Care and his daughter who was up from Brisbane.
- The Tenant did not notify the Landlord he was vacating the premises.
- The Landlord says the premises was left un-kept and the keys were not returned.
- The Landlord does not know, but believes the Tenant has moved to Brisbane to be with his family.
- The Landlord also indicated that the Tenant did not change the electricity bill into his name when he moved into the premises and the bill has remained in the Landlord's name.
- The Tenant had paid the electricity during the course of the tenancy even though the bills were in the Landlord's name.
- However, the Landlord says the electricity costs up to the Tenant's abandonment of the premises on 6 October 2002 have not been paid by the Tenant. The Landlord says the Tenant upon vacating had a bill of approximately \$161.00.
- The Landlord says the last payment of rent received by the Tenant was \$960.00 from the Tenant's sister on or about 17 October 2002.
- The Landlord also submitted to the inquiry 2 receipt books indicating the amounts that have been paid by the Tenant since he moved into the premises. The information derived from this book is as follows:

Date Paid	Receipt Number	Amount Paid (\$)
3.3.2000	53	260.00
17.3.2000	54	260.00
31.3.2000	55	130.00
7.4.2000	56	130.00
14.4.2000	57	130.00
21.4.2000	58	130.00
28.4.2000	59	130.00
5.5.2000	60	130.00
12.5.2000	61	130.00
19.5.2000	62	130.00
26.5.2000	63	130.00
2.6.2000	64	260.00
6.6.2000	65	260.00
20.6.2000	66	260.00
21.7.2000	67	130.00
7.7.2000	68	130.00
14.7.2000	69	130.00
21.7.2000	70	130.00
28.7.2000	71	260.00
11.8.2000	72	130.00
18.8.2000	73	260.00
1.9.2000	74	130.00
8.9.2000	75	130.00
15.9.2000	76	130.00
22.9.2000	77	130.00
29.9.2000	78	130.00
6.10.2000	79	130.00
13.10.2000	80	130.00
20.10.2000	81	130.00
27.10.2000	82	130.00
3.11.2000	83	260.00
17.11.2000	84	130.00
24.11.2000	85	130.00
1.12.2000	86	130.00
8.12.2000	87	130.00
15.12.2000	88	130.00
22.12.2000	89	130.00
29.12.2000	90	130.00
5.1.2001	91	130.00
12.1.2001	92	260.00
5.3.2001	93	130.00
9.3.2001	94	130.00
9.2.2001	95	130.00
16.2.2001	96	130.00
30.3.2001	97	200.00
2.3.2001	98	260.00
16.3.2001	99	260.00
20.4.2001	100	260.00
13.4.2001	1	260.00
27.4.2001	2	260.00
11.5.2001	3	130.00
18.5.2001	4	130.00
25.5.2001	5	130.00
1.6.2001	6	130.00
8.6.2001	7	130.00
15.6.2001	8	260.00
6.7.2001	9	130.00
6.7.2001	10	130.00
13.7.2001	11	260.00
27.7.2001	12	130.00
3.8.2001	13	200.00

8.9.2001	14	260.00
15.9.2001	15	130.00
25.9.2001	16	130.00
1.10.2001	17	130.00
10.10.2001	18	130.00
16.10.2001	19	130.00
22.10.2001	20	130.00
29.10.2001	21	130.00
5.11.2001	22	130.00
23.11.2001	23	130.00
3.12.2001	24	150.00
9.11.2001	25	260.00
30.12.2001	26	200.00
5.1.2002	27	130.00
19.1.2002	28	130.00
19.1.2002	29	260.00
25.1.2002	30	200.00
4.1.2002	31	200.00
16.2.2002	32	200.00
6.3.2002	33	150.00
30.3.2002	34	400.00
15.2.2002	35	260.00
4.5.2002	36	400.00
26.5.2002	37	130.00
29.3.2002	38	130.00
9.6.2002	39	130.00
18.6.2002	40	130.00
20.7.2002	41	260.00
20.7.2002	42	260.00
15.8.2002	43	150.00
21.9.2002	44	300.00
4.10.2002	45	130.00
17.10.2002	46	960.00
	TOTAL PAID	\$17,100.00

- Since the inquiry, the Landlord has also submitted a PAWA customer information, account transaction summary dated 8 November 2002, which indicates that prior to 4 October 2002, \$161.40 of electricity had been incurred by the premises.

### **Compensation Claims**

Generally speaking, I was impressed by the evidence of the Landlord during the course of the inquiry, which I find to be credible.

I am satisfied the Tenant moved out of the premises on 6 October 2002, without notifying the Landlord. I find the Tenant has effectively abandoned the premises as at this date.

### **Unpaid Rent**

The Landlord has submitted a ledger created by ABI Debt Collection in support of her claim for unpaid rent. This document indicates the rental arrears up to and including 26 September 2002 amounts to \$2,226.54.

I am not satisfied the ledger by ABI Debt Collection submitted by the Landlord is an accurate indication of the amount of rent owed by the Tenant up to and including 26 September 2002. In particular, it is not apparent how ABI Debt Collection calculated the total rent owing and for what period in coming to a “total rent owing = \$10,046.54 up to and including the 26 September 2002”.

If this amount is meant to be the amount of rent owing from 13 April 2001 to 26 September 2002, according to my calculations, the amount of rent owing should be (76 weeks x \$130.00 =) \$9,880.00. In addition, the ABI Debt Collection calculation has only taken into account rent payments made by the Tenant from 13 April 2001, in my view, this is not appropriate given the tenancy agreement commenced on 3 March 2000. On balance, I do not accept the ABI Debt Collection document assists me at all in calculating the rental arrears and I do not take this document into account.

I am satisfied the rental receipt books submitted by the Landlord to the inquiry and the information derived from it accurately indicates the amount of rent paid by the Tenant during the course of the tenancy agreement.

Under the tenancy agreement governing the parties, the Tenant had agreed to pay rent one week in advance commencing 3 March 2000. According to my calculations, the Tenant by vacating the premises on 6 October 2002 did so in the middle of a rental period commencing on 4 October 2002 and ending on 10 October 2002 inclusive. As at 4 October 2002, the Tenant in accordance with his obligations under the tenancy agreement had to pay one week rent in advance. I am satisfied the Tenant did not advise the Landlord he was moving out of the premises and in my view has effectively abandoned the premises on 6 October 2002. Accordingly, I find the Landlord is entitled to rent up to and including 10 October 2002.

According to my calculations, the amount of rent arrears payable from when the Tenant moved into the premises on 3 March 2000 to 10 October 2002 inclusive can be calculated as follows:

3 March 2000 to 10 October 2002 = 136 weeks at a rent of \$130.00 per week

Rent payable from 3 Mar to 10 Oct 2002  
= (136 x \$130.00) = \$17,680.00

The amount paid by the Tenant as indicated by  
the Landlord's receipt book = \$17,100.00

Therefore the rent outstanding = (17680 – 17100 =) \$ 580.00

The period of rent outstanding = 4 weeks + 4 days  
= 9 September to 10 October 2002.

I am satisfied the Tenant has breached his obligation to pay rent at \$130 per week in accordance with the tenancy agreement and has been in arrears of rent during the course of the tenancy agreement. The rent outstanding is \$580.00 being for period 9 September up to and including 10 October 2002 inclusive.

On the basis of the above, I order the Tenant pay the Landlord compensation in the amount of \$580.00 being for unpaid rent.

## **Electricity Claim**

Based on the evidence before the inquiry, I am satisfied it was the Tenant's responsibility under the tenancy agreement to pay for his own electricity.

The Tenant abandoned the premises on 6 October 2002. I am satisfied, the Tenant during the course of the tenancy agreement has incurred the electricity charges up to and including 4 October 2002 in the amount of \$163.40 and the Landlord should not be liable for this amount.

Accordingly, I order that the Tenant pay the Landlord compensation in the amount of \$163.40.

## **Orders**

On the basis of the above, I order the Tenant pay the Landlord compensation in the amount of \$743.40 being for unpaid rent (\$580.00) and electricity costs incurred by the Tenant (\$163.40).

Dated this 14 day of November 2002

Penny Turner  
Delegate of the  
Commissioner of Tenancies