

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 29 NOVEMBER 2002

This is a determination of an application dated 8 November 2002 by the tenants, seeking a declaration regarding the validity of their purported termination of the tenancy agreement pursuant to section 84 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 3/15 Reynolds Court, Coconut Grove in the Northern Territory of Australia.

A Notice of Inquiry dated 20 November 2002 was posted to the to the parties. The inquiry was conducted on 29 November 2002 during which evidence was taken from the tenants, (“the Tenants”). The Landlord’s agent appeared on behalf of the Landlord (“the Landlord”).

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:	3/15 Reynolds Court, Coconut Grove NT 0810
Commencement Date:	25 July 2002
Period:	Twelve (12) months
Rent:	\$190.00 per week
Security Deposit	\$760.00

The Tenant purported to terminate the tenancy agreement by issuing a Notice to Remedy Breach dated 25 October 2002 in accordance with section 93 of the Act (“the Notice”). The Notice was personally handed to the Landlord on this date. The Landlord during the course of the inquiry indicated she had received a copy of the Notice.

The breach sought to be remedied by the Tenant’s was repairs to a leaking spa. The evidence of the Tenant’s during the course of the inquiry was as follows:

- They moved into the premises on 25 July 2002. When they moved in, the spa was meant to be fully operational, save for the absence of a blower. The spa had not been filled with water and they were told by Territory First National, who was the agent for the Landlord at that time, that this was because the Landlord wanted to have the spa cleaned.
- The spa was cleaned by Chris from Pool Filtration on Friday, 26 July 2002 and the spa was filled. On that day, the Tenant noticed that the spa was receding. The next morning, on 27 July 2002, the Tenant says all the water in the spa had leaked out.
- The Tenant’s contacted the Lanldord’s agent and told her about the leak the Agent, talk her she would get “right on it”.

- The Tenant says they did not hear from the agent at all for a while. Pool Filtration had been to the premises the week beginning 29 July 2002, to show them how to maintain the filter and the Tenant's had told him about the leak, but he told them to speak to the agent, which they had already done.
- The Tenant's had sent faxes to the Landlord dated 9 August and 18 August 2002. On 20 August 2002, they received a fax from the Landlord who indicated that Ron, from Australian Leak Detectors would be out to have a look at the problem. They were not told exactly when Australian Leak Detectors would be out to fix the problem.
- The Tenant's have had numerous contact with Ron from Australian Leak Detectors since that time, however, to date the spa has still not been fixed. The Tenant says that they had heard from the Pool Filtration that they had quoted for the work three months ago, but only got approval from the Landlord to undertake the work three weeks ago.
- The Tenant's in accordance with their Notice vacated the premises on termination day being 11 November 2002.

The Landlord objected to the validity of the termination of the tenancy agreement. The Landlord indicated to the inquiry:

- A new Agency took over management of the property on 31 August 2002. There is not much on the previous agent's file regarding the defect and the Landlord does not really know what happened prior to this time.
- Heather, another property manager with the new agent was looking after the property and had sent Pool Filtration to fix the problem. They were advised by Pool Filtration that that the leak was in the pipes and Australian Leak Detector's were the only ones who could fix the problem.
- The Tenant's had also contacted the Landlord to say that the spa was green, so Pool Filtration was sent out to the premises on 9 September 2002.
- On 12 September 2002, Australian Leak Detectors made the repairs and recommended that the spa needed to be re-grouted.
- Within a week from 12 September 2002, the Tenant called again to say that the spa was still leaking. Accordingly, the Landlord had to attempt to get the spa re-grouted. The Landlord says they attempted numerous pool people, whoever no one would go out to the premises and a number of them were not prepared to undertake the work. The Landlord says there was a month delay as a result of this.
- Finally, Pool Filtration agreed to do the work, however the work had to be done to the pipes before this could occur. The Landlord says Australian Leak Detectors were the only people that could do this and he was uncontactable between 15 to 28 October 2002. In addition, Australian Leak Detectors had tried to get out to the premises on a number of occasions after this, however the gate was locked and they could not get access to the premises.

- The Landlord says the delay was due to the fact that they had to wait on the various contractors to undertake the work.

The Landlord has an obligation to repair the premises in accordance with section 57 of the Act, which provides, my emphasis:

57. Landlord's obligation to repair
- (1) Subject to this Part, it is a term of a tenancy agreement that the landlord –
 - (a) **must ensure that the premises and ancillary property are in a reasonable state of repair when a tenant enters into occupation of the premises;** and
 - (b) **must maintain the premises and ancillary property in a reasonable state of repair, having regard to their age, character and prospective life.**
 - (2) A landlord is not in breach of the term specified under subsection (1) unless he or she –
 - (a) has **notice of the defect requiring repair;** and
 - (b) **fails to act with reasonable diligence to have the defect repaired.**
 - (3) A landlord is not in breach of the term specified under subsection (1) if –
 - (a) the repairs were known to the tenant to be required at the time of entering into the residential premises agreement;
 - (b) the repairs are not emergency repairs within the meaning of section 63;
 - (c) the tenant has, in writing, waived the right to have the particular repairs made; and
 - (d) the premises are habitable and meet all health and safety requirements specified under any Act.
 - (4) For the purposes of this section, "ancillary property" includes gardening or watering equipment or other chattels provided in relation to a garden but does not include vegetation, other than a tree that poses a risk to a person's safety.

I am satisfied, the Tenant notified the Landlord of the leaking spa on 27 July 2002.

For the period 27 July to 31 August 2002, a one month period, it is not really clear what, if any, attempts were made by the Landlord to rectify the breach, save for employing Australian Leak Detectors on or about 20 August 2002 to arrange an on site inspection. I find the Landlord has failed to act with reasonable diligence to have the defect repaired from 27 July to 31 August 2002. That being said, I am satisfied that after 31 August 2002, when the new Agency took over the property management, attempts were made to rectify the breach. However, in my view there has been extensive delay in rectifying the defect, which has been over 4 months, since the Tenant's first notified the Landlord of the leaking spa.

On balance, based on all the information before the inquiry, I am satisfied that the Landlord has breached her obligation to maintain the premises in a reasonable state of repair.

I am satisfied the Notice issued by the Tenant complies with section 96 and 101 of the Act. I am satisfied as at the date of the inquiry, the spa has still not been repaired. I find the Landlord did not remedy the leaking spa by the compliance day, being 4 November 2002. Accordingly, the tenancy agreement terminated on the termination day specified in the Notice, being 11 November 2002.

On the basis of the above, I declare that the tenancy agreement has been validly terminated effective as at 11 November 2002.

Dated this 29 day of November 2002

Penny Turner
Delegate of the
Commissioner of Tenancies