

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 12 NOVEMBER 2002

This is a determination of an application dated 1st November 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”). The application is made in respect of premises being 1/7 Charles Street, Stuart Park in the Northern Territory of Australia.

A Notice of Inquiry dated 1 November 2002 was posted to the parties. The inquiry was conducted on 12 November 2002 during which evidence was taken from the Landlord’s agent, (“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:	1/7 Charles Street, Stuart Park NT 0820
Commencement Date:	21 May 2002
Period:	6 months
Rent:	\$180.00 per week
Security Deposit	\$720.00

I find that the rental payments due to the Landlord was more than fourteen (14) days in arrears at the time that the Landlord by his Agent issued a Notice to Remedy Unpaid Rental and Notice of Termination dated 17th October 2002 in accordance with section 87(1) of the Act (“the Notice”). I find the Notice was served on the Tenant by post on 7 October 2002 in accordance with section 154 of the Act.

The Notice specifies the amount of rent outstanding as \$500.00 being for period from 17 September to 7 October 2002. I note section 40 of the Act provides the rent payable under a tenancy agreement accrues daily. According to my calculations, the amount of rent outstanding is correct, however the period of rent outstanding should have been from 19 September 2002 to 7 October 2002. Alternatively, the Landlord could have indicated on the Notice she was holding \$40.00 on account for the Tenant being for period from 17 September to 7 October 2002.

In accordance with section 104 of the Act, I can only make an order for possession, if I am satisfied the tenancy has been validly terminated. In order to terminate a tenancy, section 87(2) requires that the Notice issued by the Landlord specify the amount of rent and the period of rent outstanding. Implicit in this is that in order for the requirements of section 87 to be complied with, the amount and period of rent outstanding must be correctly specified. The whole purpose of the Notice is to give the Tenant’s notice of the amount or rent they owe and the period for which it is owed. This purpose is not achieved if the amount and period of rent outstanding specified in the Notice is incorrect. The requirements of section 87(2) are clear in its terms and are in my view mandatory requirements.

The Act provides no discretion for me to amend Notices based on compliance with some, but not all of the requirements of section 87(2). In addition, I note the effect of a valid Notice issued under section 87 terminates the tenancy agreement governing the parties.

I am not satisfied the period of rent outstanding specified in the Notice is correct. Accordingly, I find the Landlord has not complied with section 87(2) of the Act and the tenancy agreement has not been validly terminated. On this basis, I order that the Landlord's application be dismissed.

Dated this 12th day of November 2002.

Penny Turner
Delegate of the
Commissioner of Tenancies