

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 4 OCTOBER 2002

This is a determination of an application dated 18 September 2002 by the Landlord, seeking an order for compensation pursuant to sections 121 and 122 of the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being Unit 1, 4 Darter Court, Leanyer in the Northern Territory of Australia.

A Notice of Inquiry dated 25 September 2002 was posted to the parties. The inquiry was conducted on 4 October 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: Unit 1, 4 Darter Court, Leanyer NT 0812.

Commencement Date: 9 February 2001.

Period: Six (6) months.

Rent: \$170.00 per week.

Security Deposit \$680.00

The Landlord claims compensation in the amount of \$845.71 being for outstanding rent and cleaning costs of \$297.00. In support of her application, the Landlord submitted various documentation in support, including a copy of the ingoing and outgoing condition report dated 9 February 2001, a rental ledger, Yellow Rose Cleaning Service invoice and copies of the Notices sent to the Tenant.

The evidence of the Landlord in support of her application is as follows:

- The Landlord issued a Notice to Remedy Unpaid Rent dated 2 September 2002 which was posted to the Tenant.
- The Tenant did not remedy the unpaid rent but vacated the premises on 11 September 2002 by dropping the keys to the premises into the office.
- On 17 September 2002 the Landlord sent to the Tenant a Notice of Landlord’s Intention to Retain Security Deposit of \$680.00 for the unpaid rent and cleaning costs. The Landlord says that she did not attach an affidavit or statutory declaration to this Notice and she would not have had the cleaning quote at that time so did not attach that.
- The Landlord says the Ingoing Condition Report was completed by the Tenant on or about 9 February 2001 which is exhibited by his signature.

- The copy of the Ingoing and Outgoing Condition Reports submitted by the Landlord has handwritten notations stating “Outgoing completed 14/9/2002, no power connected”.
- In relation to the Outgoing Condition Report, the Landlord says this was completed on 14 September 2002. The Landlord says that when the Tenant dropped the keys off on 11 September 2002 she advised him that she would be doing the Outgoing Condition Report within the next three days. However, she did not give him a date or time. The Landlord said that the Tenant would not give her a forwarding address but indicated he would contact the Landlord prior to this time.
- The Landlord says the Tenant did not contact her at all. Accordingly, on 14 September 2002 the Landlord, having not heard from the Tenant went and conducted the Outgoing Condition Report. She posted it to the Tenant on 14 September 2002. The Landlord says this was not recorded in her mail register however, she says she put it in her mail tray on a Saturday and remembers doing this.
- The Landlord says with respect to mail, the responsibility is on the individual Property Managers to fill out the mail register at her office. She forgot to fill out the mail register on 14 September 2002 after mailing the Outgoing Condition Report.
- The Landlord says that the premises was left in an unreasonably dirty condition compared to when the Tenant moved in.
- The Tenant lived there for 18 months. During that time the premises looked like it had not been cleaned at all. The following needed to be cleaned in the premises: the walls, cobwebs, finger marks, windows inside or out, curtains, kitchen, cupboards, the stove and the oven.
- In relation to the stove, the Landlord says there were overspills from cooking left on the side and bottom as well as burnt food on top of the stove.
- The Landlord says the premises was a two bedroom unit with a full bathroom, lounge, dining area as well as a downstairs area which had a bathroom and laundry incorporated into it.
- The Landlord says that there were finger marks and mould around the power points and light switches.
- The Landlord says that the townhouse was reasonably big with very large bedrooms and built-in robes.
- The Landlord says the cleaners charge about \$25.00 - \$30.00 per hour.
- In relation to the unpaid rent, the Landlord says she calculated the unpaid rent up until 11 September 2002 which is the date that the Tenant vacated the property. I note the Landlord initially claimed that the amount of \$845.71 was outstanding however, according to my calculations, I calculated the amount of rent outstanding as being \$675.71. The Landlord, after having considered the issue, indicated by facsimile 8 October 2002 that she agrees with the figure I had calculated.

THE NOTICE OF INTENTION TO RETAIN SECURITY DEPOSIT

The Landlord has issued a Notice of Intention to Retain Security Deposit dated 17 September 2002 (“the Notice”), seeking to withhold part of the compensation claimed from the Tenant’s security deposit. The evidence from the Landlord is that she did not attach a copy of the cleaning quote nor a statutory declaration as required by section 112(5) of the Act.

Landlord’s can only withhold part or all of the Tenant’s security deposit if the requirements of section 112 of the Act are met. The requirements of section 112 are clear in its terms and are mandatory requirements. As the Landlord has not complied with these requirements, I find that she is not entitled to retain the Tenant’s security deposit in the amount of \$680.00 and must return the same forthwith. I note that during the course of the inquiry there was no evidence which satisfied me that the circumstances of the Landlord’s failure to comply with section 112(5) (in so far as it related to the unpaid rent component) are such that she ought, despite the failure, be permitted to retain the security deposit.

Accordingly, I order that the Landlord return to the Tenant, the full amount of his security deposit in the amount of \$680.00 forthwith.

COMPENSATION CLAIMS

Despite my finding that the Landlord is not entitled to retain the security deposit, it is necessary for me to consider whether the Landlord is entitled to an order for compensation.

Claim of \$297.00 for Cleaning

The Landlord claims \$297.00 in cleaning the premises which she says was left in an unreasonably dirty condition. A perusal of the Outgoing/Ingoing Condition Report submitted by the Landlord indicates that the majority, if not all, of the premises was in a “dirty, dusty and filthy condition”. The oral evidence of the Landlord during the course of the Inquiry supported this. The obligation is on the Tenant in vacating the premises to leave the premises in a reasonably clean condition. In my view, based on the oral and documentary evidence from the Landlord, I am satisfied that the Tenant has not complied with this obligation and find that the Landlord is entitled to compensation for the Tenant’s breach of this obligation.

The evidence of the Landlord is that the premises looked like it had not been cleaned in 18 months. In these circumstances, I am satisfied that \$297.00 is a reasonable amount to get the premises in a reasonably clean condition.

Accordingly, I order that the Tenant is to pay the Landlord compensation in the amount of \$297.00 for leaving the premises in an unreasonably dirty condition.

Unpaid Rent

The Landlord claims the amount of \$845.71 being rent that has not been paid by the Tenant during the course of the tenancy agreement up to and including 11 September 2002 when the Tenant vacated the premises. The Landlord, in support of her application, submitted copies of her rental ledger. I am satisfied upon a review of the ledger that the Tenant has failed to pay rent in accordance with his obligations under the Tenancy Agreement.

According to my calculations, the amount of rent outstanding equals \$675.71 being unpaid rent from 17 August 2002 to 11 September 2002. I note by facsimile from the Landlord dated 8 October 2002, the Landlord agrees with this calculation.

Therefore, I order that the Tenant pay the Landlord compensation in the amount of \$675.70 being for unpaid rent from 16 August 2002 to 11 September 2002.

ORDERS

On the basis of the above, I order:

1. The Landlord is to return to the Tenant the security deposit in the amount of \$680.00 forthwith.
2. The Tenant is to pay the Landlord compensation in the amount of \$972.70 being for unpaid rent, up to and including 11 September 2002, and cleaning costs associated with leaving the premises in an unreasonably dirty condition.

Dated this day of October 2002

Penny Turner
Delegate of the
Commissioner of Tenancies