

**REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES**  
**INQUIRY – 26 NOVEMBER 2002**

This is a determination of an application dated 29 October 2002 by Belinda, on behalf of the tenant, seeking an order for the return of security deposit pursuant to section 113 of the *Residential Tenancies Act* (NT) (“the Act”). In addition, this is a determination, with the tenant’s consent of an application by the landlords for compensation pursuant to section 122 of the Act. The applications are made in respect of premises being 86 Priest Circuit, Gray in the Northern Territory of Australia.

A Notice of Inquiry dated 15 November 2002 was posted to the parties. The inquiry was conducted on 26 November 2002 during which evidence was taken from the landlord, and the Landlord’s Agent. Evidence was also taken from Belinda who appeared on behalf of the tenant, (“the Tenant”).

I note during the course of the Inquiry the Tenant consented to the hearing of the Landlord’s application for compensation despite the fact that the Landlord has not given a written application to the parties and to the Commissioner. In the interest of resolving the dispute between the parties, I agreed to hear the compensation claim pursuant to my powers under section 141 of the Act.

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:	86 Priest Circuit, Gray
Commencement Date:	26 April 2002
Period:	6 Months
Rent:	\$240.00 per week
Security Deposit	\$960.00

The Tenant seeks the return of her security deposit in the amount of \$960.00. This matter had previously been to a conciliation conference on 12 November 2002. With the consent of both parties, the material before the conciliation conference was put before to the Inquiry. The conciliation conference was partially successful in that the Tenant agreed to replace four Golden Cane Palms that had died during the course of the tenancy. However, the parties were disputing the amount of compensation that was to be paid in this regard.

The evidence from both parties during the course of the Inquiry was as follows:

- It was common ground between the parties that they were governed by a written tenancy agreement dated 19 April 2002 being for the period 23 April to 22 October 2002. A copy of this tenancy agreement has been submitted for the purposes of the Inquiry.
- It was common ground between the parties that the Tenant vacated the premises on 22 October 2002 as the lease had expired and the Landlord’s wanted to move back into the premises.
- The Landlord has submitted to the Inquiry a copy of the ingoing and outgoing condition reports for the premises.

- In relation to the ingoing, the evidence of the Landlord is that this was completed the day before the Tenant's moved into the premises on 22 October 2002. Two copies of the ingoing condition report were given to the Tenant upon completion. The Tenant did not return a copy of the ingoing to the Landlord.
- The evidence of the Tenant is that she accepts that she was given copies of the ingoing condition report. She acknowledges she did not return a copy of the ingoing condition report to the Landlord and agrees that the copy submitted by the Landlord to the inquiry is a copy of the ingoing condition report that was given to her.
- In relation to the outgoing condition report, the Landlord says this was completed on 22 October 2002 after the Tenant vacated the premises. The Landlord did not give the Tenant an opportunity to attend the outgoing inspection as he wanted to move into the premises at the same time. The Landlord says when the Tenant handed in the keys to the premises on 22 October 2002 the Tenant was told that the outgoing would be done and it would be done the following morning. When the outgoing was completed, the Landlord says she rang the Tenant to say that there were cleaning items that had to be addressed in the premises. The Tenant went back and addressed the deficiencies with the premises on Wednesday, 23 October 2002. The Landlord says it was also apparent when they did the outgoing inspection that there was a bare patch of grass in the lawn, palm trees that had died and the pool required cleaning.
- As a result of the outgoing inspection, the Landlord says they did up a Notice of Intention to Retain the Tenant's Security Deposit dated 28 October 2002 ("the Notice"). A copy of this Notice has been submitted to the Inquiry. The Landlord says that the Tenant collected the Notice on 28 October 2002 from the Agents office. The Notice seeks to retain the full amount of the Tenant's security deposit and had annexed to it a copy of a statutory declaration, as well as quotes from Jim's Mowing in the amount of \$1,074.70 and a quote from Quick Glass in the amount of \$298.10.
- In relation to the outgoing condition report, the Landlord says this was posted to the Tenant on 28 October 2002 to the Tenant's forwarding address.
- The Landlord says the outgoing was not given to the Tenant within three business days as required by section 110 of the Act. The Landlord's agent says this was because she thought the outgoing could be sent with the Notice and wanted to see if the dispute between the parties could be resolved by consent.
- In relation to the outgoing condition report, the Landlord has submitted a copy of their mail register which indicates that two copies of the property condition report was posted to the Tenant on 28 October 2002.
- The evidence of the Tenant is that she was not asked to complete the outgoing condition report. The Tenant says, if she had of been asked she "definitely" would have attended. In addition, the Tenant says they have never received a copy of the outgoing condition report.
- In relation to the compensation claim, the Landlord claims compensation for repairs to a shower screen in the amount of \$293.10 as well as costs associated with replacing four Golden Cane Palms and turf for the premises in the amount of \$706.20. In support of his claim, the Landlord has submitted to the inquiry two quotes from Jim's Mowing dated 26 October and 20 November 2002 for \$1,074.70 and \$706.20 respectively.

It appears the later quote is the revised quote upon which the Landlord is seeking to rely on for the purposes of his application. In addition, the Landlord has submitted a quote from Quick Glass dated 25 October 2002 in the amount of \$298.10.

- The evidence of the Landlord in relation to the shower screen is that the shower screen is a fixed panel with wire embedded in it. The shower screen had been cracked from the bottom left hand side to the right hand side across the full length of the panel. The panel is approximately 1m x 2.5m and when you look at it from the toilet the crack goes the full length of the panel from the left to right side. The panel separated the toilet from the shower. The Landlord says they had asked the Tenant if they interested in paying for the repairs and the Tenants reply was “as far as she was concerned she didn’t do the crack and there was no crack there”. The Landlord says that there was no crack to the panel when they moved out of the premises (they had previously resided in the premises) and now it has a crack. The Landlord says this was the first time they have rented out the premises and the panel would have been there when they purchased the house about four years ago. The Landlord says that the panel is permanently affixed to the bathtub and it would not have cracked had there been no pressure applied to it.
- The evidence of the Tenant in relation to the shower screen is that she remembers there being a crack in the shower screen, however, as she did not go through the ingoing condition report she did not realise the crack was not mentioned in the ingoing condition report. The Tenant says in response to being asked for further details of the crack that she “didn’t study it and didn’t pay any attention to it”. The Tenant however does concede that there was a ‘big crack’ there and says she vaguely remembers it being there when she moved into the premises. The Tenant also says that the Agent had previously mentioned to her that she vaguely remembered it being there at the start of the tenancy. The Tenant says that she did not damage the shower screen and does not recall ever leaning against it or falling into it.
- The Landlord’s agent indicated that she did say to the Tenant that she vaguely remembered there being a crack there, but she views so many properties that she could have been referring to a different property. The Landlord’s agent said that if there was a crack there at the start of the tenancy agreement she would have noted it on the ingoing condition report and no such note was made.
- The evidence of the Landlord in relation to the garden claim is that he was away at a remote community and received a phone call from his friends and neighbours that the lawn was dead. This occurred in or about June 2002 and he contacted his agent requesting her to tell the Tenant to water the lawn. The agent contacted the Tenant and told her that the lawn was very dry and asked to water it as it was one of the terms of the tenancy agreement. The agent says she drove past the premises immediately following that phone call from the Landlord and noticed that the lawn was very dry.
- The evidence of the Tenant is that her partner, always watered the lawn. They were away from the premises for approximately two weeks in or about June 2002. The Tenant says when the Landlord’s agent contacted her about the lawn no one was staying the house and she did not make any arrangements for the garden to be watered as she “didn’t think of it at the time”.

- The Tenant says when she was at the premises the lawn was watered about two or three times a week. Prior to leaving it for two weeks in June 2002 the grass was green and it was “fine”. When she returned to the premises she says she “didn’t study the grass” and that the lawn looked the same as the neighbours and merely looked like “dry season grass”.
- The Tenant says when they vacated the premises in October 2002 the grass was green as they had made sure they watered it after the agent had contacted them about the lawn. The Tenant says she did not water the garden personally however her partner, did.
- The Tenant says between June and October 2002 they were away from the premises for about five days in September as well as two weeks from approximately 2 to 16 September 2002. Her partner’s sister, stayed at the premises and would have watered the garden during that time. The Tenant says that her partner would have told his sister to water the garden. In addition, the Tenant that her friend also stayed at the premises about halfway through the relevant period. The Tenant says her friend told her that she had been watering the lawn as well as cleaning the house. The Tenant says this is confirmed as when they arrived back at the premises in the middle of September 2002 their sprinkler was going.
- The Tenant says when they vacated the premises on 22 October 2002 the grass was green and had been freshly mowed. The Tenant’s friend, who was also present during the Inquiry and was staying with the Tenant at the premises at the time, confirmed this contention.
- The Tenant says that the topsoil did not hold water and when they moved house they had to stop because of the dust that was being raised. The Tenant says this had occurred even though they had soaked the lawn the night before. The Tenant says the lawn was mowed on 22 October 2002.
- In response, the Landlord says that there was nothing wrong with the soil and that the Tenant did not water it regularly enough. The Landlord says the water bill from when the Tenants were staying in the premises was about \$80.00 for the quarter whereas normally his water bill is \$300.00 for excess water over the same period. The Landlord says in the dry season the gardens need to be watered every day and there was a patch at the back of the premises that was “totally dead”. The Landlord says he has photographs to show the damage before and after the tenancy agreement. The Landlord says that the back of the house near the pool and to the side of the house was the “best part of his grass”. The Landlord says that it was buffalo grass and is very lush and was in a “perfect” condition just prior to the Tenant’s entering into possession. The Landlord says that at the back near the pool that area of lawn was always wet and would have expected that to live despite the Tenant’s not watering it. However, upon the Tenant’s vacation of the premises there was no lawn there at all and it was “dead”.
- The Tenant agrees that that patch of grass was always wet and moist however she also said that she did not remember there ever being grass in the areas alluded to by the Landlord. The Tenant says that if there was never any turf in the first place, she thinks it is unreasonable to expect her to replace it. She also says the amount was unreasonable.
- The Landlord’s agent, says there was grass in the area alluded to by the Landlord and described the grass as being “very lush green”.

- The Tenant's friend, suggested that as the Tenant had dogs the grass could have been damaged because that is where the dogs run as they are kept out the back. The Tenant has two dogs, a Rottweiler and a puppy.
- In relation to the patch of grass, the Landlord says the dead patch of grass that had to be replaced was an area of approximately 5 x 2 metres. The Tenant on the other hand says that the area was about 3 x 1.5 metres. The parties appeared to concede during the Inquiry that the quote the Landlord had gotten from Jims Mowing dated 20 November 2002 which indicates an area of approximately 16m squared was "about right".
- In relation to the Golden Cane Palms, the Landlord says four Golden Canes had died due to lack of watering. The Tenants indicated during the conciliation conference that they were happy to replace the Golden Cane Palms, however the issue between the parties to be the reasonable amount that was necessary for such a replacement.
- The Landlord says that he had bought the Golden Cane Palms and they were about 1.6m high. The Landlord says he had purchased these palms three or four months before at a cost of about \$80.00 each. The Landlord says when he bought the palms he had to get a trailer to transport them. The Landlord says it was reasonable to get Jims Mowing to replace the palms as they needed a bobcat to dig the hole for the palms. In addition, the amount quoted by Jims Mowing includes replanting as well as the laying of the turf.
- The Landlord's agent had rung around various nurseries and obtained quotes from \$30.00 up to \$120.00 for the palms of a similar size. The quotes she got were \$29.95 for 20L, 6ft palm; \$76.95 for a 45L palm, \$78.00 for a 2m high, 45L palm and \$120.00 being the maximum amount she was quoted.
- The Tenant says that the palms were not six feet high and thinks they were approximately 1.5 metres high. The Tenant says that \$30.00 was a reasonable amount to pay for such palms.

I note in the course of submissions during the Inquiry, the Tenant indicated that if I was to order compensation for the Landlord she did not want that offset off her security deposit. In addition, the Tenant requested 14 days to pay any order of compensation as she may be appealing any decision and is interstate until January 2003. The Landlord in response indicated that he would like the compensation order to be effective immediately as they were waiting on the order to undertake the work, particularly in circumstances where the Tenant indicated that they would be appealing the decision which will extend the time frames.

The Tenant also queried whether there was any way she could ensure that any amount paid could be applied for the purpose of specified. For example, if she could buy replacement palms for the Landlord herself. The Landlord indicated he was not prepared to consent to this course. I indicated during the inquiry that the only order I would be prepared to make, should I find a compensation order is appropriate is an order for an amount of money. Any amount ordered would, as far as possible be an attempt to put the Landlord in a position that he would have been in had the Tenant not breached her obligations under the tenancy agreement. In my view, this is the most efficient and effective way of resolving the dispute between the parties.

## THE SECURITY DEPOSIT

Section 112 of the Act governs the circumstances under which a Landlord is entitled to retain a Tenant's security deposit at the end of the tenancy agreement. Section 112 provides, my emphasis:

Section 112 When landlord may keep security deposit

- (1) Subject to this section, **a tenant is entitled to have his or her security deposit reimbursed at the end of the tenancy agreement.**
- (2) The landlord must, **within 7 business days after the tenant gave up vacant possession of the premises** or has, in the opinion of the landlord, apparently abandoned the premises, **reimburse to the tenant the amount of the security deposit, other than an amount that the landlord is entitled to retain, or to continue to hold, under this section.**  
Penalty: 20 penalty units.
- (3) **At the end of a tenancy agreement the landlord is entitled to retain so much of the security deposit paid by the tenant as is necessary to –**
  - (a) **make good damage** (other than reasonable wear and tear) to the premises or to ancillary property that occurred during the tenancy and that was caused by a tenant or a person for whose actions a tenant is liable under section 12;
  - (b) **replace ancillary property** lost or destroyed by the tenant or by a person for whose actions the tenant is liable under section 12;
  - (c) clean the premises or ancillary property left unreasonably dirty by the tenant or by a person for whose actions the tenant is liable under section 12;
  - (d) replace locks altered, removed or added by the tenant without the consent of the landlord;
  - (e) pay for unpaid rent or for unpaid charges for electricity, gas or water payable by the tenant under section 118;
  - (f) pay an amount required to be paid under section 121; or
  - (g) pay money ordered by the Commissioner or a court to be paid by a tenant not paid.
- (4) **The landlord is not entitled to retain some or all of the amount of a security deposit for a purposes referred to in subsection (3)(a), (b) or (c) unless –**
  - (a) **a condition report in relation to the premises was accepted by the tenant under Part 5;** and
  - (b) **if the tenant –**
    - (i) **has given up vacant possession of the premises – a condition report has been provided to the tenant under section 110;** or
    - (ii) has, in the opinion of the landlord, apparently abandoned the premises – notice has been given to the tenant in accordance with section 110(3) and, if the tenant demanded copies of the condition report within 7 days after notice was given to the tenant under that section, those copies have been given to the tenant.

...

It is clear, section 112(4) of the Act provides that the Landlord is not entitled to retain any part of the Tenant's security deposit to make good damage or to replace ancillary property unless a condition report has been accepted by the Tenant under Part 5 of the Act and the Tenant upon vacating the premises has been given an outgoing condition report in accordance with section 110.

### **The ingoing and outgoing condition reports**

Based on the evidence before the Inquiry, I am satisfied that the Tenant is taken to have accepted the ingoing condition report in accordance with Part 5 of the Act. I am satisfied that two copies of the ingoing condition report were provided to the Tenant within 3 business days of her taking possession of the premises. The Tenant, after receiving the copies of the ingoing condition report did not return it to the Landlord and by her own concession did not go through it. Accordingly, pursuant to section 26(2) of the Act the Tenant is taken to have accepted the condition report for the purposes of the tenancy.

In relation to the outgoing condition report, section 110 provides, my emphasis:

Section 110      Condition reports

(1)      A landlord may, **within 3 business days after a tenant has given up vacant possession** of premises to which a tenancy agreement relates, **fill out and sign 2 copies of a condition report and give both copies to the tenant.**

(2)      The **landlord is to fill out the condition report** under subsection (1) **in the presence of the tenant** or a representative of the tenant (who is not the landlord or the landlord's agent) **unless it is not practical to do so or the tenant or the tenant's representative does not appear at the agreed time.**

...

(4)      A condition report is to –

(a)      specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates;

(b)      itemise, and specify the condition of, any fixture or chattel that is ancillary property; and

(c)      contain other prescribed information, if any.

(5)      A tenant or a tenant's representatives may –

(a)      accept a condition report given to him or her under subsection (1) or (3) by signing both copies of the report and returning one to the landlord; or

(b)      if the parties are unable to agree as to the contents of the condition report – refuse to accept the condition report.

...

The Landlord says the outgoing condition report was completed on 22 October 2002 and concedes that the Tenant was not given an opportunity to attend the outgoing inspection. The outgoing condition report was not sent to the Tenant until 28 October 2002. Based on the evidence before the Inquiry, I am not satisfied that the Landlord has complied with section 110 of the Act. In particular, I find the Landlord did not provide the Tenant with an opportunity to attend the outgoing inspection and the outgoing condition report was not given to the Tenant within 3 business days as required by the Act.

Given my finding that the Landlord has not complied with section 110 of the Act, in accordance with section 112(4) the Landlord is not entitled to retain the Tenant's security deposit for the purposes of making good damage or replacing ancillary property. Accordingly, I order that the Landlord must return the Tenant's security deposit in the amount of \$960.00 to the Tenant forthwith.

## COMPENSATION

The Landlord has brought an application for compensation pursuant to section 122 of the Act for:

- Damage to a shower screen in the amount of \$293.10; and
- Gardening, being for the replacement of turf and four Golden Cane Palms in the amount of \$706.20.

In relation to the state of repair of the premises, section 51 of the Act provides, my emphasis:

Section 51      Cleanliness and damage

- (1) It is a **term of a tenancy that a tenant** –
  - (a) will not maintain the premises and ancillary property in an unreasonably dirty condition, allowing for reasonable wear and tear;
  - (b) **must notify the landlord of any damage or apparent potential damage to the premises** or ancillary property, other than damage of a negligible kind;
  - (c) **must not intentionally or negligently cause or permit damage to the premises** or ancillary property;
  - (d) if the premises are a unit within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of the Act;
  - (e) if the premises are a building lot within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act.
  - (f) If the premises are a lot within the meaning of Part IVB of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act.
- (2) It is a **term of a tenancy agreement that at the end of the tenancy the tenant must give the premises and ancillary property back to the landlord** –
  - (a) **in a reasonable state of repair;** and
  - (b) in a reasonably clean condition,  
**allowing for reasonable wear and tear.**
- (3) A tenant is not in breach of the term of the agreement specified in subsection (1) or (2) if –
  - (a) the breach is caused by the landlord's failure to repair or maintain the premises or ancillary property; and
  - (b) the landlord had notice that the repairs or maintenance were required.
- (4) **In deciding whether premises or ancillary property are in reasonable condition** or in a reasonably clean condition, **a landlord, the Commissioner or a court must take into account** –

- (a) **the condition of the premises** or ancillary property **when the tenant took possession of them as determined by a condition report**, if any, **accepted under Part 5** by the landlord and the tenant;
- (b) **if the tenancy agreement had terminated** or the tenant has, in the opinion of the landlord, apparently abandoned the premises – **the condition of the premises or ancillary property as determined by a condition report, if any, accepted under Part 12** by the landlord and the tenant; and
- (c) **the effect of reasonable wear and tear** during the tenancy.

...

The Landlord is essentially claiming that the Tenant has breached this term of the tenancy agreement. Accordingly, the onus is on the Landlord to establish on the balance of probabilities that the Tenant has breached her obligations under section 51 of the Act. Namely, at the end of the tenancy, the premises was not returned in a reasonable state of repair allowing for reasonable wear and tear.

As I have indicated herein, I am satisfied that the parties have accepted an ingoing condition report under Part 5 of the Act, however, I am not satisfied that an outgoing condition report has been accepted under Part 12. I note the parties did not rely on the outgoing condition report during the course of the Inquiry, but appeared to rely on their oral testimony. Generally speaking, I preferred the oral evidence of the Landlord and find that the evidence of the Landlord and his agent was a more credible account of the condition of the premises upon the Tenant's vacation.

#### **The shower screen**

The Tenant's evidence is that she vaguely remembers there being a crack in the shower screen when she moved into the premises. However, as she did not go through the ingoing condition report she did not realise that it was not mentioned on the ingoing condition report. The Landlord and his agent's evidence refute this contention. In addition, I note the ingoing condition report submitted by the Landlord does not indicate that there were any cracks in the panel at the commencement of the tenancy. Section 26 of the Act provides that if an ingoing condition report is taken to have been accepted under Part 5 of the Act then the ingoing condition report is conclusive evidence of the condition of the premises and any ancillary property at the beginning of the tenancy. In any event, I prefer the evidence of the Landlord and do not accept the Tenant's evidence in this regard. I find that the shower screen was not cracked at the commencement of the tenancy agreement.

The Tenant was unable to provide details of the crack saying she "didn't study the crack and didn't pay attention to it". I find it very difficult to accept that the Tenant does not recall any details about a crack in the shower screen, given the shower screen could essentially be seen from the toilet. The Tenant also says that no force was applied to the screen. The evidence of the Landlord indicated that the crack in the shower screen was quite a significant crack going across the full width of the shower screen.

In my view, the crack of the nature described by the Landlord was significant and would not amount to reasonable wear and tear. On balance, I accept the evidence of the Landlord that a crack of this nature could only have occurred if some sort of force had been applied to it, particularly in circumstances where the panel was permanently affixed to the bathtub. I am satisfied that the crack in the shower screen was the result of the Tenant's breach of her obligations under the tenancy agreement to return the premises in a reasonable state of repair.

The Landlord has submitted a quotation from Quick Glass dated 25 October 2002 for the replacement of the glass panel. I am satisfied that the amount of \$298.10 claimed by the Landlord, as indicated by the quote they have got for the work, is reasonable.

I order that the Tenant pay the Landlord compensation in the amount of \$298.10 being for the replacement of the glass shower screen panel.

### **Gardening – the turf**

On balance, I do not accept the Landlord's evidence that it was reasonable to expect that the Tenant water the garden every single day. However, I do accept that the watering required, would have been more than the twice a week that the Tenant says that this was watered. I also note and accept the evidence of the Landlord that the Tenant probably did not water the garden and maintain the grass in a reasonable condition as required under the tenancy agreement. In relation to the replacement of turf required at the back of the premises, I accept the evidence of the Landlord and his agent that the grass was very lush and green at the commencement of the tenancy. However, upon the Tenant's vacation of the premises there was essentially no grass left particularly at the back of the house near the swimming pool. In addition I note the ingoing condition report submitted by the Landlord describes the subject grass as being "green and health, 1 x pine log retaining wall, 1 x stump, all shrubs and palms are healthy". I do not accept the Tenant's evidence that there was no grass in the areas alluded to by the Landlord.

In my view, the observation of the Tenant's friend, Rebecca Morley during the course of the Inquiry is probably the most accurate indicator of what has caused the bare patches and the grass to die namely it was the result of the Tenant's dogs using it as a running area. On balance, based on all the evidence before the inquiry, I am of the view that the Tenant has breached her obligation to return the premises in a reasonable state of repair.

I have considered the quote submitted by the Landlord from Jims Mowing which indicates that 16m squared of turf needed to be replaced as well as a metre of topsoil. In my view, the amount of \$272.00 for the replacement of approximately 16m<sup>2</sup> of turf and \$30.00 for topsoil is reasonable, particularly in circumstances where at the commencement of the tenancy agreement the turf was in a lush green condition. I note the quote charges labour in the amount of \$140.00. There was no evidence during the course of the Inquiry about this charge, but presumably the amount would cover the labour associated with planting of the Golden Canes. Doing the best with the lack of information I have in this regard, I find \$60.00 of this labour charge can be attributed to the laying of the turf.

Accordingly, I order that the Tenant pay the Landlord compensation in the amount of (\$272.00 + \$30.00 + \$60.00 + 10% GST=) \$398.20 being for the replacement of the turf.

### **Gardening – replacement of four Golden Cane Palms**

The only dispute between the parties is the amount that is reasonable for the purposes of replacing the Golden Canes. On balance, based on the evidence before the Inquiry and as I have already indicated I accept the evidence of the Landlord in that the Golden Canes would have been approximately 1.6m tall three months prior to planting. In my view, the \$80.00 claimed by the Landlord is probably unreasonable for that size of Golden Cane however the \$30.00 that the Tenant was willing to concede is probably an insufficient amount.

The Landlord's quote from Jim's Mowing indicates that the palms could be replaced at \$50.00 each. I also take into account the quotes obtained by the Landlord's agent from various nurseries in the range of between \$30.00 and \$120.00 for the supply of such palms and find that \$50.00 is a reasonable amount to be attributed to each palm. I also note that in order for the Landlord to be put in a position that he would have been in had the Tenant not breached her obligations under the tenancy agreement, the dead Golden Canes would need to be removed and replanted. As I have indicated the quote from Jim's mowing indicates that \$140.00 labour was to be charged for the laying of the turf and for the replacement of the palms. Given I have found \$60.00 can be attributed to the laying of the turf, the remaining labour charge in the amount of \$140.00 - \$60.00 =) \$80.00 is in my view, a reasonable amount to be attributed to the removal of the four dead and planting of the four new Golden Canes.

Accordingly, I order that the Tenant pay the Landlord (\$200.00 + \$80.00 + 10% GST=) \$308.00 being for the replacement of four Golden Cane palms that had died as a result of lack of watering.

### **SUMMARY OF ORDERS**

I note I have considered the parties' submissions regarding whether or not to allow time for the Tenant to pay the compensation ordered. I do not take into account any possible appeal from my decision. However, on the one hand the Tenant is interstate and on the other hand, the Landlord is entitled to payment of the compensation ordered. Given my findings that the Tenant has breached her obligations under the tenancy agreement, I order that the amount of compensation is to be paid by the Tenant forthwith.

On the basis of the above, I order that:

1. The Landlord must return the Tenant's security deposit in the amount of \$960.00 to the Tenant forthwith.
2. The Tenant is to pay the Landlord compensation in the amount of \$1,004.30 forthwith, being for the replacement of a cracked shower screen (\$298.10), the supply and replacement of four Golden Cane palms (\$308.00) and replacement of the turf (\$398.20).

Dated this            day of December 2002

Penny Turner  
Delegate of the  
Commissioner of Tenancies