

## REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

### INQUIRY – 18<sup>TH</sup> OCTOBER 2002

This is a determination of an application dated 26 September 2002 (received by the office of the Residential Tenancies Unit on 7 October 2002) by the Landlord. The application seeks 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”) in respect of premises being Lot 3882 Currawong Crescent, Howard Springs in the Northern Territory of Australia.

A Notice of Inquiry dated 9 October 2002 was posted to the parties. The inquiry was conducted on 18 October 2002 during which evidence was taken from the Landlord’s agent, (“the Landlord”) and from the tenant (the Tenant”).

Prior to the commencement of the inquiry, I indicated I had previously acted against the Tenant in relation to another matter and was prepared to disqualify myself from hearing the inquiry. The Tenant indicated she had no objection to my hearing the matter and the Landlord did also agreed to this course. In light of both parties consenting to my hearing this matter, I commenced hearing the parties on the Landlord’s application.

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:	Lot 3882 Currawong Crescent, Howard Springs NT 0835
Commencement Date:	8 March 2002
Period:	Six months
Rent:	\$270.00 per week
Security Deposit	\$1040.00

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 Rent and Notice of Termination dated 13 September 2002 in accordance with section 87(1) of the Act (“the Notice”).

I find the Notice complies with the requirements of section 87(2) of the Act and was served on the tenant by post on 13 September 2002 in accordance with section 154 of the Act.

The rent payment day is specified in the notice as being 24 September 2002. As rent was not paid by the rent payment date, in accordance with section 87(3) of the Act, the tenancy is terminated effective on the termination date being 25 September 2002 and in accordance with section 103 of the Act, the Tenant ceases to be entitled to possession of the premises as at this date.

During the course of the inquiry, the Tenant indicated that she has had ongoing problems with the premises, including the fact that she did not have access to a stove for the last 6 months, the pool was in a disgusting state and there were various aspects of the premises which she had asked the Landlord to fix.

The Tenant says despite these requests, the Landlord had not addressed these issues and she was at her "wits end" trying to have these matters addressed. The Tenant also indicated she was lodging a compensation application in relation to this issue. She has lodged an application seeking a declaration that the rent was excessive, but has been advised by the Residential Tenancies Unit, her better course would be to lodge a compensation application for the loss she has suffered as a result of the Landlord's breach of their obligations under the tenancy agreement. The Tenant indicated she had the rent money in a bank account, but had not paid it because of the Landlord's breaches of the tenancy agreement.

I understand the Tenant's frustration at these alleged breaches by the Landlord of the tenancy agreement, but as I indicated during the course of the inquiry, despite the fact that the Landlord may have breached their obligations under the tenancy agreement, the Tenant had an obligation to pay the rent. The fact that the Landlord may have breached obligations under the tenancy agreement does not entitle the Tenant to breach her obligations.

The failures of the Tenant to pay rent in accordance with the tenancy agreement and remedy the unpaid rent after the issue of the Notice means that the tenancy agreement has terminated. I am satisfied the tenancy has been terminated and the Landlord should have possession of the premises.

The Tenant indicated during the course of the inquiry that she is in a position of severe hardship. She is working 12 hour shifts and is currently on night shift. The Tenant indicated she is working the 8 days on night shift out of the next fortnight. The Tenant's husband is away for two weeks and the Tenant says she has a thirteen year old child and will require assistance with moving. The Tenant has been looking for rural properties for the last 3 months, but has been unable to find one suitable, as she also needs a property that will take horses and has a dog proof fence. The Tenant also indicated she has the rental money in the bank and can pay all future rent on time and in accordance with her obligations under the tenancy agreement. The Tenant indicated she would need one month in order to vacate the premises and find alternative accommodation.

I indicated to the parties during the course of the inquiry, that I was satisfied the Tenant was going to be in a position of severe hardship if the possession order was made effective immediately. In response to this the Landlord indicated she would be prepared to consent to a possession order being effective in one month on the condition that the Tenant pay all outstanding rent and all future rent on time in accordance with the tenancy agreement. The Tenant agreed to this course.

Given the indications from both parties, I indicated I would make orders giving effect to this agreement, namely suspending the operation of the possession order for one month until Monday, 18 November 2002 and making orders regarding the payment of outstanding rent and future rent in accordance with the tenancy agreement. In the event the Tenant breaches this order, the Landlord must make an application to have the suspension of the possession order lifted. The parties were consulted regarding the terms of the order and agreed to this course.

In relation to the Landlord's claim for compensation pursuant to sections 121 and 122, I find the Tenant has failed to pay rent in accordance with the tenancy agreement and as at the date of the inquiry remains in possession of the premises. The Tenant has paid rent up until 18 July 2002 inclusive. On the basis of the evidence before me, I find the amount of \$3,548.55 is owed by the Tenant to the Landlord in compensation, being unpaid rent and rent that would have been payable to the Landlord from the termination of the tenancy up to and including the date of the inquiry.

Accordingly, by consent of the parties, I order that:

1. The Landlord have possession of the premises effective at 10.00am on Monday, 18 November 2002.
2. The Tenant is to pay the Landlord forthwith, compensation in the amount of \$3,548.55 being unpaid rent and rent that would have been payable after the termination of the tenancy agreement up to and including 18 October 2002.
3. The Tenant is to pay to the Landlord two weeks rent in advance, in the amount of \$540.00 on 21 October 2002 and 4 November 2002 respectively.
4. Any further application for compensation is adjourned to a date to be fixed upon further application and notice to the parties.

Dated this 18th day of October 2002

Penny Turner  
Delegate of the  
Commissioner of Tenancies