

## REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

### INQUIRY – 22 NOVEMBER 2002

This is a determination of an application dated 14 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 was made in respect of premises being 16/18 Athanasiou Road, Sunset Cove in the Northern Territory of Australia.

A Notice of Inquiry dated 15 November 2002 was posted to the parties. The inquiry was conducted on 22 November 2002 during which 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:	16/18 Athanasiou Road, Sunset Cove NT 0810
Commencement Date:	29 April 2002
Period:	6 months
Rent:	\$200.00 per week
Security Deposit	\$800.00

The Landlord by his Agent issued a Notice to Remedy Unpaid Rental and Notice of Termination dated 24 October 2002 in accordance with section 87(1) of the Act (“the Notice”).

I find the Notice was sent to the Tenant by post on 22 October 2002 in accordance with section 154 of the Act.

I find that the rental payments due to the Landlord was more than fourteen (14) days in arrears at the time the Notice was issued.

The Notice specifies the amount of rent outstanding as being \$650.00 and the period of rent outstanding is specified as being 30 September to 27 October 2002. According to my calculations, which are based on the Landlord’s rental ledger, the amount of rent outstanding is correct, however the period for which rent has been outstanding should have been from 5 to 27 October 2002. Alternatively, the Landlord could have indicated on the Notice she was holding \$150.00 on account (namely, a credit) for the Tenant being for the period from 30 September to 27 October 2002.

I gave the Landlord and opportunity to indicate how she had calculated the amount and period of rent outstanding. As I understand it, the submissions of the Landlord during the course of the inquiry was that:

- The amount of rent outstanding and the period of rent outstanding had been correctly, specified.
- They had not asked for more money than they were entitled to.
- They had specified the period of rent outstanding and did not show the credit amount as there is no provision in the Act that says they need to show the credit of \$150.00 in the Notice.
- They had never been told by the Residential Tenancies Unit to indicate the credit amount or to specify the exact period.

In considering an application for possession, I must be satisfied that the tenancy agreement has been terminated in accordance with the Act (section 104(2)). Section 87 is the relevant provision which provides, my emphasis:

- (1) If a tenant breaches a tenancy agreement by failing to pay rent and the rent has been in arrears for not less than 14 days, the landlord may give the tenant a notice in accordance with subsection (2).
- (2) A notice is to be signed by the landlord and **is to specify** –
  - (a) the address of the premises to which the notice relates;
  - (b) **the amount of rent that is outstanding and the period for which it has been outstanding;** and
  - (c) that is the amount is not paid before a day specified in the notice (in this section called the “rent payment day”) that is more than 7 days after the date the notice is given –
    - (i) the tenancy is terminated on the day, later than rent payment day, specified in the notice as the day on which the tenancy terminates (in this section called “termination day”); and
    - (ii) the tenant is to give up vacant possession of the premises to the landlord on termination day.
- (3) If the rent is not paid by the rent payment day, the tenancy is terminated on the termination day.
- (4) ...

Section 87 creates a statutory procedure under which, landlord’s can by notice terminate a tenancy agreement for a tenant’s failure to pay rent. In my view, the purpose of notices issued under section 87 (“section 87 notice”) is to give the tenant an opportunity to remedy the unpaid rent by telling them how much they owe and the period for which it is owed. If the rent is not remedied by the specified rent payment day, than by virtue of the Act, the tenancy agreement is terminated. Accordingly, a section 87 notice also operates as the substantive mechanism by which the tenancy agreement is terminated in the event that rent is not paid by the rent payment day.

The legislature has seen fit to prescribe the information that must be contained in a section 87 notice. In my view, the requirements of section 87 are clear in its terms and are mandatory requirements, which must be interpreted strictly consistent with the intent and operation of the Act. I note, the Act does not provide any ability for the Commissioner to amend notices of termination for substantial compliance with some, but not all of the requirements of section 87 of the Act.

One of the fundamental principles of statutory interpretation is that the legislation is to be interpreted literally, giving effect to the ordinary and natural meaning of the words used by the legislature, adopting an interpretation consistent with the purpose of the legislation in the event of any ambiguity.

It is clear section 87(2)(b) of the Act requires the amount of rent outstanding **and** the period for which such rent has been outstanding to be specified. Implicit in this is that both the amount and period of rent outstanding is correctly specified. Just because landlords specify the amount of rent outstanding correctly, does not mean the period of rent outstanding can be incorrectly specified.

Section 40 of the Act provides:

“The rent payable under a tenancy agreement accrues from day to day”

The *Butterworths Australian Legal Dictionary* (1997) defines “outstanding”:

That which remains undischarged or unpaid, such as an outstanding debt.

The Act requires “the amount of rent outstanding **and the period for which it has been outstanding**” to be specified. As I have indicated, the Landlord has correctly specified the \$650.00 of rent outstanding. Rent payable is charged at \$200.00 per week under the tenancy agreement, which is accruing at a daily rate of ( $\$200.00/7=$ ) \$28.57. If the amount of rent outstanding is \$650.00, then the period for which it, being this amount has been outstanding equals ( $\$650.00/\$28.57 =$ ) 22.75 days, which works out to be a period from 5 to 27 October 2002 (inclusive). The Landlord has specified on her Notice a period from 30 September to 27 October 2002 which equates to 28 days. This is clearly not correct and does not comply with the requirements of section 87(2)(b) of the Act.

Alternatively, given that the majority of landlord’s run a rental ledger in weekly periods, depending on the negotiated rental payment period specified in their tenancy agreement. In my view, it would be acceptable to indicate to the tenant the period of rent outstanding in such weekly periods provided the landlord indicates to the tenant on the section 87 notice that they hold money on account for the tenant and the amount of that money. In this case, the Landlord should have indicated the period of rent outstanding was from 30 September to 27 October 2002 with \$150.00 on account. I am aware, decisions of delegates of the Commissioner of Tenancies before me have also adopted this interpretation of section 87. Irrelevant to this determination, but addressing one of the submissions of the Landlord, I am also aware the Residential Tenancies Unit has and continues to actively educate landlords about section 87 notices consistent with this interpretation.

The Notice issued by the Landlord did not specify credit amount or money being held on account. As it stands, the Notice tells the Tenant that he has paid rent up to and including 29 September 2002 and owes rent from 30 September 2002 onwards. This is clearly incorrect as based on the information before the inquiry, I find the Tenant has in fact rent up to and including 4 October 2002 and only owes rent from 5 October 2002 onward. I find the period of rent outstanding specified in the Notice should have been from 5 to 27 October 2002.

I find the Landlord has incorrectly specified the period of rent outstanding and I am not satisfied the Notice complies with section 87(2)(b) of the Act. It follows, I am not satisfied the tenancy agreement has been validly terminated. Accordingly, I order that the Landlord's application dated 14 November 2002 is dismissed.

Dated this 22 day of November 2002

Penny Turner  
Delegate of the  
Commissioner of Tenancies