

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 5 JULY 2002

This is a determination of applications dated 26 June 2002 by the Tenants (“the Tenant”), seeking a declaration that the purported termination of a tenancy is of no effect pursuant to section 84 of the *Residential Tenancies Act* (NT) (“the Act”). The applications are in respect of premises being Lot 41 McMinns Drive, Humpty Doo in the Northern Territory of Australia.

The Tenant has made two applications for such a declaration, the first of which relates to a “Notice to Remedy Unpaid Rent/Notice of Termination” dated 26 June 2002 and the other of which relates to a “Notice to Terminate” dated 26 June 2002. These reasons will only deal with the Tenant’s application to declare the Notice to Remedy Unpaid Rent/Notice of Termination dated 26 June 2002 of no effect. Separate reasons for decision will be provided with respect to the Tenant’s application that the Notice to Terminate dated 26 June 2002 be declared of no effect.

A Notice of Inquiry dated 3 July 2002 was posted to the parties. In addition, copies of the Notice were faxed and telephone conversations had with both parties as to the date and time of the inquiry. The inquiry was conducted on 5 July 2002, Ms Tenant appeared on behalf of the Tenant. Ms Tenant was accompanied by her friend, who upon specific questioning indicated he was not present at the inquiry to represent Ms Tenant. Mr & Mrs Landlord and their agent, appeared on behalf of the Landlord. Evidence was taken from both parties.

In relation to the existence of a tenancy agreement, evidence given by the Landlord can be summarised as follows:

- The Landlord bought the premises on 27 July 2001. The Tenant was already in possession of the premises at this time.
- The Landlord prior to buying the premises wanted vacant possession from the tenant. However, the tenant required two weeks after 27 July 2001 to find alternative accommodation before they could move out of the premises.
- The parties agreed the Tenant could remain in the premises for a two week period and rent would be paid at \$100.00 per week (“the initial two week agreement”).
- A letter was given by the Landlord to the Tenant outlining the terms of the initial two week agreement.
- Following the initial two week agreement, the tenant had not vacated the premises. Accordingly, the Landlord agreed with the Tenant that they could remain in the premises if they paid rent at \$200.00 per week. This agreement commenced on or about 13 August 2001 and was initially for a month, in order to enable the Tenant to find alternative accommodation.
- The Tenant did not vacate the premises after the one month period and it seems the arrangement has continued to this date. The Tenant has remained in the premises and has paid rent at \$200.00 per week.

- At some point, it appears the Landlord have attempted to get the Tenant to sign a written tenancy agreement, but the Tenant did not agree to this.
- The Landlord has also during this period issued the Tenant with a bank deposit book so rent payments could be made into the Landlord's nominated bank account.
- The Landlord says they orally indicated to the Tenant rent was to be paid in advance, however the Tenant has consistently been arrears of rent.
- The Landlord has requested the Tenant pay a security deposit, however the Tenant has not at any time paid the security deposit.
- The Landlord produced a ledger, which indicates payments have been received by the Tenant since on or about 13 August 2001 at \$200.00 per week.

In relation to the existence of a tenancy agreement, evidence given by the Tenant during the inquiry can be summarised as follows:

- The Tenant denies receiving the letter from the Landlord in relation to the initial two week agreement. She only became aware of it two weeks ago, during other court proceedings in relation to the premises. Her partner may have received the letter, but she has no knowledge of it. In any event, the Tenant agrees that for the first two weeks following 27 July 2001, the Tenant was to pay rent in the amount of \$100.00 per week for the premises.
- The Tenant says she had a telephone conversation with an agent for the vendor of the premises prior to its sale, some time in or about the end of July 2001. The effect of this telephone conversation was that after the initial two week agreement, the Landlord would allow them to continue renting the premises if they paid \$180.00 per week.
- Despite this telephone conversation, the Tenant concedes that after the initial two week agreement, she has paid rent for the premises in the amount of \$200.00 per week. She has deposited rent payments into the Landlord's bank account, although has not in every instance used the deposit book provided by the Landlord.
- The Tenant says at no time was there any agreement as to whether rent was to be paid in advance or in arrears.

On balance, given the inconsistent evidence given by both parties, I am satisfied the after the initial two week agreement, the parties entered into another agreement with respect to the premises. The tenant has paid rent in the amount of \$200.00 per week since on or about 13 August 2001. That rent has been received by the Landlord in cash as well as via their bank account. On this basis, it can be implied and I so find, the agreement was a periodical tenancy for a weekly term. I am not sure when the deposit book was provided, but I am satisfied, there was agreement between the parties, which can be implied by their conduct that payments of rent were to be made to the Landlord's bank account. On balance, in relation to when the rent was to be paid, I prefer the evidence of the Landlord and find that the agreement between the parties was that rent was to be paid in advance.

Accordingly, 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 41 McMinns Drive, Humpty Doo
Commencement Date:	13 August 2001
Period:	Weekly Periodical Tenancy
Rent:	\$200 per week to be paid into the Landlord's bank account, one week in advance.
Security Deposit	\$Nil

The Landlord issued a "Notice to Remedy Unpaid Rent/Notice of Termination" dated 26 June 2002 ("the Notice").

The Tenant seeks to declare the Notice invalid on the basis that the Notice incorrectly specifies the amount of rent outstanding and the period of rent outstanding. That being said, the Tenant was unable to tell me, nor produce evidence of how or why the amount of rent outstanding and period of rent outstanding are incorrect, other than according to her calculations she had paid rent up to 16 June 2002.

The Tenant says she has not had time due to her work and other commitments to get together her documentation in support of her contentions. She received the Notice of the Inquiry on 3 July 2002. The Tenant could only produce at the inquiry a photocopy of some bank deposit slips evidencing some of the payments that had been made by the Tenant in rent. The Tenant did not bring with her to the inquiry the deposit book provided by the Landlord nor any other documentation to support her contentions.

I note, the Notice of Inquiry, specifically says parties, when attending are to present to the inquiry all evidence regarding the matters in dispute.

The Landlord produced a ledger, which indicates rent has been paid by the tenant up to and including 28 April 2002. The Landlord also objected to any adjournment of the inquiry on the basis that it is the Tenant's application and she ought to have been prepared for it. In addition, the Landlord says the parties had previously had a dispute in relation to the tenancy agreement which had been dealt with by the Court about two weeks ago. The tenant says this dispute was only in relation to whether the old *Tenancy Act* or the *Residential Tenancy Act* applies to their tenancy agreement and she did not have to produce any such documentation regarding her rental payments.

Despite the objections by the Landlord to an adjournment of the inquiry, I am of the view the Tenant ought to be provided with a reasonable opportunity to present me with evidence of how and why the amount and period of rent outstanding, as specified in the Notice is incorrect.

The Tenant requested, the adjournment be for a two week period due to her other commitments, however I bear in mind that the Landlord is also entitled to have the matter dealt with as efficiently as possible. In addition, I note if the Notice is effective, the Termination Day is specified as being 9 July 2002 and it is in both parties interest to have the matter dealt with sooner rather than later.

Accordingly I order that:

1. The Tenant is to provide to the Office of Consumer Affairs all documentation in support of her contentions including evidence of rental payments made and the dates they were made by 3pm on Tuesday 9 July 2002. The information can be provided by facsimile on 8999 6260 or can be delivered to the Residential Tenancies Unit, 1st floor Minerals House, 66 The Esplanade, Darwin NT 0800; and
2. The inquiry be adjourned and will recommence at 9am on Wednesday, 10 July 2002.

During the course of the inquiry, I warned the Tenant and do so again herein in, if she fails to provide the information to the Office of Consumer Affairs by the time and date specified in the order, I will proceed with the inquiry on the basis of the information before me.

Dated this 5th day of June 2002

Penny Turner
Delegate of the
Commissioner of Tenancies