

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 28 OCTOBER 2003

This is a determination of an application dated 23 October 2003 by the Landlord, seeking an order to declare the purported termination to be of no effect pursuant to section 84 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 47 Kilgariff Crescent, Alice Springs in the Northern Territory of Australia.

A Notice of Inquiry dated 23 October 2003 was posted to the parties. The inquiry was conducted on 28 October 2003 during which evidence was taken from the Landlord and 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:	47 Kilgariff Crescent, Alice Springs NT 0870
Commencement Date:	16 July 2003
Period:	6 months
Rent:	\$ 260 per week payable fortnightly in advance
Security Deposit	\$1040

This application arises out of a tenancy agreement in respect of premises at 47 Kilgariff Crescent, Alice Springs in the northern Territory of Australia, that agreement being dated the 16th July 2003 and express to run for a period of six months.

The tenant went into occupation of the premises on or about the date of the agreement. It is common ground between the tenant and the landlords that from very early on in relation to the occupation the tenant complained about the fact that the solar powered hot water system did not operate. It is common ground that in order to obtain hot water the tenant was required to use the electric booster to power the hot water system so as to produce hot water. It is also common ground that this involved added expense to the tenant although the extra cost of using the electric booster was very much in dispute between the tenant and the landlords.

The premises were fitted with a solar powered hot water system. When the tenant moved into the premises that system was not working and indeed I note that evidence of the landlord that when he purchased the premises some years ago the solar powered was not working then and has never worked. To that extent I can understand his attitude in relation to the tenant’s complaints. The system never worked, it was just there.

After considerable negotiation and discussions between the landlord and tenant, the tenant finally served on the landlords a Form RT4 being a Notice to Remedy Breach (other than failure to pay rent) Notice of Termination. That Notice is dated 13 October 2003 and the termination date is 31 October 2003.

It is important to note that the sole basis for that RT4 was the non-operative solar hot water system. The tenant, in that notice, does not purport to rely on any other breach of the conditions of the Tenancy Agreement by the landlord other than the failure to repair the hot water system and I take no notice at all in relation to the recent deluge of complaints by the tenant in respect of the premises.

As far as form is concerned, the tenant has complied with the provision of the legislation in relation to the Notice to Remedy and Termination. The separation days between various Notices referred to in Section 88 of the legalisation are sufficient and the landlord conceded at the Inquiry that the Notice was served upon them.

The grounds of the application to the Commissioner are unsatisfactory. It refers to misrepresentation by the agent and misinformation and lack of communication. These are not proper grounds to attack the RT4 and I note that whatever the agent did binds the landlords.

As I said earlier in these Reasons, my sole focus in making my decision in respect of this matter must relate to the solar powered hot water system. A number of irrelevant factors arose during the Inquiry such as the landlord's offer to make payment to the tenant in respect of the added expense in using the electric booster, which in my opinion was a reasonable offer but which was rejected by the tenant, and perhaps even a suspicion that the tenant may be using the particular issue to terminate a Tenancy Agreement that she no longer wishes to be bound by. But as I say, I made no comment in respect of these irrelevant matters.

The real issue in this matter comes down to the state of mind of the landlords and the tenants. When the tenant moved in there was a solar powered hot water system installed in the premises and she assumed that it was in working order. The landlords knew that the system did not work and had never worked since they had had any connection with the premises. It is common ground that the solar hot water system does not work and has not been put into working order by the landlord up until the present time.

The landlord have obligations under the legislation to repair and maintain the premises generally. I find that failure to repair the solar powered hot water system to be a breach of the terms of the Tenancy Agreement and accordingly I find the RT4 that was issued and served upon the landlord was valid.

The situations analogous to a tenant who rents a property with swimming pool in the back yard. The swimming pool has a filter system attached but several weeks after moving in to the premises turns the filter on and it does not work. Should the landlord be obliged to fix the pool filter? In my view the answer is yes. I can see no difference in the current situation.

The formal order is that the application is dismissed.

Dated this 29th day of October 2003

Garry Schneider
Delegate of the
Commissioner of Tenancies