

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 28TH JANUARY 2003

This is a determination of an application dated 16 January 2003 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 is made in respect of premises being Lot 1965 Ilparpa Road, Alice Springs in the Northern Territory of Australia.

A Notice of Inquiry dated 21 January 2003 was posted to the parties. The inquiry was conducted on 28 January 2003 during which evidence was taken from the Landlord’s agent. Ms Tenant appeared on behalf of the tenants (“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:	Lot 1965 Ilparpa Road, Alice Springs
Commencement Date:	8 th October 2002
Period:	Periodical month to month
Rent:	\$330.00 per week payable fortnightly in advance
Security Deposit	\$1320.00

The Landlord by his Agent issued a Notice to Remedy Unpaid Rental and Notice of Termination dated 30 December 2002 in accordance with section 87(1) of the Act (“the Notice”).

The Landlord sent the Notice to the Tenant by registered post on 30 December 2002 in accordance with section 154 of the Act. In support of her application, the Landlord has submitted an Australia Post delivery confirmation which indicates that the Notice was delivered to the Tenant on 15 January 2003.

Section 87(2) of the Act requires that the Landlord must specify a rent payment day, which is more than 7 days after the date the Notice is given. The rent payment day is specified in the Notice as being 9 January 2003. I gave the Landlord an opportunity to explain the delay between posting the Notice on 30 December 2002 and when the Notice was delivered on 15 January 2003. The Landlord indicated that there is no ‘postie’ in that area, so mail is sent to a post office box and had to be collected. The Landlord was unable to indicate whether the Tenant had been notified that there was a registered post for her to collect and when any such notice would have been delivered. The Landlord did indicate that she felt she had left sufficient time prior to making the application to the Commissioner and assumed the Tenant would have checked her mail more often.

The time allowed by the Landlord prior to making the application to the Commissioner is irrelevant to whether the Notice is valid. In relation to her assumption, that the Tenant would have checked her mail more often, the Landlord has an obligation to establish on the balance of probabilities that the requirements of section 87 of the Act has been met. Although the Notice was posted to the Tenant on 30 December 2002, it is clear on the information before me that the Notice was given to the Tenant on 15 January 2003. Accordingly, I find the Landlord has not complied with section 87(2)(c) of the Act.

On this basis, I am not satisfied the Notice has validly terminated the tenancy agreement and I order that the Landlord's application dated 16 January 2003 is dismissed.

Dated this 28th day of January 2003

Penny Turner
Delegate of the
Commissioner of Tenancies