

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 14 FEBRUARY 2003

This is a determination of an application dated 24 October 2002 received by the office of the Commissioner of Tenancies on 4 February 2003 by the landlords 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 25 Koolpinyah Crescent, Tiwi in the Northern Territory of Australia.

A Notice of Inquiry dated 6 February 2003 was posted to the parties. The inquiry was conducted on 14 February 2003 during which evidence was taken from the Landlord’s agent, (“the Landlord”). Mr & Ms Tenant appeared on behalf of the tenant (“the Tenant”).

At the commencement of the inquiry, it was apparent that there was an issue regarding the terms of the tenancy agreement governing the parties. The Commissioner had previously conducted an inquiry in relation to the premises and had issued an order on 5 November 2002 for possession and compensation (“the Order”). The Order gave the Landlord possession of the premises and ordered compensation in the amount of \$1,692.95 being unpaid rent and section 121 compensation up to and including 5 November 2002. The reasons for the Order dated 5 November 2002 indicate as a result of the notice to remedy unpaid rent that the tenancy agreement had terminated on 18 October 2002.

The Landlord indicated that they did not seek to enforce the Order and were prepared to allow the tenancy continue in a periodical to see if the Tenant would pay his rent. No agreement was reached between the parties regarding the tenancy, it was just left to run. The Tenants indicated they were unaware of the order and any arrangements being made. On balance, I find it is clear the first fixed term tenancy dated 18 July 2001 (“the old tenancy agreement”) governing the parties had terminated and the parties are currently in a periodical tenancy agreement, however, the issue arises as to when the new tenancy agreement started.

The reasons for the Order indicate that the tenancy agreement terminated on 18 October 2002, however, it is apparent that the Order has taken into account unpaid rent and section 121 compensation up to and including 5 November 2002. In my view, given the lack of agreement by the parties as to the tenancy agreement, I am of the view, 6 November 2002 is the most convenient date for the new tenancy agreement to commence, which is impliedly consistent with the Landlord’s intention having attended the inquiry the day before the sought the order for possession and compensation. Both parties agreed to this course.

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: 25 Koolpinyah Crescent, Tiwi NT 0810
Commencement Date: 6 November 2002
Period: Weekly Periodical
Rent: \$270.00 per week payable one week in advance
Security Deposit \$1,080.00

(herein referred to as the "Periodical tenancy")

During the inquiry it was apparent the Landlord's ledger incorporated rent payments from the old tenancy agreement and the Periodical tenancy. It was also apparent that the Landlord had applied rent payments to discharge the previous Order of the Commissioner which ordered that the Tenant pay the Landlord compensation in the amount of \$1692.95. The Tenants during the inquiry agreed to this course.

After consultation with both parties I make the following findings regarding the Landlord's rental ledger and the rental payments made by the Tenant:

- The previous Order of the Commissioner took into account rental receipts from 21 July 2001 up to and including 21 October 2002.
- Payments made on 6, 8 and 14 November 2002 in the amounts of \$600.00, \$1020.00 and \$540.00 respectively were firstly to be applied in discharge of the Commissioner's Order given 5 November 2002 which ordered compensation in the amount of \$1,692.95, any remainder was to be applied as rent to the Periodical Tenancy. Therefore $(\$600.00 + \$1020.00 + \$540.00 - \$1692.95 =)$ \$467.05 is rent paid under the Periodical Tenancy.
- The total amount of rent paid by the Tenants under the Periodical Tenancy (taking into account payments made from 14 November to 10 January 2003 and the remainder of \$467.05 referred to above) amounts to \$2,165.05.

I declare that the Commissioner's order given 5 November 2002 has been fully discharged by the Tenants.

In relation to the Landlord's current application for possession and compensation, 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 Rental and Notice of Termination dated 23 January 2003 in accordance with section 87(1) of the Act ("the Notice").

I find the Notice was sent to the Tenant by post on 23 January 2003 in accordance with section 154 of the Act.

The Tenant indicated that he has been having some difficulty making rental payments due to health reasons and has just recently obtained a new job on 3 February 2003 so he would now be able to pay his rent.

The Landlord's Notice specifies the amount of rent outstanding as being \$920.65 for the period from 28 December 2002 until 24 January 2003. According to my calculations, the amount of rent outstanding was correctly specified, however the period of rent outstanding should have been from 1 January to 24 January 2003.

I am not satisfied the Landlord's Notice complies with section 87 of the Act, which is a mandatory precondition to an order for possession. It follows that I am not satisfied the tenancy agreement has been validly terminated and I dismiss the Landlord's application.

Dated this 14 day of February 2003

Penny Turner
Delegate of the
Commissioner of Tenancies