

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES
INQUIRY – 30 MAY 2003

This is a determination of an application dated 13 January 2003 by the Tenants seeking the return of part of their security deposit pursuant to section 113 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 1 May 2003 was posted to the parties. The inquiry was held on 16 May 2003, however as the Landlord had not been given notice of the inquiry, it was adjourned to 30 May 2003, during which evidence was taken from the Landlord’s (“the Landlord”). Evidence was also taken via telephone link from one 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:	47 Kilgariff Crescent, Alice Springs
Commencement Date:	30 July 2002
Period:	24 weeks
Rent:	\$520.00 per fortnight
Security Deposit	\$1,040.00

I note the parties had attempted to conciliate their dispute and this conciliation was unsuccessful. At the outset of the Inquiry, the parties consented to the information obtained during the course of the conciliation being used for the purpose of this Inquiry. At the commencement of the Inquiry, I went through all the documentation in the file to ensure both parties had copies of the information that was before me.

The Tenant seeks the return of \$186.80 being money that the Landlord had purported to retain from their security deposit for the following:

- Replacing a broken light fitting \$ 61.80;
- Replacing trees that had died on the premises \$125.00

I note the Landlord had also retained \$58.66 from the Tenant’s security deposit being for the Tenant’s break of their lease. The Tenant does not dispute this retention.

The evidence of the Tenant during the course of the Inquiry was as follows:

- The Tenant says as they were vacating the premises, they were cleaning the light fitting in the dining room, when the whole light cover came off. They tried to reattach the light cover however, the threading on the inside of the light as well as on the ceiling attachment was worn and would not attach.
- The Tenant says that when they returned the keys to the Landlord’s agent they explained what had occurred with the light fitting and they could not reattach the light fitting. The agent said that this was “fine” and it was not a problem.

- In relation to the plants, the Tenant says that some of the plants in the garden were dead and/or dying when they moved in. The Tenant says that they watered the garden on a regular basis, two or three nights per week. There were seven or eight plants in the garden that had died including a vine type plant, a Eucalyptus tree, a native tree and various other types of plants. The Tenant says that the premises had an irrigation system that was faulty in parts, however, they reported this to the Landlord who subsequently repaired the system. In addition, the Tenant says that they had frost in the winter, which may have caused some of the plants to die.
- On the file before me are copies of various photographs. The evidence from the Tenant is that these photos were taken some time in July or November 2002 during the course of the tenancy agreement. The Tenant says it is apparent from the ingoing report that reference is made to these photos as when they moved into the premises it was apparent that there a number of plants that were dying. The Tenant does not know if the photos were taken in July or November, but says she recalls the Landlord attending at the premises twice to take photos.
- In addition, the Tenant says it should be noted that on the ingoing/outgoing condition report submitted by the Landlord, under lawns or garden the following description appears both for the ingoing and the outgoing condition reports, “creeper – many semi-mature plants, front has affected some, refer photos”.

The evidence of the Landlord during the course of the inquiry was as follows:

- Copies of the following documents were submitted to the inquiry: the ingoing/outgoing condition reports dated 30 July 2002 and undated, Notice of the Landlord’s Intention to Retain Security Deposit dated 17 December 2003, Statutory Declaration of Ms Tenant, Quote from Paul’s Home Gardening and Pool Cleaning Services in the amount of \$125.00 being for the replacement of trees, Letter to Home it May Concern from the Agent undated, Letter from the Tenants to the Agent’s Office dated 23 December 2002.
- The agent that appeared at the Inquiry was not responsible for completing the ingoing/outgoing condition report and does not know what the condition of the light fitting or the gardens was at the commencement of the tenancy agreement and upon the Tenant’s vacation of the premises.
- The agent says they were merely acting on instructions from the Landlord. In relation to the light fitting, the Landlord’s rational appears to be that when they moved in the light fitting was not broken and is now broken when they moved out. I indicated to the agent that it appeared to me that the wearing of the threading appeared to be reasonable wear and tear, which she agreed with. In relation to the plants, the agent indicated that they were acting on the instructions of the Landlord and had ‘nothing further to add’.

During the course of the Inquiry, I went through the procedural requirements for the Landlord to retain the Tenant’s security deposit under section 112 of the Act as well as for the ingoing and outgoing condition reports which is governed by sections 25 and 110 respectively, of the Act. I am satisfied that for the purposes of the tenancy agreement there is an accepted ingoing condition report and an accepted outgoing condition report which provides conclusive evidence of the condition of the premises upon the Tenant’s entering into and vacating the premises. In addition, I am satisfied that the Landlord has complied with section 112 of the Act and is *prima facie* entitled to retain the Tenant’s security deposit for the purposes specified.

The Tenant has disputed some of the monies retained by the Landlord from their security deposit. Accordingly, it is necessary for the Landlord to establish that the money purported to be retained from the security deposit is for damage suffered as a consequence of the Tenant's breach of their obligations under the tenancy agreement. The relevant obligation is provided by section 51(2) of the Act, which provides:

Section 51 Cleanliness and damage

- (1) It is a term of a tenancy agreement that a tenant –
 - (a) will not maintain the premises and ancillary property in an unreasonably dirty condition, allowing for reasonable wear and tear;
 - (b) must notify the landlord of any damage or apparent potential damage to the premises or ancillary property, other than damage of a negligible kind;
 - (c) must not intentionally or negligently cause or permit damage to the premises or ancillary property;
 - (d) if the premises are a unit within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of the Act;
 - (e) if the premises are a building lot within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act; and
 - (f) if the premises are a lot within the meaning of Part IVB of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act.
- (2) **It is a term of a tenancy agreement that at the end of the tenancy the tenant must give the premises and ancillary property back to the Landlord –**
 - (a) **in a reasonable state of repair; and**
 - (b) **in a reasonably clean condition,**
allowing for reasonable wear and tear.
- (3) A tenant is not in breach of the term of the agreement specified in subsection (1) or (2) if –
 - (a) the breach is caused by the landlord's failure to repair or maintain the premises or ancillary property; and
 - (b) the landlord had notice that the repairs or maintenance were required.
- (4) **In deciding whether premises or ancillary property are in reasonable condition** or in a reasonably clean condition, a landlord, **the Commissioner** or a court **must take into account** –
 - (a) **the condition of the premises** or ancillary property **when the tenant took possession of them** as determined by a condition report, if any, accepted under Part 5 by the landlord and the tenant;
 - (b) **if the tenancy agreement has terminated** or the tenant has, in the opinion of the landlord, apparently abandoned the premises – **the condition of the premises** or ancillary property **as determined by a condition report, if any, accepted** under Part 12 by the landlord and the tenant; **and**
 - (c) **the effect of reasonable wear and tear during the tenancy.**

- (5) If a condition report was not accepted by the landlord and the tenant in relation to the premises or ancillary property under Part 5 –
- (a) the tenant is to be taken to have complied with the term of the agreement specified in subsection (1); and
 - (b) if the tenancy agreement has terminated or the tenant has, in the opinion of the landlord, apparently abandoned the premises – the premises or ancillary property are to be taken to have been at the time when the tenant took possession of the premises under the tenancy agreement, in the condition they are at the end of the tenancy agreement.

The onus is on the Landlord to establish on the balance of probabilities that the Tenant has breached this obligation. Namely, at the end of the tenancy agreement, the premises was not returned in a reasonable state of repair allowing for reasonable wear and tear.

In relation to the light fitting, I accept the evidence of the Tenant that the inside threading of the light fitting cover had worn. In my view, this amounts to reasonable wear and tear and there is no evidence from the Landlord to refute this view. If anything, the Landlord's agent appeared to also have been of the same view.

In these circumstances, I find that the wearing of the threading to the light fitting amounts to reasonable wear and tear and I order that the Landlord return to the Tenant the \$61.80 that they had purported to retain from the Tenant's security deposit for this purpose.

In relation to the dead plants in the garden, the evidence of the Landlord's agent was that they were merely acting on instructions from the Landlord. I indicated to the agent that they would need to adduce further evidence to support the retention of the \$125.00, however, the agent indicated she was unable to do this. I accept the evidence of the Tenant that they watered the garden regularly. In addition, I note that on the ingoing and outgoing condition reports the condition of the garden is exactly the same on the outgoing as it was on the ingoing condition report. I am not satisfied that the Landlord has discharged his onus of proof to establish that the Tenant has failed to return the garden in a reasonable state of repair allowing for reasonable wear and tear. Accordingly, I order that the Landlord return to the Tenant the \$125.00 being retained by the Landlord for the purposes of replacing dead plants in the garden.

On the basis of the above, I order that the Landlord return to the Tenant the sum of \$186.80 forthwith, being the portion of the security deposit sought to be retained by the Landlord for the replacement of the light cover (\$61.80) as well as the dead plants in the garden (\$125.00).

Dated this day of June 2003

Penny Turner
Delegate of the
Commissioner of Tenancies