

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES
INQUIRY – 5 JULY 2003

This is a determination of an application dated 25 May 2003 by the Landlord seeking an order for compensation pursuant to sections 121 and/or 122 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 9 Nash Place, Millner in the Northern Territory of Australia.

A Notice of Inquiry dated 27 June 2003 was posted to the parties. The inquiry was conducted on 5 July 2003 during which evidence was taken from the Landlord (“the Landlord”). There was no appearance by 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:	9 Nash Place, Millner
Commencement Date:	30 August 2002
Period:	12 months
Rent:	\$500.00 per week
Security Deposit	\$2,000.00

The Landlord has made an application for compensation being unpaid rent during the course of the tenancy agreement.

The evidence of the Landlord in support of her application can be summarised as follows:

- The Landlord has submitted to the Inquiry the following documentation: Notice to Remedy Unpaid Rent/Notice of Termination undated; Statutory declaration, the Landlord declared 27 January 2003; Notice of Landlord’s Intention to Retain Security Deposit dated 27 January 2003; written tenancy agreement dated 6 September 2002; and Document entitled “Rental Receipt Statement”.
- The Landlord says that the premises is a six bedroom home. The Tenant sublet the rooms of the premises to his friends and various people and was responsible for collecting the rent.
- The Tenant vacated on or about 24 January 2003 because he “lost control of the situation”.
- The Landlord says that after the Tenant vacated the premises, she entered into an agreement with the occupants of the premises, which was effective on or about 20 January 2003. This agreement meant that she was able to relet part of the premises at \$360.00 per week. The other part of the premises was let to other tenants on 24 February 2003. The Landlord says that as at 24 February 2003 she suffered no loss as a consequence of the Tenant’s breach of his tenancy agreement.
- In relation to the undated Notice to Remedy Unpaid Rent, the Landlord says this was sent by post on 8 January 2003 and she would have signed it and issued it on this day.

- In relation to the Landlord’s Notice of Intention to Retain the Tenant’s Security Deposit dated 27 January 2003, the Landlord’s evidence was that this was posted on the same day. The Landlord says she attached to this Notice a copy of her statutory declaration as well as the document being her rental ledger entitled “Rental Receipt Statement”.
- The Landlord says she charges rent of \$500.00 per week but also charged an additional \$60.00 per week to cover electricity and pool maintenance, but mainly electricity. The premises is individually metered, however she has the electricity in her name as she says if she made it the Tenant’s responsibility, they would never pay it, so it was easier just to keep the electricity in her name.

The Notice to Remedy Unpaid Rent/Notice of termination

Given the Landlord has issued a Notice to Remedy Unpaid Rent on or about 8 January 2003 (“the Unpaid Rent Notice”), it is necessary for me to determine whether or not this notice has validly terminated the tenancy agreement.

I find that the rental payments due to the Landlord was more than 14 days in arrears at the time that the Landlord issued the Unpaid Rent Notice in accordance with section 87(1) of the Act.

I find the Unpaid Rent Notice was sent to the Tenant by post on 8 January 2003 in accordance with section 154 of the Act.

I note the Landlord has submitted a copy of her rental ledger, which is in the document entitled “Rental Receipt Statement”. In this document, the evidence of the Landlord was that the monies received in the first part of the document from 6 September to 30 September 2002 inclusive and totalling \$3,560.00 included the Tenant’s security deposit of \$2,000.00. In total as submitted by the Landlord during the inquiry and as can be calculated from the rental ledger, the Tenant has paid \$6,840.00 which includes rent at \$500.00 per week and \$60.00 per week for amenities which included electricity and pool maintenance.

During the course of the Inquiry, I explained to the Landlord that in accordance with section 118 of the Act she could not require the Tenant to pay for electricity and other charges unless she complied with the requirements of section 118 of the Act.

Section 118 provides, my emphasis:

Section 118 No charges payable unless specified in agreement

- (1) A tenant is only required to pay the Landlord for a charge payable by the owner or occupier of the premises for electricity or water supplied to the premises during the tenancy –
 - (a) if the tenant is **required to do so under the tenancy agreement;**
 - (b) if **the owner would be liable, including by way of a statutory charge of overriding statutory charge within the meaning of the *Land Title Act*, to pay for the charge if it were not paid by the tenant; and**
 - (c) **if the premises to which the agreement relates are individually metered for the service or facility to which the charge relates or the agreement states –**
 - (i) **the service or facility for which the charges are payable;**
 - (ii) **the method of determining the apportionment of the charge; and**
 - (iii) **how the charge may be recovered by the landlord from the tenant.**

- (2) A landlord must not request from the tenant an amount for a charge payable by the owner or occupier of premises for electricity, gas or water supplied to the premises unless the amount is calculated in accordance with the tenancy agreement.

Penalty: 20 penalty units.

I note in the tenancy agreement governing the parties, the Landlord has purported to require the Tenant to pay for electricity by inserting a note in the rental space "... plus electricity \$60.00 per week".

I am not satisfied that the Landlord's attempt to charge the Tenant electricity as specified in the tenancy agreement complies with section 118 of the Act. In particular, the evidence of the Landlord was that the house had an individual meter, in which case the Landlord is required under the Act to specify the method of determining the apportionment of the charge and how that charge is to be recovered by the Landlord from the Tenant.

In these circumstances, it is necessary for me to calculate the amounts paid by the Tenant that can be attributed to the electricity. During the course of the tenancy agreement, the Tenant paid a total of \$6,840.00 at \$560.00 per week (which includes \$500.00 per week for rent plus \$60.00 per week for electricity and amenities). This amounts to payment for the equivalent of ($\$6840.00 \div \$560.00 =$) 12 weeks and 2 days. Accordingly the amount of rent paid by the Tenant during the course of the tenancy agreement can be calculated as follows:

$$\text{Rent paid} = 12 \text{ weeks} \times \$500.00 + \$500.00 \div 7 \times 2 = \$6,142.86.$$

The remainder of the amount paid by the Tenant can be attributed to payments for electricity being ($\$6,840.00 - \$6,142.86 =$) \$697.14.

The Unpaid Rent Notice specifies the amount of rent outstanding as being \$4,720.00 being for the period 8 November 2002 to 8 January 2003 with \$240.00 in credit.

According to my calculations, the amount of rent outstanding as at the date the Notice was issued can be calculated as follows:

Commencement of the tenancy agreement on 30 Aug 02 until the end date shown on the Unpaid Rent Notice being 8 January 2003 = 18 weeks + 6 days.

$$\begin{aligned} \text{Amount of rent payable for this period} &= 18 \times \$500.00 + (\$500 \div 7) \times 6 \\ &= \$9,428.57 \end{aligned}$$

Amount of rent paid by the Tenant prior to the Unpaid Rent Notice being issued
(as per the rental ledger, not including payment of \$1,000.00 which was paid after the Unpaid Notice was issued.)

$$= \$5,250.00$$

$$\begin{aligned} \text{Amount of rent outstanding} &= \$9,428.57 - 5250.00 \\ &= \$4,178.57 \end{aligned}$$

$$\begin{aligned} \text{Period of rent outstanding} &= \$4,178.57 \div (\$500 \div 7 \text{ days}) \\ &= 59 \text{ days approx} \\ &= 11 \text{ November 2002 to 8 January 2003.} \end{aligned}$$

I find the amount of rent outstanding should be \$4,178.57 being for the period from 11 November 2002 to 8 January 2003.

The purpose of the Notice is to give the Tenant an opportunity to remedy the unpaid rent by telling them how much they owe and the period for which it is owed. If the rent is not remedied by the specified rent payment day, then by virtue of the Act, the tenancy agreement is terminated. The legislature has seen fit to prescribe the information that must be contained in a section 87 notice. In my view, the requirements of section 87 are mandatory requirements which must be interpreted strictly consistent with the intent and operation of the Act. It is clear section 87(2)(b) of the Act requires the amount of rent outstanding and the period for which such rent has been outstanding to be specified. Implicit in this is that both the amount and precise period of rent outstanding is correctly specified.

I am not satisfied that the Landlord's notice has correctly specified the amount of rent outstanding and the period of rent outstanding in the Unpaid Rent Notice and I am not satisfied the Unpaid Rent Notice complies with section 87(2)(b) of the Act.

Accordingly, I am not satisfied the tenancy agreement has been validly terminated by virtue of the Unpaid Rent Notice.

Vacant possession of the premises

The evidence of the Landlord was that the Tenant vacated the premises on 24 January 2003. Given that the Landlord's Unpaid Rent Notice has not validly terminated the tenancy agreement, I find that the Tenant has abandoned the premises and provided the Landlord with vacant possession on or about 24 January 2003.

The Tenant has therefore breached his obligation to remain in the premises until the expiration of the 12 month fixed term and the Landlord is *prima facie* entitled to section 122 compensation for loss suffered as a result of this breach.

Security deposit

Prior to considering the Landlord's application for compensation, it is necessary to consider whether or not the Landlord is entitled to retain the Tenant's security deposit in the amount of \$2,000.00 being for unpaid rent.

In order for a Landlord to retain the Tenant's security deposit, they must comply with section 112 of the Act. In particular, the Landlord must within seven business days after the Tenant gave up vacant possession of the premises or has apparently abandoned the premises give the Tenant a Notice of Intention to Retain the Tenant's Security Deposit ("the Security Deposit Notice"). In the Security Deposit Notice, the Landlord must specify the amounts they are seeking to retain/withhold and for what purpose. In addition, they must attach to the Security Deposit Notice a copy of a statutory declaration which attests to the truth of the claim that the retention of the security deposit is required for the purpose specified in the notice. The Landlord must also attach a copy of a statutory declaration attesting that the attached receipts invoices or other documents support the amount being retained/withheld from the Tenant's security deposit.

I am satisfied based on the evidence of the Landlord that she sent a Security Deposit Notice dated 27 January 2003 as well as supporting documentation in accordance with section 112 of the Act. Accordingly, subject to my determination herein as to the amount of the unpaid rent, I am satisfied that the Landlord is entitled to retain the Tenant's \$2,000.00 security deposit for the purpose of unpaid rent.

Compensation Claim

Based on the evidence before the Inquiry, I am also satisfied that the Tenant has failed to pay rent in accordance with his obligations under the tenancy agreement. I am also satisfied that the Landlord has suffered loss as a result of the Tenant's abandonment of the premises and has attempted to mitigate the loss by reletting the premises. I accept the Landlord's evidence that from 20 January 2003, she suffered a partial loss of rent, given she was only able to relet part of the premises and suffered no loss of rent from 24 February 2003.

As calculated above, I find that the Tenant has, during the course of the tenancy agreement, paid a total of \$6,142.86.

I calculate the amount of unpaid rent and loss suffered by the premises as follows:

From the commencement of the tenancy, 30 August 2002 to
23 February 2003, the day before the Landlord
was able to fully relet the premises = 25 weeks + 3 days

The amount of rent payable by the Tenant = $25 \times \$500.00 + \$500.00 \div 7 \times 3$
= \$12,714.29

The amount of rent paid by the Tenant
during the course of the tenancy agreement = \$6,142.86

The evidence of the Landlord was that from 20 January to 23 February 2003
the premises was let at \$360.00 per week.

Therefore the Landlord suffered a loss
in the amount of \$140.00 per week for 5 weeks

= $5 \times \$140.00$
= \$700.00

Taking into account the Landlord's attempts to mitigate,
the amount of unpaid rent and compensation

= $(\$12,714.29 - \$6,142.86 - \$700.00)$
= \$5,871.43.

I find that the Tenant owes the Landlord \$5,871.43 being for unpaid rent and loss suffered as a result of the Tenant's abandonment of the premises.

I am satisfied the Landlord is entitled to retain the Tenant's security deposit for the purpose of unpaid rent.

Accordingly, the Tenant must pay the Landlord $(\$5,871.43 - \$2,000.00 =)$ \$3,871.43 being unpaid rent and loss suffered as a result of the Tenant's abandonment of the premises up to and including 23 February 2003.

Orders

On the basis of the above, I order that:

1. The Landlord is entitled to retain the Tenant's security deposit in the amount of \$2,000.00 being for the purpose of unpaid rent.
2. The Tenant must pay the Landlord compensation in the amount of \$3,871.43 being for unpaid rent and section 122 compensation up to and including 23 February 2003.

Dated this 23rd day of July 2003.

Penny Turner
Delegate of the
Commissioner of Tenancies