

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES
INQUIRY – 9 SEPTEMBER 2003

This is a determination of an application dated 22 July 2003 by the Tenants, (“the Tenants”) seeking a determination of a security deposit dispute pursuant to section 113 of the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being situate at Unit 1/16 Lowe Court, Driver, in the Northern Territory of Australia.

A Notice of Inquiry dated 28 August 2003 was sent to the Tenants and to the Landlord (“the Landlord”). The inquiry was conducted on 9 September 2003 during which evidence was taken from the Tenants and from agents for the Landlord.

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:	Unit 1/16 Lowe Court, Driver
Commencement Date:	1 June 2001
Period:	Six months, then extended to 1 June 2003
Rent:	\$170.00 per week
Security Deposit	\$680.00

By notice dated 16 May 2003, the Tenants gave notice of their intention to terminate the tenancy which then existed in relation to the premises at Unit1/16 Lowe Court, Driver, on the terms and conditions referred to above. This notice was in accordance with the provisions of the Act and this is not disputed. The Tenants gave notice that they would deliver up vacant possession of the premises on 1 June 2003. The 1st of June 2003 was a Sunday and I find that the Tenants returned the keys to the property on Monday 2 June 2003.

On all of the evidence, I find that the Tenants were keen to be present at the final inspection of the premises and voiced their desire to be present to the Landlord’s representatives. I note that a number of periodic Inspection Reports were prepared during the period of the tenancy and one or the other or both Tenants were always present as arranged with the Landlord’s representatives for those periodic inspections.

The final Condition Report had to be prepared by close of business on Thursday 5 June 2003. I accept the evidence of the Agent that, because of previous arrangements and commitments, she would not be available to carry out the final inspection on 5 June 2003.

I also accept the evidence of the Agent that the first available time for her to try and contact the Tenants to arrange the inspection was Wednesday 4 June 2003 and that she attempted to contact Ms Tenant at her work number at 12.45pm on that day and again at 1.30pm and there was no answer.

The Agent was very busy on 4 June 2003 and because of other appointments, she could not make any further telephone calls to the Tenant and so she went and did the final inspection report on her own. In her evidence, the Agent says that she deemed it in accordance with Section 110(2) not practical to wait any longer and conducted the inspection at the only time that she had available.

In my opinion the Landlord is unable to avail himself of the provisions of Section 110(2) of the Act. The expression “unless it is not practical to do so” is easily understood and I can find nothing in these circumstances which rendered it not practical to have one or other or both Tenants present at the time that the final inspection was carried out. It would not be practical to have the Tenants present at the final inspection, for example, if the Tenants had gone to live overseas immediately they handed in the keys.

Section 112(4) provides that a landlord is not to retain some or all of the security deposit for the purpose of Sections 112 (a) (b) and (c) unless a condition report has been provided to the tenant under Section 110.

As outlined above the outgoing condition report does not comply with Section 110 of the Act.

Having made those findings that is enough to dispose of the application. However, even if there had been strict compliance with the various sections of the Act, I would have made the same order as I intend to make in these circumstances.

The Tenants finally received a copy of the Final Inspection Report on Friday 6 June 2003 and attended at the premises over the long weekend and carried out further cleaning. It is not unimportant that each periodic Inspection Report was carried out by the Agent and those reports carry the comments such as:-

“Property being kept neat/tidy. Thank you.”

“Well maintained – thank you.”

“Well maintained by Tenants. Thank you.”

“Property generally well maintained”.

“Property maintained. Thank you”

I accept the Property Manager evidence that there is a difference between periodic Inspection Reports and a Final Inspection Report. However I find that the periodic Inspection Reports clearly indicate that the Tenants were responsible in the maintenance of the premises throughout the period of the tenancy which lasted for two years and it is difficult to reconcile those periodic Inspection Reports with the matters set out in the facsimile message of the Agent to the Tenants dated 18 June 2003.

The security deposit in this matter was \$680.00. In the Notice of Landlord’s Intention to Retain Security Deposit (Form RT8) dated 12 June 2003, the Landlord gave notice that he intended to retain the sum of \$318.00 for cleaning the premises and making good damage. For the reasons outlined above, I find that the Landlord is not entitled to retain that sum of \$318.00 and is ordered to pay that amount to the Tenants within seven days.

Dated this 12th day of December, 2003

Garry Schneider
Delegate of the
Commissioner of Tenancies