

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 24 July 2003

This is a determination of an application dated 16 July 2003 by the Landlord seeking an order for compensation pursuant to section 122 of the *Residential Tenancies Act (NT)* (**the Act**). The application is made in respect of premises being 11/18 Seale Street, Fannie Bay in the Northern Territory (**the Premises**).

A Notice of Inquiry dated 18 July 2003 was posted to the parties. The inquiry was conducted on 24 July 2003 during which evidence was taken from the Landlord's Agent ("the Landlord"). There was no appearance by the tenants ("the Tenant").

On the basis of the documentary and oral evidence before the Inquiry, I find there was a tenancy agreement within the meaning of and subject to the provisions of the Act on the following terms:

Premises:	11/18 Seale Stree, Fannie Bay NT 0820
Commencement Date:	24 January 2003
Period:	26 weeks (to 24 July 2003)
Rent:	\$520 per fortnight
Security Deposit	\$1040

A summary of evidence given at the Inquiry is as follows:

- The tenancy commenced on 24 January 2003 pursuant to a written agreement.
- The agreement contained a special clause 5(d), referred to colloquially as a "military clause". That clause purported to give a tenant the right to terminate the agreement on thirty days notice, if the tenant was posted away from the area or if they accepted accommodation from the Australian Defence Force. The clause provided that the notice should be accompanied by supporting documentation and signed by an authorised superior officer. Further, the clause stated that the amount of rent to be paid was to be calculated on a proportional basis up to the date upon which the notice expired.
- The tenancy agreement was to expire on the 24 July 2003.
- A letter dated 13 June 2003 (but not received it seems until 18 June) addressed to the Landlord from the Tenant (**the Tenant's letter**), purported to give notice in accordance with the military clause. However, the letter only gave 14 days notice as of 13 June 2003, and stated that vacant possession will be given on 27 June 2003.
- The Tenant's letter, was accompanied by a further letter dated 10 June 2003 addressed to the Tenant from the Defence Housing Authority (**the DHA letter**). That letter advised the Tenant that he had been recalled to base accommodation in effect from 30 days after written notice was given in accordance with the military clause.
- It was not clear to me why the Tenant had purported to only give 14 days notice in the letter.

- A further letter dated 20 June 2003 addressed to the Tenant from the Landlord (**the Landlord's letter**), acknowledged the receipt of the Tenant's letter and confirmed the date of vacation (*sic* termination) as 9 July 2003. It appears that date was 30 days from date of the DHA letter, not 30 days from the date on the Tenant's letter, nor 30 days from the receipt of the Tenant's letter (which I was told was received on 18 June 2003).
- In the meantime the Tenant fell into arrears with rent payments.
- On the 4 July 2003 the Landlord served a notice to remedy unpaid rent/notice of termination on the Tenant. The period of outstanding rent was specified as 8 June 2003 to 3 July 2003. The rent payment date was 14 July 2003, and the termination date was 15 July 2003.
- The Tenant vacated the property on 9 July 2003, the date which had been specified in the Landlord's letter, a date which was, in any event, before the rent payment date or termination date specified in the Landlord's notice.

On the evidence before the Inquiry, I find that the tenancy agreement terminated on 9 July 2003, as a result of the Tenant giving up vacant possession of the Premises with the Landlord's consent (pursuant to s 82(1)(f) of the Act), and that the conditions of the agreement including the Tenant's obligation to pay rent applied until that date. This is particularly so given that the military clause in the agreement specifically provided that rent to be paid is to be calculated up to the date on which the notice expires, which in this instance was accepted (on the face of the Landlord's letter) to be 9 July 2003.

In relation to the Landlord's claim for compensation pursuant 122, I find the Tenant has failed to pay rent in accordance with the tenancy agreement which terminated on 9 July 2003. The Tenant had paid rent up until 8 June 2003. On the basis of the evidence before me, I find the amount of \$1,172.86 is owed by the Tenant to the Landlord in compensation, being unpaid rent until the date of termination of the tenancy. Accordingly, I order that:

1. The Tenant is to pay the Landlord compensation in the amount of \$1,172.86 for unpaid rent and section 122 compensation up to and including 9 July 2003.
2. Any further claim for compensation is adjourned to a date to be fixed upon further application and notice to the parties

Dated this: day of September 2003

Craig Smyth
 Delegate of the
 Commissioner of Tenancies