

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY - 21 MAY 2004

This is a determination of an application dated 20 April 2004 by the Tenant, disputing the retention of the security deposit by the landlord on the basis of unpaid rent. The application is made in respect of premises being 8/81 Cullen Bay Crescent, Cullen Bay in the Northern Territory of Australia.

A Notice of Inquiry dated 5 May 2004 was posted to the parties. The inquiry was conducted on 21 May 2004. The agent for the Landlord (“the Landlord”) provided an authority authorizing her to represent the Landlord. She gave evidence on behalf of the Landlord. There was also an 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:	8/81 Cullen Bay Crescent Cullen Bay NT 0820
Commencement Date:	15 July 2002
Period:	12 months – now periodical
Rent:	\$1760.00 per month payable monthly in advance
Security Deposit	\$1760.00

The premises recently had a change of ownership. The Landlord named in this application is the former landlord and the new landlord is Mrs Landlord (“new Landlord”), the ex-wife of Mr Landlord, one of the two former landlords. Apparently, the property was the subject of a Family Court property settlement. This settlement took place on 31 March 2004.

On the original application, the Tenant sought the return of the Tenant’s security deposit which she believed was being withheld by the Landlord for unpaid rent.

It is apparent from documentation on the file that the Tenant’s security deposit has not been retained by the Landlord but has, in fact, been transferred to the agents for the new Landlord.

The Tenant sought to amend the application for compensation for rent money paid in advance, in error, to the Landlord.

In accordance with section 141(1)(g) of the Act, I allowed the Tenant to amend the application to seeking the return of rent paid in advance, in error, in the amount of \$2,596.72. The amount of \$2,596.72 being for rent paid for the period 31 March 2004 to 14 May 2004, approximately a six week period where the Tenant was still paying rent to the Landlord when it should have been paid to the new Landlord. No objection was raised by the Landlord to the amendment of the application.

The Landlord's evidence is that the Landlord hired a new Office Administrator, this year. She reviewed all the tenancy agreements held by the office. In reviewing the subject Tenancy Agreement, she determined that the Tenant was underpaying rent by \$146.67 per month based on the view that weekly rent is \$440.00 which, when calculated for the whole year and divided up in to calendar months, comes to 12 equal installments of \$1,906.67.

On 8 March 2004, the Landlord advised the Tenant of the "corrected" monthly amount for rent (ie \$1,907.67 not \$1,760.00) and that the tenant was in arrears.

On 23 March 2004, the Tenant wrote to the Landlord advising that she disagreed with the Landlord's interpretation of the terms of the Agreement as they applied to the amount for rent and that she was not in arrears.

On 31 March 2004, the property was transferred to the new Landlord unbeknown to the Tenant. The Tenant's obligation to pay rent to the Landlord therefore, ceased on 30 March 2004.

On 16 March and 16 April 2004, the Tenant paid rent in advance to the Landlord. Approximately, six weeks of that rent should have been paid to the new Landlord.

On 16 April 2004, the Landlord, confirming a telephone conversation of 15 April 2004, wrote to the Tenant stating that the property had changed hands and that the rent in advance, paid in error, (for the period 31 March 2004 to 14 May 2004, inclusive), would be retained to set-off the amount alleged to be in arrears, leaving a balance of \$565.37.

At the hearing of the application, the Landlord provided documentation to support the grounds for the withholding of the rent paid in error.

The Tenant is obliged to pay rent to the Landlord according to the terms of the Agreement. The relevant term of the Agreement states:

FOR THE TERM OF *Twelve (12) months with an option of One (1) year*
COMMENCING ON THE *15th day of July 2002* to the *14th day of July 2003*.....
BASED ON A WEEKLY RENTAL OF *Four Hundred and Forty Dollars (\$440.00)*
TO BE PAID *Monthly* IN ADVANCE by equal installments of.....
One Thousand Seven Hundred and Sixty Dollars (\$1,760.00).....

I find that the rental payment due to the Landlord is \$1,760.00 to be paid each calendar month on or before the 15th day of each month. Consequently, the Landlord was not entitled to retain any of the rent paid in advance, in error, for the period 31 March 2004 to 14 May 2004.

Accordingly, I order that:

1. The Landlord is to pay the Tenant compensation in the amount of \$2,596.72 being for rent paid in advance in error for the period 31 March 2004 to 14 May 2004, inclusive.
2. The Landlord is to make this payment by way of a cheque in the amount of \$2,596.72 made out to "Property Manager" the Managing Agent for the new Landlord.

Dated this 25 day of May 2004

Gabrielle Martin
Delegate of the
Commissioner of Tenancies