

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 13 FEBRUARY 2004

This is a determination of an application dated 8 October 2003 by the Tenant, in relation to a dispute relating to a security deposit pursuant to s 113 of the *Residential Tenancies Act (NT)* (“the Act”). The application is made in respect of the premises being 3/49 Rosewood Crescent, Leanyer in the Northern Territory of Australia.

A Notice of Inquiry dated 4 February 2004 was posted to the parties. The Inquiry was conducted on 13 February 2004 during which evidence was taken from the Landlord’s agent, (“the Landlord”). The Tenant appeared by telephone (“the Tenant”).

On the basis of the documentary and oral evidence before the Inquiry I find that the Tenancy Agreement within the meaning of and subject to the provisions of the Act on the following terms:

Premises:	3/49 Rosewood Crescent, Leanyer NT
Commence Date:	10 July 2003
Period:	26 weeks
Rent:	\$150 per week
Security Deposit:	\$600

This is a determination of an application by the Tenant in relation to a dispute arising from the retention of \$300 of the security deposit by the Landlord. The dispute centred on the nature and form of the in-going condition report provided by the Landlord to the Tenant. After hearing extensive evidence from both parties, agreement was reached whereby the Tenant agreed to consent to the retention of \$150 of the security deposit and the Landlord agreed to release the remaining \$150 to the Tenant immediately. It is therefore not necessary for me to decide the merits of this matter as the parties were able to settle the matter by agreement.

However, I was asked by the Landlord to provide written reasons in relation to the interpretation of s 25 of the Act and I do so, so that there may be some guidance in relation to that section.

Evidence was given at the hearing that it has been (but is no longer) the agent’s practice in relation to the provision of in-going conditions reports to provide tenants with a completed but unsigned copy upon taking possession. It appears that the practice was that the agent (on behalf of the landlord) would only sign the in-going condition report when it was received back from the tenant after the tenant had the opportunity to modify (or accept) the report. This was done, I was told, so that the landlord could not be said to have accepted the report in the event that the tenant returned the report with alterations. Further it appears that this was done because, in the agent’s experience, tenants often returned reports with incorrect or unnecessary modifications.

On the evidence provided it appeared that the agent considered that it was not a mandatory requirement that the condition report be signed, by the landlord or agent, before it was given to the tenant.

Section 25 of the Act states:

25. Landlord may provide condition report

(1) A landlord may, within 3 business days after a tenant takes possession of premises to which a tenancy agreement relates, fill out and sign 2 copies of a condition report and give both copies to the tenant.

(2) A condition report is to –

(a) specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates;

(b) itemise, and specify the condition of, any fixture or chattel that is ancillary property; and

(c) contain other prescribed information, if any.

(3) The landlord is to fill out the condition report under subsection (1) in the presence of the tenant or a representative of the tenant (who is not the landlord or the landlord's agent) unless it is not practical to do so or the tenant or the tenant's representative does not appear at the agreed time.

The word “may” in s 25(1) is directory and not mandatory. However, it refers solely to the provision of an ingoing condition report, and not to the contents of the report nor the way in which it must be given to the tenant. An ingoing condition report may be provided at the beginning of a tenancy or it may not be provided. However, if it is provided, it must be given to the tenant within three business days of possession, two copies must be given and filled out and the copies must be signed by the landlord. To interpret “may” as applying to the optional signing of the copies, could also mean that “may” could apply to the “three business days”, to the “giving it to the tenant”, to the “filling out of the form” and to the requirement for “2 copies”. That would be an erroneous interpretation.

The Act contains various provisions which place importance on the acceptance of the condition report by both parties (see for example s 51(4) and (5)). Alternatively, elsewhere in the Act it is acceptance of the report by the tenant which is important (see for example s122(4)(a)). Furthermore, it is clear from the sections that follow s 25 that any final acceptance of the condition report (by either party) is not necessarily conditional upon the initial execution of the report by the landlord or the tenant. The final acceptance of a condition report is conditional upon a number of different circumstances. At its most simplest, acceptance occurs when the tenant signs the report unaltered and returns it to the landlord (or does not return it within the specified time limit as the case may be). At that time the condition report has been accepted both by the landlord (through initial signature) and tenant (by returning the report unaltered or not within the required time). If the tenant returns the report with alterations there has been no acceptance of the report (and those changes) by the Landlord until further steps are taken (despite the landlord’s original signature on the report).

The Act is quite clear in relation to the procedure for subsequent modifications or alterations to the condition report. For example, where a report is returned with modifications made by a tenant, the report is accepted by the landlord when the alterations are initialled by the landlord and the report is returned to the tenant (see for example s 26(3)(a) and the possibility of further modifications by the landlord). If the landlord does not agree with the alterations they should not initial those alterations, they may make further alterations and send the report back to the tenant for further acceptance.

Therefore, acceptance of the report does not necessarily occur when the landlord signs the report, unless and until the tenant also signs the report and returns it unaltered. It is not possible to see any detriment which would be caused to a landlord by signing a condition report and providing it to a tenant for signature or alteration. The best that could happen is that the tenant could return it signed and unaltered. The worst that could happen is that it could be returned signed with alterations, in which case the landlord would need to initial the alterations and return the report before it would be considered accepted (or alternatively not returning it within five days to the tenant).

A failure to comply with s 25 in relation to a signature by the landlord would likely have the effect of rendering the in-going conditions report invalid (as too would be not providing it within 3 business days, or not providing two copies to the tenant).

Accordingly, I order that:

1. The Landlord pay the Tenant an amount of \$150 from the Tenant's security deposit which has been retained.
2. Any further claim for compensation is adjourned to a date to be fixed upon further application and notice to the parties.

Dated this 18th day of March 2004

Craig Smyth
Delegate of the
Commissioner of Tenancies