

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 27 FEBRUARY 2004

This is a determination of an application dated 9 December 2003 by the Landlord, in relation to compensation pursuant to s 122 of the *Residential Tenancies Act (NT)* (“the Act”). The application is made in respect of the premises being 1/4 McMinn Street, Darwin in the Northern Territory of Australia.

A Notice of Inquiry dated 12 February 2004 was posted to the parties. The Inquiry was conducted on 27 February 2004 during which evidence was taken from the Landlord, (“the Landlord”). There was no appearance by the tenants (“the Tenant”).

The Tenancy Agreement

At the Inquiry I was presented with a written document which purported to be a tenancy agreement. That document took the form of the standard Real Estate Institute of the Northern Territory tenancy agreement. That document was dated 19 November 2003 (although I note that an original date of 25 October 2003 has been crossed out and initialled) and was expressed to be between Landlord and the Landlord and 1st tenant and 2nd tenant the Tenants. That document related to a premises at 1/4 McMinn Street Darwin and stated, inter alia, that the tenancy would be for a period of 12 months beginning on 20 November 2003, at \$250 rent per week and a security deposit of \$1000. There were further terms and conditions contained within that document which are not necessarily of relevance to this determination.

The document was signed by the Landlord and by only one tenant. The document was also initialled on every page by the Landlord and Tenant. 2nd tenant signature did not appear on the document.

At the Inquiry the Landlord gave evidence, which I accept, that the 1st Tenant signed the agreement on 19 November 2003 at the premises and keys were handed over. I was told that he was given a copy of the agreement, and a copy was left for the 2nd Tenant to sign, who I was told was at sea with the Navy on that date. The Landlord also gave evidence that on the 25 October 2003, she had met the Tenants at the premises where they had discussed and agreed upon the essential terms of the tenancy. The Landlord gave evidence that both Tenants’s had agreed to enter into a tenancy agreement in relation to the premises and to pay \$250 per week for a fixed period of one year beginning on 20 November 2003. The Landlord gave evidence that at that meeting it was clear that the Tenants had made an agreement, and that the agreement would be formalised in writing on the 19 November 2003 when possession was given.

Section 19 of the Act provides for both written and unwritten tenancy agreements. In particular s 19(4) states that where a tenancy agreement is not signed by all parties to the agreement, a tenancy agreement prescribed for the purposes of the section is taken to be the agreement between the parties. The prescribed agreement is set out in Schedule 2 of Regulation 10 of the Residential Tenancies Regulations. That prescribed agreement provides for a number of contractual terms of an agreement, and relevantly includes the incorporation of an agreement as to a fixed term tenancy and the payment of rent.

That prescribed agreement operates where there has been oral agreement between parties in the absence of a signed agreement, and incorporates certain oral terms (such as the premises, the term and rent).

On the basis of the documentary and oral evidence before the Inquiry I find that a Tenancy Agreement within the meaning of and subject to the provisions of the Act existed. I do so on the evidence given by the Landlord, as outlined above, and further by the existence of a written document purporting to be a tenancy agreement which is signed by one Tenant and was originally dated 25 October 2003. I find that the tenancy agreement existed on the following terms:

Premises:	1/4 McMinn Street Darwin 0800
Commence Date:	20 November 2003
Period:	12 months
Rent:	\$250 per week
Security Deposit:	\$1000

A notice to remedy unpaid rent/notice of termination (Form RT3) was served by the Landlord on the Tenant by mail on 10 December 2003. That notice specified that an amount of rent, namely \$1000, was outstanding and should be paid by the 18 December 2003 (the rent payment date). The amount of rent specified in that notice had been outstanding for more than 14 days. That amount was not paid, and by operation of s 87(2) of the Act the tenancy terminated on the termination date as specified in that notice, namely on 19 December 2003.

Compensation

On the evidence provided to the Inquiry no rental payments or security deposit had been paid by the Tenants. Further, the Landlord gave evidence that it had been necessary to advertise the premises in order to find new tenants, who were found and who took possession on 9 January 2003. I am satisfied that the Landlord mitigated any loss in that regard.

I find that the Tenants are liable for the loss suffered by the Landlord pursuant to s 122 of the Act for unpaid rent and advertising costs until new tenants could be found for the premises. The unpaid rent equates to rent for seven weeks and one day (from 20 November 2003 to 8 January 2004), an amount of \$1785.71. Further the advertising costs, which are also compensable, amount to \$170.80. That calculates to a total of \$1956.51. Given that each Tenant should bear their liability equally, I find each Tenant liable to pay the Landlord an amount of \$978.26.

Accordingly, I order that:

1. The Tenant pay the Landlord the amount of \$978.26 for s 122 compensation.
2. The Tenant 2nd Tenant pay the Landlord the amount of \$978.26 for s 122 compensation.
3. 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