

## REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

### INQUIRY – 20 FEBRUARY 2004

This is a determination of an application dated 16 December 2003 by the Tenants, 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 5/54 Lakeside Drive, Alawa in the Northern Territory of Australia.

A Notice of Inquiry dated 9 February 2004 was posted to the parties. The Inquiry was conducted on 20 February 2004 during which evidence was taken from the Landlord’s representative (“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:         | 5/54 Lakeside Drive, Alawa 0810 NT |
| Commence Date:    | 26 July 2002                       |
| Period:           | 6 months then periodical           |
| Rent:             | \$150 per week                     |
| Security Deposit: | \$600                              |

This determination relates to a dispute arising from the retention of \$120 of the security deposit by the Landlord. On the evidence provided to the Inquiry the Landlord had originally withheld part of the security deposit for cleaning expenses and removal of certain furniture. However, the Landlord now claims that she is owed two weeks rent from the Tenants due to the failure of the Tenants to give a proper notice of termination. That issue and my reasons, in relation to the Landlord’s application for compensation pursuant to s 122 for unpaid rent, are the subject of another determination (RT304-309). I therefore restrict these reasons to the issue of the retention of the security deposit.

Documentary evidence was provided to the Inquiry which showed that following the termination of the tenancy agreement an inspection was carried out of the premises by the Landlord’s agent. In a letter to the Tenants from the Landlord, dated 16 December 2003, the Landlord stated that \$120 would be withheld from the security deposit for cleaning and removal of furniture. On the evidence of the Tenant, the Tenants have, to date, received all but \$120 of their security deposit.

An ingoing condition report was presented to the Inquiry, and it appears as part of the tenancy agreement. A two page, undated document, written by the Landlord’s agent was presented as the outgoing condition report. Evidence was given that an inspection was carried out on the premises on 1 December 2003.

The Act makes it clear that a landlord is not entitled to treat a tenant’s security deposit in whatever manner they think fit. A landlord is required to hold the security deposit on trust until the end of the tenancy and then deal with it in accordance with the law. The Act prescribes the conditions and circumstances in which a landlord may retain all or part of a tenant’s security deposit. Subject to those particular circumstances and requirements, *prima facie*, a tenant is entitled to have their security deposit returned.

Section 122 states that a landlord must within 7 days after a tenant has given up possession reimburse to the tenant the security deposit, other than an amount which they are entitled to retain under the Act. The penalty for not doing so is presently 20 penalty units or \$2200.

Section 122 then proceeds to describe a number of circumstances in which a security deposit may be retained including for the purposes to make good damage, replacing damaged property, cleaning and to pay unpaid rent. If the landlord chooses to retain the security deposit for those purposes there are further requirements under the Act. For example, if cleaning costs are to be withheld, an ingoing condition report must have been accepted by the tenant, and an outgoing condition report (in accordance with s 110) must be provided to the tenant.

Furthermore, if a landlord intends to withhold the security deposit generally they must give written notice to the tenant (using the prescribed Form RT8), attach a statutory declaration in relation to the claim and supply other supporting documentation. That must be done by the landlord within seven business days of gaining possession. Failure to do so will render any claim to withhold a security deposit invalid, subject to the discretion in s 113(2).

On the evidence provided at the Inquiry, none of those requirements were met by the Landlord, and thus the Landlord is not entitled to retain the security deposit. Further, I am not satisfied, in the circumstances (even if the Landlord was now withholding the security deposit for the 14 days outstanding rent – which amounts to \$300 in any event) that, the despite the failure to give proper notice, the landlord should be permitted to retain such an amount.

Accordingly, I order that:

1. The Landlord pay the Tenant an amount of \$120 being the remainder of 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