

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 20 FEBRUARY 2004

This is a determination of an application dated 13 January 2003 by the Landlord, in relation to a claim for compensation under s 122 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 claim by the Landlord for compensation amounting to 14 days rent. The claim was made on the basis that the Tenants, failed to give proper notice to the Landlord in relation to the termination of the tenancy agreement.

The Landlord’s Evidence

The Landlord stated that the Tenants had failed to give the 14 days written notice as required under s 94 of the Act in relation to the termination of a periodic tenancy by a tenant without reason. The Landlord gave evidence, which was supported by a letter from the agent, dated 26 January 2004, that the agent would attend the premises and collect rent from the Tenants every fortnight. In a letter of 17 December 2003 the agent is described as a caretaker. It was clear on the evidence given that the agent acted as an agent of the Landlord, not only in collecting rent, but carrying out inspections and communicating certain things between the Landlord and Tenants. On the evidence provided the agent collected two weeks rent from the Tenants on the 14 November 2003, for the period up to 28 November 2003. On evidence provided by the Landlord, the agent was telephoned by the Tenants on 17 November 2003 and was told that they intended to vacate at the end of the current rent cycle (ie. 28 November). Evidence was given in relation to what was said by the Agent to the Tenant. According to a letter written by the agent, dated 26 January 2004, the agent told the Tenants that they needed to give 14 days notice in writing and that the agent could pick the notice up. According to that letter the Tenant replied that since the Landlord was out of the country it was not necessary.

The Landlord further stated that if the Tenants had wanted to give notice to vacate the premises they had the opportunity to do so when the rent had been collected on the 14 November. Further, in relation to an issue of there being no address on the tenancy agreement to which a notice could be sent, the Landlord claims that correspondence had previously been sent to the Tenants which indicated the Landlord's postal address. Further, the Landlord gave evidence that they keys for the premises were not received until 1 December 2003 at the time of the final inspection.

The Tenants' Evidence

The Tenant gave evidence that she had been in Canberra until the 14 November and whilst there was asked to house sit a friend's house in Darwin, belonging to a Mr Friend. A letter from Mr Friend, dated 29 December 2003, was presented which supports that evidence and the fact that the Tenant intended to house-sit from approximately 20 November 2003 (although it appears from the Tenant's correspondence that the Tenant vacated on or about 27 November 2003). Mr Friend's letter reads in part "I met her on the 17th of November and asked her to tell the landlord that the flat was not going to be rented anymore right away. The next day, the tenant told me that she had [given] notice [to] the landlord". The intention to house-sit (and therefore I imply an intention to terminate the tenancy agreement) was obviously formed prior to the Tenant's return to Darwin on the 14 November, and therefore prior to the collection of rent by the agent which I am told occurred on the 14 November. Further there was no evidence given to explain why the other Tenant, was not able to get in contact with the Landlord's agent. The Tenant also gave evidence that she had left a message on the Landlord's mobile phone on 17 November 2003. The Tenant stated that she finally contacted the Agent and gave her verbal notice and was told by the Agent to vacate and return the keys on 29 November 2003. The Tenant said that the Agent told her to vacate on the 29th November and that no mention was made of the requirement for 14 days written notice. The Tenant claims she had no address to send the notice, as there was no postal address on the tenancy agreement, and rent was paid to the agent when she collected it in person. The Tenant gave evidence that she had arranged to return the keys for the premises to Mrs Agent on 29 November 2003 but Mrs Agent did not show up. The Tenant said that she left a message with a neighbour, who was expecting Mrs Agent to collect rent, but Mrs Agent did not take the message. A letter written by a Mr Neighbour, a tenant at 1/54 Lakeside Drive was tendered to support that version of events. Evidence was provided that showed that a final inspection was carried out on the premises on 1 December 2003 by Mrs Agent and keys to the premises were handed over.

Termination of Tenancy and Section 122 Compensation

The Act specifies a number of circumstances in which a tenancy agreement may terminate. Section 82 states, inter alia, that a tenancy is only terminated if the landlord or tenant terminates under the Act. Specifically in relation to periodic tenancies and the termination by a tenant, section 94 states that a tenant may terminate without reason by giving 14 days notice in accordance with the provisions of s 101. Section 101 requires such notice to be in writing, specify the date of vacant possession and other prescribed information if necessary.

Section 82 also states that a tenancy may terminate by abandonment, the date of termination effective on the next date that rent is due and payable.

Section 122 of the Act states that the Commissioner may order compensation for loss of damage suffered by a party because a party has not complied with a tenancy agreement or an obligation under the Act. In determining what compensation should be paid s 122(3) sets out a number of factors to be taken into consideration. These include, inter alia:

- Whether the person from whom compensation is claimed has taken all reasonable steps to comply with his or her obligations under the Act, and the tenancy agreement, being obligations in respect of which the claim is made.
- Whether money has been recovered by the applicant from the security deposit paid under the tenancy agreement.
- Whether an action was taken by the applicant to mitigate the loss or damage.

On the evidence provided I find that the tenancy agreement terminated on 28 November 2003. I find that it was the Tenant's intention to terminate the tenancy prior to 14 November was manifest by the intention to house-sit for Mr Friend and her attempts to contact the Landlord's agent. Although the Tenant remained in possession of the keys for the premises I do not find, in these circumstances, that that was indicative of an intention not to yield up vacant possession, and more so given the evidence of the communication difficulties between the parties and the fact that the Tenant had no physical place to return the keys to. Therefore, as the tenancy was terminated by the tenant in an act of abandonment, and not in accordance with s 94, the Landlord is, prima facie, entitled to 14 days rent as a result of the Tenant's failure to comply with an obligation under the Act. Although such a finding may seem harsh, the Act is quite clear, notice to terminate must be given in writing with 14 days notice. The rationale behind such a provision is also clear, if notice was capable of being given orally, there would be numerous disputes in relation to "who said what to whom". The provision to give notice in writing protects the tenant's rights as much as it does the landlord's rights. Although I accept that there was no postal address for the Landlord on the tenancy agreement, I find that the Tenants had previously received correspondence with the Landlord's postal address. Alternatively there was no reasonable explanation given why a written notice was not given to Mrs Agent when she collected the rent on 14 November. I find that the Tenants had not taken all reasonable steps to comply with their obligations under the Act. I am also satisfied that the loss was mitigated.

Accordingly, I order that:

1. The Tenants (apportioned 50% each) pay the Landlord an amount of \$300 being compensation pursuant to s 122 for the Tenant's failure to comply with the requirements of s 94.
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