

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 9 AND 17 MARCH 2004

These reasons are given in relation to an application on 1 March 2004 by the Landlord, seeking an order for possession pursuant to section 104 of the *Residential Tenancies Act* (NT) (**the Act**) and compensation pursuant to sections 121 and 122 of the Act. The application is made in respect of premises being 121/81 Cavenagh Street, Darwin in the Northern Territory (**the Premises**).

A Notice of Inquiry dated 1 March 2004 was posted to the parties. The inquiry was conducted on 9 March 2004 and further evidence taken on 17 March 2004 during which time evidence was taken from the Landlord and the Tenant.

On the basis of the documentary and oral evidence before the Inquiry, I find there was a tenancy agreement within the meaning of and subject to the provisions of the Act on the following terms:

Premises:	121/81 Cavenagh Street, Darwin NT
Commencement Date:	22 December 2003
Period:	3 months (to 22 March 2004)
Rent:	\$200 per week
Security Deposit	\$200.00 (see below)

The following evidence was presented to the Inquiry on 9 March 2004:

- RT1 application –Application to the Commissioner of Tenancies;
- RT3 application – Notice to Remedy Unpaid Rent; Notice of Termination;
- Tenancy Agreement dated 22 December 2003;
- Photocopied receipts by the landlord, receipts number 783334, 783335, 783336, 783329, 783327, 783328.
- Typed document by the Tenant recording rental receipts for the period 22/12/03 to 09/02/04.
- A copy of an agreement (undated) from Territory Housing submitted by the Tenant.

The following evidence was presented to the Inquiry on 17 March 2004:

- New receipts by the landlord – a tally of which has been recorded.

The determination of this matter, from the outset, has been confusing and difficult to determine. The foremost reason for such difficulties has been the state of the records kept by the Landlord in relation to the tenancy agreement and the confusion in relation to the security deposit held by the Landlord.

The Landlord and Tenant first appeared before me on 9 March 2004. As there was some confusion with the evidence presented, I requested that the parties again appear before me on 17 March 2004.

A summary of the oral evidence given by both parties at the Inquiry is as follows:

Evidence of the Tenant

- The Tenant advised that the Landlord advertised the premises at \$200 per week and 1 week's bond.
- On 23 December 2003, Territory Housing paid directly to the Landlord the sum of \$1,200.
- The Tenant advised that she gave Territory Housing a copy of the Tenancy Agreement to obtain the loan.
- The Tenant gave evidence that the amount of \$1,200 paid directly to the Landlord was for 1 weeks security deposit and 4 weeks rent.
- It was not until the Tenant received the RT3 notice that she realised that the Landlord had changed the original agreement from 1 week's security deposit to 4 weeks security deposit.
- In addition to the amount of \$1,200 paid directly to the Landlord by Territory Housing, the Tenant's documentary and oral evidence indicates that the Tenant paid an amount of \$1,000 to the Landlord in payment of rent.
- The Tenant agreed that a total amount of \$2,200 had been paid to the Landlord.

Evidence of the Landlord

- The Landlord agreed that an amount of \$1,200 had been paid directly to the Landlord from Territory Housing on or about 23 December 2003.
- The Landlord agreed with the Tenant's that the original agreement to rent the premises was on the basis of \$200 per week and 1 week's security deposit.
- The Landlord advised that the reason for the increase in security deposit was due to the following:
 - Upon receipt of the money from Territory Housing, the Landlord rang Territory Housing to find out what the money was for. Territory Housing advised the Landlord that the \$1,200 was for 4 weeks security deposit and 2 weeks rent.
 - On this advice, the Landlord changed the amount of the security deposit to 4 weeks. However, this change was not on the basis of the original agreement nor agreed to by the Tenant.
- The Landlord agreed that a total amount of \$2,200 had been paid by the Tenant. This amount included \$1,200 from Territory Housing and \$1,000 cash paid by the Tenant.
- The Landlord advised the staff at the Tenancy Unit of Commissioner of Tenancies that the amount of \$1,000 was paid by the Tenant after the RT3 notice (ie after 18 February 2004). The receipts of the Landlord do not reflect this, and this matter is discussed fully below.

On the evidence before the Inquiry, I am satisfied and find as follows:

- An amount of \$1,200 was paid directly to the Landlord on or about 23 December 2003 by Territory Housing for payment of the security deposit and rent.
- Upon evidence submitted by the Tenant and agreed to by the Landlord the original agreement was \$200 per week for rent and \$200 security deposit.
- Applying this to the amount of \$1,200 received by Territory Housing – means that the Tenant paid \$200 for a security deposit and \$1,000 towards the rent.
- As at the date of the RT3 notice, the Tenant had paid \$1,000 towards rent.
- With the payment of \$1,000 applied towards the rent, the Tenant was paid up to and including 25 January 2004.
- The period specified on the RT3 notice for rental outstanding was from 5 January 2004 until 22 February 2004 and the amount outstanding was \$1,400.
- However, the period should have been 26 January 2004 to 22 February 2004 and the amount should have been \$600 rather than \$1,400.
- As the dates and the amounts on the RT3 notice are incorrect, the RT3 notice is therefore invalid.
- As the RT3 notice is invalid, termination of the lease has **not** occurred and an order for compensation can not be ordered.

Accordingly, I order that:

1. The Landlord's application for possession and compensation is dismissed.

To complete this matter, I make the following further findings:

- As at the date of this Inquiry (17 March 2004) the Tenant has paid an additional \$1,000 after the RT3 notice was issued.
- The total amount paid by the Tenant in rent is \$2,000 with \$200 security deposit. As a result, the Tenant is paid up to and including Sunday, 29 February 2004.

In the event, the Landlord wishes to claim for any unpaid rent from 1 March 2004, or seek a notice of termination of the tenancy agreement, a new Form RT3 application should be served on the Tenant and a further application for possession and compensation must be lodged with the Commissioner of Tenancies.

Proper Keeping of Records

It is important to draw the Landlord's attention to the following provisions of the Act, regarding proper keeping of records.

As has become extremely evident in this case, proper record keeping is crucial. Not only do proper records lead to the determination of whether the Landlord or Tenant is entitled to an amount claimed, but more importantly, the provision of receipts is also a requirement of the Act.

Section 36 requires that a Landlord keep written records of each instalment of rent, and section 37 requires that a Landlord give the Tenant, especially if cash is paid, a written receipt. Further, section 31 of the Act requires that a receipt be provided for a security deposit that has been paid by the Tenant. All of these sections provide for certain particulars to be kept on each document.

For the benefit of both parties, sections 31, 36 and 37 of the Act are set as follows:

31. Receipt to be provided for security deposit

(1) If a person has paid an amount by cash, cheque or credit card as a security deposit to the landlord, the landlord must immediately give a receipt in accordance with subsection (3) to the person who paid it or the tenant on whose behalf the payment was received.

Penalty: 20 penalty units.

(2) If a person has paid an amount as security otherwise than by cash, cheque or credit card to the landlord, the landlord must within 2 business days after receiving the amount give a receipt in accordance with subsection (3) to the person who paid it or the tenant on whose behalf the payment was received.

Penalty: 20 penalty units.

(3) A receipt for the purposes of subsection (1) or (2) is to be signed by the person who received the security deposit to which it relates and is to specify –

- (a) the date the amount was received;
- (b) the name of the tenant on whose behalf the payment was received;
- (c) the amount paid; and
- (d) the address of the premises to which the payment relates.

36. Landlord to keep proper records of rent

(1) A landlord must keep a written record, which may be in an electronic form, of each instalment of rent received.

Penalty: 20 penalty units.

(2) The record is to consist of –

- (a) the amount of rent paid;
- (b) the date on which the rent was received;
- (c) the period of the tenancy to which the rent relates; and
- (d) the address of the premises to which the rent relates.

(3) For the purposes of subsection (2)(c), the period of the tenancy is to be presumed to be the next period for which rent is payable unless the person paying the rent or on whose behalf the rent is paid specifies otherwise.

4) A person must not –

- (a) make a false entry of a record of rent received under a tenancy agreement; or
- (b) falsify the record in any other way.

Penalty: 100 penalty units.

(5) The landlord must, at the request of a tenant, permit the tenant to examine the record of rent received under the tenancy agreement.

Penalty: 20 penalty units.

37. Landlord to give receipt for rent

(1) A landlord must, immediately after receipt of a cash payment for rent, give to a tenant a receipt in accordance with subsection (5).

Penalty: 20 penalty units.

(2) If rent is paid in cash to a landlord by a person on behalf of a tenant, the landlord must give to the tenant a receipt before the end of the next business day after the day on which the cash was received.

Penalty: 20 penalty units.

(3) If rent is paid by cheque by or on behalf of a tenant, the landlord must, at the request of the tenant, give to the tenant a receipt in accordance with subsection (5) within 3 business days after the date of the request.

Penalty: 20 penalty units.

- (4) A landlord is not required to give a receipt if rent is directly credited or otherwise paid into an account kept by the landlord at –
- (a) an ADI; or
 - (b) a statutory corporation of the Territory or of the Commonwealth.
 - (c) [Omitted]
- (5) A receipt for the purposes of this section is to be signed by the person receiving the rent to which it relates and is to specify –
- (a) the date on which the rent was received;
 - (b) the name of the person paying the rent;
 - (c) the amount paid;
 - (d) the period of the tenancy to which the payment relates; and
 - (e) the address of the premises to which the payment relates.

For the benefit of the Landlord there are a number of issues that need to be explained in detail:

1. A “receipt” that is required under section 37 is **not** the same as a “record” that is required under section 36. The Landlord submitted to the Inquiry “receipts” only. A “record” is a document that shows the history of all rental payments, the date on which the rent was received, the period of the tenancy to which the rent relates, and the address of the premises to which the rent relates. By the Landlord not having a written record prepared pursuant to section 36 of the Act, made it more difficult to reconcile the figures and in the end, I could not be satisfied that the receipts given by the Landlord were accurate.
2. A receipt for a security deposit **must** be distinguished from a receipt for a payment of rent. To distinguish the two, it is suggested that the Landlord, in future, use the words “Security Deposit” at the top of the receipt. The security deposit receipt provided by the Landlord was in fact calculated as a rental receipt. It was only when the Landlord gave evidence that it was found that the receipt was in fact a security deposit receipt.
3. Section 37(5) requires that the Landlord provide:
 - (5) A receipt for the purposes of this section is to be signed by the person receiving the rent to which it relates and is to specify –
 - (a) the date on which the rent was received;
 - (b) the name of the person paying the rent;
 - (c) the amount paid;
 - (d) the period of the tenancy to which the payment relates; and
 - (e) the address of the premises to which the payment relates.

The Landlord presented receipts that did not comply with this section. The Landlord recorded on the receipt, the date the rent was due, rather than the date the rent was received. With the wrong dates being recorded indicated, prima facie, that the Tenant had made payments **prior** to the rent payment day specified in the RT3 notice, rather than **after** the rent payment day.

On 9 March 2004, the Landlord acknowledged that he has made these mistakes and will rectify the same. Then on 17 March 2004, the Landlord advised that he destroyed his first receipts as they were incorrect, and rewrote them.

On 9 March 2004, the Tenant acknowledged that the receipts were incorrect but realized where the mistakes were made and accepted how the amounts were calculated.

In my view, the Landlord is a genuine witness in this regard and accordingly, at this point in time, I do not consider that it is a matter that needs to be referred to the Commissioner of Tenancies for further investigation. However, on a quick perusal of the latest receipts of the Landlord, I am of the view that the receipts are still incorrect and that the Landlord needs some assistance. Accordingly, I recommend that the Landlord speak with the Tenancy Unit of the Commissioner of Tenancies and organise a time for a representative of the Tenancy Unit to explain the record keeping requirements under the Act.

Dated this: 23 March 2004

Tearangi Faith Woodford
Delegate of the Commissioner of Tenancies