

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 27 FEBRUARY 2004

This is a determination of an application dated 30 January 2003 by the Landlord, seeking an order for compensation pursuant to section 121 or 122 of the *Residential Tenancies Act (NT)* (“the Act”). The application is made in respect of the premises being 18 Sanderling Street, Wulagi in the Northern Territory of Australia.

A Notice of Inquiry dated 19 February 2004 was posted to the parties. The Inquiry was conducted on 27 February 2004 during which evidence was taken from the Landlor (“the Landlord”). The Tenant also appeared (“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:	18 Sanderling Street, Wulagi 0812
Commence Date:	16 October 2002 – extended to 16 February 2004
Period:	6 months and further extensions expiring 16 February 2004
Rent:	\$220 per week
Security Deposit:	\$880

Termination of the Tenancy

The Landlord had served the Tenant, by mail, with a Form RT3 (Notice to Remedy Unpaid Rent/Notice of Termination) on 20 January 2004. That form specified the amount of rent outstanding as \$800 “as of 19/1/04” for the period 20 December 2003 to 16 January 2004. Rent payment date was specified as 28 January 2004 and termination date as 29 January 2004. Evidence from the Landlord’s rent ledger indicated that the Tenant had paid up until and including 16 December 2003. However, there was evidence presented that although the rent “technically” fell due mid week (on a Wednesday) that payment was not required by the Landlord until the end of the week (on a Saturday). That explains why the period of outstanding rent on the Form RT3 did not correspond with the actual date that the Tenant had paid rent up to and until (ie. 20 December as opposed to 17 December). Nevertheless, given evidence of the agreement between the parties as to the date upon which rent was due and payable, I find that the amount of rent and period expressed in the notice are valid. The amount of rent has been in arrears for more than 14 days and had not been paid before the rent payment date. Therefore the tenancy agreement terminated on the termination date 29 January 2003. Evidence was given that the Tenant yielded up vacant possession of the premises to the Landlord on 29 January 2003.

Section 122 Compensation for Outstanding Rent

It was not in dispute that the Tenant had fallen into arrears in paying rent. Failure to pay rent is a breach of the tenancy agreement, not only giving rise to a right of the Landlord to terminate the tenancy, but also to seek compensation as a result of that breach. In these circumstances the Landlord is entitled to compensation for rent that was unpaid, and rent that would have been paid up until the end of the tenancy agreement, subject to a duty to mitigate any loss. On evidence presented to the Inquiry, the Tenant had paid rent up to and including 16 December 2003, and the tenancy was due to terminate by effluxion of time on 16 February 2004. The rent in between the period 17 December 2003 to 16 February 2004 amounts to \$1948.57. The Landlord also gave evidence that the property had been advertised during that time, therefore I am satisfied that the loss was mitigated.

Section 122 Compensation for Cleaning, Repairs, Maintenance etc

The Landlord gave evidence at the Inquiry that following the Tenant's vacation a time was mutually arranged for final inspection of the Premises. The Landlord gave evidence, and presented a unsigned letter dated 18 January 2004 addressed to the Tenant in support, indicating the time of 12 mid-day 29 January 2004 had been agreed upon for the final inspection. Evidence was given that numerous messages were also left for the Tenant. The Landlord gave evidence that the Tenant did not appear as agreed, and the out-going inspection was carried out in his absence. The Landlord stated that the inspection was carried out and the condition of the premises was noted in the appropriate column on the original condition report (dated 16 October 2002 ingoing and 29 January 2004 outgoing). The Landlord further gave evidence that two copies of the condition report were mailed to the Tenant at his last known address. In relation to the outgoing condition report the Landlord claimed various heads of compensation, totalling \$1407.90, which comprised:

- Carpet cleaning \$66
- Painting \$330 (quotation)
- Maintenance Services \$370
- Stove Electrical Repairs \$220
- Gardening \$100
- Curtain Replacement \$39.90
- General Cleaning \$260
- Replacement of Electrical Extension Lead \$2.50
- Replacement of Garden Hose \$19.50

The Tenant gave evidence that no opportunity had been made for him to be present at the outgoing inspection. Further, he gave evidence that before vacating his wife had spent the week scrubbing and cleaning the house. That was supported by a letter from the tenant's wife, dated 20 February 2004. The Tenant also complained that the premises was not clean when he began the tenancy agreement. The Tenant gave evidence that he had the carpets professionally cleaned at one time, and had engaged a gardener on about 10 January 2004 to clean the yard. No receipts in support were presented to the Inquiry.

Procedures for the acceptance of the condition reports, both of the in-going and out-going inspections, are provided by the Act. The Act makes it quite clear that if a Tenant does not agree with an in-going condition report, as presented by the Landlord, they can make the necessary alterations and return it to the Landlord. The condition report is not accepted until both the landlord and tenant agree on the condition of the premises.

If the tenant signs the condition report unchanged, it is taken to have been accepted by the tenant as indicative of the condition of the premises. A tenant should not accept an in-going condition report which does not properly reflect the true condition of the premises. It is in a tenant's own interests to ensure that an in-going condition report properly reflects the condition of the premises.

In relation to the provision of an out-going report the Act requires the report be made in the presence of the tenant, unless it is not practical to do so or the tenant does not appear at the agreed time (s 110(2)).

On the evidence provided to me I find that there was a valid in-going and out-going condition report. The out-going condition report was conducted in the absence of the Tenant due to his non appearance at the time which had been agreed. The out-going condition report highlights a significant difference in the condition of the premises than that which is described in the in-going condition report. On the evidence provided I am satisfied that the Landlord ought to be compensated for the loss incurred as a result of the Tenant's failure to restore the premises to the reasonable condition it should have been left in as contemplated by the in-going condition report. The invoices which have been paid for work done are not excessive given the description of the premises in the out-going condition report.

I note that the Landlord provided one quotation for painting costs, but no paid receipt was issued. If part of the security deposit is withheld in relation to that amount then no paid receipt need be provided to the Inquiry (see 112(5)(d)) . However a proper paid receipt should be provided to the Tenant in any event (and the Tenant has the right to dispute retention of the security deposit if no receipt is in fact provided). I make mention of that because in order to claim s 122 compensation a Landlord must have suffered an actual loss. The provision of an quotation is not evidence of an actual loss. Quotations are not evidence of money which has actually been expended. In contrast however, if a landlord withholds a security deposit all that the Act requires is the provision of a document which indicates how much it will cost to make good the damage (ie. a quote will do). If the Tenant disputes that quotation, they can demand a receipt and/or make an application to the Commissioner of Tenancies.

Accordingly, I order that:

1. The Tenant is to pay the Landlord compensation in the amount of \$1948.57 (or \$1398.57 if \$550 of the security deposit is applied towards unpaid rent) pursuant to s 122 for unpaid rent.
2. The Tenant is to pay the Landlord compensation in the amount of \$1407.90 (or \$1077.90 if the remaining \$330 of the security deposit applied to various heads of loss) pursuant to s 122 for compensation in relation to cleaning, making good, repairing the premises and replacing ancillary property.
3. Any further claim for compensation is adjourned to a date to be fixed upon further application and notice to the parties.

Dated this day of April 2004

Craig Smyth
Delegate of the
Commissioner of Tenancies