

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES
INQUIRY – 20 FEBRUARY 2004

This is a determination of an application dated 4 January 2004 by the Landlord seeking an order for compensation pursuant to section 122 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 12/91 Aralia Street, Nightcliff 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 (“the Landlord”), the Landlord’s mother, and the Tenant (“the Tenant”).

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

Premises:	12/91 Aralia Street, Nightcliff
Commencement Date:	05 May 2003
Period:	12 Months fixed period
Rent:	\$110.00 per week
Security Deposit	\$440.00

The Landlord claims compensation in the amount of \$2110.60 as a result of the Tenant’s alleged abandonment of the premises. The compensation claims are as follows:

• Unpaid rent up to 28 November 2003	\$ 918.56
• Unpaid rent from 29 November 2003 to 4 January 2004	\$ 581.42
• Cleaning inside the premises	\$ 233.75
• Changing of the locks	\$ 115.50
• Costs of replacing gate remote control	\$ 69.30
• Costs of replacing the mattress protector	\$ 23.07
• Costs of replacing microwave oven	<u>\$ 169.00</u>
	<u>\$ 2110.60</u>

In support of her application the Landlord has submitted copies of the following:

- An application for tenancy dated 2 May 2003;
- The residential tenancy agreement governing the parties dated 5 May 2003;
- Special condition report for 12/91 Aralia Street, Nightcliff dated 5 May 2003;
- Property condition report (both ingoing and outgoing) of the premises dated 5 May 2003 and 29 November 2003 respectively;
- A photocopy of photographs of the premises as at 29 November 2003;
- Photocopy of receipts numbers 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47;
- Palmerston Locksmith invoice dated 1 December 2003 in the amount of \$115.50;

- Invoice for cleaning of premises dated 2 December 2003 in the amount of \$235.75;
- A Notice of Landlord's Intention to Retain Security Deposit dated 2 December 2003;
- A statutory declaration declared by the Landlord dated 2 December 2003;
- Trojon Fencing & Fabricating Pty Ltd invoice dated 4 December 2003 in the amount of \$69.30;
- Woolworths invoice dated 4 December 2003 for queen bed mattress protector dated 4 December 2003 in the amount of \$23.07;
- Statement dated 19 January 2004;
- Quote dated 24 February 2004 from Darwin Chandlers pricing various microwave ovens;
- Quote (undated) from Murray Oakley Discounts for Samsung and Sharp microwave;
- Photocopy of 2 pages of Residential Management Agreement between the Landlord and a Rental agency (folios 46 and 47) dated 10 December 2003;
- advertisement in NT News dated 20/12/03;
- advertisement in NT News dated 03/01/04;
- advertisement in NT News dated 10/01/04;
- Photocopy of A4 page with "evidence of advertisement" written;
- Document by Landlord detailing itinerary of events from 28 November 2003 to 21 February 2004;
- "For Lease" sign prepared by Landlord to let the premises;
- Copy of the Landlord's rental ledger.

The oral evidence of the Tenant given during the inquiry in relation to the tenancy agreement generally was as follows:

- The Tenant moved out of the premises at the end of September 2003. The Tenant locked the premises and put the keys and remote control in the letterbox. He did not communicate his intention to vacate the premises to the Landlord;
- The Tenant said he was in fear of his safety living in the premises. In one incident, he was broken into and in another incident, he was threatened by a person carrying a knife. The Tenant advised that this was the reason that he left the premises.
- The Tenant advised the microwave was stolen. He obtained a police report. The Tenant did not inform the Landlord that the microwave was stolen. The Tenant said that he would produce a copy of the police report;
- The Tenant agreed to pay the cleaning of the premises;
- The Tenant was served a conviction notice by the Landlord but it was found to be invalid.

The oral evidence of the Landlord during the course of the inquiry in relation to the tenancy agreement generally was as follows:

- The Landlord discovered the Tenant had in her view, abandoned the premises on 28 November 2003;
- After discovering the premises abandoned, the Landlord attended to the repairs and cleaning of the property;

- To re-let the property, after the premises had been cleaned, the cleaner placed a for rent sign outside of the property. In addition, the Landlord placed “For Lease” signs up on the notice board at Casuarina Square and other places until she was able to secure the services of a property manager;
- The Landlord met with the property manager on 3 December 2003;
- The Landlord produced written documentation that outlined the further steps taken to re-let the property.

Security Deposit

In assessing the issue of compensation, it is necessary to first consider whether the Landlord is entitled to retain the Tenant’s security deposit as any retention of a security deposit will affect the amount of the compensation order.

Section 112 of the Act provides in subsection (1) that subject to this section a tenant is entitled to have his or her security deposit reimbursed at the end of the tenancy agreement. Subsection (2) of section 112 provides that the landlord must within 7 business days after the tenant gave up vacant possession of the premises or in the opinion of the landlord, apparently abandoned the premises, reimburse to the tenant the amount of the security deposit other than an amount that the landlord is entitled to retain, or to continue to hold, under this section. Section 112(3) of the Act entitles the landlord to retain so much of the security deposit paid by the tenant as is necessary to make good (amongst other things), unpaid rent. Section 112(5) of the Act governs the circumstances in which a landlord can retain a tenant’s security deposit. A landlord is not entitled to retain a tenant’s security deposit unless within 7 business days of the tenant vacating the premises or in the landlord’s opinion, the tenant has apparently abandoned the premises, given written notice to the tenant of the landlord’s intention to retain the security deposit. It is a requirement of the Act that a copy of a statutory declaration is attached to the notice attesting to the truth of the claim that the retention of the security deposit is required for the purposes specified in the notice. Further, the statutory declaration must attest that the receipts or invoices or other documents attached to the declaration relate to the matters in respect of which part or all of the security deposit is being withheld from the tenant, or, the amount of unpaid rent owing under the agreement or money under section 121 of the Act.

Notice of Landlord’s Intention to Retain Tenant’s Security Deposit

The Landlord completed a Notice of Landlord’s Intention to Retain Security Deposit. This gave the Tenant notice that the Landlord intended to retain the security deposit in the sum of \$440 for unpaid rent. Service of the notice was given on 3 December 2003 by mail. The notice was served at the last known address of the Tenant, namely, 12/91 Aralia Street, Nightcliff. A statutory declaration dated 2 December 2003 was attached to the notice. The declaration enclosed rental receipts supporting the Landlord’s claim to retain the security deposit for unpaid rent.

Abandonment of the Property

During oral evidence, the Landlord advised that she discovered the premises abandoned on 28 November 2003. The Tenant advised that he moved out of the premises at the end of September 2003. He advised that he locked the premises and put the keys and remote control in the letterbox.

The Tenant did not communicate his intention to vacate the premises to the Landlord. As such, I am satisfied that the Landlord could not have known that the Tenant had vacated the premises at that time. It was not until 28 November 2003 that the Landlord discovered that the Tenant had abandoned the premises. The Landlord subsequently took possession of the property and attended to the cleaning and repairs of the property.

On the basis of the evidence before the inquiry, I find that the Tenant abandoned the premises on 28 November 2003. I am further satisfied that the Landlord's notice to retain the Tenant's security deposit and supporting statutory declaration and receipts satisfies the requirements of s.112 of the Act. The Landlord has complied with the time requirements of s.112 of the Act and supplied the appropriate documentation. Further, the Landlord has sent the notice to the Tenant's last known place of residence, in accordance with s.154 of the Act.

On the information before me, I am satisfied that the Landlord has complied with the provisions of s.112 of the Act and is therefore entitled to retain the security deposit of the Tenant in the sum of \$440 and apply that sum towards unpaid rent. That being the case, the amount of \$440 applied to the unpaid rent claimed by the Landlord up to 28 November 2003 in the sum of \$918.56, leaves a balance owing of \$478.56.

Compensation Claim

The next step is to consider the Landlord's claim for compensation pursuant to s.122 of the Act. The onus is on the Landlord to establish that on the balance of probabilities the Tenant has breached his obligations under the tenancy agreement or under the Act. The Landlord has claimed compensation for cleaning of premises (\$233.75), changing of locks (\$115.50), costs of replacing a gate remote control (\$69.30), costs of replacing a missing mattress protector (\$23.07) and missing microwave oven (\$169) and claim for unpaid rent up to 28 November 2003 (balance of \$478.56) and unpaid rent from 29 November 2003 to 4 January 2004 (\$581.42).

Section 122 of the Act gives the Commissioner the ability to order compensation for loss or damage suffered by the Landlord as a result of the Tenant's failure to comply with the tenancy agreement or an obligation under the Act relating to the agreement (section 122(1)(a)).

I will now consider each of the Landlord's claims for compensation individually:

Cleaning of the premises

In relation to the Landlord's claims for cleaning to the premises, the Landlord is effectively relying on section 51 of the Act which provides, my emphasis:

51. Cleanliness and damage
 - (1) **It is a term of a tenancy agreement that a tenant –**
 - (a) **will not maintain the premises and ancillary property in an unreasonably dirty condition**, allowing for reasonable wear and tear;
 - (b) must notify the landlord of any damage or apparent potential damage to the premises or ancillary property, other than damage of a negligible kind;

- (c) must not intentionally or negligently cause or permit damage to the premises or ancillary property;
 - (d) if the premises are a unit within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act;
 - (e) if the premises are a building lot within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act; and
 - (f) if the premises are a lot within the meaning of Part IVB of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act.
- (2) It is a **term of a tenancy agreement that at the end of the tenancy the tenant must give the premises and ancillary property back to the landlord** –
- (a) **in reasonable state of repair; and**
 - (b) **in a reasonably clean condition,**
- allowing for reasonable wear and tear.**
- (3) A tenant is not in breach of the term of the agreement specified in subsection (1) or (2) if –
- (a) the breach is caused by the landlord's failure to repair or maintain the premises or ancillary property; and
 - (b) the landlord had notice that the repairs or maintenance were required.
- (4) **In deciding whether premises or ancillary property are in reasonable condition or in a reasonably clean condition, a landlord, the Commissioner or a court must take into account** –
- (a) **the condition of the premises or ancillary property when the tenant took possession of them as determined by a condition report, if any, accepted under Part 5 by the landlord and the tenant;**
 - (b) **if the tenancy agreement has terminated or the tenant has, in the opinion of the landlord, apparently abandoned the premises – the condition of the premises or ancillary property as determined by a condition report, if any, accepted under Part 12 by the landlord and the tenant; and**
 - (c) the effect of reasonable wear and tear during the tenancy.
- (5) **If a condition report was not accepted by the landlord and the tenant in relation to the premises or ancillary property under Part 5** –
- (a) **the tenant is to be taken to have complied with the term of the agreement specified in subsection (1); and**
 - (b) **if the tenancy agreement has terminated or the tenant has, in the opinion of the landlord, apparently abandoned the premises – the premises or ancillary property are to be taken to have been at the time when the tenant took possession of the premises under the tenancy agreement, in the condition they are at the end of the tenancy agreement.**

Ingoing Condition Report

Part 5 of the Act governs security deposits and condition reports. Section 25 provides, my emphasis:

Section 25 Landlord may provide condition report

- (1) A landlord may, **within 3 business days after a tenant takes possession** of premises to which a tenancy agreement relates, **fill out and sign 2 copies of a condition report and give both copies to the tenant.**
- (2) A condition report is to –
 - (a) specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates;
 - (b) itemise, and specify the condition of, any fixture or chattel that is ancillary property; and
 - (c) contain other prescribed information, if any.
- (3) The landlord is to fill out the condition report under subsection (1) in the presence of the tenant or a representative of the tenant (who is not the landlord or the landlord's agent) unless it is not practical to do so or the tenant or the tenant's representative does not appear at the agreed time.

Upon receipt of an ingoing condition report completed in accordance with section 25,a Tenant can alter or accept the condition report in accordance with section 26 which provides, my emphasis:

Section 26. Alteration or acceptance of condition report

- (1) **Within 5 business days after receiving the copies of the condition report under section 25, the tenant may –**
 - (a) **accept** the report **by signing both copies and returning one of the copies to the landlord;** or
 - (b) **mark the modifications the tenant thinks fit** on both copies of the condition report, **initial the modifications and return both copies to the landlord.**
- (2) **If a tenant does not take action under subsection (1) within the time specified in that subsection, the tenant is to be taken to have accepted the condition report.**
- (3) Within 5 business days after receiving the copies of the condition report modified by the tenant under subsection (1)(b), the landlord may –
 - (a) accept the report as modified by the tenant by initialling the modifications made by the tenant and returning both copies, without making modifications, to the tenant; or
 - (b) mark the modifications the landlord thinks fit on both copies of the condition report, initial the modifications and any modifications that the tenant has made under subsection (1)(b) that the landlord accepts and return both copies to the tenant.
- (4) If a landlord does not take action under subsection (3) within the time specified in that subsection, the landlord is to be taken to have accepted the condition report as modified by the tenant.
- (5) After receiving the copies of the condition report from the landlord under subsection (3) –
 - (a) if the landlord accepted the tenant's modifications under subsection (3)(a), the tenant may, within 5 business days, accept the condition report by signing both copies and returning one of the copies to the landlord;

- (b) if the landlord made modifications under subsection (3)(b), the tenant may, within 5 business days, accept the condition report by initialling the modifications made by the landlord under subsection (3)(b), signing both copies of the condition report and returning one copy to the landlord; or
- (c) in either case, the tenant or the landlord may –
 - (i) attempt to reach agreement as to the contents of the condition report and accept the condition report by having both parties initial all modifications to the report that are accepted by them and having the tenant sign both copies of the report and return one to the landlord; or
 - (ii) apply to the Commissioner under section 27.

In the event that a condition report dispute arises between the parties then the Act provides that the matter can be referred to the Commissioner in accordance with section 27. If a condition report is accepted by the Tenant or is taken to have been accepted by the Tenant because of his or her failure to return the condition report within 5 business days of receiving it from the Landlord then section 28 provides, my emphasis:

Section 28. Condition report conclusive of condition at beginning of tenancy

If a condition report is or is to be taken to have been accepted under this Division by the landlord and the tenant, **the condition report is (insofar as it relates to the beginning of the tenancy) conclusive evidence of the condition of the premises and of the provision of and the condition of any ancillary property referred to in the condition report at the beginning of the tenancy, unless the Commissioner determines otherwise in a particular case.**

The Landlord has presented to the inquiry a “Property Condition Report”. This report was attached (along with other documents) to the tenancy agreement. The Property Condition Report was signed by both the Landlord and the Tenant. Each signature has been witnessed and both documents are dated 5 May 2003 (the same date that appears on the tenancy agreement). There was no other evidence before me to dispute the authenticity or otherwise of this report. I am therefore satisfied that the condition report (insofar as it relates to the beginning of the tenancy) was dated and signed by the Landlord on 5 May 2003. I am further satisfied that the Tenant signed and accepted the condition report on 5 May 2003. Accordingly, section 28 of the Act applies which means that the condition report is conclusive evidence of the condition of the premises at the beginning of the tenancy.

Outgoing Condition Report

A similar provision applies to the outgoing condition report under section 111 of the Act, i.e. if a condition report has been accepted or is taken to have been accepted under Part 12 Division 1 of the Act it is conclusive evidence of the condition of the premises at the end of the tenancy.

On the evidence before the inquiry, I note that the outgoing condition report has been completed by the Landlord on 29 November 2003. Her signature has been witnessed. The Landlord has marked various comments in the ‘outgoing comments’ section of the report. The report has not been signed by the Tenant. In relation to outgoing condition reports and abandonment of the premises, section 110 provides, my emphasis:

110. Condition reports

(1) A landlord may, within 3 business days after a tenant has given up vacant possession of premises to which a tenancy agreement relates, fill out and sign 2 copies of a condition report and give both copies to the tenant.

(2) The landlord is to fill out the condition report under subsection (1) in the presence of the tenant or a representative of the tenant (who is not the landlord or the landlord's agent) unless it is not practical to do so or the tenant or the tenant's representative does not appear at the agreed time.

(3) A landlord may, **within 3 business days after forming the opinion that a tenant has apparently abandoned the premises to which a tenancy agreement relates –**

(a) fill out and sign 2 copies of a condition report;

(b) give notice to the tenant at the last known address of the tenant (which may be the residential premises) specifying the place where the copies may be obtained; and

(c) at the request of a tenant made within 7 business days after giving notice under paragraph (b), give both copies to the tenant.

(4) A condition report is to –

(a) specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates;

(b) itemise, and specify the condition of, any fixture or chattel that is ancillary property; and

(c) contain other prescribed information, if any.

(5) A tenant or tenant's representatives may –

(a) accept a condition report given to him or her under subsection (1) or (3) by signing both copies of the report and returning one to the landlord; or

(b) if the parties are unable to agree as to the contents of the condition report – refuse to accept the condition report.

(6) If, within 7 business days after 2 copies of the condition report have been given to a tenant under subsection (3), both parties have not accepted the report, the landlord or the tenant may apply to the Commissioner to prepare a condition report in respect of the premises.

(7) The Commissioner may, on receipt of an application under subsection (6), prepare a condition report in respect of the premises and the ancillary property to which a tenancy agreement relates.

(8) The landlord and the tenant are, for the purposes of this Act, to be taken to have accepted a condition report prepared by the Commissioner under subsection (7).

111. Condition report conclusive of condition of premises at end of tenancy

If a condition report is accepted or is to be taken to have been accepted under this Division by the landlord and a tenant, the condition report is (insofar as it relates to the end of the tenancy) conclusive evidence of –

(a) the condition of the premises to which the tenancy agreement relates; and

(b) the condition of any ancillary property referred to in the condition report at the end of the tenancy,

unless the Commissioner determines otherwise in a particular case.

The Landlord advised that she did not send the outgoing condition report to the Tenant because she did not know of his whereabouts after she discovered the premises abandoned. Section 110(3) requires that if the Landlord chooses to complete an outgoing condition report then the Landlord is to fill out and sign 2 copies of a condition report and then give notice to the Tenant at the last known address of the Tenant (which may be the residential premises) specifying the place where the copies of the outgoing condition report may be obtained.

Accordingly, I am not satisfied that the Landlord has complied with section 110 as notice has not been given to the Tenant. The consequences are such that the outgoing condition report is not conclusive evidence of the condition of the premises at the end of the tenancy. However, as the outgoing condition report does not have the same deeming provision as in section 51(5) of the Act, I am able to consider other evidence to ascertain in general terms, the state of the premises at the end of the tenancy. To that end, I refer and rely on the photographs taken by the Landlord of the premises (bearing the date 29-11-03), the invoice by Marilyn Hodgins 2 December 2003 and the statement by Marilyn Hodgins dated 19 January 2004. Further, I rely on the Tenant's oral evidence given during the inquiry, where he agreed to pay the Landlord's claim for cleaning. Finally, whilst I have found that the condition report is not conclusive evidence of the state of the premises at the end of the tenancy, in light of the other evidence before me, I accept the outgoing condition report as a reasonable indicator of the state of the premises upon the Tenant's abandonment of the premises. Generally speaking, I was impressed by the Landlord's documentary evidence during the inquiry, which I accept is a credible account of what has occurred during the course of the tenancy agreement.

I now return to the Landlord's claim for cleaning of the premises.

The Landlord claims \$233.75 being for the costs associated with cleaning the inside of the premises. The Landlord has submitted an invoice from Darwin Domestic Employment Agency to support her claim. Further, I refer and rely upon the evidence that is mentioned above in relation to the outgoing condition report.

The Tenant has an obligation under section 51 of the Act to maintain and return the premises to the Landlord in a reasonably clean condition. I am satisfied based on the evidence before me that the premises was left in an unacceptable state. I am further satisfied that the amount claimed by the Landlord is reasonable in the circumstances. Accordingly, I order that the Tenant pay the Landlord compensation in the amount of \$233.75 being for the cleaning of the premises.

Changing the locks and replacing the gate remote control

The Landlord claims the costs associated with changing the locks and replacing the gate remote control to the premises. The Landlord claims these expenses because it is alleged that the Tenant failed to return the keys or the gate remote control. In support of this claim, the Landlord has submitted an invoice from Palmerston Locksmith for the keys in the sum of \$115.50 and an invoice from Trojon Fencing for the replacement of the gate remote control in the sum of \$69.30. Further evidence can be found in the "Special Conditions" document that was attached to the tenancy agreement. The document has been signed by both the Landlord and the Tenant on 5 May 2003. Both of their signatures have been witnessed. The relevant part of the document states:

"Key/Access Remote Control

1 x Remote control for car park security gate

2 x Unit 12 front security door keys

2 x Unit 12 front door keys.”

This evidence indicates that the gate remote control and the keys existed in relation to the premises as at the commencement of the tenancy i.e. 5 May 2003. The Tenant gave evidence that he placed the keys and the gate remote control in the letterbox when he vacated the premises. The Tenant advised that he did not inform the Landlord of his intention to vacate the premises. In accordance with the evidence before me, I am satisfied that the amount claimed by the Landlord is as a result of the Tenant’s breach of his obligation to return the keys and the gate remote control to the premises upon vacation. I am further satisfied that the amount claimed by the Landlord is reasonable. Accordingly, I order that the Tenant pay the Landlord \$115.50 and \$69.30 being for the changing of the locks to the premises and the gate remote control.

Mattress Protector

The Landlord has claimed \$23.07 to replace a damaged mattress protector. The mattress protector is not noted on the Property Condition Report. The mattress protector is however noted on the Inventory that was attached to the tenancy agreement. The Inventory is not signed or dated by either the Landlord or the Tenant. I note that there is further evidence of the mattress protector being disposed of in the statement by the Cleaner dated 19 January 2004. However, I cannot be satisfied on the evidence before me, that there was an acceptance by the Landlord and/or the Tenant in relation to the Inventory, as no signatures or dates appear on this document. Accordingly, I dismiss the Landlord’s claim in the sum of \$23.07.

Microwave

The Landlord claims for the replacement of a microwave in the sum of \$169.00. When the Landlord completed the outgoing condition report on 29 November 2003, she discovered the microwave was missing. The ingoing condition report notes that the premises had a microwave and that it was ‘Clean. Intact. Working’. The outgoing condition report noted that the microwave was “Missing – Not found”. During the inquiry, the Tenant advised that the microwave was stolen from the premises. The Tenant advised that he reported the incident to the police and obtained a police report. The Tenant did not inform the Landlord that the microwave was stolen. During the inquiry, the Tenant said that he would produce a copy of the police report. Tenancy Officer of Consumer Affairs telephoned the Tenant on 23 February 2004 to chase up a copy of the police report. The Tenant said that he would obtain a copy of the report the next day and give a copy to Consumer Affairs. As at the date of these reasons, this report has not been supplied by the Tenant.

The ingoing condition report noted that the microwave was part of the ancillary property to the premises at the commencement of the lease. The outgoing condition report noted that the microwave was missing. The Tenant acknowledged that a microwave existed, but that it was stolen. I am therefore satisfied that the microwave formed part of the ancillary property to the premises and that the Tenant breached his obligations under the tenancy agreement by not returning the microwave to the Landlord at the end of the tenancy. The Landlord is entitled to recover the reasonable cost of a replacement microwave (less any depreciation).

The Landlord originally obtained a verbal quote for the microwave in the sum of \$169.00. A verbal quote is insufficient evidence to support the Landlord's claim. Accordingly, the Landlord was requested to obtain written quotes for a similar microwave. The Landlord obtained a quote from Darwin Chandlers dated 24 February 2004. The quote gave a range of microwaves and their prices: Model MS-304W – \$209, Samsung \$159, Panasonic \$199, NEC \$225. A further quote was obtained from Murray Oakley: Samsung \$96 and Sharp \$129.00. The amounts vary according to the quality and/or brand name of the microwave. An average taken of all of these quotes equates to \$169.50. Based on the amount claimed by the Landlord (\$169) and the average amount for all of the quotes submitted (\$169.50), I am satisfied that the amount claimed by the Landlord is a reasonable estimate of the cost of a replacement microwave.

The Landlord advised that the missing microwave was approximately 2 years old. As there was no other evidence to the contrary, I accept the Landlord's evidence in this regard. In calculating the Landlord's entitlement, the compensation awarded must, as far as is practicable, put the Landlord in the position that she would have been in had the Tenant complied with his obligations under the tenancy agreement. As indicated above, the microwave was approximately 2 years old and therefore its value would have depreciated over time. Therefore, it is necessary to take this depreciation into account for the purposes of any award of compensation. In my view, it is reasonable to use the prime cost method adopted by the Australian Taxation Office to calculate depreciation. According to Tax Ruling 2000/18 a microwave has an effective life of $6\frac{2}{3}$ years. Therefore the microwave needs to be depreciated by 15% for each year of its life. I find the microwave was 2 years old and the replacement cost of \$169 should be depreciated by 30%. Therefore, the Landlord's entitlement to compensation for the microwave is \$118.30 ($\$169 \times 30\% = \50.70 . $\$169 - \$50.70 = \$118.30$). I dismiss the balance of the Landlord's claim in the sum of \$50.70.

Unpaid Rent

The last claim by the Landlord is compensation for unpaid rent in the amount of \$1,059.98 (\$1499.98 less \$440 security deposit) up to and including 4 January 2004. During oral evidence the Tenant advised that he left the premises at the end of September 2003. He further advised that he did not notify the Landlord of his intention to vacate the premises. The Landlord has submitted a copy of her receipts and rental ledger. I accept the Landlord's receipts and ledger as an accurate indicator of the amount paid by the Tenant. According to these calculations, the Tenant has paid a total amount of \$2,350. This means that the Tenant has paid rent up to and including 30 September 2003.

With a fixed term lease, the Landlord is, prima facie, entitled to payment of rent up to the end of the tenancy. If a Tenant has vacated or abandoned the premises prior to the tenancy terminating, the Landlord is required under s.120 of the Act to mitigate the loss. The evidence of the Landlord in relation to mitigation is as follows:

- 28/11/03 - Property discovered abandoned by Landlord;
- 29/11/03 – 09/01/04 – Cleaning, quotes and minor repairs undertaken;
- 02/12/03 - Cleaner affixed 'For Rent' sign on front fence of property;
- 03/12/03 - Advertised on Darwin Exchange (Internet) For Rent;
- 03/12/03 - 'For Lease' sign put up on the notice board at Nightcliff Shopping Centre, Casuarina Square, Hibiscus Shopping town, Rapid Creek Shopping Centre and Aralia Street Shops;
- 3/12/03 – 8/12/03 - Shopped around for property managers to manage the property (discussed management fees etc);

09/12/03 – Agreed on ('DRS') – obtained Management Agreement;
 10 Dec 03 – completion of management agreement by Landlord;
 13 Dec 03 – Delivery of management agreement to DRS;
 15 Dec 03 – DRS signs Management Agreement;
 20 Dec 03 – First advertisement appears in NT News at \$125 pw;
 27 Dec 03 – No advertisement due to Christmas period;
 03 Jan 04 – 2nd advertisement appears in NT News at \$120 pw;
 10 Jan 04 – 3rd advertisement appears in NT News at \$120 pw;
 17 Jan 04 – 4th advertisement appears in NT News at \$110 pw;
 24 Jan 04 - 5th advertisement appears in NT News at \$110 pw;
 31 Jan 04 - 6th advertisement appears in NT News at \$110 pw;
 07 Feb 04 - 7th advertisement appears in NT News at \$110 pw;
 14 Feb 04 - 8th advertisement appears in NT News at \$110 pw.

In light of the evidence before me, I am satisfied that the Tenant has breached his obligation to pay rent during the course of the tenancy agreement and that the Landlord has attempted to mitigate her loss. I am further satisfied that the Tenant should be responsible for unpaid rent up to the date claimed by the Landlord i.e. 4 January 2004, but in addition, unpaid rent up to and including the date of the inquiry i.e. 20 February 2004. The Tenant was advised at the Inquiry of his responsibilities in relation to payment of the rent. The Tenant was further advised that he should make attempts himself to re-let the premises. As of the date of the inquiry, the Landlord has advised that the premises are still vacant. As a result, I calculate the unpaid rent as follows:

The amount of rent payable from 5 May 2003 (the commencement of the tenancy agreement) to 20 February 2004 (date of the inquiry) = 41 weeks + 5 days.

The amount of rent payable = (41 x \$110.00 + \$110.00 ÷ 7 x 5 =) \$4,588.57

During the course of the tenancy agreement, the Tenant paid \$2,350.00

Therefore the amount of unpaid rent =(\$4,588.57 - \$2,350.00 =) \$2,238.57

Less: security deposit \$ 440.00

\$1,798.57

As noted above, my findings are greater than the original claim because the Landlord has only calculated rent up to and including 4 January 2004, however the Landlord is entitled to claim compensation for unpaid rent up to and including the date of the inquiry, namely 20 February 2004. Accordingly, I order that the Tenant pay the Landlord compensation in the amount of \$1,798.55 (rounded down) being for unpaid rent up to and including the date of the inquiry.

Summary of orders

On the basis of the above, I order:

1. The Landlord can retain and distribute the Tenant's security deposit in the amount of \$440.00 for the purpose of unpaid rent.

2. The Tenant pay the Landlord compensation in the amount of \$2,335.40 for:
 - Cleaning of the premises \$ 233.75
 - Replacement of locks to the premises \$ 115.50
 - Replacement of gate remote control \$ 69.30
 - Replacement of microwave oven \$ 118.30
 - Unpaid rent up to and including the date of inquiry (20.2.04)
(taking into consideration and deducting \$440 security deposit) \$1,798.55
 - **Total:** \$2,335.40

I dismiss the Landlord's claims for compensation for:

- Replacement of mattress protector \$ 23.07
- Balance of claim for microwave \$ 50.70
- \$ 73.77

4. Any further claim for compensation be adjourned to a date to be fixed upon further application and notice to the parties.

Dated this day of 2004

Tearangi Faith Woodford
Delegate of the
Commissioner of Tenancies