

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 25 MAY 2004

This is a determination of an application dated 14 March 2004 by the Landlord seeking an order for determination of the security deposit pursuant to section 113 of the *Residential Tenancies Act* (NT) (“the Act”), section 119 determination of electricity charges supplied to the premises and section 122 compensation. The application is made in respect of premises being Lot 3421 Florina Road, Katherine in the Northern Territory of Australia.

A Notice of Inquiry dated 11 May 2004 was posted to the parties. The Inquiry was conducted on 25 May 2004 during which evidence was taken from the Landlord (“the Landlord”). There was no appearance by 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:	Lot 3421 Florina Road, Katherine NT
Commencement Date:	1 st tenancy - 7 July 2003 – 8 December 2003. 2 nd tenancy - 8 December 2003 - 7 June 2004.
Period:	Each tenancy was for a period of a 6 Months fixed period.
Rent:	\$120 per week
Security Deposit	\$480.00

Landlord’s Claim

Essentially, the Landlord is requesting a determination of the retention of the Tenant’s security deposit in the sum of \$480 and s.122 compensation. The Landlord claims that they are retaining the security deposit for the following matters:

• Unpaid rent up to and including 13 March 2004	\$ 297.14
• Electricity	\$ 147.13
• Advertising cost to re-let premises	\$ 14.00
• Damage sustained to wall	\$ 125.00
• Loss of rent from 14 March 2004 to 6 April 2004 (24 days)	\$ <u>411.42</u>
	\$ <u>994.69</u>

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

- Residential tenancy agreement dated 6 July 2003;
- Residential tenancy agreement dated 8 December 2003;
- Residential tenancy agreement dated 22 April 2004 between the Landlord and the new Tenants;
- Condition Report – July 2003;
- Diary notes of Landlord from 27/2/04 to 13/3/04;

- Notes of Landlord headed “Vacate Demountable” dated 13 March 2004;
- Notes of Landlord headed “Power Meter Reading” with figures and note by Landlord dated 6 May 2004;
- Hand written notes of Landlord – amounts of Advertising, power, rent and painting;
- Mal Carter Painters Invoice to make good damage to paintwork on walls in demountable - \$125;
- Landlord’s ANZ Bank statements highlighting Katherine Times payments;
- Copy of the Landlord’s rental ledger for the periods 11 July 2003 to 7 April 2004;
- Notice of Landlord’s Intention to Retain Security Deposit dated 14 March 2004;
- Notice to Remedy Unpaid Rent/Notice of Termination dated 29 February 2004;
- A statutory declaration declared by the Landlord dated 14 March 2004;
- Katherine Times advertisements dated 25 February and 31 March 2004; and
- Facsimile from the Landlord faxed to the Commissioner of Tenancies dated 16 August 2004.

Retention of Security Deposit

The circumstance where a Landlord may retain the Tenant’s security deposit is dealt with by section 112 of the Act. Section 112 provides, my emphasis:

“112. When landlord may keep security deposit

(1) Subject to this section, **a tenant is entitled to have his or her security deposit reimbursed at the end of the tenancy agreement.**

(2) The landlord must, **within 7 business days after the tenant gave up vacant possession of the premises or has, 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.**

Penalty: 20 penalty units.

(3) **At the end of a tenancy agreement the landlord is entitled to retain so much of the security deposit paid by the tenant as is necessary to –**

- (a) **make good damage (other than reasonable wear and tear) to the premises or to ancillary property** that occurred during the tenancy and that was caused by a tenant or a person for whose actions a tenant is liable under section 12;
- (b) **replace ancillary property lost or destroyed by the tenant** or by a person for whose actions the tenant is liable under section 12;
- (c) **clean the premises or ancillary property left unreasonably dirty by the tenant or by a person for whose actions the tenant is liable under section 12;**
- (d) replace locks altered, removed or added by the tenant without the consent of the landlord;
- (e) **pay for unpaid rent or for unpaid charges for electricity, gas or water payable by the tenant under section 118;**
- (f) pay an amount required to be paid under section 121; or

(g) pay money ordered by the Commissioner or a court to be paid by a tenant but not paid.

(4) **The landlord is not entitled to retain some or all of the amount of a security deposit for a purpose referred to in subsection (3)(a), (b) or (c) unless –**

(a) **a condition report in relation to the premises was accepted by the tenant under Part 5; and**

(b) **if the tenant –**

(i) **has given up vacant possession of the premises – a condition report has been provided to the tenant under section 110; or**

(ii) **has, in the opinion of the landlord, apparently abandoned the premises – notice has been given to the tenant in accordance with section 110(3) and, if the tenant demanded copies of the condition report within 7 days after notice was given to the tenant under that section, those copies have been given to the tenant.**

(5) **Subject to section 113(2), the landlord is not entitled to retain, or to continue to hold under subsection (6), part or all of a security deposit unless, within 7 business days after the tenant gave up vacant possession of the premises or has, in the opinion of the landlord, apparently abandoned the premises, the landlord has –**

(a) **given written notice in the prescribed form, if any, of his or her intention to retain or continue holding so much of the security deposit as is specified in the notice for the purpose specified in the notice;**

(b) **attached a copy of a statutory declaration in the prescribed form, if any, attesting to the truth of the claim that the retention or continued holding of the security deposit is required for the purpose specified in the notice;**

(c) **attached a copy of a statutory declaration attesting that the receipts, invoices or other documents attached to the declaration relate to –**

(i) **the matters in respect of which part or all of the security deposit is being withheld from the tenant; or**

(ii) **the amount of unpaid rent owing under the agreement or money owing under section 121;**

(d) **in the case of damage or unreasonably dirty premises or ancillary property – attached copies of receipts, invoices or other documents, including orders of the Commissioner or a court, specifying the amount required to make good the damage or clean the premises or ancillary property; and**

(e) **returned to the tenant the proportion of security not claimed by the landlord or not to be held under subsection (6).**

...”

The first thing to note is that prima facie, the Tenant is entitled to the return of the security deposit at the end of the tenancy (section 112(1)).

Secondly, section 112(2) of the Act requires that the Landlord must within seven (7) business days after the Tenant has vacated or abandoned the premises, reimburse to the Tenant the amount of the security deposit, **other than** an amount that the Landlord is entitled to retain under section 112. Before a Landlord is entitled to retain any or all of the security deposit he or she must give written notice to the Tenant of the intention to do so and the reasons for retention of the security deposit. In addition, he or she must provide a Statutory Declaration in support of that Notice and it must enclose invoices, receipts or other documents to support the retention of the security deposit (section 112(5)). This is subject to the exception in section 113(2) of the Act (refer later).

Finally, under section 112(4) of the Act, the Landlord is not entitled to retain any part of the security deposit to make good damage, replace ancillary property or clean the premises unless a condition report has been accepted by the Tenant under Part 5 and the Tenant has received a condition report upon vacating the premises in accordance with section 110. If the Tenant has abandoned the premises, notice has to be given in accordance with section 110(3) and if the Tenant demanded copies of the condition report within 7 days after notice was received by the Tenant, that such copies be provided.

Notice and Statutory Declaration Requirements

The Landlord advised that the Tenant left the premises on Saturday, 13 March 2004. The Landlord sent a Notice to Remedy Unpaid Rent/Notice of Termination (“notice to terminate”) to the Tenant on 29 February 2004. In the notice to terminate, the termination day was 9 March 2004, but the Tenant did not leave the property until 13 March 2004. The Landlord arranged to meet with the Tenant on the morning of the 13th, but when the Landlord arrived, the Tenant had left the property. I am therefore of the view that the Tenant left as a result of the notice to terminate and that they effectively abandoned the premises on 13 March 2004.

A Notice of Landlord’s Intention to Retain Security Deposit (“the notice”) was completed on 14 March 2004. In the notice the Landlord claimed that they were retaining the security deposit for the purposes of:

- (a) making good damage (waiting on quote);
- (b) unpaid rent (\$297.14 to date);
- (c) payment of electricity (\$147.13); and
- (d) advertising for re-letting the premises (\$14 to date).

The Landlord advised that the notice was sent by mail on Monday, 15 March 2004. It was sent to the Tenant’s postal address (PO Box Katherine NT). A statutory declaration dated 14 March 2004 was attached to the notice. The declaration enclosed a statement of the Landlord’s rental ledger for the period 11 July 2003 to 12 March 2004 and at the bottom of the rental ledger it stated:

“As at 12 March owes \$297.14 rent + \$147.13 electricity = \$444.27 + repairs as per condition report + ongoing rent until premises re-let + costs of advertising (\$14 so far)”.

Based on this evidence the Landlord has not, in my view, complied with section 112 for the following reasons:

1. The Landlord sent the notice to the Tenant’s postal address. Section 154 of the Act requires that service of notices be delivered personally or sent to “in the case of a natural person – to the person’s last-known place of business or residence ...”. In my view, by the Landlord sending it to the Tenant’s postal address does not comply with the Act and therefore renders the service invalid.
2. In addition to that, section 112(5)(c) requires that if a Tenant has abandoned the premises that a copy of the statutory declaration be attached attesting that:
 - “(c) ... the receipts, invoices or other documents attached to the declaration relate to –
 - (i) the matters in respect of which part or all of the security deposit is being withheld from the tenant; or
 - (ii) the amount of unpaid rent owing under the agreement or money owing under section 121;

- (d) in the case of damage or unreasonably dirty premises or ancillary property – attached copies of receipts, invoices or other documents, including orders of the Commissioner or a court, specifying the amount required to make good the damage or clean the premises or ancillary property; and
- (e) returned to the tenant the proportion of security not claimed by the landlord or not to be held under subsection (6).”

I do not consider that the rental ledger sent by the Landlord to the Tenant was “receipts, invoices or other documents” to support the claims for costs for electricity or advertising. For example, the Landlord could have sent receipts that they had for advertising in the Katherine Times. Leaving messages for the Tenant regarding such costs does not comply with the Act. It is also reasonable to expect that the Landlord would send a copy of the PAWA accounts and the Landlord’s calculations for electricity charges with the statutory declaration to the Tenant. This was not done. Accordingly, I am not satisfied that the Landlord has complied with either the notice service requirements under s.154 nor the requisite document requirements as set out under section 112(5). The Landlord is therefore not entitled to retain from the security deposit monies for advertising (\$14) or electricity charges (\$147.13).

3. In relation to the retention of the security deposit for damage, the notice stated it was “waiting for [a] quote”. The Landlord subsequently obtained a quote in the sum of \$125.00 by Mal Cartier Painters and sent it to the Tenant sometime after 13 April 2004. The Act clearly states that such receipts, invoices or other documents are sent within 7 business days of the Tenant abandoning the premises. Again, the Landlord has not complied with the Act. Section 112(4) goes further by requiring that before a Landlord can retain a security deposit to make good damage (and other matters) a condition report has to be accepted by the Tenant under Part 5 of the Act and if the Tenant abandoned the premises, that notice be given in accordance with section 110(3). In addition, if the Tenant has demanded copies of the condition report within 7 days after the notice was given, then the Landlord must provide such copies to the Tenant.

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

Section 25 Landlord may provide condition report

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.**

A condition report is to –

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

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

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.**

Based on the evidence, I am not satisfied that a condition report was completed in accordance with section 25. The reason for this is effectively, a condition report was not completed for the tenancy in question. To expand further, the Landlord and Tenant entered into 2 tenancy agreements for the premises. The first tenancy agreement commenced on 7 July 2003 and expired on 8 December 2003 (“first tenancy”). The second tenancy agreement commenced on 8 December 2003 and expired on 7 June 2004 (“second tenancy”). The tenancy agreement that governs the parties and this dispute is the second tenancy. An ‘incoming’ condition report was completed in July 2003, but it attaches to the first tenancy. When the second tenancy was entered into, the Landlord should have prepared a condition report for this tenancy. The Landlord confirmed that they did not complete a condition report for the second tenancy. If a Landlord chooses to complete a condition report, it must be completed for each tenancy agreement that is entered into and it **must** comply with section 25.

I have concerns with the condition report that has been submitted by the Landlord (both the July 2003 condition report and the condition report between the Landlord and the new Tenants). In my view, the condition reports do not “specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates” and arguably does not “itemise and specify the condition of, any fixture or chattel that is ancillary property”. I am aware that the Landlord has already entered into a new tenancy agreement with new tenants and therefore, I recommend that the Landlord seek assistance from the Commissioner of Tenancies office in relation to these matters.

Finally, I have been presented with what I can only assume is meant to be the ‘outgoing’ condition report. It does not resemble the July 2003 incoming condition report in any way. It is a hand written note and states things such as “BBQ – OK” “Kitchen – microwave – no plate” B/Room – Paint Damaged” B/Rom 2 – paint marked/rubbed 1 0 ... break in wall – paint”. If it was meant to be the outgoing condition report, it clearly does not comply with section 110 of the Act. Accordingly, I find that an outgoing condition report was not completed by the Landlord and as such, the Landlord could not have complied with section 112(4)(b)(ii) of the Act. Again, I recommend that the Landlord seek assistance from the Commissioner of Tenancies office in this regard.

There are **consequences** for a Landlord if they have not provided an incoming and outgoing condition reports. For the purpose of an incoming condition report not being accepted by the parties, section 51(5) of the Act states:

- “51(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.”**

The result is that section 51(5) of the Act essentially operates as a deeming provision, in that, the Tenant is taken to have complied with the terms of the tenancy agreement under section 51(1) and (2) and more significantly, that the condition of the premises is taken at termination of the agreement to be the condition of the premises when the tenant took possession of it at the beginning of the tenancy agreement.

Accordingly, as no ingoing condition report was accepted by either the Tenant or the Landlord in accordance with Part 5 of the Act, I find that by virtue of section 51(5) of the Act, the Tenant is essentially deemed to have complied with their obligations under section 51(1) of the Act. I further find that the Tenant has maintained the premises in a reasonably clean condition; in a reasonable state of repair; and is taken not to have intentionally or negligently caused or permitted damage to the premises. In addition, in accordance with section 51(5)(b), the premises at the end of the tenancy agreement is deemed to be the condition of the property at the beginning of the tenancy. As a result, the Landlord is **not** entitled to retain the amount of \$125 from the security deposit for damage that was sustained to the premises.

Summary

Accordingly:

- The Landlord is **not** entitled to retain **any** of the Tenant's security deposit due to:
 - their failure to serve the notice in accordance with s.154 of the Act;
 - their failure to comply with the notice requirements under section 112(5) of the Act;
 - their failure to provide an accepted ingoing condition report; and
 - their failure to complete an outgoing condition report as required by section 112(4) of the Act.

Exceptions

Section 113(2) allows the Commissioner, despite the requirements of section 112(5), to permit a Landlord to retain an amount of a security deposit for matters that fall under section 112(3)(d), (e), (f) or (g). These matters include replacing locks, payment for unpaid rent, or unpaid charges for electricity, gas or water or an amount required to be paid under section 121 of the Act. As noted, these exceptions do **not** include payment for damages and therefore, the Landlord can not claim the sum of \$125 from the security deposit.

Unpaid Rent

The Landlord has claimed for unpaid rent during the term of the second tenancy. As discussed above, the Landlord sent to the Tenant a notice enclosing a rental ledger within the required time frames. According to the Landlord's rental ledger and my calculations, the Tenant has paid rent up until and including 27 February 2004. This is based on the first tenancy agreement commencing on 7 July 2003. There was some evidence put forward by the Landlord that the first tenancy commenced on 4 July 2003, however I am not satisfied on the evidence that this is the case. In that regard I rely on the commencement date that appears in the first tenancy being 7 July 2003 and calculate my figures accordingly.

As I have calculated the Tenant has paid up until 27 February 2004, the claim for unpaid rent includes rent from 28 February 2004 up to and including the date **prior** to the termination day i.e. 8 March 2004 (a total of 10 days). The Landlord's claim is for an amount of \$171.42 (10 days at \$17.14287 per day = \$171.42). On the basis of the Landlord's rental ledger before me, the fact that the Landlord sent the rental ledger to support the statutory declaration for unpaid rent, the fact that I have no evidence to the contrary by the Tenant and despite the notice not being sent to the addresses as required by s.154, I am satisfied that the Landlord is entitled to retain the sum of \$171.42 for unpaid rent from the security deposit.

Payment of an amount under Section 121

This claim covers unpaid rent for the period from the termination day (i.e. 9 March 2004) up to and including the date of abandonment (i.e. 13 March 2004). From 9 March 2004 to 13 March 2004 is a total period of 5 days. For the reasons outlined above for unpaid rent, I am satisfied on the evidence before me that the Landlord is entitled to retain from the security deposit, section 121 compensation for unpaid rent in the sum of \$85.71 ($\$120 \text{ a week} \div 7 = \$17.142857 \text{ per day} \times 5 = \85.71).

Electricity

The Landlord has claimed \$147.13 for payment by the Tenant for electricity charges for the period 7 November 2003 until 13 March 2004. The statutory declaration was supported by the Landlord's rental ledger that had on it the words "\$147.13 electricity". The Landlord subsequently submitted a sheet that was entitled "power meter reading" that documented the dates, meter reading numbers and amounts owed. The Landlord further submitted other documents entitled "Electricity usage" dated 11 November 2003 and 29 January 2004. The Landlord claimed that the Tenant was aware of the requirement to pay electricity as it was part of a verbal agreement between the parties. Throughout the term of the first tenancy, the Tenant made one payment towards electricity in the sum of \$40. This payment was made on 8 August 2003. During the second tenancy, (8 December 2003 to 7 June 2004), the tenant did not make any payments.

There is no reason at law, why an oral agreement can not be imported into a written tenancy agreement. The only difficulty with oral agreements is that it ultimately comes down to the evidence given by the parties and the documentation available. Without the benefit of the evidence of the Tenant, I can not be satisfied, on the balance of probabilities that an agreement existed in relation to the payment of electricity. I come to this conclusion on the basis that there was no consistent evidence of payments of electricity by the Tenant. Further, I am not satisfied with the documents that have been submitted by the Landlord to prove their entitlement to payment of electricity. In my view, it is only reasonable to expect that copies of the PAWA accounts be submitted as evidence to prove the meter charges that has been claimed by the Landlord. There was no evidence given by the Landlord of any steps taken to recover the electricity charges from the Tenant. If the Tenant was present at the inquiry and had acknowledged that an agreement existed for payment of electricity, then the Landlord would have been in a better position to retain such amount from the security deposit. Finally, for matters as important as these it is recommended that the Landlord incorporate such matters into a written tenancy agreement, rather than rely on oral representations. As a result, I am not satisfied that the Landlord is entitled to retain the amount of \$147.13 from the security deposit for payment of electricity.

Summary

Whilst the Landlord was not entitled to retain any of the security deposit, because of the exceptions in section 113(2), I find that the Landlord is entitled to retain the following sums from the security deposit:

\$ 171.42 – unpaid rent

\$ 85.71 – section 121 compensation

\$ 257.13

It follows, that the Landlord is not entitled to retain the balance of the security deposit in the sum of \$222.87, and must return it to the Tenant, forthwith.

Section 122 Compensation Claim

Having now dealt with the security deposit issue, I now turn to the Landlord's claim for s.122 compensation.

Advertising

The Landlord has claimed for advertising in the sum of \$21. These claims occur in the following circumstances:

- \$7 for advertising costs **prior** to the Tenant being issued with a notice to terminate on 29 February 2004; and
- \$14 for advertising costs **after** the notice to terminate was issued.

Advertising costs **prior** to the Tenant being issued with a notice to terminate

The Landlord advised that the Tenant phoned her during the week commencing 16 February 2004 to advise that he was vacating the premises on Thursday, 26 February 2004. The Landlord paid for an advertisement on 23 February 2004, to be placed in the Katherine Times on 25 February 2004. As evidence, the Landlord produced a photocopy of the advertisement dated 25/2/04 along with a receipt for \$7.00 dated 23/2/04. The Landlord left messages for the Tenant on 28 February 2004 that they had a prospective new tenant and would like to inspect the premises. The Tenant did not respond to the Landlord's telephone calls until 3 March 2004. The Tenant subsequently did not move out of the premises until after a notice to terminate was served on 29 February 2004. Prima facie, if a Tenant wishes to break a fixed term lease, the Landlord is entitled to payment of costs to re-let the premises. On the evidence before me, I am satisfied that the Landlord is entitled to the cost of advertising to re-let the premises. Therefore, I am satisfied that the Landlord is entitled to retain the sum of \$7.00 from the security deposit for the advertisement placed on 23 February 2004.

Advertising costs **after** the Tenant was issued with a notice to terminate.

As advised above, the Landlord served a notice to terminate on 29 February 2004. The termination date in the notice was 9 March 2004. The Tenant abandoned the premises on 13 March 2004. During this period, the Landlord placed an advertisement in the Katherine Times to rent the premises (ANZ Bank statement – payment of \$7.00 to Katherine Times on 11 March 2004). The Landlord placed another advertisement in the Katherine Times to rent the premises on 23 March 2004. (Refer ANZ Bank statement). As outlined above, prima facie, if a Tenant wishes to break a fixed term lease, the Landlord is entitled to payment of costs to re-let the premises. On the evidence before me, I am satisfied that the Landlord is entitled to the cost of \$14.00 for such advertising. In closing, it is noted that a photocopy of an advertisement placed in the Katherine Times dated 31 March 2004 was provided by the Landlord. The Landlord did not produce any evidence of this cost. Whilst it could be assumed that the advertisement cost the same as previous advertisements, it is up to the Landlord to prove their case on the balance of probabilities. As no evidence was submitted to the Inquiry, I can not be satisfied that the Landlord is entitled to advertising costs on 31 March 2004.

Loss of Rent

The Landlord has claimed loss of rent for the period 14 March 2004 to 6 April 2004 (24 days) in the sum of \$411.42. The fixed term tenancy between the Landlord and Tenant expired on 7 June 2004, however the Landlord managed to secure a new tenancy agreement on Wednesday, 7 April 2004.

If a Tenant has vacated the premises prior to the fixed term tenancy terminating, the Landlord is entitled to claim loss of rent, but is required under s.120 of the Act to mitigate such loss. On the evidence before me, it appears that 2 advertisements were placed during the 3 week period between 14 March 2004 and 6 April 2004 (refer ANZ bank statement – payment of \$7.00 to Katherine Times dated 23 March 2004 and photocopy of advertisement in the Katherine Times dated 31 March 2004). Katherine Times is published each week on a Wednesday. In my view, at a cost of \$7.00 per week for advertising, it is reasonable to expect that an advertisement be placed in the Katherine Times at least once per week to prove that the Landlord is attempting to mitigate their loss. This would require the Landlord to place at least 3 advertisements in the Katherine Times (on the 17 March, 24 March and 31 March 2004). There was no other evidence put forward by the Landlord to prove they had attempted to mitigate their loss. As such, I am not satisfied that the Landlord is entitled to the full amount of loss of rent claimed, but rather that they are entitled to a proportionate amount in accordance with their efforts to mitigate their loss. In the circumstances, I am of the view that $\frac{2}{3}$ of the sum of \$411.42 is reasonable in all the circumstances. I therefore order that the Tenant pay \$274.28 to the Landlord being $\frac{2}{3}$ of the sum of \$411.42.

Orders

1. The Landlord can retain and distribute the Tenant's security deposit in the amount of \$257.13 being for \$171.42 for unpaid rent and \$85.71 for section 121 compensation.
2. The Landlord is not entitled to retain the balance of the Tenant's security deposit in the sum of \$222.87 and must return to the Tenant forthwith.
3. The Landlord is entitled to section 122 compensation in the sum of \$295.28 being for \$21.00 for advertising and \$274.28 for loss of rent.

Dated this day of September 2004

Tearangi Faith Woodford
Delegate of the
Commissioner of Tenancies