

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES
INQUIRY – 1 JUNE 2004

This is a determination of an application dated 20 April 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 13 May 2004 was posted to the parties. The Inquiry was conducted on 1 June 2004 during which evidence was taken from the Landlord (“the Landlord”). There was no appearance by the Tenant (“the Tenant”).

The Landlord has already claimed compensation in relation to this tenancy agreement. The Landlord filed the application on 4 January 2004. The Inquiry was heard on 20 February 2004 and an order and reasons were given on 6 May 2004.

For the purposes of this Inquiry today, I refer to and rely upon the previous evidence given in relation to this matter and to my previous order and reasons dated 6 May 2004.

The Landlord has claimed further compensation in the amount of \$1,404.85, as a result of the Tenant’s abandonment of the premises. The compensation claims are as follows:

• New microwave	\$ 124.00
• Unpaid rent 5 January 2004 – 11 March 2004	\$1,052.85
• Leasing fee	\$ 121.00
• Advertising costs	<u>\$ 107.00</u>
	<u>\$ 1,404.85</u>

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

- Invoice from Darwin Rental Specialists dated 31 March 2004 for leasing fee - \$121;
- Kmart receipt dated 2/4/04 for microwave oven - \$124;
- Receipts by NT News for advertising – 6/2/04, 13/2/04 and 27/2/04 – an amount of \$19.25 for each date;
- Photocopy of ANZ Visa Credit Card statement of Landlord (statement period 9/2/04 – 7/3/04) with payments highlighted to NT News Darwin in the sum of \$19.25 for the dates 13/2/04, 20/2/04 and 27/2/04 (dates of transactions);
- Photocopies of NT News advertisements advertising 12/91 Aralia Street, Nightcliff for rent on 10, 17, 24, 31 January 2004, 7, 14, 21, 28 February 2004;
- Tenancy Agreement between the Landlord and the new Tenant dated 10 March 2004. The tenancy agreement stated that it was for a 6 month fixed term period and that the tenancy commenced on 12 March 2004.

Microwave Oven

The Landlord's claim for the cost of a microwave in the sum of \$124.00 is dismissed. The Landlord has already claimed this cost in her previous application dated 4 January 2004. The matter was determined on 6 May 2004. It is noted though that the Landlord made this application to the Commissioner of Tenancies on 20 April 2004. This was prior to my reasons being handed down on 6 May 2004 and explains the reason for this claim. During the Inquiry, the Landlord acknowledged that the matter had already been dealt with and accepted my previous findings in relation to the claim for the microwave.

Unpaid Rent

The Landlord has claimed unpaid rent from 5 January 2004 to 11 March 2004. Again, for the reasons outlined above, the Landlord has made this claim for unpaid rent prior to receiving my reasons dated 6 May 2004. I have already awarded compensation to the Landlord for unpaid rent up to and including 20 February 2004. Therefore, the Landlord can only claim for the period 21 February 2004 to 11 March 2004 inclusive (20 days). The claim is therefore for an amount of \$314.28 (20 days at \$15.714285 per day).

Mitigation

Before considering the claim for unpaid rent, I turn first to the mitigation issue. 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. In my previous reasons I identified that the tenancy agreement between the Landlord and Tenant commenced on 5 May 2003, for a 12 month fixed term period. The fixed term tenancy would therefore end on 4 May 2004.

The Landlord presented to the Inquiry photocopies of advertisements placed in the Northern Territory News advertising 12/91 Aralia Street, Nightcliff for rent. Photocopies were given of the following dates: 10, 17, 24, 31 January 2004 and 7, 14, 21, 28 February 2004. For the purposes of this Inquiry, the relevant dates of advertisement are 21 and 28 February 2004. In addition to this evidence, the Landlord provided a tenancy agreement between the Landlord and the new Tenant dated 10 March 2004. The tenancy agreement stated that it was for a 6 month fixed term period and that it commenced on 12 March 2004.

As advised in my previous reasons, the Tenant was advised of his responsibilities in relation to payment of rent in relation to a fixed term tenancy. The Tenant was advised that he would be liable for unpaid rent up to the time that it takes for the Landlord to re-let the premises, providing that the Landlord has done her best to mitigate the loss. In light of the evidence before me, I am satisfied that the Landlord has attempted to mitigate her loss. As a result, I order that the Tenant pay to the Landlord the sum of \$314.28 being for unpaid rent for the period 21 February 2004 up to and including 11 March 2004 (the date prior to the new tenancy commencing).

Leasing Fee

The Landlord claimed compensation in the sum of \$121 for the cost of the leasing fee (or property management fee) incurred by the Landlord as a result of engaging Darwin Rental Specialists. In my previous reasons, I noted that the Landlord attempted to re-let the property herself by placing a 'For Rent' sign on the front fence of the property, placing 'For Lease' signs on the notice boards at Nightcliff Shopping Centre, Casuarina Square, Hibiscus Shopping town, Rapid Creek Shopping Centre and Aralia Street Shops. In addition, the Landlord advertised on the Darwin Exchange (internet) 'For Rent' site. These attempts proved unsuccessful. The Landlord then engaged the services of Darwin Rental Specialists to re-let the premises. The Landlord submitted an invoice from Darwin Rental Specialists in the sum of \$121. On the evidence before me, I am satisfied that the engaging of Darwin Rental Specialists to re-let the premises was reasonable in the circumstances, and occurred as a result of the Tenant abandoning the premises. The Landlord is therefore entitled to compensation in the sum of \$121.

Advertising Costs

The Landlord has claimed the sum of \$107.00 for advertising costs of re-letting the premises. During the Inquiry, the Landlord advised that the advertisements on 17/1/04, 24/1/04 and 31/1/04 in the sum of \$10 each (\$30 total), was subsequently not claimed by Darwin Rental Specialists and as such, the Landlord has not paid these amounts. The amount claimed by the Landlord is therefore \$77.00. I therefore dismiss the Landlord's claim for advertising costs during the period 17/1/04 – 31/1/04 in the sum of \$30.00.

The Landlord presented to the Inquiry:

- receipts from NT News for advertising – 6/2/04, 13/2/04 and 27/2/04 – an amount of \$19.25 for each date
- photocopy of an ANZ Visa Credit Card statement of the Landlord (statement period 9/2/04 – 7/3/04) with payments highlighted to NT News Darwin in the sum of \$19.25 for the dates 13/2/04, 20/2/04 and 27/2/04; and
- photocopies of NT News advertisements advertising 12/91 Aralia Street, Nightcliff for rent on 10, 17, 24, 31 January 2004, 7, 14, 21, 28 February 2004.

I am satisfied on the evidence before me that the Landlord is entitled to claim advertising costs as a result of having to re-let the premises subsequent to the Tenant abandoning the premises. I further find that the sum of \$77.00 is reasonable in all the circumstances for advertising costs. Accordingly, the Landlord is entitled to the sum of \$77.00.

Summary of orders

On the basis of the above, I order:

1. The Tenant pay the Landlord compensation in the amount of \$512.28 for:

• Leasing fee	\$ 121.00
• Advertising costs	\$ 77.00
• Unpaid rent (21 February 2004 to 11 March 2004 incl)	<u>\$ 314.28</u>
Total:	<u>\$ 512.28</u>

2. I dismiss the Landlord's claim for compensation for:

- Microwave \$ 124.00
 - Advertising costs for the period 17/1/04 – 31/1/04 \$ 30.00
 - Unpaid rent for the period 5 January 2004 to
20 February 2004 \$ 738.57
- \$ 892.57

3. 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