

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 31 December 2004

This is a determination of an application dated 16 December 2004 by the landlords seeking a declaration pursuant to section 84 of the *Residential Tenancies Act* that a purported Notice of Termination issued and served by the tenants should be declared to be of no effect pursuant to the relevant section of the legislation.

A Notice of Inquiry dated 20 December 2004 was posted to the parties. The inquiry was conducted on 31 December 2004 during which evidence was taken from one of the tenants and the landlord's agent.

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:	2 Antonius Court, Brinkin
Commencement Date:	22 July 2004
Period:	12 Months
Rent:	\$700.00 per week
Security Deposit:	\$2,800.00

In this matter the tenants purported to issue a Notice to Remedy Breach and Notice of Termination dated 14 December 2004. The termination date was notified as 31 December 2004 and the matter was brought on urgently before the Commissioner and was in fact heard and determined on the 31 December 2004.

In this matter the purported Notice to Remedy Breach and Notice of Termination sets out a very large number of grounds upon which it is said that the tenancy between the landlords and the tenants should be terminated.

However, at the hearing of the matter it became clear that the tenant was in fact relying on essentially four complaints that the tenants had in relation to the premises. The first three of those complaints can be dealt with quite readily. They are the complaints in relation to the lack of shade cloth over the swimming pool, some problems in relation to the security door and condensation forming on the main roof in the dry season and dripping down onto the garage roof thereby causing annoying noises right outside the main bedroom particularly at night time. At the hearing of the inquiry I informed the tenant that he could not rely upon those grounds for terminating the agreement with the landlords because they were not subject to the provisions of the tenancy agreement in existence between the landlords and the tenants at any relevant time. I further confirm that my opinion remains the same and that those grounds as forming the basis for the Notice of Termination and Notice to Remedy Breach are not proper grounds and the Notice of Termination and Notice to Remedy Breach in so far as it relies upon those grounds is found to be of no effect.

The fourth complaint made by the tenants related to malfunctioning of the downstairs toilet area. I have heard evidence from the landlord's agent as to steps taken by the landlords in an effort to reduce or eliminate this problem. Under the terms of the tenancy agreement the landlords are required to take all reasonable steps to remedy any purported defects or problems in relation to the premises during the currency of the tenancy with the tenants. Having heard the evidence, including the evidence of the tenant, I find that the landlords have in fact taken every possible reasonable step that they could have taken in an effort to reduce the problems encountered by the tenant and his family in relation to the downstairs bathroom in particular the toilet.

Having made that finding a fact, I find that the landlords have complied with the terms of the tenancy agreement and accordingly there are no valid grounds upon which the tenants could purport to issue a Notice to Remedy Breach and Notice of Termination. In those circumstances it is my view and I order that the Notice of Termination purportedly issued by the tenants and ultimately delivered to the landlords via the agents to be of no effect.

There was some doubt as to the validity of the service of the Notice in any event but I do not make any finding in that regard given the fact of my findings in relation to the Notice itself.

Dated this 31 December 2004

Garry Schneider
Delegate of the
Commissioner of Tenancies