

REASONS FOR ORDER OF COMMISSIONER OF TENANCIES
(HEARING 1 SEPTEMBER 2004)

This is the determination of an application made to resolve a security deposit dispute whereby the tenant is seeking a refund of the security deposit of \$1,200.00 and the landlord is claiming damages totalling \$1,300.00, in respect of the premises at 7 Liddle Court, Alice Springs.

A Notice of Inquiry dated 19 August 2004 was given to each of the parties and the hearing was conducted on 1 September 2004 when unsworn evidence was taken from each of the landlords and the tenant.

On the basis of the evidence, I find that there was a tenancy agreement subject to the Residential Tenancies Act ("the Act") on the following terms:

Premises:	7 Liddle Court, Alice Springs
Commencement date:	22 January 2004
Period:	12 months
Rent:	\$300.00 per week
Security bond:	\$1,200.00

The tenancy commenced on 21 January 2004 and terminated before the expiration of the tenancy agreement on 30 July 2004 by consent between the parties.

There was a final inspection of the premises on 30 July 2004 when the tenant, the landlords and their agent attended with the Delegate for the Commissioner, George James.

An outgoing Property Condition Report was prepared and signed by the tenant and the landlords' agent. The landlords terminated the management contract with the agent on 30 July 2004 alleging mismanagement of the premises and, as stated, the landlords attended at the final inspection on 30 July 2004 and conducted an inspection of their own at the same time and took a number of photographs at the premises.

On 9 August 2004 the landlord served a notice of intention to retain security deposit for the purposes of making good damage to the premises and cleaning the premises.

As the agreed termination of the tenancy agreement was 30 July 2004, I find that that Notice was within time and complied with Section 112 of the Act.

The landlords gave their unsworn evidence first which primarily involved the photographs taken at the premises at the final inspection on 30 July 2004. The other main evidence of the landlords were the following quotes/tax invoices:

- Alice Springs Cleaning Service for cleaning the premises in the amount claimed of \$136.00.
- Harry's Handyman Service for repairs and cleaning oil spills in the amount claimed of \$724.00.
- Alice Vertical Blinds for repair or replacement of venetian blinds in the amount claimed of \$440.00 (\$410.30 to repair).

As stated earlier, an outgoing Property Condition Report was prepared and signed by the agent and the tenant. Section 111 of the Act provides that if a condition report is accepted or is taken to have been accepted by the landlord and a tenant, the condition report is (insofar as it relates to the end of the tenancy) conclusive evidence of the condition of the premises to which the tenancy agreement relates unless the Commissioner determines otherwise in a particular case. I intend to rely on the outgoing condition report unless the landlords' photographs (as well as the tenant's evidence) convinces me otherwise.

The tenant went through the landlords' photographs in her evidence and gave evidence concerning them and otherwise largely relied on the ingoing and outgoing condition reports. She stated that she agreed that the photographs looked like the premises were left in a terrible condition but that the premises were not left in an unreasonably dirty condition.

Section 51 of the Act sets out the tenant's responsibilities in relation to cleanliness and damage as follows:

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.

I have taken into account the matters set out in section 51 of the Act which are required to be taken into account.

In relation to the landlords' claim for cleaning, the quote from Alice Springs Cleaning Service relevant to this claim is for cleaning "tracks, cobwebs, spot clean all walls – switches – ex fans – laundry tub and floor, bathroom, acid shower – hand basin – toilet acid bowl, tops of cupboards – all blinds – kit wall tiles – kit sink". The amount of that claim is \$136.00. The photographs support the need for the further cleaning of the premises in the areas set out in the said quote. I find that those areas did not amount to a reasonably clean condition, allowing for reasonable wear and tear and I find that the amount claimed of \$136.00 appears most reasonable. Accordingly, I find that the landlords' claim for cleaning costs of \$136.00 is allowed.

Part of the quotation of Harry's Handyman Service relates to cleaning costs being item 2 of that quotation "clean oil spill on driveway – paved area, the fence and concrete floor around bar area" in the amount of \$79.00. Photographs support the need for such cleaning and the tenant acknowledged that her car did leak and that her barbecue caused fat spillage. Accordingly, I find that the landlords' claim for the cost of cleaning the oil spills of \$79.00 is reasonable and is allowed.

In relation to the landlords' claim for damage repairs, being items numbered 1, 5, 6 and 7 of the quotation from Harry's Handyman Service dated 3 August 2004, Section 51 of the Act provides that the tenant must notify the landlord of any damage or apparent potential damage to the premises other than damage of a negligible kind and must not intentionally or negligently cause or permit damage to the premises. Section 51(2) provides that it is a term of a tenancy agreement that at the end of the tenancy the tenant must give the premises back to the landlord in a reasonable state of repair allowing for reasonable wear and tear. Section 51(3) provides that a tenant is not in breach of that term of the agreement if the breach is caused by the landlord's failure to repair or maintain the premises and the landlord had notice that the repairs or maintenance were required.

Item 1 of Harry's Handyman Service quotation is for repair to the carport ceiling sheet and paint in the sum of \$150.00. The landlords provided photographic evidence of that damage and the tenant simply stated that she had no knowledge of that damage. That damage is not noted in either the ingoing or outgoing report. The landlords stated that that damage was not present at the commencement of the tenancy. That damage does not appear to be damage of a reasonable wear and tear nature and on all of the aforesaid evidence I find that on the balance of probabilities the damage occurred during the tenancy, was not reported to the landlord and the quote for the repair and painting is reasonable. Accordingly, I find that the landlords' claim for the cost of repairing the carport ceiling of \$150.00 is allowed.

Item 5 of Harry's Handyman Service quotation is for repairing and repainting inside walls in bedrooms 1 and 3 in the sum of \$200.00. There is no mention in the outgoing condition report of any such problems with the inside walls in bedrooms 1 and 3. The ingoing report notes a chip in the wall behind the door in bedroom 1 and 9 screw holes in the walls in bedroom 3. There is little, if any, photographic evidence of such damage in bedrooms 1 and 3 and accordingly I rely on the outgoing condition report as the evidence of the condition for this item. The landlords' claim for the cost of repairing and repainting the inside walls of bedrooms 1 and 3 is rejected.

Item 6 of Harry's Handyman Service quotation is for the tiles around the bathtub to be replaced in the sum of \$169.00. The landlords produced a photograph of the tiles requiring replacement, however that photograph is not conclusive that the damage is other than reasonable wear and tear. The photograph shows cracking in tiles, however there is no evidence of any impact which would cause such cracking and I cannot find on the balance of probabilities that the cracking of the tiles was intentionally or negligently caused. I find that the cracking of the tiles amounts to reasonable wear and tear. The cracking was not picked up in the outgoing condition report. The ingoing condition report noted "crack along wall - badly damaged near shower + chips". It further noted in relation to the bathroom doors "V water damaged". The landlords' claim for the cost of replacing cracked tiles around the bathtub is rejected.

Item 7 of Harry's Handyman Service quotation is for replacement flywire on all doors in the sum of \$126.00. No photographs were produced by the landlords to substantiate the need to replace flywire on all doors. The outgoing condition report notes minor holes to flyscreens in the dining room (the ingoing condition report noted "no holes"). The landlords gave evidence that all four flyscreens had to be replaced and that they were new as of 15 January 2004. I find that the minor holes in the dining room flyscreen, which was relatively new, does not amount to reasonable wear and tear and the landlords are therefore entitled to one quarter of the cost for replacing flywire on all four doors. Accordingly, I find that the landlords' claim for the cost of replacing the flywire on the dining room door in the amount of \$31.50 is allowed.

In relation to the landlords' claim for the repair or replacement of the venetian blinds in the lounge and bedroom, the landlords produced photographs of damage to the blinds. The tenant admitted that her dog put some teeth marks in the lounge room blinds and she obtained a quote to repair or replace those blinds which was similar in amount to the quotation from Alice Vertical Blinds produced by the landlords. The tenant also admitted that she may be responsible for the damage to the bedroom blinds but suggested that the damage should fall within the concept of reasonable wear and tear. The ingoing condition report notes that the lounge venetian blinds don't open and were slightly bent while the bedroom venetian blinds were bent and 1 broken. Taking into account all of that evidence regarding the venetian blinds, I find that the tenant is partly responsible for the need to replace the lounge and bedroom venetian blinds and I have apportioned 25% of that cost to the tenant. Accordingly, I find that the landlords' claim for the cost of replacing lounge and venetian blinds is allowed in the sum of \$110.00.

In summary, the portions of the landlords' claims for cleaning and damages which have been allowed are as follows:

• House cleaning costs	\$136.00
• Cleaning oil spills on driveway and around barbecue area	\$79.00
• Repair carport ceiling	\$150.00
• Replace flywire to dining room	\$31.50
• Replace lounge and bedroom venetian blinds (25%)	<u>\$110.00</u>
Total	<u>\$506.50</u>

As the landlords' claim for damages has been allowed in the amount of \$506.50, the tenant's claim for the return of the security deposit is allowed in the balance amount of the security deposit of \$693.50.

Order

I order that the landlord is entitled to retain from the security deposit paid by the tenant in respect of the premises at 7 Liddle Court, Alice Springs the amount of \$506.50 and that the balance amount of \$693.50 of the security deposit be reimbursed to the tenant.

**ROGER PHILIP BENNETT
8 / 9 / 04**