

**REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES**  
**INQUIRY – 5 November 2004**

This is a determination of an application dated 11 October 2004 by the Tenant seeking an order for a refund of a security deposit that was lodged with the Landlord and retained by the Landlord at the end of the tenancy agreement because of an alleged lease break by the Tenant in respect of the premises being 20/9 Manilla Place, Woolner NT 0820 in the Northern Territory of Australia.

A Notice of Inquiry dated 12 October 2004 was posted to the parties. The inquiry was conducted on 5 November 2004 during which evidence was taken from the landlord's agent ("the Landlord") and from ("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:	20/9 Manilla Place, Woolner NT 0820
Commencement Date:	13 December 2002
Period:	12 Months
Security Deposit	\$1080.00

This application concerns an interpretation of the provision of the *Residential Tenancies Act* of the Northern Territory of Australia. It not only concerns an interpretation of those provisions but of a certain special condition that was inserted into the rental agreement entered into between the Landlord and the Tenant on 13 December 2002. The Tenancy Agreement was extended and the final agreement was to expire on the 12 December 2004.

It is not disputed that the Tenant vacated the premises on the 17 September 2004 which was prior to the date upon which the Tenancy Agreement was to expire.

When the Landlord and Tenant entered into the initial Tenancy Agreement there was a special condition paragraph 5(d) which provided that the Tenant, who was at all times a member of the Australian Army, could terminate the agreement by giving the Landlord or his Agent one months notice in writing of such termination if he was posted away from the area in the course of his employment or accepting alternative accommodation provided by the Australian Defence Force and if that notice of termination was supported by documentary evidence. I note in passing that paragraph 5 of the Tenancy Agreement is deficient in that it has two sub paragraphs numbered (d).

During the hearing of the inquiry I heard evidence from the Agent acting on behalf of the Landlord and I gathered evidence from the Tenant. There is no dispute that the Tenant was given a Notice of Posting by the Australian Army that he would be posted to serve in the Army in NSW on the 17 January 2005. The notice was dated 8 October 2004 and as a result of that notification the Tenant and his partner vacated the premises in accordance with the conditions as set out in the Tenancy Agreement in relation to such postings.

It is my view and I formally find that the provisions of the Tenancy Agreement must be read literally and section 5(d) enables the Tenant to terminate the agreement on one months notice if he is posted during the course of his employment with the Australian Defence Force. I

have considered the notice that was provided to the Landlord and I find that the Notice of Posting was signed by an authorised superior officer and it provided that the Tenant would be posted to NSW in January 2005. In those circumstances I have no hesitation in finding that the Tenant has been posted as referred to in the Tenancy Agreement and was therefore entitled to give one months notice of termination of the Tenancy Agreement in the terms of that agreement.

Accordingly, I find that the Tenant has lawfully terminated the agreement in terms of that agreement and the Landlord is not entitled to retain any monies in relation to an alleged break of lease by the Tenant. Accordingly, I formally order that the Landlord is to reimburse to the Tenant the monies being \$1,080.00 that were retained in respect of the alleged break of lease.

Dated this 5 day of November 2004

Garry Schneider  
Delegate of the  
Commissioner of Tenancies