

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES
INQUIRY - FRIDAY, 6 MAY 2005

This is a determination of an application dated 31 March 2005 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 6 Stint Court Bakewell in the Northern Territory of Australia.

A Notice of Inquiry dated 22 April 2005 was posted to the parties. The inquiry was conducted on Friday, 6 May 2005 during which evidence was taken from the Landlords (“the Landlord”). There was no appearance by the Tenants (“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:	6 Stint Court Bakewell
Commencement Date:	15 November 2004
Period:	12 months
Rent:	\$320.00 per week payable fortnightly in advance
Security Deposit	\$1,280.00

Although the Tenant did not attend the inquiry, Brian Kelleher, Tenancy Officer, informed me that the Tenant had expressed the view that the tenancy was a periodic tenancy.

Their view was based on the fact that on page 3 the lease was expressed as commencing on 15 November 2005 and expiring on 15 November 2005, was nonsensical and therefore a nullity.

The lease before me is expressed as commencing on 15 November 2004. It is obvious however that the commencement date has been amended from 2005 to 2004. The amendment is not initialed by either party.

The evidence given by the Landlord at the inquiry is as follows.

- When the Tenants inspected the property they requested a 6-month term. The landlords insisted upon a 12-month term.
- The lease was signed at the BP Palms on 15 November 2004. The keys were immediately handed to the Tenants, as they wanted to take possession of the property immediately.
- Either just before or just after the lease was signed, the Landlord noticed that the commencement date was expressed as 2005 not 2004. The Landlord pointed this out to the Tenant and changed the date to 2004 in the presence of the Tenant.
- The Tenants vacated the property in late February or early March with no warning to the Landlords.

The question therefore arises as to whether the lease is valid and enforceable or whether it is a nullity and therefore reverts to a periodic tenancy.

The primary task of the interpreter of a written bi-partite document is to ascertain the common intention of the parties as expressed by their words in the document. The document must be read as a whole and one provision of it may control another (*Freeway Management Pty Ltd v Estate of Dunbar*).

If the words are clear, effect must be given to them, notwithstanding that the result appears inconvenient, unless it is apparent that by something akin to a typographical error a word has been omitted or included causing that intention to miscarry (*Suehiro International (Aust) Pty. Ltd. V Epson Enterprises Pty. Ltd. (SC(NSW), Cohen J 1949/89 4 April 198 Unreported, BC890238*), or the result is absurd, unreasonable, capricious or unjust (*ABC v Australasian Performing Rights Association (1973) 129 CLR 99 at 109*).

I take the following factors into account.

- The lease was altered immediately and in the presence of the Tennant.
- The Tennant took immediate possession of the premises on 15 November 2004, thereby demonstrating an intention that the lease was to commence on 15 November 2004.
- The back page of the lease is signed and dated 15 November 2004.

I find that the fact that the date was expressed as 2005 was a typographical error. Any attempt to construe the term from 15 November 2005 to 15 November is absurd. The fact is that the tenant took possession on 15 November 2004. The clear intention of the parties was to create a legally binding lease for a period of 12 months commencing on 15 November 2004 and expiring on 15 November 2005.

In relation to the Landlord's claim for compensation pursuant to section 122, I find the Tenant has failed to pay rent in accordance with the tenancy agreement. The Tenant has paid rent until 14 February 2005 inclusive. The property was re-let on 31 March 2005. On the basis of the evidence before me, I find the amount of \$2057.13 is owed by the Tenant to the Landlord in compensation, being unpaid rent.

In order to re-let the property, the Landlord incurred advertising costs of \$105.70. These costs are reasonable and I find that the amount of \$105.70 is owed to the Landlord by the Tenant for advertising costs.

Accordingly, I order that:

1. The Tenant is to pay the Landlord compensation in the amount of \$2,162.83 being for section 122 compensation.
2. The Landlord is entitled to use the security deposit to off set the payment referred to in order 1 herein.
3. Any further claim for compensation is adjourned to a date to be fixed upon further application and notice to the parties.

Dated this Wednesday, 18 May 2005

Sophie Cleveland
Delegate of the
Commissioner of Tenancies