

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 4 OCTOBER 2005

RT0506-172

This is a determination of an application dated 23 September 2005 by the Tenant seeking an order in relation to emergency repairs pursuant to s 63 of the *Residential Tenancies Act (NT)* (“the Act”) and compensation pursuant to s 122 of the Act. The application is made in respect of the premises being 37/1 Daly Street, Darwin in the Northern Territory of Australia.

A Notice of Inquiry dated 23 September 2005 was posted to the parties. The Inquiry was conducted on 4 October 2005 during which evidence was taken from the Tenant, and the Landlord’s Agent (“the Landlord”).

On the basis of the documentary and oral evidence before the Inquiry I find that the Tenancy Agreement existed within the meaning of and subject to the provisions of the Act on the following terms (see also decision from file RT0506-158):

Premises:	37/1 Daly Street, Darwin NT
Commence Date:	18 September 2005 (had previously been periodic with the same Tenant)
Period:	20 January 2006
Landlord:	
Tenants:	
Rent:	\$420 per week
Security Deposit:	\$1600

This matter concerns the Tenant’s application seeking an order in relation to the repair or replacement of a garbage disposal unit installed under and in the kitchen sink (alternatively referred to as the “garbage gobbler”) pursuant to sections 57 and 63 of the Act. Further the Tenant seeks compensation pursuant to s 122 of the Act for damage and loss suffered as a result of the Landlord’s breach of the tenancy agreement, namely by not repairing the garbage gobbler.

The Tenant’s Evidence and Submissions

At the Inquiry the Tenant gave evidence that he had alerted the Landlord to the state of the garbage gobbler in writing via email on 1 August 2005. The Tenant gave evidence that the garbage gobbler was located under the second kitchen sink and that when used it was leaking water under the sink which eventually found its way through the cupboards and onto the kitchen floor. It was the Tenant’s evidence that in order to operate the garbage gobbler tap water was run down the same sink in order to facilitate the grinding of the organic waste. It was that water which was leaking out of the unit. The Tenant also gave evidence that some water also ran into the garbage gobbler’s sink when the other kitchen sink was used thus also causing water leakage.

The Tenant gave evidence that plumbers attended the premises on 5 August 2005 to inspect the garbage gobler. It was revealed in evidence that the plumbers subsequently provided a quotation to the Landlord on 10 August 2005. That quotation included two options. One option related to the repair of the garbage gobler unit at \$395. The second option related to the cost of bypassing the garbage gobler and connecting the sink hole to the plumbing thus rendering the garbage gobler useless, that was quoted at \$180.

On 10 August 2005 the Landlord emailed the Tenant telling him that she had left a message with the owner re the garbage gobler. It was the Tenant's evidence that he heard nothing further. He gave evidence that the plumbing company telephoned him on 2 September 2005 indicating that they had been instructed not to repair the garbage gobler but to bypass it. That course was confirmed by the Landlord on 5 September 2005.

The Tenant subsequently sought a reduction in rent (by email) on 6 September 2005 of \$3 per day or \$21 per week. The Landlord replied by email on 9 September 2005 offering a rent reduction of \$5 per week. At the date of the Inquiry I was informed that there had been no repair or replacement of the garbage gobler.

The Tenant seeks an order for repair of the garbage gobler pursuant to s 63 of the Act on the basis that it is an emergency repair. Further, the Tenant seeks compensation of \$4.50 per day calculated, I was told, on the basis of loss of convenience, his time (I assume in having to place scraps into the rubbish bin) and for the risk of injury or harm due to the leaking water. The Tenant seeks compensation from 8 August to 23 September, but also accruing at a daily rate. I assume therefore that he seeks compensation from 8 August to the date of the Inquiry (which also traverses the previous periodic tenancy).

The Landlord's Evidence and Submissions

The Landlord's evidence was that a decision was made by the owner not to repair the garbage gobler in the circumstances but rather to bypass it at a cost of \$180. The Landlord confirmed that a \$5 per week reduction in rent was offered.

Consideration of the Evidence and Submissions – Emergency Repairs

Section 63 of the Act provides that the Commissioner, on the application of the Tenant, may order a Landlord to ensure that specific repairs are made in a specified period to a premises or ancillary property if:

- (a) the repairs required are emergency repairs;
- (b) the premises or ancillary property are in a state of disrepair that does not arise from contravention of the tenancy agreement by the tenant;
- (c) the tenant has, under section 58, notified the landlord in writing of the requirement for the repairs to be made; and
- (d) either the repairs have not been made within 5 business days after receipt of a notice under section 58 or –
 - (i) the landlord has not, within 5 business days after receipt of a notice under section 58, made arrangements for the repairs to be made and notified the tenant accordingly; and
 - (ii) the repairs have not been made within 14 days after the date of the notice.

Further, s 63(2) of the Act defines “emergency repairs” as work needed to repair:

- (a) a water service that provides water to the premises that has burst;
- (b) a blocked or broken lavatory system on the premises;
- (c) a serious roof leak;
- (d) a gas leak;
- (e) serious storm, fire or impact damage;
- (f) flooding or serious flood damage;
- (h) a failure or breakdown of the gas, electricity or water supply to the premises;
- (j) a failure or breakdown of an essential service or appliance on premises for water or cooking;
- (k) a fault or damage that makes premises unsafe or insecure;
- (m) a fault or damage likely to injure a person, damage property or unduly inconvenience a resident of premises; or
- (n) a serious fault in a staircase or lift or other area of premises that unduly inconveniences a resident in gaining access to or using the premises.

It was the Tenant’s submission that the repair of the garbage gobler constituted an emergency repair because it was work needed to repair items (f), (j), (k) and (m). I turn to deal with each one of those claims.

Work needed to repair flooding or serious flood damage (s 63(2)(f)): there was no evidence that work was required to repair flooding or serious flood damage. Work may have been required to repair a leaking garbage gobler which may have leaked onto the floor but that is not within the category of repairs envisaged by s 63(2)(f) of the Act.

Work needed to repair a failure or breakdown of an essential service or appliance on premises for water or cooking (s 63(2)(j)): there was no evidence to support this ground. I do not consider a garbage gobler an essential service or appliance for water or cooking.

Work needed to repair a fault or damage that makes premises unsafe or insecure (s 62(3)(k)): there was some evidence given that water would run onto the floor and cause a slipping hazard. However, it is assumed that simple remedial action could be taken, such as either not using the unit or placing a plug in the sink hole which would remove the danger. In that case the fault or damage in the garbage gobler is not an emergency repair.

Work needed to repair a fault or damage likely to injure a person, damage property or unduly inconvenience a resident of premises (s 63(2)(m)): there was some evidence given that water would run onto the floor and cause a slipping hazard. However, it is assumed that simple remedial action could be taken, such as either not using the unit or placing a plug in the sink hole which would remove the danger. Further, I am of the view that the damage is such that it would not unduly inconvenience a resident, although it may cause some inconvenience. In that case the fault or damage in the garbage gobler is not an emergency repair.

I therefore conclude that the repairs required to the garbage gobler are not emergency repairs and thus I will not make an order pursuant to s 63 of the Act.

Consideration of the Evidence and Submissions – Compensation

The Tenant claims that the Landlord has failed to maintain the premises in a reasonable state of repair as required by s 57(1) of the Act. That section requires the Landlord to maintain the premises and ancillary property in a reasonable state of repair, having regard to its age, character and prospective life.

On the evidence provided it would appear that the Landlord has acted with a degree of diligence in having the garbage gobler inspected by a plumber and assessing options for repair. Section 57(1) of the Act does not require a Landlord to maintain a premises and ancillary property in a state of complete repair, rather it requires a “reasonable state of repair” having regard to their age, character and prospective life. What is reasonable is an objective standard. In these circumstances the question is whether it is reasonable for the Landlord not to keep the garbage gobler in a reasonable state of repair (ie. operating) given that it requires \$395 for repair (or \$215 more than a bypass). I was not given any information about the age, character or prospective life of the garbage gobler, however I assume as these devices are plumbed into a sink that they are intended to last for some time. It is therefore not unreasonable to expect a garbage gobler installed at a premises to be kept in a reasonable state of repair (ie. working order). This is particularly so considering it appears it will cost the Landlord an extra \$215 to repair it.

Thus, by not keeping the garbage gobler in a reasonable state of repair I find that the Landlord has breached s 57(1) of the Act which is a term of the tenancy agreement and therefore has breached the tenancy agreement.

Section 122 of the Act allows the Commissioner to order compensation for loss or damage suffered by an applicant due to the failure of another party to comply with the tenancy agreement or an obligation under the Act relating to the tenancy agreement. I note that a party may not apply for compensation if the loss or repair is suffered by reason of the failure of the Landlord’s duty to repair and no notice is given under s 58(1) of the Act. The tenant had given written notice to the Landlord. I therefore find the Tenant is entitled to compensation.

The Tenant, seeks compensation from 8 August to 23 September and by implication from his application until the date of the Inquiry, that amounts to 58 days. The Tenant seeks compensation calculated at the amount of \$4.50 per day (\$1.50 per meal) or \$31.50 per week. I note the Tenant had previously sought a rent reduction of \$3 per day or \$21 per week.

The amount of compensation payable is determined, not by what the Tenant thinks he is owed, but rather by what is reasonable in the circumstances. An amount of \$31.50 per week represents approximately 7.8% of the weekly rental. In my view that is not reasonable compensation for the non use of a garbage gobler, which by any standards is a minor kitchen appliance. Further there is no evidence that the garbage gobler played any significant importance in relation to the Tenant’s selection of the premises.

I am therefore inclined to calculate compensation for the non use of the garbage gobler at 1% of the weekly rental which amounts to \$4.20 per week or 60 cents a day. For the 58 day period from 8 August until the date of the inquiry that amounts to \$34.80. I note that the Landlord continues to breach the tenancy agreement and may be liable for further compensation until the garbage gobler is repaired.

Accordingly, I order that:

1. The Tenant's application in relation to an order for emergency repairs is dismissed in relation to the premises at 37/1 Daly Street, Darwin in the Northern Territory.
2. The Landlord is to pay the Tenant compensation pursuant to s 122 in the amount of \$34.80 for breach of the tenancy agreement in relation to non repair of the premises or ancillary property.
3. Any further claim for compensation is adjourned to a date to be fixed upon further application and notice to the parties.

Dated this day of October 2005

Craig Smyth
Delegate of the
Commissioner of Tenancies