

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 18 NOVEMBER 2003

This is a determination of an application by the (“Tenant”), seeking an order for compensation pursuant to section 113 of the *Residential Tenancies Act* (NT) (“the Act”). The application is in relation to a security deposit paid by the Tenant to the Landlord (“Landlord”) in respect of premises being 2/4 Armidale Street, Stuart Park in the Northern Territory of Australia.

Although the letter from the Tenant which forms the basis for the application bears the date 4 December 2003 this is clearly incorrect as it is date stamped as having been received in the Commissioner’s office on 7 October 2003. Indeed the inquiry in relation to the matter was conducted on Tuesday 18 November 2003 which is, of course, prior in time to 4 December 2003. It was generally conceded at the inquiry that the date on the letter was incorrect and should have been 4 October 2003.

A Notice of Inquiry dated 22 October 2003 was sent to the parties. The inquiry was conducted on 18 November 2003 during which evidence was taken from the Tenant and the Landlord.

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:	Unit 2/4 Armidale Street, Stuart Park
Commencement Date:	unknown
Period:	periodic tenancy
Rent:	\$175.00 per week
Security Deposit	\$720.00

There are a number of unsatisfactory matters concerning the agreement between the Landlord and the Tenant. There is a discrepancy in the evidence as to whether there was or was not a written lease agreement between the Landlord and the Tenant. In her initial letter of application the Tenant says “there was no lease”. When the Commission initially contacted the Landlord in relation to this application the Landlord was requested to provide various documents to the Commission including a copy of the ingoing report, a copy of the outgoing condition report, copy of Notice to Retain a Security Deposit and copy of the Statutory Declaration as provided for under the legislation. The Landlord responded to that letter on Tuesday, 21 October 2003 and referred to an “attached tenancy agreement dated 20 February 1999”. I have on file, and I presume that this was what was provided by the Landlord, two copies of page 2 and 4 of a pro-formal rental agreement which refers to a security deposit in the sum of “\$700.00 exactly” and also a copy of what purports to be a property condition report dated 20 February 1999. There is no date on the pages of the lease agreement so I do not know what date it bears and I do not know who might have signed that document.

In relation to the “property condition report” as I said earlier this is dated 20 February 1999 but is completely blank apart from a notation which in the space for provision of comments in relation to the passage/hall is as follows:-

“the house is in clean, tidy freshly painted condition rented as fully furnished.”

On the evidence before me I can not determine one way or another if there was a written lease agreement and when it was entered into. However on all of the available evidence including the evidence given by the Landlord and the Tenant at the inquiry I find that the Tenant moved into the premises on the 2 March, 1999 that there was some sort of agreement entered into on the 20 February 1999. Whether that agreement was written or oral it was for an initial period of twelve months tenancy and that after that first twelve months expired the tenant simply stayed in possession of the premises. From 1999 or 2000 there was a periodic tenancy in existence at the time that the premises were vacated in May 2003. Whether the agreement was written or oral matters little in the overall context of my decision in this particular matter.

The Landlord’s position is this, the Tenant paid a security deposit in the sum of \$700.00. At some point during the tenancy the Tenant installed an air-conditioner in the premises and ultimately the Landlord conceded that he was prepared to pay to the Tenant the sum of \$350.00 in respect of that air-conditioner. That makes a total of \$1,050.00 and it was further agreed that the Tenant would pay to the Landlord the sum of \$100.00 in respect of a table that she removed from the premises at the time of vacation and therefore the Landlord owed the sum of \$950.00 taking into account those matters. The Landlord claims that the Tenant did not give proper notice in relation to vacating the premises as required under the lease and claims this two weeks rent being the sum of \$350.00 which leaves a balance of \$600.00. The Landlord also claims that certain repairs needed to be carried out to the premises following vacation and has provided a receipt in the sum of \$448.80 for those necessary repairs leaving a balance of \$151.20.

A cheque for the sum of \$151.20 was sent to the Tenant’s solicitors who acted on behalf of the Tenant at some period of time.

The Tenants position is that she paid the \$700.00 security deposit and sold the air-conditioner to the Landlord for \$350.00. She agrees with the purchase of the table from the Landlord making the total amount payable of \$950.00. She denies failing to give proper notice and she denies any damage to the premises and accordingly her claim is in the sum of \$950.00. However, I note that the \$151.20 that has already been sent to the Tenant or her solicitors and that would leave a balance of \$799.80.

It is in my opinion, and experience, that disputes in relation to security deposits and the condition of premises at the time that the tenancy commences and ends is one of the most troublesome and litigated matters that arise from tenancy agreements. It is therefore of the utmost importance that the condition at the commencement of the tenancy and the conclusion are properly noted and recorded so that these sorts of disputes in relation to damages to the premises can be avoided. The Act makes specific provisions for ingoing reports and outgoing reports to be prepared by the Landlord, in the presence of the Tenant (if possible) and although the provision of those reports is not mandatory it is in the interests of both parties, and the Landlord in particular, to ensure that those reports are prepared and accepted by both the Landlord and the Tenant at the commencement and conclusion of the tenancy.

Prima facie, under section 112 of the legislation the Tenant is entitled to have his or her security deposit reimbursed at the end of the tenancy agreement. Under section 112 the Landlord is entitled to retain some or all of the security deposit in the event of certain matters being proven which require monies to be spent on restoring the premises to the condition that they were in at the commencement of the tenancy.

However under section 112, before the Landlord is entitled to retain any or all of the security deposit he or she must give written notice to the Tenant of the intention to do that and the reasons for it and to provide a Statutory Declaration in support of that Notice which must enclose invoices and other matters in proof of the monies which need to be retained for the purposes as set out in section 112.

The importance in relation to the ingoing report as far as the Landlord is concerned is because of the provisions of section 51(5) of the legislation which provides that if a condition report was not accepted by the Landlord and the Tenant in relation to the premises at the commencement of the tenancy then the Tenant is deemed to have complied with all of his or her obligations in relation to repairs and keeping the premises tidy and so forth and when the tenancy is terminated the premises are taken to be in the same condition at the conclusion of the tenancy as they were at the commencement of the tenancy.

In this case there have been multiple breaches of the legislation by the Landlord. There is no signed, dated and accepted ingoing report, and I don't have a copy of any written lease but that is of minimal importance, there is no evidence of the requisite notice being provided by the Landlord to the Tenant under section 112 nor in relation to the Statutory Declaration which must accompany that notice as provided for under that section.

There are two reasons I find that the Landlord is not entitled to retain the sum of \$448.80 in respect of cleaning and repairs. The first is that no ingoing condition report was prepared and accepted by the Landlord and the Tenant and accordingly the premises are to be taken to be the same at the conclusion of the tenancy agreement as they were at the commencement and further because no notice was given as required under section 112(4) of the Act.

The situation in relation to unpaid rent is somewhat different. Under the provisions of section 113(2) of the Act the Commissioner may permit the Landlord to retain an amount of a security deposit for the purpose specified in section 112(3)(d) even though notice has not been given under section 112(5) if the Commissioner is satisfied that the circumstances of failure to give the notice is such as the Landlord ought, despite the failure, be permitted to retain such an amount. The evidence in relation to the vacation of the premises is somewhat muddled however I find that the onus of proof, on the balance of probability, lies upon the Landlord to satisfy the inquiry that he or she is entitled to retain part or all of the security deposit in respect of unpaid rent. I am uncertain as to whether the Tenant gave the requisite notice, she says she did and the landlord says she didn't. In those circumstances I cannot be convinced either way and the onus being upon the Landlord I further hold that he is not entitled to deduct the sum of \$350.00 in relation to two weeks rent allegedly outstanding in respect of failure to give the requisite written notice of intention to vacate the premises.

