

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 12 December 2002

This is a determination of an application dated 19 November 2002 by the landlord seeking an order for compensation pursuant to sections 121 and 122 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 56 Applegum Drive, Karama in the Northern Territory of Australia.

A Notice of Inquiry dated 20 November 2002 was posted to the parties. The inquiry was conducted on 12 December 2002 during which evidence was taken from the Landlord (“the Landlord”). There was no appearance by the tenant (“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:	56 Applegum Drive, Karama
Commencement Date:	12 July 2002
Period:	12 Months
Rent:	\$250.00 per week
Security Deposit	\$1,000.00

The Landlord claims compensation in the amount of \$6,358.36 and distribution of the Tenant’s security deposit as a result of the Tenant’s abandonment of the premises. The compensation claims made by the Landlord are as follows:

• Unpaid rent	\$1,250.00
• Changing of the locks	\$ 195.25
• Reconnecting Power	\$ 76.00
• Cleaning inside the premises	\$ 341.20
• Replacing damaged carpets	\$ 715.00
• Repairing the spa and replacing the spa equipment	\$ 148.15
• Flee and tick sprays	\$ 200.00
• Cleaning of the yard	\$ 450.00
• Miscellaneous costs	\$ 44.76
• Advertising the premises in the NT News	\$ 63.00
• Loss of income	\$2,600.00
• Re-letting fees	\$ 275.00

In support of their application the Landlord has submitted to the Inquiry, copies of the following:

- A Notice of Landlord's Intention to Retain Security Deposit dated 11 October 2002 ("the Notice");
- A statutory declaration declared by Landlord dated 11 October 2002;
- The residential tenancy agreement governing the parties dated 5 July 2002;
- Letter, Landlord to the Tenant dated 11 October 2002;
- DuraKill invoice number 993482 dated 2 October 2002 in the amount of \$200.00;
- Darwin Lock and Key Tax Invoice dated 30 September 2002 in the amount of \$195.25;
- Power and Water application for supply/disconnection of supply dated 30 September 2002 in the amount of \$76.00;
- Bunnings invoice dated 30 September 2002 in the amount of \$9.85;
- Cash receipts dated 2 and 5 October 2002 from Murray's Pool in the amount of \$76.25 and \$15.00 respectively;
- Woolworths receipt dated 2 October 2002 in the amount of \$44.30;
- Coles receipt dated 30 September 2002 in the amount of \$47.05;
- Humpty Doo Hardware Tax Invoice dated 4 October 2002 in the amount of \$6.00;
- Bunnings Casuarina Tax Invoice undated in the amount of \$68.12;
- AGC credit card receipt for Darwin Carpet Choice in the amount of \$715.00;
- KG Young & Associates Tax Invoice dated 28 October 2002 in the amount of \$30.00;
- KG Young & Associates copy of transactions ledger dated 1 November 2002 in the amount of \$275.00, as well as transaction statement from KG Young from 29 October to 1 November 2002;
- Darwin Carpet Choice Tax Invoice dated 3 October 2002 in the amount of \$715.00;
- Copy of the Landlord's transaction history for account entitled "Rental Offset Account" with National Bank;
- Copy of the Landlord's rental ledger;
- Copy of the ingoing and outgoing condition reports for the premises dated 19 July 2002 and 2 October 2002 respectively;
- Document entitled "Events regarding 56 Applegum Drive, Karama and the Tenant";
- Letter, Landlord to Tenant dated 29 September 2002 regarding rental arrears;
- B & B Maxwell tax invoice dated 18 October 2002 in the amount of \$341.20;
- Nukleen Tax Invoice dated 10 October 2002 in the amount of \$101.20;
- NT News tax invoice dated 4 October 2002 in the amount of \$32.70;
- Jims Mowing Tax Invoice dated 1 October 2002 in the amount of \$450.00;

- Pay slip of Ms Landlord from Norbuilt Pty Ltd dated 16 September 2002; and
- Pay slip of landlords from Offshore On Shore Supply Services Pty Ltd dated 27 September 2002.

In addition, during the Inquiry, the Landlord showed a video depicting the condition of the premises upon the Tenant's vacation of the premises. The Landlord says the video was taken on 29 September 2002.

The oral evidence of the Landlord during the course of the Inquiry, in relation to the tenancy agreement generally was as follows:

- The Tenant moved into the premises on 12 July 2002. Two adults and two children aged 10 and 13 years occupied the premises.

The ingoing condition report

- The Landlord says the ingoing condition report was completed when the Tenant moved into the premises on 12 July 2002. The Landlord says that she started completing the ingoing condition report with the Tenant on that day, however, it was getting late so the Tenant asked her leave the ingoing condition reports with him so that it could be completed in his own time. The Landlord says they left the original document.
- Once the Tenant had filled in the ingoing condition report, it was given to the Landlord. The Landlord went through the condition report and signed it having agreed with all the comments made by the Tenant and sent it back to him after photocopying it.
- I note the ingoing condition report has been signed by both parties and is dated 19 July 2002. The Landlord says that she signed the ingoing on or about 4 August 2002 after receiving it from the Tenant.

The abandonment

- The Landlord says they were interstate in about September 2002. During this time they tried on numerous occasions to contact the Tenant on his mobile phone as he was behind in his rent, however the Tenant did not answer the mobile. In addition the Landlord says they sent the Tenant a text message to his mobile. The Landlord says that they spoke to the Tenant towards the end of September 2002. The result of this conversation was that the Tenant indicated he could not afford to pay all of the rental arrears but indicated that he would put \$250.00 into their bank account by 25 September 2002. This did not occur and the Landlord, who was in Rockhampton at the time, said that upon their return to Darwin they went to the premises to give the Tenant a Notice to Remedy the Unpaid Rent as by that stage the Tenant was in arrears of \$1,250.00 of rent.
- The Landlord says when they attended at the premises on 28 September 2002 it was apparent that the Tenant was in the process of moving out. The inside of the house was empty and although they did not go inside the premises there was still a number of the Tenant's possessions such as bikes in the yard. The Tenant was not present at the time so the Landlord left him a note asking the Tenant to contact the Landlord immediately within the next 24 hours. The Landlord says that she wrote words to the following effect on a piece of paper and left it at the premises: "We believe the premises has been abandoned, please contact us within 24 hours otherwise we will have the locks changed and will commence legal proceedings".

- The Landlord says they went back to the premises on 29 September 2002. During this attendance they spoke to the neighbour to the premises, who told them that the Tenant had “skipped out” on Wednesday, 25 September 2002. The Landlord left the premises and went and bought a chain and lock to secure it. They returned to the premises at about lunchtime that day and proceeded to lock the gate. They gave the neighbour to the premises a contact number just in case the Tenant returned to the premises.
- The Tenant did attend at the premises that day as they received a phone call from the neighbour. The Landlord says that from the time of the phone call it would have taken them about 20 minutes, as they were out at Palmerston, to get back to the premises but by the time they arrived at the premises, the Tenant had left. The Landlord says the Tenant had removed the gate, removed the balance of their possessions as well as some shelves that were located in the walk-in wardrobe.
- The Landlord says they tried to report the matter to the Police as the gates had been removed however the Police were not able to assist them.
- The Landlord says they accepted the premises as being abandoned on 29 September 2002.

The outgoing condition report

- The Landlord says the outgoing condition report was completed on 2 October 2002.
- The Landlord gave one copy of the outgoing condition report to the Tenant personally at his place of work. The Landlord said when he gave the Tenant the outgoing condition report he had to walk away before “things got ugly”.

Notice of Intention to Retain the Tenants Security Deposit

- The Landlord says the Notice was given to the Tenant personally at his place of work on or about 11 October 2002. The Landlord says when he attended he handed to the Tenant a copy of the rent ledger, the Notice as well as a statutory declaration sworn by them.
- The Landlord says the Notice was give to the Tenant on 11 October 2002 as he was offshore on an oil rig prior to the time and did not want his wife dealing with the Tenant’s on her own. The Landlord says as soon as he returned onshore he went and delivered the Notice to the Tenant.

THE SECURITY DEPOSIT

Section 112 of the Act governs the circumstances in which a landlord is entitled to retain a tenant’s security deposit. A landlord is entitled to retain so much of the security deposit paid by the tenant as is necessary to *inter alia* make good damage, replace ancillary property, clean the premises as well as paying for unpaid rent. In order to retain a tenant’s security deposit, the landlord must within 7 business days after the tenant gave up possession of the premises or in the opinion of the landlord apparently abandoned the premises, give written notice of his intention to retain or continue holding so much of the security deposit. In addition, attached to this notice should be a copy of a statutory declaration attesting to the truth of the retention of the security deposit as well as documentation and/or receipts in support.

In this instance, the Landlord has sought to retain the Tenant’s \$1,000.00 security deposit for the purposes of unpaid rent.

On the basis of all the evidence before the Inquiry, I find that the Tenant abandoned the premises on 29 September 2002. I am satisfied that the Landlord's Notice and supporting documentation was given to the Tenant personally on 11 October 2002. I am satisfied that the documentation complies with section 112(5) of the Act. However, as I have found the premises was abandoned on 29 September 2002 it was incumbent on the Landlord to serve the Notice within 7 business days of this date. This means the Notice had to be served on the Tenant by no later than 8 October 2002. The Landlord did not serve the Notice until 11 October 2002 and as a result has not complied with one of the requirements under section 112(5) of the Act.

I note as the Landlord has sought to retain the Tenant's security deposit for the purposes of unpaid rent, the Commissioner under section 113(2) of the Act, has discretion to permit the retention of the security deposit in certain circumstances. The Commissioner must be satisfied that the circumstances of the failure to give the Notice are such that the Landlord ought, despite the failure, be permitted to retain such amount. The evidence of the Landlord is that they did not serve the Notice until 11 October 2002 because one of the Landlord's was on an oilrig off shore and he did not want his wife dealing with the Tenant on her own. On balance, I am satisfied that the circumstances of the failure are such that the Landlord despite the failure should be permitted to retain the Tenant's security deposit. I take into account the nature of the dispute between the parties, the reasons given by the Landlord for the failure to comply with the time limit, and the fact the Tenant was personally served with the Notice as soon as possible upon the Landlord's return on shore.

Accordingly, subject to my consideration herein as to whether the Landlord is entitled to an order for unpaid rent, I find that the Landlord is permitted to retain the Tenant's security deposit in the amount of \$1,000.00 for this purpose.

COMPENSATION CLAIM

In considering the Landlord's application for compensation, the onus is on the Landlord to establish on the balance of probabilities that the Tenant has breach his obligations under the tenancy agreement or under the Act.

On the basis of the evidence before the Inquiry, I am satisfied, the ingoing condition report submitted to the inquiry, which has been signed by both parties, can be taken as an accepted condition report for the purpose of Part 5 of the Act. This report in accordance with section 28 of the Act provides conclusive evidence of the condition of the premises at the beginning of the tenancy, unless the Commissioner determines otherwise in any particular case.

I am not satisfied that the Landlord has completed an outgoing condition report in accordance with Part 12 of the Act as the Landlord has only given the Tenant, one copy of the condition report. However, in the absence of the Tenant who has not availed himself to the Inquiry, I accept the outgoing condition report submitted by the Landlord to the Inquiry as a reasonable indicator of the state of the premises upon the Tenant's abandonment of the premises. Generally speaking, I was impressed by the Landlord's oral and documentary evidence during the Inquiry, which I accept is a credible account of what has occurred during the course of the tenancy agreement.

During the course of the Inquiry, the Landlord also showed a video that he had taken of the premises following the Tenant's abandonment. The Landlord says the video was taken on 29 September 2002. Observations during the video confirmed the comments made by the Landlord on its outgoing condition report. In addition it was apparent that there were significant traffic marks on the walls.

It looked like dirt had been smeared on most of the walls within the premises. There was a great deal of disarray in the garden with fallen trees and dead plants. In addition there was a great deal of rubbish and personal effects that had been left by the Tenant. The spa on the premises was totally green. The bird aviary had cushions and timber as well as sofa seat covers lying within it. The carpets were obviously stained and overall the premises in my view appeared to be in a very filthy and dirty condition. The carpet in one of the rooms looked like there had been green paint blotches left on it, there were also heavy traffic marks on a lot of the built in robes and various amounts of rubbish left lying around.

I will now consider each of the Landlords claims for compensation individually:

Unpaid rent

The Landlord claims compensation being for unpaid rent in the amount of \$1,250.00.

The evidence of the Landlord was that the Tenant had paid his rent up to and including 6 September 2002. The Landlord has submitted a copy of their rental ledger as well as their bank statements in support. I accept the Landlord's ledger as being an accurate indicator of the amount in fact paid by the Tenants during the course of the Tenancy. In relation to the Landlord's attempt to mitigate their loss, the evidence of the Landlord is that they advertised the premises in the NT News on 5, 6, 12, 13, 19 and 26 October 2002. The Landlord says new tenants moved into the premises on 29 October 2002.

I am satisfied that the Tenant has breached his obligation to pay rent during the course of the tenancy agreement and that the Landlord has attempted to mitigate his loss. I am satisfied that the Tenant should be responsible for unpaid rent up to 29 October 2002, the date new tenants moved into the premises. I calculate the unpaid rent as follows:

The amount of rent payable from 12 July 2002 (the commencement of the tenancy agreement) to 28 October 2002 = 15 weeks + 4 days

The amount of rent payable = $(15 \times \$250.00 + \$250.00 \div 7 \times 4 =)$ \$3, 892.86

During the course of the tenancy agreement, the Tenant paid \$2,000.00

Therefore the amount of unpaid rent = $(\$3,892.86 - \$2,000.00 =)$ \$1,892.86

I note my findings are greater than the original claim, however during the course of the inquiry, it was apparent that the Landlord had only calculated rent up to and including 11 October 2002.

I order that the Tenant pay the Landlord compensation in the amount of \$1,892.85 (rounded down) being for unpaid rent up to and including 28 October 2002.

Changing the locks

The Landlord claims the costs associated with changing the locks as the Tenant did not return the keys to the premises. The Landlord says there are two front doors, two back doors and the door to the shed that had to be replaced. The Landlord says that there was an internal door however they did not get this replaced. In support of his claim, the Landlord has submitted an invoice from Darwin Lock and Key in the amount of \$195.25.

I am satisfied that the amount claimed by the Landlord is the result of the Tenant's breach of his obligation to return the keys to the premises upon vacation. I am satisfied that the amount claimed by the Landlord is reasonable. Accordingly, I order that the Tenant pay the Landlord \$195.25 being for the changing of the locks to the premises.

Reconnecting electricity

The Landlord claims \$76.00 that they have incurred as result of having to reconnect the electricity. The Landlord says that the Tenant, upon his abandonment, had the electricity disconnected and this had to be reconnected so that the premises could be cleaned and the spa could be maintained. In addition the Landlord says they required the electricity to show people within the premises.

I am satisfied that the costs incurred by the Landlord for the electricity are reasonable and a consequence of the Tenants breach of his obligations under the tenancy agreement to return the premises, including the spa in a reasonably clean condition and in a reasonable state of repair.

I order that the Tenant pay the Landlord compensation in the amount of \$76.00 being for the reconnection of the electricity.

Cleaning

The Landlord claims \$341.20 being for the costs associated with cleaning the inside of the premises. The Landlord has submitted an invoice from B & B Maxwell in this regard. The Landlord says that the house is a normal three-bedroom house with open plan living. The premises has an ensuite and walk-in robe off the main bedroom as well as front and back verandahs. The Landlord says this cost is reasonable because they had obtained other quotes which started at \$450.00 to clean the premises. In addition the cleaning costs included dry-cleaning the curtains. The Landlord says that the cleaning of the curtains was necessary as the Tenant had dogs and the dogs had left filthy marks all over the curtains which were hanging over the sliding doors. The Landlord says two adults as well as two children aged 10 and 13 were living in the premises.

The Tenant has an obligation under section 51 of the Act to maintain and return the premises to the Landlord in a reasonably clean condition. I am satisfied, based on the evidence before the Inquiry, in particular having regard to the Landlord's outgoing condition report as well as the video that they had taken of the premises on 29 September 2002 that the premises was left in a deplorable state. I am satisfied in the circumstances that the amount claimed by the Landlord is reasonable.

Accordingly, I order that the Tenant pay the Landlord compensation in the amount of \$341.20 being for the cleaning of the premises.

Replacement of carpet

The evidence of the Landlord is that the Tenant and/or their dogs had urinated on the carpets in the back bedroom to the premises. The Landlord says they had to replace the carpets as the urine bleaches the carpet and it cannot be steam cleaned. The Landlord says the smell in the room was repugnant. The Landlord says that they checked with the cleaner that they had hired, Bruce Maxwell, regarding the urine and getting the stains out of the carpet. He indicated that this could not be done and the Landlord further confirmed this by speaking to the carpet guy from Darwin Carpet Choice. In bedroom three there were green paint like marks and in the main bedroom there were brown stain marks which looked like grease stains on the carpet. The Landlord says it was necessary to replace all the carpets in the rooms, as it could not be patch repaired. The Landlord says that the carpets are two and a half years old. The Landlord says in order to minimise the costs associated with replacing the carpet, the Landlord removed the carpet himself. Therefore the only cost that they have been charged by Darwin Carpet Choice was for the supply and laying of the carpet.

I am satisfied that there was urine, paint and significant stain marks on the carpet upon the Tenant's vacation of the premises. This is clearly in breach of the Tenant's obligation to maintain the premises in a reasonably clean condition and in a reasonable state of repair. The Landlord's have had the carpet replaced at a cost of \$715.00. The compensation payable is not however the full replacement cost of the carpet. The compensation awarded must, as far, as is practicable, put the Landlord in the position he would have been in had the Tenant complied with his obligations under the tenancy agreement. The carpet in the premises was approximately 2.5 years old and its value would have been depreciated over time. Therefore, it is necessary to take this depreciation into account for the purposes of any award of compensation. In my view, it is reasonable to use the prime cost method adopted by the Australian Taxation Office to calculate the depreciation. In my view, the effective life of carpet is 10 years. Accordingly, the carpet needs to be depreciated by 10% for each year of its life. I find the carpet was 2 years old and the replacement costs of \$715.00 should be depreciated by 20%. Therefore the Landlord's entitlement to compensation for the carpet amounts to $(\$715.00 - (715.00 \times 20\%)) = \572.00 .

In these circumstances, I am satisfied that \$572.00 can reasonably be attributed to the Tenant's breach of his obligations under the tenancy agreement. I order that the Tenant pay the Landlord \$572.00 for the replacement of the carpet. I would dismiss the balance of the Landlord's claim in the amount of \$143.00.

Repairs and cleaning of the spa

The Landlord claims compensation associated with repairing and cleaning the spa. The Landlord says that the spa was green and they had to get their filter acid dipped at Murrays Pool because it was no longer working. The Landlord says that they tried to clean the spa 4 or 5 times themselves however it was still filthy and the filter was longer working. The Landlord says the filter was approximately 18 months old when the Landlord resided at the premises and prior to the tenancy agreement it was in good working order. The Landlord says that the testing kit for the spa had been removed from the premises, in addition the dog had chewed and damaged the vacuum pole used to clean the pool. I note the equipment such as a vacuum pole and skimmer were not listed on the Landlord's ingoing condition report, however, I accept the Landlord's evidence that at the commencement of the tenancy that the equipment was present and it was in a good, clean, working order.

In support of his claim, the Landlord has submitted invoices from Murrays Pool as well as an invoice from Coles supermarket. The Landlord claims \$76.25 being for the vacuum pole, hose as well as a test kit. \$15.00 for the acid dip of the filter. \$9.85 for acid hydro spirit of salt, \$15.76 for chlorine, \$7.56 for the hose to refill the spa, \$3.24 for gloves x 2, \$5.29 being for the cork tool kit as well \$11.96 for the pool salt.

In relation to the hose, the Landlord says that they needed a hose because they had to refill the spa. The Landlord says they reside out at Humpty Doo and it was cheaper for them to buy a new hose rather than go home and get one. In relation to the gloves the Landlord says they each needed a pair of gloves in order to try and clean it as the spa was green and they were not going to put their hands in it. The Landlord says a cork tool kit was necessary because the Tenant's had loosened the screws to the pool fence. The evidence of the Landlord, particularly the video indicates that the spa was in fact left in a green condition.

On balance, I am satisfied that the Tenant has breached his obligation to maintain and return the spa and associated equipment in a reasonably clean condition and in a reasonable state of repair and that the costs incurred by the Landlord in this regard are reasonable. I order that the Tenant pay the Landlord \$148.15 being for the repairs and cleaning of the spa.

Tick and flea spray

The Landlord claims \$200.00 in order to get the premises sprayed for ticks and fleas as well as for cockroaches. The Landlord says that it was part of their tenancy agreement that as the Tenant's had dogs in the premises it had to be fumigated. The Landlord says that they did not look for ticks and fleas, however, it is not until you stay in the premises that you can tell whether or not the place is infected with ticks and fleas. The Landlord says they did however see ants and cockroaches and half of the amount they have claimed could be attributed to their presence within the premises.

The only obligation on the Tenant under the Act is to return the premises in a reasonably clean condition and in a reasonable state of repair. I acknowledge the parties had agreed that the Tenant's would have the premises fumigated upon vacation. However, section 20 of the Act provides any agreement that is inconsistent with the Act or attempts to exclude, modify or restrict the operation of the Act is void to the extent of the inconsistency. The Landlord will only be entitled to compensation for ticks and fleas, if he can show that there were ticks and fleas in the premises and their presence was a consequence of the Tenant's breach of his obligations under section 51 of the Act and/or any other relevant provision.

On balance, based on the evidence before the Inquiry, I am not satisfied that the Landlord has discharged his onus of proof in relation to this claim. I am not satisfied that the tick and flea spray as well as the ant and cockroach spray was necessary and was the result of the Tenant's breach of his obligations under the tenancy agreement. The Landlord's claim for tick and flea spray appears to have been made in reliance on a term of the agreement. In relation to the ants and cockroaches, I am not satisfied that the Landlord's have proved that the ants and cockroaches were a consequence of the Tenant's breach of any of his obligations under the tenancy agreement. Accordingly I would also dismiss this aspect of the claim.

I order that the Landlord's claim in the amount of \$200.00 being for tick and flea spraying be dismissed.

Cleaning of the yard

The Landlord claims \$450.00 associated with the cleaning and maintenance of the yard. In support of his claim, the Landlord has submitted a Tax Invoice by Jims Mowing in the amount of \$450.00. The Landlord did not get other quotes for this. The Landlord says due to their financial circumstances, it was necessary for them to get the work done as soon as possible as they urgently needed to get new tenants in the premises. The Landlord says \$450.00 is a reasonable amount given the condition that the yard was left in. The Landlord says that the gardener spent quite a few hours at the premises. They do not know how many hours he spent there and what his hourly rate is as he had given a flat charge for the premises.

Based on the evidence before the Inquiry, particularly the video and outgoing condition report submitted by the Landlord, I am satisfied that the Tenant has breached his obligation to return the garden in a reasonable state of repair. In the circumstances I am satisfied that \$450.00 can reasonably be attributed to the Tenant's breach of this obligation under the tenancy agreement.

I order that the Tenant pay the Landlord compensation in the amount of \$450.00 being for the cleaning of the garden.

Miscellaneous costs

The Landlord claims \$44.76 being for the replacement of light bulbs in the premises that had blown as well as the removal of plugs in the laundry, bathroom and kitchen. The Landlord says that the globes had blown and it was necessary for them to be replaced.

The itemisation of the Landlord's claims is as follows: the replacement of globes ($\$2.68 + \$2.75 + \$1.40 + \$2.75 =$) \$9.58; the plugs to the premises = ($\$2.44 + \$0.82 + \$0.82 + \$4.07 + \$4.07 =$) \$12.22; hedge and pruning shears = ($\$10.98 + \$5.98 =$) \$16.96; wall mates for the nylon curtains \$1.20; and a rivet \$4.80.

In relation to the light bulbs I am satisfied that this can be attributed to the Tenant's breach of his obligation to return the premises in a reasonable state of repair. I would therefore allow this amount. In relation to the shears, the Landlord says that they tried to minimise the gardening costs by doing some of the gardening themselves. They required the shears for trimming the hedges so that they would not be charged for it from a professional gardener. I am satisfied that in the circumstances compensation should be allowed for this amount as had a gardener been employed to trim the hedges an amount in excess of this would have been charged. Accordingly I would allow this amount.

In relation to the Landlord's claim for the replacement of plugs, the incoming condition report does not specify that there were plugs provided in the premises and as the incoming condition report is conclusive evidence of the status of the premises, I would dismiss this aspect of the Landlord's claim. In relation to the curtain wall plugs the Landlord says that one side of the curtain had been hanging down as the wall plugs had been removed. There was no evidence from the Landlord as to how the wall plugs had been removed from the wall. In my view, the \$1.20 claim by the Landlord could amount to reasonable wear and tear and I so find. In relation to the rivet, the Landlord says this was for general maintenance although they do not know exactly what it was for. I dismiss this aspect of the Landlord's claim on the basis that he has not fulfilled his onus of proving that it was a consequence of the Tenant's breach of his obligations under the tenancy agreement.

In total, I order that the Tenant pay the Landlord compensation in the amount of \$26.55 (rounded up) being for general miscellaneous costs associated with the premises. I disallow the Landlord's claim of compensation in the amount of \$18.22.

Advertising costs

The Landlord claims the costs associated with advertising the premises in the amount of \$63.00. In support of his claim, the Landlord has submitted tax invoices from NT News and KG Young & Associates. I am satisfied that the costs have been incurred as a consequence of the Tenant's abandonment of the premises and the amount claimed by the Landlord is reasonable. I order that the Tenant pay the Landlord compensation in the amount of \$63.00 being for advertising.

Loss of income

The Landlord's claim loss of income associated with having to take the time off work to clean, repair and deal with the premises in the amount of \$2,600.00.

In relation to the landlord, she says that her wages amount to \$745.00 per week net. She says that it was necessary for her to take the time off work to clean the premises. She attempted to gurney the driveway, which took 10 hours of her time. In addition she says that they cleaned the premises prior to getting professional cleaners in order to minimise the cost. She says they were having financial difficulties at the time and if they had employed a cleaner rather than doing the work themselves, it would have cost a "fortune" given the condition the premises had been left in. the landlord says she had to take 5 workings days in total. She says that she also washed the curtains, spent numerous hours cleaning the spa about 4 or 5 times before getting the filter acid dipped as well as attending at the shops to get the parts and equipment necessary. She says they spent time in the garden trying to repair the garden, prune the hedges and have incurred expenses which they have not claimed such as buying plants as well as fixing the irrigation system. The landlord says that it was necessary for her to be at the premises so that people could come and change the locks as well as to clean and repair the premises. The Landlord says that she would have spent approximately 40 hours at the premises which does not include her mileage and travel time given that they reside out at Humpty Doo.

The other Landlord, says that he is paid \$37.50 per hour. He also had to take the time off from 30 September to 4 October 2002 and this time was spent doing pretty much what his wife was doing. In addition the landlord had to remove the carpet as well as go around changing light globes and general maintenance and repairs. In relation to the carpet he says it took him 2 to 2.5 hours to rip it up. The Landlord says \$2,600.00 for loss of income is reasonable as he is a casual employee. If he does not go to work then he does not get paid and he does not see why he should lose his income because of the Tenant's conduct and breaches of the tenancy agreement. The Landlord has submitted to the inquiry a copy of his pay slip, which indicates he nets \$735.00 for half a weeks work. The landlord says he normally works 42 hours per week.

The Landlord says two people were required to attend to these matters because it was a lot quicker and they were at the premises the whole time. The Landlord says that they had to be at the premises as well so that the cleaning and repairs could occur. They say that one person would not have been sufficient and the amount that they have claimed is reasonable because they are not used to doing that sort of work and it would have taken them a lot longer. The Landlord says they each were allocated different tasks and pretty much worked consistently throughout the week. The Landlord also says that he had to travel 45 kilometres each way from his house to the premises as well as a number of trips to the dump. In addition the Landlord says that they have not claimed their waiting time where they have had to sit and wait at the premises for people to show up. Given where they live they had to sit there because it was not worthwhile for them to drive home and then back to the premises again.

The purpose of an award of damages for breach of a tenancy agreement (which is essentially a contract) is to place the affected party in a position that they would have been in had the other party complied with his obligations under the tenancy agreement.

In my view, the amount claimed by the Landlord is excessive and unreasonable. There is no doubt that the Tenant breached his obligation to maintain and return the premises in a reasonably clean condition and in a reasonable state of repair. However, the Landlord is not entitled to the wages that they have lost as a consequence of this breach. They are entitled to a reasonable amount of compensation for the purpose of placing the premises in a condition that it would have been in had the Tenant complied with his obligations under the tenancy agreement.

In my view, both of the Landlords effectively chose to take the time off work, rather than hiring people to undertake the work. Had they hired people, I am of the view the costs of such works would certainly would not have amounted to the \$2,600.00 that they have claimed.

I note the Landlord has claimed and been awarded compensation for *inter alia* cleaning, replacement of the carpet, cleaning the spa and garden in the amount of $(\$341.20 + \$715.00 + 148.15 + \$450.00 =) \$ 1,654.35$. The submission of the Landlord was that they essentially had to do this work themselves as they were under financial constraints and had to try to minimise the costs. I have no doubt that had they got professional cleaners and gardeners in to clean the premises as it was, the cost would have fallen well below the additional \$2,600.00 that they have claimed for loss of income. I also do not accept the Landlord's submission that both the Landlords were required for the whole of the week in order to place the premises in a reasonably clean condition and in a reasonable state of repair. I note the Landlord indicated that he works offshore and is paid casual rates and does not get paid when he does not show up at work.

I accept that 10 hours was probably required in order to gurney the driveway to the premises. I also accept 10 hours is a reasonable period to have been spent on cleaning the spa. I also accept the 2.5 hours spent by the Landlord to remove the carpet to the premises. I also would allow a further 5 hours for general maintenance and cleaning inside and around the premises. In my view, had a professional been hired they would have charged in the vicinity of \$30.00 per hour. Accordingly I am of the view that $(27.5 \text{ hours} \times \$30.00 =) \$825.00$ is a reasonable amount of compensation to be awarded to the Landlord for placing the premises in a reasonably clean condition and in a reasonable state of repair. I would allow \$825.00 being for the loss of income and would dismiss the balance of the Landlords claim in the amount of \$1,775.00.

Re-letting fees

The Landlord claims \$275.00 being for the re-letting fees associated with getting a real estate agent to manage the premises. The Landlord says that because they have been "burnt" by the Tenant they have had to get agents, KG Young & Associates Pty Ltd, to manage the premises. In addition, as an owner they do not have access to the TICA database (which is a database containing information about tenants who have defaulted under tenancy agreements) and given that one of the Landlord's is away a lot, the responsibility should not fall back to the other Landlord. The Landlord says if the Tenant had of continued with the tenancy agreement, they probably would not have gotten KG Young & Associates. The Landlord says that given all the issues they have had with this Tenant it was too hard for them to manage the premises on their own.

Although I understand the Landlord's frustration, I am of the view that the Tenant cannot be held responsible for this \$275.00 re-letting fee. The Landlords have essentially made a personal choice to engage the services of an agent and cannot then attribute this cost to the Tenant's breach of his obligations under the tenancy agreement. The Landlord is only entitled to the costs that incurred as a result of the Tenant's failure to comply with his obligations under the tenancy agreement. The Landlord admitted during the course of the Inquiry that had the tenancy agreement continued for the 12 month period they probably would not have gotten an agent involved in the premises. I am not satisfied that the \$275.00 re-letting fee is a consequence of the Tenant's breach of his obligations under the tenancy agreement and find it was a personal choice being made by the Landlord. Accordingly I dismiss the Landlord's claim of compensation in this regard.

Summary of orders

On the basis of the above, I order:

1. The Landlord can retain and distribute the Tenant's security deposit in the amount of \$1,000.00 for the purpose of unpaid rent.
2. The Tenant pay the Landlord compensation in the amount of \$3,590.00 being for:
 - Unpaid rent up to and including 28 October 2002 over and above the security deposit, in the amount of (\$1892.85 - \$1,000.00=) \$ 892.85
 - Replacement of locks to the premises \$ 195.25
 - Reconnection of electricity \$ 76.00
 - Cleaning of the premises \$ 341.20
 - Supply and replacement of the carpet \$ 572.00
 - Repairs and cleaning of the spa \$ 148.15
 - Cleaning and maintenance of the garden \$ 450.00
 - Miscellaneous costs \$ 26.55
 - Advertising costs \$ 63.00
 - Loss of income \$ 825.00
3. I dismiss the Landlord's claims for compensation in the amount of \$2,411.22 being for:
 - Supply and replacement of carpet \$ 143.00
 - Tick, flea, ant and cockroach spraying \$ 200.00
 - Miscellaneous costs \$ 18.22
 - Loss of income \$1,775.00
 - Re-letting fee \$ 275.00

Dated this 20th day of December 2002

Penny Turner
Delegate of the
Commissioner of Tenancies