

## REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

### INQUIRY – 27 August 2002

This is a determination of an application dated 19<sup>th</sup> August 2002 by the Landlords, seeking an order for possession pursuant to section 104 and for compensation pursuant to section 121 and 122 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 65 McMinns Drive, McMinns Lagoon in the Northern Territory of Australia.

A Notice of Inquiry dated 20<sup>th</sup> August 2002 was faxed and posted to both parties. The inquiry was conducted on 27<sup>th</sup> August 2002 during which evidence was taken from the Landlord’s (“the Landlord”). One of the occupants, accompanied by her friend, appeared for the Tenant (“the Tenant”).

I note by order dated 23 July 2002 I have previously given an order for possession of the premises effective as at 29 July 2002, yet the Landlord was making another application for possession. The Landlord’s response to this was that my order of 23 July 2002 had been appealed by the Tenant’s to the Local Court. The Tenant discontinued their appeal on or about 26 August 2002. The Landlord says that the order of 23 July 2002 has been registered with the court and a warrant of possession was to be executed on or about 27 August 2002. Accordingly, the Landlord is not pursuing her application for possession given that she already has an order for possession however pursues her claim for compensation being the rent payable by the Tenant whilst they remain in possession of the premises after the tenancy agreement was terminated.

#### **Representation of the Tenant**

At the outset of the Inquiry the tenant attempted to get her friend to represent her. He advised the Inquiry he has a law degree but is not currently the holder of a current practicing certificate under the *Legal Practitioners Act*. In addition, he advised that the tenant has a condition whereby she is unable to speak and feels like being sick when she is nervous. The Landlord objected to this representation saying that the friend has always attended previous Inquiries as a person in support rather than a representative. The Landlord says the friend has never represented the Tenant before during previous Inquiries and the Tenant does not need him. Accordingly, the Landlord would not consent to the friend representing the tenant.

Section 148 of the Act places limits on persons being represented before the Commissioner. Given that the Landlord does not agree to the friend representing the Tenant the only ability for the representation to occur is if I am satisfied that “the party is unable to present the parties case properly without assistance.” I was not satisfied based on the information from the parties that the tenant would not be able to present her case properly. I indicated to the tenant that there is no need for her to be nervous and her friend could sit beside her in an attempt to appease any feelings of nervousness that she may have. I indicated to the tenant that if necessary I would consider a further application for such representation but we would “see how we go”.

At one point during the course of the inquiry the tenant withdrew from the room. Upon her return to the room she says that she suffers from anxiety and left the room, as she “felt like vomiting”. The tenant says she feels nervous because “everything relies on now and today’s outcome”. I explained to the tenant that the only issue for determination today was with respect to the Landlords application for compensation. I have already given an order for the possession by order dated 23 July 2002 and given that the Tenant has discontinued the appeal to the Local Court the possession order given on 23 July 2002 remains effective and the Landlord was not pursuing that aspect of her application. In any event, I allowed the friend to represent the Tenant during the course of this Inquiry.

### **The tenancy agreement**

In my reasons for orders dated 5 July 2002, I found there is a tenancy agreement within the meaning of and subject to the provisions of the Act on the following terms:

|                    |  |
|--------------------|--|
| Premises:          | 65 McMinns Drive, Humpty Doo   |
| Commencement Date: | 13 August 2001   |
| Period:            | Weekly Periodical Tenancy  |
| Rent:              | \$200 per week to be paid into the Landlord’s bank account, one week in advance. |
| Security Deposit   | \$Nil  |

By order given 11 July 2002 I declared that the Notice to Remedy Unpaid Rent/Notice of Termination dated 26 June 2002, issued by the Landlord had validly terminated the tenancy agreement effective 9 July 2002. By order given on 23 July 2002 I ordered the Landlord have possession of the premises effective 29 July 2002 and the Tenant was to pay the Landlord compensation in the amount of \$1,114.28. In my reasons for decision dated 23 July 2002, it is apparent I calculated the compensation up to and including 19 July 2002.

### **Submissions of the Tenant**

The friend indicated that the Tenant was very concerned because she has a lot of chattels at the premises and the only way they can be removed is by containerisation. The containers have been purchased but the Tenant is yet to receive them. The Tenant says where they are renting is subject to thieving and the Landlord has a common law duty to safeguard their individual possessions during the order for possession. The Tenants would be seeking an order from me to the effect that the Landlord order for possession will be subject to this common law duty to protect the Tenant’s chattels. I indicated to the friend that the issue of possession for the premises had already been determined and I had no jurisdiction to entertain the issue again nor make any orders in the terms sought by the Tenant. If the Tenant has any concerns or applications they want to make regarding the execution of the possession order, the appropriate forum would be to raise those issues in the Local Court.

The only issue that requires determination on the Landlord's current application is whether or not they are entitled to compensation under the Act. The issue of possession has been dealt with in my reasons for decision dated 5, 10 and 23 July 2002 during which I had made certain findings in relation to the tenancy agreement and I am bound by those findings unless they are quashed or varied on appeal by the Local Court. As a result the only submissions I wanted to hear from him was in relation to the issue of compensation and I would not be prepared to hear any submissions on issues previously determined by me.

The Tenant resubmitted that those issues remained relevant and that in the Notice of Inquiry from this office they were of the understanding that the Inquiry was being held in relation to possession. I indicated to the Tenants that the correspondence from this office clearly states that the Inquiry was with respect to possession as well as compensation, in addition, the Tenants were provided with a copy of the Landlord's application which makes it clear they are applying for compensation and possession. The Landlord had indicated at the outset of this inquiry the only issue they are pursuing was in relation to compensation.

The Tenant submitted that in determining the issue of compensation the amount of rent payable was relevant and that it was in effect excessive because it had been doubled from \$100.00 to \$200.00 per week. These submissions are irrelevant to the issue that requires determination by me. Once again I reiterated my position to the friend that I had already made findings with respect to the tenancy agreement governing the parties and I will not be hearing any further submissions on those issues that had previously been determined by me. During my determination on 5 July 2002 I found that the current tenancy agreement governing the parties requires rent to be paid at \$200.00 per week and that is the amount that I will be using in assessing any compensation payable.

In my view, the above submissions of the Tenant are irrelevant to the Landlord's application for compensation and the issues that require determination by this inquiry.

### **Compensation**

In this relation to the issue of compensation, the evidence of the Landlord was that the Local Court had made certain orders during the appeal proceedings with respect to the payment of rent. The Landlord says and produced to the Inquiry a copy of an order of the Local Court given 7 August 2002 which required the Tenants to pay three instalments of \$200.00 each on 8, 15 and 26 August 2002. In addition, the Landlord says the Court ordered the Tenant to pay \$200.00 to her solicitors Withnall Maley on or about 31 July 2002. In total, the Landlord says since my order of 23 July 2002, the Landlord has paid \$800.00 in rental payments.

The relevant submission of the Tenant in relation to the amount of compensation is that they paid to the Landlord \$200.00 on 8, 15 and 22 August 2002. In addition the tenant says that her husband may also have paid another \$200.00 to the Landlord's solicitors for the purpose of the appeal. I note this accords with the Landlord's records that since the order of 23 July 2002 a total of \$800.00 has been paid by the Tenants to the Landlord.

My reasons for decision dated 23 July 2002 indicate that I had calculated the compensation figure up to and including 19 July 2002. Accordingly, in terms of compensation the Landlord is only entitled to obtain any amounts from 20 July 2002 to the date of this Inquiry being 27 August 2002. In addition, the rent payable for the premises under the tenancy agreement amounts to \$200.00 per week.

Section 121 of the Act governs the compensation payable by the Tenant and provides, my emphasis:

- (1) If a tenant **fails to hand over vacant possession of premises after he or she is required by or under this Act to do so, the landlord is entitled to receive from the tenant –**
  - (a) Compensation for any loss or expense incurred by the landlord by the failure; and
  - (b) **An amount equivalent to the rent that would have been payable by the tenant for the premises for the period the tenant remains in possession after termination of the agreement.**

...

In calculating the compensation payable the period I am concerned with is from 20 July to 27 August 2002 (the date of the Inquiry) inclusive which amounts to 39 days. The daily amount of compensation payable at the rate of \$200.00 per week amounts to ( $\$200.00$  per week / 7 days =)  $\$28.57$  per day. Accordingly, the amount of compensation equates to ( $39$  days x  $\$28.57$  per day =)  $\$1,114.23$ . The evidence from both parties is that during this time the Tenant has paid  $\$800.00$ . Accordingly the amount of compensation that remains to be paid amounts to ( $\$1,114.23 - \$800.00 =$ )  $\$314.23$  rounded down amounts to  $\$314.20$ .

On this basis I order that the Tenant pay the Landlord section 121 compensation in the amount of  $\$314.20$  being rent that would have been payable whilst the Tenant remains in possession of the premises after the termination of the tenancy agreement from 20 July 2002 up to 27 August 2002 (inclusive).

Dated this 2<sup>nd</sup> day of September 2002

Penny Turner  
Delegate of the  
Commissioner of Tenancies