

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 16TH SEPTEMBER 2002

This is a determination of an application dated 2nd July 2002 by the Landlord (“the Landlord”), seeking an order for compensation pursuant to sections 121 and 122 of the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being 5/43 Sergison Circuit, Rapid Creek in the Northern Territory of Australia.

A Notice of Inquiry dated 4th September 2002 was posted to the parties. The inquiry was conducted on 16th September 2002 during which evidence was taken from the tenants, (“the Tenant”). There was no appearance by the Landlord.

Although I was ready to proceed with the Inquiry at 9am, I allowed 5 minutes to see if the Landlord would appear. The Landlord did not appear and the Inquiry commenced at approximately 9.05am.

During the course of the inquiry the agent for the Landlord rang the Office of Consumer Affairs at approximately 9.10am advising she had “unexpectedly been tied up” and would be able to make it to the inquiry in half an hour. At that stage, the inquiry was already in progress and I did not think it was reasonable to postpone the inquiry as the Landlord has had ample notice of the time the inquiry was scheduled to occur. In addition, I had another inquiry scheduled to occur immediately following this one and in any event, I note the Notice of Inquiry dated 4 September 2002 clearly indicates the inquiry was to be conducted at 9am or as soon afterwards as the business of the inquiry permits on 16 September 2002.

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:

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|--------------------|--|
| Premises: | 5/43 Sergison Circuit, Rapid Creek NT 0810 |
| Commencement Date: | 12 th April 2002 |
| Period: | 2 months |
| Rent: | \$160.00 per Week |
| Security Deposit | \$640.00 |

The Landlord has made an application for compensation, it is unclear from the documentation how much is being claimed by the Landlord in compensation. However, a document submitted by the Landlord entitled "List of Costs – 5/42 Sergison Circuit, Rapid Creek" appears to indicate the Landlord is claiming an amount of \$3,234.00 being for the following:

| | |
|--|-----------------|
| Replace flyscreens (x4) and frame (x1) | \$125.00 |
| Repair and painting walls | \$1,500.00 |
| Cleaning unit | \$100.00 |
| Replace coffee table | \$50.00 |
| Replace missing dining room chair (matching set) | \$50.00 |
| Replace missing double bed | \$350.00 |
| Replace broken cupboard door | \$150.00 |
| Replace mattresses (x1 double x1 single) | \$200.00 |
| Rent | \$434.00 |
| Repair broken towel rail | \$25.00 |
| New deadlock and front door lock | \$150.00 |
| Repair new front gate | <u>\$100.00</u> |
| TOTAL: | \$3,234.00 |

In support of the Landlord's application, the following was submitted by the Landlord:

- Document entitled "List of Costs – 5/42 Sergison Circuit, Rapid Creek" outlining the amounts claimed as listed above;
- The tenancy agreement between the parties dated 12 April 2002;
- Copy receipt entitled "L Samuals", which appears to be for the purchase of a double bed, although it is unclear how much was paid for this
- Copy receipt entitled "Retention of bond" where it appears \$434.00 of the Tenant's bond was to be retained by the Landlord although it is not apparent from the face of the document what it was to be retained for: and
- An outgoing and ingoing condition report dated 22 March 2001 and 25 May 2002 respectively.

The onus is on the Landlord to prove on the balance of probability that it is entitled to the amounts claimed in compensation. As the Landlord did not appear for the inquiry, I was unable to determine certain issues such as whether the Tenant's were given an opportunity to attend the outgoing condition report? Whether the amounts claimed could be attributed to reasonable wear and tear? The outgoing condition report appears to be signed on 25 May 2002 by the Landlord, however it is not known whether the Tenant's were given an opportunity to attend the outgoing inspection report? Whether the amounts claimed are reasonable and a result of the Tenant's breach of the tenancy agreement? In addition, I note no invoices were produced by the Landlord outlining the work done for the amounts claimed for repair, replacement and cleaning and whether they had in fact been incurred by the Landlord.

During the course of the inquiry, I asked the Tenant whether they were consenting to any amounts claimed by the Landlord in compensation. The Tenant indicated they would be prepared to consent to an order being made for the following amounts:

| | |
|--|----------------|
| Flyscreen (x4) and frame (x1) | \$125.00 |
| Repair broken towel rail | \$25.00 |
| Replace mattresses (x1 double x1 single) | \$200.00 |
| Rent, one week only | \$160.00 |
| Replace missing dining room chair (matching set) | <u>\$50.00</u> |
| TOTAL: | \$560.00 |

The Tenant indicated she was disputing the other amounts claimed by the Landlord in compensation.

The Tenant indicated she was prepared to consent to this \$560.00 amount be retained by the Landlord from her \$640.00 security deposit. The Landlord is to return the balance of the security deposit, in the amount of (\$640.00-\$560.00=) \$80.00 forthwith.

The Landlord has failed to satisfy me on the balance of probabilities that the other amounts claimed in compensation (which have not been conceded by the Tenant) in the amount of (\$3,234.00 - \$560.00=) \$2,674.00 was reasonably incurred and the result of the Tenant's breach of the tenancy agreement. Therefore, I dismiss the balance of the Landlord's claim for compensation.

On the basis of the above, I order:

1. By consent of the Tenant, the Tenant is to pay the Landlord compensation in the amount of \$560.00;
2. By consent of the Tenant, the Landlord is entitled to retain the amount of \$560.00 being for order 1 from the Tenant's \$640.00 security deposit;
3. The Landlord is to return the balance of the security deposit, in the amount of \$80.00 to the Tenant forthwith;
4. The balance of the Landlord's claim for compensation in the amount of \$2,674.00 (being for: repair and repainting of walls; cleaning unit; replace coffee table; replace missing double bed; replace broken cupboard door; rent in the amount of \$274.00; new deadlock and front door lock; and repairing new front gate) is dismissed.

Dated this 16th day of September 2002

Penny Turner
Delegate of the
Commissioner of Tenancies