

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 8 AND 18 OCTOBER 2002

This is a determination of an application dated 30 September 2002 by the landlords, (“the Landlord”) seeking an order for compensation pursuant to section 122 of the *Residential Tenancies Act* (NT) (“the Act”). The application is made in respect of premises being 15 Marranthes Place, Fairway Waters in the Northern Territory of Australia.

A Notice of Inquiry dated 1 October 2002 was posted to the parties. The inquiry was initially conducted on 8 October 2002 during which evidence was taken from the Landlord. There was no appearance by the tenant, (“the Tenant”).

On 8 October 2002, the inquiry was adjourned to 18 October 2002 so that the Landlord could provide further information in support of their claim. When the Inquiry resumed on 18 October 2002, the Landlords appeared on behalf of the Landlord. Once again the Tenant did not appear. The Landlord submitted further documentation regarding the rental payments made by the Tenant and the first tenancy agreement for the premises governing the Tenants.

On the basis of the documentary and oral evidence before the Inquiry, I find there is a tenancy agreement (“the current tenancy agreement”) within the meaning of and subject to the provisions of the Act on the following terms:

Premises:	15 Marranthes Place, Fairway Waters
Commencement Date:	25 January 2002
Period:	12 Months
Rent:	\$285.00 per week
Security Deposit	\$1,000.00

The Landlord claims compensation being for the following:

- Advertising costs for the premises incurred as a result of the Tenant’s abandonment in the amount of \$273.30;
- Maintenance repairs for damage to the premises undertaken by Max’s Maintenance Service in the amount of \$565.00;
- Cleaning costs in the amount of \$120.00;
- Repairs to the reticulation system and garden beds in the amount of \$39.00; and
- Unpaid rent up to the date of the Inquiry.

I note the Landlord initially also claimed the costs associated with dealing with the Tenant's abandoned goods in the amount of \$270.00. However, during the course of the Inquiry the Landlord indicated that a male friend who was at one stage also living at the premises with the Tenant had paid the costs associated with the abandoned goods as well as \$230.00 off the unpaid rent that was owing. The Landlord says this was a "gentleman's agreement" with the friend who was the "male friend" of the Tenant. Accordingly, the Landlord withdrew this aspect of his claims and noted that \$230.00 should be taken off any order for compensation in unpaid rent.

The evidence of the Landlord, during the course of the Inquiry on 8 October 2002 was as follows:

- The Tenant advised the Landlord in early June 2002 that she had cancer and had to get treatment interstate. The Tenant indicated she wanted to keep the premises and would pay the rent for it while she was away. The Landlord felt some empathy for the Tenant and agreed to this course provided that the Tenant pay the rent for the premises. However, the Landlord says after this time he has not been able to get in contact with the Tenant at all.
- About three weeks later in either early June or late June 2002 the Tenant's mother, approached the Landlord and indicated that the Tenant had gone to Brisbane for treatment. She also indicated that the Tenant was in the process of arranging her superannuation so that the rent for the premises would be paid. The Landlord queried how long this process would take before payment was made and says he did not get a definitive response from the mother. The Landlord says no documents were sighted they just accepted the word of the mother. The Landlord says the mother wanted to know how long the Landlord's could hold out on the rent payments so they worked out that they could last until 12 September 2002 provided that part payments of rent were being made in the interim.
- The tenant mother also indicated to the Landlord that she had Power of Attorney from the Tenant. The Landlord says despite requests to get the Power of Attorney in writing from the Tenant this was not forthcoming.
- The Landlord says they also discussed with her the possibility of releasing the Tenant from the tenancy agreement and re-advertising the premises. However, the mother indicated that the Tenant did not want to be released from the tenancy agreement. As a result of these discussions with the mother the Landlord sent the Tenant a letter dated 18 August 2002 in an attempt to try to get the premises relet to another tenant. The Landlord in support of his application submitted a copy of this letter and it indicates that the Landlord as well as the tenant mother had signed the letter. The Landlord asked the mother to fax the letter to the Tenant however she said she did not know how to use a fax and would contact the Tenant with the details.

- The Landlord says they approached the tenant's mother in an attempt to find out contact details for the Tenant in Queensland on numerous occasions in early July, mid July, early August and 18 August 2002. These attempts were unsuccessful and she refused to give them contact details for the Tenant.
- It also appears the Tenant had a number of personal issues which are not relevant for the purpose of this Inquiry.
- The Landlord says the whole situation was starting to cause them stress so a couple of times on 18 August 2002 they tried to visit the the mother, but she refused contact with the Landlord and did this by leaving a notice on her door.
- As a result of these circumstances the Landlord issued a Notice of Termination seeking to remedy unpaid rent dated 28 August 2002. They mailed this Notice of Termination to the Tenant at her last known address being the address of the premises as well as to the Tenant's mother's address. The Landlord says that the Tenant did not remedy the unpaid rent and did not contact the Landlord at all following the issue of the Notice.
- On 9 September 2002, the Landlord went to the premises and found that all the furniture had been removed from the premises. The Landlord says that neighbours at the premises indicated that the Tenant's mother had removed all her furniture.
- The Landlord contacted the Tenants mother in the evening on 9 September 2002 and she indicated that she had removed all her furniture that she had loaned to the Tenant. She also indicated she did not want her furniture to be sold to pay the Tenant's bills and had left the rest of the furniture and gear that was not hers. Some of the goods left in the premises belonged to the male friend and included his Commonwealth Army gear.
- The Landlord says he was in Canberra at the time and accepted the premises as being abandoned property on 14 September 2002 when he returned to Darwin. The Landlord says there was a delay in accepting the property as being abandoned between 9 and 14 September as he was interstate. That being said, the Landlord says he had a "gut feeling" on 9 September that the Tenant had "left them in the lurch".
- The evidence of the Landlord is that they made numerous attempts to try to locate the Tenant in the Brisbane area. They contacted the hospitals in an attempt to find the Tenant.
- Around 10 September 2002 as a result of the abandonment, the Landlord spoke to the Residential Tenancies Unit about the situation. The Landlord says acting on the advice given by the Unit the Landlord went to the premises on Saturday 14 September 2002 and accepted it as being abandoned.
- The Landlord says on two occasions in late June and on 15 July 2002 they sat down with the tenant's mother and tried to work out how much had been paid by the Tenant in rent and how much was outstanding. The purpose of this meeting was also to figure out how long the Landlord could afford to hold out for the Tenant. The Landlord says the Tenant had not paid any rent since July 2002. The Landlord says the Tenant had a rental receipt book and Ms Hully had contact with her and was taking verbal advice from the Tenant as to the rent payments made.

- The Tenant and her partner, had previously rented the premises on a fixed term agreement for 12 months from 25 January 2001 to 24 January 2002 (“the first tenancy agreement”). However, the marriage broke down, the partner moved out of the premises and the Tenant requested a new lease in her own name at the expiration of the first tenancy agreement (“the current tenancy agreement”). The Landlord has provided for the purposes of the Inquiry a copy of the first tenancy agreement.
- The Landlord says that with respect to the first tenancy agreement the Tenants’ had fully paid up their rent up to and including 24 January 2002.
- The Landlord says that his wife’s assessment was that the premises was abandoned on 9 September 2002. The Tenant’s mother by that stage had said that she did not want anything to do with the tenancy agreement. The Landlord accepted the premises as being abandoned and went out to the premises the following Saturday, being 14 September 2002, to put all the abandoned goods in to storage.
- The Landlord says the outgoing condition report was completed on 31 August 2002 because he knew he was going interstate to Canberra. The Landlord says as they had sent out a Notice of Termination to remedy the unpaid rent and no response had been received by the Tenant he thought he was able to complete the outgoing inspection.
- The Landlord says he suspected that the Tenant would abandon the premises about two days before issuing the Notice of Termination on or about 26 August 2002. The Landlord says that was his first inkling that the premises would be abandoned.
- The Landlord also indicated that he relied on the advice of the Residential Tenancies Unit to the best of his ability and issued the Notice of Termination to remedy the unpaid rent and conducted the outgoing inspection on that date in accordance with that advice. The Landlord says the Unit had told him that he had to do the outgoing inspection as soon as the Notice of Termination had been issued.
- In relation to the outgoing condition report the Landlord says he did not give the Tenant an opportunity to attend the outgoing because he had no way of getting in contact with her. The Landlord says they did not have any forwarding address other than the address of the premises and although they had the Tenant’s mothers address they did not send anything to the Tenant or her mother.
- In relation to the ingoing condition report the Landlord says this was signed on 25 January 2002 and would have been done about that time. As the Tenant had previously been in occupation of the premises given the first tenancy agreement, the Tenant did not sign another ingoing condition report. The Landlord says that as the Tenant’s current tenancy agreement was merely continuing they just took the ingoing condition report from the commencement of the first tenancy agreement between Mr and Ms Tenant. The Landlord says he cannot remember giving two copies of the ingoing condition report to the Tenant.
- The Landlord has also issued a Notice of Intention to Retain the Tenant’s Security Deposit. This Notice was dated and posted on 25 September 2002 to the Tenant by registered post.

- The Landlord says the Notice of Intention to Retain Security Deposit was not sent until 25 September 2002 despite the fact that he had formed the view on 9 September 2002 that the property had abandoned because he had a very busy workload and he was interstate at the time.
- The Landlord says attached to the Notice of Intention to Retain the Security Deposit was the quote from Max's Maintenance Service, his letters dated 18 August and 30 September 2002 as well as the Statutory Declaration sworn 25 September 2002.
- The Landlord says they again tried to contact the Tenant through her mother however she ended up hanging up on them.
- The Landlord says they have incurred \$273.30 in advertising costs right up until the weekend prior to the date of this Inquiry. The Landlord has submitted to the inquiry a facsimile from the NT News dated 8 October 2002 in support of this claim.
- The Landlord says that they have had a couple of queries from prospective tenants however as at the date of the Inquiry the Premises was still vacant. They had to reduce the rent from \$285.00 per week to \$275.00 per week in order to attract tenants.
- In relation to the claim for Max's Maintenance, the Landlord says that the door handles from the door was hanging out and there were numerous scratches to the door jams. This occurred in bedroom two, bedroom three, bathroom and master bedroom and had to be repaired.
- The Landlord says the garage door had been damaged and it looked like it had been "vicously kicked".
- The Landlord says that the knobs and fan switches had been pulled of their sockets and required adjusting and putting back in. The Landlord indicated the bulk of the work on the quote was for the garage door as that was the most extensive damage. The Landlord also indicated that the repair person has been engaged but has not yet performed the work which is scheduled to occur the week of the Inquiry.
- In relation to the cleaning the Landlord has submitted a statement which was signed by the Landlord's wife and undated. The document is entitled "cleaning bill of 15 Maranthes Place, Durack". The Landlord says that his wife charged \$20.00 per hour to clean the premises and the document outlines the various items that had been addressed within it. The Landlord says that if they had have had the premises professionally cleaned it would have cost \$300.00 and that his wife being a Christian even though they have been "burnt" has charged a reasonable amount.
- In relation to the repairs to the reticulation system and garden beds the Landlord indicated the garden was weeded and cleaned. The Tenant's had a cat which had chewed some of the sprinklers and damaged part of the reticulation system. The Landlord indicated he has not charged his labour to repair this damage but has merely charged the cost of materials. The Landlord says that he had to redo all the bark chippings in the garden beds and would have spent about two and a half days cleaning the garden.

- The Landlord says that at the time they could not afford to pay for people to professionally do the cleaning and repairs and accordingly they did a lot of the work themselves.

Upon resumption of the Inquiry on 18 October 2002, Mr and Mrs Landlord appeared on behalf of the Landlord. Once again there was no appearance by the Tenant. The Landlord submitted a letter dated 14 October 2002 to the Inquiry which attaches a copy of the tenancy agreement governing Mr & Ms Tenant dated 25 January 2002 as well as rental receipts and a statement of rental arrears owing. In addition the Landlord has given me copies of telephone records indicating the numerous attempts they have made to contact the Tenant through the hospital and friends of the Tenants. The evidence of the Landlord during the course of the Inquiry on 18 October 2002 was as follows:

- The Landlord had spoken to the Tenant's male friend on 15 October 2002 as well as the Tenant's mother. However they still have not had any contact from the Tenant.
- In relation to the rental payments made by the Tenant, the first payment made by the Tenant was on 24 January 2002. A total of \$6,845.00 has been paid by the Tenant in rent with the last payment being made on or about 18 June 2002. The Tenant has not made any other rent payment since this date. In support of their rental calculations the Landlord had submitted copies of his bank statements.
- The Landlord says that the first tenancy agreement between husband and wife was fully paid up and he is only seeking unpaid rent from the current tenancy agreement.
- The Landlord says that the Tenant's mother, had contacted them since 8 October 2002 and acknowledged that the Tenant owed unpaid rent and wanted to come to an agreement. The Landlord says they indicated to the Tenant's mother that she should show up for the Inquiry and she had said that she would.
- Mrs Landlord says in relation to the ingoing condition report for the first tenancy agreement she spoke to the Tenant prior to 24 January 2001 to do the lease and would have filled out the ingoing condition report on 17 January 2001. Copies of the ingoing condition report was given to the Tenant on 17 January 2001.
- In relation to the ingoing condition report for the current tenancy agreement, Mrs Landlord says she had a conversation with the Tenant who indicated that the ingoing condition report would stand from the first tenancy agreement because the bond was continuing on anyway from the first tenancy agreement. Mrs Landlord says she requested the Tenant to do an end of lease inspection and an ingoing condition report for the purposes of the current tenancy agreement however the Tenant did not agree to this.
- When the Tenant entered into the current tenancy agreement she did not want to do another ingoing condition report as they had already done one over a couple of days in January 2001 before they moved into the premises. Mrs Landlord says that the Tenant asked her to merely photocopy the first ingoing condition report rather than the Tenant having to write it all out again. Accordingly, she photocopied two copies and gave it to the Tenant.

- Mrs Landlord says on the day the current tenancy agreement was signed, she told the Tenant that she would need to go through the premises and indicate what the condition of each room was, ie. whether light switches were working and if not they would arrange to get things fixed. Mrs Landlord says the Tenant did not want to do another ingoing condition report and requested the Landlord to do it on her own. Accordingly the Landlord merely went through the premises and marked it up as per the ingoing condition report submitted for the purposes of this Inquiry.
- In relation to the abandonment of the premises Mrs Landlord indicated that some of the Tenant's things were moved out the weekend after 11 September 2002. Mrs Landlord says when she attended the premises on 9 September 2002 all the electrical things, the television, the entertainment unit had been moved out of the premises. The Landlord says that they cleaned the house on 14 September 2002 as they was due to show the premises the next day. The Landlord says that everything had been moved out of the premises except for one mattress and a great deal of paper and food was left in the cupboards.
- The Landlord says she went back to the premises to clean it only "junk" was left being old shoes, a broken table and the fridge was "really smelly" from rotten food. In addition, the Tenants male friend's army gear was in the rooms and there were some children's toys lying around.
- The Landlord says she definitely went back to the premises to clean it on 14 September 2002. She recalls it as being the weekend after September 11 and says that she remembers it because she was very upset on that day.
- The Landlord says the Tenant has not redirected her mail and there would be about 20 letters in the mailbox which have not been collected by the Tenant.
- The Landlord requests that in the event a compensation order is made the Tenant be given 14 days to pay the amount.

The Tenant's Security Deposit

As the Landlord has issued a Notice of Intention to retain the Tenant's Security Deposit dated 25 September 2002, it is necessary to consider whether the requirements of the Act have been complied with so as to support the Landlord's retention of the Tenant's security deposit.

Section 112 of the Act provides, my emphasis:

Section 112. When Landlord may keep security deposit

- (1) Subject to this section, **a tenant is entitled to have his or her security deposit reimbursed at the end of the tenancy agreement.**
- (2) The landlord must, **within 7 business days after** the tenant gave up vacant possession of the premises or had, **in the opinion of the landlord, apparently abandoned the premises, reimburse to the tenant the amount of the security deposit, other than an amount that the landlord is entitled to retain, or to continue to hold, under this section.**

Penalty 20 penalty units.

- (3) **At the end of a tenancy agreement the landlord is entitled to retain so much of the security deposit paid by the tenant as is necessary to –**
- (a) **make good damage** (other than reasonable wear and tear) to the premises or to ancillary property that occurred during the tenancy and that was caused by a tenant or a person for whose actions a tenant is liable under section 12;
 - (b) **replace ancillary property** lost or destroyed by the tenant or by a person for whose actions the tenant is liable under section 12;
 - (c) **clean the premises** or ancillary property **left unreasonably dirty by the tenant** or by a person for whose actions the tenant is liable under section 12;
 - (d) **replace locks altered, removed or added** by the tenant without the consent of the landlord;
 - (e) **pay for unpaid rent** or for unpaid charges for electricity, gas or water payable by the tenant under section 118;
 - (f) **pay an amount required to be paid under section 121**; or
 - (g) **pay money ordered by the Commissioner or a court** to be paid by a tenant but not paid.
- (4) **The landlord is not entitled to retain some or all of the amount of a security deposit for a purpose referred to in subsection (3)(a), (b) or (c) unless –**
- (a) **a condition report in relation to the premises was accepted by the tenant under Part 5**; and
 - (b) **if the tenant –**
 - (i) has given up vacant possession of the premises – a condition report has been provided to the tenant under section 110; or
 - (ii) **has, in the opinion of the landlord, apparently abandoned the premises – notice has been given to the tenant in accordance with section 110(3)** and, if the tenant demanded copies of the condition report within 7 days after notice was given to the tenant under that section, those copies have been given to the tenant.
- (5) Subject to section 113(2), **the landlord is not entitled to retain, or to continue to hold under subsection (6), part or all of a security deposit unless, within 7 business days after the tenant** gave up vacant possession of the premises or has, in the opinion of the landlord, **apparently abandoned the premises, the landlord has –**
- (a) **given written notice** in the prescribed form, if any, **of his or her intention to retain or continue holding so much of the security deposit as is specified in the notice** for the purpose specified in the notice;

- (b) **attached a copy of a statutory declaration** in the prescribed form, if any, **attesting to the truth of the claim that the retention or continued holding of the security deposit is required for the purpose specified in the notice;**
 - (c) **attached a copy of a statutory declaration attesting that the receipts, invoices or other documents attached to the declaration relate to –**
 - (i) **the matters in respect of which part or all of the security deposit is being withheld from the tenant;** or
 - (ii) **the amount of unpaid** rent owing under the agreement or money owing under section 121;
 - (d) **in the case of damage or unreasonably dirty premises** or ancillary property – **attached copies of receipts, invoices or other documents,** including orders of the Commissioner or a court, **specifying the amount required to make good the damage or clean the premises** or ancillary property; and
 - (e) **returned to the tenant the proportion of security not claimed by the landlord** or not to be held under subsection (6).
- (6) **If, in the opinion of the landlord, the tenant has abandoned the premises, the landlord may continue to hold on trust for the tenant as much of the security deposit as is necessary to ensure that the deposit will be available for payment to the landlord** in accordance with section 122 as compensation for –
- (a) **loss of the rent** that the tenant would have been liable to pay under the agreement if he or she had not abandoned the premises; and
 - (b) **loss caused to the landlord in securing new tenants** for the premises.
- (7) Subject to subsection (9), **an amount of security deposit held by a landlord** under subsection (6) **is to be held on trust for the tenant until –**
- (a) **the Commissioner determine the distribution of the security deposit under section 122;** or
 - (b) if the Commissioner is satisfied that all losses referred to in subsection (6) may be calculated in relation to the tenancy to which the deposit relates – the Commissioner determines the distribution of the deposit on the application of the tenant under this Act.
- (8) The landlord is not entitled to claim under section 122 part or all of the amount of the loss referred to in subsection (6) unless –
- (a) the Commissioner receives an application to determine the distribution of the tenant's deposit; or
 - (b) the loss is claimed under section 122,
- as soon as practicable after the loss can be calculated and in any case within 3 months from the date on which the tenant apparently abandoned the premises.

- (9) If the landlord ceases under subsection (8) to be entitled to claim part or all of the amount of the loss referred to in subsection (6), the tenant is entitled to as much of the security deposit as the landlord continued to hold on trust for the tenant under subsection (6) and section 116 applies accordingly.

The evidence of the Landlord in relation to the apparent abandonment of the premises is that this occurred either on 9 September or 14 September 2002. The Landlord had formed a view on 9 September 2002 that the premises had been abandoned when they went to the premises and found that the furniture had been removed from it. The fact that the Landlord's did not have time to go to and clean the premises until 14 September 2002 is, in my view, not determinative of whether the Tenant has abandoned the premises. Given the Landlord had not heard from the Tenant at all in relation to the premises and given the removal of furniture from the premises, I am of the view the Landlord could and did reasonably considered that the Tenant had abandoned the premises and relinquished any claim she may have had to the premises as at 9 September 2002. On balance, based on the evidence before the Inquiry, I find that the Tenant abandoned the premises as at 9 September 2002

It is clear section 112(4) of the Act provides that the Landlord is not entitled to retain any part of the Tenant's security deposit to make good damage, replace ancillary property or clean premises left in an unreasonably dirty condition unless the condition report has been given to the Tenant in accordance with section 110(3) of the Act. Section 110(3) of the Act requires that two copies of the outgoing condition report are to be given to the Tenant within three business days after the Landlord has formed the opinion that the Tenant has apparently abandoned the premises.

The Landlord indicated during the course of the Inquiry that he did not send the outgoing condition report to the Tenant as he did not have a forwarding address. In addition I note the evidence of the Landlord is that the outgoing condition report was completed initially on 30 August 2002 and then verified on 14 September 2002. As I have found the premises was abandoned on 9 September 2002, it was incumbent on the Landlord to complete the outgoing condition report and send it to the Tenant by 12 September 2002, which is three business days of them becoming aware that the premises had been abandoned. In the circumstances I find that the Landlord has not complied with section 110 of the Act and in accordance with Section 112(4) of the Act the Landlord is not able to retain the security deposit for the purposes of making good damage, replacing ancillary property and cleaning the premises.

In addition, section 112(5) of the Act amongst other things, requires that the Landlord must within seven business days after the Tenant has abandoned the premises give written notice to the Tenant of his intention retain the Tenant's security deposit. Review of the Landlords Notice of Intention to Retain Security Deposit indicates that it was not issued until 25 September 2002 and was sent to the Tenant by registered post on or about this day. Seven business days from the date of the Tenant's abandoning the premises on 9 September 2002 would have expired on 18 September 2002 and it was incumbent on the Landlord to have given the Notice by this date.

I note during the course of the Inquiry, the Landlord indicated that he was away interstate and was unaware that he had to issue the Notice of Intention to Retain Security Deposit within this time frame. Notwithstanding the Landlord's ignorance of the law, section 112 is clear in its terms and its requirements are mandatory. These requirements must be interpreted strictly as the legislature has seen fit to prescribe the circumstances in which Landlords may retain a Tenant's security deposit. On balance, I am not satisfied that the Landlord has complied with section 112(5) of the Act.

That being said, I note section 113(2) of the Act provides, my emphasis:

Section 113 – Commissioner may deal with disputes relating to security deposits

- (2) **Despite section 112(5), the Commissioner may permit a landlord to retain an amount of a security deposit for a purpose specified in section 112(3)(d), (e), (f) or (g), although the landlord has not given the tenant a notice under section 112(5) for that purpose, if the Commissioner is 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 an amount.**

Section 113(2) of the Act gives the Commissioner a discretion to permit a Landlord to retain the Tenant's security deposit despite section 112(5) for *inter alia* replacing locks to the premises, paying unpaid rent and compensation orders if the Commissioner is satisfied the circumstances of the failure of the Landlord to comply with section 112(5) are such that the Landlord ought, despite the failure be permitted to retain that amount. I note, section 113(2) does not apply to money sought to be retained for making good damage, replacing ancillary property or cleaning premises left in an unreasonably dirty condition.

Although generally speaking ignorance of the law is no excuse, on balance, I am of the view the circumstances of the Landlord's failure to give the notice are such that I ought to exercise my discretion under section 113(2) to allow the Landlord to retain this amount of the security deposit for the purpose of unpaid rent. In exercising my discretion I have had regard to: the various attempts by the Landlord to accommodate the Tenant's personal circumstances; the Landlord's numerous attempts to establish a line of communication with the Tenant regarding the current tenancy agreement; and the fact that upon becoming aware of having to issue the Notice of Intention to Retain Security Deposit by the Residential Tenancies Unit, the Landlord attempted to do so forthwith.

Accordingly, I declare that the Landlord is permitted to retain the Tenant's security deposit in the amount of \$1000.00 for the purpose of any unpaid rent, subject to my consideration herein as to whether the Landlord is entitled to an order for compensation in unpaid rent.

Compensation Claim

In considering the Landlord's application for compensation, the onus is on the Landlord to prove on the balance of probabilities that any loss or damage suffered by them is a result of the Tenant's breach of her obligations under the tenancy agreement.

Generally speaking, I was impressed by the Landlord's evidence which I found to be credible. In the absence of the Tenant who has not availed herself or a representative to the Inquiry, I accept the Landlord's evidence as being a reasonable indicator of the state of the premises upon the Tenant's abandonment.

It was abundantly clear during the course of the Inquiry that the Landlord has tried to accommodate the personal difficulties being encountered by the Tenant and have approached this dispute in a fair and reasonable manner, at times to their own detriment.

The Tenant's obligations with respect to cleanliness and damage is governed by section 51 of the Act, which provides, my emphasis:

Section 51 – Cleanliness and damage

- (1) It is a **term of a tenancy agreement** that a tenant –
 - (a) **will not maintain the premises and ancillary property in an unreasonably dirty condition, allowing for reasonable wear and tear;**
 - (b) must **notify the landlord of any damage or apparent potential damage to the premises** or ancillary property, other than damage of a negligible kind;
 - (c) **must not intentionally or negligently cause or permit damage to the premises or ancillary property;**
 - (d) if the premises are a unit within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act;
 - (e) if the premises are a building lot within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act; and
 - (f) if the premises are a lot within the meaning of Part IVB of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act.
- (2) It is a **term of tenancy agreement that at the end of the tenancy the tenant must give the premise and ancillary property back to the landlord** –
 - (a) **in reasonable state of repair;** and
 - (b) **in a reasonably clean condition,**
allowing for reasonable wear and tear.
- (3) A tenant is not in breach of the term of the agreement specified in subsection (1) or (2) if –
 - (a) the breach is caused by the landlord's failure to repair or maintain the premises or ancillary property; and
 - (b) the landlord had notice that the repairs or maintenance were required.
- (4) **In deciding whether premises or ancillary property are in reasonable condition or in a reasonably clean condition,** a landlord, **the Commissioner** or a court **must take into account** –
 - (a) **the condition of the premises or ancillary property when the tenant took possession** of them as determined by a condition report, if any, accepted under Part 5 by the Landlord and the tenant;

- (b) if the tenancy agreement has terminated or **the tenant has, in the opinion of the landlord, apparently abandoned the premises – the condition of the premises or ancillary property as determined by a condition report, if any, accepted under Part 12** by the landlord and the tenant; and
 - (c) **the effect of reasonable wear and tear** during the tenancy.
- (5) If a condition report was not accepted by the landlord and the tenant in relation to the premises or ancillary property under Part 5 –
- (a) the tenant is to be taken to have complied with the term of the agreement specified in subsection (1); and
 - (b) if the tenancy agreement has terminated or the tenant has, in the opinion of the landlord, apparently abandoned the premises – the premises or ancillary property are to be taken to have been at the time when the tenant took possession of the premises under the tenancy agreement, in the condition they are at the end of the tenancy agreement.

In addition, I note section 122(3) provides the matters that must be taken into account by the Commissioner in assessing whether or not to order compensation for loss or damage suffered by the Landlord. I am satisfied on the basis of the information for the Inquiry that the parties completed an ingoing condition report for the purposes of Part 5 of the Act. That being said I am not satisfied that the outgoing condition report has been accepted by the parties but in the absence of the Tenant and given my findings that the Landlord’s evidence is credible, I accept that the outgoing condition report is a reasonable indicator of the state of the premises upon the Tenant’s abandonment.

Repairs by Max’s Maintenance Service

The Landlord claims \$565.00 being for repairs to various door frames in the premises, sanding back and touching up the paintwork on the door frames, replacing knobs on fan switches as well as to replace and paint a damage garage door.

The evidence of the Landlord was that the door handles were hanging out of the door and there were a lot of scratches through the door jams. The Landlord says this damage was in bedroom two, bedroom three, the master bedroom and the bathroom. In addition the Landlord says the garage door needed repairing as it looked like it had been kicked in. The knobs on the fan switches had also been pulled out and required adjusting and replacing. The Landlord says that the bulk of the work had to go into the garage door as that was the most significantly damaged. A perusal of the Landlords outgoing condition report indicates that the bottom of the garage door had been “viscously kicked” and was broken. The outgoing condition report also supports the Landlords oral evidence with respect to the broken fan switches as well as the damage to the door jam.

On balance, I am satisfied the Tenant has breached her obligation to return the premises in a reasonable state of repair and that the damage claimed by the Landlord does not amount to “reasonable wear and tear”. I am also satisfied that \$565.00 claimed by the Landlord is reasonable given the work that had to be undertaken. In these circumstances, I order that the Tenant pay the Landlord compensation in the amount of \$565.00.

Cleaning Claim

The Landlord claims \$120.00 being for cleaning the premises and in support of this claim has submitted a cleaning bill signed by Ms Landlord which outlines the various things that were addressed.

The Landlord says that they did the work themselves and had they gotten a professional cleaner it would have cost them in the vicinity of \$300.00. His wife has only charged \$20.00 per hour for a six hour period and says this amount is reasonable. A perusal of the outgoing condition report indicates that the majority of the premises needed cleaning and I am satisfied that upon the abandonment of the premises the Tenant did not return it to the Landlord in a reasonably clean condition. I have reviewed the cleaning bill and given the itemised cleaning that was undertaken, I am satisfied that \$120.00 charged by the Landlord is reasonable.

Accordingly, I order that the Tenant pay the Landlord \$120.00 being for cleaning.

Repairs to the reticulation system and garden beds

The Landlord claims the costs associated with repairing the reticulation system and garden beds of the premises in the amount of \$39.00.

The evidence of the Landlord is that the garden had to be weeded and cleaned. The Tenant had a cat who had chewed up and damaged some of the sprinklers on the reticulation system. The Landlord says he spent two and a half days cleaning the garden and has not charged his labour but has charged the costs associated with buying hoses and bark chippings. The Landlord says that because of his financial circumstances they could not afford to get someone to professionally do the work so they did it themselves to save costs. The evidence of the Landlord is supported by a review of the outgoing condition report and I am satisfied that the repairs were necessary and can be attributed to the Tenant's failure to return the premises in a reasonable state of repair and in a reasonably clean condition. I am also satisfied that the amount claimed by the Landlord is reasonable.

Accordingly, I order the Tenant pay the Landlord \$39.00 being for repairs to the reticulation and garden beds.

Unpaid Rent

The Landlord claims unpaid rent as a result of the Tenant's breach of her obligation to pay rent under the tenancy agreement. The parties had entered into a fixed term tenancy commencing on 25 January 2002 for 12 months to 24 January 2003. The Landlord claims unpaid rent right up to the date of the Inquiry. The evidence of the Landlord is that the Tenant, prior to abandoning the premises, had been in arrears of rent with the last payment in rent received from the Tenant on 18 June 2002. In support of his claim the Landlord has provided copies of his bank statement and a letter which details the rental receipts that have been made by the Tenant dated 14 October 2002. This statement indicates that the Tenant during the course of the current tenancy agreement had paid a total of \$6,845.00 in rent. On balance I am satisfied that the statement by the Landlord with his bank statements in support indicate the amounts that have in fact been paid by the Tenant in rent during the course of the tenancy agreement.

The Landlord indicated as at the date of the Inquiry that they still have not been able to find alternative tenants for the premises. They have been advertising the premises consistently in an attempt to get new tenants for the premises and they have also reduced the rent having initially advertised it at \$285.00 per week and are now advertising it for \$275.00 per week. The Landlord submitted copies of the advertisements they have taken out for the premises and a schedule from the NT News on facsimile dated 8 October 2002 which indicates that the Landlord has incurred a total of \$273.30 in advertising costs.

I am satisfied, based on the evidence of the Landlord during the course of the inquiry, that they have attempted to mitigate their loss and should be entitled to an order for compensation in unpaid rent as a result of the Tenants abandonment of the premises.

According to my calculations the amount of unpaid rent can be calculated as follows:

From 25 January 2002 to 8 October 2002 (the date of the Inquiry) = 36 weeks
+ 5 days

The amount of rent payable for this period = $[36 \times 285 + (285 \div 7 \times 5)] =$
\$10,463.57

The amount of rent in fact paid by the Tenant during the course of the tenancy agreement as indicated by the statement of the Landlord dated 14 October 2002 = \$6,845.00.

In addition, the evidence of the Landlord is that they have also received \$230.00 from the male friend who has agreed to pay this amount off any unpaid rent. Therefore, the amount of unpaid rent = $(\$10,463.57 - \$6,845.00 - \$230.00 =)$ \$3,388.57.

This amount equates to approximately 12 weeks rent being for the period from 17 July to 8 October 2002 (inclusive).

I am satisfied the Landlord is entitled to compensation in the amount of \$3,388.57 being the unpaid rent for period from 17 July to 8 October 2002 (inclusive).

As I have indicated herein, I am satisfied the Landlord ought to be permitted to retain the Tenant's security deposit in the amount of \$1,000.00 for unpaid rent. Therefore, taking into account the security deposit, $(\$3,388.57 - \$1,000.00 =)$ \$2,388.57 remains outstanding.

Accordingly, I order the Tenant pay the Landlord compensation in the amount of \$2,388.57 being for unpaid rent.

Advertising claim

On the basis of the evidence before the Inquiry I am also satisfied that the Landlord had to advertise the premises as a result of the Tenant abandonment of the premises and that the Landlord has attempted to mitigate his loss. I am also satisfied that the amount claimed by the Landlord is reasonable.

Accordingly I order the Tenant pay the Landlord \$273.30 in compensation being for the costs associated with advertising.

Orders

On the basis of the above, I order:

1. The Landlord is permitted to retain the Tenant's security deposit in the amount of \$1,000.00 being for unpaid rent.
2. The Tenant must, within 14 days from the date of this order pay the Landlord compensation in the amount of \$3,385.87 being for:

Repairs by Max's Maintenance Service	\$ 565.00
Cleaning of Premises	\$ 120.00
Repairs to reticulation system & garden beds	\$ 39.00
Unpaid rent (taking into account security deposit retained at order 1 = \$3,388.57 - \$1,000.00)	\$2,388.57
Advertising of premises for reletting	\$ 273.30

Dated this 13th day of November 2002

Penny Turner
Delegate of the
Commissioner of Tenancies