

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 5 DECEMBER 2002

This is a determination of an application dated 21 November 2002 by the Landlord, seeking an order for possession pursuant to section 104 and for access to the premises pursuant to sections 74 and 77 of the *Residential Tenancies Act* (NT) (“the Act”). The Tenants have also made an application dated 21 November 2002 to determine the validity of the notice of termination pursuant to section 84 of the Act and the return of their security deposit. Both applications are made in respect of premises being 2 Coen Street, Wagaman in the Northern Territory of Australia.

A Notice of Inquiry dated 22 November 2002 was posted to the parties. The inquiry was initially listed to occur on 29 November 2002. However, by consent, the inquiry was adjourned to 5 December 2002, during which evidence was taken from the Landlord, (“the Landlord”). The tenants also appeared at the inquiry (“the Tenant”). Given the nature of the disputes between the parties, both applications were heard jointly.

There were a number of issues between the parties, including the terms of the tenancy agreement. The parties had negotiated a ‘rent free period’ after taking possession some time on or about 17 August 2001 in return for repairs to the pool and around the premises. The parties had signed a written tenancy agreement on 17 September 2001, however, the Landlord cannot locate this. Evidence was given by all present in relation to the terms of the tenancy agreement governing the parties.

Significantly, the parties’ evidence in relation to the term of the tenancy agreement was directly contradictory. Both parties agreed that the tenancy agreement commenced on or about 17 September 2001, however, the Landlord asserted the term of the agreement was for a twelve-month period. The Tenant’s asserted that the term of the tenancy agreement was for a two-year term. I found it necessary to take evidence on oath from both parties in relation to this issue. On balance, I prefer the evidence of the Tenant’s in relation to the term of the tenancy agreement and I find it was for a two-year period commencing on 17 September 2001.

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:	2 Coen Street, Wagaman NT 0810
Commencement Date:	17 September 2001
Period:	2 years
Rent:	\$280.00 per week
Security Deposit	\$1,120.00

In addition, based on the evidence given during the course of the inquiry, I find:

- The Tenant entered into possession of the premises on or about 17 August 2001.
- The parties negotiated a 'rent free period' amounting to approximately four weeks as repairs were necessary to the premises and to the pool.
- The Tenant's did not have to pay rent from 17 August 2001 to 16 September 2001, inclusive.
- The Tenant agreed to do the work for the pool and other repairs during this rent-free period.
- The Landlord agreed to payment for the repairs to the pool and materials incurred by the Tenant in the amount of \$1,232.47 being utilised for the purpose of the Tenant's security deposit and rent. In addition, the Tenant's paid on or about 21 September 2001 an amount of \$448.00 into the Landlord's bank account. Both these amounts represent the Tenant's security deposit, in the amount of \$1,120.00 plus two weeks rent in the amount of \$560.00 for the purpose of the tenancy agreement.
- The Tenant's were to pay rent, one week in advance commencing on 17 September 2001.
- The tenancy agreement was for a 2-year fixed term and will expire on 17 September 2003.

The Landlord purported to terminate the tenancy agreement, by issuing a Notice of Termination dated 11 October 2002 in accordance with section 90 of the Act ("the Notice"). Section 90 can only be used to terminate a periodical tenancy. In light of the findings I have made above, in relation to the tenancy agreement being for a fixed term of 2-years commencing 17 September 2001 to 17 September 2003, it follows the Notice issued by the Landlord was invalid. I find the tenancy agreement has not been validly terminated in accordance with the Act and I dismiss the Landlord's application for possession.

It was also apparent during the inquiry that the Landlord is purporting to sell the premises and has been attempting to obtain access to the premises for the purpose of obtaining a valuation so she can have the property listed for sale. The Tenant's indicated that they have also been looking for alternative accommodation and want to vacate the premises once they find suitable accommodation. In this context, there was some discussion about a possible resolution of the disputes between the parties and consent orders were agreed to.

I note the parties were explained their obligations regarding allowing reasonable access to the premises for the purpose of prospective purchasers under section 74 and 76 of the Act as well as the security deposit and return of it under section 112 of the Act.

On the basis of the above, I order:

The Landlord's application dated 21 November 2002 for possession of the premises is dismissed.

By consent of both parties, I order:

1. The Landlord is permitted to enter the premises for the purpose of obtaining a valuation on the premises between 5.00pm to 6.00pm on Monday, 9 December 2002.
2. The parties agree and acknowledge the Tenant has until 28 February 2003 to find alternative accommodation.
3. Should the Tenant find alternative accommodation prior to 28 February 2003, the Landlord shall consent to the Tenant's terminating the tenancy agreement and vacating the premises with two weeks notice to be given to the Landlord prior to vacating.
4. The tenancy agreement governing the parties shall terminate on Monday, 3 March 2003.
5. The Landlord shall be given vacant possession of the premises effective as at 4pm on Monday, 3 March 2003.

I commend both parties on their full and frank input into the inquiry and the amicable resolution of the dispute.

Dated this 5th day of December 2002

Penny Turner
Delegate of the
Commissioner of Tenancies