

## REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

### INQUIRY – 19 JULY 2002

This is a determination of an application dated 12 July 2002 by the Landlord (“the Landlord”), seeking an order for possession pursuant to section 104 and for compensation pursuant to sections 121 and 122 of the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being 26 Aldidja Street, Alice Springs in the Northern Territory of Australia.

A Notice of Inquiry dated 15 July 2002 was hand delivered to the Tenant and posted to both of the parties. The inquiry was conducted over the telephone on 19 July 2002 during which evidence was taken from the Landlord’s agent (“the Landlord”) and from the Tenant (“the Tenant”).

At the commencement of the inquiry, it became apparent that the Tenant had not been given copies of the information provided to me for the purposes of the inquiry. The Landlord indicated that the Tenant was aware of the issues before the inquiry as arrears letters had previously been sent to the Tenant. Notwithstanding, natural justice requires that the Tenant be given copies of all information I have before me. Accordingly, copies of this information were provided to the Tenant and the inquiry was adjourned for fifteen (15) minutes so that the Tenant had an opportunity to look at the documents.

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:	26 Aldidja Street, Alice Springs NT 0870
Commencement Date:	9 March 2002
Period:	Six (6) months
Rent:	\$240.00 per week, to be paid fortnightly in advance
Security Deposit	\$960.00

Upon the commencement of the inquiry, the Tenant applied for an adjournment of the inquiry on the basis that amounts in the Landlord’s rental ledger did not correspond. I indicated to the Tenant the only figure I was interested in for the purpose of the inquiry was the amounts he has paid in rent, which could be discerned quite clearly from the ledger and refused his adjournment on this basis. In any event, the Tenant agreed the \$3,330.00 indicated as being paid on the Landlord’s ledger was an accurate indication of the amounts he has paid in rent.

The Tenant during the course of the inquiry submitted that the Landlord’s application dated 12 July 2002 should be dismissed as the Landlord had incorrectly written \$480.00 into the “weekly rental” section of its application. I rejected the Tenant’s argument on the basis that the purpose of the application is to indicate the issues that would be heard before the inquiry. I had before me a copy of the written tenancy agreement, which made it clear the rent payable was \$240.00 per week, which was to be paid fortnightly in advance. Accordingly, the fact the Landlord made an error in its application was not of any consequence and in any event, there is nothing preventing the Landlord from amending its application.

The Landlord by their Agent issued a Notice to Remedy Unpaid Rent/Notice of Termination dated 1 July 2002 (“the Notice”). I find that the rental payments due to the Landlord was more than fourteen (14) days in arrears at the time that the Landlord issued the Notice. The Notice was served on the tenant by post on 4 July 2002 in accordance with section 154 of the Act.

The amount of rent outstanding the period of rent outstanding as specified in the Notice is \$990.00 being for the period 1 June 2002 to 12 July 2002. According to my calculation, I find the \$990.00 amount of rent outstanding as specified in the Notice is correct, however the period to which it relates should in fact be from 14 June 2002 to 12 July 2002.

The issue I must determine is whether the Notice is invalidated by virtue of the Landlord’s error in the Notice, which specifies the period of rent outstanding as being 1 June to 12 July 2002.

The evidence of the Landlord is that the tenant is not disadvantaged by such an error, they understand the Tenant is in a position of hardship, but the Tenant has been sent a number of arrears letters as indicated on the ledger and has previously indicated he will not be paying any further rent. The Tenant has not paid since 17 June 2002 despite knowing he is in arrears. The Landlord wants possession as soon as possible and is in a position of hardship if the possession order is not granted.

The evidence of the Tenant is that he has every intention of paying the rent he has not paid to date and intends to move out of the premises as soon as possible. He has tried to locate alternative accommodation; however, most of the accommodation in Alice Springs is fully booked until the end of October due to the tourist season. His only viable option would be to hire a caravan and place it in his daughter’s driveway at a cost of \$65 per week, however, he needs about \$250.00 to set up and it is currently too cold to camp outside.

Upon being queried by the Landlord regarding Sienna Apartments, who apparently rents premises at \$155.00 per week fully furnished, the Tenant says he does not want to rent there as the manager is ‘hitler’s son’. The Tenant says he has recently been in hospital for a month and had to give up work as a result. His son was living with him at one stage and paying half the rent, but has since moved out. In relation to the ledger and previous arrears letters, the Tenant says a number of the letters were sent to him as a result of him paying at the post office, which takes two days to process his rent payments. Therefore the arrears letters were often sent as a matter of course and makes his situation look worse than it in fact is. In relation to the error in the Notice the Tenant says I should dismiss the Landlord’s application so as to ensure that they issue accurate notices in future.

I reserved my decision on the Landlord’s application, as the issue is one, which is in my view, is difficult to resolve. It seems to me to defeat the purpose of the Act, if landlords are prevented from relief because minor errors have been made as to the calculation of the period in which rent has been outstanding. Ideally, I am of the view the circumstances of each particular case should be considered and it is an issue of fact and degree as to whether such errors invalidate a notice. During such deliberations, the rights of both parties must be fairly balanced.

On the one hand, I have a Landlord who is entitled to rent for his premises and has issued a Notice in an attempt to remedy breaches of the tenancy agreement. The Notice correctly specifies the amount of rent outstanding, but in relation to the period of rent outstanding an error has been made by the Landlord. On the other hand I have a Tenant who is in breach of the tenancy agreement, as at the date of the inquiry had not paid rent since 17 June 2002 and does not currently have the ability to remedy the breach.

The purpose of the Notice is to give the Tenant a reasonable opportunity to remedy breaches of the tenancy agreement, namely the unpaid rent. I note that since the Notice was issued on 4 July 2002, the Tenant has made no payments at all in rent to remedy the breaches. I understand the Tenant is currently in a position of hardship, but the longer that the tenancy persists, in my view, the greater the hardship will be caused to the tenant.

That being said, there is no ability for me under the Act to amend Notices nor take into account the issues I have just raised. One of the fundamental principles of statutory interpretation is that the legislation is to be interpreted literally, giving effect to the ordinary and natural meaning of the words used by the legislature. Section 87(2) of the Act provides, my emphasis:

“A notice is to be signed by the landlord and is to specify –

- (a) the address of the premises to which the notice relates;
- (b) the **amount of rent that is outstanding and the period for which it has been outstanding**; and
- (c) that is the amount is not paid before a day specified in the notice (in this section called the “rent payment day”) that is more than 7 days after the date the notice is given –
  - (i) the tenancy is terminated on the day, later than rent payment day, specified in the notice as the day on which the tenancy terminates (in this section called “termination day”); and
  - (ii) the tenant is to give up vacant possession of the premises to the landlord on termination day.

Section 87(3) provides “if the rent is not paid by the rent payment day, the tenancy is terminated on the termination day”.

It is clear; the Act requires the amount of rent outstanding and the period for which such rent has been outstanding to be specified. As the Landlord in this instance has incorrectly specified the period for which the rent has been outstanding, the Notice dated 4 July 2002 is defective and the tenancy agreement has not been validly terminated. I have no alternative but to dismiss the Landlord’s application.

I note during the inquiry, the Tenant requested these reasons for decision and order be sent to GPO Box ....., Alice Springs NT 0871, due to problems he has had with receiving mail at his residential address. I have acceded to his request.

Dated this 29th day of July 2002

Penny Turner  
Delegate of the  
Commissioner of Tenancies