

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 9 AUGUST 2002

This is a determination of an undated application by the Landlord seeking certain amounts be withheld from the Tenant's security deposit in accordance with section 39(6) of the *Tenancy Act* (NT). The application is made in respect of premises being 96 Freshwater Road, Jingili in the Northern Territory of Australia ("the premises").

A Notice of Inquiry dated 29 July 2002 was posted to the parties. The Inquiry was conducted on 9 August 2002 during which evidence was taken from the Landlord's agent ("the Landlord"). The Tenant appeared ("the Tenant") by telephone link-up.

On the basis of the documentary and oral evidence before the Inquiry, I find there is a tenancy agreement on the following terms:

Premises:	96 Freshwater Road, Jingili
Commencement Date:	11 December 1999
Period:	Monthly Periodical
Rent:	\$300.00 per week
Security Deposit	\$1,200.00

The tenancy agreement was in force immediately before the commencement of the *Residential Tenancies Act* (NT) ("the Act") and pursuant to section 160 of the Act, the *Tenancy Act* (NT) continues to apply to the tenancy agreement. In relation to security deposit disputes, section 161 of the Act provides that the Act has application to such disputes. I am satisfied I have jurisdiction to hear and determine the matter at an inquiry under this Act and note, pursuant to section 161(2) of the Act, I may only make orders of the kind specified in section 39(8) of the *Tenancy Act* which provides:

- (8) Where a matter has been referred to the Commission in accordance with this section, he shall inquire into the matter and may order that such amount (if any) as he considers appropriate having regard to –
 - (a) the cost of making good any damage to the premises or to the goods occasioned during the tenancy;
 - (b) the cost of the cleaning of the premises left unreasonably dirty by the lessee; and
 - (c) any unpaid rent,be paid to the lessor and may order the refund of the balance (if any) to the lessee.

The Landlord is seeking to retain the following amounts from the Tenant's \$1,200.00 security deposit:

1. Unpaid rent from 4 to 8 July 2002 in the amount of \$214.28; and
2. Cleaning costs paid to Yellow Rose Cleaning Service in the amount of \$495.00.

The Landlord has refunded to the Tenant the balance of the security deposit being \$490.72. During the course of the inquiry, the Tenant indicated he was not disputing the amount claimed for unpaid rent. Accordingly, by consent I order that the Landlord is entitled to retain from the security deposit \$214.28, being for unpaid rent from 4 July to 8 July 2002.

There is however dispute in relation to the Landlord's claim of \$495.00 for the cleaning of the premises.

The oral and documentary evidence before the Inquiry from the Landlord is as follows:

- The Landlord submitted a copy of an Ingoing Condition Report which is dated 11 December 1999. In addition, the Landlord produced to the Inquiry a copy of the Outgoing Condition Report which is undated. The Outgoing Condition Report is a copy of the Ingoing Condition Report, except that there are handwritten notations on the left-hand side of the document.
- I note the Tenant was not provided with a copy of this Outgoing Condition Report, however during the Inquiry had no objections to the use of it and did not require a copy be sent to him.
- The Tenancy Agreements between the parties were also produced to the Inquiry. In addition, the Landlord produced to the Inquiry a quote from Nightcliff Cleaning Service Pty Ltd indicating it would cost \$600.00 to clean the house to a reasonable standard. The Landlord also produced a tax invoice from Yellow Rose Cleaning Service which indicates that the cleaning had occurred at a cost of \$495.00. The invoice is dated 15 July 2002.
- I note the Landlord also produced to the Inquiry a copy of the Tenant's rental ledger however, given the Tenant has conceded this amount, it is not necessary for me to rely on this documentation.
- The evidence of the Landlord is that the Tenant vacated on 3 July 2002.
- The outgoing inspection was conducted on 3 July 2002 in the presence of the Tenants. However, the Landlord says that he went around again to the premises on 8 July 2002 to complete the outgoing inspection at which time no further amendments were made to the Outgoing Condition Report.
- The Landlord says that whilst he was filling out the Outgoing Condition Report on 3 July 2002, he would have been about two-thirds of the way through with it when the Tenant started getting hostile. Accordingly, he was unable to complete the condition report on that day and went back on 8 July 2002 to complete it.
- The evidence of the Landlord is that the Outgoing Condition Report produced to the Inquiry is an accurate indication of the status of the premises immediately after the Tenants had vacated the premises.

- The oral evidence of the Landlord is that was that when he did the final inspection, it was apparent that the inside and outside of the premises had not been cleaned.
- The Landlord denies that there was ever any agreement that the Tenants did not have to clean the premises because the premises was to go to auction. The Landlord says that the only agreement between the parties was that the Tenants' would not be obligated to clean the premises if they remained in the property until it was auctioned. Following the auction, the Tenants would then have to vacate the premises.
- I note the Agent was not involved with these negotiations, but says he has since spoken to the Sales Agent and the Landlord who had indicated this was what had transpired.
- Despite this agreement, the Landlord says the Tenant wanted to vacate before the auction was conducted and gave no notice to the owners before doing so as they wanted to leave in a 'hurry'.
- The Landlord says he felt misled by the Tenants who had agreed to stay in the premises until the auction and says at all times the Tenants were responsible for the gardening and the cleaning of the house.
- Generally speaking, the Landlord says that the Tenants were very good tenants and kept the premises during the life of the tenancy agreement in a neat and tidy condition.
- The Landlord concedes it was apparent that the Tenant had attempted to clean bits and pieces within the premises. The Landlord says as is apparent from the Condition Report, there were not a lot of issues in relation to the cleanliness of the premises that he could and did take issue with.
- A Sales Agent was the agent responsible for dealing with the Landlord in respect of the sale of the premises. The evidence from the Property Agent, the agent before the Inquiry, was that Sales Agent and the Landlord had made it clear that the Landlord would clean the premises on the condition that the Tenants remained in the property until it was auctioned. The Landlord says at no time was the Tenants told that they did not have to clean.
- The first time the Agent heard about this alleged agreement was on or about 1 July 2002 when he spoke to the Tenant about it. In addition, the Property Agent says that the Tenants had agreed that they would remain in the premises until at least 10 July 2002, which is why the written tenancy agreement was extended to this date. However, the Tenants' then changed their minds wanting to vacate earlier and he was able to negotiate with the Landlord who agreed to let them vacate earlier on 8 July 2002 rather than 10 July 2002.
- The Landlord could not attend the Inquiry because he lives in New South Wales.
- In relation to the engagement of the cleaners, the Landlord's evidence is that he told the cleaners that they had to bring the property up to a "reasonable" standard. The Landlord says he did not provide instructions to the cleaners as to what specifically needed cleaning in the premises.

- In relation to the premises generally, the Landlord says that if something was mouldy he would describe it as “grubby”. He would not have thought to specifically identify that the walls, for example, were mouldy. The bathroom at the time he did the final inspection was dirty, although the Landlord concedes that the floors were in a good condition and did not require cleaning.
- The Landlord says \$495.00 is reasonable and is a standard cost in order to clean a house. He says that cleaners were very expensive. He had gotten another quote from Nightcliff Cleaning which was more expensive and he engaged the cheaper cleaners. The Landlord does not know if Yellow Rose Cleaning charges at an hourly rate as their methodology for cleaning premises is to assign five or six cleaners who do the cleaning all at one time and they then charge a standard cost.
- In relation to the facsimile dated 6 August 2002 from Ms Brown, the Landlord says that this should not be relied upon as Ms Brown is a friend of the Tenants and had specifically been asked to go to the premises to be a witness.
- When the final inspection was conducted on 3 July 2002 Ms Brown had to act as a sort of a mediator as the situation got very hostile. Ms Brown had told the Property Agent that she knew there would be a dispute but would try to explain to the Tenants that they still needed to do their cleaning.
- The Landlord says that during the whole course of negotiating the vacation of the premises the Tenant had hung up on him on the telephone at least three times and that the whole process of negotiating with the Tenants’ was very hostile.
- The Landlord says that he did not think that he was being ‘hard’. He wanted to avoid any potential conflict with the Tenant and just wants them to understand that he was merely doing his job.

The evidence of the Tenant during the course of the inquiry can be summarised as follows:

- The Tenant disagrees that the premises was left in an unreasonably dirty condition, he says that he, prior to vacating, hosed down all the windows and spent at least half a day cleaning the kitchen cupboards and wiping the walls. The premises is a three-bedroom house which is quite old and the paint was peeling off the walls, but the Tenant denies that there was any mould present.
- In about mid-May 2002 the Tenant was contacted by the Landlord who offered the Tenants’ the first option to buy the premises before it went to auction. At that time, the Landlord asked the Tenants’ whether they would have any objections to having prospective purchasers inspect the property for the purpose of the auction. The Tenant says that he did not take any issue with this as the Landlord had assured him that the Tenants’ would not need to clean the premises if they vacated as the Landlord would get cleaners and contractors into the property prior to it going to auction. The Landlord told the Tenants that the Sales Agent would be contacting him about the inspection dates.
- In late May 2002 the Tenant contacted the Sales Agent to discuss the marketing dates for the inspections.

- In early July 2002 the premises was open for inspection on 6 & 7 July 2002. The Tenant says that the Sales Agent, with another property manager, inspected the premises. At this time he brought through agents as well as painters and cleaning contractors to give quotes for the premises.
- The Tenant says that he informed the Sales Agent that he intended to vacate the premises on 6 July 2002. The Sales Agent told him he did not have to put his notice of intention to vacate in writing and also reconfirmed the Landlord's representation that the Tenant's would not be required to do any cleaning. The Tenant says he specifically asked the Sales Agent whether or not they should keep their gardener on (the Tenant's had a gardener who used to visit the premises to do the gardening once a week). The Tenant says the Sales Agent inquired as to how much the gardener cost and told him he would organise the gardening with the owner. As a result of this representation, the Tenant let their gardener go.
- A week or so later the Sales Agent took the painter to the premises and obtained a second quote to have all the bedroom repainted.
- The Tenant subsequently vacated on 4 July 2002.
- The Tenant denies that they agreed to stay in the premises to the date of the auction. The Tenant said the he arranged with the Sales Agent for the electricity to be disconnected on 4 July 2002 however they would be leaving a day earlier on 3 July 2002.
- The Tenant says he spoke to the Property Agent, who is the agent managing the rental of the premises on or about 1 July 2002. During the telephone conversation, the Property Agent said he did not know about the contractors who had come into the premises to do the quotes and knew nothing of the agreement that the Tenant had with the Landlord with respect to the cleaning and the gardening. The Property Agent told the Tenants it was their responsibility to have the premises cleaned to which the Tenant told him to contact the Sales Agent about the agreement that had been reached with the Landlord. The evidence from the Property Agent is that he was unable to contact Sales Agent with respect to this alleged agreement given that he was on holidays. The Tenant says during this conversation the Property Agent told him that he would be around to the premises on 3 July 2002 to carry out the final inspection.
- As a result of this conversation the Tenant says he spent the next day and a half cleaning as well as packing in order to vacate the premises. The Tenant says he hosed through all the windows, cleaned the cupboards, wiping them both on the inside and out. As far as the walls being dirty the Tenant says that it was normal wear and tear and that the marks could be cleaned however it was apparent that the walls needed a repaint as the paint was peeling in certain areas.
- The Tenant says the house was as clean as when they moved into it. The Tenant says that during all the inspections they have had with the Property Management, they have had nothing but excellent reports.
- In any event, the Tenant says that they acted in good faith on the agreement from the owner and the Sales Agent that they would not have to worry about cleaning the premises.

- The Tenant says that the house was very old and had been built just after the cyclone. The paint was peeling on the walls on the main room and the louvres had dust embedded in them.
- The Tenant says he resided in the premises for 2½ years and had an excellent history of inspections with respect to maintaining the premises. He had taken the word of the Sales Agent, who he believed was representing the Landlord and was shocked to discover that he was required to ‘foot the bill’ for the cleaning.
- The Tenant says that \$495.00 is excessive, it is not the normal charge for the cleaning of the house but amounted to the cost of detailing the premises in readiness for the auction. The Tenant says he is a cleaning supervisor and could have arranged the cleaning at the fraction of the price, being \$150.00. The Tenant says that the average rate for cleaning is \$15.00 per hour and a \$495.00 charge amounts to 33 hours of cleaning which is unreasonable.
- The Tenant says he knew that the property manager with respect to the rental was the Property Agent however he assumed given that the Sales Agent was also from the same Property Management company that he was also representing the Landlord.
- The Tenant sought to rely on a facsimile dated 6 August 2002 of Ms Brown who is a friend of the Tenants. The Tenant says Ms Brown is a real estate agent who would have some idea of what “reasonable” condition amounted to. The Tenant says that the Ms Brown is employed by Real Estate and is a reputable real estate agent in Darwin. The Tenant denies that he had pre-arranged for Ms Brown to be in attendance at the premises to act as a witness and says that Ms Brown dropped in to say ‘goodbye’ of her own accord. The facsimile essentially states that the premises was in reasonable condition, although paint was peeling off the walls.
- In relation to the cleaning of the windows the Tenant says he had the hose inside the house and hosed the windows down so that the water ran outside. The Tenant says that he wiped all the louvres which were old style Darwin louvres. In relation to the cupboards the Tenant says he used Spray & Wipe to wipe the cupboards down and Windex was used on the louvres. The Tenant says he used Ajax in the bathroom and toilet. The Tenant says he vacuumed and moped the floors and had to re-mop it after the cupboards had been cleaned with Spray & Wipe.
- The Tenant emphatically says that at no time did they agree to stay in the premises until the premises was auctioned. He says that it was impracticable to do so and that he and his partner could not live there whilst painters and cleaners had to go about doing their work in order to bring the premises ‘up to scratch’ for the auction.
- The Tenant says in any event when they moved into the premises the house is prone to dust and dead geckos and that once a week he would have had to remove quite a number of them.

The only issue that requires determination is whether or not the premises was left in an unreasonably dirty condition by the Tenant and if so, whether the \$495.00 cleaning charge is a reasonable amount.

The evidence from the Tenant is that he did not thoroughly clean the premises because he relied on certain representations made by the owner through his agent the Sales Agent. The representations were to the effect that he did not have to clean the premises because it was being put up for auction and the Landlord would be getting contractors in to bring the premises up to a suitable condition for the auction. On balance, I am satisfied that representations were made to the Tenant by the Landlord to this effect.

I note the Landlord denied these representations, but the agent present during the inquiry was not involved in the relevant negotiations and gave second hand evidence as to his understanding of the agreement reached between the parties. Although the Property Agent did the best he could to explain the agreement, the relevant people being the Sales Agent and the Landlord were not present during the inquiry to give evidence. On balance, I prefer the Tenants version of events. It seems to me that the Tenants', given their history good in the premises, would not have left it without cleaning had these representations not been made by the Landlord.

In any event, the Tenant, after having a conversation with the Property Agent on 1 July 2002, who contradicted his understanding of the agreement with the Sales Agent and the Landlord, attempted to clean the premises. I accept the evidence of the Tenant when he says that he spent a day and a half on cleaning the premises after speaking to Property Agent, irrespective of the fact that it did not accord with his understanding of his agreement with Sales Agent and the Landlord. I note the Outgoing Condition Report indicates there were various places where the premises was described as having cobwebs, dirty grubby and containing traffic marks. However as is apparent from the Outgoing Condition Report, the majority of the premises was in a good and clean condition.

Given the representations made by the Landlord to the effect that the Tenant did not have to undertake the cleaning and gardening of the premises and notwithstanding some of the premises has been marked on the Outgoing Condition Report as being 'dirty, grubby etc' state, I am satisfied in the circumstances that the Tenant has complied with his obligation to deliver the premises in reasonable condition. I note I am of the view that the deficiencies in the Outgoing Condition Report is reasonable in the circumstances and does not amount to an "unreasonably dirty condition" so as to require cleaning as that obligation had been varied by the Landlord's positive representations in this regard. Accordingly, I find the Tenant did not leave the premise in an unreasonably dirty condition.

Even if I am wrong in this view, I am not satisfied that \$495.00 is a reasonable consequence of the Tenant's breach of their obligation to deliver the premises in good order. The invoice from Yellow Rose Cleaning Service dated 15 July 2002 outlines that the walls and ceilings in the bedroom were cleaned as they were covered in mould, all louvres had a wipe over, mould was removed from the bathroom and toilet, the kitchen was given a complete clean and was described as "very dirty", cobwebs were removed and the floors were vacuumed and moped. I note that the Outgoing Condition Report does not in my view indicate that all these matters, as indicated in the Cleaner's invoice, required cleaning.

In particular, the Outgoing Condition Report does not indicate that the kitchen required cleaning. In fact the only deficiency in the kitchen as indicated by the Outgoing Condition Report is that the external cupboards were described as "grubby", yet despite this the Cleaners saw fit to describe the kitchen as requiring a "complete clean.... very dirty". In addition, I note the invoice from Yellow Rose Cleaning indicates the floors were cleaned, however the Landlord conceded during the inquiry such cleaning was not necessary.

The Landlord's evidence during the Inquiry was that he told the cleaners that they had to bring the premises up to a "reasonable condition". It is obvious from the reference to the complete clean of the kitchen by the Cleaners and the Outgoing Condition Report that what is a "reasonable condition" for the professional cleaners does not accord with the Landlord's assessment of a reasonable condition. Accordingly, I find that the \$495.00 charge is excessive and the Landlord has failed to satisfy me that the amount claimed is a reasonable consequence of any failure by the Tenants to deliver the premises in a reasonably clean condition.

On balance, and in light of all the evidence before the Inquiry, I am satisfied that the Landlord made certain representations to the Tenant to the effect that he would not be required to clean the premises nor do any gardening. In reliance on this representation, the Tenant assumed that he did not have clean and when he found out that this assumption was incorrect, he did the best that he could do in the circumstances to clean the premises. In these circumstances, I find the Tenants did not leave the premises in an unreasonably dirty condition. In any event, I find that the cleaning conducted by Yellow Rose Cleaning Service is not a reasonable consequence of any failure by the Tenants' to deliver the premises in a reasonably clean condition. In my view the cleaning is more likely to have been instigated by the Landlord in preparation for the auction of the premises.

Accordingly, I make the following orders:

1. By consent, the Landlord is entitled to retain from the Tenants' security deposit \$214.28 being for unpaid rent from 4 July to 8 July 2002; and
2. The Landlord's application for cleaning premises left unreasonably dirty in the amount of \$495.00 is dismissed and I order that the Landlord return the \$495.00 retained from the Tenants' security deposit forthwith.

Dated this 19th day of August 2002

Penny Turner
Delegate of the
Commissioner of Tenancies