

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES

INQUIRY – 19 JULY 2002

This is a determination of an application dated 15th July 2002 by the landlords (“the Landlord”), seeking an order for possession pursuant to section 104 and for compensation pursuant to section 121 and 122 of the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being 65 McMinn Drive, McMinns Lagoon in the Northern Territory of Australia.

A Notice of Inquiry dated 15th July 2002 was faxed to the tenant and posted to both of the parties. The inquiry was conducted on 19th July 2002 during which evidence was taken for the Landlord, accompanied by her agent (“the Landlord”). The Mr Tenant appeared for the Tenant (“the Tenant”).

In my reasons for orders dated 5 July 2002 I made findings in relation to the existence of a tenancy agreement within the meaning of and subject to the provisions of the Act on the following terms:

Premises:	65 McMinn Drive McMinns Lagoon NT 0836
Commencement Date:	13 August 2001
Period:	weekly periodical
Rent:	\$200 per week to be paid into the Landlord’s bank account, one week in advance.
Security Deposit	nil

In addition, in my reasons for decision dated 10 July 2002, I declared that the tenancy had been validly terminated effective 9 July 2002. As a consequence of this declaration, the Landlord has brought an application for possession of the premises and for compensation.

I indicated to the parties, given my reasons for decision on 5 and 10 July 2002, the only issue I was concerned with was whether there was any reasons an order for possession should not be given to the Landlord.

I note in passing the Tenant was in my view quite belligerent during the course of the inquiry about issues that have previously been dealt with in my reasons of 5 and 10 July 2002 and his perceptions of the errors I had made therein. He was told he has a right of appeal which must be instituted within 14 days after receiving the decision of 10 July 2002. Despite my numerous attempts to find out if he will suffer any hardship in the event a possession order was made he was determined to revisit the issues previously decided by me with respect to this tenancy agreement. I indicated to the Tenant during the course of the inquiry, the issues he was seeking to revisit had been determined and was irrelevant to the Landlord’s present application for possession of the premises.

In relation to the issues relevant to the Landlord's application for possession, the evidence of the Tenant, during the course of the inquiry can be summarised as followed:

- He was going away on Sunday, 21 July 2002, for 7 weeks on contract work and he would need people to assist him with moving his gear.
- He has been looking hard for alternative accommodation, but has not found any suitable alternative.
- It costs money to move. He does have a 14 year old child who he is supporting, but the child does not live with him.
- The Tenant also indicated, on 15 July 2002, he had deposited \$400.00 into the Landlord's bank account and will be depositing another \$400.00 into the bank account on the day of the inquiry. Upon being asked for a deposit slip for the 15 July 2002 transaction, the Tenant said he did not bring the deposit book with him to the inquiry.

The Landlord's evidence can be summarised as follows:

- She cannot afford to live with the rental income from the Tenant and wanted to find a suitable tenant to pay rent as soon as possible.
- The only recent payment she has received from the Tenant was on 15 July 2002, in the amount of \$400.00.

The Landlord is *prima facie* entitled to possession of the premises. The Tenant is in breach of the tenancy agreement and despite being aware of such a breach, in my view, has not made any significant attempt to remedy such breach or to reach some sort of amicable compromise. On the basis of all the evidence before the inquiry I am not satisfied that the Tenant would be in a position of severe hardship so as to justify suspension of the order of possession in accordance with section 105 of the Act. I do however take into account that one of the Tenants will be out of town. Accordingly, I order the Landlord be entitled to possession of the premises effective as at 10am on Monday, 29 July 2002.

In relation to the Landlord's claim for compensation pursuant to section 121 and 122, I find the tenant has failed to pay rent in accordance with the tenancy agreement and as at the date of the inquiry remains in possession of the premises.

I make the following findings in relation to the unpaid rent and section 121 compensation:

- In my reasons for order on 10 July 2002, I found the rent outstanding as at the date the Notice to Remedy Unpaid Rent was issued on 26 June 2002 and the period it was outstanding was as follows:

6 May to 30 June 2002 = \$1,600.00

The termination was declared effective as at 9 July 2002, therefore rent outstanding from:

1 July to 9 July 2002 = $(200/7 \times 9\text{days}) = \257.14

Total Rent Outstanding from 6 May to 9 July 2002 = \$1,857.14

- The following payments have been made by the Tenant since the Notice to Remedy Unpaid rent was issued:

25 June 2002 \$200.00

5 July 2002 \$400.00

15 July 2002 \$400.00

Which equates to a total of \$1,000.00 paid by the Tenant.

- Therefore total amount of section 122 compensation being unpaid rent during the course of the tenancy agreement amounts to $(\$1,857.14 - \$1,000.00) = \mathbf{\$857.14}$
- In relation to section 121 compensation, the equivalent amount of rent that would have been payable by the tenant for the premises for the period the tenant remains in possession after the termination of the tenancy agreement can be calculated as followed:

The tenancy terminated on 9 July 2002, therefore equivalent amount in rent payable from:

10 July to 19 July 2002 (the date of the inquiry) = $(200/7 \times 9) = \mathbf{\$257.14}$

- I find the total amount of sections 121 and 122 compensation owed by the Tenant to the Landlord amounts to $(\$857.14 + \$257.14) = \mathbf{\$1,114.28}$.

Accordingly I order that:

1. The Landlord have possession of the premises effective as at 10.00am on Monday, 29 July 2002; and
2. The Tenant is to pay the Landlord compensation in the amount of \$1,114.28.
3. Any further application for compensation is adjourned to a date to be fixed upon further application of the Landlord and notice to the parties.

Dated this 23rd day of July 2002

Penny Turner
Delegate of the
Commissioner of Tenancies