

REASONS FOR THE ORDER OF THE COMMISSIONER OF TENANCIES
INQUIRY – 29 MARCH 2005

This is a determination of an application made by the Tenant. The Tenant, by application dated 15 February 2005, seeks an order for compensation pursuant to section 122 of the *Residential Tenancies Act* (NT) (“the Act”) in respect of premises being 14 Dorrigo Crescent, Karama 0812 in the Northern Territory of Australia (“the premises”).

A Notice of Inquiry dated 2 March 2005 was posted to the parties. The inquiry was conducted on 29 March 2005 during which evidence was taken from the Tenant. Evidence was also taken from the landlord’s agent (“the Landlord”).

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:	14 Dorrigo Crescent, Karama
Commencement Date:	3 September 2004
Period:	52 weeks
Rent:	\$280 per week
Security Deposit	\$1,120.00

The Tenant has made an application for compensation for \$600.00 being for denial of use of three airconditioners and a stove. The Tenant has estimated the loss to her amounts to \$25.00 per week for the period between 3 September 2004 and 11 February 2005 (24 weeks).

The documentary and oral evidence of the Tenant before the inquiry can be summarised as follows:

- The premises were advertised as a three bedroom fully airconditioned low set brick home.
- The Tenant was given the Condition Report on Friday 3 September 2004. She still had to clean the premises she was living in and was unable to return the Condition Report to the Landlord within 5 working days (13 September 2004). The Condition Report was returned to the Landlord on 16 September 2004.
- The amendments to the Conditional Report by the Tenant included:
 - Airconditioner to bedroom 2 does not work
 - Airconditioner to bedroom 3 does not work
 - Insect infestation
 - Hot plates on stove cannot be regulated; only one temperature “burn”
 - Window sills filthy
 - Rear screen door off its tracks
 - Handle to cold water tap in kitchen not secure (falls off)
 - Handle to cold water tap in bathroom not secure (falls off)

- Window in main bedroom does not open (no runners)
- Overgrown shrub on garden shed needs to be removed.
- 13 to 28 October 2004 the Tenant travelled to Alice Springs for reasons of work.
- On 28 October 2004, the Tenant contacted the Landlord to advise that she had returned to Darwin, she had received all her mail, and received the letter advising her of the periodical inspection due 8 November 2004.
- The Tenant travelled to Queensland to attend a funeral on 6 November 2004 and returned to Darwin on 10 November 2004. She explained this in an email to the Landlord. She missed the inspection date on 17 November 2004 because she had been delayed at work.
- The Tenant notified the Landlord again that the airconditioners were not working. It was becoming unbearable for her daughters to sleep in their rooms because it was just too hot. She also raised the other issues noted in the amendments to the Condition Report and identified in an email to the landlord's agent. A new inspection date was arranged for 25 November 2004.
- At that inspection the Tenant provided a detailed list of work that needed to be done at the premises. These were the same faults which had been notified to the Landlord on 16 September 2004 in the Condition Report. The Tenant also advised, at this time, that there were rats in the ceiling.
- On 7 December 2004, the Tenant was contacted by the Landlord for rent in arrears. The Tenant asked when the repairs were going to happen. The Tenant, again, told the Landlord that the airconditioners were still not working and that it was too hot for her daughters to sleep in their bedrooms. They had been sleeping in the lounge room as that airconditioner worked reasonably well.
- On 14 December 2004, the Tenant contacted the Landlord again and enquired as to the status of the repairs.
- On the afternoon of 14 December 2004, the Tenant was contacted by the Landlord's son (John). He attended the premises and inspected, the airconditioners in all rooms, the stove, the flyscreen in one bedroom and the screen door at the back entrance.
- On 15 December 2004, John attended the premises to inspect faults as identified by the Tenant. He said the airconditioners were working but could possibly need regasing or if they were unable to be repaired, replacing them; he said that he would be getting his mother's credit card details to order a new stove; the owner's son tried to fix the rear screen door on that day but was unsuccessful. He noted the screen in the Tenants daughters' room and he said he would have that fixed in a few days. John said that the screen in one room would be repaired and that a replacement stove will be purchased. The Tenant was given a timeframe of "over the next few days" to expect the repairs to be carried out.
- The screen was never fixed before the Tenant left the premises.
- On 23 December 2004, a new stove was delivered and sat in a box in the lounge room of the premises until 11 February 2005.
- On 11 February 2005, the Tenant was informed of another house inspection.

- The Tenant admits she fell behind in her rent over the Christmas period and received three Notices to Remedy Rent.
- She fulfilled the first notice by paying \$860.00 by 17 January 2005.
- She was unable to meet the demand of \$1,100.00 by 3 February 2004 but has since paid that amount.
- The Tenant asked Delia Lawrie to seek an extension of time to pay the rent. That request for an extension of time was denied.
- On 11 February 2005, the Tenant contacted the landlord's agent and requested she telephone the Tenant 30 minutes before the due time for the property inspection that day. The Tenant's daughter was home sick that day. The agent arrived at the property around 4pm without calling the Tenant.
- On 11 February 2005, the Tenant arrived home to find an electrical contractor waiting in front of the premises. She had no notice of the attendance of the electrical contractor. He had come to install the stove.
- The Tenant alleges that the electrical contractor informed her that he had been given the job a while ago but was so busy that he just forgot about it until that week when the Real Estate Agent had contacted him again to install the stove.
- The Tenant alleges that the electrical contractor said in relation to the stove being replaced, that "he hadn't seen a stove that old before".
- On 16 February 2005, an airconditioner service person arrived at the property to service all the airconditioners. He physically removed two older style airconditioners from the bedroom windows 2 and 3. He took the airconditioners outside and hosed them down. He said there was about 20 years worth of dirt and build up in them. The Tenant observed that this was a health hazard. He serviced and cleaned the three other airconditioners. It was his view that the airconditioner in one of the daughter's bedrooms should be replaced because it was irreparable. The Tenant advised that the service to the airconditioners had worked a lot better than before.
- The Tenant also provided a copy of an email to the Honourable Delia Lawrie Member for Karama. In the email, the Tenant reiterates the story of falling behind in her rent and lists the issues of faulty airconditioners, stove, and screens and windows in the premises. She sought Ms Lawrie's assistance.
- The Tenant also provided a copy of the Property Condition Report as amended by her and lodged on 16 September 2004.
- At the hearing, the Tenant provided a Statutory Declaration of a friend, David. The Statutory Declaration concerns David's assistance to the Tenant in relocating to the premises, the condition of the house when moving in the Tenants's belongings and the state of the gardens. In particular, David noticed that the house was not in a very clean condition, the window slides were clogged with years of built up dirt and grime making it difficult to open the sliding windows, he personally cut and remove dense vegetation from the shed and removed debris from the sides and rears of the shed such as broken bed frames, broken concrete slabs, left over unusable building materials. He said this amounted to five trailer loads of rubbish taken to the Leanyer Refuse Centre. Another trailer load of garden rubbish was taken to the Leanyer Refuse Centre from the front and rear gardens. He said that the Tenant brought to his attention the inoperable state of the electrical stove.

On or about 23 December, he became aware of a replacement stove being left on the front veranda of the premises. He moved it inside the premises on Christmas Eve. He says that the stove was not installed until late February, early March. David assisted the Tenant to vacate the premises and that the premises was in a far better condition than when she first took occupancy of the dwelling. He further alleges that the property was infested with ticks. Steps were taken to eradicate the pests.

- The Tenant also provided a document signed by another friend, Colleen. It is dated 29 March 2005. Colleen states that she assisted the Tenant to move into the premises. Two days after the Tenant had moved in, Colleen arrived to find the Tenant was cleaning external security screens and window tracks of the property. It was a mammoth task using the garden hose. The amount of settled dust and dirt was incredible. The screens and window tracks were black in colour and quite unsightly.
- The Tenant provided photos of the taps over the kitchen sink, the faulty stove, the faulty airconditioner in the 2nd bedroom, two decaying mice inside the rear of the faulty stove before its removal, the back screen door off its tracks and the damaged bedroom screen in the third bedroom. The Tenant admits that the mobile telephone number she provided on the Tenancy Application was wrong. The application also recorded the Tenant's home phone number and work phone number.

The documentary and oral evidence of the Landlord before the Inquiry can be summarised as follows:

- The Landlord received the incoming Condition Report from the Tenant on 16 September 2004. The Tenant advised that the stove/hotplates "all get extremely hot regardless of setting 1-5"; that the taps in the kitchen fell off and didn't work; turning off the taps caused a knocking in the pipes; the airconditioner in bedroom 1 does not work properly or cool the room, they may need regassing. At the end of the Property Condition Report the Tenant wrote "shed is overgrown on roof with some sort of dead bush which needs to be removed; 2 x airconditioners in the other rooms needs to be regased. Knocking in pipes when all taps are switched off. Toilet system runs for a long time after flushing. Hot plates on stove all get really hot regardless of setting". At the end of the Tenancy Agreement, below Clause 48, it was recorded that the Tenant and her two children Amy aged 13 and Caitlin aged 11 would be the occupants of the premises.
- The Application for rental property concerning the premises recorded the Tenant mobile phone number. Unfortunately, the phone number was wrong. However, the application also recorded the Tenant's home phone number and work phone number.
- On 9 September 2004, Statewide Electricians attended the premises and the owner's son was advised that if parts were not available, they would have to be made.
- On 23 September 2004, the electrician advised the owner's son that parts would need to be made.
- On 29 September 2004, the owner's son rang to say he could not get in touch with the Tenant as her mobile seemed always to be switched off. The agent rang the Tenant at work and left a message asking her to contact the agent.
- On 19 October 2004, periodically inspection letter sent to the Tenant advising on 8 November 2004, the agent would conduct an inspection between 3 and 5pm.

- On 22 October 2004, the agent attempted to ring the Tenant on her mobile but was switched off, the agent rang the work number and left a message. An arrears letter was sent.
- On 29 October 2004, another arrears letter was sent.
- On 9 November 2004, the Tenant emailed the agent. The Tenant had been called away unexpectedly due to a family crisis in Queensland. That is why she was not available for the first inspection of the premises. Reply email confirming 17 November 2004 at 4.30 as the next date for the inspection of the premises.
- On 8 November 2004, email sent to agent from Tenant re tenant missing another inspection. Tenant mentions maintenance problems which have not been addressed since she moved in, another date was set for the inspection – 25 November 2004 at 4.40pm.
- On 25 November 2004, a periodical inspection of the premises took place with the Tenant. The Tenant gave a detailed list of work needing to be done on the premises. On two other occasions the Agent had attended the premises to conduct an inspection; the dog was inside the premises. The Tenant advised the agent that the dog had gotten through the bedroom screen which the Tenant alleges was broken.
- On 30 November 2004, the agent faxed the owner's son with a list of maintenance issues to be attended.
- On 8 December 2004, the agent left a message on the mobile phone of the son of the Landlord that the maintenance issues raised with him on 30 November and prior to that, had not been attended to.
- On 14 December 2004, the Tenant emailed the agent and advised that the repairs had still not been carried out. The agent phoned the Landlord's son. He said he would follow up on the repairs. He also said he had not been able to get in touch with the Tenant.
- On 15 December 2004, the Landlord's son contacted the Tenant.
- On 21 December 2004, the agent left a message on the Landlord's son mobile. She faxed through details of the Tenant's Application to the Commissioner of Tenancies seeking compensation for repairs not carried out on the premises.
- On 22 December 2004 the agent spoke to the Tenant. The Tenant reported that no repairs had been carried out.
- The Landlord's son contacted the agent and said that the Tenant was advised that because the house was closed up all day and no fans were left running that the airconditioners would not operate as efficiently as they could. He told the Tenant that a new stove was being brought up from interstate. He also told her that if she were not entirely happy with the airconditioners running efficiently he would organize them to be regassed in the New Year. He said that she accepted these arrangements.
- On 30 December 2004, the agent received an email from the Tenant with a different mobile number from that recorded on her application form.
- On 31 December 2004, the agent emails the Tenant asking for confirmation of correct mobile number.

- On 4 January 2005, the agent receives an email reply with the correct mobile number. The Tenant also promised to make a payment for rent in arrears on 6 January 2005.
- On 4 January 2005, the agent sent a fax to the owner's son with the correct mobile number and her work number. The agent told the Tenant that she had on previous occasions had gone out of her way to help the Tenant with a payment plan for rent in arrears. But the Tenant had not honoured those arrangements. The agent issued a Notice to Remedy.
- On 5 January 2005, the Tenant emailed the agent that she was a single parent of two children, had a tough period over the last few months with unforeseen expenses, then Christmas and wanted to make another change in the payment plan.
- On 13 January 2005, Compensation Inquiry was cancelled and no reason was given.
- On 19 January 2005, the agent received an email from the Tenant which said that the Tenant and her daughter had tried to use the stove and could not cook on it. The agent subsequently left a message on the Landlord's son mobile.
- As of 1 March 2005, the Tenant owed the Landlord \$1,230.

In so far as Condition Reports are concerned, section 25 and 26 of the *Residential Tenancies Act* apply. Section 25 provides that a Landlord may within three business days after a tenant takes possession of a premises to which a Tenancy Agreement relates, fill out and sign two copies of the Condition Report and give both copies to the tenant. The landlord is to fill out the Condition Report in the presence of the tenant or a representative of the tenant unless it is not practical to do so. Section 26 provides that the tenant may, within five business days after receiving the Condition Report from the landlord accept the report by signing both copies and returning one of the copies to the landlord or mark the modifications on both copies of the Condition Report, initial modifications and return both copies of the Condition Report to the landlord.

Within five business days after receiving the Condition Report, the landlord may accept the report as modified by the tenant and return both copies to the tenant, or mark the modifications the landlord thinks fits on both copies of the Condition Report and initial the modifications and any modifications that the tenants made under subsection (1)(b) and that the landlord accepts and return both copies to the tenant. If a landlord does not take such action, then the landlord is taken to have read and accepted the Condition Report as modified by the tenant. Subsequent to this the landlord may accept the tenants modifications within five business days and accept the Condition Report by signing both copies and returning one of the copies to the tenant. Either the tenant or the landlord may attempt to reach an agreement as to the contents of the Condition Report and accept the Condition Report by having both parties initial all modifications to the report that are accepted by them and having the tenant sign both copies of the report and return one to the landlord. Alternatively, an Application can be made to the Commissioner pursuant to section 27 of the Act.

In these circumstances, the Incoming Condition Report is not in dispute. It is accepted by both parties that the list of maintenance issues raised by the Tenant in the Condition Report, her letter and numerous correspondences with the Landlord were in serious need of attention.

I find that the Condition Report returned to the Landlord is evidence of the condition of the premises at that time.

I find the premises was let to the Tenant with a dangerously faulty electrical utility, namely, a kitchen stove. This is even more significant as the Tenant was living at the premises with her two young daughters, aged 11 and 13 years, and the Landlord was aware of that fact. Potentially, it was an accident waiting to happen. Further, the premises was let with airconditioning units in the second and third bedroom that were working well below an acceptable standard and not in accordance with the terms of the tenancy agreement.

For these faults, the Tenant seeks a total of \$600.00 in compensation.

Section 122 of the Act, “Compensation and Civil Penalties” provides the Commissioner may make an order for compensation “for loss of damage suffered by the Applicant where the other party has failed to comply with the Tenancy Agreement” or an obligation under the Act relating to the Tenancy Agreement (section 122 (1)(a) of the Act). However, the Applicant may not make an application for compensation for loss or damage as a result of the Landlord’s duty to repair, unless under section 58 (1) has been given. Section 58(1) provides that the Tenant is to notify the Landlord if repairs to the premises are required “as soon as reasonable practicable after becoming aware of the need for the repairs or maintenance”. I find that the tenant did notify the Landlord of the subject need for repairs as soon as was practicable.

In determining whether to order compensation, the Commissioner must take into account the following:

- (a) whether the person from whom the compensation is claimed has taken all reasonable steps to comply with his or her obligations under this Act and the tenancy agreement, being obligations in respect of which the claim is made;
- (b) in the case of a breach of a tenancy agreement – whether the applicant has consented to the failure to comply with obligations in respect of which the claim is made;
- (c) whether money has been paid to or recovered by the applicant by way of compensation, including any money recovered or entitled to be recovered from the security deposit paid under the tenancy agreement;
- (d) whether a reduction or refund of rent or other allowance has been made to or by the applicant in respect of the tenancy agreement;
- (e) whether an action was taken by the applicant to mitigate the loss or damage;
- (f) any tender of compensation; and
- (g) if the claim is made in respect of damages to the premises to which the tenancy agreement relates – any action taken by the person from whom the compensation is claimed to repair the damage at his or her own expense.

I find that the Landlord did not take all reasonable steps to comply with her obligations under the Act in so far as the Tenant's request for repairs as detailed in the Condition Report and subsequent communications.

The Tenant did not comply with this breach by the Landlord.

The Tenant has not been compensated by the Landlord in respect of the breach by the Landlord.

Accordingly, I order that the Landlord pay the Tenant \$600.00 for compensation being for the denial of the full use of three airconditioners and the stove at the premises.

Dated this 24th day of May 2005.

Gabrielle Martin
Delegate of the
Commissioner of Tenancies