

AUSTRALIAN CAPITAL TERRITORY RESIDENTIAL TENANCIES TRIBUNAL

CITATION: John VAN DYKE & Dana VAN DYKE –v- Katy DESA & Nedlljko
DESA [2009] ACTRTT (3)

RT 8910 of 2008

Catchwords: Correction of clerical errors.

Tribunal: A. Anforth, Member

Date: 12 February 2009

**AUSTRALIAN CAPITAL TERRITORY
RESIDENTIAL TENANCIES TRIBUNAL**

)) **NO: RT 891 of 2008**

JOHN DANA VAN DYKE
(Applicant/Lessor)

AND:

KATY DESA and NEDLLJKO DESA
(Respondent/Tenants)

DECISION

Tribunal :A. Anforth, Member

Date :16 December 2008

Decision:

1. That the Tenancy Agreement has been breached.
2. That the Residential Tenancies Agreement is terminated and possession of the premises is to be given to the lessor/s at 10.00am on the 13th day of January, 2009.
3. That the said tenant and any other person claiming right of possession through the tenant's tenancy is to vacate the premises in accordance with this Order.
4. That if the tenant/s fails to vacate the premises in accordance with Order 2 and 3 above, the lessor may apply to the Registry of the Residential Tenancies Tribunal for a Warrant for Eviction.
5. That this order is suspended for a period of nil days.
6. That the lessor may access the premises immediately to determine whether the tenants/s is still in possession.
7. That the tenant/s is to remove all goods and return the premises in a clean condition by 10.00am on the 13th day of January, 2009.
8. That any goods remaining on the premises after the date for vacant possession will be deemed uncollected goods and the Uncollected Goods Act applies to their storage and disposal.
9. That the tenant/s shall pay the lessor rental arrears in the sum of \$4393.71 on or before the 13 January, 2009.
10. That the tenant/s shall pay the lessor an occupancy fee at the rate of \$66.57 per day from the 14th day of January, 2009, until the date that possession is given.
11. That the rent is to be paid weekly starting the 23rd day of December, 2008

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Member

**AUSTRALIAN CAPITAL TERRITORY
RESIDENTIAL TENANCIES TRIBUNAL**

RT 891 of 2008

JOHN DANA VAN DYKE
(Applicant/Landlord)

KATY DESA and NEDLLJKO DESA
(Respondent/Tenant)

REASONS FOR DECISION

1. The tenancy commenced on 11 August 2007 initially for a fixed term of 1 year in respect of residential premises at Gungahlin at a rent of \$466.00 per week. A bond of \$1860.00 was lodged with the Office of Rental Bonds.
2. The tenants fell into substantial rent arrears and following a Notice to Remedy the landlord served the tenants with a Notice to Vacate on 22 August 2008 requiring possession on 9 September 2008. Prescribed term 92 of the *Residential Tenancies Act* 1997 (the Act) permits the landlord to serve such a notice if the tenants are more than 1 week in arrears of rent at the time of service of the notice and for the notice to require possession within 2 weeks of service. A copy of the notice was produced to the Tribunal and was valid in all respects. The tenants did not vacate in response to this notice.
3. On 23 September 2008 the landlords served the tenants with a second Notice to Vacate requiring possession on 24 November 2008. This notice was issued pursuant to prescribed term 96(1)(d) of the Act based on the landlords intention to sell the premises which requires the landlord to give the tenants 8 weeks from the date of service in which to vacate the premises. A copy of the notice was produced to the Tribunal and was valid in all respects.
4. The tenants did not vacate the premises in response to either notice and the matter was listed before the Tribunal on 16 December 2008. On that occasion Ms McGavin, real estate agent, appeared for the landlord and Katy Desa appeared in person.
5. The Tribunal was informed by the landlords agent that the rent was paid only to 10 October 2008 and was presently in arrears to the extent of \$4289.00. The tenant conceded this.
6. The tenant informed the Tribunal that due to certain domestic circumstances that she wished to end the tenancy and the parties agreed on a date for possession of 13 January 2009.
7. The Tribunal then made the standard for possession on that date which included that the rent calculated to be owing as at 13 January 2009 of \$4393.71 be paid on or before that date. In addition the Tribunal ordered that the tenants continue to

pay their weekly rent until 13 January 2009 for which credit would then be given from the arrear calculation referred to above.

8. A copy of the orders of the Tribunal were sent to the parties.
9. On 19 December 2008 solicitors for the landlord requested a statement of reasons for the above decision.
10. Given the consent nature of the orders the Registrar was instructed to ascertain precisely what elements of the decision were of concern to the landlords' solicitors.
11. The landlords' solicitors advised that their concern was that order 9 of the Tribunal's orders omitted a date by which the rent arrears had to be paid by the tenant. A perusal of the file revealed that the handwritten orders of the Tribunal clearly specified the date for payment to be 13 January 2009 whereas the typed version of the orders sent to the parties omitted the "13" and specified only "January 2009". This was a clerical error in the transcription of the orders made. It should have caused no confusion because both parties were present at the Tribunal on the day when the orders were pronounced and explained.
12. The Tribunal understands the landlords need for clarification but in cases such as this it would be far quicker and less costly to the public purse of the affected party to simply indicate the existence of the clerical error to the Registrar who has power to correct such errors.

A. Anforth
12th February 2009