CITATION:	*Hartwell and Hartwell v Commissioner of Tenancies and Roach* [2002] NTMC 051
PARTIES:	D J T HARTWELL AND J HARTWELL v COMMISSIONER OF TENANCIES and NATHAN ROACH
TITLE OF COURT:	LOCAL COURT
JURISDICTION:	RESIDENTIAL TENANCIES ACT
FILE NO(s):	20217925
DELIVERED ON:	20 December 2002
DELIVERED AT:	DARWIN by post
HEARING DATE(s):	12 December 2002
DECISION OF:	Mr V LUPPINO SM

CATCHWORDS:

Appeal – Appeal from decision of Delegate of Commissioner of Tenancies – Validity of notice pursuant to s 87(2) of the Residential Tenancies Act – Meaning of the terms "the amount of rent that is outstanding" and the tern "the period for which it has been outstanding"

Residential Tenancies Act ss 40, 87(2) and 104

REPRESENTATION:

Counsel:

Appellant:	Miss Kathpoulis
First Respondent:	Mr Lanyon
Second Respondent	Unrepresented

Judgment category classification:	B
Judgment ID number:	[2002] NTMC 051
Number of paragraphs:	14

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20217925

BETWEEN:

D J T HARTWELL & J HARTWELL
Appellants

AND:

COMMISSIONER OF TENANCIES
First Respondent

and

NATHAN ROACH
Second Respondent

REASONS FOR DECISION
(Delivered 20 December 2002)

Mr LUPPINO SM:

1. This was an appeal to the Local Court from a decision of the Delegate of the Commissioner of Tenancies ("the Delegate") made in relation to an application by the Appellants dated 14 November 2002. That application sought an order for possession under s 104 of the Residential Tenancies Act (NT) ("the Act"). Following an Inquiry conducted on 22 November 2002 the Delegate made certain findings and ultimately ruled that the notice upon which the application was founded ("the Notice") was invalid. Consequently the application for the order for possession was dismissed.

2. Hearings on appeal from decisions of the Delegate are hearings de novo and accordingly it was necessary for the parities to present all their evidence in full. That was facilitated to a certain extent as the issues on appeal were very narrow and the parties agreed the necessary facts.

3. The agreed facts were as follows;

    1. That there was a tenancy agreement within the meaning of and subject to the provisions of the Act;

    2. That the terms of the tenancy agreement were inter alia, a commencement date of 29 April 2002 and that rental was $200.00 per week payable fortnightly;

    3. That the Appellants, by their agents, issued the Notice, which was dated 24 October 2002, pursuant to s 87(1) of the Act, (a copy of the Notice was tendered by consent and became Exhibit 1);

    4. The Notice was sent to the Second Respondent by post on 22 October 2002 in accordance with s 154 of the Act.

    5. Rental payments due to the Appellants were more than 14 days in arrears at the time that the Notice was issued.

4. In addition, the Appellants tendered in evidence a rental schedule, which I understand was identical with the rental schedule provided to the Delegate at the Inquiry, and that became Exhibit 2.

5. I gave my decision at the conclusion of argument. I dismissed the appeal as I found that the Notice was invalid and consequently that the Appellants were not entitled to the relief sought. I was requested by Mr Lanyon to publish reasons given that this is the first time the issue has been the subject of a court ruling and would therefore provide some guidance to the industry generally. Accordingly I publish these brief reasons.

6. The hearing before the Delegate and the appeal before me turned on the meaning of s 87(2)(b) of the Act. Subsections (1) and (2) of s 87 are now set out namely:-

"(1) If a tenant breaches a tenancy agreement by failing to pay rent and the rent has been in arrears for not less than 14 days, the landlord may give the tenant a notice in accordance with subsection (2).

(2) 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 if 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."

7. It will be noted that s 87(2)(b) contains two requirements for the Notice. Both "the amount of rent that is outstanding" as well as "the period for which it has been outstanding" must be set out in the notice.

8. The Notice in this case specifies that the amount of rent outstanding is $650.00. It was agreed that this was the amount outstanding at the relevant time. The Notice specifies the period from 30 September 2002 to 27 October 2002 as the period that the rent is outstanding

9. It is clear however from Exhibit 2 that following a payment made by the tenant on 1 October 2002 ie. before the date of issue of the Notice, the rental was paid up to and including 4 October 2002.

10. Miss Kathopoulis, who appeared as agent of the Appellants, submitted that the period specified in the Notice was nonetheless correct because the period specified in the Notice represented the two fortnightly rental cycles for

which the rent was outstanding. She submitted that this satisfied the requirements of s 87(2)(b). That would be correct only if the word "period" in that subsection referred to the relevant cyclical rental period, (whether that be weekly, fortnightly or monthly), and not the actual precise period for which rent was outstanding. I do not agree. In my view there is nothing in the Act to indicate that that is the meaning of the term in that subsection.

11. In coming to this conclusion I bear in mind that the purpose of the matters required to be specified in the Notice given pursuant to s 87(2) are to give the tenant an opportunity to remedy the breach before further action is taken. To do so the tenant needs to know the amount outstanding. To be satisfied that the amount claimed to be outstanding is in fact the correct amount and to enable the tenant to reconcile that with his own records and receipts for payment, it is imperative that the tenant knows the period for which the rent is outstanding. In this case, it is clear from Exhibit 2 that rental payments were not made strictly in accordance with rental cycles specified in the tenancy agreement. The amount said to be outstanding is not an exact multiple of a whole number of rental cycles. As such, specifying the entire period of the relevant rental cycle which contains the actual period for which the rent is outstanding, as Miss Kathpoulis has done in the Notice, would be uninformative. It could not give any meaningful assistance to the tenant in reconciling the amount claimed. The tenant in this case, knowing that his rental is $200.00 per week, and seeing a Notice claiming arrears of $650.00 per week supposedly for a cycle of two fortnights, would not be able to make that reconciliation based the Notice alone. As I said the purpose of the Notice is to enable that reconciliation to be made so that the tenant is given an opportunity to rectify the alleged breach.

12. In my view the meaning of the phrase "the period for which it has been outstanding" in s 87(2)(b) must relate to the precise period for which the rental is outstanding and cannot require only the identification of the relevant rental cycle period which contains the actual period. This

interpretation is supported by s 40 of the Act which stipulates that rental accrues from day to day. In this way, the Act does away with the old common law rules which gave rental cycle periods some greater significance, for example, the rule that a notice must expire at the end of a rental cycle period to be valid.

13. I also note with interest that Exhibit 2, the Appellant's own rental payments history in relation to this tenancy, shows the payment made by the tenant on 1 October 2002 and indicates that this is a payment for the period from 26 September 2002 to 4 October 2002. That contains therefore in a nutshell the precise information which the Appellants required to validly complete the Notice in question rather that selecting dates corresponding with rental cycle periods.

14. For the foregoing reasons it is my view that the Notice is not a valid Notice pursuant to s 87(1) of the Act for failure to specify correctly "…the period for which it has been outstanding" in relation to outstanding rent as required by s 87(2)(b) of the Act. In my view, compliance with the requirements of that section are a mandatory precondition to an application for an order for possession and consequently the application for an order for possession is dismissed.

Dated this 20th day of December 2002.

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V M LUPPINO
STIPENDIARY MAGISTRATE