

Federal Court

Rent assistance: meaning of rent

SECRETARY TO THE DSS v
KNIGHT
(Federal Court)

Decided: 23 December 1996 by
Tamberlin J.

The DSS appealed against a decision of the AAT, affirming a decision of the SSAT, that rent assistance was payable to Knight at an increased rate due to payments made by her on a 4-weekly periodic basis. These payments related to the granting of a licence to occupy a unit in a retirement village.

The facts

Knight took accommodation in a retirement village in July 1994 and, under the Licence Agreement, was granted 'the right to use occupy and reside in the Unit' upon payment of \$30,000. This amount was non-refundable. The agreement also required her to pay a weekly maintenance fee of a specified amount. An annexure to the agreement set out how the amount of \$30,000 was to be paid. This involved an initial contribution of \$15,000, payable in two instalments, with the balance to be paid by way of regular instalments of \$154 every 4 weeks from 1 July 1994 to 28 February 1995, reducing to \$126 every 4 weeks thereafter until 30 June 2003, or upon vacating the unit.

The issue

The issue before the Court was whether the AAT erred in law in deciding that the 4-weekly payments attributable to her entry contribution could be properly characterised as rent, for the purposes of paying to her rent assistance under s.1064-D1 of the *Social Security Act 1991* (the Act).

The legislation and submissions

The term rent is defined in s.13 of the Act, the relevant parts of which provide:

'13.(2) Amounts are rent in relation to the person if:

- (a) the amounts are payable by the person:
 - (i) as a condition of occupancy of premises, or of a part of premises, occupied by the person as the person's principal home; or
 - (ii) for services provided in a retirement village that is the person's principal home . . . and
- (b) either:

- (i) the amounts are payable every 3 months or more frequently; or
- (ii) the amounts are payable at regular intervals (greater than 3 months) and the Secretary is satisfied that the amounts should be treated as rent for the purposes of this Act.

13.(3) Subparagraphs (2)(a)(ii) to (vi) (inclusive) do not limit the generality of subparagraph (2)(a)(i).'

It was argued on behalf of the Secretary that the 4-weekly payments made by Knight were made in relation to an outstanding debt and not to her occupancy of a retirement unit. It was argued that the Act needed to be read as a whole in order to ensure that provisions of the Act are not rendered otiose or futile. Specifically it was said that the definition of 'rent' must be read in the light of those provisions of the Act relating to the assets test set out in Part 3.12. In particular, s.1147 contains a definition of a 'special resident's entry contribution'. That section provides in part:

'1147.(1) A special resident's entry contribution is:

- (a) if the resident is not a member of a couple — the resident's individual residence contribution . . .
- (1C) For the purpose of this Division, the individual residence contribution is:
 - (a) for a retirement village resident — the total amount paid, or agreed to be paid, for the resident's current right to live in the retirement village . . .
 - (2) An amount that is rent for the purposes of this Act is to be disregarded in applying subsections (1), (1A) and (1B).'

As s.1147(2) required 'rent' to be disregarded in determining an individual resident's contribution, there must be a dichotomy between rent and an entry contribution, precluding the characterisation of an entry contribution as 'rent'. It was further argued that entry contributions are properly treated as a capital payment or an asset of the resident, even though they are not refundable or transferable.

The meaning of the term 'rent'

Tamberlin J stated that s.13(3) supported the view that the term rent was to be given a broad construction. It was also noted that the Act is beneficial legislation and, for that reason, the primary and natural significance of the language used in s.13 was not to be read down or interpreted in the light of indirect references to other provisions in the Act. Contrary to the submissions made on behalf of the Secretary, the Court indicated that the express exclusion of 'rent' in s.1147 sup-

ported the view that, but for the exclusion, there would otherwise be some overlap between the expressions 'rent' and 'entry contribution'.

The Court considered that the intention of the parties, as evidenced by the Licence Agreement and correspondence, was that the contribution payments were meant to be a condition of occupation of the premises. The periodic contribution payments would cease if occupancy were terminated, with no resultant debt arising or financial obligation on the part of either party. Further, default in meeting the periodic payments would, under the Licence Agreement, give the licensor the right to terminate the licence and the occupancy under it.

The Court did not consider that the periodic payments were of a capital nature. They did not result in a capital asset or sum being accumulated, or any interest being acquired which could be transferred, mortgaged or otherwise dealt with. No sum was refundable upon ceasing occupation of the premises.

Neither did the Court consider that in this case, the arrangement was a 'device' to gain entitlement to rent assistance, and if such a problem did arise it was open to the legislature to make appropriate amendments.

The fact that the obligation to make the periodic contribution payments ceased after a given period did not alter the nature of the payments as consideration for the right to occupation. The legal nexus between the occupancy and the obligation to make contribution payments, together with the regular periodic nature of the payments, led the Court to conclude that the payments were properly characterised as 'rent' within the meaning of s.13(2) and s.1064-D1 of the Act.

Formal decision

The application was dismissed and the DSS was ordered to pay costs.

[A.T.]

[Editor's note: It is understood that the DSS is appealing this decision on the basis that the periodical payments were payments of a capital nature paid in a periodic form.]