

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *The State of Queensland through the Department of  
Housing and Public Works v Tenant* [2020] QCAT 144

PARTIES: **THE STATE OF QUEENSLAND THROUGH THE  
DEPARTMENT OF HOUSING AND PUBLIC  
WORKS**  
(applicant)

v

**TENANT**  
(respondent)

APPLICATION NO/S: T302/20

MATTER TYPE: Residential tenancy matters

DELIVERED ON: 15 May 2020

HEARING DATE: 26 March 2020; 2 April 2020

HEARD AT: Southport

DECISION OF: Adjudicator Alan Walsh

- ORDERS:
- 1. A non-publication order is made with respect to:**
    - (a) the name and address of the Respondent and her son and the address of her tenancy wherever appearing on the Tribunal record and/or in evidence;**
    - (b) the name and address of each of the seven witnesses by affidavit for the Applicant referred to in the affidavit of Samantha Ferris sworn 20 March 2020 whose redacted affidavits were served on the Respondent.**
  - 2. Order 1 does not apply to:**
    - (a) The Orders that separately issue to the Applicant and the Respondent in this proceeding which shall refer to the Respondent by name.**
    - (b) The Warrant of Possession to be issued in terms of Order 5 which shall refer in the title to the Respondent by name and to the address at which the Warrant is to be executed.**
    - (c) Communications between the Applicant and others for the purpose of assisting the**

**Respondent with referrals for the provision of accommodation and assistance including but not limited to the matters set out in paragraphs 2 and 3 of the two (2) page affidavit of Samantha Ferris sworn 31 March 2020.**

- (d) **Communications (if any) between the Respondent's Psychologist, the Respondent's Support Services and others assisting the Respondent, and the Applicant.**
  - (e) **Communications between the Applicant and the Human Rights Commission concerning the Respondent's complaint to the Applicant and/or to the Human Rights Commission.**
3. **In accordance with section 31(3) of the *Human Rights Act 2019 (Qld)*, nothing contained in Order 1 prevents the publication and reporting of this decision.**
  4. **The Respondent's tenancy is terminated on the ground of her objectionable behaviour with effect from midnight on 24 May 2020.**
  5. **A Warrant of Possession issue authorising a police officer or officers to enter the premises identified in the Warrant and to give vacant possession of them back to the Applicant.**
  6. **The Warrant shall take effect on 25 May 2020 and remain in effect until 6pm on 7 June 2020.**
  7. **Entry under the Warrant shall only be between the hours of 8 am and 6 pm.**
  8. **QCAT Registry at Southport email these orders to the parties.**

**CATCHWORDS:**

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – minor civil dispute – tenancy dispute – Public Housing - where Applicant applied to terminate Respondent's State tenancy for objectionable behaviour

LANDLORD AND TENANT – RESIDENTIAL TENANCIES LEGISLATION – OBLIGATIONS, PROHIBITED MATTERS AND PROTECTION OF LESSEES – statutory criteria for objectionable behaviour - whether tenant behaviour objectionable – whether objectionable behaviour ground made out – discretionary

factors

HUMAN RIGHTS – HUMAN RIGHTS LEGISLATION – where *Human Rights Act 2019* (Qld) applies in Queensland residential tenancy context – where human rights limited in certain circumstances - whether human rights of tenant to privacy, family and home prevail over right of lessor to evict tenant – whether human rights to freedom to choose residence, not to be treated in cruel, inhuman or degrading way, or freedom of expression limited – where *Residential Tenancies and Rooming Accommodation Act 2009* (Qld) valid, effective and limiting according to its provisions – where exercise of discretion requires consideration of human rights and balancing of legislative purposes – whether termination of lease for objectionable behaviour non-arbitrary and lawful – whether termination a proportionate response to objectionable behaviour of tenant

*Charter of Human Rights and Responsibilities Act 2006* (Vic), s 7

*Domestic and Family Violence Protection Act 2012* (Qld), s 159

*Human Rights Act 2019* (Qld), s 3, s 11, s 12, s 13, s 15, s 17, s 19, s 21, s 24, s 25, s 26, s 31, s 37, s 48, s 58, s 59  
*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 3, s 4, s 12, s 13, s 66

*Residential Tenancies and Rooming Accommodation Act 2008* (Qld), s 4, s 5, s 10, s 26, s 52, s 54, s 183, s 184, s 297A, s 335, s 345A, s 349, s 350, s 527D, s 527 E

*Residential Tenancies and Rooming Accommodation (COVID-19) Emergency Response) Regulation*, s 6, s 8

QCAT Presidential Direction dated 30 April 2020

*Burgess v Director of Housing* [2014] VSC 648

*Director of Housing v Ronan (Residential Tenancies)* [2013] VCAT 2050

*Director of Housing v Uden* [2014] VCAT 1329

*Giotopoulos v Director of Housing* [2011] VSC 20

*Horizon Housing Company v Ross* [2020] QCAT 41

*Lawler v Department of Housing and Public Works, State of Queensland* [2017] QCATA 21

*Momcilovic v The Queen* [2011] HCA 34

*Simonova v Department of Housing and Public Works* [2018] QCATA 33

*State of Queensland through the Department of Housing and Public Works v Gray* [2017] QCAT 475

*State of Queensland through the Department of Housing and Public Works v Turnbull* [2014] QCAT 442

*State of Queensland through the Department of Housing*

*and Public Works v Lawler (Coolangatta Claim 66/16)*  
*State of Queensland through the Department of Housing*  
*and Public Works v Tapim [2015] QCATA 71*  
*Turnbull v State of Queensland [2014] QCA 240*

**APPEARANCES &  
 REPRESENTATION:**

Applicant: S Ferris, Housing Officer, and R Higgins, Rent Connection Officer, by telephone.

Respondent: Self-represented, by telephone.

**REASONS FOR DECISION**

**Introduction**

- [1] The Applicant in this matter applies on ground of objectionable behaviour for termination of the Respondent's State Tenancy Agreement for residential premises at Southport on the Gold Coast. The lease commenced on 14 June 2018 for a fixed term ending on 13 June 2021 at a concessional rental of \$66.15 a week.
- [2] The Application falls within one of the exceptions<sup>1</sup> to the moratorium on residential tenancy evictions prescribed by section 8 (Moratorium on evictions) of the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (Qld) which received assent on 23 April 2020 and is retrospective to 29 March 2020 in certain instances.
- [3] Much of the Applicant's evidence pertains to the Respondent's behaviour prior to 29 March 2020.
- [4] I reserved my decision on 9 April 2020<sup>2</sup> following hearings on 26 March 2020 and 2 April 2020 when the parties attended by telephone because of the Covid-19 Emergency.

**De-identification/Non-publication**

- [5] Of my own accord, I de-identify the Respondent by referring to her in the title to this case as 'Tenant' because, though not in the period of the tenancy to which this Application relates, but some years ago, she has reportedly been the victim of domestic violence<sup>3</sup> and she suffers from a mental illness.
- [6] I also refrain from referring in these reasons to the Respondent's son by name and to his address in case she is identified by association with him<sup>4</sup> and I will order<sup>5</sup> that their names and addresses not be published.<sup>6</sup>

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<sup>1</sup> See s 8(2)(a) of the of the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (Qld).

<sup>2</sup> See order 3 of the Orders dated 2 April 2020.

<sup>3</sup> See s 159(1) and (2) of the *Domestic and Family Violence Protection Act 2012* (Qld); s 66(1), (2), (3), and (4) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), and QCAT Presidential Direction dated 30 April 2020.

<sup>4</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 66(1)(c).

<sup>5</sup> Ibid, pursuant to s 66(3).

<sup>6</sup> Ibid, pursuant to s 66(1) and (2)(b).

- [7] Upon the application of the Applicant, I will order<sup>7</sup> that the identity and addresses of the seven witnesses for the Applicant who provided evidence by original affidavits, copies of which were redacted in those respects only and served on the Respondent, not be published.
- [8] I will do so because of a genuine apprehension for their safety in the event of reprisal or retaliation having regard to the history of the Respondent's behaviour referred to in these reasons.

### **Evidence and Other Material**

#### For Applicant

##### *Senior Housing Officer Ferris*

- [9] Of contextual, historical relevance is the fact that Respondent has been a tenant of the Applicant under several State tenancy agreements for varying periods since 21 July 1999. The evidence of Acting Senior Housing Officer, Samantha Ferris, in an affidavit sworn on 31 March 2020 in that regard, is as follows.<sup>8</sup>
- [10] The Respondent's first State tenancy, without incident, was at a Kingston address between 21 July 1999 and 24 August 1999.
- [11] The Respondent's second tenancy at a Waterford West address subsisted from 8 May 2001 until 29 November 2001. The Respondent was transferred there due to prior domestic violence but it is not clear from the affidavit whether a domestic violence order was made or who the perpetrator of the violence was.
- [12] During that tenancy, the Applicant received a complaint about the Respondent yelling and screaming and neighbours reported feeling scared of her.
- [13] The Respondent's third tenancy was at an Underwood address between 29 November 2001 and 21 October 2004, during which she requested a transfer due to neighbourhood disputes.
- [14] No complaints about the Respondent were recorded. She vacated the property before she could be transferred.
- [15] The Respondent's fourth tenancy was at a Kingston address from 26 February 2013 to 25 June 2014.
- [16] During the fourth tenancy, the Respondent incurred a maintenance debt of \$4,030.18 for damage to property and the following reports and complaints were made.
- [17] The Applicant received ten complaints from five neighbours regarding the Respondent's behaviour, foul language, yelling, throwing items, causing property damage, making threats of violence towards neighbours, threats to knife her neighbours, throwing plates and glasses at neighbours' properties, screaming and yelling abuse at neighbours, trespassing on neighbours' properties, and causing neighbours to feel unsafe.
- [18] Neighbours reported people coming and going from the property all the time and there were multiple police attendances at the property. When interviewed by staff of

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<sup>7</sup> Ibid, pursuant to ss 66(1) and 66(2)(a), (b), (d), and (e).

<sup>8</sup> Affidavit of Acting Senior Housing Officer Ferris sworn 31 March 2020, paragraph [5].

the Applicant, the Respondent denied causing the disturbances. She blamed the neighbours who, she said, 'had it out (sic) for her.'

- [19] The Respondent's fifth tenancy at a Capalaba address subsisted in the period 25 June 2014 to 17 August 2016 to which she was transferred for domestic violence. Again, it is unclear whether any domestic violence orders were made and who the perpetrator was.
- [20] During the fifth tenancy, the Applicant received five complaints from two neighbours regarding disturbances, constant shouting, abusive language, loud music all hours of the day and night, yelling and screaming abuse from the property.
- [21] The Respondent blamed this behaviour on the neighbours, saying that they stood around her laughing and would not take responsibility for their behaviour. She requested a transfer because, she said, she believed that people were watching her constantly and harassing her verbally.
- [22] The Respondent's sixth tenancy was at another Waterford West (Chambers Flat) address from 17 August 2016 to October 2017 where she was placed in community housing with Mangrove Housing Company as Lessor.
- [23] In September 2017, the Respondent was given Notice to Leave for a serious breach of the sixth tenancy agreement in that she assaulted another neighbour and because of illegal activity at the property. She blamed the assault on the neighbour who, she said, provoked her.
- [24] The Respondent failed to leave the sixth tenancy property as required.
- [25] Upon Application to the Tribunal in T1037/17 at Beenleigh by Mangrove Housing Company, the Queensland Civil and Administrative Tribunal terminated her tenancy. The Police evicted her under a Warrant of Possession executed on 7 December 2017 because of her continued failure to leave.
- [26] The Respondent's seventh State tenancy is the one that is current at Southport which the Applicant wants the Tribunal to terminate.
- [27] During the present tenancy, the Applicant has received over seventy complaints from twenty neighbours and approximately one hundred and forty-eight videos of objectionable behaviour of the Respondent.
- [28] Ms Ferris says that neither the Respondent nor her support workers have suggested that she herself has suffered domestic violence during this time, that the Respondent acknowledges her behaviour but takes no responsibility for it.<sup>9</sup>
- [29] Ms Ferris says<sup>10</sup> that the Applicant has received eleven complaints from three neighbours along with twenty-eight new videos of the Respondent's objectionable behaviour at the Southport address since the Respondent was informed of these proceedings.
- [30] Ms Ferris says<sup>11</sup> that, in the period 26 March through to 31 March 2020, the Applicant has received a further nine complaints from two neighbours, of people coming and going from the property at all hours of the day and night and of the

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<sup>9</sup> Ibid, page 2.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid, paragraph [6].

Respondent yelling, screaming, and threatening to physically abuse a visitor to her property.

- [31] In her primary affidavit sworn on 20 March 2020, Ms Ferris refers to the affidavits of seven neighbours deposing to behaviour of the Respondent and the physical and emotional effects of it on them in their neighbouring homes.
- [32] Their identities and addresses were redacted on the copy served on the Respondent and both the original and the redacted copy of those affidavits are filed with the Tribunal.
- [33] The affidavit evidence of the seven witnesses for the Applicant's case corroborates Ms Ferris's affidavit evidence concerning incidents involving the Respondent and her behaviour during the current tenancy and is consistent with the history of similar complaints previously.
- [34] One of the seven witnesses says that the Respondent's behaviour caused tenants in a neighbouring complex to leave, that 'this woman can yell for hours at a time which disturbs sleep on a regular basis,' and that, 'with a small child in the family, her language and veiled threats are unacceptable.'
- [35] That, the witness says, has been occurring for at least six to eight months, perhaps longer.
- [36] Another of the seven witnesses in a neighbouring property deposes to extreme disturbances caused by the Respondent, witnessing the Respondent's involvement with others in a serious assault of a passer-by, her use of extreme language and ranting outside alone at no-one, and his need repeatedly to report incidents to the Applicant and the Police for follow up.
- [37] Another of the seven witnesses refers to the drastic toll on himself and his family in having to endure sleepless nights as a result of the Respondent's disgusting language, aggressive and abusive behaviour, dumping of rubbish and 'suspicious items' on his property, slamming of doors, smashing of bottles, trespass, and the destruction of his fence.
- [38] This witness also refers (as do others) to suspected drug deals taking place on the property involving the Respondent's son.
- [39] Another of the seven witnesses, a registered nurse, refers to the Respondent's abusive behaviour, to having been greatly affected by it, and to not feeling safe in her home. She witnessed the Respondent throwing ceramic plates at a block of units opposite and to yelling profanities at a passer-by.
- [40] The other of the seven witnesses depose to similar behaviour of the Respondent, necessitating Police attendance and of the effects of her behaviour on them.
- [41] I have no reason to doubt the veracity of the affidavit evidence relied on by the Applicant.

*Audio/Video Evidence*

- [42] Ordinarily, electronic evidence in the form of videos is not permitted in QCAT minor civil dispute proceedings because of resource constraints. The general prohibition of electronic evidence is noted on the QCAT website for the public to read but the Tribunal has a residual discretion to admit relevant electronic evidence. It may inform itself of anything in any way it thinks fit.

- [43] Exceptional circumstances justifying the exercise of the discretion will arise where the evidence is seriously in dispute, potentially pivotal to the outcome, and where it is likely to assist the Tribunal in fact finding and weighing evidence. However, the admission of electronic evidence in minor civil disputes such as this is the exception rather than the rule due to time and resource limitations of the Tribunal.
- [44] Where electronic evidence is permitted and the parties attend a hearing in person, a voice recording may be played in Court and received into the record through the Court microphones and video evidence may be played on a computer and screen if available in the hearing room.
- [45] Video evidence may also be permitted where there is another mechanism for it forming a part of the record of proceedings and being viewed, for example a file attached to an email which itself forms part of the record of evidence.
- [46] Upon its request, I permitted the Applicant to rely on six short audio/video clips in the form of attachments to emails, five of which recorded the Respondent's behaviour.
- [47] I ordered that they be filed (as they were) by the Applicant emailing them to the Courthouse for viewing on a computer and that they be served on the Respondent who, I was satisfied, could view them on her cell phone.
- [48] I gave the Respondent, who has an email address but who said she did not have a computer, an explanation of how to view them in that way.
- [49] Five of the six video clips taken by onlooker neighbours, which I viewed, one of which with audio content only, evidence a pattern of abusive, aggressive, vitriolic language in varying degrees directed by the Respondent at others in disturbing, expletive filled rants.
- [50] One video clip shows what appears to be a furtive exchange of a package outside the tenancy between two unidentified males, the collecting male on a bicycle to whom the delivering male standing alone hands the package. However, viewed in isolation and without more, I do not accept that it is sufficient evidence of the actual exchange of drugs.
- [51] As will appear later, the Respondent is herself aware of having been videoed but has consciously refrained from viewing the videos filed and served in this proceeding. She says she was 'illegally filmed' without her permission and that the material should not have been submitted. She thus acknowledges that the videos were taken of her.
- [52] I have no reason to doubt the veracity of the audio/video evidence.
- [53] In saying that she was illegally filmed, the Respondent is mistaken. The videos were taken of her in public. Her behaviour occurred outside the tenancy in public. There is no law prohibiting the taking of a video in public of a member of the public. With the exception of the video of a furtive exchange of the package to which I have just referred, I accept the audio and video evidence for what it shows.

*Mental Disorder*

- [54] Ms Ferris says<sup>12</sup> that the Applicant is aware that the Respondent has mental and behavioural disorders due to substance abuse. She swears that the Respondent has previously informed the Applicant that she was diagnosed with brain damage which affects her rational ability to control her behaviour.
- [55] Ms Ferris says that the Respondent has not supplied the Applicant with any medical reports. None are filed by the Respondent in these proceedings. However, there is sufficient other evidence in this case pertaining to the state of the Respondent's mental health upon which I may reliably make findings of fact on the balance of probabilities.
- [56] Ms Ferris says<sup>13</sup> that she has been informed by the Respondent's treating Psychologist that the Respondent has regularly received depot (slow release) injections since December 2019 with little behavioural improvement and that her use of illicit substances is reducing the effectiveness of the medication.
- [57] The statement of the Respondent's Psychologist through Ms Ferris, who relays it on information and belief, is hearsay but I accept it, firstly because I am not bound by the rules of evidence and, secondly, because other evidence, including that of the Respondent herself, is consistent with what Ms Ferris was told.

*Attempts to Sustain Tenancy*

- [58] In her Affidavit sworn on 20 March 2020,<sup>14</sup> Ms Ferris lists the following attempts by the Applicant to assist the Respondent to sustain the tenancy:
- (a) Regularly reminding her of her obligations as tenant under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).
  - (b) Regularly meeting and involving her support network, including Community Mental Health.
  - (c) Undertaking several meetings with the Respondent and her support worker to discuss issues and assist her to be able to sustain the tenancy.
  - (d) Regularly reminding the Respondent that she risks termination of the tenancy if objectionable behaviour continues.
  - (e) Regularly requesting her to attend to concerns about the condition of the property.
- [59] Ms Ferris says<sup>15</sup> that the Respondent promised that things would end up being a whole lot worse if the Applicant tried to kick her out because she wouldn't care anymore and that 'everyone better watch out.' When asked to explain what she meant, the Respondent said: 'You'll see.' The implied threat was clear: evict the Respondent at its peril.

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<sup>12</sup> Ibid, paragraph [1].

<sup>13</sup> Ibid, paragraph [2].

<sup>14</sup> At paragraph [11].

<sup>15</sup> At paragraph [12].

*Alternatives to Homelessness*

- [60] In her two page affidavit sworn 31 March 2020, Ms Ferris says that the Applicant acknowledges<sup>16</sup> the implications for people who are homeless or at risk of homelessness during this time of pandemic but says<sup>17</sup> that the tenancy should still be considered for termination even though this could potentially leave the Respondent, and her son who lives with her, with no housing options and an exit into homelessness.
- [61] Ms Ferris goes on to say<sup>18</sup> that the Applicant would like to advise of several services to assist the Respondent in sourcing alternative accommodation and that additional funding will soon be made available to the Department to assist vulnerable people needing to self-isolate.
- [62] In that event, Ms Ferris says that the Applicant would be able to assist in sourcing a motel or similar accommodation for the time.
- [63] Ms Ferris says<sup>19</sup> that the Applicant is able to refer the Respondent to the Gold Coast Place Based Response Team who can assist with a co-ordinated response to help source and locate temporary short term accommodation for her and work in collaboration with other services to source affordable accommodation.
- [64] Ms Ferris says<sup>20</sup> that the Applicant could refer the Respondent on to Rent Connect Officers to try and obtain private rental accommodation and, if successful, the Applicant would assist with a bond loan of the equivalent of four weeks' rent and an additional rental grant of two weeks.
- [65] If all of that were to be unsuccessful, Ms Ferris says<sup>21</sup> that the final option the Applicant could explore would be to consider signing a head lease with the Respondent for a short-term lease to give her time to sustain the tenancy and that, if the initiative was successful, the Applicant would step away and the Respondent become the 'legal tenant' of the particular property.

For Respondent

- [66] The Respondent, who attended the hearings by telephone without representation, had the benefit of the advice and assistance of Tenants Queensland Inc. (QSTARS).<sup>22</sup> I twice adjourned the hearing of this case and gave directions to ensure that she had the opportunity to consult as necessary and to prepare and file evidence and submissions with their assistance.
- [67] Apart from oral statements over the telephone during hearings, the evidence of the Respondent herself is in the form of a six-page handwritten, signed statement. I will treat it as though she had sworn to the truth of what is in it and I will not accord it any less consideration and weight just because it was unsworn.

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<sup>16</sup> At paragraph [1].

<sup>17</sup> At paragraph [2].

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, paragraph [3].

<sup>21</sup> Ibid.

<sup>22</sup> Evident from an email from a Senior Advice Worker to the Respondent, copied to the Applicant and the Southport Court House, dated 1 April 2020 and from written submissions prepared for her.

[68] Evidence of witnesses for the Respondent, to which I will refer later, was either in affidavit or statutory declaration form except where unsigned.

*Tenant's Evidence*

[69] It is convenient to summarise the Respondent's six-page witness statement.

[70] In it, the Respondent says the following:

- (a) Her behaviour is not attributable to substance abuse, rather to being pushed to her limit by nasty, hate filled, bullying, manipulating, controlling people with a superiority problem playing mind games. She says that she has never told anyone that she has brain damage.<sup>23</sup>
- (b) The number of complaints is 'ridiculously high' and 'recently nothing but lies ... without consideration of the things they do sometimes' and that she has no respect and a complete disregard for them which she now regrets.<sup>24</sup>
- (c) She has never before been told that a transfer would be considered and past transfers had something to do with domestic violence and arguing with someone and 'dramas stemming from all sorts of places' including 'people on motorbikes hollering out my name and unit number.'
- (d) People were watching and following her and 'all sorts of stuff' which is why she has very little tolerance.<sup>25</sup>
- (e) She has been 'very good from what she was like previously' and wants to continue this way<sup>26</sup> and is taking responsibility for her actions<sup>27</sup> though it is a bit much to have to accept 'what they would say about my family and how they would mentally and emotionally cripple me for (sic) to act in the way I had.'<sup>28</sup>
- (f) They told her that they killed her father and mother, they laughed at and ridiculed her, made themselves known at the front door and gathered in large numbers 'over the back.'
- (g) She heard people at her side fence rush back under the car parks to hide and they are trying to intimidate and instil fear.<sup>29</sup>
- (h) She recounts a man trying to get her attention and calling her 'bub' and then being ridiculed for thinking he loved her.
- (i) She complains that others have harassed her and says that she gets so tired of 'the putrid ways they infect and infest my life, mind and body with these disturbing ... ways to disarm me mentally, cripple me physically and leave me fearful ... trying to intimidate me and ... install (sic) more fear into my life and mind with these psycho mind games' with 'every day and nights ... getting worse.'

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<sup>23</sup> Statement of Respondent, page 1.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid, page 2.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid, page 3.

- (j) She says that is where her fury would come from.<sup>30</sup>
- (k) She says that ‘I am really sorry for my behaviour,’<sup>31</sup> and that ‘I try to explain to people I sound like a psycho babbling twit.’
- (l) She says that she knows the medication has been working but ‘it’ is the only way she knows to deal with it.<sup>32</sup>
- (m) She says that she is not fighting to stay, rather she is fighting for somewhere to go and is worried about her twenty-year old son whom she has always tried to keep from being homeless on the streets ‘with the trap (sic) house.’<sup>33</sup>
- (n) She says she has only been told that she is getting evicted with no transfer and that this is very unfair in her eyes,<sup>34</sup> that she worries about being homeless again and about her mental health and wellbeing.<sup>35</sup>
- (o) She and her son have never really made friends like they have here and their support has been amazing.
- (p) She says ‘I know I seem like the problem but there’s reasoning behind my actions and there’s another layer of problems that don’t even belong to me ... I feel so jaded by it all.’
- (q) She refers to people who she was meant to know for years become close and to being again ‘destroyed by a person who’s never beared (sic) a child let alone a proper mindset,’<sup>36</sup> that it is sad and that ‘everything they have done’ has really affected her.
- (r) She says that she is ‘beyond belief so sorry’ and that she is calming down and changing.
- (s) She says that ‘I am normally so very opposite to the way I have been’<sup>37</sup> and concludes by saying that she is aware of people illegally filming her without permission so their videos should not have been submitted.
- (t) She says that she hasn’t watched the videos ‘because I feel regretful and ashamed of my behaviour ... I am so sorry.’

[71] Witnesses for the Respondent gave the following evidence.

*Ricki-Lee Jonson*

[72] Ricki-Lee Jonson, who does not give an address other than ‘of Southport,’ says on oath in several affidavits that he/she:

- (a) Calls the Respondent ‘mum’ because ‘she takes care of me heap’s (sic) and helps a lot of other young streety’s (sic),’ that she is ‘a strong caring kind women (sic) and she looks after me and also looks after a heap of homeless fellas/chick (sic).’

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid, last line.

<sup>32</sup> Ibid, page 4.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid, page 5.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

- (b) Has seen 'Tonya' terrorising the Respondent and that Tonya's sister-in-law has said that Tonya is using her 'telepathical mind' to traumatise the Respondent.
- (c) Has witnessed the effects on the Respondent of this telepathic mind taunting which has badly affected her and that:

Kaitlyn Chapman told me that Tonya threatens and contacts (the Respondent) through her Tathipathical (sic) minds and constantly torments (the Respondent) with different people.

[73] None of the seven witnesses for the Applicant's case, to whom I referred earlier, go by the name of Tonya.

*Respondent's Son*

[74] The Respondent's son occupies the premises with his mother. He deposes in a statutory declaration to waking up most mornings with 'mum yelling and screaming at people whether or not they are in the house or outside.'

[75] He says that 'mum is crazy because I hear it sometimes.'

[76] He says that 'I find it highly unfair that someone who isn't even on the liease (sic) can do this to those that are on the liease (sic).'

[77] He says that this has also caused problems between himself and his mother, that her yelling and screaming all night has affected his sleep and has also affected his mental state 'most times now.'

*Wayne Moule*

[78] Mr Moule, of an address in Queen Street, Southport, deposes in one of two affidavits to the following:

- (a) He has known the Respondent for about six years and has seen her mental health decline in the last two years to 'voicalize (sic) outburst' at 'perceived' threats and intimidation.
- (b) He can see that it is taking a toll on the relationship with her son who is only 20 years old, at his wits' end and doesn't know how to help his mother.
- (c) The Respondent and her son should be moved to a two-bedroom apartment 'to better suit their needs as the current accommodation is unsuitable.'

[79] In another affidavit, Mr Moule says that:

- (a) About six weeks before, the Respondent told him about a man she thought was being held hostage or captive.
- (b) Before Mr Moule got there, the Respondent heard someone being punched, kicked and dragged away from a window.
- (c) He and the Respondent went to the door and heard someone crying, knocked on the door but no-one answered, and 'the people' have since moved out and not been seen again.

*Jasmine McCrae*

[80] Ms McCrae, of an address in Queen Street, Southport, says that:

- (a) She was sitting with the Respondent and two friends ‘out the back’ when she heard abuse from the other side of the fence.
- (b) The Respondent said they were abusing her, calling her ‘the new girl’ and ‘the bitch.’
- (c) In her opinion, ‘they’ are tormenting the Respondent and her guests and somehow knew that Ms McCrae had arrived.
- (d) The Respondent is distressed and has ‘enough on her plate to worry about.’

*Justin Helmer*

[81] In an unsigned, unsworn ‘affidavit,’ Mr Helmer, whose address is simply stated as ‘of Southport,’ says:

- (a) He has witnessed ‘relatives of the neighbours admit that they have taunted, abused, baited, stirred the pot, created problems and basically deliberately caused issues’ for the Respondent.
- (b) He has been ‘in the house’ when windows have smashed and items have been stolen from behind the house.
- (c) He believes that this was to cause the Respondent and her family and friends harm.

*Respondent’s Human Rights Complaint*

[82] The Respondent relies on evidence in the form of a letter to the Applicant’s Area Manager dated 20 March 2020<sup>38</sup> in which she complains that the Applicant’s decision to apply for a termination order is ‘in direct contravention of (her) section 25 human right to privacy and reputation and (her) section 26 right to protection of families and children.’

[83] She says in that letter that:

- (a) She and her son, aged 20, will be homeless if termination occurs because they will have nowhere else to live due to their low income.
- (b) The Applicant issued her a Notice to Remedy Breach which had not expired prior to commencing proceedings, did not provide particulars of the breach and did not take account of her right to a fair hearing in breach of section 31 of the Human Rights Act 2019 (Qld).
- (c) The decision to apply to terminate her lease was not compatible with her human rights, nor the Applicant’s refusal of a transfer request so she could make a fresh start.
- (d) The Applicant’s decision to apply for a termination order and refuse a transfer is not a reasonable or justifiable limit considering the factors referred to in section 13(2) of the Human Rights Act 2019 (Qld).
- (e) The Applicant did not consider other less restrictive and reasonably available ways to achieve the purpose of the limitation which might have included a behaviour management agreement or discussing transfer options.

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<sup>38</sup> Filed on 25 March 2020.

- (f) Her complaint is to be treated as such under section 65(1) of the Human Rights Act 2019 (Qld) and, as such, a request to review the decision to apply to terminate her lease.
- [84] The parties did not put in evidence the Notice to Remedy breach referred to in the Respondent's complaint. I did not call for production of it because an Application for termination of a lease for objectionable behaviour does not need to be supported by a Notice to Remedy Breach and a Notice to Leave.<sup>39</sup>
- [85] The validity or otherwise of a Notice to Remedy Breach raised by the Respondent is therefore irrelevant to the matters that I am required to decide in this case.
- [86] The status and outcome (if any) of the complaint is unclear.
- [87] The Respondent says in a submission that:
- (a) She has limited income being reliant on the Newstart Allowance and has no viable alternative housing options.
  - (b) In the event a termination order is made, she will become homeless in the short term.
  - (c) At best, she will have to reside in unsafe and insecure housing such as a refuge or rooming house accommodation.
  - (d) She has complex health needs that are supported by the Qld Health HHOT team (Homeless Health Outreach Team).
  - (e) Her ability to receive this support will be severely constrained if she is homeless.
  - (f) She has requested a housing transfer but the Department of Housing has refused to consider it.
  - (g) She believes a transfer would provide her with an opportunity to make a fresh start with the appropriate supports in place.
- [88] At the hearing on 26 March 2020, I asked the Respondent whether she had any relatives in this State. She replied: 'None that I talk to. They're all high on stuff.'

### **Tribunal Information**

- [89] Section 28(3)(b) and (c) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) provides that the Tribunal conducting a proceeding is not bound by the rules of evidence or any practices or procedures applying to courts of record other than if adopting them and may inform itself in any way it considers appropriate.
- [90] Because it is statistically relevant and has not been addressed by either side in this proceeding, I have informed myself of the following uncontroversial evidence<sup>40</sup> of the Applicant in a recent, but unrelated, application<sup>41</sup> for termination of a State Tenancy before me at Southport.
- [91] As of 31 December 2019:

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<sup>39</sup> In written submissions, the Applicant says that eight Notices to Remedy Breach have been issued to the Respondent but they are not in evidence either.

<sup>40</sup> Affidavit of Joyce Carpenter, Acting Senior Housing Officer, sworn 17 February 2020.

<sup>41</sup> Southport matter T122/20.

- (a) There were 5,015 social housing dwellings on the Gold Coast, 4,150 of which were managed by Government and 865 Community managed.
- (b) 3,160 applicants were awaiting social housing on the Gold Coast.
- (c) 138 people were housed on the Gold Coast in the period from 1 July 2019.
- (d) There were three Gold Coast evictions for the 2019-2020 financial year and 87 evictions in the whole of the State.
- (e) 25,106 applicants were awaiting social housing in Queensland against a total of 67,592 social housing dwellings.

### **Findings on Material Questions of Fact**

- [92] On the evidence overall, I accept, as more probable than not, the Applicant's evidence and that of its seven witnesses in preference to the evidence of the Respondent and her witnesses wherever there is a material inconsistency between the latter and the former.
- [93] I do so because the Applicant's seven witnesses are independent of the Applicant and corroborate much of the evidence of Ms Ferris for the Applicant concerning the Respondent's behaviour during the current tenancy. Equally, I do not accept the proposition that any of those seven witnesses provoked the Respondent at any time.
- [94] The evidence of the Respondent's son supports the Applicant's evidence in describing her as 'crazy' and her behaviour as intolerable.
- [95] The Respondent's behaviour in the term of the current lease is little different from that during several earlier tenancies.
- [96] The evidence of Ricki-Lee Jonson for the Respondent concerning perceived telepathic assaults on the Respondent by another person supports the conclusion that she suffers from a paranoid delusional disorder.
- [97] I find that:
- (a) The Respondent suffers from a serious psychiatric condition which is likely the consequence of ongoing drug abuse.
  - (b) She suffers from a paranoid delusional disorder evidenced in her belief and the belief of one of her witnesses that she is telepathically assaulted and victimised by others which, she herself says, is mentally and emotionally crippling.
  - (c) Medication, which the Respondent admits taking for her mental condition, has to her mind been working, however she has to explain to others that she sounds like a psycho babbling twit.
  - (d) Objectively, the depot injections which the Respondent has been receiving for her condition have resulted in little behavioural improvement and the effectiveness of medication is reduced by her ongoing use of illicit substances.
  - (e) In a sense, the Respondent is the victim of her own substance abuse and others, including her son, are the victims of her behaviour as a result.
  - (f) She does not deny her behaviour but challenges the 'ridiculously high' number of complaints.

- (g) She is ashamed of, and regrets, her behaviour but she declined to view the video evidence of it.
- (h) She is, 'beyond belief,' sorry for her behaviour.
- (i) Her behaviour is, and has persistently been, abusive, offensive, verbally and sometimes physically violent, continuing unabated in varying degrees through four prior tenancies and throughout the present tenancy.
- (j) Her behaviour was unchanged before and after the commencement of the proceedings in this matter which have had no ameliorative or deterrent effect.
- (k) The Respondent has for a long time been, and remains, unable rationally to constrain herself and that is unlikely to change.
- (l) Viewed objectively, the Respondent's behaviour is reprehensible, dangerous, it has seriously and detrimentally affected the amenity, lives and rights of other individuals and neighbours and has caused one set of neighbours to move out.
- (m) Her behaviour has badly affected her son who lives with her and it will most likely continue to do so.
- (n) That is how Ms Ferris and the seven witnesses for the Applicant and the Respondent's son and others have subjectively experienced her.
- (o) In the circumstances and given the history, the Applicant has justifiably refused to again transfer the Respondent to a new tenancy under their management.
- (p) The Applicant will do all within its means, financially and otherwise, to assist the Respondent (together with her son) into a new private tenancy or short-term accommodation or emergency accommodation if her tenancy is terminated.
- (q) The Applicant will also consider a phased private tenancy of the type referred to by Ms Ferris, as an alternative to the Respondent being rendered homeless, as a last resort.
- (r) The Respondent has not taken up that offer and the parties now await a decision in this case.
- (s) There is no evidence that the Respondent's son himself has applied for a public housing tenancy.
- (t) If he did, he would in all likelihood have to join the queue of some 25,000 individuals awaiting public housing in Queensland unless special circumstances might warrant him being prioritised.
- (u) It is unlikely that the Respondent's behaviour, whether living with or without her son, will change without sustained psychiatric intervention and treatment.
- (v) No-one appears to have considered that the Respondent's interests might best be served by admission to a psychiatric institution, involuntarily if needs be, pursuant to the *Mental Health Act 2016* (Qld).

## **Legislation**

[98] The three statutes which apply on the facts of this case are the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('the QCAT Act'), the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ('the RTRAA') and the *Human Rights Act 2019* (Qld) ('the HRA').

*RTRAA and QCAT Acts*

[99] The RTRAA is an enabling Act which, subject to a statutory limitation in the case of money claims,<sup>42</sup> confers jurisdiction on this Tribunal to hear and determine residential tenancy disputes, including applications to terminate a lease, as minor civil disputes in the State of Queensland.

[100] An application to terminate a lease takes no account of the amount of rent for the unexpired portion of a lease in determining whether the Tribunal has jurisdiction to hear a case. It suffices, to found jurisdiction, that there is a tenancy agreement in existence which a party seeks to terminate on an available statutory ground, in this case objectionable behaviour.

[101] The Tribunal's residential tenancy jurisdiction is confirmed by section 12(4) of the QCAT Act with which legislation the RTRAA intersects and section 13(1) requires that the Tribunal make orders that it considers fair and equitable to the parties to the proceeding in order to resolve the dispute. The Tribunal may dismiss the Application if it considers that to be appropriate.

[102] In terms of section 4 of the RTRAA, a right or remedy under the Act is in addition to a right or remedy a person would have apart from it<sup>43</sup> provided such right or remedy is not inconsistent<sup>44</sup> with the Act.

[103] Subject to that qualification, the RTRAA does not operate to reduce the effect of a right or remedy a person would otherwise have.<sup>45</sup>

[104] For example, the HRA, to which I will refer shortly, legislates human rights, procedures, and a potential remedy for breach of them.

[105] Section 5 of the RTRAA provides, amongst other things, that its main objects are to state the rights and obligations of tenants, lessors and agents for residential tenancies<sup>46</sup> and that they are mainly achieved by regulating the making, content, operation and ending of residential tenancy agreements.<sup>47</sup>

*Tenancy Rights, Obligations and Objectionable Behaviour*

[106] Section 183(1) of the RTRAA provides that a Lessor must take reasonable steps to ensure the tenant has quiet enjoyment of the premises. Subsection (2) prescribes that a Lessor or Lessor's agent must not interfere with the reasonable peace, comfort or privacy of the Tenant using the premises.

[107] Section 184 provides that a Tenant must not:

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<sup>42</sup> A maximum of \$25,000 by amendment to section 13 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) effective from 1 September 2019 by removing the reference to a 'tenancy matter' and amending section 516 of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).

<sup>43</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), s 4(1).

<sup>44</sup> *Ibid*, s 4(3).

<sup>45</sup> *Ibid*, s 4(2).

<sup>46</sup> *Ibid*, s 5(1)(a).

<sup>47</sup> *Ibid*, s 5(2)(a).

- (a) Use the premises for an illegal purpose; or
- (b) Cause a nuisance by the use of the premises; or
- (c) Interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.

[108] Individually or in combination, those activities may amount to objectionable behaviour of a Tenant just as may the breach of a Lessor's corresponding obligation.

[109] The obligations under section 183 and 184, together with other statutory obligations under the RTRAA, are also contractual obligations of the parties to a statutory residential tenancy in Queensland. Section 52(1) confirms this in providing that if, under this Act, a duty is imposed on, or an entitlement is given to, a lessor or tenant, the duty or entitlement is taken to be included as a term of the residential tenancy agreement.<sup>48</sup>

[110] For completeness, but not pertinent in the present case, section 54(1) states that if a provision of the RTRAA is inconsistent with a term of a residential tenancy agreement, the former prevails. The latter is void to the extent of the inconsistency.

[111] Subsection (2) says that if a standard term is inconsistent with a special term then the former prevails. The latter is void to the extent of the inconsistency.

[112] The standard Form 18C State Tenancy Agreement in turn provides as follows in section 19(2) [Tenant's use of premises – ss 10 and 184] of the Standard Terms:

(2) The tenant must not –

- (a) use the premises for an illegal purpose; or
- (b) cause a nuisance by the use of the premises; or

*Examples of things that may constitute a nuisance:*

- . using paints or chemicals on the premises that go onto or cause odours on adjoining land
- . causing loud noises
- . allowing large amounts of water to escape onto adjoining land

(c) interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant; or

(d) allow another person on the premises to interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.

[113] Section 297A prescribes what may be done where an Applicant seeks to terminate a tenancy agreement for objectionable behaviour in public or community housing.

[114] Subsection (1) provides that the lessor may apply for a termination order because the tenant, a guest of the tenant or a person allowed on the premises by the tenant:

- (a) has harassed, intimidated or verbally abused –
  - (i) the lessor or lessor's agent; or

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<sup>48</sup> Unless section 26 applies which is not the case here.

- (ii) a person occupying, or allowed on, premises nearby.
- (b) is causing, or has caused, a serious nuisance to persons occupying premises nearby; or
- (c) has intentionally or recklessly endangered another person at the premises or interfered with the reasonable peace, comfort or privacy of a person occupying premises nearby.

[115] Subsection (2) provides that an application under this subsection is called an application made because of objectionable behaviour and subsection (3) states that, in this section, lessor means:

- (a) The chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
- (b) A community housing provider.

[116] Section 345A of the RTRAA applies where, as in this case, the Applicant for termination is the Chief Executive of the Department in which the *Housing Act 2003* (Qld) is administered, acting on behalf of the State or a community housing provider. A ‘State tenancy agreement’ means a residential tenancy agreement under which the lessor is the said Chief Executive.<sup>49</sup>

[117] The Tribunal may, in the proper exercise of its discretion, order the termination of a State tenancy agreement on the ground of objectionable behaviour if the ground is established and the behaviour justifies doing so.<sup>50</sup>

[118] As I said earlier, the RTRAA does not require that an application to terminate a tenancy agreement for objectionable behaviour be preceded, and supported, by a Notice to Remedy Breach and a Notice to Leave, which notices may be required for other categories of lease breach.

[119] Section 335(1) of the RTRAA provides that an application may be made to the Tribunal for a termination order without giving a Notice to Leave the premises to the tenant if the application is made for (amongst other things) objectionable behaviour.

[120] What amounts to ‘objectionable behaviour,’ whether of a lessor or tenant, is not defined in either the RTRAA or the QCAT Act, so the term is to be construed according to its commonly understood meaning and includes that which is serious and unpleasant, exceptionable or obnoxious;<sup>51</sup> arousing distaste or opposition, unpleasant or offensive.<sup>52</sup>

[121] Section 297A(1) and (2) which I have quoted, provides insight into the types of behaviour regarded as objectionable, viz. harassment, intimidation, verbal abuse, serious nuisance, intentional or reckless endangerment, or interference with reasonable peace, comfort and privacy of nearby occupants.

[122] Section 345A of the RTRAA provides further insight regarding what might be regarded as objectionable behaviour in a variety of circumstances, according to the facts of each case, in stating that the Tribunal may have regard to:

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<sup>49</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), s 345A(5)(a) and (b).

<sup>50</sup> *Ibid*, s 345A(1)(a) and (b).

<sup>51</sup> Cambridge Dictionary ([dictionary.cambridge.org](http://dictionary.cambridge.org)) and Thesaurus: synonyms and related words.

<sup>52</sup> Lexico; Oxford Dictionaries.

- (a) whether it was recurrent and the frequency of recurrences;<sup>53</sup>
- (b) the seriousness of behaviour in the form of harassment, intimidation or verbal abuse;<sup>54</sup>
- (c) the seriousness of intentional or reckless endangerment;<sup>55</sup>
- (d) the seriousness of behaviour in the form of interference with a person's reasonable peace, comfort or privacy.<sup>56</sup>

[123] It also prescribes the factors to which the Tribunal must (my emphasis) have regard in deciding whether the behaviour justifies terminating the tenancy agreement, namely:

- (a) any serious or adverse effects on neighbouring residents and other persons if the agreement is not terminated;<sup>57</sup>
- (b) any evidence regarding the tenancy history of the tenant;<sup>58</sup>
- (c) if the tenant is a tenant under a State tenancy agreement, the Department's responsibility to other tenants and the need of persons awaiting housing assistance from the State.<sup>59</sup>

[124] Neither the discretionary nor the compulsory considerations, to which I have referred, are a closed set of factors to which the Tribunal may have regard in reaching a decision.

[125] Objectionable behaviour is, by reason of the provisions of the RTRAA to which I have referred, unlawful behaviour in the residential tenancy setting in a civil sense. As proscribed behaviour, where sufficiently serious, it may be the basis for the Tribunal ending the tenancy of an individual.

[126] For completeness, I note that section 527D of the RTRAA provides that the chief executive of the department in which the *Housing Act 2003* (Qld) is administered, acting on behalf of the State, or a community housing provider, may by written notice given to the tenant require a written undertaking in the terms stated in the notice not to engage in stated anti-social behaviour and section 527E provides that either may apply to terminate a lease for failure to enter into the undertaking or serious or persistent breach of it.

[127] Section 349(2) of the RTRAA requires that the Tribunal must not refuse to terminate the tenancy merely because the tenant is a tenant of the chief executive of the department in which the *Housing Act 2003* (Qld) is administered, acting on behalf of the State, or a community housing provider.

[128] Section 350(1) of the RTRAA requires the Tribunal authorise a Warrant of Possession for a property where the Tribunal terminates a tenant's lease.

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<sup>53</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), s 345A(2)(a).

<sup>54</sup> *Ibid*, s 345A(2)(b).

<sup>55</sup> *Ibid*, s 345A(2)(c).

<sup>56</sup> *Ibid*, s 345A(2)(d).

<sup>57</sup> *Ibid*, s 345A(3)(a).

<sup>58</sup> *Ibid*, s 345A(3)(b).

<sup>59</sup> *Ibid*, s 345A(3)(c)(i) and (ii).

### Queensland Precedent

- [129] The Tribunal's decision in *State of Queensland through the Department of Housing v Public Works v Tapim* [2015] QCATA 71 is authority for the proposition that, in the objectionable behaviour context, the phrase 'occupying ... premises nearby' does not mean that the victim of the anti-social behaviour must still be a neighbour at the time that the application for termination of a tenant's lease is lodged with the Tribunal.
- [130] In the present case, one of the affected neighbouring tenancies has ended whilst the other neighbouring tenancies of the seven witnesses for the Applicant who are affected by the Respondent's behaviour still subsist.
- [131] In *State of Queensland through the Department of Housing and Public Works v Lawler* (Coolangatta Claim 66/16),<sup>60</sup> I terminated a tenant's State tenancy for objectionable behaviour in similar circumstances to those in the present case. Mr Lawler appealed the termination but was unsuccessful in the result.
- [132] In *Lawler v Department of Housing and Public Works, State of Queensland* [2017] QCATA 21, the Appeal Tribunal constituted by a Senior Member and Member quoted the following from my *ex tempore* reasons with approval:
- (a) A psychiatric illness which explains objectionable conduct is not a lawful excuse or defence to an application to terminate a lease for objectionable behaviour.<sup>61</sup>
  - (b) Mental illness was not a sufficient reason to displace the view that objectionable behaviour justifies termination.<sup>62</sup>
  - (c) It was a feature of the Respondent's mental illness that he lacked insight into his condition, that his response was to point the finger of blame to all but himself which was understandable because it was entirely consistent with his psychiatric condition but it nevertheless did not excuse the behaviour.<sup>63</sup>
  - (d) The Respondent did not have an appreciation of the consequences of his behaviour for others and his need for intensive medical assistance, in his own interests.<sup>64</sup>
  - (e) Unpleasant though my task was, I was required to act on the evidence overall as it presented and, in the exercise of my discretion, to give the matters which the Applicant complained of, and the evidence in that regard, due weight.<sup>65</sup>
  - (f) It was not inevitable that the Respondent would end up homeless.<sup>66</sup>
  - (g) The Department had done what it could but the Respondent had refused to engage with it.<sup>67</sup>

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<sup>60</sup> Quoted with approval by Senior Member O'Callaghan and Member Traves in *Lawler v Department of Housing and Public Works, State of Queensland* [2017] QCATA 21 at paragraph [29].

<sup>61</sup> *Ibid*, paragraph [29].

<sup>62</sup> *Ibid*, paragraph [28].

<sup>63</sup> *Ibid*, paragraph [30].

<sup>64</sup> *Ibid*, paragraph [31].

<sup>65</sup> *Ibid*.

<sup>66</sup> *Ibid*, paragraph [33].

<sup>67</sup> *Ibid*, paragraph [35].

- (h) It was not the Applicant's duty to intervene and direct a tenant to receive medical assistance and it would be acting outside of its jurisdiction if it did so.<sup>68</sup>
- [133] The Tribunal's decision in *Simonova v Department of Housing and Public Works* [2018] QCATA 33<sup>69</sup> is authority for the proposition that the requirement in section 297A(1)(c) of the RTRAA to prove intentional or reckless endangerment of another person by a tenant does not extend for purposes of the second limb of the subsection.
- [134] That is, proof that the tenant has intentionally interfered with the reasonable peace, comfort or privacy of a person occupying premises nearby is not required. It suffices to prove the interference itself, regardless of the intention.
- [135] Put another way, partially or completely involuntary conduct which is objectionable does not cease to be objectionable and actionable, or any less so, because it is attributable wholly or in part to a medical condition. The degree, if any, of an individual's insight<sup>70</sup> into their behaviour and the impact of it on others is irrelevant.
- [136] The learned Adjudicator in *State of Queensland through the Department of Housing and Public Works v Turnbull* [2014] QCAT 442 at paragraph [31] correctly, in my respectful opinion, observed that '.... the difficulty with these types of cases is the delicate balancing act of weighing up the competing interests of the parties. The interests of the Department and other neighbouring tenants against the interests of Mr Turnbull.'
- [137] In that case, the Tribunal found that Mr Turnbull, who had complex needs, was intellectually handicapped and that his capacity for impulse control and behavioural regulation had been adversely affected as a result of brain injury. It nevertheless terminated Mr Turnbull's lease and ordered his eviction for serious, drug related, breach of the tenancy that could have life threatening consequences for him and his neighbours.<sup>71</sup>
- [138] The Tribunal did so, balancing the interests of the parties, accepting the likelihood of Mr Turnbull being left homeless, because it could not ignore his involvement in the storage of hazardous chemicals (methyl-amphetamine)<sup>72</sup> and drug equipment posing a potential or real threat to neighbours and other tenants in the complex.<sup>73</sup> Mr Turnbull unsuccessfully sought a stay of the eviction. His subsequent appeal to the Queensland Court of Appeal<sup>74</sup> was dismissed.
- [139] In *State of Queensland through the Department of Housing and Public Works v Gray* [2017] QCAT 475, the Respondent tenant's lease was terminated for objectionable behaviour not dissimilar to that complained of in the present case. Mrs Gray was a vulnerable person with an eight-year-old child. Her behaviour was the manifestation of psychological and emotional issues.

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<sup>68</sup> Ibid.

<sup>69</sup> Upheld by the Queensland Court of Appeal in *Simonova v Department of Housing and Public Works* [2019] QCA 10.

<sup>70</sup> In the sense considered in *Department of Communities, Housing and Homelessness Services v Kairouz* [2010] QCAT 355 at paragraph [7] of the decision.

<sup>71</sup> *State of Queensland through the Department of Housing and Public Works v Turnbull* [2014] QCAT 442, paragraphs [34] and [35].

<sup>72</sup> Ibid, paragraph [33].

<sup>73</sup> Ibid, paragraphs [37] and [38].

<sup>74</sup> In *Turnbull v State of Queensland* [2014] QCA 240.

[140] Mrs Gray had also breached an Acceptable Behaviour Agreement entered into pursuant to section 527D of the RTRAA. The Applicant did not rely on the breach of the Agreement itself but did rely on Mrs Gray's objectionable behaviour as the ground for termination. The Tribunal referred to the decisions in *Turnbull* and *Simonova*, balanced the competing interests of the parties and affected neighbours, and ordered termination of the lease.

*Applying the RTRAA and Precedent*

[141] Applying the legislation and case law to which I have referred, I find that the Applicant has made out the objectionable behaviour ground for termination of the Respondent's lease in this case.

[142] I find that the Respondent's harassment, intimidation, violence towards, and verbal abuse of, others, to which I have referred:

- (a) Was frequent and recurrent in the term of the present lease and continued even after the Respondent was served with the Application to terminate her lease.
- (b) Continued in the face of repeated warnings of the consequences for her if it did not cease and repeated attempts to assist the Respondent sustain the tenancy if she were able to change her ways.
- (c) Has seriously impacted others, including families, in tenancies nearby who fear for their safety and security.
- (d) Has seriously interfered with the reasonable peace, comfort and privacy of persons nearby and has continued to have that effect in the manner recounted by the seven witnesses for the Applicant and Ms Ferris.
- (e) Will likely continue to seriously and adversely affect the privacy, amenity, quiet and peaceful enjoyment, health and wellbeing, of neighbouring residents and other persons.
- (f) Will continue to affect, and disproportionately use up, the resource of staff of the Applicant in trying intensively to manage the situation and deal with ongoing complaints, if the tenancy is not terminated.
- (g) Is consistent with the type and pattern of similarly serious objectionable behaviour of the Respondent during prior tenancies with, or arranged by, the Applicant, to which I earlier referred.
- (h) Compromises the Department in its responsibility to other tenants to whom it has obligations and owes a duty of care.
- (i) Impedes access to one or more of the approximately three thousand deserving, law abiding individuals waiting in the queue for public housing on the Gold Coast of Queensland as at 31 December 2019.

[143] I am required to act on the evidence overall and, in the exercise of my discretion, to give the matters of which the Applicant has complained and the evidence in that regard due weight.

[144] The mental illness which afflicts the Respondent explains, but does not excuse or justify, her objectionable behaviour or provide a defence to the Application to terminate her lease. On the contrary, her objectionable behaviour justifies terminating the tenancy agreement.

- [145] The Respondent has limited insight into her behaviour. She has expressed some remorse, but she has not acknowledged the serious effect of it on others whom she blames for her ‘fury’.
- [146] Though there is no evidence that the Applicant required the Respondent in this case to enter into an Acceptable Behaviour Agreement, section 527D of the RTRAA does not compel that course of action and I am satisfied on the evidence in this case that calling on the Respondent to enter into such an agreement would have made no difference to her behaviour.
- [147] The Applicant has done all that it reasonably can to deal with the situation and sustain the Respondent’s tenancy, to no avail, and comes to the Tribunal for a termination order as a last resort.
- [148] Though the Respondent and her son may end up homeless, that is not inevitable if she accepts one of the options put forward by the Applicant. Worst case, though unsatisfactory to her, as the Respondent herself concedes, she would have resort to emergency accommodation or rooming accommodation.
- [149] I do not accept, as suggested by her, that terminating this tenancy will constrain the Respondent from continuing to get support from the Queensland Health HHOT Team and from Queensland Health itself through psychiatric and other medical and support services.

*The HRA*

- [150] From 1 January 2020, the Queensland legislature has added the provisions of the HRA to the statutory mix of legislation requiring consideration in applications for termination of a residential tenancy.
- [151] As I said in *Horizon Housing Company v Ross*,<sup>75</sup> the HRA adds substantial complexity to the tenancy law of this State. This case illustrates the point. The HRA also adds significantly to the time required to conduct hearings and give decisions in cases such as this where human rights are potentially affected.
- [152] The Tribunal would err in law if it failed to consider what human rights of litigant/s and any other human beings are relevant and engaged, and whether they are lawfully limited and qualified or rendered subordinate to the rights of others by a decision of the Tribunal.<sup>76</sup>
- [153] The RTRAA provides for mutual rights and obligations between lessors and tenants. Parties to a tenancy agreement in Queensland have statutory and contractual obligations to each other in the result, whereas the HRA does not provide for this.
- [154] I would err in law if I did not consider, and balance, the human rights of all individuals affected by the Respondent’s objectionable behaviour, including those of neighbours of the Applicant and her son.
- [155] As I said in *Ross*, human rights do not exist in a vacuum, lessors and tenants alike have statutory rights and obligations, and they are bound by legislation and the terms

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<sup>75</sup> [2020] QCAT 41, paragraph [10].

<sup>76</sup> For example, see *Burgess v Director of Housing* [2014] VSC 648.

of their tenancy agreements. Human rights are to be considered in the factual and legal context of each case.<sup>77</sup>

[156] As I earlier noted, to the extent of any inconsistency between a provision for human rights in the HRA and a provision of the RTRAA in the tenancy context, the latter prevails. The HRA does not purport to fetter the Tribunal's discretion conferred by the RTRAA to end a tenant's tenancy.

[157] Though neither of the parties to this case did so in their written submissions, it is appropriate in this decision to summarise the rights, entitlements, and procedures under the HRA so as to determine which are relevant before deciding whether they are limited on the facts of this case.

[158] In terms of the HRA:

- (a) Only individuals have human rights in Queensland.<sup>78</sup>
- (b) Human rights include:
  - (i) The rights to recognition as a person before the law, to enjoy human rights without discrimination, to equality before the law and equal protection of the law without discrimination, to equal and effective protection against discrimination, but measures taken for the purpose of assisting disadvantaged persons or groups do not constitute discrimination.<sup>79</sup>
  - (ii) The right of an individual not to be treated or punished in a cruel, inhuman or degrading way.<sup>80</sup>
  - (iii) The freedom of an individual to choose where to live.<sup>81</sup>
  - (iv) The freedom of expression of an individual including (but not limited to) oral expression.<sup>82</sup>
  - (v) The right of an individual to own property and not be arbitrarily deprived of one's property.<sup>83</sup>
  - (vi) The right of an individual to not have privacy, family, home (or correspondence) unlawfully or arbitrarily interfered with and to not have the person's reputation unlawfully attacked.<sup>84</sup>
  - (vii) The right and entitlement of families as a 'fundamental group unit of society' to be protected by society and the State.<sup>85</sup>
  - (viii) The right of an individual to have a civil proceeding decided by a competent, independent and impartial Court or Tribunal after a fair and public hearing, though media, other persons or the general public may be excluded from part or all of a hearing in the public interest or in the

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<sup>77</sup> Ibid, paragraph [12].

<sup>78</sup> *Human Rights Act 2019 (Qld)*, s 11.

<sup>79</sup> Ibid, s 15(1) to (5).

<sup>80</sup> Ibid, s 17(b).

<sup>81</sup> Ibid, s 19 as regards freedom of movement within Queensland.

<sup>82</sup> Ibid, s 21(2).

<sup>83</sup> Ibid, s 24(1) and (2).

<sup>84</sup> Ibid, s 25(a) and (b).

<sup>85</sup> Ibid, s 26(1).

interests of justice, but all judgments of a Court or Tribunal must be publicly available.<sup>86</sup>

- (ix) The right of an individual to access health services without discrimination.<sup>87</sup>
- (c) Human rights are in addition to other rights and freedoms.<sup>88</sup>
- (d) Human rights may be subject to reasonable limits ‘that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.’<sup>89</sup>
- (e) In deciding whether a limit on a human right is reasonable and justifiable, the following may be relevant:
  - (i) the nature of the human right;<sup>90</sup>
  - (ii) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;<sup>91</sup>
  - (iii) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;<sup>92</sup>
  - (iv) whether there are any less restrictive and reasonably available ways to achieve the purpose;<sup>93</sup>
  - (v) the importance of the purpose of the limitation;<sup>94</sup> the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;<sup>95</sup> and
  - (vi) the balance between the importance of the purpose of the limitation and the importance of preserving the human right.<sup>96</sup>
- (f) All statutory provisions must, to the extent possible that is consistent with their purpose, be:
  - (i) interpreted in a way that is compatible with human rights;<sup>97</sup> or
  - (ii) where that cannot be done, to the extent possible that is consistent with its purpose and in a way that is ‘most compatible’ with human rights.<sup>98</sup>
- (g) Section 58 of the HRA makes it unlawful for a public entity (in this case the State of Queensland through the Department of Housing) to act or make a decision in a way that is not compatible with human rights or, in making a

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<sup>86</sup> Ibid, s 31(1), (2) and (3).

<sup>87</sup> Ibid, s 37(1).

<sup>88</sup> Ibid, s 12.

<sup>89</sup> Ibid, s 13(1).

<sup>90</sup> Ibid, s 13(2)(a).

<sup>91</sup> Ibid, s 13(2)(b).

<sup>92</sup> Ibid, s 13(2)(c).

<sup>93</sup> Ibid, s 13(2)(d).

<sup>94</sup> Ibid, s 13(2)(e).

<sup>95</sup> Ibid, s 13(2)(f).

<sup>96</sup> Ibid, s 13(2)(g).

<sup>97</sup> Ibid, s 48(1).

<sup>98</sup> Ibid, s 48(2).

decision, to fail to give proper consideration to a human right relevant to the decision<sup>99</sup> unless the public entity could not reasonably have acted differently or made a different decision because of a ‘statutory provision ... or otherwise under law’<sup>100</sup> (the exception).

- (h) Unless the exception applies, section 59 of the HRA provides that if a person may seek any relief or remedy in relation to an act or decision of a public entity on the ground that it was unlawful other than because of section 58<sup>101</sup> then the person may seek the relief or remedy on the ground of section 58 unlawfulness even if not successful on the other ground.<sup>102</sup>

[159] Section 59 contradicts the proposition that the HRA does not legislate a cause of action available to a human being for breach of the Act. It does so in law, by the back door, in providing for the right to make a claim or seek a remedy on the back of another claim regardless of whether it succeeds.

[160] Where a claim rides on the back of another cause of action asserted by an individual alleging a breach of a human right, section 59(3) of the HRA provides that the aggrieved individual is not entitled to be awarded damages on the ground of unlawfulness arising under section 58.

#### *Applying the HRA*

[161] I find that the following human rights of the Respondent and those of her son are relevant, and reasonably and justifiably limited, in this case.

#### *Limitation of Freedom to Choose Residence*

[162] In the public housing statutory tenancy context, the freedom to choose where to live is, in my opinion, subject to, and reasonably limited by, the State’s resources in the acquisition and supply of public housing. That is because Public Housing is not instantly available on demand. Section 345A(3)(c)(i) and (ii) of the RTRAA, to which I referred earlier, recognises that.

[163] In that sense, both in terms of access and retention, public housing is a limited resource, funded by the taxpayers of the State, offered to individuals in need who apply and who must wait in queue for housing to become available. It is not an unqualified right. Waiting times may be lengthy, sometimes many years.

[164] An individual’s freedom to choose where to live is reasonably limited where, as in the present case, objectionable behaviour of a tenant in public housing warrants termination of an individual’s lease, notwithstanding that the individual originally chose to take up the lease offered by the State.

[165] In the public housing context, an individual may request, but does not have the right to demand, a transfer to a tenancy elsewhere. Where an individual’s behaviour has been consistently objectionable and the behaviour is likely to continue wherever the individual is housed in the future, a transfer request would reasonably be declined.

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<sup>99</sup> Ibid, s 58(1).

<sup>100</sup> Ibid, s 58(2).

<sup>101</sup> Ibid, s 59(1).

<sup>102</sup> Ibid, s 59(2).

*Limitation of Right Not to Be Treated in Cruel, Inhuman or Degrading Way*

- [166] Cruel, inhuman or degrading treatment is a separate category to torture. It concerns an infringement of dignity. In my opinion, the provision is sufficiently broad so as to include forcible eviction as an example of what might subjectively be considered cruel, inhuman or degrading treatment.
- [167] However, the right to not be treated in a cruel, inhuman or degrading way, e.g. by forcible eviction from a tenancy, is reasonably limited in circumstances where it is necessary because a tenant has failed to leave in defiance of a Tribunal order ending a residential tenancy.
- [168] Where, upon the application of a lessor, the Tribunal terminates a tenant's lease, section 350(1) of the RTRAA provides that the Tribunal must authorise a Warrant of Possession. No discretion is involved.
- [169] In that circumstance, a tenant brings the consequence of eviction upon him/herself where the treatment is the result of the tenant not leaving premises as ordered by the Tribunal.
- [170] It would run counter to legal principle if an evictee could claim the right not to be so treated where it was only necessary because of the failure to leave a property as ordered by the Tribunal.

*Limitation of Freedom of Expression*

- [171] The freedom of expression of an individual including oral expression is, in my opinion, reasonably and lawfully limited in the Queensland tenancy context by the requirement that the expression by words and/or conduct is not objectionable and does not seriously impact proprietary, contractual, and statutory rights, of others, whether they be individuals, families or otherwise.

*Limitation of Right to Privacy, Family, Home and Reputation*

- [172] The right of an individual or individuals not to have their privacy, family, home, or correspondence interfered with and to not have their reputation attacked is reasonably and lawfully limited where their behaviour warrants the interference and the response is not arbitrary.
- [173] The right and entitlement of families as a fundamental group unit of society to be protected by society and the State is reasonably and lawfully limited where the behaviour of a tenant is so objectionable as to warrant the termination of a tenancy and the return of vacant possession to the lessor, notwithstanding its effect on the family.

*Mutual Rights and Obligations*

- [174] It is often said that the RTRAA protects tenants and that is so, where appropriate. However, it also provides statutory protection to lessors and others against the unlawful behaviour of tenants and vice versa. As I have said, lessors and tenants alike have mutual obligations which they must perform to enjoy the rights conferred by the legislation.

*Competing Legislative Purposes*

- [175] The statutory objective and purpose of the HRA is to protect human rights in any context. However, in appropriate cases, that important purpose must yield to the

important statutory objectives and purpose of the RTRAA to which I referred earlier.

*Interpretation*

- [176] Section 48(4) of the HRA states that the Act does not affect the validity of an Act or provision of an Act that is not compatible with human rights or a statutory instrument or provision of a statutory instrument that is not compatible with human rights and is empowered to be so by the Act under which it is made.
- [177] Put another way, the RTRAA and regulations continue to be valid and effective and are to continue to be applied according to their tenor in context of the HRA. In this regard, the explanatory notes to the *Human Rights Bill 2018* state as follows.
- [178] First, the emphasis on giving effect to the legislative purpose means that the provision does not authorise a court to depart from Parliament's intention, but it may depart from the literal or grammatical meaning of the words used in exceptional circumstances.<sup>103</sup>
- [179] Second, the court must apply a proportionality analysis when interpreting a statutory provision under clause (now section) 13.<sup>104</sup>
- [180] Third, if a provision can be interpreted in more than one way, but none of the options would be compatible with human rights, then the court should apply the analysis required under clause (now section) 13 to each of the available options and select the option that is most compatible.
- [181] The requirement of the HRA that legislation be interpreted in a way that is compatible, or most compatible, with human rights does not, in my opinion, require that unambiguously limiting provisions of the RTRAA be interpreted in a less limiting way.
- [182] The lawful limitations of human rights to which I have referred are entirely consistent with a free and democratic society based upon human dignity, equality and freedom. They are essential to the orderly regulation of rights and obligations and the prohibition of conduct which threatens them.
- [183] Limitations help achieve the important purposes of both the RTRAA and the HRA and balancing them. Where provisions of the HRA are inconsistent with provisions of the RTRAA so far as statutory obligations of tenants and lessors are concerned, the latter prevail.
- [184] In *Director of Housing v Uden* [2014] VCAT 1329 concerning the Victorian Human Rights Charter, to which I may have regard,<sup>105</sup> it was held that where the words of a statute are clear then they must be given that meaning. It is only where statutory words are capable of more than one meaning that they should then be given the meaning that best accords with the human rights in question.
- [185] The 'exceptional circumstances' departure, in the Explanatory Notes that I have quoted, for not following accepted standards of statutory interpretation of legislation limiting human rights, has been disavowed by the High Court of Australia in

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<sup>103</sup> Explanatory Notes, page 30.

<sup>104</sup> Ibid, page 31.

<sup>105</sup> See section 48(3) of the *Human Rights Act 2019* (Qld).

analysing the interpretative provisions of the Victorian Human Rights Charter which are the equivalent of section 48 of the HRA.

[186] In *Momcilovic v The Queen* [2011] HCA 34, a majority (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ) of the High Court supported the conclusion that the Charter does not require Courts to depart from established understanding of the limits of statutory interpretation.<sup>106</sup>

[187] There are, in any event, in my opinion, no exceptional circumstances in the present case which would justify any different approach or departing from the clear legislative intent of Parliament in the drafting of the RTRAA, its legitimate objects and purpose, and giving effect to that.

*Discretion*

[188] Recognition of human rights according to the provisions of the HRA is required in the exercise of the Tribunal's discretion, but that does not involve a question of interpretation.

*No Less Restrictive Remedy*

[189] On the evidence overall, there is, I find, no less restrictive and reasonably available way, other than by termination of tenancy and eviction, to achieve the purpose of holding the Respondent to account for her breach of statutory and contractual obligations under the RTRAA, particularly having regard to the serious effect of her objectionable behaviour on others.

[190] The Applicant was, and remains, justified in declining the Respondent's request for another relocation and seeking termination of the lease where there is no reasonable prospect that the objectionable behaviour will end.

*Son's Human Rights*

[191] An unfortunate consequence of terminating the Respondent's tenancy is that her son's right of occupancy will cease as well. She and her son will cease to cohabit as a family if they are split up in the process, as may occur. His associated human rights in respect of the tenancy of the Respondent will thus also be limited by the termination.

[192] Terminating the Respondent's lease with that consequence is, in my opinion, neither arbitrary, nor disproportionate, nor unlawful, rather it is the inevitable consequence of the Respondent's objectionable behaviour which rebounds on both mother and son.

[193] Section 7 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), on which the HRA is modelled, is identically worded to section 13 of the HRA to which I earlier referred.

[194] In her analysis of section 7, Member Kirmos in *Director of Housing v Ronan (Residential Tenancies)* [2013] VCAT 2050 said:

[24] The landlord's representatives gave evidence that they engaged with the tenant in an effort to avoid having to apply for possession, including referring her to external organisations and arranging mediation with

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<sup>106</sup> As succinctly summarised by lawyer Mark Hosking in 'Human Rights Case Summaries' published on the Human Rights Law Centre database.

neighbours. The Tribunal considers the decision by the landlord to seek to regain possession was only made after it considered all other avenues had been exhausted. It did not act on a whim or unreasonably to an inconsequential and transitory disturbance by the tenant. It did not act contrary to the objects of the Housing Act 1983. The Tribunal does not consider that the landlord acted arbitrarily in seeking the compliance order, giving the notice or making the application for possession.

...

[30] While the family and in particular children are protected by the Charter, it does not mean that families or children can never be removed from public housing by legal means, where valid reasons to do so arise. It would otherwise bring about the absurd situation where public tenants, depending on their circumstances, might never be required to vacate, no matter what has arisen.

[195] The facts to which the Member referred are similar to those in the present case and I respectfully agree with her statement of principle. In extrapolation, it would be an absurd outcome in the present case if, by asserting her human rights without regard for her human obligations, the Respondent could never be required to vacate the property under any circumstances.

[196] I note for completeness that the Tribunal in *Ronan* found that section 17(1) of the Victorian Human Rights Charter, which provides that families are the fundamental group unit of society and are entitled to be protected by society and the State, was not engaged in that case.

#### Respondent's Submissions

[197] I accept the Respondent's submission that the Tribunal has a discretion whether or not to terminate a tenant's lease. That was not in issue in this case.

[198] However, I do not accept the Respondent's submissions that:

- (a) Her behaviour would not justify terminating the tenancy; it does for the reasons I have given.
- (b) She would inevitably face homelessness if evicted; that is not necessarily so and depends on the Respondent.
- (c) A transfer to other premises would be the correct and just outcome; that is not a credible solution and will not result in a change of the Respondent's behaviour.
- (d) The Applicant's conduct was unlawful and should be so declared; that is not so for the reasons I have given.
- (e) The proceedings ought to be adjourned, pending the outcome of the human rights complaint, or dismissed; adjournment would unnecessarily delay finalisation of the dispute and there is no proper basis upon which the application for termination could be dismissed.
- (f) Her limited income means that she has no viable secure housing options and would have to live in an unsafe and insecure housing refuge or rooming accommodation; though I accept she is a person of limited means, it does not necessarily follow that she will have to live in unsafe or insecure accommodation.

- (g) She should be afforded the opportunity of a fresh start; the evidence does not support the submission, the Respondent has been given many fresh starts but to no avail.
- (h) An acceptable behaviour agreement would have been a less restrictive and reasonably available way to achieve the purpose of the limitation; As I said, calling on her to enter into such an agreement would have made no difference to her behaviour.

[199] The Respondent, who was advised by QSTARS, could have filed a counter-application alleging the breach of her tenancy and human rights but did not do so. It was not the Tribunal's role to give her advice in that regard. However, nothing turns on the omission because the Applicant did not breach the lease and the Respondent's human rights. It did not act unlawfully.

[200] I accept the Respondent's submission that there is a public interest issue in this matter. I have addressed it comprehensively in these reasons. In the Queensland residential tenancy context, it includes that tenants in public housing must comply with their contractual and statutory obligations and not infringe the rights, including the human rights, of others.

[201] If still unresolved, the Respondent's human rights complaint will carry to its own conclusion in due course. That it may be ongoing is no reason to delay finalising this case. This application is an urgent one. The Tribunal must ensure that the proceedings are conducted as quickly as is consistent with achieving justice.<sup>107</sup>

#### Applicant's Submissions

[202] For the reasons I have given, I accept the Applicant's submission that the Tribunal should end this tenancy on the ground of the Applicant's objectionable behaviour.

[203] I accept that:

- (a) the Applicant has not acted arbitrarily in making this application and that doing so was the last resort, all other reasonable endeavours to save the tenancy having failed.
- (b) there is no less restrictive option for dealing with the Respondent's objectionable behaviour other than terminating the tenancy.
- (c) terminating the tenancy is the proportionate response in all the circumstances.
- (d) the Respondent's human rights are lawfully and justifiably limited on the facts of this case.
- (e) the Applicant has a duty of care to neighbours to mitigate foreseeable risks to health and wellbeing of neighbours caused by the Respondent.
- (f) the Respondent's interests are outweighed by the importance of ensuring the equitable distribution of a finite resource to those most in need and the importance of protecting the human rights of others affected by her behaviour.
- (g) the impact of eviction on the Respondent's already impaired mental health is outweighed by the public interest in allowing the chief executive of the

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<sup>107</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), ss 3(b) and 4(c).

department in which the *Housing Act 2003* (Qld) is administered to distribute public housing according to the waiting list.<sup>108</sup>

- [204] I do not accept the Applicant's submission that ending the Respondent's tenancy limits her right to own property and not to be arbitrarily deprived of it. Property is not defined in the HRA. Query whether it means property in the sense of registered or equitable title to real property (real estate) or any and all property, of any description.
- [205] As the Applicant says, the RTRAA provides for procedures to deal with abandoned property at the end of a tenancy. Whether or not the Respondent or her son abandons property at the end of her tenancy remains to be seen. If they do, the Applicant will have to follow the procedures set out in the Act.
- [206] I do not need to decide whether a tenant's interest in a lease, or leasehold interest in property in other words, is 'property' as referred to in the HRA and caught by the provision that requires that the individual not be deprived of it.
- [207] It suffices to say that if a leasehold interest is a human right protected by the HRA and limited by the RTRAA then the limitation, as it applies to the Respondent's interest in the lease, prevails in this case.

### **Orders**

[208] For the reasons I have given, I order that:

1. A non-publication order is made with respect to:
  - (a) The name and address of the Respondent and her son and the address of her tenancy wherever appearing on the Tribunal record and/or in evidence; and
  - (b) The name and address of each of the seven witnesses by affidavit for the Applicant referred to in the affidavit of Samantha Ferris sworn 20 March 2020 whose redacted affidavits were served on the Respondent.
2. Order 1 does not apply to:
  - (a) The Orders that separately issue to the Applicant and the Respondent in this proceeding which shall refer to the Respondent by name.
  - (b) The Warrant of Possession to be issued in terms of Order 5 which shall refer to the Respondent by name and to the address at which the Warrant is to be executed.
  - (c) Communications between the Applicant and others for the purpose of assisting the Respondent with referrals for the provision of accommodation and assistance including but not limited to the matters set out in paragraphs 2 and 3 of the two (2) page affidavit of Samantha Ferris sworn 31 March 2020.
  - (d) Communications (if any) between the Respondent's Psychologist, the Respondent's Support Agencies and others assisting the Respondent, and the Applicant.

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<sup>108</sup> In the Victorian context, see *Giotopoulos v Director of Housing* [2011] VSC 20; 34 VAR 60.

- (e) Communications between the Applicant and the Human Rights Commission concerning the Respondent's complaint to the Applicant and/or to the Human Rights Commission.
- 3. In accordance with section 31(3) of the *Human Rights Act* 2019 (Qld), nothing contained in Order 1 prevents the publication and reporting of this decision.
- 4. The Respondent's tenancy is terminated on the ground of her objectionable behaviour with effect from midnight on 24 May 2020.
- 5. A Warrant of Possession issue authorising a police officer or officers to enter the premises identified in the Warrant and to give vacant possession of them back to the Applicant.
- 6. The Warrant shall take effect on 25 May 2020 and remain in effect until 6 pm on 7 June 2020.
- 7. Entry under the Warrant shall only be between the hours of 8 am and 6 pm.
- 8. QCAT Registry at Southport email these orders to the parties.