

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *AT v Victim Assist Queensland* [2024] QCAT 307

PARTIES: AT
(applicant)

v

VICTIM ASSIST QUEENSLAND
(respondent)

APPLICATION NO/S: GAR081-23

MATTER TYPE: General administrative review matters

DELIVERED ON: 31 July 2024

HEARING DATE: 29 May 2024

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS: **The decision made by Victim Assist Queensland refusing financial assistance to the applicant is confirmed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where the applicant was refused financial assistance under the *Victims of Crime Assistance Act 2009* (Qld) – where the applicant sought review of a decision made by Victim Assist Queensland refusing to pay the applicant compensation – where the applicant had been a tenant and his tenancy terminated by the Tribunal for his objectionable behaviour – where the applicant claimed a right to be on the premises and refused to return keys to the lessor – where police were called – where the applicant claimed he was detained at the house – where the applicant claimed he had been assaulted by the lessor – where mobile telephone camera footage taken by the applicant at the time failed to show the applicant suffering injury or being detained – where the applicant had no right to be on the premises or to refuse to return the lessor's property

Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s 350, s 351

Victims of Crime Assistance Act 2009 (Qld), s 3, s 25, s 27

APPEARANCES &
REPRESENTATION:

Applicant: Self-represented
Respondent: L Benjamin, In-house Legal

REASONS FOR DECISION

- [1] The applicant ('AT') applied to Victim Assist Queensland for financial assistance as a victim of an act of violence. His application was refused. He has applied to the Tribunal to review that decision.
- [2] The purposes of the *Victims of Crime Assistance Act 2009* (Qld) are set out in s 3 of the Act with s 3(3) including the purpose of providing a scheme to give financial assistance to certain victims of acts of violence.
- [3] The objects of the scheme are set out in s 3(2) and include helping victims of acts of violence to recover by giving them financial assistance which assistance also represents a symbolic expression by the State of the community's recognition of the injuries suffered.
- [4] A victim is a person who has suffered harm because a crime has been committed against the person.¹ Crime is defined for the purposes of Chapter 2 and Schedule 1AA of the Act to include an offence against the person of someone.
- [5] Chapter 3 of the Act establishes the scheme. Section 25 provides certain basic concepts. The meaning of act of violence as a crime for the purpose of the scheme is defined as one which directly results in death or injury to a person.
- [6] Injury is defined in s 27 as bodily injury or mental illness or disorder.

Background

- [7] AT was a tenant of residential premises at the Gold Coast. One of the claimed perpetrators of the act of violence against AT was his lessor at the time. The lessor had applied to the Tribunal to terminate the tenancy. The basis of the application is unclear, the initiating application not being available, however the termination order was granted on the grounds of AT's objectionable behaviour. The tenancy was terminated from midnight on 17 December 2018. A warrant for possession of the property and its return to the lessor was issued effective on 18 December 2018.
- [8] A warrant of possession must be issued when a residential tenancy is terminated by the Tribunal. By s 350 of the *Residential Tenancies and Rooming Accommodation Act 2008* ('RTRAA'):

350 Issue of warrant of possession

- (1) The owner of residential premises may apply to the tribunal for the issue of a warrant of possession if—
 - (a) there is no residential tenancy agreement in effect for the premises; and
 - (b) a person is occupying the premises without the consent of the owner, including, for example, a person who was a

¹ *Victims of Crime Assistance Act 2009* (Qld), s 5.

tenant under a residential tenancy agreement that has ended.

- (2) If a tribunal makes a termination order on an application made other than by a tenant, it also must issue a warrant of possession.

[9] Then the *RTRAA* goes on to provide:

351 Warrant of possession

- (1) A warrant of possession must—
 - (a) authorise a police officer, or a stated authorised person, to enter the premises and give possession of the premises to the owner of the premises or the person in whose favour a termination order was made; and
 - (b) authorise the person to whom the warrant is directed to exercise the powers under the warrant with necessary and reasonable help and force; and
 - (c) state the hours of the day when entry may be made; and
 - (d) state the day the warrant ends.
- (2) The registrar must give written notice of the issue of a warrant of possession to the person occupying the premises as soon as practicable after the warrant is issued.
- (3) If the registrar can not comply with subsection (2) after reasonable efforts (whether before or after the warrant is executed), the validity of the warrant is not affected merely because of the noncompliance.
- (4) A warrant of possession takes effect on the day stated in the warrant for it to take effect and ends—
 - (a) if paragraph (b) does not apply—14 days after it takes effect; or
 - (b) if the tribunal is satisfied that, because of special circumstances, the warrant should continue until a later day stated in the warrant—on the later day.

[10] From the time of termination, midnight 17 December 2018, AT had no right to be on or enter the tenancy premises.

[11] AT did not understand the purpose of the time parameters set in the warrant of possession (the warrant be executed between 8am and 6pm).

[12] Where a tenant fails to vacate after termination, police attend and the lessor is expected, if there are tenant possessions remaining, to engage removalists and have the possessions removed to storage under the watch of the attending police executing the warrant. The cost of removal and storage is initially borne by the lessor but ultimately recoverable from the former tenant.

[13] Police are only there to ensure there is no breach of the peace. Their presence or lack of presence has no bearing on the efficacy of the termination order made by the Tribunal. They are not there to collect keys.

- [14] Police usually give written notice of a particular time and date they intend to be there to execute the warrant to both the tenant and the lessor. That enables the lessor to engage removalists if necessary. Here the notice was issued by police at Robina advising both AT and the lessor that they intended to execute the warrant against AT (if he was still on the premises) at 10am, 26 December 2018. AT's tenancy, however, had already ended midnight 17 December 2018.
- [15] Not understanding that he had no right to be on the premises after midnight 17 December 2018, AT returned on 20 December 2020. He had no right to return, nor any right to retain the keys to the premises.
- [16] The events of the evening of 20 December 2018 are simply explained. AT's tenancy had been terminated for his objectionable behaviour. AT did not accept the termination was effective until police executed the warrant. The lessor demanded return of the keys to the property. AT refused to hand them over. The lessor called the police (as also did AT). AT retreated to his bedroom and refused requests from his friend, who was with him at the time, to either return the keys or to leave. Police came. AT and the friend left with AT still refusing to hand back the keys.
- [17] AT claims that in the course of the evening he was the 'victim of an assault, threats, extortion, forcible confinement among other offences'.²
- [18] AT filmed part of the interaction between himself and the lessor. Also present apart from AT's friend was the lessor's father.
- [19] AT has placed great weight on the mobile telephone camera footage taken by him that evening, both in making a complaint to police about the lessor, and at the hearing.
- [20] I do not understand why. I have viewed the footage. There is nothing to be seen in it supporting AT's claims to having suffered assault, threats, extortion or forcible confinement.
- [21] The footage reveals the lessor demanding return of his keys. He was entitled to make that demand. AT refuses. AT was not entitled to keep the keys. AT retreats, voluntarily, to his (former) bedroom and he stays there with his friend until police arrive. The friend makes more than one demand of AT that he give back the keys to the lessor and that they should leave. AT repeatedly refuses both requests.
- [22] Police closed their investigations into the affair without charging the lessor. They closed their file with an email of 3 February 2021 to AT informing him the audio commentary recorded on the mobile telephone camera footage had been transcribed and given close consideration together with the video, but the footage failed to disclose any assault, threat to assault, aggressive body gestures or the barricading of any door as had been claimed by AT.
- [23] Police spoke to AT's friend who was there that evening. She corroborated to them at the time the lessor's version of events which was there had been no assault and no deprivation of liberty.

² Financial Assistance Application – Primary Victim 22 October 2020.

- [24] AT's friend gave evidence at hearing. Her evidence at hearing changed from the early statements made by her to police when they investigated AT's complaints. I conclude her earlier statements to police are to be preferred to the changed version provided at hearing. Her earlier evidence was at least supported by the mobile telephone camera footage. She had originally told police AT had a verbal argument with the lessor. She said she did not witness any physical interaction, or hear threats by the lessor. She did not feel threatened.
- [25] The application for financial assistance lodged with Victim Assist Queensland was refused on the basis there was no evidence of an act of violence having taken place as claimed, nor evidence that AT had suffered any injury in result. I draw the same conclusions from the evidence before me.
- [26] I confirm the decision to refuse financial assistance. There is no evidence of an act of violence having taken place as claimed by AT, nor that he suffered any injury. Both elements are prerequisites to payment of compensation.