

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Bourne v First National Real Estate Rochedale* [2023]  
QCAT 359

PARTIES: **SAMANTHA JANE BOURNE**  
(applicant)

**v**

**FIRST NATIONAL REAL ESTATE ROCHEDALE**  
(respondent)

APPLICATION NO/S: Q2021-23

MATTER TYPE: Residential tenancy matters

DELIVERED ON: 21 September 2023

HEARING DATE: 15 September 2023

HEARD AT: Brisbane

DECISION OF: Judicial Member D J McGill SC

ORDERS: **Application dismissed.**

CATCHWORDS: LANDLORD AND TENANT – RESIDENTIAL  
TENANCIES LEGISLATION – OBLIGATIONS  
PROHIBITED MATTERS AND PROTECTION FOR  
LESSEES – regulation of tenancy databases – what is a  
database – whether reference listed on database – whether  
reference inaccurate – whether reference became out of  
date – whether reference listed in breach of statute –  
whether jurisdiction to order removal – whether respondent  
could remove reference – whether appropriate to order  
removal by respondent

*Residential Tenancies and Rooming Accommodation Act*  
2008 (Qld) s 457, s 458, s 459, s 461

## APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: T Stewart from the respondent

## REASONS FOR DECISION

- [1] The applicant was formerly a tenant of residential premises managed for the owner by the respondent.<sup>1</sup> Towards the end of a fixed term tenancy, on 4 April 2023, she was given a notice to leave, as the owner wanted to live in the premises, and sought other accommodation. The applicant had difficulty in finding alternative accommodation, and as a result of something said to her by another agent, came to believe that her difficulties were due to something placed on a database by the respondent. Hence this application, which sought relief under the *Residential Tenancies and Rooming Accommodation Act* 2008 (Qld) ("the Act") Chapter 9. This comes within the original jurisdiction of the Tribunal.
- [2] On 19 June 2023 she filed in the Tribunal an application which referred to the Act s 316 and s 461. The application stated that the respondent had listed a defamatory review which claimed incorrectly that she had caused damage to a benchtop, which was not the case, and as a result she had been unable to secure alternative accommodation and faced being homeless. There was subsequently a separate proceeding by the respondent against the applicant seeking termination of the tenancy and a warrant for possession, which was discontinued after the applicant obtained alternative accommodation, and moved out.

### Legislation

- [3] Section 316 is concerned with a situation where a tenant has made an application to the Tribunal for a termination order because of damage or injury, and seeks a restraining order against the lessor because of a belief on reasonable grounds that the lessor is likely to cause further damage or injury. It is not applicable, as the applicant has not sought a termination order, whether because of damage or injury or for any other ground.
- [4] Section 461 provides as follows:
- (1) A person (the **tenant**) whose personal information has been listed on a tenancy database may apply to a tribunal for an order under this section.
  - (2) The tribunal may order a person to take stated steps to—
    - (a) have the personal information about the tenant omitted from the database; or
    - (b) have stated changes made to the personal information about the tenant that is included in the database.
  - (3) The tribunal may make the order only if it is satisfied—
    - (a) the database includes personal information about the tenant that is inaccurate, incomplete, ambiguous or out of date; or
- Example for paragraph (a)—*
- Personal information about X is listed on a tenancy database for a reason relating to a minor matter. The database does not give

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<sup>1</sup> For convenience I shall refer to Ms Bourne as the applicant and the real estate agency as the respondent.

details of the matter but includes a notation implying that X may be responsible for a serious breach of the Act.

- (b) the inclusion of the personal information about the tenant in the database is unjust in the circumstances, having regard to—
  - (i) the reason for the listing; and
  - (ii) the tenant's involvement in the acts or omissions giving rise to the reason for the listing; and
  - (iii) the adverse consequences suffered, or likely to be suffered, by the tenant because of the listing; and
  - (iv) any other relevant matter.

*Examples for paragraph (b)—*

- 1 Personal information about Y is listed on a tenancy database for a reason relating to damage caused to premises by a domestic associate of Y in the course of an incident of domestic violence. Because of the listing, Y can not obtain appropriate and affordable accommodation.
- 2 Personal information about Z is listed on a tenancy database for a reason relating to an amount of rent that remained unpaid for 2 months after it was payable. During that period, Z was in hospital recovering from a serious accident and unable to make arrangements for payment.

(4) To remove doubt, a tribunal may make an order under this section against any person including the following—

- (a) a person who owns or operates a tenancy database;
- (b) a person who lists personal information about another person on a tenancy database.

- [5] The first issue which arises under this section is whether the applicant's personal information has been listed on a tenancy database. The term "tenancy database" is defined in the Act s 457, but in a way which does not define the term "database". As a result, "database" has its ordinary meaning: a repository of information on a number, usually a large number, of matters, which can be accessed by people to obtain information relating to the particular matter of interest to them. There is no particular requirement that the information be accessible to a number, or a large number, of people, as appears from s 458 which excludes from the operation of these provisions a database kept by a business or other entity for its own use, and not accessible by anyone else.

### **Factual matters**

- [6] The applicant said that there is a database called Ignite, operated by realestate.com.au, on which she had entered her personal profile, and which she was told by an agent also contained a reference by the respondent which mentioned her having damaged a benchtop. That, she was told, was accessible by other agents who searched her profile when she had applied for other properties, which explained why she had been rejected so many times.

- [7] The respondent said that, on a routine inspection, there was a patch of paint which had come off a benchtop, which had not been the case when the tenancy commenced, and which the applicant had been asked to repair. The applicant maintained that the benchtop had been painted over a laminated surface, and that one day when some Dettol was spilt there, some of the paint came off. Each time it was cleaned, more came off, but the cause was that the laminated surface had been painted over, so that the damage was not her fault. She was told by the owner on 10 May 2023 not to worry about the damage, that she was not required to fix it.
- [8] Before then, however, the respondent received on 28 April 2023 a request for a reference from another real estate agent who was using the Ignite programme, and on 2 May 2023 she had provided one, in which she mentioned the damage to the benchtop. When asked if the tenant would receive a full bond refund, she said: "Pending as tenant has damaged vanity benchtop and does not feel she is responsible. The entire benchtop may need to be replaced." The reference was a form which was completed on line, but they retained a copy of it, which was provided to the applicant on 21 June 2023, and put in evidence. The reference was otherwise positive.
- [9] The respondent was aware of the Ignite system, but did not use it. The respondent did not have access to it, and did not know whether the reference provided had been just passed on to the agent who had requested it, or whether it was held on the system and available to other agents who had subscribed to that system. The respondent appeared to know little about the system. The reference form states: "This information will only be shared back with the property manager." The covering email however did state:
- The references you supply for this request will be saved against future applications, so you won't have to supply multiple references in future. The references won't be visible to applicants but will be made available to property managers considering them for a new property.
- [10] There was no information published by realestate.com.au about the operation of the Ignite system, and in particular whether a reference provided under the system would be available to agents other than the one requesting the reference, nor was there any other independent evidence about these matters. The only other material is from an exchange of emails between the applicant and realestate.com.au, when she sought to obtain a copy of the reference, without success. What they said was consistent with the email to the respondent of 28 April 2023, quoted from above.

### **Consideration**

- [11] I was not referred to, and have not been able to find, any decisions concerning the Act which throw any light on this question. On the whole, on the basis of the material available, I consider that the Ignite system, because it retains references and will make them available to multiple persons, does amount to a database for the purposes of the Act, even if the number of other people is quite limited, being those who subscribe to the Ignite system, and who have received an application for rental from the relevant tenant. It is unfortunate that the operator of the Ignite system is not a party, because I am deprived of the opportunity to hear any submissions it may make on this question, but I note that it declined to provide a copy of the reference to the applicant, even when reminded of the Act s 459C(2). If I am correct, the operator in refusing committed an offence under that subsection.



- [12] If the Ignite system is a database, it is a tenancy database, because of the nature of the information contained on it. The term “personal information” is defined widely, and on the face of it the information in the reference was personal information for the purposes of s 461. Accordingly the applicant was entitled to apply to the Tribunal under that section, subject to whether the operation of these provisions is excluded by the Act s 458. That provides that the Chapter does not apply to “a tenancy database kept by an entity for use only by that entity or its employees or agents.”
- [13] This database was kept, not only for the use of the operator and its employees, but for other subscribers to the Ignite system. That would be other property managers, who would be or would work for real estate agents, but I do not consider that they would be “agents” for the purposes of s 458(1)(a). As I read the section, the word “its” governs “agents” as well as employees. Further, I do not consider that becoming a subscriber to the Ignite system turns other property managers into agents of the operator for the purposes of the section. As presently advised, I do not consider that this section protects the Ignite system. By retaining references for other property managers to look at, it is operating a tenancy database which is subject to the Act Chapter 9.
- [14] Subject to s 461(3), therefore, the Tribunal is empowered to order that the personal information be removed from the database, or that it be changed in some particular way. What particularly concerned the applicant was that the information, which she described as defamatory, had remained on the database after the issue of the damage had been resolved by the owner. The listing of information on a database is regulated by s 459, and it is sufficient to note that the respondent had not complied with the notice requirements of s 459(2), nor was the limitation in s 459(1)(b) satisfied.
- [15] An issue remains however whether s 459 applies to the respondent in providing the reference, or whether it applies to the operator of the database, in placing the information into the database so as to make it available to other property managers enquiring about the applicant. The email stated that the reference “will be saved” but does not clarify whether that is something achieved automatically by submitting a reference using this programme, or whether it is something which the operator will do after the reference has been provided. More information is required about the operation of the system, but on the basis of what is said in the email, I consider that the former is more likely to be what happens.
- [16] As to whether the information was inaccurate, incomplete, ambiguous or out of date, when it was listed it seems to me that that was not the position. It was the actions of the applicant which had resulted in the paint coming off an area of the benchtop, and the fact that she considered she was not responsible was recorded, giving a degree of balance. The matter had not been fully investigated at that stage, and that was the effect overall, bearing in mind that it was not asserted that the bond would not be fully repaid to the applicant.
- [17] As to that, of course, whether or not there was an issue about damage, to say whether or not the bond would be fully repaid was premature, given that the tenancy was continuing. A better response may have been: “Too early to say, tenancy continuing.” The applicant’s real complaint however is that the reference remained accessible, as it was, even after the issue of damage was resolved, and was no longer a possible reason for not repaying the full amount of the bond.

- [18] The respondent's answer here was that, once the reference was submitted, they had no control over it, and could not amend it or remove it. They did not themselves have a subscription to the Ignite system, so there was no way for them to access it. Accepting that the reference was out of date, there was nothing they could do about it. The applicant said that she had been told at some stage by the respondent that they had removed the reference but was not able to refer me to anything in the material to that effect. That was denied by the respondent, and I am not prepared to act on this without some confirmation. I accept that once the reference was submitted the respondent lost control over it.
- [19] It follows that it would be futile to make an order under s 461 against the respondent, as the respondent lacks the capacity to do anything more than to ask the operator of the system to remove that part of the reference. In my view, there is no point in making such an order, as there would be no reason to think that it would achieve the intended purpose. What is required is an order against the operator of the database, but it is not a party to the proceeding. There is also the consideration that the applicant now has other accommodation, and is not still in the market. If the applicant returns to the rental market and encounters this problem again, an application could be made against the operator of the Ignite system.
- [20] As well, it must be an exaggeration to blame all of the difficulties the applicant experienced in trying to obtain accommodation on this reference. It would have been available only to agents who subscribed to the Ignite system, and the respondent's material showed that there were a number of requests for references passed to it using other systems, or directly by other agents. That supports their statement that there are a number of competing systems of this kind in the market. More to the point, I am prepared to take notice of the fact that the property rental market is unusually tight in Brisbane at the present time, and it is not at all surprising that a person could make dozens of applications to rent properties without being accepted.
- [21] In all the circumstances, therefore, I am not prepared to make an order under s 461. It follows that the application is dismissed.