

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

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

PARTIES: **HORIZON HOUSING COMPANY LIMITED**  
(applicant)  
v  
**MARKUS ROSS**  
(respondent)

APPLICATION NO/S: MCDT1597-19

MATTER TYPE: Residential tenancy matters

DELIVERED ON: 9 January 2020 (ex tempore)

HEARING DATE: 9 January 2020

HEARD AT: Southport

DECISION OF: Adjudicator Alan Walsh

ORDERS:

- 1. The Residential Tenancy Agreement between the parties be terminated as from midnight on 11 January 2020 on the ground of failure to leave.**
- 2. A Warrant of Possession to issue authorising a police officer to enter the premises at 10/1896 Gold Coast Highway, Burleigh Heads, QLD 4220.**
- 3. The Warrant shall take effect on 12 January 2020 and remain in effect for 14 days to expire at 6 pm on 25 January 2020.**
- 4. The Warrant to be executed as soon as reasonably practicable after taking effect.**
- 5. Entry under the Warrant shall only be between the hours of 8 am to 6 pm.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – MINOR CIVIL DISPUTE – TENANCY DISPUTE – where applicant applied to terminate residential tenancy agreement with respondent – where failure to leave the ground for termination – where warrant of possession of tenanted property sought

LANDLORD AND TENANT – RESIDENTIAL TENANCIES LEGISLATION – RENT – OBLIGATIONS, PROHIBITED MATTERS AND PROTECTION OF LESSEES – where general tenancy

agreement required respondent to pay rent – where notice to leave predicated on respondent’s failure to remedy rent breach on notice – where outstanding rent substantial at time of hearing – where respondent failed to engage with applicant to arrange payment plan – where respondent failed to attend hearing – where application properly grounded

LANDLORD AND TENANT – HUMAN RIGHTS LEGISLATION – OBLIGATIONS, PROHIBITED MATTERS AND PROTECTION OF LESSEES – whether tenant’s right under *Human Rights Act* 2019 to privacy family and home ought prevail over lessor’s right to termination order for tenant’s material breach of lease and residential tenancy legislation – where *Residential Tenancies and Rooming Accommodation Act* 2009 valid, effective and limiting according to its provisions – where exercise of discretion requires consideration of human rights and balancing of legislative purposes – whether termination order should be made in all the circumstances – whether termination of tenancy agreement appropriate, lawful and proportionate

*Human Rights Act* 2019 (Qld) s 3, s 11, s 13, s 15, s 17, s 24, s 25, s 26, s 31, s 48

*Queensland Civil and Administrative Tribunal Act* 2009 (Qld) s 3, s 4, s 8, s 10, s 11, s 12, s 13, s 28, s 33, s 57, s 90, s 93, s 127

*Residential Tenancies and Rooming Accommodation Act* 2008 (Qld) s 4, s 52, s 61, s 83, s 277, s 280, s 281, s 293, s 325, s 326, s 328, s 329, s 330, s 337, s 349, s 350, s 351, s 352, s 415

#### APPEARANCES & REPRESENTATION:

Applicant: Mr W McKenna, Housing Officer

Respondent: No appearance

#### REASONS FOR DECISION

- [1] This application is in all respects properly grounded. It seeks termination of the lease by the Applicant to the Respondent of the property at 10/1896 Gold Coast Highway, Burleigh Heads, Queensland 4220 on ground of failure to leave.
- [2] The Form 12 Notice requiring that the tenant leave was predicated upon a valid Form 11 Notice to Remedy Breach for failure to pay rent, at that stage for \$199.81, which notice served by mail required that he pay (it) between the 28<sup>th</sup> of October and

the 13<sup>th</sup> of November 2019. He did not pay any rent in that period and, indeed, hasn't subsequently.

- [3] That opened the way for the Form 12 issued the 22<sup>nd</sup> of November 2019, served by express post, requiring that he leave on or by midnight on the 3<sup>rd</sup> of December 2019. He didn't leave. The application was filed on the 5<sup>th</sup> of December 2019, well within the two-week period required by section 293 of the *Residential Tenancies and Rooming Accommodation Act* 2008.
- [4] Of significance also is the following.
- [5] Firstly, the extent of the rental indebtedness now, which has escalated to \$1,525.80. See in this respect Exhibit A1.
- [6] Secondly, as appears in the annexure to Exhibit A1, an email was sent by Mr McKenna on the 7<sup>th</sup> of January, two days ago, to the Respondent Mr Ross, forwarding a payment plan and a pay deduction authority form, in both instances for his signature and return.
- [7] Mr McKenna asked that the documents be returned that day so he could action them before the court hearing scheduled for today the 9<sup>th</sup> of January 2020 and, if returned, he indicated he would ask the Tribunal to adjourn the case for a month to give the Respondent a chance to demonstrate that he was paying rent and paying off arrears.
- [8] The Respondent tenant, who has not engaged with the Applicant, has simply ignored that email.
- [9] This is community housing. There is a high demand for community housing. The tenant seeks to ignore his responsibilities, including the contractual responsibilities under the lease, and has not performed his obligations. I am satisfied that this lease should end.
- [10] However, as from the 1<sup>st</sup> of January 2020, the provisions of the *Human Rights Act* 2019 have commenced operation in this State and add significantly to the complexity of residential tenancy disputes such as this. I am bound by the provisions of that Act to take account of the Respondent's human rights which arise under that Act in reaching a decision in this case.
- [11] Owners, and agents for owners, will need to educate themselves about the provisions of that legislation in addressing it in matters such as this in the future.
- [12] An owner and lessor, in this case, and a tenant alike have statutory rights as well as obligations and are bound by the provisions of the residential tenancy legislation and the terms of the relevant tenancy agreement. Human rights conferred by the *Human Rights Act* 2019 do not exist in a vacuum. They are to be considered in the factual and legal context of each case.
- [13] In coming to a decision in this case, I have considered the provisions of the *Human Rights Act* 2019 and, insofar as human rights of the tenant are engaged on the facts of this case, having considered them, I find that they are lawfully limited by the valid and effective provisions of the *Residential Tenancies and Rooming Accommodation Act* 2008 in circumstances where the tenant is in ongoing breach of the lease in ever increasing amounts rental-wise in the respects to which I have referred.

- [14] In the proper exercise of my discretion, I find that the owner is entitled to a termination order and a warrant of possession, notwithstanding the effects of that on the tenant who has brought this outcome on himself for the reasons I gave earlier.
- [15] Terminating this lease is, I find, a just and proportionate response on the facts of the case considering, amongst other things, the tenant's breach of his obligation under the tenancy agreement, his breach of the Act itself, and considering the effect of the breach on the owner and lessor, including but not limited to the fact that non-paying tenants such as Mr Ross in this case are holding out legitimate law-abiding citizens, who might otherwise occupy premises and who are in need, from taking up the accommodation.
- [16] Mr Ross has had ample time to arrange for other accommodation since being issued the Form 12 Notice to Leave. There is no evidence that he has taken any, or any practical, steps to find alternative accommodation or arrange short-term tenancy or emergency accommodation. He cannot take advantage of his own inaction and prejudice the Applicant as a consequence.
- [17] Mr McKenna seeks a relatively prompt termination order. I agree that that is appropriate in the circumstances and a proportionate response to the breaches of the tenant. A termination order is therefore made in respect of the premises at 10/1896 Gold Coast Highway, Burleigh Heads, Queensland 4220 on the ground of failure to leave as and from the 11<sup>th</sup> of January 2020.
- [18] I direct the issue of a Warrant of Possession to the Principal Officer of Police at the relevant police station in the State of Queensland in the following terms. The Warrant takes effect on the 12<sup>th</sup> of January 2020. Whereas the Queensland Civil and Administrative Tribunal has made the termination order above, you are authorised for a period of 14 days from the above date expiring on the 25<sup>th</sup> January 2020 to enter the premises and give possession of them to the Applicant and to exercise such powers under this Warrant with necessary and reasonable help and force, entry under the warrant to be made between the hours of 8 am and 6 pm.
- [19] A copy of these orders will go out to the parties in the mail. Mr McKenna, please inform the tenant of the outcome so that he is on notice of the need to make prompt arrangements to move elsewhere.