

edQUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Common Ground QLD v Christopher Healy* [2020]
QCAT 495

PARTIES: **COMMON GROUND QLD**
(applicant)

v

CHRISTOPHER HEALY
(respondent)

APPLICATION NO: 2600/19

MATTER TYPE: Residential tenancy matters

DELIVERED ON: 17 December 2020

HEARING DATE: 11 September 2020

HEARD AT: Brisbane

DECISION OF: Adjudicator Stroud

ORDERS: **1. A termination order is made with respect to the tenancy on the grounds of objectionable behaviour as at 31 January 2021.**

2. A warrant be issued to take effect on 1 February 2021 for a period of 14 days ending on 15 February 2021.

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – minor civil dispute – tenancy dispute – Community Housing – where Applicant applied to terminate Respondent’s tenancy for repeated breaches – where Applicant applied to terminate Respondent’s tenancy for objectionable behaviour.

LANDLORD AND TENANT – RESIDENTIAL TENANCIES LEGISLATION – statutory criteria for repeated breaches – whether repeated breaches require breach to be capable of being remedied – statutory criteria for objectionable behaviour – whether objectionable behaviour ground made out – whether objectionable behaviour justifies termination of the tenancy – discretionary factors.

Queensland Civil and Administrative Tribunal Act 2009
(Qld) s 28

Residential Tenancies and Rooming Accommodation Act
2008 (Qld) s 184, s 297A, s 299, s 335, s 345A, s 347,
s 349

Residential Tenancies and Rooming Accommodation
Regulation 2009 (Qld) r 25

Residential Tenancies and Rooming Accommodation
(COVID-19) Emergency Response Regulation 2019 (Qld)

Cutbush v Team Maree Property Service [2010]
QCATA 20

Foster v Horizon Housing Company [2016] QCATA 75

Lawler v Department of Housing and Public Works, State
of Queensland [2017] QCATA 210

Seo v Kent Southport Realty Pty Ltd t/a Shores Realty
[2018] QCAT 125

Simonova v Department of Housing and Public Works
[2019] QCA 10

Southport Realtor Pty Ltd t/as Shores Realty v

Rostas[2014] QCATA 13

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

State of Queensland through the Department of Housing v
Public Works v Tapim [2015] QCATA 71

The State of Queensland through the Department of
Housing and Public Work v Tenant [2020] QCAT 144

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

APPEARANCES & REPRESENTATION:

Applicant: C Curtis Counsel instructed by HWL Ebsworth

Respondent: C Upton Counsel instructed by Armstrong Legal

REASONS FOR DECISION

1. Introduction

- [2] The Applicant, Common Ground Queensland (**CGQ**), is a community housing organisation located in South Brisbane that offers affordable housing to people at risk of, or experiencing, homelessness or that suffer from a disability, including mental health and addiction.
- [3] The Respondent is a male in his 50's who suffers from both substance abuse and mental health issues. He has been a tenant at CGQ since 2012.
- [4] The Applicant seeks an order under the *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* (**the Act**) for the termination of the Respondent's tenancy on the grounds of repeated breaches of the Tenancy agreement or, in the alternative, on the grounds of objectionable behaviour by the Respondent.
- [5] The original application was filed in the Tribunal on 4 December 2019 and subsequently amended and filed on 20 March 2020.

[6] As the application was filed prior to the commencement of the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2019* (Qld),¹ it is not an application to which this legislation applies.

2. Evidence

[7] A full list of evidence filed and relied upon by both parties was helpfully set out in the 'Index to Agreed Trial Bundle' filed jointly by the Applicant and Respondent on 9 September 2020.

[8] The following Affidavits were filed by CGQ; those marked with an Asterix attended the hearing on 9 September 2020 for cross examination:

- (a) Derek Taylor,* Tenancy Manager dated 15 April 2020 x 2; 2 June 2020 and 1 September 2020;
- (b) Janice Walters, Rental and Reporting Manager dated 16 April 2020;
- (c) Mario Bicanic,* Concierge/Security Officer dated 16 April 2020;
- (d) Joey Passi,* Concierge/Security Officer dated 16 April 2020;
- (e) Mark Uttley,* Concierge/Security Officer dated 16 April 2020;
- (f) Wesley Connell,* Concierge/Security Officer dated 16 April 2020;
- (g) Michael Murphy,*Operations Manager dated 2 June 2020; and
- (h) Sonya Keep, Chief Executive Officer dated 2 June 2020.

[9] The following tenants also filed Affidavits on behalf of CGQ; however, due to their vulnerable status, they were not required to attend the hearing for cross examination:

- (a) Elizabeth Milburn dated 16 April 2020;
- (b) George Godfrey-Bailey dated 22 April 2020;
- (c) Kellie Williams dated 22 April 2020; and
- (d) Kerry Russell-Oldham dated 22 April 2020.

[10] The Respondent's evidence includes a Statutory Declaration by Kelly Lark (tenant) dated 18 May 2020, and Affidavits by:

- (a) Christopher Healy dated 15 January 2020, 18 May 2020 and 6 September 2020;
- (b) Jacinta Healy (the Respondent's sister) dated 18 May 2020;
- (c) Andrew Johnson, Micah Senior Service Co-ordinator dated 19 May 2020;
- (d) Karen Healy (the Respondent's sister) dated 20 May 2020; and
- (e) Jen Weidman, Mental Health Social Worker dated 20 May 2020.

[11] The Respondent was the only witness who gave evidence at the hearing.

¹ commenced 29 March 2020.

CCTV Footage

- [12] Ordinarily, electronic evidence in the form of videos is not permitted in the Minor Civil Dispute Jurisdiction due to resource and time constraints. However, I exercised my discretion and allowed the Applicant to admit into evidence 10 CCTV footage clips which directly related to the breaches relied upon by the Applicant and/or incidents of objectionable behaviour. This course was not objected to by the Respondent and each of the clips were displayed during the hearing on a large TV, viewable by all parties, and both parties had the opportunity to make submissions regarding the interpretation and relevance of each of the clips.

3. Legislative Provisions

- [13] An application for termination on the grounds of repeated breaches and/or objectionable behaviour is not required to be preceded by a Notice to Leave.²

Repeated Breaches

- [14] Under s 299 of the Act the lessor may apply to the Tribunal for termination for repeated breaches if:

- (a) the lessor gives 2 notices to remedy breach to the tenant for breaches of a particular provision in relation to the agreement; and
- (b) each notice relates to a separate breach of the particular provision; and
- (c) the tenant remedies each breach within the relevant allowed remedy period; and
- (d) the tenant commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
- (e) all breaches happen within the period prescribed under a regulation for this section.

- [15] The prescribed period for the purposes of s 299(1)(e) is 12 months.³

- [16] Under s 347 of the Act, the Tribunal may make a termination order for repeated breaches if it is satisfied:

- (a) the applicant has established the ground of the application; and
- (b) the person in relation to whom the order is sought committed each breach stated in the 2 notices to remedy breach on which the application is based.

- [17] There are matters the Tribunal **must** consider in deciding the application, namely:

- (a) the seriousness of each breach associated with the application, having regard to the extent of any inconvenience or financial or other disadvantage suffered by the applicant;
- (b) the period for which the tenancy has been in existence;
- (c) the period in which the breaches were committed;
- (d) for a fixed term agreement—the remaining period of the tenancy; and

² Refer s 335(1)(e) and (g) of the Act.

³ *Residential Tenancies and Rooming Accommodation Regulation 2009* (Qld), r 25 (**the Regulations**).

(e) anything else the tribunal considers relevant.

[18] Section 184 of the Act provides that, when using the premises, the tenant must not:

- (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.

Objectionable behaviour

[19] The Tribunal may, in the proper exercise of its discretion, order the termination of a community housing tenancy agreement on the ground of objectionable behaviour if the ground is established and the behaviour justifies doing so.

[20] What amounts to ‘objectionable behaviour’, whether of a lessor or tenant, is not defined in either the Act or the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (**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; arousing distaste or opposition; and unpleasant or offensive.⁴

[21] Under s 297A of the Act, the lessor may apply to the Tribunal for a termination order because the tenant:

- (a) has harassed, intimidated or verbally abused the lessor or lessor’s agent; or a person occupying, or allowed on, premises nearby; or
- (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.

[22] Under s 345A, the Tribunal make the order if it is satisfied:

- (a) the applicant has established the ground of the application; and
- (b) the behaviour justifies terminating the agreement.

[23] There are matters the Tribunal **must** consider in determining whether the tenant’s behaviour justifies termination. These are set out in s 345A(3) of the Act and include:

- (a) any serious or adverse effects on neighbouring residents or other persons, including whether neighbouring residents or other persons are likely to be subjected to objectionable behaviour if the agreement is not terminated; and
- (b) any evidence regarding the tenancy history of the tenant; and
- (c) if the tenant is a tenant under a State tenancy agreement:
 - (i) the department's responsibility to other tenants; and

⁴ Cambridge Dictionary (dictionary.cambridge.org) and Thesaurus: synonyms and related words

(ii) the needs of persons awaiting housing assistance from the State.

- [24] The Tribunal may, pursuant to s 345A (2), also have regard to:
- (a) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
 - (b) for behaviour in the form of harassment, intimidation or verbal abuse - its seriousness; and
 - (c) for behaviour in the form of intentional or reckless endangerment - its seriousness; and
 - (d) for behaviour in the form of interference with a person's reasonable peace, comfort or privacy - its seriousness.
- [25] These factors, both mandatory and optional, are not exhaustive. The Tribunal may therefore have regard to other factors it considers relevant.
- [26] The Tribunal must not refuse to terminate the tenancy merely because the tenant is a tenant of a community housing provider.⁵

4. Case Authority

Repeated Breaches

- [27] In *Foster v Horizon Housing Company*⁶, the tenancy was terminated on the grounds of repeated breaches in circumstances where the tenant parked in the no parking zone of the complex on six occasions. It was of relevance that it was dangerous for Mr Foster to park in that particular spot and that it was not an accidental breach. The Tribunal, in considering whether the breach justified terminating the tenancy, said '...it does seem excessive, in some respects, to actually remove – I'm assuming an otherwise good tenant from their property on this basis; but given the number of breaches, it's difficult for me to deny the application.'
- [28] In *Southport Realtor Pty Ltd t/as Shores Realty v Rostas*,⁷ the Appeal Tribunal set aside the Tribunal's decision at first instance not to terminate for repeated breaches as it found that the Adjudicator failed to exercise discretion. In that case, the tenant had been issued with eight breach notices for failing to pay rent when due and remedied each breach prior to the remedy date. The Adjudicator declined to terminate the tenancy as, at the date of the hearing, the rent was up to date. In considering s 299 of the Act, the Appeal Tribunal held:

The Act is explicit about the operation of s 299. If the lessor gives two notices to remedy breach of the same provision and the tenant remedies each breach within the allowed period, the tenant commits a further breach of the same provision and this all happens within the prescribed period the lessor can apply for termination.

There is a common misconception in the industry about the use of this section. Eight breach notices are not more deserving of action than two. This section is

⁵ Refer s 349A of the Act.

⁶ [2016] QCATA 75.

⁷ [2014] QCATA 13.

designed to be a “short sharp shock” to those tenants who like Mr Rostas, are inclined to test the lessor.⁸

Objectionable Behaviour

- [29] *Lawler v Department of Housing and Public Works, State of Queensland*⁹ was an appeal by Mr Lawler of the Tribunal’s decision to terminate his tenancy on the grounds of objectionable behaviour. Mr Lawler did not dispute that he had engaged in objectionable behaviour but did dispute that the objectionable behaviour justified terminating the tenancy agreement. The Tribunal at first instance found the objectionable behaviour warranted termination, as the conduct of Mr Lawler was serious, had been going on for at least 12 months, and had led to over seventy complaints and multiple calls to the police. It was also relevant that Mr Lawler had not taken any steps to resolve the issue. Mr Lawler had refused offers to engage in dispute resolution and his ‘harassment’ of the neighbour below, principally by playing loud music over extended periods, was not likely to stop.
- [30] In confirming the original decision, the Appeal Tribunal held:
- (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.
 - (b) Mental illness was not a sufficient reason to displace the view that objectionable behaviour justifies termination.
 - (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 that it nevertheless did not excuse the behaviour.
 - (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.
 - (e) It was not inevitable that the Respondent would end up homeless.
- [31] The Tribunal’s decision in *Simonova v Department of Housing and Public Works*¹⁰ is authority for the proposition that the requirement in s 297A(1)(c) of the Act, to prove intentional or reckless endangerment of another person by a tenant, does not extend to the second limb directed to interference with the amenity of a person ‘occupying premises nearby’. 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.
- [32] In *Simonova*, the Tenant had a dual diagnosis of schizophrenia and post-traumatic stress disorder. She had polyps on her vocal cords which caused her to speak in a loud penetrating monotone voice similar to that of someone hearing impaired. The Magistrate at first instance described the sound as ‘having a foghorn like quality’. The medical evidence was to the effect that the tenant lacked voluntary

⁸ Ibid [4]-[5].

⁹ [2017] QCATA 210.

¹⁰ [2019] QCA 10 (*‘Siminova’*).

control of her behaviour and, due to certain barriers, it would be difficult for her to engage in therapies to change her behaviour and emotional response.

- [33] The Tenant's behaviour included direct and personal verbal confrontation with neighbours, noise in the form of vocalisation to herself and calling out abuse to the neighbours, and banging of doors, windows and cupboards. The tenant's noisy conduct within her property occurred during the day and nearly every night and caused a serious nuisance to persons occupying premises nearby. The behaviour was of such frequency that it went well beyond mere inconvenience or unpleasantness and the interference with neighbours' reasonable peace in comfort was so serious as to warrant termination.
- [34] In *State of Queensland through the Department of Housing and Public Works v Turnbull*,¹¹ an application for termination due to serious breach, the Tribunal terminated the tenancy of Mr Turnbull on the grounds of serious breach despite the fact that Mr Turnbull had complex needs, was intellectually handicapped, and his capacity for impulse control and behavioural regulation had been adversely affected as a result of brain injury. In that case, the breach concerned serious drug related offences that could have had life threatening consequences for him and his neighbours.
- [35] The decision to terminate the tenancy had the likely effect that Mr Turnbull would be rendered homeless; however, the Tribunal could not ignore the fact that Mr Turnbull's involvement in the storage of hazardous chemicals (methylamphetamine) and drug equipment posed a potential or real threat to neighbours and other tenants in the complex.
- [36] As is relevant in both cases of serious breach and objectionable behaviour, the Tribunal 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.'
- [37] The *State of Queensland through the Department of Housing and Public Works v Gray*¹² confirms the Tribunals preparedness to terminate the lease of a vulnerable person as long as the 'balance of interests' favour termination.
- [38] In that case, the Tribunal found Ms Gray, a single mother of an 8-year-old, was a vulnerable person who suffered both psychological and emotional issues. Her behaviour (over a two year period) resulted in seventeen complaints from neighbours concerning fighting, males coming and going all day and night, yelling, screaming, obscene language, domestic disturbances, disputes, excessive noise, banging and crashing noises, loud music, intoxicated behaviour, racial abuse, abuse of her child and threats to burn down a neighbour's house. There were also forty-two reports to the police regarding the premises relating to noise disturbances, domestic and other violence, threats against others, threats to a child, break and enter, welfare checks, trespassing and loitering. The Tribunal, in terminating the lease for objectionable behaviour, referred to the decisions in *Turnbull* and *Simonova* in support of the requirement to consider the competing interests of the parties and affected neighbours.

¹¹ [2014] QCAT 442 ('*Turnbull*').

¹² [2017] QCAT 475.

- [39] The case of the *State of Queensland through the Department of Housing v Public Works v Tapim*¹³ concerned an assault on a tenant who had subsequently left the premises. In terminating the tenancy for objectionable behaviour, the Tribunal held that 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.
- [40] *The State of Queensland through the Department of Housing and Public Work v Tenant*¹⁴ concerned a tenant who, over a period of 2 years, had received over seventy complaints from twenty neighbours and approximately one hundred and forty-eight video recordings of the tenant evidencing objectionable behaviour. The Tribunal, in determining whether the objectionable behaviour justified termination of her tenancy, found the tenant’s behaviour to be persistently abusive, offensive verbally and sometimes physically violent, and which had continued unabated through four prior tenancies and throughout the present tenancy. Viewed objectively, the Tribunal determined that tenant’s behaviour was reprehensible, dangerous, and had seriously and detrimentally affected the amenity, lives and rights of other individuals and neighbours and caused one set of neighbours to move out.
- [41] A determination that behaviour is considered to be objectionable behaviour sufficient to warrant termination does not always need to be extensive or the subject of numerous complaints by multiple tenants or neighbours. In the case of *Seo v Kent Southport Realty Pty Ltd t/a Shores Realty*,¹⁵ the Tribunal found the tenant’s conduct in repeatedly switching off the power supply of another tenant in the same building was sufficient to be considered objectionable behaviour justifying termination of tenancy.
- [42] *Cutbush v Team Maree Property Service*¹⁶ is authority that the determination of whether behaviour is objectionable does not operate in a vacuum and must involve questions of degree and circumstance and is to be considered in the context of (proceeding) events. In setting aside the original decision of objectionable behaviour, the Appeal Tribunal, whilst not condoning Mr Cutbush’s behaviour in photographing his neighbours, considered it relevant that the neighbours’ conduct had been provocative and had also included photographing Mr Cutbush. The Appeal Tribunal determined that the behaviour of Mr Cutbush was at worst categorised as retaliatory and inappropriate rather than objectionable.

5. Background

- [43] In determining this application, I have considered relevant the type and nature of the community housing CGQ provides. CGQ is a unique community housing provider that differs from standard public housing as well as other community housing providers.
- [44] As set out in the Affidavit of Karen Healy,¹⁷ a Professor of Social Work and Head of the Disciplines of Social Work and Counselling at the University of Queensland notes that:

¹³ [2015] QCATA 71.

¹⁴ [2020] QCAT 144.

¹⁵ [2018] QCAT 125.

¹⁶ [2010] QCATA 20.

¹⁷ Dated 20 May 2020 at [32].

CGQ is based on the international model of Common Ground, which originated in New York in 1991 and is aimed at ending homelessness by creating sustainable tenancies and community with person who were homeless (or at risk of homelessness) and person on low incomes. The original Common Ground model emphasis the importance of: quality permanent housing (homes) for low income and formerly homeless person; creating community among residents; and sustaining tenancy strategies through the provision of integrated social support by the housing provider and support services working together to address the complex needs of residents.¹⁸

...

GCQ's website states to the effect that they provide support housing responses to vulnerable persons suffering mental illness and addiction and that supportive housing response are "linked with dedicated, tailored support services that address the root causes of homelessness".¹⁹

[45] Annexed to Ms Healy's Affidavit is information taken from the CGQ website explaining supportive housing:

Supportive housing is a solution for ending homelessness for the most vulnerable people in Queensland. It offers permanent alternative to rough sleeping and crisis accommodation. Supportive housing offers permanent, affordable housing that is linked with dedicated, tailored support services that address the root cause of homelessness.²⁰

[46] CGQ South Brisbane premises consists of 13 levels of studio apartments which accommodate approximately 146 tenants. As set out on the CGQ website, the premises operate a 24-hour concierge service located in the building foyer which is staffed by two personnel, a security officer and a Micha Tenant Services Worker (TSW). The concierge service has several related aims, being to monitor the building, to control access in and out of the building, to respond to tenant need, to promote onsite tenant and visitor safety, and to ensure responsible use of communal resources. Evidence at hearing provided that there are numerous security cameras located throughout the premises, including the entrance, foyer, lifts, hallways and communal areas which are monitored by the concierge.

[47] The day to day functions of the concierge was explained further at the hearing and included their reporting of any communication or incidents with a tenant in a 'Incident Log' and, in what appears to be more serious circumstances, completing a 'Building Incident Form'. Similarly, if a tenant had a complaint, they were encouraged to complete a Tenant Issues Form (TIS).

[48] Derek Taylor, Tenancy Manager of CGQ, gave evidence at hearing that of the tenants, approximately:

- (a) 40 to 50% suffer mental health issues;
- (b) 15 to 20% have substance abuse issues;
- (c) 50% were at risk of chronic homelessness; and
- (d) 50% are low income workers.

¹⁸ Ibid [32].

¹⁹ Ibid [26].

²⁰ at exhibit "KH-1".

- [49] The Respondent is in his 50's and has resided at CGQ for the last seven years. His earlier background included tertiary study, full time employment and a family. Subsequently, he battled unemployment, mental health issues and long-term substance abuse which appear to have ultimately contributed to him becoming homeless for a period of approximately 12 months prior to moving into CGQ.²¹ The evidence of the Respondent supports that he has embraced the CGQ model and has been actively involved and is an enthusiastic participant in its social activities as well as attending tenant forums, weekly community meals and regularly engaging with the tenancy support services.²²
- [50] The Applicant submits that the Respondent has, over the past 16 months, displayed increasingly frequent incidents of objectionable behaviour, which has included loud arguments with other tenants, verbal abuse of other tenants and concierge staff, the use of offensive words and racial comments, physical violence, involvement in alleged drug deals, possession of weapons and noise disturbances late at night.
- [51] The Respondent, in his attendance with Ms Weidman on 30 March 2020,²³ seems to suggest that the issues with CGQ commenced around 18 months ago after he reported observations of sexual misconduct by a concierge staff person with other residents. He believes he is being targeted by CGQ staff and that they are treating him differently than they do other tenants. By way of example, he states that, in an incident concerning himself and another tenant where both are equally at fault, it is only him and not both parties who is issued with a notice of breach.

6. Repeated Breaches

- [52] The first ground the Applicant relies upon to terminate the Respondent's tenancy is repeated breaches by the Respondent of s 21 of the General Tenancy Agreement which is mirrored in s 184 of the Act.
- [53] Section 21 of General Tenancy Agreement regarding the tenant's use of the premises relevantly provides:
- (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.

²¹ Refer affidavit of Jen Wiedman dated 20 May 2020.

²² Refer exhibit "AJ-1" to the affidavit of Andrew Johnson sworn 19 May 2020.

²³ Ibid.

[54] Between 14 May 2019 and 29 November 2019, the Applicant has issued six Notices to Remedy Breach (NTRB) to the Respondent, as follows:

NTRB No.	Issued Date	Remedy Date	Alleged Breach
1.	14 May 2019	28 May 2019	Disturbing the peace by having loud, aggressive and abusive verbal conflict with someone near the lifts on level 7, evening of 7/5/19 21.2 (c) – The Tenant – must not interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.
2.	26 July 2019	9 August 2019	Aggressive behaviour towards other tenants in foyer, including invitation to physical fight, requiring intervention by Concierge, evening 25/7/19 21.2 (c) – The Tenant – must not interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.
3.	26 July 2019	9 August 2019	Drug deal witnessed by Concierge staff in foyer, early hours of 26/7/19 21.2 (a) The tenant must not – use the premises for an illegal purpose.
4.	29 November 2019	8 December 2019	Harassment, abuse and threatening behaviour towards female tenant and visitor in elevator and out the front of the building, early hours of 22/11/19 21.2 (c) – The Tenant – must not interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.
5.	29 November 2019	8 December 2019	Deliberate throwing of coffee dregs for someone else to clean up, as recorded on CCTV in the elevator, morning of 22/11/19.
6.	5 November 2020	19 November 2020	Facilitating a drug deal in your unit with visitor Wendy Roma, evening of 25/1/2020 21.2 (a) The tenant must not – use the premises for an illegal purpose.

[55] NTRB 1, 2 and 4 all allege a breach of clause 21.2 (c) of the Tenancy Agreement, which provides that ‘the tenant must not interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant’. NTRB 1, 2 and 4 occurred within the prescribed 12-month period and are relied upon by the Applicant as grounds for termination pursuant to s 299 of the Act.

- [56] With respect to NTRB 2, 5 and 6, these breaches were issued pursuant to different provisions of the Tenancy Agreement and therefore do not fall within the requirements of s 299 of the Act.
- [57] To terminate for repeated breaches, the Tribunal must be satisfied that the Tenant has been issued two notices to remedy breach for separate breaches of the same provision and that the tenant has remedied each breach in the allowed remedy period.
- [58] Section 299 of the Act is commonly relied upon for termination of a tenancy agreement in circumstances where the tenant has failed to pay rent when due and only makes payment of the rent after being issued with a Form 11 Notice to Remedy Breach, prior to the remedy period stated therein.
- [59] The intention of this provision is to stop tenants practising brinkmanship. It is needed because a lessor cannot issue a Form 12 Notice to Leave if the Form 11 Notice to Remedy Breach has been complied with. Pursuant to s 299 of the Act, a lessor can apply to the Tribunal to terminate without the need for a Form 12 if there are two remedied breaches followed by a third breach all happening within 12 months.
- [60] Whilst predominately used for continued late rent payments, the section is not confined to this. What is consistent in an application pursuant to s 299 of the Act is that the type of breach relied upon in each instance is the same and capable of being remedied.
- [61] For example, in *Foster v Horizon Housing Company*,²⁴ the tenant continually breached the tenancy agreement by parking his vehicle in the no parking zone of the complex. This breach in each instance was the same, just occurring on different dates and was capable of being remedied by the removal of the vehicle from the no parking zone, and/or refraining from parking there.
- [62] Unlike other provisions of the Act, there is no requirement in s 299 of the Act that the breach relied upon is a serious breach of the tenancy. As previously stated, its purpose is to prevent tenants from stalling and manipulating the system.
- [63] In my view, s 299 of the Act cannot be relied upon in circumstances when the Notice to Remedy Breach has been issued after the breach the subject of the notice has already been remedied and/or is not capable of being remedied. That is not to say the Form 11 should not be issued, as it can still form the basis for termination on other grounds. However, it is a mandatory term of s 299 of the Act that the tenant remedies the breach within the relevant allowed remedy period.
- [64] This requirement is, in my respectful opinion, consistent with the purpose of the section which is to prevent tenants stalling and manipulating the system to prevent a Notice to Leave being issued.
- [65] Even if I am wrong in relation to the requirement that the breach must be capable of being remedied, I am also not satisfied that s 299 of the Act can be relied upon in circumstances where the incidents constituting the breach substantially differ from each other. I accept that s 299 of the Act only requires that the breach be of a 'particular provision' and does not expressly state that the breaches themselves must be the same. However, to apply s 299 of the Act in circumstances where the

²⁴ [2016] QCATA 75.

breaches substantially differ in character, conduct and location implies a broad interpretation of ‘particular provision’ which I consider is inconsistent with the intention of s 299 of the Act. When reading s 299 of the Act as a whole, I am of the view that a narrow interpretation, namely that the incidents constituting the breach are the same, is more consistent with the purpose and intention of the provision of the Act.

- [66] I also have regard to the fact that there are other, and in my view, more appropriate termination provisions in the Act to terminate a tenancy for incidents of nuisance, threatening or disruptive behaviour.
- [67] In relation to the breaches relied upon by the Applicant, NTRB1 was issued seven days after the breach occurred. The breach incident involved an altercation on 7 May 2019 between the Respondent and a tenant outside a lift on 7 May 2019. Obviously, the breach is not capable of remedied by the Respondent within the allowed remedy period. Furthermore, the breach differs significantly from the other breaches relied upon by the Applicant in that they concern different incidents, parties, behaviour and location. The breach in NTRB1 in my view fails to satisfy the requirement of s 299 of the Act and ought more properly be considered as a breach of s 297A of the Act, as constituting objectionable behaviour.
- [68] NTRB2 was also issued after the alleged incident occurred and similarly was not capable of being remedied in the allowed remedy period. It concerned a one-off incident in the foyer of the premises with a different tenant which was resolved on the same day. The breach in NTRB2 in my view fails to satisfy the requirement of s 299 of the Act and ought more properly be considered as a breach of s 297A of the Act, as constituting objectionable behaviour.
- [69] NTRB4 was an incident which occurred on 22 November 2019; again, with different persons. The NTRB was issued seven days after the incident and also at a time when the tenant was, known by the Applicant, hospitalised in a psychiatric ward. The breach incident differs significantly from NTRB 1 and 2, and also occurred outside of the building premises. The breach was not capable of being remedied within the allowed remedy period and, as with NTRB1 and NTRB2, in my view fails to satisfy the requirement of s 299 of the Act and ought more properly be considered as a breach of s 297A of the Act, as constituting objectionable behaviour.
- [70] NTRB3, 4 and 6 were all breaches of different provisions of the Tenancy Agreement and, notwithstanding my finding set out above, do not fall within the requirements of s 299 of the Act which requires 2 remedied breaches of the particular provision. In saying that, they are all breaches that can be considered as breaches of s 297A of the Act as constituting objectionable behaviour.
- [71] For the reasons set out above, I am not satisfied that s 299 of the Act can be relied upon by the Applicant for termination of the Respondent’s tenancy. Accordingly, the Application to terminate the tenancy on the grounds of repeated breaches is dismissed.
- [72] I will however consider whether the breaches the subject of the NTRB constitute objectionable behaviour.

7. Objectionable Behaviour

- [73] In addition to the incidents the subject of the NTRB, the Applicant relies upon additional incidents involving the Respondent that occurred between the period July

2018 and July 2020 as constituting objectionable behaviour. The Applicant submits that since January 2019, the Respondent has regularly engaged in various forms of objectionable behaviour, totalling thirty incidents, over a period of approximately 14 months.

[74] Counsel for the Applicant submits that the nature of the objectionable behaviour displayed by the Respondent is serious and includes behaviours such as:

- (a) physical violence towards other tenants of the building;
- (b) intimidating behaviour and threats of physical violence towards other tenants of the building;
- (c) verbal abuse of other tenants of the building and Concierge Staff, including the use of offensive words and racial comments;
- (d) intentional or reckless endangerment of other tenants of the building and Concierge Staff by keeping weapons and engaging in drug deals; and
- (e) generally interfering with the reasonable peace, comfort and privacy of other tenants of the building by engaging in loud arguments and causing noise disturbances late at night.

[75] The Applicant submits that, unless the tenancy is terminated, both tenants and staff will continue to be subject to further objectionable behaviour by the Respondent.

[76] Counsel for the Respondent submits (in summary):

- (a) there is insufficient evidence to support a finding of objectionable behaviour;
- (b) the evidence of the witnesses who did not attend for cross examination (primarily the tenants) should be treated with caution and not relied upon in making any findings; and
- (c) many of the allegations by the tenants [not produced for cross examination] does not raise about the level of conjecture.

[77] NTRB1 concerns former tenant Elizabeth Milburn. Ms Milburn claims that:

On 7 May 2019 I was outside the lift on level 7 at the Building when the Respondent exited the lift and walked aggressively towards me screaming 'you have no rights'. He then spat in my face. I asked him to lower his voice but that only made it worse. When he spat in my face I felt humiliated. The Respondent continued to scream aggressively at me "you have no rights" and was standing uncomfortably close to me as his spittle hit my face. The interaction with the Respondent made me worried that he might hit me in the face.²⁵

[78] There are two CCTV footages of this incident.²⁶ The first at 9.17pm shows an unknown person riding the Respondent's bike to the end of the hall and giving it to the Respondent. Ms Milburn is seen coming up the hall the same time as the Respondent collects his bike and they all seem to be heading in the same direction; namely, the lifts. The second video (also 9.17pm) shows the Respondent and unknown person entering the lift while Ms Milburn stops and stands near the second lift. The Respondent appears to be having a conversation with the unknown

²⁵ Refer affidavit of Elizabeth Milburn dated 16 April 2020, [2] to [4].

²⁶ Refer affidavit of Derek Taylor dated 15 April 2020, exhibits "DT-1" and "DT-2".

person in the lift, when he exits the lift (leaving his bike inside the lift) and approaches Ms Milburn. Ms Milburn drops her walking stick as the Respondent approaches and a heated conversation occurs between them with both parties leaning in closely towards each other. The Respondent is then seen taking steps backward, with Ms Milburn walking forward towards him. Ms Milburn then starts pointing her finger at the Respondent at which time he drops his backpack and adopts an aggressive fighting stance with both fists clenched and leaning in towards Ms Milburn. Ms Milburn then picks up her walking stick of the floor and starts walking away. The Respondent then throws a couple of air punches and takes a couple of steps towards Ms Milburn. Ms Milburn is no longer seen in the video footage, as the Respondent moves back to the lift; while waiting for the lift, it appears a conversation is still going on between them until the Respondent enters the lift. The footage contains no sound and therefore what was said cannot be corroborated.

- [79] I note that, despite the incident happening on 7 May 2019, it was not reported by Ms Milburn until 12 August 2019, at which time she completed a TIS.²⁷ However, the Respondent himself reported the incident to the Concierge on 7 May 2019 where he claimed that he had been assaulted by Ms Milburn who spat in his face. The Respondent claims that he had loaned Ms Milburn money and, as he was in the lift, Ms Milburn said to him words to the effect ‘sucked in, I won’t be paying you back’. The Respondent claims this provoked him, and he walked outside the lift, was intimidated and thought Ms Milburn was going to assault him.²⁸
- [80] Regardless of what was said between the parties, what is concerning about this incident is that, even if Ms Milburn ‘provoked’ the Respondent as alleged (which I don’t accept), the CCTV footage clearly shows that the Respondent, rather than continue in the lift, deliberately exits the lift with the intent to confront Ms Milburn. The footage shows a sustained, highly aggressive confrontation by the Respondent towards Ms Milburn. I find on the evidence that the Respondent initiated the incident with Ms Milburn, and that his conduct in engaging in an intimidating, aggressive behaviour towards Ms Milburn constitutes objectionable behaviour by the Respondent.
- [81] It is not relevant in a finding of objectionable behaviour that Ms Milburn is no longer a tenant of CGQ.²⁹
- [82] NTRB 2 concerns an altercation between the Respondent and tenant Mr Elgan Leedie that occurred around 6.15pm on 25 July 2019. The CCTV footage shows Mr Leedie sitting on a bench in the foyer.³⁰ The Respondent enters the building with his bike and Mr Leedie approaches him. The Respondent then turns and sees Mr Leedie for what appears to be the first time and is clearly visibly upset at what has been said. The Respondent drops his bike and takes a number of steps back away from Mr Leedie and starts yelling. The concierge soon appears. The concierge then steps in between both of them and forcibly moves Mr Leedie away, at which point Mr Leedie sits back down on the bench. The Respondent is still clearly visibly angry, pointing and shouting at Mr Leedie. The concierge starts talking to the Respondent and appears to be directing him to move on when Mr Leedie quickly gets up off the

²⁷ Refer affidavit of Elizabeth Milburn dated 16 April 2020 and exhibit “EM-1”.

²⁸ Refer affidavit of Chris Healy dated 15 January 2020, [2].

²⁹ *State of Queensland through the Department of Housing and Public Works v Tapim* [2015] QCAT 71.

³⁰ Refer affidavit of Derek Taylor dated 15 April 2020 and exhibit “DT-6”.

bench and moves towards the Respondent. The Respondent takes his jacket off and throws it to the ground along with other items and seems to go downstairs, but then keeps coming up. By this stage, other tenants have entered the area and are observing what is going on.

[83] The Respondent gave evidence at the hearing that Mr Leedie demanded drugs from him, and this got him very upset and set him off. This resulted in a heated argument between himself and Mr Leedie that required the intervention of the concierge.

[84] Mr Bicanic, who was the concierge involved, prepared two Building Incident Forms with respect to the incident.³¹ Mr Bicanic notes that he did not hear the conversation before the argument to know what it was about, but recorded that it was the Respondent who was shouting and demanding to fight Mr Leedie, and that he was trying to convince Mr Leedie not to engage in a fight with the Respondent. Mr Bicanic said that the Respondent stated that Mr Leedie demanded drugs from him and that, when he didn't get the drugs, Mr Leedie said that he would drill him which ignited the Respondent to the point that foam was coming out of Mr Healy's mouth and that he was being proactive, went outside of the foyer, and was screaming to Mr Leedie, 'Come on! Come outside and drill me!'

[85] The Respondent, in both his affidavits,³² states the altercation was initiated by Mr Leedie asking him for drugs. He has also included a letter from Mr Leedie dated 31 December 2019, where Mr Leedie supports the Respondent and admits he (Mr Leedie) was in the wrong. Is not clear from the letter, however, whether he is referring to this or another incident.

[86] The Applicant submits, and I accept, that this incident was a serious disruption in the common area that caused disturbance and discomfort to other tenants who witnessed what transpired. I do not accept, however, after viewing the CCTV footage, that the Respondent was the instigator of the incident. I am satisfied, based on the footage, that it was Mr Leedie who was the instigator, and that he approached the Respondent and said something that clearly upset the Respondent. Despite this finding, I do not consider it in any way justifies the Respondent's reaction and his obvious inability to control his emotions. His reaction was completely out of proportion to what he states Mr Leedie said, and his reaction was aggressive, uncontrollable, disruptive and caused a serious nuisance to the other tenants in the foyer, as well as the concierge who was required to intervene to diffuse the situation. The CCTV footage shows that, following the incident, Mr Leedie was visibly upset with several tenants who witnessed part of the incident seen to be comforting him.

[87] I consider the behaviour of the Respondent to constitute objectionable behaviour.

NTRB4

[88] NTRB4 was issued on 22 November 2019. It is alleged that, on that date, the Respondent was involved in a verbal altercation with another tenant, Kelly Lark, and her girlfriend, Faye Andrews.

[89] The Respondent asserts that he was in the lift when Ms Lark and Ms Andrew walked in and that Ms Lark made a comment to the Respondent which provoked

³¹ Refer affidavit of Mario Bicanic dated 16 April 2020, [9]-[12] and exhibits "MB-3" and "MB-4".

³² Refer affidavit of Christopher Healy dated 15 January 2020, [12]-[20]; and 18 May 2020, [141]-[3]; and exhibit "CH-2".

him;³³ he then walked out of the lift and made a complaint to an employee of the Applicant.

- [90] The Respondent alleges that few months prior to the incident in September, he was assaulted by Ms Lark and Ms Andrew when Ms Lark threw an item at him, hitting him in the cheek bone which resulted in him visiting the hospital the following day. On 18 May 2020,³⁴ Ms Lark provided a Statutory Declaration where she states:

I Kelly known Chris for many years and recall \$50 loan that went wrong afterwards did not kicked anyone but accidentally ashtray was thrown and I was the one who did that in this statement is truth and hopefully will be dealt with honestly

- [91] The CCTV footage 8(1)³⁵ of the incident shows that on 22 November 2019 at 3.53am, the Respondent (dressed in bike gear and wheeling his bike) is in the lift with another male when Ms Lark and Ms Andrew enter. Words are said between the Respondent and Ms Lark, and Ms Lark and Ms Andrews exit the lift. When the lift reaches ground, the Respondent immediately exits, leaving his bike and bag in the lift. The next footage, 8(2) which is recorded at 3.52am (sic), shows Ms Lark and Ms Andrews walking outside away from the premises. The Respondent is seen to be following them. Ms Lark and Ms Andrews turn around and see the Respondent and Ms Andrews walks back to the building while the Respondent and Ms Lark remain. The Respondent is seen adopting an aggressive pose similar to a fighting stance and starts pointing to Ms Lark. Ms Andrews returns, and she and Ms Lark turn and walk away. The Respondent appears to follow them but is outside the CCTV range. At around 3.54am, the Respondent is seen walking back to the premises at the same time a concierge walks forward where the concierge stops and appears to look around. CCTV footage 8(3), time stamped 3.55am shows the Respondent following Ms Lark and Ms Andrews and saying something to them. He maintains an aggressive stance and keeps walking towards Ms Lark as she tries to walk away; the Respondent is gesturing to her with his arms and clearly saying something to her. The Respondent's body language indicates he is very angry; he gestures to Ms Andrews, then turns and punches the wall.
- [92] Looking at the three CCTV footage recordings, it seems that the order of events was likely 8(1), 8(3) and then 8(2).
- [93] Mr Wesley Connell provided an Affidavit,³⁶ and gave evidence at the hearing, that on 22 November 2019, he was altered by a Tenant Support Worker (TSW) to an incident developing in the foyer between the Respondent, Kelly Lark and her girlfriend Faye Andrews. Mr Connell prepared a Building Incident Report of this matter, in which he states:³⁷

I could hear over the radio the shouting and yelling. As I exited Tracey pointed out Chris Healy sizing up Kelly Lark with Neil Wiese yelling to call QPS on Chris Healy, as I exited the front doors I saw Chris Healy going in for Kelly, Chris's fists were up, clenched and he was yelling at Kelly and Faye, I saw him attempt a feigned swing. At this point I saw Kelly move towards words Chris. I request TSW Tracey to push the duress button and call QPS. As

³³ Refer affidavit of Christopher Healy dated 15 January 2020, [21]-[26]; and 18 May 2020, [60]-[64].

³⁴ Refer 417 of the Trial Bundle.

³⁵ Refer affidavit of Derek Taylor dated 15 April 2020, [5](h) to (j); and exhibits "DT-8(1)(2) and (3)".

³⁶ Refer affidavit of Wesley Connell dated 9 April 202, [9]-[11].

³⁷ Refer *ibid*; and also exhibit "WC-3".

I turned around I saw Chris running back towards the building and saw Kelly and Faye walking away, I called out to Kelly and Faye who approached me, Chris seeing me asking them questions immediately started yelling, I told Chris that I was not going to tell him again to go back into the building. Kelly and Faye explained to me that they attempted to enter the elevator on lvl4 but Chris stopped them and began abusing them, which continued after (sic) left him alone and came down in another elevator, he continued to abuse them when they go to the foyer and followed them out spitting on them and trying to fight them.

- [94] As with NTRB1 and NTRB2, the Respondent alleges the incident was a result of him being provoked. I accept that, due to the CCTV not containing audio, it is not possible to know what was said between the parties. Regardless, the CCTV footage of the incident in conjunction with the evidence of Mr Connell, quite evidences the aggressive behaviour of the Respondent towards Ms Lark and Ms Andrews and that the Respondent deliberately followed them out of the building to confront them. Both Ms Lark and Ms Andrews appear on a number of occasions to unsuccessfully attempt to walk away from the Respondent.
- [95] I find that the Respondent's conduct in deliberately following Ms Lark and Ms Andrews with the sole intent of causing a confrontation, his aggressive behaviour towards them, and his violent display of punching of the wall constitute objectionable behaviour.
- [96] I have taken into consideration that the Respondent, who suffers from Bipolar Affective Disorder, was voluntarily admitted to the Royal Brisbane Women's Hospital the following day on 24 November 2019 and was subsequently transferred to the Logan Hospital Mental Health Unit on 29 November 2019 as a result of a manic episode.³⁸
- [97] In a letter from the Respondent's Doctor, Dr Gina Jourdan,³⁹ she states her opinion that during this period [24 November 2019] and several months prior, the Respondent was experiencing symptoms of disorganisation and disinhibition as part of his mental illness which can understandably lead to conflict with others and unusual behaviour.
- [98] As confirmed in *Lawler v Department of Housing and Public Works, State of Queensland*,⁴⁰ whilst the Respondent's mental illness may explain his objectionable behaviour, in this instance it is not a lawful excuse or defence to an application to terminate a lease for objectionable behaviour.
- [99] NTRB3 and 6 both related to purported drug deals.
- [100] Mr Mark Uttley attests that on 25 July 2019 he was at the front desk when he witnessed an interaction between the Respondent and visitor Benjamin Field where the Respondent handed Mr Field a small item and Mr Field handed him cash. Mr Field believes that the small item was drugs.⁴¹
- [101] The Respondent denies that he engaged in a drug deal with Mr Field.⁴²

³⁸ Refer affidavit of Christopher Healy dated 18 May 2020 and exhibit "CH3".

³⁹ Refer affidavit of Christopher Healy dated 18 May 2020 and exhibit "CH3".
⁴⁰ [2017] QCATA 210.

⁴¹ Refer affidavit of Mark Uttley dated 22 April 2020 [5]-[8] and exhibit "MU-2".

⁴² Refer affidavit of Christopher Healy dated 18 May 2020 [254]-[259].

- [102] After viewing the CCTV footage,⁴³ I am not satisfied on the evidence that what was passed between the Respondent and Mr Field was a drug exchange as it is not clear from the CCTV footage what, if anything, was exchanged.
- [103] The breach alleged in NTRB6 is that the Respondent facilitated a drug deal in his unit with visitor Wendy Roma on the evening of 25 January 2020.
- [104] Mr Mario Bicanic attests that on 25 January 2020 he was at the front desk when Ms Milburn made a report to him (via the intercom) that a visitor Wendy Roma was soliciting for drugs. Whilst talking with Ms Millburn, he saw the Respondent exit the lift to the foyer and saw Ms Roma follow the Respondent back into the lift. He reviewed the CCTV footage and saw Ms Roma accompany the Respondent to level 7, and then into the Respondent's unit.⁴⁴
- [105] The CCTV footage does not,⁴⁵ in my view, support the Applicant's version of events. It shows a male person, Mark Taylor, waiting at the concierge desk for the Respondent. At the same time Ms Roma is seen in the background talking to another person. It seems when she finished talking to the other person, she approached Mr Taylor at the reception desk and commenced engaging him in conversation. The body language suggests Mr Taylor did not know Ms Roma prior to this interaction. The Respondent is then seen exiting the lift wearing a robe and Mark Taylor approaches him. Ms Roma seems to trail behind Mr Taylor, giving the impression that she is with him. They all entered the lift and went to the Respondent's unit. I accept the evidence of the Respondent that he did not invite Ms Roma to visit him and, upon being informed by the concierge that she was a banned individual, that he told her to leave. There is no evidence that during the time Ms Roma was in the Respondent's unit a drug deal transpired.
- [106] I find the evidence does not support that a drug deal took place in the Respondent's unit.
- [107] In relation to NTRB 5, I am not satisfied on the evidence, and the photographs of the incident,⁴⁶ that the Respondent deliberately, and not accidentally, poured coffee dregs on the lift floor.

11 March 2019 – alleged verbal assault by the Respondent on Ms Russell-Oldham

- [108] Ms Kerry Russell-Oldham (a tenant in the building) has filed an affidavit in the proceeding,⁴⁷ in which she alleges that on 11 March 2019 she was walking through the front door when the Respondent and another tenant started yelling at her, using swear words she could not understand. She states the attack was unprovoked and it startled her, and that the abuse made her feel unsafe in her home and fearful about entering or exiting the building in case the Respondent was there.
- [109] Ms Russell-Oldham completed a TIF of the incident on the day it occurred.

⁴³ Refer affidavit of Derek Taylor dated 15 April 2020 [5] and exhibits "DT-5" and "DT-6".

⁴⁴ Refer affidavit of Mario Bicanic dated 16 April 2020, [19]-[22] and exhibit "MB-7".

⁴⁵ Refer affidavit of Derek Taylor dated 15 April 2020, [5](k)(l) and (m); and exhibits "DT9(1) to (10)".

⁴⁶ Refer pages 545 to 548 of the Joint Trial Bundle. Affidavit of Derek Taylor dated 15 April 2020, [5](h) to (j); and exhibits "DT-8(1)(2) and (3)".

⁴⁷ Refer affidavit of Kerry Russell-Oldham dated 22 April 2020, [5] to [9].

[110] There is no CCTV footage of this incident and the Respondent denies that it occurred.⁴⁸

[111] I prefer the evidence of Ms Russell-Oldham with respect to this complaint, as the TIF was completed by her immediately following the incident and she provided sworn evidence a year later as to its truthfulness. There appears to be no previous conflict between herself and the Respondent and there was no evidence submitted that would support a finding the allegation was untrue or vexatious.

[112] I consider the verbal abuse by the Respondent towards Ms Russell-Oldham as constituting objectionable behaviour.

17 March 2019 – Glared in a threatening manner at another in the lift

[113] Ms Kellie Williams (a tenant) has filed an affidavit in the proceeding,⁴⁹ in which she alleges that on 17 March 2019 she was in the lift when the Respondent entered and glared at her in a way that she took as threatening. She states that when she sees the Respondent waiting for a lift in the foyer, she will wait for the next one because the Respondent makes her feel afraid.

[114] Ms Williams completed a TIF of the matter which differs slightly to her affidavit in which she states ‘I was in the lift and Chris [level 7] was giving me a look as if to say, “I want to kill you”. And I haven’t done anything, and I didn’t feel safe in the lift’.

[115] The Respondent denies this incident occurred.⁵⁰

[116] I am not satisfied that ‘a look’ can be considered objectionable behaviour.

20 May 2019 – Conflict between Respondent and visitor Casey Shine

[117] It is alleged that, on 20 May 2019, the Respondent was involved in an altercation out the front of the building with a visitor to the building, Casey Shine.

[118] The incident appears to have been partly witnessed by Mr Wesley Connell, who recorded it in the incident log.⁵¹ The incident log provides, in summary, that upon Mr Shine asking the Respondent a question, the Respondent became instantly aggressive and elevated, which ultimately required separation by Mr Connell.

[119] The Respondent does not deny there was a conflict with Mr Shine,⁵² but states it was initiated by Mr Shine over a bow and arrow that the Respondent sold to another person. The Respondent states that he was on the footpath working on his bike when Mr Shine walked towards him yelling, ‘where is my bow and arrow you agreed to sell me?’. When the Respondent told him, he sold it to someone else, he states that Mr Shine got angry then proceeded to yell and swear at him, calling him a ‘fucking idiot’. The Respondent asserts that Mr Shine was provoking him, and that he had to defend himself.

[120] The CCTV footage of this incident, time stamped 11.34pm, does show Mr Shine walking past the Respondent yelling at him. The footage shows the Respondent working on a bike under a tree at the front of the premises and Mr Shine standing

⁴⁸ Refer affidavit of Christopher Healy dated 18 May 2020.

⁴⁹ Refer Affidavit of Kellie Williams dated 22 April 2020 and exhibit “KW-1”.

⁵⁰ Refer Affidavit of Christopher Healy dated 18 May 2020, [240] to [247].

⁵¹ Refer Affidavit of Wesley Connell dated 16 April 2020, [2] to [4] and exhibit “WC-1”.

⁵² Refer Affidavit of Christopher Healy dated 18 May 2020, [43] to [53].

out of the front of building around 10 metres away. At 11.35pm, the Respondent walks over to Mr Shine and, standing around 5 metres away, appears to be yelling at him; the Respondent is swaying and moving his arms up and down. Mr Connell is seen to approach and stand between both men. The Respondent walks back to his bike, then turns and goes back again towards Mr Shine, where he is seen is constantly waving his arms up and down. Mr Shine is standing still with his hands in his pocket. Mr Connell remains standing between the 2 men and watches the Respondent, who returns to his bike. The Respondent can still be seen waving his arms and then continues working on his bike in what appears an angry manner. Mr Connell remains watching the Respondent throughout this period, where intermittently the Respondent continues waving his arms and seems to be arguing with Mr Connell. Another person comes out and works with the Respondent on the bike, which seems to calm him down.

- [121] I find the Respondent's conduct towards Mr Shine to be aggressive, intimidating and out of control and to constitute objectionable behaviour.

Alleged incidents between the Respondent and George Godfrey-Bailey

14 June 2019

- [122] Mr Godfrey-Bailey, a tenant in the building,⁵³ attests that on 14 June 2019 he was sitting on the plinth outside the building when the Respondent walked up to him and said that his son owed him money for a welding mask and then commenced to swear and threaten him. Mr Godfrey-Bailey says that this stressed him out so much that he got very bad chest pains and had to call an ambulance. Mr Godfrey-Bailey completed a TIF regarding the incident where, in addition to the above, he stated 'He [meaning the Respondent] also gestured as though he was going to kill me'.
- [123] Mario Bicanic, who was working at the time,⁵⁴ attests that he heard the verbal conflict start between the Respondent and George Godfrey-Bailey and intervened along with the Queensland Police Service who were co-incidentally there at the same time. I note that the incident report for the matter completed by Mr Bicanic does not provide any detail regarding Mr Bicanic hearing what was said between the parties; rather, the incident report states that the police, when leaving the building, heard the commotion and went over to address it. I also note the CCTV footage of the incident indicates very little involvement by Mr Bicanic.
- [124] The Respondent attests that it was Mr Godfrey-Bailey who initiated the verbal conflict,⁵⁵ provoking the Respondent by yelling and swearing at him after he raised with Mr George-Bailey that his son had not paid him for a welding mask that the Respondent sold him.
- [125] The CCTV footage of this incident shows Mr Godfrey Bailey sitting outside the premises when he is approached by the Applicant at approximately 3.18pm.⁵⁶ The Respondent and Mr Godfrey have a conversation of approximately 30 seconds. When the Respondent starts walking away towards a police officer who is walking towards them, Mr Godfrey-Bailey then gets up and also walks to the police officer. Mr Godfrey-Bailey and the Respondent are seen to be arguing for another short

⁵³ Refer affidavit of George Godfrey-Bailey dated 22 April 2020, [2]-[6] and exhibit "GB-1".

⁵⁴ Refer affidavit of Mario Bicanic dated 16 April 2020, [6] to [8] and exhibit "MB-2".

⁵⁵ Refer affidavit of Christopher Healy dated 18 May 2020, [203]-[9], and [262]-[72].

⁵⁶ Refer affidavit of Derek Taylor dated 15 April 2020 and exhibit "DT-4".

period when one officer walks away with the Respondent and another stays with Mr Godfrey-Bailey; a third Police officer is also seen. The Respondent is seen to walk away around 3.19pm and two of the officers stay with Mr Godfrey-Bailey, who seems quite agitated as he keeps talking and waving his arms. A CGQ concierge seems to also be present on the footpath observing. The police stay with Mr Godfrey-Bailey until the end of the CCTV footage, recorded at 3.22am.

[126] The CCTV footage indicates that the verbal communication between the Respondent and Mr Godfrey-Bailey was of a very short duration. As there is no audio, who said what is unable to be confirmed. It is not the case the police were called to the scene responding to a complaint, but rather were at the building on other related business when they walked outside and heard both men arguing.

[127] I do not accept that the Respondent caused Mr Godfrey-Bailey chest pains; the CCTV footage shows that after the Respondent left the scene Mr Godfrey-Bailey was agitated, waving his arms around and seeming not to be able to settle down, despite the presence of three police officers attending to him. I am not satisfied on the evidence that the verbal disagreement between the Respondent and Mr Godfrey-Bailey constituted objectionable behaviour; at most, it seems to me that both parties' behaviour was inappropriate in that they were arguing in public.

26 July 2019

[128] Mr Godfrey-Bailey attests that on 26 July 2019,⁵⁷ the Respondent visited him in his unit at the same time that Kelly Lark and her friend Faye Andrews were also visiting him. Mr Godfrey-Bailey says the Respondent got into an argument with Ms Lark and Ms Andrews about them owing money to the Respondent, and that he witnessed the Respondent kick Faye Andrews in the stomach. Mr Godfrey-Bailey called the concierge and Mark Uttley removed the Respondent from the Unit, after which the police attended, and Mr Godfrey-Bailey provided a statement.

[129] Mr Mark Uttley attests that he received an urgent call from Mr Godfrey-Bailey and,⁵⁸ upon attending the unit, observed the Respondent, Kelly Lark and Faye Andrews on the balcony arguing. Mr Uttley states he did not hear what the argument was about and directed the Respondent to leave the unit.

[130] The incident report of Mr Uttley records that, when escorting the Respondent back to his unit, the Respondent informed him that he was assaulted when a can was thrown at him which hit him on the side of the face. Mr Uttley records he encouraged the Respondent to lodge a complaint with the police.

[131] Neither Mr Uttley nor Mr Godfrey-Bailey state that they noticed any injury to the Respondent.

[132] The police attended and spoke with Ms Lark, Ms Andrews and Mr Godfrey-Bailey. The incident report records that they all said the Respondent kicked Ms Andrews in the stomach and they wanted him charged with assault. The police did not interview the Respondent at the time, as it was alleged that he was intoxicated. This is further noted in the incident report when the Respondent telephoned the police from the foyer to report theft of money and later when the police attended the premises and

⁵⁷ Refer affidavit of George Godfrey-Bailey dated 22 April 2020, [7] to [15].

⁵⁸ Refer affidavit of Mark Uttley dated 16 April 2020, [9]-[15] and exhibit "MU-3".

spoke to the Respondent. Ultimately, no complaint was formerly lodged by Ms Andrews to the Police and the Respondent was not charged for the incident.

[133] The Respondent attests that it was Ms Andrews and Ms Lark that initiated the confrontation and that he did not, nor has he ever, kicked Ms Andrews.⁵⁹

[134] The assault of another person is without dispute objectionable behaviour. The evidence presented provides that three persons, Ms Andrew, Ms Lark and Mr Godfrey-Bailey confirmed both to the concierge and the police that the Respondent kicked Ms Andrews in the stomach. Ms Andrews did not lodge a complaint with the concierge, nor did she follow up the following day to lodge a formal complaint with the police. The only witness who provided an affidavit in the proceeding attesting to the assault was Mr Godfrey Bailey who was not called for cross examination.

[135] Section 28(3)(b) and (c) of the QCAT Act provides that the Tribunal, in conducting a proceeding, is not bound by the rules of evidence or any practices or procedures that apply to courts of record other than if adopting them, and may inform itself in any way it considers appropriate.

[136] The Tribunal is required to observe the rules of natural justice and procedural fairness. It is not unusual in applications of this type that persons providing statements are not named or called for cross examination. The Applicant elected not to call any of the tenant witnesses to support their application due to their vulnerable person status - a course of action that I agree with. The practical effect of this, of course, is that evidence given is untested, and the Tribunal must bear this in mind when considering what weight, if any to give it.

[137] The Respondent, who has been represented by Counsel throughout these proceedings, has had the opportunity to respond to the allegations. The Respondents' evidence, in response to nearly every allegation is that he denies he is at fault.

[138] Given the significant number of complaints levied against the Respondent by multiple parties consisting of both tenants and CGQ staff, I have found the Respondent's denial of nearly every single incident to be implausible and lacking credibility. The standard response, as set out the Respondent's affidavit is generally along the lines:

- (a) I deny the allegation;
- (b) I was provoked;
- (c) there is no evidence to substantiate the allegation;
- (d) the allegations are purely speculative, vague and ambiguous; and
- (e) I was not contacted or charged by police.

[139] I therefore find, on the balance of probabilities, that the Respondent did kick Faye Andrews in the stomach as alleged, and such conduct is objectionable behaviour by the Respondent.

14 February 2020

⁵⁹ Refer affidavit of Christopher Healy dated 15 January 2020, [21]-[26] and [57]-[64].

[140] Mr Godfrey-Bailey attests that, on 14 February 2020,⁶⁰ he was standing out the front of the building with his son, Ian Godfrey-Bailey, when the Respondent rode past on his bike and spat on his son and said words to the effect ‘be careful if you are going to walk around here by yourself’. Mr Godfrey-Bailey says he responded by warning the Respondent to be careful if he was going to pick on his son, and a heated argument ensued between them.

[141] The Respondent attests that he did not spit on Ian Godfrey-Bailey.⁶¹ Rather, the Respondent states that, in response to him raising with Ian Godfrey-Bailey the money he still owed for the welding mask, Mr Godfrey-Bailey initiated a verbal altercation, provoked him and threatened to assault him.

[142] The Respondent refers to the incident log of the matter prepared by Joey Passi,⁶² which states:

George got upset and started making threats. Chris then came inside and asked for a TIF. Whilst Chris was filing out the forms George continued to antagonise him into fighting and make threats to get him later”. George said “if he comes outside my door or on my side of the hallway im (sic) gonna knife him”. He then reached into his pocket and pulled out a little pocket knife..” For safety reasons TSQ didn’t want to be in the room while George was acting like he was.

[143] The incident log prepared by Joey Passi does not in my view support the allegation by Mr Godfrey-Bailey; to the contrary, it seems to suggest that Mr Godfrey-Bailey was the antagonist of an incident against the Respondent.

23 March 2020

[144] The Affidavit of Derek Taylor attests to a conflict that was witnessed by concierge Mr Bicanic.⁶³ The incident log for the matter states that at 8.02pm:

Chris Healy pointed out that Lewis Weazel swore at him and won’t leave him alone. I told Lewis Weazel to go back to his apartment or to go outside and leave Chris alone.

[145] At 8.13 pm:

Chris Healy was getting his mail with Lewis Wezel came inside the foyer with his 2 x visitors...when apparently Chris Healy stated that Lewis threatened to punch him. I didn’t hear it because Lewis whispers when he talks. I the (sic) stood between Chris and Lewis while TSW Tom was signing in Lewis’s two visitors.

[146] I am unsure on what basis the Applicant is relying upon the above incident as constituting objectionable behaviour by the Respondent, in circumstances where it appears that Lewis Weazel was the subject of complaint as recorded in the incident report and not the Respondent.

25 March 2020

[147] On 25 March 2020, Mr Godfrey-Bailey states that he was in the foyer when he saw the Respondent walk past with what appeared to be the handle of a knife sticking out

⁶⁰ Refer affidavit of George Godfrey-Bailey dated 22 April 2020, [7] to [15].

⁶¹ Refer affidavit of Christopher Healy dated 18 May 2020, [160]-[171] and [210]-[220].

⁶² Refer affidavit of Joey Passi dated 16 April 2020 and exhibit “JP-2”.

⁶³ Refer affidavit of Derek Taylor dated 1 September 2020, [12](a) and exhibit “DT-1”.

from the back of the Respondent's pants.⁶⁴ Mr Godfrey-Bailey told the concierge he was worried that the Respondent might be violent towards him.

[148] The Respondent denies that he had a knife sticking out of his pants,⁶⁵ and at the hearing produced an implement used in book binding which he states was what he 'believed' was tucked into the waist band of his pants.

[149] This was the first occasion the Respondent provided an explanation to this allegation; previously, he has simply denied the object was a knife. I found the evidence of the Respondent to be unconvincing as the object produced at hearing was large and heavy and unlikely to be able to be tucked into pants.

[150] Mr Wesley Connell attests he was informed of this incident by Mr Godfrey-Bailey on 25 March 2020,⁶⁶ and that he prepared an incident report regarding it on 30 March 2020.

[151] In the incident report, Mr Connell states that he was unable to confirm what was in the tenant's waistband as he did not have a clear view.

[152] The CCTV⁶⁷ footage of the incident was not sufficiently clear to identify the object.

[153] I find the evidence of the Respondent to lack creditability and do not believe it was book binding instrument as proffered. However, there is insufficient evidence before the Tribunal for me to be satisfied the instrument was a knife as alleged.

Incidents regarding Respondent's conduct with CGQ Concierge/Security staff

[154] The Applicant relies upon several incidents that have occurred between the Respondent and concierge/security staff of CGQ as constituting objectionable behaviour.

[155] On 13 June 2019 the Respondent telephoned the concierge to speak with his TSW, Andy. The call was answered by Mario Bicanic,⁶⁸ who states that the Respondent began shouting, yelling and swearing about other tenants until the call was disconnected. Mr Bicanic states that the abuse made him feel uncomfortable and impacted on his ability to help other clients.

[156] Mark Uttley states that on 30 July 2019,⁶⁹ he answered three calls in succession from the Respondent who was wanting to speak with his TSW. Mr Uttley records in the incident report that the Respondent sounded upset, was speaking at an extremely quick pace, stated he may as well commit suicide, and said to Mr Uttley 'you can all get fucked, I got smashed in the head and nobody cares'.

[157] The Respondent denies he said this to Mr Uttley and that Mr Uttley must have misconstrued what he said as he could not understand the Respondent.⁷⁰

[158] Wesley Connell attests that on 24 March 2020,⁷¹ he observed the Respondent acting strangely and overhead the Respondent tell the TSW that Mr Connell was

⁶⁴ Refer affidavit of George Godfrey-Bailey dated 22 April 2020, [21] to [24].

⁶⁵ Refer affidavit of Christopher Healy dated 18 May 2020, [69]-[74] and [221]-[227].

⁶⁶ Refer affidavit of Wesley Connell dated 9 April 2020, [15]-[17] and exhibit "WC-5".

⁶⁷ Refer affidavit of Derek Taylor dated 15 April 2020 and exhibit "DT-10".

⁶⁸ Refer affidavit of Mario Bicanic dated 16 April 2020, [2]-[5] and exhibit "MB-1".

⁶⁹ Refer affidavit of Mark Uttley dated 16 April 2020, [16]-[21] and exhibit "MU-4".

⁷⁰ Refer affidavit of Christopher Healy dated 18 May 2020, [273]-[276].

⁷¹ Refer affidavit of Wesley Connell dated 9 April 2020, [12]-[14] and exhibit "WC-4".

judgmental and racist as he refused to take the Respondent's rubbish out and handed him a bin instead. The Respondent denies that he said these things to the TSW.

- [159] Mr Connell also attests that on 27 March 2020,⁷² he overheard the Respondent tell his TSW that Mr Connell was a racist and he and other concierges were corrupt and fraudulent. Mr Connell states he felt offended and uncomfortable having these insults directed at him and his colleagues. The Respondent denies that he made these comments.⁷³
- [160] Derek Taylor attests⁷⁴ that on 30 April 2020 the incident log reports that the Respondent said to Mark Uttley 'Don't talk to me prick'. I note the incident log also records that the Tenant was talking with his TSW at the time, in a loud voice where he stated where in the policy does it state the concierge have the right to be spies. The tenant was upset and the TSW took the tenant in another room where the Tenant could be heard shouting. The Respondent denies this occurred.⁷⁵
- [161] The incident log also records that,⁷⁶ on 1 May 2020, the tenant called concierge and spoke with Joseph Passi. He asked to be put through to the TSW; when told the TSW was not at the desk, he asked to be transferred to Andy (Micha). The Respondent was advised he can't be transferred using the intercom. The Tenant called another 4 times saying it had been done in the past and started yelling about concierge being told not to speak with him.
- [162] The Respondent denies this incident occurred.⁷⁷
- [163] As previously stated, the Respondent asserts that issues with CGQ Concierge commenced around 18 months ago, after he reported a staff person for alleged sexual misconduct and, since that time, he believes he is being targeted by CGQ as a result. The concierge was cross-examined by Counsel for the Respondent in relation to this allegation and I found the witnesses to be frank, truthful and consistent in their evidence. I am not satisfied that there was any evidence to support that the Respondent is, or has been, unfairly targeted by CGQ staff.
- [164] The incident logs prepared by concierge contemporaneously with the above incidents are recorded in a factual and unemotive manner. They contain no element of bias toward the Respondent.
- [165] I am satisfied on the evidence given by each of the above concierges that the incidents occurred in the manner described. What is a recurrent theme in many of the above instances is that when the Respondent is not satisfied with the response received (such as his TSW being unable) he takes his anger out on the concierge by shouting, swearing, and making derogatory comments. He also engages in nuisance behaviour, repeatedly contacting them in attempt to achieve a different outcome. This type of behaviour is detrimental not only to the concierge attempting to do their job but also other tenants who need the services of the concierge.
- [166] I consider the Respondent's conduct when dealing with concierge displays a complete lack of respect and constitutes objectionable behaviour.

⁷² Refer affidavit of Wesley Connell dated 9 April 2020, [18]-[20] and exhibit "WC-6".

⁷³ Refer affidavit of Christopher Healy dated 18 May 2020, [75]-[80].

⁷⁴ Refer affidavit of Derek Taylor dated 1 September 2020, [13](b) and exhibit "DT-1".

⁷⁵ Refer affidavit of Christopher Healy dated 18 May 2020, [2]-[5].

⁷⁶ Refer affidavit of Derek Taylor dated 1 September 2020 and exhibit "DT-1".

⁷⁷ Refer affidavit of Christopher Healy dated 18 May 2020, [2]-[5].

Noise Complaints

- [167] The application includes nine noise complaints concerning the Respondent which are said to have occurred on: 12 June 2019;⁷⁸ 16 July 2019;⁷⁹ 13 February 2020;⁸⁰ 14 April 2020;⁸¹ 5 May 2020;⁸² 8 May 2020;⁸³ 19 May 2020;⁸⁴ 20 May 2020;⁸⁵ and 24 May 2020,⁸⁶ as constituting objectionable behaviour by the Respondent.
- [168] All of the complaints concern either loud music emanating from the Respondent's unit or noises emanating from the use of tools or things being dropped on the Respondent's apartment floor.
- [169] Complaints of noise on 5, 8, 20 and 24 May 2020 are all from the neighbour living below the Respondent, who has complained of noise from things being dropped on the Respondent's floor and/or from noises from carrying out building work such as drilling, sawing, etc. The tenant submitted two written complaints to the Applicant: one of 8 May 2020,⁸⁷ where he stated the noise wakes him up multiple times during the night and for 3 mornings he has gone to work with as little of two hours sleep; and on 20 May 2020,⁸⁸ where he stated the behaviour is detrimental to his sleep pattern and has caused issues with this work. He has tried to communicate with the Respondent to keep the noise down but the Respondent refuses to listen to this, and the behaviour continues shortly after attempts at communication are made.
- [170] It appears the complaints of the downstairs neighbour were not addressed with the Respondent at the time they were said to have occurred but after CGQ received the written complaints from the Tenant. In response, the Respondent does not accept that he was the cause of the noise and claims that he often hears the tenant above his unit in the action of craft hammering which may well be the source.⁸⁹
- [171] In relation to the other noise complaints, I accept that the evidence supports that when the Respondent has been informed by the concierge of a noise complaint by a tenant, he immediately addresses it. However, this does not excuse the excessive noise made by the Respondent sufficient to warrant such a large number of complaints. Of concern is that between 13 February 2020 and 24 May 2020, being a time when these proceedings were before the Tribunal, there were a further seven noise complaints from tenants about the Respondent.
- [172] This recurrent behaviour by the Respondent evidences a continual disregard by the Respondent regarding the adverse effect his behaviour has on other tenants in the

⁷⁸ Refer affidavit of Joey Passi dated 16 April 2020, [2]-[6] and exhibit "JP-1".

⁷⁹ Refer affidavit of Wesley Connell dated 9 April 2020, [5]-[8] and exhibit "WC-2".

⁸⁰ Refer affidavit of Mario Bicanic dated 16 April 2020, [23]-[25] and exhibit "MB-8". I note that the affidavit states the complaint was 'verbal abuse'. However, the incident report clearly states it was a complaint regarding noise.

⁸¹ Refer affidavit of Derek Taylor dated 1 September 2020, [13](a) and exhibit "DT-1".

⁸² Refer affidavit of Derek Taylor dated 1 September 2020, [13](b) and exhibit "DT-1".

⁸³ Refer affidavit of Derek Taylor dated 1 September 2020, [14] and exhibit "DT-2".

⁸⁴ Refer affidavit of Derek Taylor dated 1 September 2020, [13](c) and exhibit "DT-1".

⁸⁵ Refer affidavit of Derek Taylor dated 1 September 2020, [15] and exhibit "DT-3".

⁸⁶ Refer affidavit of Derek Taylor dated 1 September 2020, [13](d) and exhibit DT-1.

⁸⁷ Refer affidavit of Derek Taylor dated 1 September 2020 [13] and exhibit "DT-2".

⁸⁸ Refer affidavit of Derek Taylor dated 1 September 2020, [15] and exhibit "DT-3".

⁸⁹ Refer affidavit of Christopher Healy dated 8 September 2020, [6]-[15] and exhibits "CH-1 and CH-2".

premises in continually causing a nuisance to tenants occupying premises nearby and depriving them of quiet, peace and enjoyment of their units.

8. Findings

[173] As set out above, I have found that the Respondent engaged in objectionable behaviour with respect to the following;

- (a) altercation with Ms Milburn on 7 May 2019, where the Respondent engaged in intimidating, aggressive and threatening behaviour towards Ms Milburn;
- (b) altercation with Elgan Leedie on 25 July 2019, where the Respondent's behaviour was aggressive, uncontrollable, disruptive and caused a serious nuisance to the other tenants in the foyer as well as the concierge;
- (c) incident with Kelly Lark and Faye Andrews on 22 November 2019, where the Respondent deliberately followed the women and engaged in aggressive and threatening behaviour towards them, as well as acts of violence in punching a wall and refusal to walk away;
- (d) incident of 11 March 2019, where the Respondent verbally abused Ms Russell-Oldham, another tenant;
- (e) incident of 20 May 2019, where the Respondent engaged in aggressive, intimidating and uncontrollable behaviour towards Mr Shine;
- (f) physical assault of Faye Andrews by the Respondent on 26 July 2019;
- (g) the Respondent's conduct towards the concierge on 13 June 2019, 30 July 2019, 24 March 2020, 27 March 2020, 30 April 2020 and 1 May 2020; and
- (h) Noise complaints on 12 June 2019, 16 July 2019, 13 February 2020, 14 April 2020, 5 May 2020, 8 May 2020, 19 May 2020, 20 May 2020, and 24 May 2020.

[174] I must now decide whether such behaviour warrants the termination of the Respondent's tenancy.

[175] Counsel for the Respondent submits that, even if the Tribunal found the Respondent had engaged in objectionable behaviour, a termination order would not be justified as:

- (a) The allegations involve low-level disruption between a small cohort of tenants who plainly have a history with one another. Namely, Lark, Godfrey-Bailey and Leedie. No weight should be given to Russell-Oldham or Williams.
- (b) Consideration should also be given to the context of the circumstances in which the behaviour occurred. There is evidence before the Tribunal that 40 to 50% of the tenants have mental health issues and approximately 20% have substance abuse issues. Nearly the majority receive welfare payments and disruption between tenants is a frequent event. Mr Taylor gave evidence that 'there are regular disputes between tenants. It's regular, probably every second day'. Mario Bicanic admitted that 'it is common for tenants to swear at staff. The environment can be emotional one.'

[176] I agree that a number of complaints concern the same group of individuals who, following the making of a complaint, subsequently reconcile. The Respondent attests to the fact that, despite complaints made by Mr Godfrey-Bailey, the

Respondent continued to socialise with him, and Mr Godfrey-Bailey continued to invite the Respondent to his unit. The Respondent's sister gave evidence that, in a telephone call with her brother on 19 February 2020, he was in the apartment of Mr Godfrey-Bailey along with Ms Elizabeth Milburn and they were laughing and enjoying each other's company. Mr Leedie subsequently provided a letter in support of the Respondent and so too did Ms Lark.

[177] Mr Taylor gave evidence that this 'make-up break up' behaviour is quite common in the CGQ environment. I accept this may be the case, and that the Respondent may now be friends with some of the complainants. However, my finding of objectionable behaviour when it comes to incidents with other tenants is not so much as to who was at fault, but rather the Respondent's behaviour in relation to the incident.

[178] Counsel for the Applicant submits, and I accept, that the history of the Respondent shows the Applicant has attempted to work constructively with the Respondent to manage his behaviour in the past, which has included entering into an Acceptable Behaviour Agreement in June 2016. There have also been numerous other past incidents which very well may have been sufficient grounds for termination including:

- (a) on 17 February 2016, a near-fatal overdose by the Respondent in another tenant's unit from boiling up fentanyl patches;
- (b) on 2 June 2016, a serious incident of violence requiring concierge intervention;
- (c) a number of incidents of conflicts and confrontations in late 2017, and harassment and abuse of staff which resulted in multiple warning letters;
- (d) eight recorded incidents (other than rent arrears) during early 2018, including a police raid that resulted in stolen items being removed; and
- (e) noise complaints as far back as 2013.⁹⁰

[179] With respect to the matters before the Tribunal, the Respondent repeatedly:

- (a) denies any allegation of wrongdoing;
- (b) justifies his behaviour on the basis he was provoked;
- (c) claims there is no evidence to substantiate any of the allegation;
- (d) considers the allegations are purely speculative, vague and ambiguous; and
- (e) relies on not being contacted or charged by police as support of no wrongdoing.

[180] This is even though the CCTV footage clearly showed the Respondent behaving in aggressive, intimidating and threatening behaviour towards other tenants.

[181] Regardless of whether the Respondent was provoked as alleged, it is difficult to reconcile how the Respondent could, after viewing the footage, consider his behaviour as being acceptable.

⁹⁰ Refer Affidavit of Derek Taylor dated 2 June 2020.

- [182] I agree with the submissions of the Applicant that the Respondent's affidavit material does not reveal any acknowledgement or insight into the issues caused by the Respondent.
- [183] The Respondent's lack of insight was further demonstrated when I asked him a number of questions at the hearing following the viewing of the CCTV footage and whether after viewing it, he would do things differently. I expected (or hoped) the Respondent would give some indication that he needs to better control his behaviour in adverse situations. Instead, the Respondent said he has learnt not to trust certain people and to stay away from them.
- [184] At no time during the hearing did the Respondent admit or accept that his behaviour was unacceptable.
- [185] The Respondent's behaviour which has caused me the most concern are the incidents with Ms Milburn on 7 May 2019, Mr Leedie on 25 July 2019 and Ms Lark and Ms Andrew on 22 November 2019. In all these incidents, the Respondent justifies his conduct by stating he was provoked. However, he had every opportunity in all of these incidents to ignore what was said and continue on his way. Instead, he went out of his way to confront the person, such as exiting the lift in relation to Ms Milbourn, or following Ms Lark and Ms Andrews out of the building, or throwing his bike down in the foyer and confronting Mr Leedie. The CCTV footage shows the Respondent's anger levels escalate at a rapid rate to a point where his behaviour is soon out of control. With Ms Millburn, the Respondent adopted a fighting stance with closed fists, and is alleged to have spat on her; with Mr Leedie, the concierge gave evidence the Respondent was foaming at the mouth and spitting on Mr Leedie.
- [186] The fact that the Respondent, when viewing himself in this manner, does not consider he may have some anger issues is somewhat perplexing.
- [187] The Respondent's displays of aggressive behaviour particularly in common areas have caused some tenants to express fear of him. It is also upsetting and intimidation to those tenants who inadvertently find themselves witnessing the behaviour as occurred with the Respondent's altercation with Mr Leedie. The CCTV footage shows the tenants who witnessed this incident subsequently comforting Mr Leedie who is seen to be visibly upset.
- [188] A further demonstration of the violent and aggressive behaviour of the Respondent is that he kicked Ms Andrews in the stomach during an argument with her.
- [189] It is directly relevant that the significant majority of CGQ tenants are vulnerable people suffering mental illness. Displays of aggression, shouting, yelling and physical altercations are likely to have serious and adverse effects on them.
- [190] I have also considered the Respondent's behaviour in light of the CGQ environment which differs significantly from other community housing providers. CGQ houses over 140 tenants in the one building, with the majority being considered vulnerable people. Many are unemployed, suffer mental health and substance abuse issues and no doubt have too much time on their hands. I have considered the fact that, with 24-hour concierge and TSW, making a complaint is an extremely simple process.
- [191] That being said, with the large number of tenants being vulnerable people dealing with mental health and substance abuse issues, their ability to be able to access and obtain support of the concierge and TSW is important. The evidence supports that the concierge have been subject to verbal and abusive tirades from the Respondent

on multiple occasions and excessive time wasting due to repeated successive calls by the Respondent in instances where he does not like what he has been told. The time spent by the concierge in diffusing incidents involving the Respondent, addressing noise complaints and taking nuisance calls from the Respondent is to the detriment of other tenants.

[192] The numerous noise complaints are further evidence of the Tenant's disregard towards other tenants in CGQ and the impact of his behaviour on others. Even after being informed by the tenant below of the impact the noise was having on his sleep and work, the Respondent failed to cease the behaviour.

[193] Counsel for the Respondent submits that the Respondent may be rendered homeless if a termination order is made. I appreciate that prior to CGQ the Respondent was homeless for a period of 6 to 12 months. However, the Respondent has had seven years of stable housing and significant TSW support which no doubt has assisted him with developing helpful living skills. The tenant support he receives in CGQ is also available outside CGQ, so there is no reason this could not continue.

[194] I have also considered the evidence of Dr Jourdan, Andrew Johnson and Jen Weidman who are of the same mind that the Respondent will benefit from stable accommodation, and the lack of same would impact on the Respondent's mental health. However, I am not convinced that such stability could still not be achieved outside of CGQ.

[195] It was apparent during this matter that the Respondent has a supportive and caring family. He also has a close relationship with Andy, his TSW, all of who can assist the Respondent in a transition to alternate accommodation.

[196] I have considered that there is a very long waiting list for public housing; however, I have regard to the evidence of Mr Taylor given at hearing that he was confident he would be able to assist the Respondent in finding alternate housing and maybe able to 'pull some strings', but only after a termination order is made.

[197] In making my decision, I have considered the fact that the Respondent suffers from a mental illness and that this may contribute to his lack of insight into his behaviour or appreciate of his behaviour on others. However, whilst it might explain the objectionable behaviour it does not excuse it and is not a defence to terminate the lease for objectionable behaviour.

[198] The lack of insight by the Respondent gave me serious cause for concern as, without insight, there is no ability for change. This means that if the tenancy is not terminated, in all likelihood the Respondent's objectionable behaviour will continue.

[199] I find that the objectionable behaviour of the Respondent is serious, recurrent and unlikely to cease if the tenancy is not terminated.

Orders

[200] The orders are as follows:

1. A termination order is made with respect to the tenancy on the grounds of objectionable behaviour as at 31 January 2021.
2. A warrant be issued to take effect on 1 February 2021 for a period of 14 days ending on 15 February 2021.