

Application of *Charter* in Public Housing Eviction Case

Director of Housing v IF [2008] VCAT 2413 (18 November 2008)

The Residential Tenancies List of the Victorian Civil and Administrative Tribunal rejected submissions that making a compliance order against a tenant would be contrary to the *Charter*. Member Nihill considered that the proceedings did engage the s 13 *Charter* 'privacy' right however considered the compliance procedure to be a reasonable limitation under s 7 of the Act.

Facts

It was alleged that over a number of years the respondent ('the tenant') engaged in threatening behaviour towards his neighbours which included a husband ('the neighbour'), wife and their child. As a result, the landlord (the Director of Housing) served a notice of breach which stated the incidents relied on by the landlord and required the tenant to 'remedy the breach within 14 days by ceasing such activities forthwith and to take action to avoid their reoccurrence at anytime in the future...' The landlord subsequently applied to the Tribunal under s 209 of the *Residential Tenancies Act 1997* for a compliance order under s 212 of that Act on the basis that the landlord was continuing to disturb the neighbour.

Decision

Member Nihill found the notice complied with the Act and that, on the balance of probabilities, the relevant conduct did occur. Member Nihill also found that the tenant breached the notice even though the conduct complained of occurred outside the 14 day period referred to in the notice of breach.

In response to argument, Member Nihill agreed that s 13 of the *Charter*, which provides that a person has the right 'not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with' was engaged by ss 208 and 209 of the Act. The Member noted that of itself a compliance order simply required the tenant to comply with the Act, however, when considering a breach of the order, she would also need to consider any potential interference with the tenant's privacy and home. The Member stated at paragraph 36 that the interference was 'a potentially serious one in the context of the current acute housing shortage'.

Member Nihill also considered the right to privacy as it applied to the neighbour and in addition noted s 17 of the *Charter* provided their child the right 'without discrimination, to such protection as is in his or her best interest, and is needed by him or her by reason of being a child.'

The tenant argued that the landlord was a 'public authority' for the purposes of the *Charter* and was therefore required by s 38 to act compatibly with the *Charter*. It was further submitted that the *Charter* duties applied when exercising powers under the *Housing Act 1983* and that in deciding to issue the notice of breach, the landlord failed to act in accordance with the *Charter*.

Member Nihill refused to rule on whether the landlord had breached its *Charter* obligations in relation to the *Housing Act* submission. Member Nihill stated:

After careful reflection, I do not consider that I have the jurisdiction to go behind the application made by the landlord, and review whether or not the landlord acted in a *Charter* compatible way in reaching the decision to make the application.. Any challenge to the decisions of the Director of Housing made under the *Housing Act* would need, I think, to be brought in a different jurisdiction.

The decision of *Sabet v Medical Practitioners Board of Victoria* [2008] VCA 346 was cited in support of this ruling.

The decision is available at www.austlii.edu.au/au/cases/vic/VCAT/2008/2413.html.

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