

## RECORD OF OUTCOME

**Outcome Type:** Order and Judgement

**Court of Origin:** Magistrates Court of South Australia

**Action Number:** 2020/SMCH000603

**Between:** Rental Property Network as agent for John and Connie Hansen Trustee for the Hansen Family Super Fund (Applicant)

**AND** Daniel Boag (Respondent)

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Date of Hearing: 2 September 2020

Before: Ms J Bakas

In attendance: Linda Vandeppear and Taryk Mazzeo on behalf of Rental Property Network (via telephone), Connie Hansen (via telephone)

Witness for applicant: Constable Stasha Stolinski (via telephone)

Tenancy: 27 Cleve Street, MANSFIELD PARK SA 5012

### **Possession (Landlord application)**

Made under the *Residential Tenancies Act 1995* sections 87(1), 87(2), 90, 110(1)

### **Findings of the Court**

1. This matter has been referred to the Magistrates Court by the South Australian Civil and Administrative Tribunal (SACAT) under Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013* (the SACAT Act) because the landlord lives interstate.
2. I am satisfied that it is appropriate for this matter to be dealt with in the Magistrates Court on the basis of SACAT's referral. Under Section 38C(3) of the SACAT Act the Magistrates Court has all of the powers and functions in relation to proceedings transferred to it by SACAT which SACAT would have had in dealing with the dispute.

### **The application**

3. This is a tenancy agreement under the *Residential Tenancies Act 1995* (the Act).
4. This is an application by the landlord seeking an order terminating the tenancy due to serious breach (section 87). However, due to the nature of the application, the matter was set down for a directions hearing on 18 August 2020 to consider the application also under section 90 of the Act.
5. Bearing in mind the objectives of the Court as set out in section 8 of the South Australian Civil and



Administrative Court Act 2013 (the SACAT Act) as well as the Court's procedural powers to amend proceedings pursuant to section 33 of the Act, I decided to proceed to deal with the matter before me under both sections 87 and 90 of the Act.

6. Under s 87(1) of the Act the Court may terminate a residential tenancy agreement if it is satisfied that the tenant has committed a breach and the breach is sufficiently serious to justify termination of the tenancy.

7. Under s 87(2) of the Act the Court may terminate a residential tenancy agreement immediately if satisfied that: the tenant, or a person permitted on the premises with the consent of the tenant, has intentionally or recklessly, caused or permitted, or is likely to cause or permit personal injury to the landlord or the landlord's agent or a person in the vicinity of the premises.

8. Under s 90(1) of the Act, the Court may terminate a tenancy on the grounds of the tenant's conduct. The applicant is the landlord. The landlord is an "interested person" under s 90(3) of the Act (and is therefore entitled to make the application).

9. In any application involving an application under s 90 of the Act, the Court has two questions to answer—

- first, are the grounds referred to in s 90 made out—in this case, has the landlord established that the tenant has used or caused or permitted the property to be used for an illegal purpose; and
- if so, in all the circumstances, should the tenancy be terminated.

10. The applicant for termination of the tenancy referred to damage to the property, drugs being sold from the property and neighbours being frightened by the occupants conduct. However at the hearing, the agent expressed that they was predominantly concerned with the illegal conduct that was occurring at the property.

11. I note that the tenancy agreement had three named tenants: Ms Donna-Lee Boag, Mr Daniel Boag and Mr Andrew Brooks. The tenancy was initially for a fixed term but has since lapsed into a periodic one. The landlord has issued a Form 3, 90 day notice to terminate the tenancy on 28 October 2020. The agent's evidence at the hearing included that Ms Boag and Mr Brooks moved out some time ago and Mr Boag was the only remaining tenant but that there are other occupants at the property. As noted in the Directions dated 18 August 2020, the current bond lodged against this property is only half the usual 6-week bond in the name of Mr Boag. The remainder of the bond was released on 7 April 2018. It is rather unusual to release half a bond during a live tenancy. However, I note that the current agent was not managing the property at that time. In any event, I am satisfied that Mr Boag is the only named tenant and that the amount of bond held is \$1,050.00.

12. I am satisfied that the tenant was served with notice of the hearing but the tenant did not attend the hearing. The Court attempted to phone the tenant with the contact number on file but the number was disconnected. The Court then tried to phone the tenant with a contact number that Ms Vandeppear had been able to contact Mr Boag on but he did not answer the call.

#### Evidence and submissions of the parties

13. The landlord's agent, Ms Vandeppear, gave the following evidence:

- She has recently assumed management of the property.



- Ms Boag and Mr Brooks vacated the property some time ago. Mr Boag recently vacated the property within the last two weeks.
- She has been advised by SAPOL not to attend the property for her own safety.
- The Form 3 notice was lodged as a matter of urgency as the property is a hotspot of illegal activity, as was the application to the Court.
- She is unsure what the property damage is, as she has not been able to perform an inspection.
- Her understanding is that when the previous agent conducted an inspection, three weeks prior to her assuming agency, they found damage.
- She further remarked that when the landlord viewed the photographs taken from the inspection she noticed that a door was missing and some windows were broken.
- She did meet with Mr Boag on the front lawn of the property and he was aware that he had a new property manager and had details of where to make rental payments.
- Rent is paid to 30 July 2020. There is also water outstanding.

14. Constable Stasha Stolinski gave the following evidence:

- From 1 March 2020 to 11 August 2020 SAPOL attended the property 16 times.
- She attended on a regular basis, as the property is of interest to SAPOL, primarily because its residents are at risk of committing serious criminal trespass as well as motor vehicle and drug related offending.
- Officers frequently attended to perform bail checks and follow-up suspects, on one occasion drug paraphernalia was found.
- On 30 July 2020 she attended the property on behalf of Ms Vandeppear to issue the Form 3 notice.
- The Form 3 notice was issued to Marcia Brown, who she believed to be the partner of Mr Boag.
- Her interactions with persons that occupy the premises have been hostile and violent which have resulted in arrests. Based on this history, she advised Ms Vandeppear not to attend the property as she believed it was not safe to do so.
- Mr Boag's bail address has changed and so he was required to reside at another address.
- She has never found drugs or weapons at the property. However, in June 2020 there was a search conducted at the property by SAPOL and a person was arrested for drug related offences.
- The SAPOL has also received complaints from neighbours regarding the conduct of people residing there.
- Since the Form 3 notice was issued, a few of the occupants have moved out.

### The Court Findings

15. I accept the evidence given by the applicant and their witness.

16. I am satisfied from the evidence before me that rent arrears stand at \$1,750.00 and that the bond is only \$1,050.00.

17. As stated above, under s 87(1) of the Act the Court may terminate a residential tenancy agreement if it is satisfied that the tenant has committed a breach and the breach is sufficiently serious to justify termination of the tenancy.



18. Under s 87(2) of the Act the Court may terminate a residential tenancy agreement immediately if satisfied that: the tenant or a person permitted on the premises with the consent of the tenant, has intentionally or recklessly, caused or permitted personal injury to the landlord or the landlord's agent or someone in the vicinity of the premises (or is likely to do so).

19. I am satisfied that the evidence establishes on the balance of probabilities that the tenant or a person permitted on the premises by the tenant is likely to cause or permit personal injury to any person who enters the premises. I am also satisfied that the rent arrears alone are a serious breach under section 87(1).

20. The remedy under section 87(2) is immediate possession of the premises by the landlord. This is a drastic remedy which the Court is hesitant to order.

21. I have considered the possibility that an immediate order for possession may have the consequence of making the tenants homeless during the pandemic, as I am required to do so by the *COVID-19 Emergency Response Act 2020*. I note that in her evidence Constable Stolinski submitted that Mr Boag has been bailed to another address. It is unclear what the status is of the remaining occupants. Having regard to the information before me I will allow the tenant until Monday 14 September 2020 to vacate the property.

22. Rent arrears as at the vacate date will be \$2,300.00.

23. Given my findings above it is not necessary to consider section 90.

### **Orders of the Court**

1. I order that the tenancy agreement will terminate on Monday 14 September 2020 and the landlord will have possession of the property from midday on that day. This order may only be enforced by the Court bailiff.

2. The bond (Bond No: 4128021-7) in the amount of \$1,050.00 is to be paid to the landlord (via the agent) in full and the tenant must pay the landlord (via the agent) \$1,250.00 within 14 days of the date of this order. If the tenant does not pay, this order may be enforced in the Magistrates Court.



J Bakas  
Judicial Registrar  
8 September 2020



TENANCY INFORMATION

Tenancy address       **27 Cleve Street, MANSFIELD PARK SA 5012**  
Tenancy commenced   **Friday, 3 March 2017**  
Tenancy term  
Tenancy type           **Periodic**  
Tenant name           **Daniel Boag, Donna-Lee Boag, Andrew Brooks**  
Agent name             **Rental Property Network**  
Rent                     **\$350.00 Weekly**  
Bond                     **\$1050.00 (Bond No. 4128021-7)**

