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Human Rights, Police and Tenancy: A Troubling Mix?

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Cases Considered:

Beaverbone v. Sacco, 2009 ABQB 529

A recent decision of Justice Joanne Veit of the Court of Queen's Bench brings to light the potential interrelationship between landlord and tenant legislation, human rights legislation and the powers of the police—both generally and under the new *Safer Communities and Neighbourhoods Act* S.A., 2007, c. S-0.5 ("*SCAN*"). Before discussing the disturbing facts of the case, it is useful to discuss the legislation that could apply.

The *Alberta Human Rights Act*, R.S.A., 2000 c. A-25.5, recently replaced the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 2000, c.H-14. Section 5 of the *Human Rights Act* provides that landlords cannot deny rental accommodation or provide rental conditions for tenants in a manner that discriminates against them based upon a number of grounds, including mental disability.

The *SCAN* permits police officers (and other officials) to apply to the court for a community safety order to vacate and/or close the premises when property is consistently used for purposes such as drug trafficking, gang activity or child pornography.

Section 29(1) of the *Residential Tenancies Act*, S.A. 2004, c. R-17.1, authorizes the termination of a tenancy (eviction notice) for a substantial breach by a tenant. The covenants a tenant makes are set out in s. 21 and include: paying the rent when due, not interfering with the rights of other tenants or the landlord, not performing illegal acts or carrying on an illegal trade on the premises, not endangering persons or property in the premises or the common areas, not doing or permitting significant damages to the premises, maintaining the rented premises in a reasonably clean condition and vacating the premises at the expiration or termination of the tenancy.

In Alberta, the Residential Tenancy Dispute Resolution Service assists people with residential tenancy disputes. This service provides landlords and tenants with the ability to resolve disputes outside of court. A Dispute Resolution Officer (DRO) is authorized to make binding decisions involving disputes of up to $25,000. There are limitations to the powers of the DRO, however. For example, the *Residential Tenancy Dispute Resolution Service Regulation* (A.R. 98/2006) provides that the DRO must make an order that the matter cannot be heard if he or she believes the matter involves a constitutional law or human rights law issue or if the issues are too complex and that a court is the appropriate body to hear the matter. When the DRO makes such an order, the applicant must either withdraw the application or designate a court (Provincial Court or Court of Queen's Bench) to which the matter will be transferred.

Now for the facts of the case. For several years, Mr. Beaverbone and Ms. Houle were tenants in premises owned by the Saccos. They rented the whole house and there were no common areas shared with anyone else. Ms. Houle's 20 year old son also resided there. Mr. Beaverbone was diagnosed with post traumatic stress disorder (PTSD) and the effects of the illness were that he was angry, hostile, irritable, moody and suicidal, highly anxious, had trouble concentrating, short term memory loss, poor appetite, insomnia and nightmares. Beaverbone was under the care of a physician and a psychiatrist. The reported decision does not indicate the cause of Mr. Beaverbone's PTSD.

Since 2006, the police had been called out to the residence on many occasions. Some calls were because of threats of self-harm by Mr. Beaverbone or disputes initiated by Mr. Beaverbone with Ms. Houle. Starting in February 2009, calls to the police usually related to disputes with two of the tenant's neighbours. On one occasion, Ms. Houle reported that the neighbours were shoveling snow onto her driveway. On another occasion, Ms. Houle reported that a neighbour was waving an ice pick at Mr. Beaverbone when he was shoveling the sidewalk. In April 2009, police were called over a dispute with the neighbours over the issue of Mr. Beaverbone using a chainsaw to cut tree branches that were overhanging the tenants' yard. On May 3, 2009, Mr. Beaverbone reported to the police that the neighbour had threatened him with a rifle and had taunted him with racist epithets. The neighbours then reported to the police that they were afraid of Mr. Beaverbone. On May 10, 2009, a large dog entered onto the tenants' premises and an altercation occurred between the person in charge of the dog and the tenants. In addition, a neighbour reported to the police that Ms. Houle was driving in an aggressive manner.

Mr. Beaverbone was never charged with a criminal offence relating to these incidents. He was twice detained under s. 10 of the *Mental Health Act*, R.S.A. 2000, c.M-13.

According to paragraph 15 of the judgment, after May 10, 2009 the police called the landlords (the Saccos) down to the station, showed the landlords a photo of Mr. Beaverbone together with a list of his convictions and perhaps charges. The police told the landlord that "we have a big concern with regards to a powder keg in the neighborhood stemming around your address. It is my opinion that we need to evict these people." The police officers testified that the Saccos agreed to evict the tenants.

On May 12, 2009, members of the Edmonton Police Service served the tenants with an eviction notice signed by the Saccos' son-in-law. The notice listed the reason for eviction as "significant breach as per the Edmonton Police Service" (at para. 14). The address of the landlord's agent was in care of the Edmonton Police Service.

On May 14, 2009, on their own initiative and with many cars, the police went to the tenants' residence and told them if they contacted the landlords again, they would be charged with harassment.

The matter then went to the Residential Tenancy DRO. The landlord applied to terminate the tenancy and obtain an order for possession based on the allegation that the tenants had interfered with the rights of the landlord and other tenants in the premises and the common areas and the tenant had endangered persons or property in the premises and the common areas.

To make his case, the landlord relied on evidence provided by four police officers, which consisted mostly of hearsay evidence in police reports prepared by other police officers who

were not called as witnesses. The police did acknowledge that the *SCAN* did not apply to this situation. They could not point to any law that would explain their conduct in this case.

At the hearing a neighbourhood store owner testified that the tenants had always treated her with respect and the store's computer technician testified that he heard the neighbours call the tenants racist names.

On the second day of the hearing, the tenants argued that the DRO should not continue the hearing in light of s. 17 of the Regulations because there were human rights and *Charter* issues. After hearing both sides on this issue, the DRO decided to continue with the hearing. At the conclusion of the hearing, the DRO ordered that the tenants be evicted.

The tenants appealed the eviction decision to the Alberta Court of Queen's Bench. Parties can appeal a DRO's decision but only with respect to questions of law or jurisdiction (*Residential Tenancy Dispute Resolution Service Regulation* section 23(1)). Justice Veit found that the DRO had made an error of law when he continued the hearing despite the argument that *Charter* and human rights issues were involved and that his decision was reviewable on the standard of correctness.

Justice Veit held that the DRO had failed to properly consider whether the landlords had accommodated Beaverbone's mental disability and whether the tenants' rights under the *Charter* had been violated by the Edmonton Police Service. Thus, the DRO should have stopped the hearing.

The Court of Queen's Bench returned the matter to the DRO, after ordering that he cannot hear the matter. Because there were definitely human rights and *Charter* issues, the DRO should then give the Saccos the choice to continue or withdraw their application. Once they decide to proceed, they should be given the choice to have the application heard by the Provincial Court or the Court of Queen's Bench.

One cannot actually fault the landlords in this situation as they were following unsolicited advice given by the police. It is quite understandable that they would follow the police's advice to evict their tenants given how they received it. What is more troubling is how the police have misused their authority to indirectly mistreat a person with a mental disability. It is perhaps fortunate that the legislation recognizes that landlord and tenant disputes involving human rights issues cannot be dealt with by DROs.