

Human Rights | Housing and Homelessness

Case Study: Notice to leave for rental arrears



An Aboriginal woman (Bonnie) is a single mum to three children. They have been living in community housing for approximately nine years.

Naomi (11), Keira (8) and Tahnee (6) attend the local primary school and Bonnie is connected with local family and Aboriginal communities in the area.

At times during her tenancy, Bonnie cancels Centrepay rent deductions, and her rental ledger falls into arrears. Other than these periods of arrears, Bonnie is a good tenant and neighbour.

Recently, Bonnie travelled to regional Queensland several times for Sorry Business, and these expenses have impacted on Bonnie's ability to pay rent. She is currently three weeks in arrears, instead of two weeks ahead.

The housing provider has sent reminders and has previously discussed the rent arrears with Bonnie. Bonnie has disengaged with staff, and she refused to attend a meeting. A breach notice was issued in accordance with the *Residential Tenancies and Rooming Accommodation Act 2018 (Qld)*. Rent is not being paid in full, and the tenancy is slipping further into arrears.

The housing provider must decide whether or not to issue a notice to leave and defer a rental debt.

* *The names used in the scenario have been changed to protect the identity of those involved.*

This fact sheet has been co-designed with a community housing provider to highlight examples of giving proper consideration to human rights in accordance with the *Human Rights Act 2019 (Qld)* (HRA).



Purposeful Outcome

Be clear about the purpose of your service and clarify the outcome you are wanting to achieve in making this service decision.

Community housing provides eligible people with access to safe, appropriate, and affordable homes. Community housing provides certainty for those on low-income, allows people to develop tenancy management skills and can be a stabilising step before households move into the private market.

Bonnie and her family need to maintain a safe, secure and affordable home. Being on a low income, affordability would prevent her from accessing an appropriate home on the private market. Bonnie's inconsistent rent payments could make it even harder to maintain a stable home in the future. It is important for Bonnie to remain in community housing so she can access affordable rent, receive tenancy management support and maintain a stable home in which to raise her three children.



Identify Rights

Identify the human rights of all people involved in the situation and understand how they will be impacted by the decision.

Of the 23 rights protected in the *Human Rights Act 2019 (Qld)* (HRA) the following are engaged in the situation:

Protection of families and children

Bonnie and her children are unlikely to secure a home in the private housing market, but whilst they are in community housing their family unit remains protected. Should their tenancy end, they are likely to become homeless and this will impact upon the family unit and Bonnie's ability to protect her children.

Recognition and equality before the law

Despite a history of rent arrears, Bonnie has the right to receive services. She also has a history of repaying this debt and is otherwise a good tenant.

Cultural rights – Aboriginal and Torres Strait Islander Peoples

Bonnie and the children are closely connected to the local community and maintaining an affordable home in the area will maintain their connection to Country, cultural practices, customs, and kinship ties. This connection would be disrupted should they need to leave the area due to housing affordability.

Right to education

Naomi, Keira and Tahnee attend the local primary school. Should the family become homeless this would severely impact upon the children's access to education, their ability to attend school, learn and complete homework.

Protection from cruel, inhuman and degrading treatment and right to liberty and security of person

Should the family become homeless their security could be at risk and their living conditions could deteriorate and become inhuman and degrading.

Privacy and reputation

Bonnie and her children have the right to privacy and reputation, both of these could be limited if their tenancy ends and they are unable to secure another property. Experiencing homelessness or even living with friends and family will impact upon their right to privacy and the rights of those who accommodate them.

Bonnie's tenancy is at risk. Although remaining in community housing allows Bonnie to fulfil many of her human rights, an eviction into homelessness would cause a severe restriction to many of her rights.

Limited restriction  Significant restriction

Naomi, Keira and Tahnee would also be impacted by the eviction as it would impact upon their education and their connection to Country and culture at an important, influential phase of life. The family unit would also be disrupted.

Limited restriction  Significant restriction

Decision

Develop and agree to a plan with Bonnie to ensure further arrears do not occur or worsen using tenancy sustainment practices.

Bonnie commits to meeting her obligations and engaging with the housing provider to assist with her tenancy sustainment. Options include agreeing on the best method and schedule of rental payments, using direct debits, and establishing regular catch-ups between Bonnie and housing provider.

Ensure Bonnie has access to appropriate financial and personal support services.

The housing provider will carry the debt, with Bonnie's commitment to entering into a repayment plan, to reduce the arrears at affordable repayments.



Test Compatibility

With your decision in mind, answer these five questions to check if your decision is compatible with human rights.

Is the decision to defer debt and intensively manage Bonnie's arrears compatible with human rights?

Is the decision not to issue a notice to leave and defer a rental debt lawful? Yes – The housing provider has discretion not to issue a notice to leave.

Does the decision achieve a legitimate purpose? Yes – Deferral of debt prevents a situation of homelessness for Bonnie and her children.

Is the decision rational? Yes – Deferring the debt will allow the tenancy to be maintained.

Is the decision necessary? Yes – Deferring the debt has the least impact, without a deferral there will be an impact upon Bonnie and her children's rights.

Is the decision fair and balanced? Yes – Deferring the debt places a financial burden upon the housing provider and will require intensive tenancy management. This investment of resources is outweighed by the severe human rights limitation that Bonnie and her children would have experienced should they have been evicted.

** The decision to defer debt and intensively manage Bonnie's tenancy is likely to be compatible with the HRA.*



Justify Decisions

Document a clear justification for the decision demonstrating the consideration given to human rights.

Expected Outcome

Bonnie and her children remained in their home, avoiding the severe human rights limitations and stress that would have impacted them had they received the notice to leave.



Human rights limitations that would have impacted Bonnie and the additional limitations that Naomi, Keira and Tahnee would have experienced had they been given a notice to leave.



Additional resources to offset the debt and increased resources to provide intensive tenancy management and support.

Update

Bonnie and the children remained in their home for the summer holidays, and they are looking forward to next year without the stress and complexity of starting the year homeless.

Document created December 2021

This case study is for training purposes only. It should not be relied upon as legal advice or information.