

CITATION: *Chief Executive Officer (Housing) v Steiner* [2008] NTMC 009

PARTIES: CHIEF EXECUTIVE OFFICER
(HOUSING)
Applicant

v

ELIZABETH STEINER
Respondent

TITLE OF COURT: LOCAL COURT

JURISDICTION: Darwin

FILE NO(s): 20719504

DELIVERED ON: 21 February 2008

DELIVERED AT: Darwin

HEARING DATE(s): 14, 28 August, 10, 29 October, 22
November and 10 December 2007

JUDGMENT OF: Ms Melanie Little SM

CATCHWORDS:

Residential Tenancies Act – Whether a Nuisance - Whether Breach of s 100
Residential Tenancies Act – whether tenancy ought to be terminated.

REPRESENTATION:

Counsel:

Applicant: Ms Tillman
Respondent: Mr Tranthem, with Ms O'Connor-
Burger

Solicitors:

Applicant: Minter Ellison
Respondent: Darwin Community Legal Services Inc

Judgment category classification: B
Judgment ID number: [2008] NTMC 009
Number of paragraphs: 92

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN

TERRITORY OF AUSTRALIA

No. 20719504

[2008] NTMC 009

BETWEEN:

CHIEF EXECUTIVE OFFICER (HOUSING)
Applicant

AND:

ELIZABETH STEINER
Respondent

REASONS FOR DECISION

(Delivered 21 February 2008)

Ms Melanie Little SM:

1. Before the Court is an application pursuant to s 100 of the *Residential Tenancies Act* filed by the applicant on 13 July 2007. The Chief Executive Officer Housing (“the applicant”) is seeking an Order that the lease between the applicant and Elizabeth Monique Steiner (the respondent and hereafter named the “respondent”), pertaining to 10 Nemarluk Drive, Ludmilla be terminated and that the Court set the date for the termination to be effective. They are also seeking an Order for a warrant of possession to issue after 5.00pm on the date set by the Court under Order 1. A lengthy contested hearing was conducted. The matter involved oral and documentary evidence. After submissions were made, the decision was reserved. This is now the decision in the matter.
2. The applicant bears the onus of proof in this matter and the burden of proof is on the balance of probabilities.
3. S 100 of the *Residential Tenancies Act* sets out as follows:-

100. Conduct of tenant unacceptable

- (1) A court may, on the application of the landlord or an interested person, terminate a tenancy and make an order for possession of the premises if satisfied the tenant has –
 - (a) used the premises, or caused or permitted the premises to be used, for an illegal purpose; or
 - (b) repeatedly caused a nuisance on or from the premises or repeatedly permitted a nuisance to be caused on or from the premises; or
 - (c) repeatedly caused or repeatedly permitted an interference with the reasonable peace or privacy of a person residing in the immediate vicinity of the premises.
- (2) If the application is made by an interested person, the court may make an order for possession of the premises only if the landlord has been –
 - (a) served with a copy of the application; and
 - (b) given the opportunity to be heard by the court.
- (3) If the landlord objects to the court making an order for possession, the court may make the order only if satisfied exceptional circumstances justify it.
- (4) An order for possession must state the date it takes effect.
- (5) In this section –

"interested person", for an application under this section, is a person who has been adversely affected by the conduct described in the application.

4. There are some matters which are not in dispute. Those matters will be set out prior to the summary of the evidence. The respondent is a tenant of the applicant and there is a lease document which regulates the tenancy. On 22 May 2005 a Tenancy Agreement was entered into between the applicant and the respondent in respect of the premises at 10 Nemarluk Drive, Ludmilla. The Tenancy Agreement expires on 22 May 2010. The Agreement is before the Court in Exhibit A1, Annexure WR2. Clause 22.1(b) of the Tenancy Agreement is a relevant provision in these

proceedings. Clause 22 sets out a code of conduct and 22.1 reads “during the lease term the tenant must:-

...

- (b) Treat neighbours in a reasonable and courteous manner and not create a nuisance whether by loud noise, offensive behaviour, bad language, drunken behaviour, physical violence or trespass onto any neighbour’s property”

Clause 1.15 of the Tenancy Agreement sets out:-

that “neighbours” mean other people who live in general proximity to the premises.

The premises are 10 Namarluk Drive, Ludmilla. Clause 9 of the Tenancy Agreement is headed:-

“Tenant’s Responsibility for the Actions of Others”

Clause 9.1 sets out:-

“If a person who, while on the tenant’s premises with the consent of the tenant, performs or omits to perform an act that, if it had been an act or omission of the tenant, would have been a breach of the lease, the tenant is responsible under the lease for the act or omission for the purposes of the *Residential Tenancies Act*”.

Clause 9.2 sets out:-

“In interpretation of clause 9.1 and clause 22.1(e): any person lawfully on the premises shall be deemed to be so with the consent of the tenant”.

Clause 22.1(e) sets out that:-

“The tenant must ensure that any person on the premises with the knowledge and consent of the tenant complies with the lease and the code of conduct”.

5. The applicant is the owner of the premises. The applicant manages all public sector housing in the Northern Territory. The applicant has established a Tenancy Management System (TMS) a computer record of

incidents, communications and issues relating to a tenancy. The TMS is an electronic file. The TMS for these premises is Annexure WR3 in Exhibit A1. All disputed or irrelevant references have been crossed out and will not be taken into account in this decision. All other entries have been admitted by consent. While there is also a paper file, that was not tendered.

6. Annexure WR5 on Exhibit A1 is a record of the Police Attendances Report for 10 Nemarluk Drive, Ludmilla for the periods of 1 June 2006 – 2 December 2006 and the period 1 January 2007 – 2 May 2007. These records are single line references to each particular date and do not give full particulars as to incidents. They are very general descriptions of the incident type. These have been tendered by consent.
7. All persons who gave evidence in the matter had prepared affidavits and their evidence in chief involved the tendering of the affidavit with some further examination in chief. They were then cross-examined. Not only did this procedure limit the time that the hearing took, it also ensured that notice was given to each of the parties as to the evidence in chief. I would urge parties in future cases to continue with that practice in the interests of fairness. While it is appropriate that these matters be given an early first listing, once set for hearing, an adequate time for a defended hearing should be allocated. This would avoid a drawn out hearing as occurred here. Filing an affidavit in support of the initial application also assists the parties identify the issues. Mediation or conciliation should be encouraged in applications of this nature.
8. I have taken into account all the evidence before me. I will summarise the evidence in this matter. As they are all under 18 years, the children of the respondent are referred to in this decision by their initials.
9. Before the Court is a DVD which is a visual and audio recording of statements made by the respondent directed to her immediate neighbour,

David Coulson, who resides at 12 Namarluk Drive, Ludmilla. The DVD has been made by another neighbour who lives in the house adjoining Mr Coulson's house. The DVD became Exhibit A6. The neighbour is heard to enquire whether Mr Coulson is alright during the recording. The visual content of the DVD is irrelevant and does not add anything to the proceedings. The audio content of the DVD has been admitted, save and except some comments made by Mr Coulson, which will not be part of the transcript to follow. These comments are not taken into account.

Transcript of Exhibit A6

Respondent: ... (inaudible) you prick, I've had enough ... come on out the front, I've had enough of you, come on, I'm home alone. come and sort it out now ... I have a medical disorder you fucking cunt and I've had enough of you ... you dirty old pervert, you slow down going pass my yard and check out my kids, come on, you two bit fucking piece of shit, get out the front, I've had enough. You're no good without your fuckin gun are ya (inaudible, but including a swear word) come on mate ... you're dog can't even bark properly ... (inaudible) ... you old cunt ... gonna teach the dog to attack the fuck out of ya ... ring one more fuckin Council or one more Copper and I'm coming over and sort you out myself and I'll stay off the medication for a fuckin week for it ... (inaudible) ... shut your fucking mouth, you make trouble, move house.... (inaudible) ... you old cunt (inaudible) ... [well maybe somebody might do something about his fucking dog and bait the cunt ... I don't give a fuck, he can ring the Coppers and I'll tell em ... he's a dog!]

10. The first witness called was Wendy Raymond, Housing Manager employed by the applicant. Her affidavit dated 26 June 2007 became Exhibit A1. That affidavit exhibits the Certificate of Title for the premises, the Tenancy Agreement in this case, the Tenancy Management System printout relating to the premises and the material supplied by the Northern Territory Police Department. The Tenancy Management System records indicate a significant number of complaints being made by neighbours and in particular, from number 8 Namarluk Drive and number 12 Namarluk Drive throughout 2006 and 2007. An example of some of

the entries are as follows:-

- 16/08/06 Private owner from 8 rang to complain about the daily fighting, number of persons in the dwelling, abusive visitors, alleged drug use, cars coming and going at all times of the day of the night. She said she had to ask some persons to get inside as they were having sex in the open, in full view of her veranda, says she has reported the matter to Police and is getting sick of it. Also says that the place has been raided for drugs by the Police and wants something done about it - Charlotte informed TM (presumably Tenancy Manager).
- 18/08/06 Received call from private owner in 12 Nemarluk who went on to say he has had no sleep because of the people in our dwelling, who yell and fight, scream and have numerous visitors at all parts of the day and night, says he is at his wits end and something needs to be done about them as he has no peace. Says being a shift worker he has not been able to catch up with his sleep due to the behaviour and lack of consideration from our tenants. Also mentioned that the tenants keep shouting and arguing with people in 4 Beluyen Street and that the Police have been informed. Informed caller that the matter would be investigated and addressed. Cheryl informed TM.
- 30/08/06 Received a call from a private neighbour to the tenants at number 10 Nemarluk Drive, she called to advise that there was an incident on the weekend where people from the house were outside on the road yelling and screaming at each other whilst outside, they were in their vehicles doing burnouts on the road and a person was hit by one of the cars and run over ... said her family has had enough with the noise and abuse coming from not only the tenants but the visitors to the house, always coming in and out for drugs day after day.
- 06/09/06 Mr David Coulson, private sector at 12 Nemarluk lodged a complaint via email advising he had to phone the NT Police again at 9.00pm last Thursday night due to the alarming fighting, screaming and arguing from 10 Nemarluk Drive. Up to 5.30am

this morning there was another bout of fighting and screaming and arguing and foul language. He did not report this to the Police.

- 18/09/06 Received a call from a private neighbour to 10 Nemarluk Drive, Ms Shari Yardley of 8 Nemarluk Drive. Said that the screaming and yelling was happening again last night all through the night and wants something done about it. She is threatening neighbour and telling them she is going to buy her house and they can't stop her abusing them. Shari said that the abuse is also coming from another couple who have been living with them for the last couple of weeks.
- 03/10/06 Received complaint from neighbour re noise and abuse, late night music and cars at all hours.
- 05/10/06 Private owner at number 12 called to say he has had enough of abusive behaviour at this tenancy. People have been squatting, tents in the yard, threats made, fence pulled down, stereo on all night.
- 18/10/06 Received a stat dec from Shari Yardley advising tenants of number 10 Nemarluk Drive continue to deal drugs, abuse neighbours and have domestics at all hours. Stat dec placed on file.
- 01/11/06 Shari Yardley from number 8 Nemarluk Drive called into the Office to see Housing Manager ... it is alleged that there are domestics at the house every day, the tenant acts in a very aggressive and abusive manner towards neighbours. There have been two drug raids at the premises, her visitors have sex at the front of the house in full view of everyone, the tenant abuses people driving or walking past the house.
- 17/11/06 Received another complaint from David Coulson of 12 Nemarluk advising that ASB (anti-social behaviour) has not subsided. Mr Coulson says he is often disturbed by screaming, arguing. He says this often happens as early as 5.00am and stereo playing loud from about 7.30am-8.00am.

11. This is a snapshot of the complaints made. These formal notifications

continue until 16 April 2007 and are in evidence before the Court.

12. The Tenancy Management System also records interactions between the Housing Officers and the respondent. As the complaints by neighbours begin to get more regular throughout 2006, the Housing Officers make contact with the respondent. On 1 September 2006, a Tenancy Manager called in to see the respondent and advised of the complaints received. On 5 December 2006, the respondent stated to Territory Housing that she was being targeted by both the Police and neighbours and that she will just “buy the place and we can all get off her case”. After being advised that there would be an investigation regarding complaints, the respondent was very abusive and aggressive towards Officers. She advised that she would apply the freedom of information to see who was complaining about her and what they were saying. There are later entries where discussions are occurring between the Housing Officers and the respondent regarding the possibility of an eviction application. The respondent is reported to be distressed during these conversations. The Tenancy Management System also records interactions between Housing Officers and other agencies such as the Police and Darwin City Council relating to this tenancy. It also records actions taken by the Department. One relevant action is on 2 January 2007 when an Officer did a drive-by number 10 Namarluk Drive and noticed three derelict cars, one on the front path area and at least two in the rear yard. Rubbish was also noted in the yard.
13. The records annexed to Ms Raymond’s affidavit show that the Police attended at the premises at 10 Namarluk Drive, Ludmilla on 25 separate occasions between 1 June 2006 and 2 December 2006. Between 2 December 2006 to 2 May 2007, the Police attended at the premises on eight occasions. It is not possible to say with any degree of certainty how many of these attendances were instigated by the respondent and in particular, whether some related to complaints she was making about

neighbours or other persons. Nevertheless, it is clear that there were a significant number of Police attendances over a relatively short period of time. Some of the reports made to Territory Housing and recorded in their Management System correlate with the Police incidents with respect to dates and types of incidents. For example, the incident said to involve a hit and run does correlate with the date an anonymous caller rang Territory Housing about the incident. The call to Territory Housing made on 30 August 2006 was said to relate to the incident from the weekend. The call to the Police was on 27 August 2006. Other incidents are said to relate to threats made against a person, disturbances and noise complaints. 'Disturbances' is a very general term which can incorporate a myriad of incidents.

14. Ms Raymond explained in her evidence that some tenancy staff make entries on the TMS and some information is generated automatically onto the electronic records. The name of the person who enters the communication is identified in the record. Exhibit A2 is a letter sent by the Tenancy Manager to the respondent on 17 October 2006, calling for an appointment in respect to alleged anti-social behaviour. Two neighbours' surveys were attached. A meeting time was set for 25 October 2006. Those surveys were from Mr McLaughlin from 4 Belyuen Street and from Ms Naidoo at 3 Mosec Street. That latter survey complains about both 10 Nemarluk Drive and 4 Belyuen Street. The witness was then cross-examined. She agreed entries could be selective on the TMS. She recognised that this situation may have been a neighbourhood dispute and she was not encouraging complaints to be made. Counter staff are not authorised to speak to Mr Coulson – he needed to speak to the Tenancy Manager. She agreed that some complaints made to Police emanated from 10 Nemarluk Drive regarding behaviour on the street. She was aware that the respondent had been seven years in the premises and that the respondent had two children. She was not aware until the day of the evidence that one of the children had

special needs. The Tenancy Manager has a role to play in trying to keep people in their homes. They need the co-operation of the tenant if they are to provide assistance such as mediation or involvement with other organisations. In re-examination, she said that a Tenancy Manager now has a role somewhat like a social worker. Nevertheless there is a need for the tenant to ask for help.

15. The affidavit of Ruth Perceval dated 20 June 2007 was tendered as Exhibit A3. She and her partner, David Coulson are owners of 12 Nemarluk Drive, Ludmilla, next door to the respondent's premises. They have owned their property for about 15 months at the time of giving evidence in October 2007. She has sent correspondence to Territory Housing complaining about the respondent's behaviour on behalf of herself and her partner. She has witnessed instances involving the respondent's behaviour. On 21 March 2007 at about 7.30am, she heard people shouting and screaming at each other. She reported the incident to the Police. In March 2007 the respondent and the respondent's visitors were abusing her and said words to the following effect "who do you think you are calling the Police on us? You fucking cunt. I've got a lot of fucking friends in Darwin who will sort you out". This series of comments made the witness very scared. The respondent's behaviour is having an impact on the witness' ability to enjoy her home. The behaviour of the respondent has made her scared for her safety and the safety of her partner and animal. She does not feel safe being alone at her home anymore. She is tired, stressed and exhausted as a result of the behaviour of the respondent and the behaviour of the respondent's family and visitors. She adopted the contents of the affidavit of David Coulson with respect to the series of complaints.
16. Ms Perceval then gave further evidence in chief. She is the manager of holiday apartments in Darwin and has been doing that since 1994. She goes to bed at 10.00pm, to be up at 6.00am each work day. She has been

living at 12 Namarluk Drive since the end of January 2006. Previously she and her partner lived on Bagot Road and they decided to purchase the Ludmilla property. Complaints about the respondent's behaviour include noise and foul language. She has lived in Darwin a long time and knows that there is always going to be noise from neighbours. From 10 Namarluk Drive there are also fights and loud music. She is confident the noise is coming from 10 Namarluk Drive, Ludmilla. In recent times (prior to her evidence given in October 2007), it has not been as frequent. In an attempt to limit the noise from 10 Namarluk Drive, she has closed the louvres on that side of the house and they have also purchased a large wardrobe that goes the whole length of the louvres to block out the noise. She had no particular complaint against the respondent's son. She estimated that she had heard loud music coming from the residence approximately a dozen times. She has called the Police about the behaviour at this residence approximately a dozen times. There are neighbours at 4 Belyuen Street by the names of Rhett and Leanne who she would not describe as ideal neighbours and they do have some fairly loud arguments. She could not be confused between the people in 4 Belyuen Street and the respondent.

17. She was then cross-examined. The first time she had met Shari Yardley was on the first day of the hearing at the Courthouse (August 2007). She agreed that it was possible that some of the noise was coming from number 8 Namarluk Drive (Shari Yardley's premises). Nevertheless she believed that the respondent had a very distinctive voice and she was sure of who was making the noise and who was causing difficulties. Territory Housing said to keep a diary about some incidents and she had made the diary notes which are now attached to her partner's affidavit. She agreed that it was possible that some of the loud music she heard was coming from house number 8. With respect to her reference of 13 January 2007 where there was arguing for about 20 minutes, she was asked whether she considered that unusual. She recounted that she had previously lived on

Bagot Road and there were people arguing, but the arguing which was occurring in Nemarluk Drive had caused her to become de-sensitised and numb. The Police Officer had suggested getting a s 99 Order but the Officer said that it does not really achieve anything. It was put to her that she lived in a fairly dysfunctional type of neighbourhood, she denied that, saying “I don’t think so, I mean there are two houses that are a bit noisy, I can live with one but not the other”. She has never met the respondent. She has seen the respondent. The Police had also suggested that she may consider moving house. That was a very serious consideration. One of the Police Officers also suggested mediation.

18. At the end of the cross-examination, I asked some questions of this witness. She assumed that things had settled down in the last few weeks because of the Court case going on. She did not believe that mediation would work because a lot of the behaviour is not specifically targeted at herself and her partner, “it is just the way the people are, it is the way they behave amongst themselves”. In re-examination, she said that the first time that she had met the people at number 8 Nemarluk Drive was when she came to Court.
19. The next witness was Shari Yardley. Her affidavit of 12 July 2007 became Exhibit A4. She lived at 8 Nemarluk Drive, Ludmilla between February 2006 to March 2007, and then for a few weeks in June 2007. At the time of giving evidence, she was back at 8 Nemarluk Drive (October 2007). She first noticed the respondent’s behaviour when she moved into 8 Nemarluk Drive in February 2006. She has witnessed behaviour such as loud and abusive arguments between the respondent and other people, threats of physical abuse to neighbours, verbal abuse to neighbours, yelling and screaming, supply of drugs and public display of offensive sexual behaviour by the respondent’s visitors. The loud noise, screaming and fighting from 10 Nemarluk Drive occurred on a regular basis. She cannot recall all of the incidents but particularised some instances. In

February 2006 she recalls hearing the respondent yelling abusive language as a result of some flooding. On 15 August 2006, she witnessed visitors to the premises having sex on the front veranda of the premises. She asked the persons to go inside and was met with abusive language. On 17 September 2006 screaming and yelling had been heard from 10 Nemarluk Drive during all hours of the night and the noise emanated from the respondent and visitors who appeared to be residing at the premises. On 18 September 2006 she made a complaint to Territory Housing about the previous night. The respondent threatened the witness and said words to the effect "I'm going to buy this house and then you can't stop me abusing you". On a date in March 2007, she witnessed the respondent verbally abusing the resident at 12 Nemarluk Drive. She heard the respondent call the resident a paedophile and demanded that he come outside and bring his guns so that she could fight with him. Over that same day, she witnessed the respondent abusing the owners of an opportunity shop (business is across the road from their residences). She has complained to Territory Housing and the Police about what has occurred. The behaviour of the respondent and the respondent's visitors makes her feel angry and disgusted. She became sick and tired of the constant yelling and carrying on. At or around the time she was swearing her affidavit, she believed the respondent's behaviour may have slightly reduced in its regularity (July 2007). She prepared a statutory declaration making complaints with respect to 10 Nemarluk Drive dated 18 October 2006. This was given to Territory Housing. That ends the summary of the affidavit. Her evidence continued.

20. Ms Yardley first saw Ms Steiner in February 2006. On that occasion the respondent abused her. That was within weeks of first moving into the property. She had heard threats of physical abuse made by the respondent to neighbours. The witness would hear abuse from the respondent, calling out the neighbour's name and standing near his gate and going on about neighbours minding their own business. That would happen fairly often.

She could tell it was the respondent who was yelling and screaming because of her voice and sometimes she would see her come out of the house still screaming. The other occupants at number 10 Namarluk Drive are Wayne, J and G. She would hear some noise from number 4 Belyuen Street, noise such as kids running amok. She has called the Police to attend the respondent's residence about five times. She would not describe herself as a quiet neighbour. She has had no complaints made about herself except those made by the respondent. She has had verbal altercations with the respondent. On the first occasion, the respondent came up to her and told her off and swore at her for putting water in her yard. The respondent looked very scary. The witness believed there was no point in trying to talk to the respondent about this. The respondent has never come and knocked on her door, she would just stand there and yell. She has been told off for various reasons and been told that she better mind her own business or she (the respondent) was going to 'fuck us'. The respondent yells this towards her house. They did not really care about her noise until the respondent started "having a go" at them. She admitted that she had used abusive language towards the respondent. The respondent started these altercations. On one occasion she ended up having a fight with the respondent's husband and the witness admitted that she had started that altercation. On that occasion the respondent and the witness were in the middle of an argument and the respondent's husband came out. The witness had words with him and then the respondent's husband went across the road. He started to make a comment towards the witness and so the witness walked over and hit him. With respect to how she feels about living next door to the respondent, she said "I don't want to live there anymore, we haven't signed another 12 month lease because we don't plan to stay living next to her. We haven't wanted to live there since the first month we have moved there. ... You get abused, it's just constant ... never once has she come to the door or put a letter in our letterbox. It's just been abuse and then she might call

our landlord ... she will just come to the fence and swear at us, let us know that she had been there for seven years and that this was her street and that she made the rules. That's what we have been told from her when we moved in. We have been looking for a place and we have been trying to move out".

21. She was then cross-examined. Her house and the respondent's house are ground level brick houses with louvres, three bedrooms and an outdoor area. The difficulty with the people in the respondent's house is that she and her family were being abused and told how to live their lives. She agreed that in the last couple of months it had not been as bad. Up until then, the music, yelling and screaming was carrying on every day. There was swearing and threats directed at the witness. When the witness tried to raise an issue with the respondent about the behaviour of the respondent's son, she was verbally attacked by the respondent. The respondent abuses the witness directly and she also yells at other people. The witness agreed that if she was being abused and threatened by the respondent, that she would respond. On one occasion the respondent flashed her breasts at the witness's mother-in-law.
22. Ms Yardley has witnessed threats of physical abuse to her neighbours. Usually David Coulson cops it. The witness has heard people from number 10 say that they are going to shoot him, that they were going to hit him and that they were going to go into his house. The witness has heard the respondent say that the next neighbour to call the cops on her is going to "get fucked in the arse". It's mainly the older guy that cops it (David Coulson). She has heard the respondent standing in the front of her house saying "we're going to shoot you, we're going to get the cops to raid your house". The witness had called the Police when the respondent was going off at the old man as she believed he lived on his own. People would come to her house and ask if she had any drugs. She would respond that she believed they had the wrong house and she would send them next

door. On one occasion the respondent attempted to sell the witness some scales. The Police raided the respondent's house. The people that go to the respondent's house are known junkies in Darwin. She hardly ever hears the child, J. The only time she can recall the child screaming or crying was after the respondent had been "going off her head" for some time. The respondent's children are the best children in the entire block. You can hear the house getting smashed up but you cannot hear kids, all you can hear is the respondent. In the last couple of months there have not been as many visitors to the house – there are no cars in and out all day and night. There are not people whistling at the front. The witness stills hears the respondent going off but she had got considerably better. There used to be many people that came to the house and carrying on and it would always end up with fighting and with the respondent yelling.

23. The respondent was always telling the witness to mind her own business. The layout of the houses means that noises are always projected into their house. On one occasion the respondent gave the witness a kilogram of "off" prawns. The respondent rang the witness's landlord and said that she had given the witness \$800. The witness does not want to have anything to do with the respondent. The witness had heard the respondent call the man at 12 Nemarluk Drive a paedophile and using the words "you're a paedophile, you're a fucking paedophile, I see you looking at my kids you dirty old man".
24. The next witness was David Coulson from 12 Nemarluk Drive, Ludmilla. An affidavit dated 20 June 2007 was tendered by consent and became Exhibit A5. He and his partner, Ruth Perceval have been the owners of 12 Nemarluk Drive for 15 months at the time of giving evidence. These premises are directly next door to 10 Nemarluk Drive. Within days of moving into his house, he first noticed the behaviour of the respondent and/or others at her house. There was loud music, loud and abusive arguments, shouting and foul language and several noisy dogs. Territory

Housing requested that he keep a diary of anti-social incidents and they were annexed to the affidavit. Correspondence has been sent to the plaintiff with respect to the complaints made by this witness and his partner. Correspondence was annexed to his affidavit. Examples of the sort of behaviour included on 18 March 2007, significant shouting, swearing and screaming, which spilled out onto the street and threats made that someone was to be punched and a door kicked in. On 23 or 24 March 2007, a man was heard from the respondent's premises belting a dog. Offensive language and threats were made towards the dog which went on for some time. On 25 March 2007 there was further yelling, screaming and noise coming from the premises. The respondent swore at persons at 4 Belyuen Street. On 27 March 2007, the witness was watering his garden when the respondent started yelling abuse at him. He did not respond to the provocative comments. There was a threat made that if the witness or his partner complained to the Police or Council again, she would sort him out. Words to the effect of "I'll get a gun and sort you out" and "I will bait your dog" were used. The swearing and shouting went on for a considerable time. Another neighbour came to the witness's house to check he was alright. That neighbour had a video camera and recorded some of the incident. (That recording is now Exhibit A6). The witness is concerned by the respondent's behaviour and the impact it is having on his family. He has made reports to the Police and Territory Housing.

25. On 4 April 2007 his dog became violently ill and he had been advised by a vet that the dog had been poisoned. The respondent's anti-social behaviour has continued since that time and it is rare for more than a couple of days to go by without the witness being disturbed by the respondent's conduct or the conduct of others in her house. The behaviour is impacting on the witness's ability to enjoy his home. He feels uncomfortable in his own home and is unable to enjoy the home which he and his partner have purchased. The respondent's behaviour has

made him scared for his safety and the safety of his partner and pet. The witness is tired, stressed and exhausted as a result of the respondent's behaviour and the behaviour of her visitors. That ends the summary of his affidavit. In further evidence in chief, the witness said that he considered he was tolerant of everyday usual neighbourhood noise. Loud music would come from the respondent's residence on a daily basis, any hour of the day or night. Vile and abusive arguments would occur at least every several days if not several times per day. There would not be two days without violent fighting and arguing coming from the respondent's residence. He agrees that he has heard yelling and foul language coming from 4 Belyuen Street. He did not confuse the voice of the respondent with any of those persons. He has telephoned the Police between 25 to 50 times with respect to this residence. The DVD was then played and he identified the woman's voice as being that of the respondent. The references in the DVD where the witness says to the camera that "this goes on 24 hours a day" are disregarded. This became Exhibit A6. He was then cross-examined.

26. Despite the fact that the witness laughed at the end of the tape, he disputed that he was not afraid or intimidated by the respondent's words. He says that he was worried about the threats and abuse. His neighbour had come over to check that he was alright. Prior to the DVD being made, there had been about half an hour or so of similar comments. He agreed that a few days before the DVD was made, he had made a complaint to the Council about the dogs at number 10 Namarluk Drive. An answer this witness gave about distances revealed that he had spoken to his partner about the evidence she had given. There was an incident on 2 April 2006 where there was arguments and fighting coming from next door at around 9.30 in the morning. He went and put the car radio on loud enough to drown out the behaviour from number 10. The respondent then screamed and shouted abuse and threats at him. When asked why he had not gone to ask them to quieten down, he responded "no way, I wouldn't

dare even approach her property”. He made numerous complaints about 10 Nemarluk Drive. When he learnt that the property was a Northern Territory Public Housing property, he directed his complaints to Territory Housing as well as to Police. The children in the house are not a problem. The number of visitors and the respondent herself are the major concern. In particular, the violent, aggressive, brawling and rioting all hours of the day and night. He would hear blood curdling screams, threats and words such as “get the knife off him”, doors being kicked in, furniture being thrown around and noises which sounded like people were being thrown against the walls, loud banging and screaming. He would hear threats made such as “I’m going to kill you” during the altercations. There were visitors as well as people residing at the property, living in tents and living in cars.

27. The witness is currently unemployed, although he does obtain some employment on a part- time basis as a sports official and referee. He gave evidence about an incident where he approached two people (said to be the respondent’s partner and friend) and there was a verbal altercation. At the end of the altercation, he said to the persons “if I catch you in my yard again, you’ll not leave the way you got in”. He admitted the contents of this verbal argument and this final statement. The witness has linked the threat made by the respondent to bait his dog (heard on the DVD) and the baiting of his dog soon thereafter. He first met Shari Yardley from 8 Nemarluk on the first hearing date of the Court (August 2007). He is not aware of any disturbances coming from 8 Nemarluk Drive. The disturbances which are causing him annoyance are coming from 10 Nemarluk Drive. That was the close of the case for the applicant.
28. With respect to the various witnesses called for the applicant, I make the following findings on credit. Ms Raymond was a professional witness whose evidence I accept. Ruth Perceval was an extremely nervous and fragile witness. She was a responsive witness. She answered carefully

and without elaboration or exaggeration. I have no hesitation in finding that she was an honest and reliable witness. The witness Shari Yardley was more demonstrative and forthright in her evidence. She was not overwhelmed by the Courtroom occasion. To use a colloquial expression, she is the sort of person who would “call a spade a bloody shovel”. She answered responsively and without hesitation. She was clear in her evidence. She did not know the witnesses Ruth Perceval or David Coulson (who she sometimes referred to as the old man) prior to the hearing commencing and there is no evidence whatsoever that she was colluding in her evidence with those persons. Further support for this finding is that reports and complaints were made to the Police and Territory Housing and affidavits were prepared prior to them meeting. She was prepared to acknowledge that her language and behaviour was, at times, less than perfect. She candidly admitted some bad behaviour on her part, including slapping Mr Lewis. I found her an honest and reliable witness. Whilst not as nervous as Ms Perceval, Mr Coulson was also a witness who was timid. He appeared stressed by the Courtroom environment and he was somewhat overwhelmed by the occasion. Nevertheless, he was able to answer clearly and responsively. He also acknowledged some bad behaviour on his part. I find that he was an honest and reliable witness.

29. The respondent’s case then commenced. The first witness was Dylan Wayne. His affidavit dated 27 August 2007 was tendered and became Exhibit R7. He has known the respondent and the respondent’s partner Wayne Lewis for about seven years. He witnessed an altercation between Shari Yardley and Wayne Lewis in June 2007. He saw Shari Yardley slap Wayne around the face and yell at him. A second instance in March 2007 was when he was walking with Wayne Lewis on Nemarluk Drive towards Bagot Road. There was a verbal exchange between a man and Wayne Lewis. The verbal exchange then ended with Wayne asking whether he was being threatened by the man and the man replied “I am threatening

you, what are you going to do about it". He was later told this was the man from 12 Nemarluk Drive. This was reported to the Police. He gave further evidence in chief. He has been a regular visitor to 10 Nemarluk Drive for the last few years. As Shari Yardley was attacking Wayne Lewis, Wayne was putting his hands up to defend himself and was trying to get her to calm down. He was then cross-examined. The witness moved into the premises of 10 Nemarluk Drive on 25 July 2007. Prior to that, he had been a regular visitor to the house. Mr Lewis owns a car and he keeps it at 10 Nemarluk Drive, as it is not on the road. He did not see the events leading up to the point that Shari Yardley had slapped Mr Lewis. He was then re-examined. He has formed the impression that there was abuse, threatening behaviour and foul language directed by neighbours towards people who visit 10 Nemarluk Drive.

30. The next witness called was Beverly McDonald, the mother of the respondent. Her affidavit dated 24 August 2007 became Exhibit R8. In 1999 the respondent and her two children, G and J relocated to the Northern Territory to be with the witness. The relocation was for the respondent to start a new life away from her previous drug environment and for the witness to support the two children. The respondent and the children lived with the witness for approximately 18 months until a Tenancy Agreement was entered between the applicant and the respondent. At an interview prior to the first Tenancy Agreement being entered into, the witness told an employee of the applicant of the circumstances of the respondent. In particular, she explained that the respondent was a recovering drug addict, had a mental illness and that one of the children had a special need. A report about this child was annexed to her affidavit. After the first Tenancy Agreement was entered into, the witness checked with the applicant to see whether there were any problems with the respondent's tenancy – she was never advised of any. She was never aware of any problems until David Coulson moved into 12 Nemarluk Drive, Ludmilla. On one occasion she was at the respondent's

house and heard the man at 12 Namarluk Drive asking them to “shut up”. She has seen the respondent shout at both her children but has not heard her swear at them. The child with the special needs is difficult to deal with. She has observed the respondent “lose it” with that child – the respondent would yell quite loudly at him. She attends regularly at the respondent’s house to help with errands and transport.

31. The respondent has advised her that the respondent has not used illegal drugs since the end of January 2007 and has been trying hard at a recovery programme. The witness has personally driven the respondent to some medical appointments with her general practitioner, Tamarind Centre and Amity. When she has been at the respondent’s house, she has never seen any illegal drugs or heard loud music, noisy dogs, loud or abusive arguments, shouting or foul language. She regularly hears loud music coming from 8 Namarluk Drive. Since being in the Territory, the respondent has only had one relapse in her drug use and that was recently. In the past three years she has been going to the respondent’s house about twice a week. She believes the respondent is a good mother. At times the respondent does lose her patience with the children and yells at them. She has heard the respondent swear at the children. Because of the child’s medical condition, he can get very frustrated, get angry and violent. The witness has the children on alternative weeks. The witness takes the child with the special needs to all of his appointments at his doctors or the Tamarind Centre. The respondent is a manic depressive. If something really upsets the respondent, she can lose it. When they first came to the Northern Territory, they did not seek professional assistance with respect to the respondent’s drug use. In the more recent relapse, the witness took the respondent to agencies such as Amity House, NT Carers and Centacare.
32. Ms McDonald was then cross-examined. The witness has been encouraging the respondent to take responsibility and attend appointments

on her own. The witness was directed to a report from Dr Tamayo dated 1 February 2007 with respect to the respondent's drug use. The letter outlined drug use and in particular, methamphetamines and cannabis being used by the respondent. The witness indicated that she was not aware of the respondent's relapse at around that time. The letter also indicated that the respondent declined to become involved in drug withdrawal or rehabilitation programs. The witness was not aware that this had occurred. She was also referred to treatment notes dated 10 April 2007. There was a reference to the respondent not being interested in a rehabilitation program. The witness was not aware of this. (These documents are annexed to the affidavit of the respondent – R11 - which will be referred to in the summary of her evidence). When the respondent loses it, the witness cannot get her to listen to her. Part of the DVD A6 was played to the witness. She was asked if she recognised the voice and she replied "yes, that's my daughter". It was put to her that the witnesses for the applicant had complained of behaviour such as demonstrated in the DVD. She was asked whether this was an example of her daughter losing it. She responded, "if someone was going off at you all the time and not being nice and not being neighbourly, after a while you get sick of it". She asked rhetorically "what would you do if you were getting picked on because your children are outside in the yard and you have an autistic child". In re-examination, she said she had never heard the respondent make statements or behave in the way as heard in the DVD.

33. The next witness was Karen Denton. Her affidavit dated 24 August 2007 became Exhibit R9. Paragraph 12 of the affidavit is not to be taken into account. Paragraphs 4 and 5 relate to information provided to the witness and will be given little weight. The witness is a friend and employee of the respondent's mother. She attends the respondent's house at least once a week to assist the respondent in tasks such as transportation. She has attended the respondent's house unexpectedly at various times of the day and has never heard the respondent's stereo on. She has never heard the

respondent use foul language, have loud and abusive arguments with others or have noisy dogs. On one occasion the respondent raised her voice to the children. She has witnessed the child with special needs to be very hyperactive and lash out before anyone can stop him. She has seen that the child is difficult to control. The respondent yells at the children but she has never heard her swear at the children. She met the respondent six months ago (from the date of the affidavit). Soon after she met, a man driving a car past the respondent's house drove slowly and poked his tongue out at her. She was told by the respondent that this was one of her neighbours. She has never met Shari Yardley but has recalled being given a rude finger by Ms Yardley on one occasion. She has heard Shari Yardley speaking to the respondent, as the respondent was calling to her children. Ms Yardley stated "why would they want to come to you, you fat pig, you're just a dog, your kids would be better off without you". The voice came from number 8 Nemarluk Drive. The children were distressed by this. In late July 2007, she heard music coming from Ms Yardley's house. In mid August 2007 she heard Ms Yardley call out to the respondent "you're a fat lying slut". There was some further examination in chief. The respondent has discussed her personal circumstances with the witness, including health issues with respect to one child and that she is a recovering drug addict. She is also aware that the respondent is on medication. She has never been at the house when there has been a loud or abusive argument going on. She was then cross-examined. She met the respondent in approximately April 2007. The respondent told her she was recovering from taking illicit drugs. She had tried to help the respondent with respect to the complaints that have been made.

34. The next witness was Wayne Lewis. His affidavit dated 24 August 2007 was reaffirmed in Court on 29 October 2007 and became Exhibit R10. The witness has been in a relationship with the respondent for approximately three years. They spend most week days from approximately 4.00pm to 10.00pm together at the respondent's house. He

occasionally spends a night at the respondent's house. He is at the respondent's house on the weekends. He is aware that the respondent is a recovering drug addict and that she has been on different medications for mental illness. Since April 2007, he has noticed that she is much calmer, more sociable and thinks more clearly. On 5 December 2006 he attended a meeting at the plaintiff's office with the respondent. The respondent was advised that Territory Housing considered it was within its rights to kick the respondent out of the house because of incidents. When the respondent requested information as to the incidents, she was told that there was a list of Police call-outs and phone calls. No details were given of the incidents. The respondent attempted to explain her side of the story, but the woman on behalf of the applicant was not interested in what the respondent was saying. The witness has never observed any of the behaviours which Shari Yardley complained about. He has witnessed Shari Yardley using foul language and yelling obscenities towards the respondent's house. He recalls two particular incidents. In January 2007, Ms Yardley called the witness outside and made some unsavoury suggestions. There were threats made by Ms Yardley's partner. Police were called and the Police requested that all parties keep the peace. The second incident was in June 2007. Ms Yardley called out to the respondent. The witness walked over to see friends on the other side of the road. Ms Yardley slapped the witness to the face. He tried to defend himself and told her to calm down. He disputes that music is unreasonably loud and suggests that loud music comes from 8 Namarluk Drive. He believes an incident which David Coulson attributed to the respondent was related to 4 Belyuen Street Ludmilla. He agrees that he was the person who belted a dog on one occasion. He explained that this related to the dog's bad behaviour towards him. He recounted the incident in March 2007 involving David Coulson.

35. Mr Lewis was then asked more questions in examination in chief. He believes the respondent was struggling when she started new medication

and she would have mood upsets. He denied that the respondent physically and verbally abuses neighbours. He denied that the respondent allows visitors to display offensive language and behaviour. He agreed he had been involved in some loud and abusive arguments in the respondent's house. These were not regular. He agreed that the respondent would yell at her children on a daily basis. It would usually only be a few minutes. The child with special needs can be difficult. There is general misbehaviour, including that the child might kick the doors, slam doors or smash his toys. He would hear yelling at the children at 8 Nemarluk Drive. Several complaints have been made by the respondent to the Police about the neighbour's behaviour. The witness has made one complaint to the Police about the neighbour's behaviour. He disputes that there is loud music played at all hours of the day at 10 Nemarluk Drive. He disputed that there was lots of shouting and foul language from the house. Parties which have been held at the respondent's house have always been registered with the Northern Territory Police. A mark has been put on the respondent's stereo to keep the volume at a set level. 8 Nemarluk Drive produces quite a lot of noise and loud music from the house. He does not know of any actual arguments between the persons in 4 Belyuen Street and the respondent. He can recall that once there was an argument between the two people at that house and the respondent walked out the back and asked them to keep it down. When the people at 12 Nemarluk Drive slam their rubbish bins, it causes the dogs at the respondent's house to be stirred up.

36. The witness was then cross-examined. He was referred to the respondent's affidavit. He agreed that he was aware that the respondent was a recovering drug addict. He was aware that in the past she had used heroin. She had also used speed and marijuana. He was aware that the respondent had used speed and marijuana in the last 18 months. He stumbled across some things and also noticed that she was "off her face". The respondent has a hearing problem. Sometimes she does not realise

she is raising her voice. The DVD A6 was played to the witness. He recognised the respondent's voice in the DVD. He agreed that the respondent was screaming in the DVD. He did not know when this happened or what it was about. He has heard her use the language that was used on the DVD on previous occasions, but it's not something that is very common.

37. The respondent was then called as a witness. Her affidavit of 27 August 2007 became Exhibit R11. The deleted parts are not taken into account. The respondent is 37 years old and currently unemployed and receiving Centrelink benefits. She has three children, namely Chris 17 years, G 9 years and J 11 year old. J and G reside with her and Chris resides with her mother, Beverley McDonald. She has been in a boyfriend/girlfriend relationship with Wayne Lewis for approximately three years. Mr Lewis does not reside with her. Since 1986, the respondent has suffered mental health and substance abuse issues. Her affidavit was corrected in evidence before the Court. She relapsed in her drug recovery in late 2005 and stopped using drugs again at the end of January 2007. The respondent saw Dr Tamayo in February 2007 and was referred to a psychiatrist for treatment for mental health issues. Dr Tamayo also completed documentation for Centrelink. The referral letter and documentation for Centrelink are annexed to the affidavit. From February 2007, the respondent has been taking medication which has affected her behaviour. In June 2007, she has been attending Amity House. She relocated to Darwin in 1999. In January 2001, she was advised one of her children suffered autism spectrum disorder. He is prone to outbursts of yelling and screaming and is difficult to parent. She has undertaken a parenting programme through Anglicare to assist. When they relocated to Darwin, they originally resided with her mother for approximately 12 months. Her first lease with the applicant was signed in 2000. When negotiating for this lease, the respondent explained to the applicant the

range of issues that have been raised in this affidavit.

38. The respondent disputes the allegations made with respect to her behaviour. The respondent denies the facts and allegations set out in the applicant's tenancy history and say they contain numerous errors and inaccuracies. The applicant's employees have never attempted to discuss any of the respondent's alleged behaviour and state that "all they have ever done is blamed me and threatened to throw me out of my house". The respondent has never had the opportunity to explain her version of what has occurred and the applicant's employees have accused her of causing all the problems with the neighbours. The applicant's employees have not assisted the respondent when she informed them of problems caused by Shari Yardley and David Coulson. The respondent has never been offered alternative housing nor had other suggestions made as to how to resolve the problem. In relation to a meeting with the applicant's employee on 5 December 2006, the respondent recalls having an anxiety attack halfway through the meeting and had little recollection of the meeting. The respondent disputes she has loud music playing and says that the music is coming from 8 Nemarluk Drive. The respondent admits yelling and shouting at both her younger children at the house, saying that this has occurred during the normal course of parenting. The respondent admits that she has occasionally "lost it" with the child with special needs by swearing at him, but that she has worked hard on her parenting skills and denies that this has occurred regularly or as described by the residents of 12 Nemarluk Drive. The respondent has heard and sometimes observed disputes between the occupants of houses nearby and in particular, 8 Nemarluk Drive and 4 Belyuen Street. The respondent disputes any involvement in incidents on 12, 18 and 21 March 2007. With respect to the incident which was recorded on the DVD, she did not give anyone permission for her to be taped. She disputes that she threatened David Coulson or shouted at David Coulson. She disputes she threatened to bait David Coulson's dog. She had Darwin City Council

Officers come to her house about her dogs. On 27 March 2007, she was angry at the accusations that her dogs were mistreated and stood on her front step and muttered “fucking neighbours, I wish they’d mind their own business”. On or around 27 April 2007, the Council took the respondent’s dogs away. The respondent said out loud to David Coulson (who was standing in his front yard) “old bastard, mind your own business, you must have nothing better to do than interfere with my life, now you’ve had my dogs taken, what sort of neighbour are you, what’s wrong with you, why can’t you talk to me about your problems, why can’t we do it face to face with witnesses right now”. The respondent heard Jason Cox (whose dog the respondent had been looking after and whose dog was also taken by the Council) approach David Coulson and say “why did you do that, why couldn’t it wait one more day until we got paid [to get the dogs registered]”. The respondent and Mr Cox were very upset about their dogs being taken.

39. With respect to Police attendances, the respondent states that some related to complaints that the respondent and other people at her house had made about Shari Yardley, David Coulson and Rhett McLaughlin. After an officer of the applicant told the respondent that she might be kicked out of her house, the respondent wrote to David Coulson about the challenges she faced as a parent. The respondent did not keep a copy of this letter. The respondent has witnessed David Coulson shout at her mother. On numerous occasions the respondent has seen David Coulson give her the rude finger, poke his tongue out and stare at her for long periods of time as he drove past her house.
40. With respect to Ruth Perceval’s affidavit, the respondent states that on one occasion she was calling out to her children to get toilet paper and they screamed and yelled at each other and banged hallway cupboards. With respect to paragraph 8 of Ms Perceval’s affidavit, the respondent states that she has never said any of those words, nor has she had those

words said by anyone in her house to Ruth Perceval (which included an implied threat and swearing). The respondent believes this could be the neighbours at 4 Belyuen Street. The respondent denies the allegations made in Shari Yardley's affidavit. No visitors to the respondent's house have had permission to have sex inside or outside of the house. With respect to an incident on 25 August 2006, the respondent called the Police about an unwanted visitor. The respondent denies saying to Shari Yardley that she was going to buy the house and so Shari Yardley could not stop the respondent abusing her. The respondent had telephoned the Police about Shari Yardley's behaviour towards her. In March 2007 there were several incidents where the neighbours at 4 Belyuen Street were having loud arguments and the Police were called. The respondent denies calling out to the man at number 12 Namarluk Drive and accusing him of being a paedophile. She has witnessed Shari Yardley yelling and screaming and has been the victim of Shari Yardley's verbal and physical abuse. She has ignored Shari Yardley's verbal abuse, because she *believes* that Ms Yardley's behaviour is a result of being high on drugs. She has complained to Police and Shari Yardley's landlord when her behaviour has become physically aggressive and abusive to Wayne Lewis.

41. Dr Tamayo's letter to Dr Frost on 1 February 2007 sets out medication which had commenced on that date and calls for further evaluation of the case. Dr Tamayo stated that the respondent declined to be involved in drug withdrawal/rehabilitation programs. She reports that the respondent has allegedly ceased using speed for the past three months and reduced her marijuana usage. The treating doctors' report to Centrelink has been referred to previously. Dr Tamayo gave a presumptive diagnosis of bipolar disorder. At the time of the report (10 April 2007), the respondent's main drug dependence was marijuana. Further, the doctor reported that the respondent is not interested in undertaking drug rehabilitation. On 13 June 2007, Top End Mental Health Services wrote to Dr Tamayo and indicated that the respondent had declined suggestions

to undertake counselling for past sexual abuse, drug use and/or parenting strategies. They advised of a change in medication. A letter from the school indicated that the child with special needs was having marked behavioural difficulties, which had recently escalated (3 May 2007). Correspondence from Darwin City Council dated 17 April 2007 raised the issues with respect to the keeping of unregistered dogs. The respondent was given seven days in which to register the animals.

42. The respondent then gave further evidence in chief. In her early life, she was physically and sexually abused by her father. That led her to leave home at 15, turn to prostitution and increase her drug use. She had a lot of mental health problems around the time she had her eldest son. Her son came to live with the respondent's mother when she was not coping with her other son and was pregnant with her daughter. She had a range of other problems which lead to intervention by DOCS. At the time of giving evidence she had a referral to see a psychiatrist. (End of October 2007). Her mother's assistance in having the children on alternative weeks has helped. Her mother has been doing this on and off for three years. When she got back on drugs, the children were more unruly and she was more chaotic and disorganised. They are now back into a routine.
43. The respondent did the PPP parenting program at Anglicare. She was told that the program would not work for her children as they were too head strong and stubborn. She came to an agreement between the previous neighbours at 12 Namarluk Drive and herself as to noise. She had never met the people currently in 12 Namarluk Drive. The first time she had seen David was the day that she went off on the video. She had got up from a drug induced sleep (from medication) and she was in a daze. Three women were telling her that they were coming to take the dogs next week because the dogs had been abused. The woman told the respondent that her neighbour had made a complaint about cruelty to the dogs and the noise from the dogs barking. The respondent presumed this neighbour to

be David (Coulson). The respondent recounted an incident where two of the dogs went wild and Wayne tried to separate them and he was bitten. The respondent did not even know there was a female living at 12 Nemarluk Drive for some time. The DVD was made around 10.00am. The ladies from the Council had just left and she “lost it”. She walked towards her neighbours fence and said “why do you keep doing this to me” and then she started getting angry. There was no response from the neighbour. Other times he has said things to her including calling her a “white trashy whore” and the children have been called “ferrel mongrels”. It was a male voice who was saying those things. The respondent would hear words such as “I wish she would shut those fucking dogs up”. The videotape was made about a week after the dogs were taken.

44. Prior to the first allocation of housing, the respondent went to Housing and spoke to a social worker. The respondent and her mother’s partner were conflicting whilst living together. The respondent pushed for the Department of Housing to provide her with a house. She got help through a social worker, Centrelink and Welfare. They were all aware of her drug recovery, the fact that one of her children had special needs and that she had ongoing mental problems with depression. The respondent does not play her music before 10.00am in the morning. It was not loud enough to be heard outside the yard. David Coulson has never asked her to turn the music down. Shari Yardley plays loud music a lot. There have been a few arguments between the respondent and her partner. There are arguments between the respondent and her seventeen year old son. In April 2007, her seventeen year old son moved back to her mother’s. Her mother would take the other two children on alternate weeks. The arguments between the respondent and her seventeen year old son would occur about three times a week. She agreed that she does get a little bit loud with the other children when she is chastising them. Since coming off the drugs she can cope with the children a lot better. There are not so many people coming to the house now. She agreed that she swears in the

house but “not every second word”.

45. With respect to Ruth Perceval’s allegation that on 12 March 2007 she was being shouted at, the respondent said that those words were being directed to David. That was because the Council had come and taken the dogs. The respondent believes that Ms Perceval has the wrong dates. The day they took the dogs, the respondent called out to David “why can’t you just come and talk to me, what’s your problem”. He responded that he would not speak to “white trashy whores”. There were two incidents – the day they came to tell the respondent they were taking the dogs and the day they took the dogs. The respondent was extremely upset and crying on the phone to Territory Housing about the fact that the dogs had been taken. The respondent admitted that she does get into arguments and can be loud and abusive at times. The respondent said that she has been threatened by Shari Yardley. She recounted times that Shari Yardley had abused her. The respondent has not been given any options to try and sort out the problems between herself and her neighbours. She has trouble getting her children to bed at night. The respondent has made complaints about Shari Yardley and Rhett and Leanne. The respondent does not live in a quiet neighbourhood. There is noise coming from many of the houses in the area. The respondent has never had her hearing checked but agreed that she can be very loud. The respondent some times goes off at herself. With respect to the DVD, the respondent said that she had been upset about being told of the complaints with respect to the dogs. She denies there is loud music coming from her property. She has never been approached by Mr Coulson to turn her music down. She did not believe that had ever given David Coulson reason to be fearful of her. She had “gone off” but there is no way she could harm David Coulson. She has never made threats to Ruth Perceval or Shari Yardley. Shari Yardley has made threats to her. In recent times she only has three visitors to her house, her mother, Karen Denton and Wayne Lewis.

46. She was then cross-examined. She is 37 years of age. Three years ago she did a seven month parenting course with FACS. She has worked with Anglicare as a volunteer then an employee. She has worked part time for her mother in the shop when her mother is sick. She did that two years ago but has not done that since. Through Centrelink she's attempting to get work and do training. Between late 2005 to the end of January 2007, she had a drug relapse. That relapse was triggered by a split between a previous partner and herself. She was referred to Dr Tamayo's letter of 1 February 2007 where it was pointed out that she declined rehabilitation. She agreed that she was still using marijuana at the time of the letter. She agreed that from around October/November 2005 she had been using amphetamines. She had gone to various agencies in an attempt to work through her drug relapse, including her GP, Amity and she had been through the Credit Program. She agreed that she did not seek medical assistance for her rehabilitation prior to 2007. She explained that she has difficulty trusting people. She agreed that she had refused in-house rehabilitation, saying she could not do that as she had children. As at April 2007, she was still using marijuana. She was directed to the Drug Capacity Assessment Report where it was pointed out that the use of recreational drugs could affect treatment for her bipolar disorder. It was put that as at 13 April 2007 she was still taking recreational drugs and not willing to participate in rehabilitation programs. She agreed with that proposition. She said that since that time, things had changed. She had refused drug and parenting counselling, she could manage herself. It was put to her that the focus of the evidence in Court had been that she was having difficulty coping with life and she agreed with that. She stated that she had extreme difficulties with her son. Her arguments with Wayne would be once or twice a fortnight, usually arguing over the children. It was put to her that she had a significant drug relapse over a much longer period than had originally been told. She indicated that she did not see marijuana as a problem. She said that she has now given up all drugs.

She agreed that she had significant mental health issues. She is now seeing a doctor and going to Tamarind Centre.

47. The respondent was referred to the Tenancy Management System entries and she denied that she yelled at the worker on 1 September 2006. With respect to an appointment made with Territory Housing on 25 October 2006, she recalls she had an anxiety attack at the meeting. She could not recall meeting Territory Housing in December 2006, but could recall meeting in January 2007. It was put that it was only after Territory Housing had approached her more than once that she had decided to get help. She replied that it was her choice to get help. Her son Christopher moved back to her mother's house in April 2007. The DVD exhibit A6 was played and she stated to the Court "I believe it is my voice, I was angry and upset, could possibly be my voice and it was me yelling, yes". It was put to her that earlier in her evidence she said that she had never threatened David Coulson. She replied that she did not threaten the man. It was put that she said that David Coulson had no reason to be scared of her, she replied "why would he be scared of me, I'm a woman home alone". Some of the comments made in the DVD were put to her and she said that she was angry they were going to take her dogs. It was put to her that she had said someone should bait your dog and she denied that. She denied she had used the word bait, she said she had used the word "tape". It was put to her that the witnesses Ruth Perceval, Shari Yardley and David Coulson had said that they frequently heard her yelling. She was asked whether what was heard in the DVD was an example of her yelling. She said that that was a one off occasion and she was extremely upset. She says that she lives in a house with louvres open and she does have domestics with Wayne but they are not as common recently. Sometimes she goes off at herself and she used to do that every two to three days. She is much better now. Sometimes she goes off at others. She does not hold her tongue. She and J argue and fight about two to three times a

week.

48. In re-examination, she said that when the DVD was being taken she thought she was standing just behind the fence in the bushes. Bottles were thrown into the wheelie bin at the house next door, which would upset the dogs. Material about Autism Spectrum Disorder and personality disorder were handed up. That was the end of the evidence on behalf of the respondent.
49. With respect to questions of credit, all witnesses called by the respondent were closely aligned to the respondent. There was no independent witness called by the respondent as to her behaviour or the behaviour of persons at her house. While that does not of itself render their evidence unreliable or of lesser weight, it is a consideration to take into account when assessing their evidence. The witness Karen Denton is the most independent of the witnesses but is still closely aligned to the respondent. The respondent's mother is her employer. Each of the witnesses called by the respondent has a natural sympathy for the respondent which was not able to be (or intended to be) disguised in their evidence. The respondent has not been frank with one of the most important witnesses in the respondent's case (her mother) with respect to her drug use. There is a 15 month period of multi drug use and then there is ongoing use of marijuana. Her mother was not aware of this extensive drug use and believed that there was only a short period where the respondent relapsed. She was not aware that the respondent had declined treatment for drug withdrawal and was not aware of the lengthy period of time involved. The respondent's boyfriend was said to be aware of her relapse, as he stumbled across "some things" and he noticed she was "off her face". Given the amount of time he spent at the premises that evidence is hard to accept. If it is accepted, it means the respondent was not frank with her boyfriend. In the final analysis, the witnesses called by the respondent do not assist her case relating to matters in dispute. I prefer the witnesses for

the applicant with respect to matters in dispute. Little weight is given to the respondent's witnesses generalised statements about the respondent's behaviour and the behaviour of persons at the premises. They give evidence of some issues which are not in dispute, such as the incident involving Wayne Lewis and Shari Yardley and the incident between Wayne Lewis and David Coulson. They are partisan witnesses who were seeking to assist the respondent. Their reliability is affected by their relationship with the respondent. I prefer the witnesses for the applicant with respect to matters in dispute.

50. The respondent herself gave evidence in an emotional and at times, distressed fashion. She was prepared to be extremely open with the Court about very personal and distressing incidents in her earlier life. This frankness was not evident when speaking of her recent occupancy of 10 Nemarluk Drive, which is the Court's primary concern. She has not been frank with her witnesses. For example, as set out above, she has kept significant matters from her mother and possibly her boyfriend. The respondent's evidence was to the effect that if people just "minded their own business", there would be no difficulties. She seeks to attribute the allegations made against her to other neighbours. She was originally non-committal as to whether her voice was the one being recorded on the DVD. This reflected negatively upon her. She made allegations in her affidavit with respect to her neighbours which were not put to those persons in cross-examination. For much (if not all) of the time being considered she was using amphetamines and cannabis. This would have affected her recall of events. It is conceded that the orders the applicant is seeking place the respondent in a vulnerable position and this may have affected her ability to give evidence. I have taken that into account, but nonetheless, find that she was not frank with the Court in her evidence with respect to matters that are in dispute and which relate to whether this tenancy will be terminated. With respect to the issues in dispute, I do not find that her evidence is reliable. I prefer the evidence of the applicant's

witnesses. This is not to say that I reject all of her evidence as to her time at 10 Nemarluk Drive.

51. Findings of fact – I find the text of Exhibit A6 is as set out in paragraph 9 of this decision, and that the DVD was recorded on 27 March 2007. Initially the respondent set to distance herself from this DVD, saying it was only possible that it was her who made the statements. Later in her testimony she accepted that she was the person who made the statements. This did not reflect well upon the respondent. The respondent's witnesses (who knew her) had no hesitation recognising the respondent's voice. I find that on 27 March 2007, the respondent did make the statements which were directed towards her neighbour, Mr David Coulson. I find Mr Coulson was standing in the driveway of his property immediately adjacent to where the respondent was standing and that the respondent knew he was within earshot. I find that Mr Coulson heard these comments.

52. The text will be set out again:-

Respondent: ... (inaudible) you prick, I've had enough ... come on out the front, I've had enough of you, come on, I'm home alone. come and sort it out now ... I have a medical disorder you fucking cunt and I've had enough of you ... you dirty old pervert, you slow down going pass my yard and check out my kids, come on, you two bit fucking piece of shit, get out the front, I've had enough. You're no good without your fuckin gun are ya (inaudible, but including a swear word) come on mate ... you're dog can't even bark properly ... (inaudible) ... you old cunt ... gonna teach the dog to attack the fuck out of ya ... ring one more fuckin Council or one more Copper and I'm coming over and sort you out myself and I'll stay off the medication for a fuckin week for it ... (inaudible) ... shut your fucking mouth, you make trouble, move house.... (inaudible) ... you old cunt (inaudible) ... [well maybe somebody might do something about his fucking dog and bait the cunt ... I don't give a fuck, he can ring the Coppers and I'll tell em ... he's a dog!]

53. This DVD is important in at least three ways. First it is an actual verbatim

account of language used by the respondent to a neighbour. It demonstrates abusive, threatening and insulting language. That language is personally directed to one of her immediate neighbours. Secondly, it corroborates the accounts of the neighbours as to the type of language used by the respondent and the fact that, at times, it was directed at them personally. The respondent's voice is very loud and aggressive sounding throughout the DVD. The words in square brackets at the end of the transcript sound as if they were directed to someone in her own premises. Nevertheless they were audible to her neighbour and contained a threat to both his dog and further swear words. Finally, the date of the DVD, 27 March 2007, is well after the respondent became aware that the applicant was receiving complaints from neighbours about her behaviour and that they were considering their options, including eviction.

54. The respondent's theory that there was collusion between the neighbours in number 8 and number 12 Namarluk Drive, Ludmilla is rejected. I find there was no collusion as between Shari Yardley and David Coulson or between Shari Yardley and Ruth Perceval. I find they made complaints to Territory Housing and the Police independently of each other. I find Shari Yardley had not met or spoken to either David Coulson or Ruth Perceval at the time they were complaining to Territory Housing about the problems at number 10 Namarluk Drive. Further, I find that they had prepared their affidavits before they had ever met or spoken to each other. I find that they first met each other at the first hearing date in the matter (14 August 2007), which was sometime after the affidavits were prepared. (Ms Perceval's affidavit is from June 2007, Ms Yardley's is from July 2007 and Mr Coulson's is from June 2007). I reject any suggestion that either the applicant or David Coulson had any influence over whether Shari Yardley made her affidavit and/or gave evidence. Further, I find that neither David Coulson nor Ruth Perceval were persuaded or influenced by Ms Yardley to give evidence. David Coulson and Ruth Perceval own their own property and have no allegiance to Northern

Territory Housing. Shari Yardley is in private rental and has no allegiance to Northern Territory Housing. David Coulson and Ruth Perceval are partners and there is always the possibility that one partner may feel obliged to give evidence because of the other partner's influence or requests. The respondent's theory is that Mr Coulson is obsessed about the respondent's tenancy and that he was single minded about having the respondent evicted. One inference from that theory is that Ms Perceval was not acting of her own free will. I reject that. I find that Ms Perceval was acting as a consequence of the effects of the behaviours upon her personally and that she was giving evidence as a consequence of the effect the behaviours from 10 Namarluk Drive were having on her and her life. I do not find she was pressed into giving evidence. It is not the case that only one person was affected by the respondent's tenancy, to such an extent that they were prepared to give evidence.

55. There is no doubt that there was a conversation in the lunch break between Mr Perceval and Mr Coulson on one of the hearing dates with respect to distances between the houses in 10 and 12 Namarluk Drive. This was evident by the admission of Mr David Coulson and his evidence on the question of distances. Ultimately, the question of distances does not go to any matters at issue. Nevertheless, it does show that there was a discussion. This does not, of itself, lead me to reject either of the witnesses' evidence. They had prepared affidavits and signed them well in advance of the hearing date. Their evidence did not move so dramatically away from the material contained in their affidavits as to suggest that there was collusion on matters which were ultimately matters in dispute. The fact that certain statements are made which appear to be the same does not necessarily mean that there is collusion. It may simply be that the persons both witnessed the same events and they have used the same or similar language to describe them. Had the matter discussed been of more importance in the matters in dispute, this issue would have been

of more importance.

56. The importance of the fact that Shari Yardley has not met David Coulson or Ruth Perceval lies in the evidence Ms Yardley gave not only of the respondent's general behaviour, but of some of the matters she alleged that the respondent had said to David Coulson. Of particular note is the evidence that she had heard the respondent call David Coulson a paedophile. This type of insult is recorded on the DVD, with the words "dirty old pervert" being used. The witness Shari Yardley was greatly concerned about the way the respondent was behaving towards the man she described as the 'old man' at number 12 (taken to mean Mr Coulson). Ms Yardley has no allegiance to Mr Coulson. Her concern about the way Mr Coulson was being treated tends towards a finding that the behaviour of the respondent constituted a nuisance.
57. This is not a case where there are only allegations of, for example, loud noise, which is not said to be directed personally towards the neighbours who are affected by the loud noise. This case involves personal attacks, threats and insults being directed at neighbours. In considering the matters before me, I regard the threats as significant in coming to the conclusion that the application is made out.
58. It was only when the Court queried the dates being discussed by the respondent in her evidence as to the resumption of her drug use that it became apparent to the Court (and her solicitors) that there had been a much longer resumption of drug use than the respondent's affidavit had attested to. This certainly affected the preparation of the respondent's case, as it had been believed that the drug relapse was a period of three months. It was in fact a period of at least 15 months. The evidence annexed to the respondent's affidavit is that in fact there was ongoing drug use after the period of January 2007. This was later admitted by the respondent in her evidence. So not only is the date of the relapse

incorrect, the date of the cessation of the relapse is also incorrect. I find that the respondent used illicit drugs from late 2005 up to and including late April 2007. Amphetamines and cannabis were used until January 2007. Cannabis was used after that time.

59. This drug relapse coincides with the time that Mr Coulson and Ms Perceval purchased their home. The respondent's mother believes that there were no problems in the tenancy prior to Mr Coulson moving next door. The respondent's material before the Court is that there were earlier complaints from people at both 12 and 8 Nemarluk Drive, but she had been able to resolve those issues. Those issues are not before the Court but it is not the respondent's case that there were no issues with neighbours prior to Mr Coulson moving to Ludmilla. In my view, the timing of the drug relapse is far more likely to explain the issues encountered with the respondent's tenancy, rather than the arrival of Mr Coulson. Mr Coulson and Ms Perceval are quiet and relatively timid people. I reject any suggestion that they have invented or exaggerated scenarios in an effort to ensure that the respondent is evicted. I find that there is no link between Mr Coulson arriving at 12 Nemarluk Drive and the issues with respect to the respondent's tenancy.
60. Whilst I accept that her son has behavioural difficulties, I do not accept that the respondent's son is responsible for the majority of the allegations of noise which are being made. Indeed the evidence I have is that whilst there may be behavioural difficulties, the children are not responsible for the majority of the noise.
61. The respondent has mental health issues and I find that as a proven fact these mental health issues have had some affect upon the respondent's behaviour. The extent of the effect cannot be accurately assessed. There is no evidence before the Court which would allow such an assessment. This is something the respondent has known about since 1986 and was

part of the reason for the allocation of public housing. Treatment has not always been sought or undertaken by the respondent. Changes in medication have occurred and this may be responsible for some of the behaviours of the respondent. The material in the doctor's report to Centrelink indicates that due to the symptoms of her disorder, her level of functioning has deteriorated. The doctor believes that the use of illicit drugs could also have contributed to this deterioration.

62. During relevant periods of time, the respondent was declining to undertake rehabilitation for drug use. For an extended period of time, she was using a range of illicit drugs, including amphetamines and marijuana. She then continued using marijuana. The use of both of these substances affects the behaviour of the user. The behaviour exhibited on the DVD and the evidence of the applicant's witnesses of the respondent's behaviour is not inconsistent with someone who is using the substances that the respondent was using at the relevant time. She seeks to attribute her behaviour primarily to her mental disorder (in the DVD and her evidence generally), nevertheless I find that there is no evidence before the Court which I could reliably make such a finding. The doctor's evidence is that there may well be an inter-relationship between the mental disorder and her use of illicit drugs. Of course, it is noted that the respondent largely rejects the allegations made.
63. The respondent's evidence as to the explanation for her behaviour recorded on the DVD is somewhat inconsistent. She is clear that the incident had some relationship with the question of the dogs. She is inconsistent in her evidence as to whether it was the day that she was told the dogs would be taken, the day the dogs were taken or sometime after they were taken. Her tirade directed towards Mr Coulson was linked with the dogs at her premises. The taped material corroborates Ms Yardley's evidence that the respondent had been making accusations against Mr Coulson and in particular, that he was somehow associated with the abuse

of children. That is a serious and inflammatory allegation and the type of allegation that can lead to retaliatory action. There is no evidence before the Court of any significant behaviour by Mr Coulson in response. The DVD also corroborates Ms Yardley's evidence that threats were made against Mr Coulson. They fly in the face of the evidence of the respondent that she has never threatened Mr Coulson. I find that the words used in the DVD are proof that threats have been made against Mr Coulson by the respondent. The evidence of the witnesses for the applicant is that threats have been made on other occasions. I find that threats have been made by the respondent against Mr Coulson and Ms Yardley. Ms Yardley particularised the following threats – that the respondent was going to “fuck us”, that the next time we called the cops on her, we were going to “get fucked in the arse”. Ms Yardley has heard the respondent standing in the front of her house speaking in the direction of Mr Coulson, saying “we’re going to shoot you”. Mr Coulson's evidence is that he has had words directed to him by the respondent such as “I’ll get a gun and sort you out” and the other words which are proven to have been said by the respondent in the DVD recording. I find that these threats have been made by the respondent. I find that the threats were made without there being any justification or excuse on behalf of the respondent for the making of these comments. In respect to Ms Perceval, the respondent stated “who do you think you are, calling the Police on us, you fuckin cunt, I’ve got a lot of friends in Darwin who will sort you out”. I find that in March 2007 Ms Perceval was also the direct recipient of a threat and I further find that she was greatly alarmed by this. Ms Perceval was an extremely quiet neighbour. Indeed as the respondent and Ms Yardley said, they did not even realise there was a woman living at the premises for some time. The threats made to all three neighbours are serious and weigh heavily in favour of the orders sought being made.

64. The respondent has disputed that she had ever said that she proposed buying the house so that she could continue abusing her neighbour and no

complaints could be made. Ms Yardley specifically stated that the respondent had said this. Ms Yardley reported this to Territory Housing on 18 September 2006. There is material before the Court in the TMS from Territory Housing that the respondent made very similar assertions to a housing officer on 5 December 2006. I find that these assertions were made. They demonstrate a belligerent attitude on the part of the respondent towards her neighbours. The respondent has said that she would only ring Ms Yardley's landlady when Ms Yardley had attacked Mr Lewis. I reject that evidence. The evidence of Ms Yardley is that her landlady was rung on numerous occasions by the respondent. She states one example when the respondent asserted that Ms Yardley owed the respondent \$800. I accept the evidence of Ms Yardley in respect of this issue. Just how this alleged debt was said to relate to the landlady of Ms Yardley is unknown. I accept that the respondent did make calls to Ms Yardley's landlady and that this has created an extra layer of interference in Ms Yardley's life. I do not go as far to find that all calls were irrelevant. Ms Yardley has acted in a way to interfere with the respondent's life to some extent. I do accept the respondent was justified in contacting the landlady with respect to some of the behaviours of Ms Yardley.

65. There is evidence before the Court that there is music which is audible to neighbours from both number 8 and number 10 Namarluk Drive. I find that it is proven that both premises play music which has had a tendency to interfere with other neighbours. Ms Perceval's evidence on this question was persuasive and I accept that both premises have music which is too loud. I do not regard this issue as one which is determinative of the application before the Court. The interference to neighbours by loud music is not so significant as to be determinative.
66. The arguing, screaming and fighting which is alleged to have occurred at the property of number 10 Namarluk Drive is of far greater importance in

the final rulings in the application and I find that from the point in time that Ms Yardley, Mr Coulson and Ms Perceval moved into their properties, that there were regular fights and arguments involving yelling and screaming occurring at number 10 Namarluk Drive. These fights and arguments can be categorised into three separate categories. Firstly there were disputes as between the primary residents of the home as between the respondent and her children and the respondent and Mr Lewis. Even on the respondent's evidence, these disputes were regular enough to be considered a nuisance to neighbours. She admitted regular arguments with her partner, her children and to berating herself in a loud and argumentative fashion. Secondly, there were fights and arguments which occurred between the respondent and visitors to her home. Finally, there were arguments and disputes amongst visitors to her home. I find that these latter two categories of arguments and disputes were the most alarming to the residents at number 12 Namarluk Drive. In particular, I find that these latter two categories of arguments and disputes involved an escalation of the behaviours that were emanating from number 10 Namarluk Drive. These incidents may or may not have involved the use of weapons such as knives. Weapons such as knives were mentioned in the arguments. The incidents were of such severity that the neighbours believed there may have been weapons involved. The incidents were extremely disturbing to the neighbours. Calls were made to the Police about many of them. They were reported to the landlord, Territory Housing. I find that as a result of this behaviour, there was no reasonable opportunity for the neighbours to approach number 10 Namarluk Drive and request that this behaviour desist. Neighbours cannot be expected to take action which they reasonably believe may place them in danger. Unless a person was appropriately trained, it would not be safe to approach the premises where disputes of this nature were occurring on a regular basis. I find that no criticism can be levelled at the neighbours for not approaching the respondent to try and mediate a solution to their

complaints. Police were called in to attend and they did attend.

Complaints were made to the landlord of the premises (the applicant) and the applicant has trained tenancy officers who have experience in resolving complaints.

67. The respondent has made it clear that if her neighbours had simply minded their own business, there would be no difficulties. The answer to this suggestion is the respondent had made her issues the business of her neighbours. The respondent has directed insults, threats and abuse towards all three of the applicant's civilian witnesses (her immediate neighbours). While not living in the same proximity as persons in a block of flats, the neighbours of number 10 Nemarluk Drive had little option but to be within earshot of the remarks being made by the respondent. The noise created by the residents and visitors of number 10 Nemarluk Drive could not be successfully screened by the residents of numbers 8 and 12 Nemarluk Drive. In particular, I accept the evidence of Ms Perceval that she tried closing the louvres and that she purchased a large wardrobe in an attempt to screen off the area of the respondent's house which was immediately adjacent to her bedroom. I find that this interfered with her life. A Darwin house with louvres is built to allow airflow for more comfortable living. The expense involved in purchasing a wardrobe, together with the time and effort involved in installing the wardrobe, was an interference in Ms Perceval's life. Notwithstanding these efforts, I find that she was still able to hear the abuse and anti-social behaviour which was emanating from number 10 Nemarluk Drive. I find that this was particularly affecting Ms Perceval as she was attempting to sleep prior to getting up at 6.00am each working day. Both Ms Yardley and Mr Coulson were, at all relevant times, home more regularly during week days and the anti-social behaviour emanating from number 10 Nemarluk Drive affected them during the day and the evenings. Ms Perceval was also affected on weekends.

68. The evidence before me persuades me that there was also arguing and noise emanating from number 4 Beluyen Street, a property behind 10 Nemarluk Drive. I find that while the arguing and fighting from that property was not ideal, it did not occur as regularly or to the same intensity as the incidents at number 10 Nemarluk Drive. I find that there is no confusion in the evidence of the applicant's witnesses as to where major incidents were coming from and that was from 10 Nemarluk Drive. The respondent's voice is said to be a distinctive voice and each of the civilian witnesses for the applicant were strong on their evidence that they were able to recognise the respondent's voice. They were able to distinguish her voice from that of the occupants of number 4 Beluyen Street. Whilst not further referred to earlier, I indicate that Mr McLaughlin from 4 Belyuen Street attended Court at the end of the hearing and indicated that he wished to give evidence on behalf of the applicant. Ms Tillman did not seek to call Mr McLaughlin and he was not called. His behaviour in the Courtroom was such as to disrupt proceedings somewhat and cause the respondent distress. Any issues as between the respondent and Mr McLaughlin are not relevant to these proceedings.
69. I have found that the respondent has been responsible for a number of behaviours and that there are several possible explanations for her behaviours. Irrespective of the cause of the behaviours, I find there is no proviso in the lease to excuse behaviour which is in contradiction of the code of conduct. During the lease term, the tenant must treat neighbours in a reasonable and courteous manner and not create a nuisance, whether by loud noise, offensive behaviour, bad language, drunken behaviour, physical violence or trespass onto any neighbour's property (Clause 22.1 (b)). Neighbour is defined as other people who live in the general proximity to the premises. I find that the neighbours at 8 and 12 Nemarluk Drive, Ludmilla are in the general proximity to the premises, the subject of the lease. There is responsibility on the respondent to

behave in a particular way. The code of conduct is breached if the behaviours are proven. Similarly, s 100 of the *Residential Tenancies Act* has no such provisio.

70. The respondent's case has raised a question as to why Territory Housing would bring this application when the complaints are emanating from private citizens. It is agreed that Territory Housing is a provider of public housing and that such housing is often provided for persons who may find it difficult to obtain housing in the private rental market. Tenants of Territory Housing properties have certain obligations and in this case, the respondent has obligations as set out in the Tenancy Agreement. A code of conduct has been incorporated into the Tenancy Agreement and the respondent has voluntarily entered into that agreement. She is bound by the code of conduct. The code of conduct clause 21.1(b) relates specifically to neighbours. I find that it is not inappropriate for Territory Housing through its Chief Executive Officer to commence proceedings as against a tenant in circumstances where it is alleged that there is a breach of the code of conduct relating to the treatment of neighbours and a breach of the *Residential Tenancies Act*.
71. The *Residential Tenancies Act* also envisages applications being made by landlords or an interested person pursuant to s 100 of the Act, where the conduct of the tenant is unacceptable. The impacts of persons in the immediate vicinity such as neighbours are specifically referred to in this section. An application may be made by a landlord or interested person. Each of the civilian witnesses called on behalf of the applicant would fall into the definition of interested persons. Whilst an application can be made by an interested person, s 100(2) of the *Residential Tenancies Act* sets out that the landlord has to be served with a copy of the application and given an opportunity to be heard before the Court if an application is made by an interested person. The *Residential Tenancies Act* places the landlord in a different position to that of an interested person in such

applications. The landlord must be involved in any application to terminate a tenancy pursuant to s 100 of the Act. The situation is not in the reverse. There is clear legislative intent that the Court be empowered to act on the application of a landlord if the Court is satisfied of any of the criteria in s 100(1)(a)(b) or (c) of the *Residential Tenancies Act*. A discretion rests with the Court as to whether an order is made. It is envisaged by the legislation that such an application can be made with respect to behaviours of a tenant which are impacting on persons residing in the immediate vicinity of premises. I find it was not inappropriate that Territory Housing commenced this application following complaints made to them by neighbours and persons in the general vicinity and following information they have received from other sources and in particular, the Northern Territory Police.

72. I find that from the time Shari Yardley at 8 Namarluk Drive and David Coulson and Ruth Perceval at 12 Namarluk Drive moved into their premises in early 2006, that the respondent has not treated them in a reasonable and courteous manner. Further I find that she has created a nuisance with respect to the neighbours in both 8 and 12 Namarluk Drive, Ludmilla. I find that the code of conduct in clause 22.1(e) of the Tenancy Agreement has been breached.
73. Has s 100(1) of the *Residential Tenancies Act* been breached? A nuisance is not defined in the *Residential Tenancies Act*. Accordingly, the Common Law definition of nuisance is to be relied upon. The case of *Oldham v Lawson* (1) [1976] VR 654 is a decision of the Supreme Court of Victoria. In that case, the plaintiffs brought an action for nuisance as a consequence of noise emanating from a house adjoining their premises. Justice Howe set out as follows:-

“To establish a nuisance, the plaintiffs must show there has been a substantial degree of interference with their enjoyment of their use of the house at 31 Mathoura Road. What constitutes such a substantial degree of interference must be decided according to

what a reasonable standards for the enjoyment of those premises. What are reasonable standards must be determined by commonsense, taking into account relevant factors, including what the Court considers to be the ideas of reasonable people, the general nature of the neighbourhood and the nature of the location at which the alleged nuisance has taken place and the character, duration and time of occurrence of any noise emitted and the effect of the noise” (p 655 of the decision).

74. It is in this context that the Court must consider whether the respondent has created a nuisance with respect to her neighbours. The material before the Court persuades me that the neighbours in both 8 and 12 Nemarluk Drive are not unreasonable people. They appreciate that living in close proximity to houses in the Darwin area means they will have to expect noise from time to time. The tendency in communities such as Darwin is to live very much of an outdoor lifestyle. Houses have louvres and doors are open. Ms Perceval’s evidence on this question was compelling. She has lived for many years on Bagot Road in Ludmilla, an area which is known to have noise issues. She acknowledged that there were some issues from time to time, but she was able to live with that. She moved with her partner from Bagot Road to the Nemarluk Drive location. It is not the case that those in 12 Nemarluk Drive have moved from a quiet rural location into a residential suburb. Ms Perceval was so affected by the noise and interference from 10 Nemarluk Drive, that she closed her louvres and then arranged for a wardrobe to be purchased to block the louvres which most directly faced towards 10 Nemarluk Drive. This was, in my view, a good indication of the severity and the ongoing nature of the interference. It also indicates that Ms Perceval was seeking to undertake all she could to minimise the disruption to her life, without directly calling upon the respondent to act. I find the neighbours are not unreasonable people.
75. The interference in the enjoyment of the use of the houses in numbers 8 and 12 Nemarluk Drive, Ludmilla has a range of distinct characteristics. Firstly, there are (potentially) defamatory and undoubtedly insulting

comments made to Mr Coulson. Secondly, there are threats made to all three neighbours which were distressing and disturbing for the recipients of those threats. Next there is swearing and abusive language, some of which is directed to the neighbours and some of which is heard by the neighbours during arguments or disputes going on at 10 Nemarluk Drive. Then there is general noise from disturbances, fights and arguments which occurred in 10 Nemarluk Drive. These occur at various times of the day or night. It is not possible for the neighbours to predict when these outbursts would occur. This means there is very little by way of preparation the neighbours could make in an attempt to avoid or ameliorate the effects of the disturbances. For example, if they knew that every night between the hours of 6.30pm and 7.00pm there would be a disturbance, they could consider tailoring their daily lives around this regular occurrence. This is not to suggest that they should have to plan their day around such a disturbance, but nonetheless, they certainly could consider doing that. In these circumstances, the randomness of the disturbances means there is no possibility that neighbours could plan to avoid the disturbances. I accept that for David Coulson and Ruth Perceval, this has had a significant impact on their ability to sleep throughout the night for some time. Whilst the effect is being felt by both persons, it should be noted that Ruth Perceval works full time and is required to get up and leave early each morning for her work. I find there has been a substantial degree of interference with the enjoyment of the use of the premises at number 8 and number 12 Nemarluk Drive, Ludmilla as a consequence of the respondent's behaviour and the behaviour of those persons who have been at her premises at number 10 Nemarluk Drive, Ludmilla. I find that nuisance has been proven.

76. In the code of conduct during the term of the lease, the respondent must:-

Clause 22.1(b): "treat neighbours in a reasonable and courteous manner and not create a nuisance, whether by loud noise, offensive behaviour, bad language, drunken behaviour, physical

violence or trespass onto any neighbour's property”.

77. The Tenancy Agreement defines tenant and the respondent is the tenant in these circumstances. The Tenancy Agreement also defines neighbour to mean other persons who live in the general proximity to the premises. The premises are 10 Nemarluk Drive, Ludmilla. The witnesses Ms Yardley, Ms Perceval and Mr Coulson are all neighbours within the meaning of the Tenancy Agreement living either side of the premises. The code of conduct places an obligation on the respondent to act in a very particular way. The respondent must treat neighbours in a reasonable and courteous manner. Reasonable connotes an objective test. In these circumstances, I would say that reasonable means acting in a moderate and sensible fashion. Courteous connotes actions in a considerate and polite manner. Consideration implies that the person must be thoughtful as to how their actions and words will impact on the recipient (including unintended recipients as in the case of general yelling and shouting) of those actions and words. The respondent must not create a nuisance. Nuisance has already been discussed and the common law definition of nuisance applies in these circumstances. The code of conduct sets out a series of circumstances which may amount to nuisance and these are loud noise, offensive behaviour, bad language, drunken behaviour, physical violence or trespass onto any neighbour's property. Each of these behaviours will require individual consideration and ultimately, whether such nuisances have been created by the respondent will be a matter of fact. Loud noise could be any form of noise, not exclusively music. In this case, music and loud arguing and shouting are both within the matters being considered. Offensive behaviour has a very wide definition. Given that there is a separate category of bad language, swearing and bad language will not be included within the definition of offensive behaviour in these circumstances. Physical violence connotes actual violence and I do not take threats to be included within the meaning of physical violence in this part of the code of conduct. Threats of violence could be seen as a

breach of the code as treating someone in an unreasonable or discourteous manner.

78. The code of conduct also sets out in clause 22.1(c) that the tenant must “where pets are permitted ensure those pets do not cause a hazard or nuisance to neighbours and do not cause the premises to be damaged or unsanitary”. There is considerable evidence before the Court that the dogs were causing a nuisance to the neighbours and in particular, Mr Coulson. I find that this part of the code of conduct has been breached. The pets were removed from the premises some four months before the application was filed and that has not been the main issue which the applicant has brought the application upon.
79. The question arises whether clause 22.1(b) of the code of conduct has been breached by the respondent. I find the evidence before the Court satisfies me that clause 22.1(b) of the code of conduct has been breached by the respondent. I find that the respondent has not treated neighbours in a reasonable and courteous manner and has created a nuisance. I find she has breached her obligations in the code of conduct as it relates to her neighbours. I find that this breach of the code of conduct is an ongoing breach from the time that Ms Yardley moved into 8 Nemarluk Drive and from the time that Mr Coulson and Ms Perceval moved into 12 Nemarluk Drive, Ludmilla in January/February 2006. I do not find that any physical violence has ever been perpetrated by the respondent upon any of her neighbours. Further, I do not find it proven that she has trespassed onto her neighbour’s property. I find that the respondent has not treated her neighbours in a reasonable and courteous manner and in particular, that she has threatened all three of her neighbours and used abusive and inflammatory language when she has made these threats. I find that her behaviour towards each of her neighbours has lacked consideration and moderation. This relates to her ongoing dealings with each of the neighbours. Further I find that she has created a nuisance in a number of

ways, including by loud noise which came from her property in the form of arguing, yelling and screaming. This occurred frequently and regularly over the period of time from her neighbours moved to the properties to the time the application was lodged before the Court. The behaviour continued, although to a lesser extent when the proceedings were before the Court.

80. While these rulings are made with respect to the code of conduct, there has been no action by the landlord to terminate the tenancy pursuant to clause 18 of the code of conduct (see clauses 18 and 21 of the code of conduct). As Clause 22 imposes a responsibility on the tenant and that has been found to be breached, action could have been taken under clause 18 of the code of conduct. There is no material before the court to explain why that has not occurred. Such an action would have been unilateral and would not have given the tenant the opportunity to be heard. While I am not expressly required to rule on this question I have done so as I am of the view that if I had found that the code of conduct was *not* breached then that fact would have been important in weighing up the matters to be considered in the substantive application. I do not take the reverse position. I do not find that because the code of conduct has been breached that there is then a finding which binds me on the question of whether s 100 of the *Residential Tenancies Act* has been breached. The findings on the code of conduct will be relevant on the question of the exercise of the discretion in s 100 of the *Residential Tenancies Act*, if I find s 100 of the *Residential Tenancies Act* has been breached.
81. The application is brought pursuant to s 100 of the *Residential Tenancies Act*. Based upon the findings made on the evidence before the Court and the definition of nuisance, I find that s 100 (b) and (c) of the *Residential Tenancies Act* has been breached. I am satisfied that the tenant/respondent has repeatedly caused a nuisance by way of a substantial degree of interference with the lives of the neighbours in

number 8 and number 12 Nemarluk Drive on or from the premises and has repeatedly permitted a nuisance to be caused on or from the premises and further, that the tenant/respondent has repeatedly caused and repeatedly permitted an interference with the reasonable peace or privacy of a person residing in the immediate vicinity of the premises. (Ss 100(1) (b) and (c) of the *Residential Tenancies Act*). While the legislation only requires a finding on one of these limbs prior to consideration of whether to terminate a tenancy, I find that all alternatives on both limbs are proven by the applicant on the balance of probabilities.

82. Based upon this finding, the Court has discretion as to whether to terminate the tenancy and make an order for possession of the premises. This discretion must be exercised judicially. It can not be exercised arbitrarily. There is no guidance in the Act as to how to exercise this discretion. The court must consider all the material before the court that is relevant to this question. The first matters to be considered relate to the breaches involved. The seriousness of the breaches will be looked at. If the finding were that the breaches were minor but just tipped the Court into a finding that there were breaches of the Act, then that would weigh in favour of the respondent. I do not find that the breaches were minor. While I do not go as far to find that they were at the highest end, they were quite significant. The length of time the breaches occurred is the next matter to consider. The breaches have occurred for (at least) 18 months and I regard that as a long period of time. The breaches were not limited to actions which were independent of the neighbours. Some breaches were directed personally at the neighbours. The actions of the respondent were deliberate in this regard.
83. Secondly I will consider questions relating to the relationship between the applicant and the respondent in the tenancy. The applicant is charged with providing public housing to those who apply for housing. In this case the respondent has applied for housing with reference to her particular

circumstances. Notwithstanding that she was not ordinarily a resident of the Northern Territory, she has been housed by the applicant reasonably quickly. Following her first tenancy, she entered the current Tenancy Agreement and has been situated at the property since 22 May 2005. The breaches have occurred for much of the time of the tenancy. The code of conduct has been entered into by the respondent (as tenant) as part of her Tenancy Agreement. That has been breached. She has voluntarily entered that Agreement and must be taken to have known of its contents. The code of conduct is written in relatively easy to understand language. The respondent has notice of her responsibilities under the Agreement. She has agreed to enter a Tenancy Agreement which incorporated the code of conduct. It cannot be said that the respondent had no idea of her responsibilities under the Tenancy Agreement. While she may not know of the precise wording of s 100 of the *Residential Tenancies Act*, she must be taken to be aware of the code of conduct. The two provisions are not significantly different. The Tenancy Agreement expires in May 2010. Any order made now will mean that the agreement is ended approximately two years before that time. That is a considerable period of time.

84. Tenancy managers are assigned to tenants. The respondent was approached by members of the applicant's staff to raise questions relating to her ongoing tenancy at the premises. She did not take up the opportunity to desist from her behaviour and/or have others at the premises modify their behaviour. Clause 22.1(e) of the Code of Conduct requires that the respondent ensure that any person on the premises with her knowledge and consent complies with the lease and the code of conduct. Not only did the objectionable behaviour continue, the respondent made it clear that she would seek to purchase the property so that any complaints could not be pursued through machinery such as was available if she continued on as a tenant. The applicant is not required to act to avoid taking action under s 100 of the *Residential Tenancies Act*. Notwithstanding that fact, I find that the applicant did take action to try

and avoid the action they have now brought. That was not successful. I find that the respondent has known about the possibility of the application since (at least) December 2006. The application was not made until 13 July 2007. That represents a significant time in which the respondent could have modified her actions and ensured that visitors and others at the house either modify their behaviour or not come to the house. It is not the case that there was no notice of the possibility of the application.

85. In some senses, the relationship between the applicant and respondent can be characterised as a commercial arrangement. Accommodation is supplied in exchange for rent. It is not the same as private rental arrangement in that there are tenancy officers employed by the applicant and there is often no equivalent housing at the rent offered by Territory Housing in the private rental market. Tenancies may be offered 'out of turn' (that is not strictly based upon length of application) to people who make out a special case. So there is a social service aspect to the relationship which means it can not be characterised the same way as a commercial arrangement. S 100 of the *Residential Tenancies Act* does not distinguish between types of landlords. Nevertheless, the relationship between the applicant and respondent in each case must be considered as part of the matters taken into account when deciding whether to terminate a tenancy.
86. The next matters to be considered are those which are personal to the respondent and her family. The respondent has health and substance abuse issues. As far as I can determine, these issues are not presently playing a role in the respondent's life or in her behaviour. The substance abuse issues are likely to have made the health issues more severe than they would otherwise have been. Her health issues do not presently raise special considerations on the question of whether she will be in a position to find alternative accommodation. She speaks English fluently and is educated. She is able to access services and agencies as required. She has

family support which may be able to be called on for accommodation (as in the past). She is 37 years of age and so her age is not a special consideration. She receives regular payments of Centrelink benefits and so she has an income which can be applied to rent or board in other accommodation. Her children are presently spending alternative weeks with herself and her mother. The children are now 11 years of age and 9 years of age. They are not old enough to be living independently. There is evidence that one of the children has special needs. The respondent's mother provides significant assistance with this child including taking him to appointments. The respondent has known of the child's special needs since before she moved into the premises and indeed his special needs were one of the reasons she pressed for an early allocation of housing (as were her health issues and the fact of having, at that stage, two very young children). She was allocated housing on that basis. These factors are now being called upon to argue the tenancy not being terminated. While they are not disregarded, these factors are not so overwhelming as to be determinative of the question.

87. The next issue to consider is that of the impact upon the persons in number 8 and number 12 Nemarluk Drive. It is implicit in my findings that the impact upon the lives of the neighbours has been significant. Mr Coulson and Ms Perceval have purchased their own property. This necessitates a significant financial undertaking. Ms Perceval's evidence was that selling the house and leaving the street was a serious consideration. The behaviour of the respondent has made her feel scared for her safety. She does not feel safe being alone in her home anymore. She is tired, stressed and exhausted as a result of the behaviour of the respondent and the respondent's visitors and family.
88. Mr Coulson is also tired, stressed and exhausted as a result of the respondent's behaviour and the behaviour of her visitors. He has been worried about the threats and the abuse that he has received. Ms Yardley

does not wish to live at the rental property any longer because of the behaviour of the respondent. Within one month of moving into the property, she and her family did not wish to reside there anymore. They have been seeking alternative accommodation. The impact of the respondent's and her visitors' behaviour on the lives of the neighbours, has been serious. The evidence of Ms Yardley is that the respondent had said that "this was her street and that she made the rules". The actions of the respondent and the respondent's visitors have lead to neighbours either side of her wishing to move premises for no other reason other than the behaviour of the respondent and her visitors. Mr Coulson and Ms Yardley have at times acted in a childish and negative way. This has been in response to behaviours of the respondent and her visitors. I find that all three persons have been affected in the way outlined in their evidence. The behaviour of Ms Yardley and Mr Coulson has been trivial in comparison to the behaviour of the respondent and the respondent's visitors. Ms Perceval's behaviour cannot be criticised.

89. I have taken into account all matters before the Court when considering the question of whether the tenancy at number 10 Nemark Drive, Ludmilla should be terminated and an order made for possession of the premises. Based on the evidence before the Court, the findings made, the case law and the all relevant considerations as set out above, an order terminating the tenancy and ordering possession of the premises will be made. Those orders will be made pursuant to s 100 of the *Residential Tenancies Act*.
90. In light of the fact that the defendant has two children who are not in a position to live independently, including one who has special needs (albeit that each of the children are spending a considerable amount of time with their maternal grandmother), I am persuaded that the discretion pursuant to s 105(1) of the *Residential Tenancies Act* should be exercised and I suspend the operation of the order for 60 days from the date of this

decision. I decline to suspend the operation of the order for the full period available under section 105 of the *Residential Tenancies Act*. This decision is made taking into account the factors set out in section 100(2) of the *Residential Tenancies Act*. The lease has been terminated as a consequence of the respondents actions, she has caused a nuisance, threatened and harassed neighbouring residents, she has had warning of the application that has been made and her behaviour has lead to serious breaches. This decision is made recognising that any shorter order may result in an impact on the child's welfare which could cause severe hardship to the tenant/respondent. There is no other material before the Court justifying the making of this order. In making this order I have formed the view that there is not an unacceptable risk posed to neighbouring residents or visitors within the locality of the premises of 10 Nemarluk Drive Ludmilla if the order for possession was to be suspended. I base that finding primarily on the evidence that the respondent had been able to modify her behaviour while the application was before the Court.

91. Notwithstanding this ruling, as a consequence of the orders made herein, there is a possibility that the respondent may take retaliatory action against those neighbours who have made complaints and given evidence before the Court. That reaction would be consistent with previous behaviour of the respondent, which the Court has evidence of. For that reason I would suggest that the neighbours be alerted to this decision and that they be advised of any remedies they may have. I note that the present Tenancy Agreement allows for termination of the lease where there is any breach of a term which imposes a responsibility on the tenant. While the orders made mean that the tenancy is terminated, that order has a suspended operation and it would seem to me that the terms of the Tenancy Agreement will continue to govern the relationship between the applicant and the respondent until the premises are vacated. Any fresh allegations of a breach of the code of conduct and in particular, clause 21.1(b) would prima facie mean that the landlord could terminate the lease pursuant to s

18 of the Tenancy Agreement. Whilst I do not go as far as to making any final rulings on this question, this issue is raised acknowledging the potential for issues to arise as a consequence of this decision. As found in the decision, the behaviours of Ms Yardley and Mr Coulson have at times behaved badly or in a childish way. Should their behaviours be said to be responsible for any actions on behalf of the respondent in this interim period, that would tend to militate against the applicant taking action as against the respondent in the period prior to the order of the Court coming into effect.

92. The orders made in this matter are as follows:

- (i) Pursuant to s 100 of the *Residential Tenancies Act*, the tenancy between the applicant and the respondent pursuant to a Tenancy Agreement dated 22 May 2005 with respect to the property at 10 Namarluk Drive, Ludmilla is terminated.
- (ii) Pursuant to s 100 of the *Residential Tenancies Act* an order is made for vacant possession of the property at 10 Namarluk Drive Ludmilla.
- (iii) Pursuant to s 105(1) of the *Residential Tenancies Act*, I suspend the operation of the order for possession of the premises for 60 days from the date of this order.

Dated this 21st day of February 2008.

anie Little

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STIPENDIARY MAGISTRATE