

Decision of the Commissioner for Consumer Protection

Section 11J(2) *Residential Tenancies Act 1987*

Application Number:	[redacted]
Application Type:	Landlord application to refuse pet request
Property:	[redacted]
Bond held:	\$2,840 (including \$260 pet bond)
Tenant:	[redacted]
Landlord:	[redacted]

Decision

The Commissioner orders:

1. The landlord to approve the tenant's request.
2. The tenant is permitted to keep the requested pet at the rental premises.

Request

On 31 July 2024, the tenant requested to keep a miniature dachshund named [redacted] (the requested pet) at the property, following the process established in the *Residential Tenancies Act 1987* (RTA).

Application

On 4 August 2024, the landlord applied to Consumer Protection for approval to refuse the tenant's request.

The landlord's reasons for refusing the pet request are:

- keeping the pet is likely to cause damage which will cost more than the bond to repair.
- keeping the pet is likely to cause the landlord undue hardship.

Evidence

The landlord and tenant were invited to provide evidence to support their views about the application.

The landlord provided the following evidence:

- Copy of the lease agreement.
- Copy of amendment to lease confirming the tenant is permitted to keep the [redacted] [redacted] (the existing approved pet) at the property.
- Email chain between the property manager and the [redacted] [redacted] [redacted].
- Written submissions from the property manager.

The tenant provided the following evidence:

- Pet request form.
- Photo of the existing approved pet and paving added near the fence and gate.
- Letter to Consumer Protection.
- Verbal statements.

Law

Under the RTA tenants have the right to keep a pet at their rental property with the landlord's permission.¹

The tenant is responsible for any damage or nuisance caused by a pet they keep at the property.²

Landlords have the right to apply to Consumer Protection for an order allowing them to refuse the pet request.³

When an application is received, the Commissioner is required to either:

- approve the landlord's application; or
- order the landlord to approve the tenant's request.⁴

The Commissioner may approve this application if satisfied that the grounds claimed by the landlord are established. In this case, that keeping the pet would likely cause:

- damage that will cost more than the bond to repair; and/or
- the landlord undue hardship.⁵

The landlord is responsible for satisfying the Commissioner that one or both of the above grounds apply.

Reasons for Decision

All evidence has been reviewed and only the evidence relevant to deciding this application is mentioned in these reasons for decision.

Is keeping the pet likely to cause damage that would cost more than the security bond to repair?

The landlord raised concerns about the possibility of the requested pet causing damage to the property.

These concerns included previous damage caused by the existing approved pet and another dog. It must be noted that evidence of a previous dog causing damage is not evidence that the requested pet will cause damage. Although it could be evidence of the tenant's ability to control or prevent such damage or to repair such damage should it occur in the future. I note the tenant's letter sets out measures that have been put in place to reduce the likelihood of the dogs damaging the property.

The landlord was also concerned about damage to fixtures and landscaping. They provided an email estimating the cost of repairing this damage if it were to occur. No evidence has been provided to support these estimates or that the requested pet is likely to cause this damage.

The tenant made verbal statements that:

- They intend to take a week off work to settle and train the requested pet.
- The requested pet is advertised as puppy-pad trained.

The tenant confirmed in their letter to Consumer Protection that:

- The requested pet will be confined to a caged-off play area with a water bowl, bed, toys for entertainment, and puppy pads.
- The existing approved pet and the requested pet would have supervised access to the property inside and outside throughout the day when the tenants are home.

Considering the information from the landlord and the tenant, I am not satisfied that the requested pet is likely to cause damage that would cost more than the security bond to repair.

¹ Sections 50A *Residential Tenancies Act 1987*.

² Section 50I *Residential Tenancies Act 1987*.

³ Section 50E(1) *Residential Tenancies Act 1987*.

⁴ Section 50E(2) *Residential Tenancies Act 1987*.

⁵ Section 50E(3) *Residential Tenancies Act 1987*.

Is keeping the pet likely to cause the landlord undue hardship?

The term 'undue hardship' is not defined in the RTA.

The Macquarie Dictionary defines the terms as:

- Undue: unwarranted; excessive; not proper, fitting or right; unjustified.
- Hardship: a condition that bears hard upon one; severe toil, trial, oppression or need.

The NSW Supreme Court has previously concluded that the phrase "undue hardship" means "greater hardship than the circumstances warrant".⁶

The landlord claims they will suffer 'undue hardship' if the pet request is approved because:

- If the requested pet escapes, she could cause a nuisance to neighbours, damage to neighbouring properties, harm to a person or pet, council complaints and court fees.
- The owner has just built the property, and damage may affect the builder's liability warranty.

No evidence has been presented to show that the requested pet is likely to escape, harm another person or pet, cause damage to a neighbouring property or cause a nuisance to neighbours.

Additionally, the RTA makes it clear that the tenant is responsible for any nuisance or damage caused by their pet. There is no evidence presented that the requested pet would cause damage that would affect the builder's liability for defects from unsatisfactory workmanship.

I am not satisfied that keeping the requested pet at the premises is likely to cause the landlord undue hardship.

Appeal

A tenant or landlord who is dissatisfied with this decision may appeal to the Magistrates Court of Western Australia within seven days after receiving this decision.

The appeal can be started by lodging both a [Form 1B – Appeal Against Registrar's Decision](#) and a copy of this notice with the Magistrates Court online at ecourts.justice.wa.gov.au/eCourtsPortal.

For information about appealing the decision, see <http://www.commerce.wa.gov.au/consumer-protection/commissioner-determinations>.

Signed

[redacted]

Delegate of the Commissioner for Consumer Protection
DATE OF ORDER AND WRITTEN REASONS

[redacted] September 2024

⁶*State of New South Wales v Austeel Pty Limited* [2004] NSWSC 81, [22], quoting *Liberian Shipping Corporation v A King & Sons Ltd* [1967] 1 Lloyd's Rep 302 at 307