

Decision of the Commissioner for Consumer Protection

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

Application Number:	[redacted]
Application Type:	Landlord application to refuse a pet request
Property:	[redacted]
Bond held:	\$2,840
Tenants:	[redacted] and [redacted]
Landlords:	[redacted] and [redacted]

Decision

The Commissioner orders:

1. The landlords must approve the tenants' request to keep the requested pet at the premises.
2. The tenants are permitted to keep the requested pet at the premises.

Request

On 8 August 2024, the tenants requested to keep a Siamese cat (the requested pet) at the premises, following the process established in the *Residential Tenancies Act 1987* (WA) (RTA).

Application

On 9 August 2024, the landlords applied to Consumer Protection for approval to refuse the tenants' request.

The landlords' refusal was on the grounds that:

- The premises are unsuitable for keeping the pet.
- Keeping the pet is likely to cause damage that would cost more than the security bond to repair.
- Keeping the pet is likely to cause the landlord undue hardship.
- Keeping the pet would pose an unacceptable risk to the health and safety of a person.

Evidence

The landlords and tenants were invited to provide evidence to support their views about the application.

The landlords provided the following evidence:

- Verbal statements to Consumer Protection.
- Written submissions to Consumer Protection.
- Photos (13) of landlord's skin reactions.
- A receipt for a psychology clinic [redacted] dated [redacted] 2022.

The tenants provided the following evidence:

- Verbal statements to Consumer Protection.
- Pet request form.
- Written submissions to Consumer Protection.
- Research information about cleaning to remove cat allergens.
- Article from the Cultural and Social History Society on Siamese cats.

Law

Under the RTA, tenants have the right to keep a pet at their rental premises with the landlord's approval.¹

The tenant is responsible for any damage or nuisance caused by a pet they keep at the premises.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, the claimed grounds are:⁵

- The premises is unsuitable for keeping the pet.
- Keeping the pet is likely to cause damage that would cost more than the security bond to repair.
- Keeping the pet is likely to cause the landlord undue hardship.
- Keeping the pet would pose an unacceptable risk to the health and safety of a person.

The landlord is responsible for demonstrating that one or all of the above reasons apply.

Reasons for Decision

As a delegate of the Commissioner, I have reviewed all evidence. Only the evidence relevant to deciding this application is mentioned in these reasons for decision.

Are the premises unsuitable for keeping the requested pet?

In a written submission to Consumer Protection, the landlords stated that the tenants were notified at the commencement of tenancy that no pets were to be allowed at the premises.

On 29 July 2024, changes to the RTA came into effect which gave tenants the right to request permission to keep a pet at their rental premises. The tenant is entitled to request to keep a pet even if the residential tenancy agreement previously included a term prohibiting pets.

The landlords have not provided any evidence to demonstrate how the premises is unsuitable for keeping the requested pet.

For these reasons, I am not satisfied that the premises is unsuitable for keeping the requested pet.

¹ Section 50A *Residential Tenancies Act 1987* (WA).

² Section 50I *Residential Tenancies Act 1987* (WA).

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

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

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

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

A security bond of \$2840.00 is held with Bonds Administration for this premises.

The landlords have not provided any evidence to demonstrate how, or why, the requested pet is likely to cause damage that would cost more than the security bond to repair.

For this reason, I am not satisfied that keeping the requested pet would likely cause damage that would cost more than the security bond to repair.

Is keeping the requested 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

Aside from the concerns over a risk to their health and safety, which are addressed below, the landlords have not explained what undue hardship they are likely to suffer, nor provided any evidence to support a claim of undue hardship.

For this reason, I am not satisfied that keeping the requested pet would cause the landlords undue hardship.

Would keeping the requested pet pose an unacceptable risk to the health and safety of a person?

When deciding whether the requested pet would pose an unacceptable risk to the health and safety of a person, the Commissioner must consider the following two questions:

1. Does a risk to the health and safety of a person exist? and
2. If so, is the risk unacceptable?

The first question requires evidence of the risk. This could include proof that the requested pet is venomous, or a medical diagnosis confirming an allergy caused by exposure to the type of pet requested.

The second question involves assessing whether the risk is unacceptable. The Macquarie Dictionary defines unacceptable as "so far from a required standard, norm, expectation, etc., as not to be allowed".

This question requires the Commissioner to assess the likelihood of the risk eventuating, and the gravity of the risk that may eventuate.⁷ The landlords must demonstrate that the risk is likely to occur and that the consequences are serious enough to be considered 'unacceptable'.

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.

⁷ *New South Wales v Simcock* (Final) [2016] NSWSC 1805 at [71].

Does a risk to the health and safety of a person exist?

The landlords provided verbal statements and written submissions to Consumer Protection, outlining the negative health effects they may suffer if the requested pet were to be kept at the premises, including:

- Coughing, narrowed airway and difficulty breathing.
- Eczema (skin rashes).
- Impacted mental health.
- Asthma since childhood.

The landlords' written submissions included statements to the effect that:

- They have suffered from skin rashes for many years, since 2013.
- Results from a previous allergy test showed dust, some food, bad smells, and small particles were the reason for the allergies.

These statements indicate the landlords' belief that their health concerns are triggered by a variety of causes and have been ongoing for many years.

The landlords did not provide evidence of any allergy tests or documentation from a medical professional to confirm either the cause of the allergic reactions, or the severity of those reactions.

The landlords provided photographs which appear to show one of the landlord's skin reactions. I am unclear as to the cause of the skin reactions, given the lack of medical evidence from the landlords.

The receipt dated [redacted] 2022, from a Clinical Psychology Clinic [redacted] [redacted], does not outline the reasons for the session.

The landlords are responsible for satisfying the Commissioner that an unacceptable risk to the health and safety of a person exists, and that it is connected to the keeping of the requested pet.

In my view, the cause of the symptoms alleged by the landlords cannot be established solely on the verbal and written statements from the landlords, in the absence of some medical evidence.

On 28 August 2024, Consumer Protection wrote to the landlords and advised them of the preliminary view that the photos, verbal and written statements, and psychology clinic receipt provided did not demonstrate that the requested pet would cause an unacceptable risk to the health and safety of a person, or the other grounds for refusal they had chosen. The landlords were given a further nine days to provide additional evidence to substantiate the refusal grounds. After the nine days, a further two emails and a phone call were made to the landlords to follow up the request for more evidence. After receiving the preliminary review, the landlords did not provide Consumer Protection with any additional evidence.

I am therefore not satisfied that the requested pet would pose a risk to the health and safety of the landlords.

Is the risk unacceptable?

To be satisfied that the risk posed by the requested pet is unacceptable, the landlords must provide evidence that the risk is likely to happen, and the effects are likely to be severe.

As above, I am not satisfied that the landlords would be at risk from the requested pet. I will, however, consider whether any risk that may exist would be unacceptable.

The landlords employ a property manager to manage the premises on their behalf, and in the tenants' written submission, they confirm the landlords do not attend the premises for inspections.

Should the landlords wish to exercise their rights to visit the premises for an inspection⁸ they will need to follow their own health maintenance guidelines.

The tenants have an obligation to ensure that the premises are left in as close as possible to the same condition compared to when they moved in, less any fair wear and tear⁹. This cannot be determined until the end of the tenancy.

Considering all the information from the landlords and the tenants, I am not satisfied that keeping the requested pet at the premises would pose an unacceptable risk to the health and safety of a person.

Appeal

A tenant or landlord who is dissatisfied with this decision can appeal to the Magistrates Court of Western Australia. Appeals must be lodged within seven days after receiving this decision, or a later date if leave is granted by the Court.

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] November 2024

⁸ Section 46 (2)(b) Residential Tenancies Act 1987 (WA)

⁹ Clause 45.2, Form 1AA Residential Tenancy Agreement.