

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
Premises:	[redacted]
Bond held:	\$1,106
Tenants:	[redacted] and [redacted]
Landlord:	[redacted]

Decision

The Commissioner orders:

1. The landlord must approve the tenants' request to keep the requested pet at the rental premises.

Request

On 21 August 2024, the tenants requested to have [redacted] a French Bulldog cross Pug (the requested pet), at the premises following the process established in the *Residential Tenancies Act 1987* (RTA).

Application

On 22 August 2024, the landlord applied to Consumer Protection for approval to refuse the tenants' request.

The landlord's refusal was on the grounds that:

- The premises are unsuitable for keeping the pet.
- Keeping the pet at the premises is likely to cause the landlord undue hardship.

Evidence

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

The landlord provided the following evidence:

- Application to Commissioner.
- Pet request Form 25.
- Written submissions to Consumer Protection.
- Ingoing property condition report, including ingoing photographs.
- Lease agreement.
- Photographs [redacted].

The tenants provided the following evidence:

- Written submissions to Consumer Protection.
- Photos of the requested pet.

- References from neighbours.
- Map showing a park near the residence.

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.³

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

- 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 are unsuitable for keeping the pet.
- keeping the pet at the premises is likely to cause the landlord undue hardship.

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

Is the premises unsuitable for keeping the pet?

The landlord has concerns that the building, being a [redacted] multi-storey [redacted], does not have sufficient space for a dog to be accommodated.

Photographs from the landlord have been supplied to show the building structure and the grounds.

The landlord has supplied a copy of the ingoing property report and photographs which show that there is a secure balcony area with astro turf on the surface and shelter from the weather.

The tenant advised that the requested pet is currently living in the apartment. They supplied photographs of the requested pet eating and resting in a small area of the apartment's interior. The tenants advised that the requested pet is kept on the balcony when not at home and during the day.

The tenants supplied a photograph of the requested pet socialising in the park that is near the residence.

While I acknowledge that the unit is not as large as a typical house, I am not satisfied that the premises, in conjunction with the surrounding area, provide insufficient space for the requested pet. For this reason, I am not satisfied that the premises are unsuitable for keeping the requested pet.

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

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

The Macquarie Dictionary defines the terms as:

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).

- 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, raising concerns about:

- Other residents applying for pets which will create conflict and noise.
- Droppings in the common areas, and barking causing noise issues.
- No grassed areas, only a communal courtyard and small balconies.
- Conflicts arising with neighbours who live in close proximity to each other.
- A history of a [redacted] number of noise complaints at the complex.

The landlord has not supplied any evidence that the requested pet, which currently resides at the unit, has caused any of these issues of concern to date. A letter of support in favour of the requested pet has been provided by neighbours of the tenant.

The RTA states that tenants are responsible for all nuisance caused by a pet kept at the premises.⁷

The *Dog Act 1976* (WA) sets out requirements that the tenants would have to comply with if there were complaints about nuisance caused by dogs. I am satisfied that if there were any nuisance complaints, the landlord has appropriate remedies under the RTA and the *Dog Act 1976* (WA).⁸

Considering the definition of undue hardship and the information from the landlord and the tenants, 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 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] October 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.

⁷ Section 50I(a) *Residential Tenancies Act 1987* (WA).

⁸ Section 62 *Residential Tenancies Act 1987* (WA).