

# 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:** \$2,600  
**Tenant:** [redacted]  
**Landlords:** [redacted] and [redacted]

### Decision

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The Commissioner orders:

1. The landlords must approve the tenant's request to keep the requested pet at the premises.
2. The tenant is permitted to keep the requested pet at the premises.
3. The landlords' approval of the requested pet is subject to the following condition:
  - a. The requested pet must be removed from the premises during all routine inspections.

### Request

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On 1 August 2024, the tenant requested to keep [redacted], a nine-year old Dachshund (the requested pet), at the premises, following the process established in the *Residential Tenancies Act 1987* (RTA).

### Application

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On 14 August 2024, the landlords applied to Consumer Protection for approval to refuse the tenant's request.

The landlords' refusal was on the grounds that:

- Keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person.

### Evidence

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

The landlords provided the following evidence:

- Medical certificate from [redacted].
- Copies of email communications between landlord and tenant.
- Written submissions to Consumer Protection.

The tenant provided the following evidence:

- Pet Request Form.
- Photo of the requested pet.

- Copy of tenancy application.
- Copy of lease agreement.
- Written submissions to Consumer Protection.
- Copies of email communications between landlord and tenant.

## Law

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

The tenant is responsible for any damage or nuisance caused by a pet they keep at the premises.<sup>2</sup>

Landlords have the right to apply to Consumer Protection for an order allowing them to refuse the pet.<sup>3</sup>

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.<sup>4</sup>

The Commissioner may approve this application if satisfied that keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person.<sup>5</sup>

The landlords are responsible for demonstrating that the above reason applies.

## Reasons for Decision

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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 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.<sup>6</sup> The landlord must demonstrate that the risk is likely to occur and that the consequences are serious enough to be considered 'unacceptable'.

<sup>1</sup> Section 50A *Residential Tenancies Act 1987* (WA).

<sup>2</sup> Section 50I *Residential Tenancies Act 1987* (WA).

<sup>3</sup> Section 50E(1) *Residential Tenancies Act 1987* (WA).

<sup>4</sup> Section 50E(2) *Residential Tenancies Act 1987* (WA).

<sup>5</sup> Section 50E(3) *Residential Tenancies Act 1987* (WA).

<sup>6</sup> *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 submit they both have asthma and that [redacted]'s asthma is more severe. In their application to the Commissioner, the landlords stated:

Both landlords are severally allergic to dogs and as such, entering the property for necessary tasks could bring on an asthma attack with potentially major health repercussions.

On 1 September 2024, the landlords supplied a medical certificate from [redacted] which states:

[redacted] suffers with asthma which [redacted] has noticed is aggravated by exposure to dog hair. As such it is best if [redacted] refrains from contact with dogs and dog hair.

The medical certificate from [redacted] confirms [redacted] suffers from asthma. The medical certificate states that [redacted] informed the GP that [redacted] has noticed [redacted]'s asthma is aggravated by dog hair.

Is the risk unacceptable?

The GP relaying what they have been told by [redacted] is insufficient medical evidence to support the claim that [redacted]'s asthma is aggravated by dog hair. The medical certificate also does not provide information about the level of risk to [redacted]'s health if [redacted] asthma was aggravated by exposure to the requested pet or its hair. Given this, I have insufficient evidence to conclude that this risk is unacceptable.

No medical evidence has been provided about [redacted]'s asthma or [redacted]'s sensitivity to dog hair.

On 16 September 2024, Consumer Protection wrote to the landlords and advised them of our preliminary view; that that the medical certificate provided on 1 September 2024 did not demonstrate that the requested pet would pose an unacceptable risk to the health and safety of a person. The landlords were given a further 14-days to provide additional medical evidence to substantiate this ground. The landlords did not provide Consumer Protection with any additional evidence during the 14-day window.

Having regard to all the evidence before me, I am not satisfied that the requested pet is likely to cause an unacceptable risk to the health and safety of a person.

**Condition – the requested pet is to be removed from the premises during all routine inspections**

While I am not satisfied that the requested pet is likely to cause an unacceptable risk to the health and safety of a person, I acknowledge that the landlord's medical certificate recommends it is best if [redacted] refrains from contact with dogs and dog hair.

Accordingly, I have decided to impose a condition requiring the tenant to remove the requested pet from the premises during all routine inspections.

This condition is unlikely to be onerous for the tenant, as a routine inspection can only occur a maximum of four times per year.<sup>7</sup>

This condition will ensure the landlord is not exposed to the requested pet during routine inspections.

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<sup>7</sup> Section 46(3) Residential Tenancies Act 1987 (WA).

## **Appeal**

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A tenant or landlord who is dissatisfied with this decision can appeal to the Magistrates Court of Western Australia within seven days after receiving this decision, or a later date with leave from 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](http://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