

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO [REDACTED]

CATCHWORDS

Tenant pet on rented premises, reasonable grounds for landlord to refuse consent to keep pet on rented premises, *Residential Tenancies Act 1997* sections 71A, 71B, 71C, 71D, 71E

APPLICANT

[REDACTED]

FIRST RESPONDENT

[REDACTED]

SECOND RESPONDENT

[REDACTED]

WHERE HELD

Melbourne

BEFORE

[REDACTED]

HEARING TYPE

Hearing (telephone hearing)

DATE OF HEARING

26 March 2020

DATE OF ORDERS

1 April 2020

**DATE OF WRITTEN
REASONS**

24 April 2020

CITATION

[REDACTED] (Residential Tenancies)
[2020] VCAT 484

FINDINGS

- 1 On 02 March 2020 the tenant requested the landlord's consent to keep a pet at the rented premises.
- 2 The pet is a male [REDACTED] with a brindle coat, no. [REDACTED] named [REDACTED]
- 3 The landlord applied to VCAT (within the 14 days after receiving the tenant's request) for an order that it is reasonable to refuse to consent to keep the pet on the rented premises.

- 4 Having considered the matters in section 71E(2) of the *Residential Tenancies Act 1997*, it is not reasonable to refuse to keep the pet on the rented premises.

ORDER

1. The tenant is permitted to keep the pet on the rented premises.


Member



APPEARANCES:

For Applicant:  Rental Department Manager
 appearing
remotely

For First Respondent  appearing remotely

For Second Respondent  appearing remotely

REASONS

THE PARTIES

1. The applicant is a landlord of rented premises at [REDACTED] (rented premises).
2. The respondents are tenants of the rented premises.

THE ISSUES

3. On 2 March 2020 the tenants requested the landlord's consent to keep a pet dog on the rented premises. The request was made under section 71B(1) of the *Residential Tenancies Act 1997 (RTA)* on a Pet request form in the form approved by the Director of Consumer Affairs.
4. On 10 March 2020 the landlord applied to VCAT under section 71D for an order that it is reasonable for the landlord to refuse consent to keep the tenants' pet dog on the rented premises. In his application the landlord relied on two grounds as follows:

- The landlord's insurance policy does not include coverage for pets.
- The landlord suffers from allergies and hayfever which may impact him should he decide to return to the rented premises to live.

At the hearing the landlord's agent raised the following further issues:

- That the landlord had previously suffered pet damage to the rented premises that the landlord had been unable to recover from the tenant and was consequently concerned that the tenants' pet dog may cause damage to the rented premises that the landlord would be unable to recover from the tenants.
- Whether the tenants were already keeping the pet dog at the rented premises.

THE LAW

5. On 2 March 2020 new sections 71A-E of the RTA came into effect (pet laws). The pet laws prescribe a procedure for a tenant to request the landlord's consent to keeping a pet on the rented premises and that a landlord must not unreasonably refuse such consent. The pet laws do not apply to pets living at the rented premises before 2 March 2020.
6. In moving the Consumer Legislation Amendment Bill 2019 on 12 September 2019 the Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Suburban Development described the proposed pet laws as "reforms" that:

contribute to strengthening the conception of residential rental accommodation as a "home" while retaining the ability of landlords to

withhold consent to a pet in their rental property where, in all the circumstances, it is reasonable to do so.

7. Debate on the second reading of the proposed pet laws included the following statements that are instructive as to the purpose of the pet laws:
- “[P]et ownership is a long-term and serious commitment and it usually lasts longer than our tenancy agreements. Sadly we also know that rental pet bans are the cause of many people having to give up their beloved pets. In Victoria the RSPCA reports that around 15 per cent of the dogs and cats surrendered came into their care because their owners were moving and could not take them to their new homes. Pets provide companionship, support and improve our emotional well-being. Yes, some pets make a mess, but so do children...” Member for Northcote.
 - “Obviously when we sign up to having a dog or a cat we are hopeful that that dog or cat will be in our lives for 10 to 15 years... Normally we might remain in the same rented accommodation for 2 to 3 years. Our family circumstances will change, we will have kids, our kids will move on-all of those things-and as we go about securing new leases to new properties we should have that opportunity, that right, to bring our cat or our dog with us into that new home...If that dog or cat does any damage to their property outside of normal wear and tear, then it is quite reasonable for the home owner to expect that home to be restored.” Member for South Barwon.
8. Section 71E (2) of the RTA states that in determining an application under section 71D the Tribunal may have regard to the following matters:
- (a) the type of pet the tenant proposes to keep, or is keeping, on the rented premises;
 - (b) the character and nature of the rented premises;
 - (c) the character and nature of the appliances, fixtures and fittings on the rented premises;
 - (d) whether refusing to keep the pet on rented premises is permitted under any act;
 - (e) any prescribed matters;
 - (f) any other matter the Tribunal considers relevant.

THE EVIDENCE

9. [REDACTED] gave the following evidence on behalf of the tenants:
- The tenants did not have a dog when they moved into the rented premises in May 2019.
 - In February 2020 the tenants had negotiated to purchase a puppy and on 28 February 2020 the tenants emailed the landlord's agent

requesting permission to have a puppy advising that it will be a six week old puppy [REDACTED] Dog

- On 1 March 2020 the tenants collected the puppy that was eight weeks at the time of collection and took the puppy to family living in [REDACTED] New South Wales. The tenants named the puppy [REDACTED] [REDACTED] has since 1 March 2020 lived with the tenants' family in [REDACTED] NSW.
 - On 2 March 2020 the tenants requested the landlord's consent to keep the puppy at the rented premises using the Pet request form in the form approved by the Director of Consumer Affairs. The Pet request form included that the pet was a [REDACTED] no. [REDACTED] male, brindle eight weeks old-medium size.
 - One of the family members living in [REDACTED] works with the tenant [REDACTED] and brings [REDACTED] to work each day. The tenants also visit [REDACTED] in [REDACTED] New South Wales after work and on weekends.
 - While [REDACTED] attends a vet close to the rented premises and has visited the rented premises on occasions when he has visited the vet or the tenants are close by the rented premises with [REDACTED] the dog is not currently and never has been living at the rented premises.
 - The tenants are keen for [REDACTED] to be able to come and live with them at the rented premises as soon as possible.
 - It was apparent to the tenants when they moved into the rented premises in May 2019 that at least one dog had lived at the rented premises. There was dog poo in the garden and evidence of dog damage. The tenants submitted photos from the ingoing condition report showing dog poo in the garden, the rubber handle on the clothing hoist chewed off and with teeth marks and a veranda post badly scratched or chewed. Internally there was evidence of the carpet damaged where it joined the tiled floor. Although it is not clear that this damage was caused by an animal.
10. [REDACTED] gave the following evidence on behalf of the landlord:
- The rented premises consist of an older style home with a reasonable size backyard. [REDACTED] estimates the rented premises comprise approximately 700 m² of land.
 - The landlord has suffered pet damage to the rented premises from pets kept by previous tenants without his consent and that he has been unable to recover the cost of that pet damage.
 - The landlord's insurance cover does not include damage caused by tenant's pets. This is an optional extra at a cost of \$162 per annum for coverage and an additional \$250 excess for claiming this item. The

landlord provided documentary evidence of his certificate of insurance and the policy documentation.

- The landlord has advised by email that he suffers from allergies and hayfever and has concerns that this would be an issue if he were to return to live at the rented premises. No medical evidence was tendered. Nor was any evidence given of the landlord planning to live at the rented premises when the tenants vacate on 31 May 2020.
- The landlord is suspicious as to the tenants' credibility because by an email on 28 February 2020 the tenants referred to a six week puppy; on the pet request form dated 2 March 2020 the tenants referred to an eight week puppy and then in an email dated 23 March 2020 the tenants referred to having a dog that resides in [REDACTED]. This made the landlord suspicious that the dog was already owned by the tenants and living at the rented premises.

FINDINGS

11. [REDACTED] gave a logical explanation of her recent purchase of [REDACTED] and his current living arrangement in [REDACTED]. No evidence was given that [REDACTED] is or has been living at the rented premises. Accordingly, I find that at the date of hearing [REDACTED] was not living at the rented premises and consequently the pet laws apply.
12. I turn to what I regard as the relevant in this case criteria set out in section 71E(2).

The type of pet the tenant proposes to keep, or is keeping, on the rented premises

13. I accept the evidence that [REDACTED] will grow to a medium size dog.

The character and nature of the rented premises

14. The rented premises comprise an older style home with a reasonable size backyard
15. I find that it would not be reasonable to refuse consent upon the grounds of type of pet or character and nature of the rented premises.

Other relevant matters

16. Whether or not a landlord takes out landlord insurance with or without an optional extra for tenant pet damage is a commercial decision to be made by the landlord. The additional premium and excess for the optional extra for tenant pet damage is not a ground for refusing consent. To permit this as a ground for refusing consent would thwart the purpose of the pet laws.
17. Similarly the fact that the landlord has suffered pet damage that he has been unable to recover from previous tenants is not a ground for refusing consent. The RTA provides for landlord's to recover pet damage in excess of usual wear and tear in the same manner as it provides for landlord's to recover any other type of tenant damage in excess of usual wear and tear.

18. I am not satisfied that a landlord's medical condition is a valid ground for refusing consent. Prospective future tenants may equally suffer a medical condition that may be aggravated by a pet on the rented premises. In such circumstances I do not consider it unreasonable that the landlord or prospective future tenants would do such cleaning as they require for their individual health requirements. Accordingly, I do not find that this is a valid ground for refusing consent to the tenants keeping [REDACTED] at the rented premises.
- 19 In all of the above circumstances, it is not reasonable for the landlord to refuse consent to keep [REDACTED] on the rented premises.

[REDACTED]
Member

