

# Decision of the Commissioner for Consumer Protection

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

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| <b>Application Number:</b> | [redacted]                                 |
| <b>Application Type:</b>   | Landlord application to refuse pet request |
| <b>Premises:</b>           | [redacted]                                 |
| <b>Bond Amount:</b>        | \$3,800                                    |
| <b>Tenant(s):</b>          | [redacted]                                 |
| <b>Landlord(s):</b>        | [redacted]                                 |

### Decision

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The Commissioner orders:

1. The landlord 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 following condition applies to the landlord's approval of the requested pet:
  - a. Where the requested pet has been allowed on a couch, bed or carpet provided by the landlord as part of the tenancy, the tenant must have the item professionally steam cleaned at the end of the tenancy.
4. The following conditions do not apply:
  - a. The requested pet is to be kept out of the carpeted rooms.
  - b. The requested pet is to be kept in the second bathroom when the tenant is out.
  - c. All upholstered furniture, carpets, curtains and mattresses must be professionally steam cleaned at the end of the tenancy.

### Request

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On [redacted], the tenant requested to keep a 4-month-old Cavoodle dog (the requested pet) at the premises, following the process established in the *Residential Tenancies Act 1987* (WA) (RTA).

### Application

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On [redacted], the landlord applied to Consumer Protection for approval to refuse the tenant's request.

The landlord's refusal was on the grounds that:

- The premises are unsuitable for keeping the requested pet.
- Keeping the requested pet at the premises is likely to cause damage to the premises that could not be repaired for less than the amount of the security bond.

The landlord also requested the following conditions, should the Commissioner order the requested pet to be approved:

- Pet not to have access to carpeted rooms.
- Pet to be kept in second bathroom when the tenant is out.
- All upholstered furniture, carpet, curtains and mattress to be professionally steam cleaned at the end of the tenancy.

## Evidence

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

The landlord provided the following evidence:

- Screenshot of couch advertisement.
- Receipts for furniture included in the rental of the premises.
- Ingoing Property Condition Report.
- Screenshot of floorplan.
- Written submissions to Consumer Protection.
- Copy of Strata by-laws.
- Pet Request Form 25.
- Photo of balcony fence.
- Verbal statements to Consumer Protection.

The tenant provided the following evidence:

- Written submissions to Consumer Protection.
- Photos of couches with covers.
- Photos of pet cage.
- Verbal statements to Consumer Protection.

## 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>

Landlords have the right to apply to Consumer Protection for an order allowing them to refuse the pet request.<sup>2</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>3</sup>

The Commissioner may approve this application if satisfied that the grounds claimed by the landlord are established. In this case, the claimed grounds are:<sup>4</sup>

- The premises are unsuitable for keeping the requested pet.
- Keeping the requested pet at the premises is likely to cause damage to the premises that could not be repaired for less than the amount of the security bond.

The landlord is responsible for demonstrating that at least one of these grounds applies.

The Commissioner may set conditions on the approval of the tenant's request.<sup>5</sup>

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

<sup>2</sup> Section 50E(1) *Residential Tenancies Act 1987* (WA).

<sup>3</sup> Section 50E(2) *Residential Tenancies Act 1987* (WA).

<sup>4</sup> Section 50E(3) *Residential Tenancies Act 1987* (WA).

<sup>5</sup> Section 50E(4) *Residential Tenancies Act 1987* (WA).

## Reasons for Decision

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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?**

The RTA provides examples of why a premises may be unsuitable, such as lack of secure fencing, insufficient open spaces and any other thing necessary to humanely keep pets.

The premises are a fully furnished, two-bedroom, two-bathroom apartment with a balcony, on the fourth floor [redacted]. The balcony has two moveable panels to provide shade and privacy, and there is a small gap under the bottom of the glass panels. The premises has carpeted bedrooms.

In their application to the Commissioner, the landlord advised they had concerns whether the premises would be suitable for the requested pet due to:

- The gap on the balcony.
- No dog door to let the pet move between the indoor and outdoor space for toileting.
- Lack of a laundry room for the requested pet to be kept while the tenant is out.

A photograph was provided by the landlord showing the gap between the floor rail and the bottom of the glass balcony fence to be approximately 5cm. Research shows the average height of a Cavoodle is 25 to 38 cm.<sup>6</sup> A gap of this size is unlikely to pose a risk to the requested pet.

A floorplan provided by the landlord shows the premises are reasonably sized for the requested pet.

In a written submission to Consumer Protection, the tenant advised:

- They mostly work from home, allowing time and flexibility to care for the requested pet.
- The requested pet is an intelligent breed and easy to toilet train.
- A pet crate will be purchased to secure the requested pet when they are out.
- The requested pet will be walked regularly.

The landlord has not provided evidence which demonstrates the tenant will not adequately meet the toileting needs of the requested pet.

Considering the evidence provided by the landlord and the tenant, I am not satisfied that the premises are unsuitable for keeping the requested pet.

### **Is keeping the requested pet at the premises likely to cause damage to the premises that could not be repaired for less than the bond?**

A security bond of \$3800 is held with Bonds Administration for this tenancy.

In a written submission to Consumer Protection, the landlord advised the property is a newly built [redacted] fully furnished and equipped apartment. The landlord advised the white curtains, rugs, light upholstered furniture, floorboards and carpets are new. The landlord is concerned the requested pet could damage the new items as it is still young and prone to chewing at only 4 months old.

There is a general risk with every tenancy that a tenant may damage the premises they are renting. This is addressed in the RTA by outlining the tenant's responsibilities; the tenant shall not intentionally or negligently cause or permit damage to the premises.<sup>7</sup>

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<sup>6</sup> [www.petbarn.com.au/petspot/dog/dog-breeds/cavoodle/](http://www.petbarn.com.au/petspot/dog/dog-breeds/cavoodle/)

<sup>7</sup> Section 38(1)(a)(b)(c) *Residential Tenancies Act 1987* (WA)

The RTA similarly outlines tenant responsibilities for keeping a pet; the tenant is responsible for nuisance caused by a pet, and repairing damage caused by a pet.<sup>8</sup>

As outlined in the heading above, the tenant provided a plan for caring for the requested pet.

The landlord has not provided evidence demonstrating how or why the requested pet is likely to cause damage that would exceed the bond.

In the written submission from the tenant, they advised they have already purchased sofa covers to protect the couches from general wear and tear. The tenant confirmed they are aware of their responsibilities to ensure the property is well maintained and to minimise damage.

Having reviewed all the evidence provided, I am not satisfied that the requested pet is likely to cause damage to the premises that could not be repaired for less than the security bond.

### **Requested conditions**

The landlord requested three conditions to be imposed if the Commissioner orders the landlord to approve the requested pet.

When deciding whether to approve a condition, I am guided by the following factors:

- Is the requested condition appropriate, reasonable, and proportionate to the risk?
- Is the requested condition covered under any other law?
- Do the parties agree to the requested condition?
- Does the proposed condition address any of the following factors in the RTA: <sup>4</sup>
  - the premises are unsuitable for keeping the pet;
  - keeping the pet at the premises would exceed a reasonable number of pets being kept at the premises;
  - keeping the pet at the premises is likely to cause damage to the premises that could not be repaired for less than the amount of the security bond for the premises;
  - keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person; keeping the pet at the premises is likely to cause the lessor undue hardship;
  - a prescribed ground.

I have addressed each condition separately below.

#### The requested pet is to be kept out of the carpeted rooms

The tenant has outlined their plan to toilet train the requested pet, to walk the requested pet regularly, to work mainly from home, and to house the requested pet in a crate while the tenant is not home.

The landlord has not presented any evidence which shows the requested pet is likely to cause damage to the carpets at the premises, or that damage would exceed the bond. As outlined in the heading above, the tenant is responsible for damage caused by the pet.

I am not satisfied that it is reasonable to prohibit the requested pet from accessing the carpeted rooms.

For these reasons, this condition is refused.

#### The requested pet be kept in second bathroom when the tenant is out

In the tenant's written submission to Consumer Protection they have advised they work from home and when they are not at the premises, the requested pet will be kept in a pet crate.

Given there are a number of areas in the premises the crate could be placed without causing damage to the flooring, and that the landlord has not outlined why the requested pet would need to be kept in the second bathroom, I find this condition to be unreasonable.

For these reasons, this condition is refused.

All upholstered furniture, carpets, curtains and mattresses must be professionally steam cleaned at the end of the tenancy.

The landlord has not provided evidence to show why all upholstered furniture, carpets, curtains and mattresses will likely need to be professionally steam cleaned at the end of the tenancy.

This condition places a high burden on the tenant, despite there being no evidence that keeping the requested pet at the premises will result in the need for this cleaning.

For these reasons, this condition is refused.

In its place, I have set the following condition:

Where the requested pet has been allowed on a couch, bed or carpet provided by the landlord as part of the tenancy, the tenant must have the item professionally steam cleaned at the end of the tenancy.

The tenant has the option to restrict the requested pet from accessing the carpets, couches and beds provided by the landlord, in which case, these items would not require professional steam cleaning at the end of the tenancy.

## **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](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

**Delegate of the Commissioner for Consumer Protection**

**DATE OF ORDER AND WRITTEN REASONS**

[redacted]