

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2024/3128

CATCHWORDS

Residential Tenancies Act 1997 (Vic) sections 71A, 71B, 71C, 71D(1), 71E, application to refuse consent to keep a pet on rented premises

APPLICANT	Tatiana Mezin
RESPONDENT	Adrian Lauretti Harlan Wilkerson
BEFORE	V Bombas, Member
HEARING VENUE	Telephone
HEARING TYPE	Final Hearing
DATE OF HEARING	31 May 2024
DATE OF ORDER	27 June 2024
CITATION	Mezin v Lauretti (Residential Tenancies) [2024] VCAT 600

ORDER

FINDINGS

1. On 17 January 2024 the renters requested the residential rental provider's consent to keep a pet at the rented premises.
2. The pet is a Soft-coated Wheaten Terrier named Gerald.
3. The residential rental provider applied to VCAT (within 14 days after receiving the renter's request) for an order that it is reasonable to refuse consent to keep the pet on the rented premises.
4. Having considered the matters in section 71E(2) of the *Residential Tenancies Act 1997 (Vic)*, it is not reasonable to refuse consent to keep the pet on the rented premises.

ORDER

The renters are permitted to keep the pet on the rented premises.

V Bombas
Member



APPEARANCES:

For Applicant

In person

Samantha Lee, real estate agent

For Respondents

In person



REASONS

BACKGROUND

- 1 The parties entered into a 12-month fixed term residential rental agreement on 12 August 2023.
- 2 The rented premises is a two-storey home, built in January 2020 by the current residential rental provider who lived in the premises prior to it becoming a rental property. The current renters are the first renters to occupy the property, and there have been no occupants of the premises other than the residential rental provider and the renters.
- 3 The residential rental provider currently lives overseas and intends to return to Australia and reside in the rented premises later this year. Her exact date of return is uncertain, and there has been no notice to vacate issued.
- 4 In December 2023 the renters emailed the agent a pet request to keep a dog, receiving a response that the residential rental provider had a severe allergy to pets and asking that the request be withdrawn, or proposing that the renters may wish to end the tenancy early. The renters withdrew their request, however after minding the dog on a number of occasions at the rented premises they made another application to keep a pet.
- 5 On 17 January 2024 the renters made a request to keep a pet, in particular a 2 year old Soft-coated Wheaten Terrier named Gerald. The residential rental provider responded on 29 January 2024 with an application under section 71D of the *Residential Tenancies Act 1997* (Vic) ('the Act') for an order that it is reasonable to refuse consent to keep a pet.
- 6 A hearing took place on 31 May 2024 and the residential rental provider's agent requested written reasons of the Tribunal's decision. At the conclusion of the hearing, I reserved my decision.

THE LAW

- 7 Division 5B of the *Residential Tenancies Act 1997* (Vic) governs pets in residential rented premises and sets out provisions which allow a renter to request consent to keep a pet.
- 8 Section 71B allows a renter to request consent to keep a pet, and section 71C provides that a residential rental provider must not unreasonably refuse consent. Section 71D operates to allow a residential rental provider to apply to the Tribunal to refuse consent to keep a pet on rented premises.
- 9 Section 71C places an onus on the residential rental provider to apply to the Tribunal for an order to refuse consent to the keeping a pet. The onus is on the residential rental provider to show why it is reasonable to refuse consent.
- 10 In determining an application to refuse consent section 71E(2) states that the Tribunal may have regard to the following matters;



- a. The type of pet the renter 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 fitting of the rented premises;
- d. Whether refusing consent to keep the pet on rented premises is permitted under any Act;
- e. Any prescribed matters; and
- f. Any other matter the Tribunal considers relevant.

EVIDENCE OF THE RESIDENTIAL RENTAL PROVIDER

- 11 The residential rental provider says that she has a chronic medical condition which is 'Rheumatoid Arthritis Autoimmune' and that she has an allergy to animal dander. When triggered, her allergy exacerbates rheumatoid symptoms. She states that this triggers pain and swelling of the joints, and symptoms of sneezing, itching, nose dripping and breathing difficulties.
- 12 The evidence of the residential rental provider was supported by a letter from her general practitioner confirming her diagnosis and stating that she cannot have animals living in her house which includes a home in which she may live in the future.
- 13 The residential rental provider claims that animal dander can persist for six months despite thorough cleaning and can adhere to all surfaces.
- 14 The residential rental provider states that she carefully manages her health by ensuring that no animals are kept in her house, and by ensuring that family members and guests do not wear shoes in her home.
- 15 The residential rental provider submits that it is reasonable to refuse consent to keep a pet as the renters have allowed a dog to stay at the rented premises without consent. She further submits that the property will not be able to be adequately cleaned of all animal dander and the contamination of the property will impact her health for many months after the property is vacated and she is able to resume occupation.
- 16 The residential rental provider says that she has previously reacted to even so-called hypoallergenic dogs, and that there is no such thing as a completely hypoallergenic dog.
- 17 The agent provided an estimate that it would cost approximately \$8,000 to replace carpets and either paint or wash walls if a pet was to be kept at the rented premises.

EVIDENCE OF THE RENTERS

- 18 The renters say that the dog they are wanting to keep, Gerald, does not currently reside at the rented premises. They state that from time to time



they have cared for the dog at the rented premises for friends for up to three days. The renters contend that this does not amount to a breach of the residential rental agreement not to keep a pet without consent.

- 19 The renters state that the medical history of the residential rental provider was not disclosed to them prior to them entering into the rental agreement, and that they were not aware that the residential rental provider had a strong opposition to pets being kept at the rented premises. They state that at the time they entered into the agreement they did not have a pet and had not committed to keeping one. They did not provide evidence as to whether they would have entered into the rental agreement had they known of the residential rental providers' medical history.
- 20 The renters say that they have undertaken to keep the dog off carpeted areas of the house, including upstairs, and to have the dog sleep in a crate. The dog can easily be prevented from going upstairs as there is already a child gate on the stairs. This information was also contained in their application to keep a pet.
- 21 The renters say that one of them has a dust allergy and therefore they use an air purifier in the house, which presumably will reduce the presence of animal allergens.
- 22 One of the renters has children from a previous relationship who frequently stay at the rented premises and these children have cats at their other home. Although the cats do not stay in the rented premises, the renters say that the children are likely to carry pet dander on their clothes and shoes.
- 23 The renters indicated a willingness to end their lease early as a result of the residential rental providers stance, however this offer was refused by the residential rental provider.

DISCUSSION

- 24 The legislation specifically lists the factors which the Tribunal may take into account when determining an application to refuse consent, which are listed above.
- 25 The first factor to be considered is the type of pet for which consent is sought. In this instance the pet is a dog, specifically a Soft-coated Wheaten Terrier. There were no particular characteristics of this breed of dog discussed at the hearing to indicate that the pet is anything other than a domestic family dog, suitable in size and temperament for the renters and the rented premises.
- 26 The second factor to take into account is the character and nature of the rented premises. In this instance the rented premises is a relatively new home, in which the residential rental provider intends to reside. There was no other evidence regarding the nature and characteristics of the rented premises.
- 27 The third factor to consider is the character and nature of the appliances, fixtures and fitting of the rented premise. There was no evidence regarding



these factors presented, and nothing to indicate that the appliances, fixtures and fittings of the rented premises are particularly unique or unusual. It is of note that only the bedrooms have carpet.

- 28 There are no matters that have been brought to my attention to consider in relation to whether refusing consent to the pet on rented premises is permitted under any other Act, and there are no prescribed matters to consider.
- 29 Section 71E(2)(f) refers to *any other matters* the Tribunal considers relevant, and it is appropriate for me to consider the health implications of the residential rental provider, if a pet is to be kept at the rented premises.
- 30 I accept the evidence of the residential rental provider that her health will be impacted if a pet is kept in a house in which she lives, or in which she intends to live in the future. She experiences an autoimmune condition which is exacerbated by animal dander, and this evidence has not been disputed. She states that she is likely to need to replace carpet and either paint or wash walls if a pet is kept in the rented premises, and that this would cost approximately \$8,000. I have not been presented with any quotes to substantiate this cost, or any evidence regarding types of cleaning which can be conducted to remove pet dander, and whether such cleaning can be effective.
- 31 The renters have provided evidence in the hearing, and also in their application that they intend to keep the dog off carpeted areas and to use an air purifier. They appear to be mindful of the particular needs of the residential rental provider and have not sought to minimise her concerns. They have provided evidence of the efforts they will go to in order to minimise allergens, such as keeping the dog off carpeted areas and using an air purifier.
- 32 It is of note that there is nothing to suggest that the renters are anything other than responsible renters. There is a suggestion that there has been a breach of the Act or the residential tenancies agreement by keeping a dog without consent, which the renters deny. In any event this was not an application regarding a breach of duties or a breach of the agreement, and I make no findings or determination in relation to such a breach.
- 33 The residential rental provider's health and the lengths she is required to avoid allergens are unique. In the home in which she lives she takes extra care to minimise allergens. These are not reasonable expectations to place on a renter. There is no expectation that renters or their guests remove their shoes when entering rented premises or to ensure that they are not inadvertently contaminating a home with animal dander. Any such requirement would be considered unreasonable and unduly harsh. It can reasonably be assumed that many people could inadvertently carry allergens on their shoes or clothes, and it would be unreasonable to expect them to avoid such allergens due to the health of a residential rental provider. It follows that the residential rental provider in this case may well chose to conduct a more rigorous clean of the premises prior to living in it, or even



replace carpets. That is a choice that may be forced on her due to health concerns, and not necessarily a reflection on the cleanliness of the rented premises.

- 34 The residential rental provider has willingly entered into a residential rental agreement and must accept that there is an element of risk associated with the introduction of allergens into the rented premises, regardless of whether a pet is kept in the property or not. She cannot reasonably expect to impose the level of care and caution that she exercises in her own home onto renters, and this extends to the keeping of a pet.
- 35 Taking into account all of the relevant factors above, I am not satisfied that it is reasonable for the residential rental provider to refuse consent to keep the pet on the rented premises, and accordingly make an order permitting the renters to keep a pet, specifically a Soft-coated Wheaten Terrier named Gerald.

V Bombas
Member

