

How new pet rights for tenants will impact body corporate



PETS AND NEW TENANCY LEGISLATION

Residential tenancy laws in Queensland are set to change on 1 October, making it easier for rental property tenants to keep a pet.

While there has been extensive media coverage of the new legislation, little has focused on the impact to strata developments. Specifically, whether existing body corporate by-laws overrule those in the new amendment.

What does the legislation mean for Landlords?

Under the new legislation coming into effect on October 1, 2022:

- Landlords will be unable to apply a blanket ban on pets within their rental property.
- There will be a specific RTA form for a tenant to apply to the property owner to keep a pet
- Landlords must consider all applications on their individual merits
- Landlords must give the tenant an answer within 14 days. If they don't respond, the law considers the pet has been approved.
- Application can only be refused based on a specific list of prescribed grounds.

Grounds for the Landlord's refusal of a pet application.

New section 184E of the Residential Tenancies and Rooming Accommodation ACT 2008 sets out that

The following are the only grounds for a lessor to refuse a tenant's request for approval to keep a stated pet at the premises; -

1. Keeping the pet would exceed a reasonable number of animals being kept at the premises.
2. The premises are unsuitable for keeping the pet because of a lack of appropriate fencing, open space or another thing necessary to humanely accommodate the pet.
3. Keeping the pet is likely to cause damage to the premises or inclusions that could not practicably be repaired for a cost that is less than the amount of the rental bond for the premises.
4. Keeping the pet would pose an unacceptable risk to the health and safety of a person, including, for example, because the pet is venomous.
5. Keeping the pet would contravene a law.
6. Keeping the pet would contravene a body corporate by-law or park rule applying to the premises.
7. The tenant has not agreed to the reasonable conditions proposed by the lessor for approval to keep the pet.
8. The animal stated in the request is not a pet.

Body Corporate by-laws overrule a tenant's right to keep a pet

While body corporate blanket-bans on pets are not common, most bodies corporate have some type of restriction or regulation on the type and number of pets a resident can have at the scheme.

These restrictions often include

- A requirement to obtain committee approval for each pet
- A requirement to register the pet with the on-site manager or caretaker
- The number of pets
- The type of pet
- Conditions about how the pet can live at the site – where it can and can't go.

These body corporate by-laws will overrule any approval granted by a landlord owner if the two are conflicting.

Inconsistency in the decision timeframe

One of the most significant parts of the new tenancy legislation is that the landlord must give the tenant an answer with 14 days after receiving the application. If the landlord does not respond within 14 days, or if the landlord says no but that decision deviates from the approved list of reasons to refuse a pet, then the pet application is deemed to have been approved.

Silence from the owner – pet application approval

Problems may arise within body corporate schemes when: -

- Investor owners who previously did not allow pets at all, may not know their body corporate's by-laws around pets (as they previously did not need to).
- If a by-law requires that pets must receive committee approval, under the body corporate legislation the committee has at least 6 weeks to consider the application, creating an unavoidable conflict between the 14-day owner approval timeframe, and the 6-week approval timeframe for the body corporate.

The body corporate committee must respond rapidly to a pet approval request to meet the 14-day timeframe.

What is likely to happen in the real world?

- Media attention to this rental law change will most likely result in rental agents and body corporate committees receiving substantially more pet application from tenants.
- Tenants rarely obtain a copy and review the body corporate by-laws or consider their effect, before signing a lease. This step in rental property leasing will become more important.
- The onsite manager is better placed to process and manage pet applications on behalf of investor owners and body corporates.