Pet Disputes: An Animal is more than one Animal

Bruce v The Owners – Strata Plan No. 98803 **[2022] NSWCATCD 83**

The recent decision in *Bruce v The Owners Strata Plan No. 98803* [2022] NSWCATCD 83 gave consideration to the restrictions on tenants keeping pets in strata schemes. The matter was brought by two tenants, whose pet application to keep their French bulldog had been rejected by the owners corporation. The tenants already had one dog living in their lot. Their application was rejected as the Owners Corporation claimed that a reference to 'an animal' and 'the animal' within various sections of the by-laws implied that only one animal may be kept on each lot, and that the area of the backyard was not big enough for an additional dog. The main issue considered by General Member S Hanstein was the basis on which owners corporations can withhold approval for the keeping of an animal on the lot or common property.

Section 137B of the **Strata Schemes Management Act 2015 (NSW)**

Under section 137B, by-laws and decisions by owners corporations will have no force or effect to the extent that it would unreasonably prohibit the keeping of an animal on a lot. It is taken to be reasonable to keep an animal on a lot unless the keeping of the animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property. Regulation 36A of the Strata Schemes Management Regulation 2016 (NSW) outlines the circumstances in which the keeping of an animal would 'unreasonably interfere' with another occupant's use and enjoyment of their property, for example, when the animal repeatedly runs at or chases another occupant, repeatedly causes damage to common property or another lot, or endangers the health of another occupant through infection or infestation.

Section 157 of the Strata Schemes Management Act 2015 **(NSW)**

The tenants sought an order from the Tribunal under section 157 of the Strata Schemes Management Act 2015 (NSW), which would declare that they may keep their dog on their lot or common property. Under section 157, the Tribunal may make an order for the keeping of animal on a lot or common property only if;

> (a) the by-laws permit the keeping of an animal with the approval of the owners corporation and provide that the owners corporation cannot unreasonably withhold consent to the keeping of an animal, and
>
> (b) the owners corporation has unreasonably withheld its approval to the keeping of the animal on the lot or common property.

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The first condition under s 157(a) was satisfied, however the Owners Corporation argued that the expression “an animal” and “the animal” found in sections 157, 137B and the by-laws of the scheme implied that occupants may keep one animal only. General Member Hanstein disagreed with this interpretation, finding that the section did not limit the number of animals that could be kept. Instead, General Member Hanstein held that owners corporations must *only* consider how the animal in any case will impact other residents, using the guidelines under section 36A of the Strata Schemes Management Regulation 2016 (NSW).

As the decision of the owners corporation in this case was based primarily on the misinterpretation of the section rather than any possible impact of the dog on other residents, the decision was found to be unreasonable. The Tribunal declared that the applicants may keep their dog on their lot, as long as it did not unreasonably cause annoyance or disturbance to other residents.

If you have issues regarding pets in your strata scheme, we have a great deal of experience in this area. Bannermans Lawyers can assist in all facets of by-laws, decision making and pets.

Key takeaways

- The case of Bruce v The Owners Strata Plan No. 98803 clarifies the interpretation of by-laws regarding pet ownership.
- Section 137B of the Strata Schemes Management Act 2015 (NSW) protects tenants' rights to keep pets unless it unreasonably interferes with others.
- The Tribunal ruled that owners corporations cannot unreasonably withhold consent for keeping pets based on misinterpretations of by-laws.
- Guidelines under Regulation 36A outline what constitutes unreasonable interference with other occupants.
- Bannermans Lawyers offers expertise in navigating strata law and pet ownership disputes.

*****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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8 December 2022

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