

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Boon v Department of Communities Housing, and Digital Economy* [2022] QCATA 37

PARTIES: **AMANDA BOON**
(applicant/appellant)

v

**DEPARTMENT OF COMMUNITIES HOUSING,
AND DIGITAL ECONOMY**
(respondent)

APPLICATION NO/S: APL025-22

ORIGINATING
APPLICATION NO/S: MCDT284/21 (Maroochydore)

MATTER TYPE: Appeals

DELIVERED ON: 24 March 2022

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judicial Member R Jones

ORDERS:

- 1. Leave to appeal is refused.**
- 2. The stay granted by Mellifont J on 2 February 2022 is lifted.**
- 3. The residential tenancy agreement between the Applicant and the Respondent is terminated from midnight 4 April 2022.**
- 4. A warrant of possession shall be issued authorising a police officer to enter and take possession of the premises located at 1/12 Cockatoo Street, Bli Bli.**
- 5. Such warrant of possession is to take effect from midnight 5 April 2022 and remain in effect for 14 days.**
- 6. I will hear from the parties if necessary, as to any consequential orders.**

CATCHWORDS: APPLICATION FOR LEAVE TO APPEAL – where no error of law revealed – where allegations of misconduct on the part of the respondent unsubstantiated - where no other basis to disturb the findings of the Tribunal below revealed – leave to appeal refused

TERMINATION OF RESIDENTIAL TENANCY – where applicant in breach of tenancy agreement by unlawfully

keeping too many animals on site – where some of the animals kept on site used for breeding purposes – where sufficient grounds established to warrant termination

FAILURE TO REMEDY BREACHES – where attempts to remedy breaches of tenancy agreement at best piecemeal – where steps taken by applicant failed to adequately address breaches of the tenancy agreement

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

REASONS FOR DECISION

- [1] This proceeding is concerned with a Minor Civil Dispute between Amanda Boon (Applicant) and the Department of Communities, Housing and Digital Economy (Respondent). The dispute is about the termination of the Applicant's tenancy agreement by the Respondent. For the reasons given, the orders are as follows:
1. Leave to appeal is refused.
 2. The stay granted by Mellifont J on 2 February 2022 is lifted.
 3. The residential tenancy agreement between the Applicant and the Respondent is terminated from midnight 4 April 2022.
 4. A warrant of possession shall be issued authorising a police officer to enter and take possession of the premises located at 1/12 Cockatoo Street, Bli Bli.
 5. Such warrant of possession is to take effect from midnight 5 April 2022 and remain in effect for 14 days.
 6. I will hear from the parties if necessary, as to any consequential orders.

Background

- [2] Up until 27 January 2022, the Applicant had been in occupation of the subject premises as a tenant of the Respondents. However, on 27 January 2022, Magistrate Stjernqvist made orders terminating the tenancy agreement as and from midnight 30 January 2022.
- [3] His Honour also issued a warrant of possession to authorise a police officer to enter the premises, such warrant to take effect on 31 January 2022 and remain in effect for 14 days, to expire at 6:00pm on 14 February 2022.
- [4] The same day, the Applicant filed her application for leave to appeal. The grounds of appeal are as follows:
- (a) Errors of law and facts and denial of procedural fairness;
 - (b) The Respondent lied about the Applicant, saying she had not remedied the breaches, had not removed cages, that nothing had changed – before and after photographs and other evidence was not relied upon (sic) to determine the truth and fact.

- (c) Continual reference to present tense and words such as “having” and “is” further misled as it implied that the Applicant had not remedied the breaches.
- (d) Damages at the property were misrepresented and fabricated.

[5] The orders sought by the Applicant on appeal are:

- (a) That the Applicant and her family continue renting the property until 30 October 2022 (stating that she does not want her daughters and herself to become homeless).
- (b) That she is responsible for the exit clean so that the Department cannot bill her the \$11,000 they have stated needs to be spent to repair the damages.

[6] On 27 January 2022, the Applicant also filed an application for a stay of the orders made by the learned Magistrate. The stay application relevantly stated:

I have lodged an appeal against the decision of the Magistrate & the matter relates to a termination of our tenancy. If the stay is not granted a warrant of possessions (sic) will be executed & my 2 teenage daughters & she (sic) will be homelessness (sic).

There is an order to terminate my tenancy and order a warrant of possession based on errors of law and fact and the application to stay the decision is necessary to stop my family from becoming homeless and will allow the appeal to proceed with fairness.

[7] The stay application was heard by the President of the Queensland Civil and Administrative Tribunal (QCAT), Justice Mellifont, on 2 February 2022. On that day Her Honour made a number of orders. In particular:

1. An interim order is made suspending the operation of the warrant of possession pending determination of the application for leave to appeal, or until further order of the Tribunal.

....

10. Unless otherwise ordered, any application for leave to rely upon fresh evidence will be heard and determined together with the application for leave to appeal or appeal in the manner set out in paragraph 11.

11. Unless otherwise ordered by the Appeal Tribunal, the application for leave to appeal and appeal (if leave is granted) will be heard and determined on the papers, that is, by the written submissions (including replies, if any) from the parties and without an oral hearing, not before:

4:00 pm on 21 February 2022.

[8] As Her Honour observed in her reasons, the grounds of appeal were couched in very general terms and required particularisation. Notwithstanding, Her Honour granted the stay for the following reasons. First, the alleged breaches of the tenancy agreement had been, according to the Applicant, remedied and, as such, would not warrant termination. Second, and related to the first point, unwarranted eviction would cause harm to the mental health of the applicant and her two daughters who reside with her.

The Tenancy agreement and alleged breaches

[9] The tenancy agreement between the Applicant and the Respondent is embodied in a document titled “state tenancy agreement (Form 18c).”

[10] The tenancy agreement comprises of 13 pages and 49 so called “Standard Terms”. Of particular relevance are the following terms:

19 Tenants use of premises

(1) The tenant may use the premises only as a place of residence or mainly as a place of residence or for another use allowed under a special term.

(2) The tenant must not –

- (a) use the premises for illegal purpose; or
- (b) cause a nuisance by the use of the premises; or

Examples of things that may constitute a nuisance:

- Using paints or chemicals on the premises that go onto or cause odours on adjoining land.
 - Causing loud noises.
 - Allowing large amounts of water to escape onto adjoining land.
- (c) interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant; or
- (d) allow another person on the premises to interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.

22 Pets

(1) The tenant may keep pets on the premises only if this agreement states for item 17.1 that pets are approved.

(2) If this agreement states for item 17.1 that pets are approved and this agreement states for item 17.2 that only –

- (a) a particular type of pet may be kept, only that type may be kept; or
- (b) a particular number of pets may be kept, only that number may be kept; or
- (c) a particular number of a particular type of pet may be kept, only that number of that type may be kept.

...

24 Tenant’s obligations – 2 188(2) and (3)

(1) The tenant must keep the premises clean, having regard to their condition at the start of the tenancy.

...

[11] As I understand it, unless otherwise authorised by the respondent, the maximum number of pets the Applicant could have at the premises was two cats and two dogs.

[12] On 28 October 2021, the Respondent issued a remedy breach notice. The breaches were particularised as follows:

Interfered with the reasonable peace, comfort or privacy of a neighbour as stated in your State Tenancy Agreement.

- Strong Odour from property – Animal urine and faeces.
- Noise disturbance from animals at your department property.
- Failure to keep internal and external areas of the premises and inclusions cleaned as stated in your State Tenancy Agreement.

The notice also stated:

If you do not take steps to fix this breach, or contact us, we may issue you with a Notice to Leave. You will have two weeks to leave your property.

...

[13] On 12 November 2021, the Applicant was advised that “you need to move out...”.

[14] On 17 December 2021, an officer of the Respondent, one Melissa Wareing swore an affidavit which included a number of exhibits, one of those exhibits¹ was a copy of the Applicant’s so called Tenancy History Extract. That Extract contains a number of entries. In particular:

On 18 August 2021, the Ninderry Electorate office contracted the Maroochydore HSC regarding a complaint from Ms Boon’s neighbours about multiple animals and strong smell coming from the property.

On 2 September 2021, staff attended the property to investigate the concerns raised, however Ms Boon was not present at the time of visit. An urgent calling card was left to make contact with the HSC.

On 15 September 2021, staff attended Ms Boon’s property to investigate the concerns raised. Staff were not able to enter the property, however entered a neighbour’s property and confirmed a strong urine odour emanating from the external of the premises, and multiple dogs and cats in cages...

On 16 September 2021, the HSC issued Ms Boon with a Notice Remedy Breach for noncompliance with council by-laws, unapproved structures and failure to maintain the premises.

On 17 September 2021, Council staff contacted the HSC to advise that they had attended Ms Boon’s property and had issued two compliance notices in relation to multiple animals at the property.

On 29 September 2021, a private neighbour contacted the HSC regarding the property and lodged the following concerns;

Breeding of multiple animals at property

Animals crying and fighting – noise is very upsetting

Will also be contacting RSPCA

Rubbish everywhere in the front yard

¹ Exhibit MW-7.

On 13 October 2021, staff attended the property with officers from Council's Animal Management Unit. Staff observed:

Multiple unregistered animals at property

Multiple cages and structures inside and outside

Animal faeces and urine and strong odour

On 26 October 2021, a second Notice to Remedy Breach was issued to Ms Boon for noncompliance with council guidelines, unapproved structures, failure to keep premises clean and interfering with the peace, comfort and privacy of neighbours.

...

On 10 November 2021, staff conducted a further home visit to identify if Ms Boon had remedied the breach. Staff observed:

2 dogs, 2 cats, 9 kittens and 7 puppies

A strong odour inside and outside of property

Multiple cages inside and external structures/enclosures

Ms Boon advised Council had seized other animals from the property on 9 November 2021.

Staff discussed that Ms Boon had still not remedied the breaches and a Notice to Leave may be issued.

On 11 November 2021, Council contacted HSC advising that on 9 November a search warrant was executed at Ms Boon's property. Council staff observed:

9 kittens, 10 cats, 5 dogs, 8 puppies, 3 dogs pregnant with puppies.

The odour of cat urine and faeces emanating from the premises was overpowering to the point staff requested the Environment Health Officer to attend.

- [15] I would note at this stage that apart from some broad assertions to the effect that she had remedied the breaches relied on by the Respondent, the Applicant neither expressly nor by necessary implication denied the accuracy of any of the Extract entries. Indeed, in her own material the Applicant has made a number of quite frank admissions, including having been in breach of the tenancy agreement by having too many animals on site.
- [16] In a document prepared by, or at least on behalf of the Applicant, addressed to the "Chief Executive Officer", forwarded on 30 September 2021, the Applicant concluded by saying:

The note at the foot of the Compliance notice instructed that all my pets needed to be registered by 30 Sep. They have now been registered. It also stated that I needed to reduce numbers of animals to 2 of dogs & 2 of cats.

The latter is what a (sic) would like to address earnestly.

I would desperately like to have the opportunity to remedy this contravention by applying for an additional animal permit.

...

May I please have another change/opportunity to apply for the additional animal permit & could we please keep our pets. Just one more chance would be the best gift ever to us as a family.

The reason for my request is stated below with complete honesty.

In 2017 I left a new marriage due to domestic violence where the husband was grooming my daughters & gaslighting myself. I ended up homeless with nothing. As a result I have been blessed with emergency housing through the department of housing.

In 2019 I started a small cleaning business **& decided it would be a good idea to buy some pedigree pets & breed them as a hobby**. The idea was because we love animals, we had to start all over again in 2017 with no belongings etc & this would enable me to pay my daughters school fees...(emphasis added)

- [17] As the undisputed tenancy history extracts reveal, on 10 November 2021, two dogs, two cats, seven puppies and a kitten were located on site. The next day a similar number, if not more, animals remained on site.

The attempts to remedy

- [18] On 9 February 2022, the Applicant filed a document in which she sought to particularise each alleged breach and the steps taken to remedy those breaches.
- [19] The document starts at 16 September 2021 and concludes 27 January 2022. It is unnecessary to dwell on the evidence leading up to 12 November 2021, because up until 11 November 2021, the Applicant accepts that more than four adult animals were being kept on site.
- [20] It can be accepted that the Applicant has, over time, taken steps to address a number of the breaches complained of by the Respondent. That said, those attempts could at best be described as being piecemeal. By way of examples:

05/12/2021	Paid 2 have yard tidied up & cat enclosure dismantled
10/10/2021 (sic)	3 Bay cat enclosure sold & collected
17/12/2021	Paid to have more yard work – decluttered internal & external house. Donated & sold excess animal items.
04/01/2022	Cat enclosure sold
05/01/2022	2 adult pug dogs surrendered ²
06/01/2022	Last cat enclosure removed 8am

- [21] Even as late as the filing of this document, 9 February 2022, the best the Applicant is able to say is that “most of the excess animal things” have been disposed of but some are “currently still up for sale”.
- [22] I have not been directed to, nor could I find any documents revealing just how many animals the Applicant currently has onsite. However, as late as 1 December 2021, in her application for review, the Applicant revealed she is still trying to get permission to keep her *cats* and *dogs*.

² This was confirmed by the recipient of the two dogs.

Conclusion and Orders

- [23] By reference to the Applicant's ground of appeal, I am sufficiently satisfied that the Applicant has not been the subject of any denial of procedural fairness nor the subject of lies and/or misinterpretation on the part of the Respondent. Further, no error of law has been revealed.
- [24] The only real live issue in this appeal is whether the Applicant breached and remained in breach of the tenancy agreement.
- [25] That the Applicant was in breach up until 11 November 2021 is undeniable. The breach notice of 28 October 2021, required remedy by 9 November 2021. As at that date the evidence clearly establishes that the Applicant has done little, if anything, to remedy the breaches. Even from 9 November 2021, through to present, the Applicant attempts to remedy the situation as I have already said, have been piecemeal. The facts and circumstances raised by the applicant leaves me far from satisfied that even as late as 9 February 2022, the breaches of the tenancy agreement had been satisfactorily addressed.
- [26] On balance, the evidence leads me comfortably to conclude that the conclusion reached by the learned Magistrate ought not be disturbed. The Applicant has failed to show that the decision of Magistrate Stjervqvist is doubtful enough to justify the grant of leave to appeal or that for any other reason leave to appeal should be granted.
- [27] Accordingly, I order as follows:
1. Leave to appeal is refused.
 2. The stay granted by Mellifont J on 2 February 2022 is lifted.
 3. The residential tenancy agreement between the Applicant and the Respondent is terminated from midnight 4 April 2022.
 4. A warrant of possession shall be issued authorising a police officer to enter and take possession of the premises located at 1/12 Cockatoo Street, Bli Bli.
 5. Such warrant of possession is to take effect from midnight 5 April 2022 and remain in effect for 14 days.
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