

Home Truths

Paws for Thought: Pets and the Renters' Rights Bill

Max Gordon: Hello and welcome to *Home Truths* - the Housing Law Podcast from 42BR Barristers.

My name's Max Gordon.

Matthew Timm: And I'm Matthew Timm.

MG: And this is the latest episode in our series of podcasts about the Renters' Rights Bill. Today we're going to be discussing pets, pets at home, all things animal.

The reason for this is the Renters' Rights Bill is introducing something new, or proposing to introduce something new, in its current writing to give an implied term, allowing people to keep pets in their residential homes.

Matthew, you were saying you've actually had this come up recently in a case?

MT: Yes, so I had a case and it was all to do with pigeons that were unwell and the tenant was caring for them, and so the landlord obviously wanted an injunction to stop this tenant from doing that. He had two sick pigeons and a hutch and many more in this flat, which was causing a nuisance.

MG: I'm picturing just feathers everywhere and yes, and it doesn't sound very nice, I'll be honest.

MT: But he raised the fact that this was law that was coming in, and soon enough he'll be able to make this request. And so we got to the

point at the hearing of arguing over whether a pigeon was a pet or a pest, and the judge adjourned off to get expert evidence on that point.

MG: I mean, I'm personally slightly surprised by that because of course, yes, this is coming in or potentially coming in as it's drafted, but of course it's not law at the moment, so I'm surprised the judge sort of contemplated that.

But on that point, what is expert evidence as to a pet? The Renters Rights Bill gives some sort of definition, doesn't it? But it is quite broad. So what it says is that '*pet means an animal kept by a person, mainly for personal interest...*' Not quite sure how that would define, '*...companionship.*' Makes sense. '*...Ornamental purposes.*'

MT: Yes. It's slightly strange, isn't it?

MG: '*...Or a combination of those three.*' That to me sounds like pretty much any animal you might conceive to keep as a pet in your house.

MT: And it's so broad that it could be snakes, dragons, so long as it's legal to own that pet.

MG: Yes, absolutely. I think advise to check the laws on what animals you can have, be it from a parrot,

MT: No tigers!

MG: Yes, exactly! But under this, yes, pretty much any animal you conceive. I mean, you see these things online, don't you, of what is a support animal being taken places, same sort of thing. It's very, very broad. But yes, I can definitely see the purpose of this, and I think it's got a clear, good intention. Anecdotally, I know it's a friend of a friend, I know of a circumstance recently, somebody ended a relationship.

They needed to move out of their property. They had a dog. So they're then looking to rent somewhere and they had an awful job finding a landlord that would take a dog and they were, you know, really struggling finding themselves in difficulty to find, particularly I think if you're in a city, but I imagine it applies anywhere because I suppose some landlords, if they don't have to, are more reluctant to take on dogs or any pet, concerned about the damage.

But on that, a bit of Googling and I found some statistics about pets in the home. And these are supported by reports done by various universities or things as far as I've been able to fact check them. So, for example, there is a lower risk than expected looking from a landlord's perspective.

76 of landlords report no pet related damage in properties where they allow pets, there can be higher demand, of course, it opens up to your pet and non-pet owners. And apparently could result in longer tendencies. Apparently pet owners on average tend to stay in properties longer, so that reduces your turnover, marketing, times when a landlord's property may stay vacant. So potential good points on both sides of the fence.

MT: Yes, and I think there's definitely a strong feeling from tenants. I had a look through some of the submissions to the Bill and one of those were Battersea Dogs and Cats Home. And they've explained around one in 10 cats and dogs are given up, due to restrictions in rental properties and they say demand is high. 76% of tenants either own or aspire to own a pet. But just 8% of private landlords let their properties as pet friendly. And so it goes both ways, doesn't it? And there's definitely strong feelings on both sides.

MG: A big gulf then.

I mean, certainly issues, a lot of people got pets living in COVID and lockdown, and I think there's been a lot of issues with people then not being able to care for them. So yes, I mean, obviously, looking after animals, welfare of the pets is at the forefront. But let's turn back to the Renters' Rights Bill.

And I guess the sensible place to start is the request, isn't it? So firstly, to make a request, there is a, as we say, an implied term to every assured tenancy. Now that, of course, infers or you have to read into that, you've got the tenancy already. And so we, we discussed before we press record, didn't we?

If you are a tenant or potential tenant with a pet, you're probably better to stay quiet to begin with before raising.

MT: Absolutely. And if you are going for one of these properties that's getting lots of viewings and you are competing against other people to try and get the tenancy to begin with, the way the Act is going to work, you wait until you've got the tenancy, and on day one, you then make your written request to bring your pet that you've left with your parents, during the move in so that you can bring them with you.

MG: Yes. And you've touched on a very important point there. The request has to be in writing, doesn't it? And it needs to describe the pets in question. Now I imagine that's more the practical descriptions rather than the pet's name and if they're a good boy or girl or something like that.

And so that then puts the ball in the landlords park, doesn't it? And they cannot unreasonably refuse that request.

MT: That's right. And also, time limits kick in. So they have 28 days after the request in order to respond, save for some exceptions. But that's the general rule. And so a landlord gets that written request and

they've got to decide whether to accept or not, and they can't unreasonably refuse, and so

really the sticking point in court and the area of contention is going to be around what's reasonable and what's not.

MG: Absolutely, yeah, like you said, there's some technicalities to begin with, the 28 day period - that can be extended, you know, requesting further information or needing more time. And one of those is if you've got superior landlord situation, something I think we'll circle back to.

But yes, I agree. The litigation point, things you and I may end up arguing in court is going to be about reasonableness. I mean, it's often about reasonableness on various fields and as far as I can see, there's no particular detail on that in the Bill. So I think it's going to be reasonable unreasonableness, as is considered elsewhere.

In landlord and tenant situations, that tends to be, for example, international Drilling Fluids Limited. That was about the reasonableness of permission to assign, but it's been used in various other realms, and so very, just broadly and quickly, the test is that it's going to be judged objectively.

Of course, based on the individual facts of the case, refusal cannot be arbitrary or capricious. The burden I think, will fall to the tenant that's certainly under this test, and I think the same will apply here. So it is going to be for the tenant to have to show it's been unreasonable, but I think once that's obviously asserted, you're going to see, obviously then the argument's going to have to come from both sides, aren't they?

MT: Yes. Yes.

MG: And it's potentially, it's not necessary, this is under the International Drilling Test, not necessary for a landlord to prove the conclusions are justified, just that they were reasonably held. I wonder if that will be applied here with pets in a practical sense, but very potentially. And it may include an element where the landlord needs to consider not just the effect on themselves, but the effect on the tenants as well, potentially.

So the next question. What could be a reasonable reason, I suppose?

MT: Well, thinking through some of the factors, you've got the type of pet, haven't you? So if it's a ginormous dog...

MG: ...A bear of a dog!

MT: ...or if it's a snake, if it's dangerous, those sorts of considerations of what is the pet, what's their natural behaviour, and does it belong in whatever this property is.

Which then moves on to kind of the type property. It's very different if you are in a detached house with a garden, for example, compared to if you are in one of these flats in a city.

MG: I often think, like you see people, you know, when you walk around London, you see somebody with like a massive dog, and I do sometimes wonder, they must have a big home because, you know, where do you put such a large dog? I mean, it's interesting you raised the stats from Battersea Cats and Dogs Home...

MT: Yes...

MG: ...Because it certainly used to be the case, I think it still is, that one of the criteria for being able to adopt a dog from Battersea, is the type of home and if you have a flat without an outside area, you are not allowed to be on the list. You can't adopt and home from them.

So could similar criteria be applied? A landlord could say, well, you know, it's any dog or cat, I think from Battersea, but say a reasonable sized dog, well, this is a second floor flat, it doesn't have its own outside area, so it's just not suitable to have a dog, could that same criteria be applied reasonably here?

MT: And it's going to get really difficult in the requests if you are saying, I have a dog, but don't worry, it's trained to use a balcony and all of this. And it comes back to that point of do you have to justify, or is it just reasonable belief that if the landlord says, no, it is a flat, and therefore no cats or dogs, because there's nowhere for them to use the toilet, is that reasonable, is it not?

MG: I mean, you raise a good point. Obviously just like people, all pets are different. I've certainly had a pet in a flat and he never caused any damage, but that wouldn't necessarily be the same of all animals or of course, depending on how you keep them if they're walked regularly enough. How is a landlord going to know that? Obviously they're going to ask a question, I'm sure everybody will say, I know my pet is very well behaved, I've got it very well trained. But no, it is very difficult.

MT: One really good reason probably would be to do with allergies or medical conditions. So if a landlord has lots of tenants in a property already and one of them is severely allergic to cat or dog hair or if the actual landlord themselves is, that probably is going lean more towards being reasonable than not.

MG: Yes, I could see that being a very good reason. I mean, are you then going to need medical evidence to demonstrate that? But yes, a severe allergy of anybody who has a need or a right to be in the building, or certainly the property, but it could be the building. If you. like we say, going back to, I'm picturing the massive shaggy dog situation, if you've got a very severe allergy and it's your neighbour,

are they going to have an asthma attack or whatever it may be when they're coming in and out of the building because there is dog hair, you know? Not maliciously. Not on purpose, but it happens.

MT: Yes.

MG: But that could be a good reason, I think to reasonably refuse. But of course, it's going to require necessarily the proving of all these different facts and circumstances, isn't it?

There are examples actually in the Bill as well, and this brings us up to what we've mentioned briefly before, if you've got an intermediary and then a superior landlord. So under 16B, there is circumstances in which it is reasonable for a landlord to refuse consent, and that may be in which the pets being kept at the dwelling house would cause the landlord to be in breach of an agreement with a superior landlord. And B, so it's very similar, an agreement between the landlord and a superior landlord prohibits the keeping of pets at the dwelling house without consent, and the landlord has taken reasonable steps to obtain that consent from the superior landlord, but it's not been given.

MT: Yes, so just thinking through those with that first one about the agreements between the intermediary and the superior landlord, if there was a lease that simply said, no pets whatsoever...

MG: Yes, which obviously the Renters' Rights Bill it's not going to touch that, this is about assured tendencies, not leasehold tendencies.

MT: Then surely that provision means that it is reasonable, to refuse the request for a pet.

MG: I think it must be, if the lease expressly states no pets and that's what's been agreed and you know, that can't be unreasonable at the time you're signing the lease, yes, I think that sort of binds it and now we have to be careful.

So I think when I discussed other issues with Alex on a previous podcast, which listeners can go back and listen to, we were talking about the potential pitfalls of the Bill or the limits. This could be one of them, isn't it? I mean, reasonable steps taken to the superior landlord, beyond writing a letter saying, well, I think it's reasonable, you know, can we have permission and the superior landlord says no, could you potentially get scenarios, particularly with large scale landlords, the superior landlord, the freeholder could be one company...

MT: Yes.

MG: ...The immediate landlord who you have your tendency with is with a different company. And, you know, one doesn't have to trickle down sort of thing. So the reasonable this point is circumnavigated somehow.

MT: And if you had the scenario where the superior landlord simply doesn't reply, how many letters, how many emails, how many phone calls do you need to send in order to satisfy that provision?

MG: Yes. I have to say, I don't think it would have to be that much, frankly, which is going to be a very frustrating, so that's not the intent here, and we are slightly pulling this wording apart, but I think that is a potential issue that's going to come with the current drafting.

MT: And then interestingly, if say a tenant is successful in going to the courts, then what the court has powers to do is a specific performance of the obligations. That would be specific performance to allow them to get their pets?

MG: Yes, yes. The specific performance of the implied term. So absolutely, you're right. And so that will be the basis of what a claim to the court may be on.

MT: And so a lot of the contention has been around, well, what if a pet causes damage? How can that risk be mitigated? And who should be responsible for that?

MG: Yes, yes. You have to imagine, that's what landlords are concerned about. That's why they refuse having pets at the moment.

MT: And so when the Bill was first proposed, the idea was that there would be insurance available that could be taken out for damage that would be caused by pets. And up until fairly recently, I think it was around the start of July, that was the idea that in the debates in the House of Commons and the House of Lords, there is concerns about the availability of that insurance product and how widespread it would be and how quickly it can come onto the markets. And so the government actually changed its position and amended the Bill in the House of Lords. So what we have now is a pet damage deposit, which works in similar ways to your ordinary deposit, but it's something additional, simply because you have a pet in the property.

MG: So how is it proposed that that's a better option than the insurance?

MT: Well, I think it is simpler and it uses current mechanisms that are already in place and the proposal is that the deposit would be equivalent to three weeks rent. So it gives it an ascribed value, that deposit can be paid when the pet moves into the property.

MG: Sure, I suppose it alleviates, like you're saying, when the insurance kicks in, is it going to be paid out, things like that.

You touched on the specific wording again. Some interesting points. We don't want to dwell too much over the exact wording, but I think this is worth looking at. So the additional pet damage deposits, this is

under 16C under the current proposals, can be used to make good pet damage.

Now I think you have to be inferred in there, the pet deposit, the specific pet deposit point can't be used for other purposes. It doesn't quite say that, but I think maybe that's the intention.

The second point, B, must be of equivalent value to three weeks of rent. That's interesting because it doesn't allow a bracket, it doesn't say 'minimum of, so my reading of that is it has to be three weeks. It can't be less. It can't be more.

MT Yes, I agree. And you have to remember this is totally different to your ordinary deposits that you put down for the tenancy. And so you are in effect paying two deposits.

MG: Absolutely. And that obviously could be prohibitive to a lot of people.

You know, having the deposit money together, often the most difficult point of moving house, isn't it? Or moving flat, whatever it is. And yes, obviously there are restrictions and mechanisms in place for your 'regular deposit', and there are limits on how high that can be, but still, there doesn't appear to be a bracket here, but the three week deposit for the pet, has to be on top of your other deposit.

It has to be then, it is governed by the same rules, so it has to be put in a scheme and, you know, protected in the same way. But yes, I can see that being very difficult for a lot of pet owners or people moving house to find that additional, you know, sum of money, may stop a lot of people to having this benefit.

MT: And it also adds that extra onus on the landlord to make sure it has been added to a deposit scheme and all of that in the right way. Where a landlord who is responding to a request and thinks they're being quite fair. It's just an extra hurdle, isn't it, to get all their ducks in a row

MG: Sure. I mean, would it result in the same consequences? You know? Now if a landlord doesn't protect a deposit as they are meant to, and somebody makes a claim, there's a mandatory award of compensation to the tenant. Whether they've suffered a loss or not, I have to assume the same would apply for your pet damage deposit as well, if it's not treated correctly,

MT: It's important to note. so this was the Bill, as it went back from the House of Lords, it's now gone back to the House of Commons to decide on those amendments. So I think a real area of contention in the coming debates is going to be this insurance compared to deposits.

So it'll be interesting to see where it ends up at. At the minute it is this pet damage deposit.

MG: Of course, yes. And very important to note at the time of recording, this is all, as you say, still being debated. This wording is not final, so we'll have to see how it develops, but as we come to sum up, what are the takeaways?

Is it going to be helpful? Is it a good proposal?

MT: I think so, because if you are, well for both sides, it provides some clarity on a process. It gives you a written request, a number of days to reply and what needs to be considered, and that's even though you can argue either way about reasonable and reasonable, there's some

clarity there and some structure there, which is more than we've had previously.

MG: I agree. It gives the, you know, putting the implied term in yes, it's not, it doesn't mean if you have a pet, it's slam dunk straight away, of course, it's not a hundred percent guarantee, but it gives definitely more power in the tenant's hands. But it is considering the landlord's position as well with the proposed deposit or insurance as it was.

So, yes, I think, it's a positive step, but it is, you know, it's not as all these things, it's not as simple as necessarily yes or no, is it, it's going to be played out a bit more. And where a landlord is a bit hesitant or potentially looking for a reasonable reason to refuse, that's where you're going to have the disputes coming before the judge, I think more than anything else.

MT: And it'll also be interesting to see how landlords respond and whether they want to fight it and go all the way through court proceedings or a strongly worded letter from a tenant quoting these new sections once they do become law and are enacted are enough to get a landlord to reconsider the request and agree.

MG: Yes, absolutely. And again, I think it'll go case by case and I think as part of the Bill and how I think the rental market is developing a lot at the moment, so I think we are going to see shifts in landlord and tenant perspective and action. So we'll just have to see for our purposes, for example, how that plays out in court.

MT: And I think the historical position has been tenants on one side wanting their pets and landlords on the other most of the time saying no. So with this if there is some sort of middle ground to be reached hopefully that brings out some of those new stats that you mentioned about people wanting to stay in their properties for longer and all of that and seeing that benefit will be helpful for everyone involved.

MG: Hope so. Well, we hope this has been interesting and giving you an insight into these new topics we've had.

Join us for the next episode of *Home Truths* - the Housing Law Podcast from 42BR Barristers, which will be released shortly following this one.

You can find our podcast on Apple Podcasts, Spotify, and the Chambers website.

Thank you for listening.

MT: Thank you.