

Rental Property Owner's Liability; It's for the Dogs **by FDR (Frank D. Rubin, Esq.)**

As if you didn't have enough to fear from the courts in your day-to-day operations, consider the parameters of liability the California Appeals Courts have created for you. Owners have to feel like they are walking through an unsecured Afghanistan mine field when they visit their properties. Instead of hearing a pleasant "goodbye" after a visit to a tenant, the owner hears the poetic words, "I'll be suing you." Wouldn't Robert Frost be proud?

Only classic words like that could make you hug your local insurance agent. You have to feel your tenants are circling above you like vultures over a carcass looking to swoop down and sue. Be glad they don't eat you alive; it will only feel like that after the court process.

The question is just how far does California law go in making a rental property owner responsible, not just to their own tenants, but to non-tenants? All owners are concerned about accidents that might happen on their rental properties, not just to their own tenants/residents, but to the general public that might come onto the property. What is the level of liability exposure rental property owners have when one of their charming, (usually a non-paying) residents harms a non-resident.

In 1975 in Uccello v. Laudenslayer, the California Appellate Court had the following facts. The dog of a tenant "A" bit Uccello. As part of the lawsuit over the dog bite, the owner was named as a Defendant. The owner's insurance defense firm argued that the property owner merely rented to the miscreant tenant "A" who owned the dog that bit Uccello and thus, had no responsibility.

The Appellate Court set a standard of liability. The Court argued that the property owner is responsible for having knowledge about their rental property and to know if there was nay dangerous situation at the rental property. The issue was notice.

If the injured party could show the owner was on prior notice of the dangerous situation, here a biting dog, and took no action to remedy the problem, the injured party could hold the owner liable even though the owner had no ownership or control of the offending pooch.

To justify this legal dictum, the Court explained how easy it was to evict bad tenants. Even in 1975 when Uccello was decided, it was not easy at all to evict bad tenants. Now that many cities have rent control with just cause eviction requirements such as Los Angeles, evictions for anything other than non-payment of rent are a daunting task at best.

At the time of the Uccello opinion, one of my colleagues said, "The next thing we'll get from the courts is a case regarding a dangerous tenant." That statement was prophetic.

Sure enough, just five years later in 1980 in Rosales v. Stewart, a tenant discharged a gun. A person nearby, not even on the rental property was killed. The suit for wrongful death sought liability against the rental property owner.

The Appeals Court again applied the same notice standard of analysis. If the injured party (here the surviving family), could prove the rental property owner knew of the dangerous situation and did nothing to reduce the risk, then the owner could be liable. The real unwritten agenda and logic of these rulings by the Appeals Court is insurance coverage. Most tenants do not have any liability coverage as most owners do. In these cases with serious injuries, it is unlikely the offending tenant (dog owner, the dog, or gun slinger) would have any insurance.

The key operative factor is how much notice of danger did the owner have? In Rosales, the owner had no idea he had a tenant packing heat.

About the only affirmative use I have been able to make of these cases is in rent control evictions. The owner's argument is that, "I'm now on notice of some danger this tenant is posing. Gee, I'm really sorry but because of the liability cases, I have to do an eviction."

In Uccello, the dog on the premises bit a person on the same premises. In Rosales, the gun was on the premises and killed a person on an adjacent property. But those dimensions were far too close for the Court in Donchin v. Guerrero.

In Donchin v. Guerrero, in 1995, four blocks away from the rental premises, a tenant's dog bit someone. The trial court had no trouble ruling that there was no landlord liability, but not the Appeals Court. Incredibly, even with an incident four blocks from the rented premises, the same standard of owner awareness held. If the owner knew the tenant's dog was dangerous, the owner should have tried to get rid of the tenant with the offending dog. How such an eviction would have prevented a dog biting incident four blocks from the rental unit was never explained.

The moral of the story is the millisecond you have any knowledge of a dangerous situation at your rental property, paraphrasing the military edict – "Evict first, ask questions later." Even if evictions aren't as simple as the Uccello court rationalized, a property owner just can't sit still.

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