

Dog Bites Neighbor and Landlord's Pocketbook From the Rental Property Reporter

Why would a landlord ever rent to someone with a dog? One reason would be because the rental market is so slow that the only tenants he or she can get are those with dogs. Another reason might be that you are just itching to put yourself into a sea of disaster.

When you allow a dog onto your rental property (or don't allow a dog but the tenant sneaks one in anyway), you have a myriad of potential disasters on the horizon. The damage dogs often do to rental property is an outcome that I hardly need to mention, but there is an additional concern that makes a dog property damage look tame. It occurs when your tenant's dog bites someone.

Dog bite law has almost become a recognized specialty in the legal profession, lawsuits result so often. A dog owner can be held liable under the following circumstances:

- the dog bites someone who is on the property legally
- the dog bites anyone off the property
- the dog jumps on someone and injures him or her
- the dog chases someone resulting in that person injuring him or herself
- the dog scares someone causing that person to be injured some other way, such as being hit by a car

But you're just talking about dog owners, you say. Yes, but landlords can and will be held liable for the actions of their tenants' dogs under many of the same circumstances.

Two legal terms come into play here: foreseeability and knowledge. In order for you to be held liable both those conditions have to be met.

One, you would have had to know, or would have reasonably been expected to know, that the tenant's dog was vicious. In that event you could be held liable for the dog biting someone on your rental property, even if you don't live there.

A second condition would be where you should have foreseen a problem could occur, such as when you failed to keep the fence around the property in good repair, or even had no fence at all. The dog escaped; then, after escaping, it bit someone.

If the dog was off the premises because the tenant unchains it or takes it for a walk and it bites or otherwise injures someone, then probably the tenant alone is liable, but only under specific circumstances.

Let's look at two recent court cases that deal with those issues.

Mrs. Carter was 72 years old and lived in a building owned by Metro North Associates, her landlord. As she walked in the complex one day she heard a dog's "vicious" barking, turned, and saw a pitbull on a leash. The dog's owner was upset at the disobedience of the pitbull and the fact that children playing nearby were "aggravating" the dog.

Apparently the dog's owner wasn't hanging onto the leash tightly enough, because moments later the dog jumped up on Mrs. Carter and bit her face. All she remembered, she said, was feeling "a strong, muscular presence" that knocked her into the security cabin.

Mrs. Carter sued Metro North Associates, claiming they were responsible because the employees knew about the dog and failed to enforce the complex's "no pets" policy. One employee allowed as how that was true.

The landlord asked for a summary judgment, claiming it wasn't responsible for the dog or its behavior. The landlord's defense was that there was no proof of negligence on its part. In order for the landlord to be liable Mrs. Carter would have had to prove that the dog had "vicious propensities" and that the landlord knew or should have known about those propensities.

The judge, however, disagreed and awarded judgment to Mrs. Carter. The court dismissed any need for proof of the dog's propensity for viciousness since the judge recognized on his own that pitbulls were a vicious breed.

The landlord appealed, saying that there was no evidence that the dog was vicious since it had never attacked anyone before or even displayed vicious behavior.

The appeals court reversed the judgment, finding for the landlord.

Mrs. Carter, the appeals court said, would have to prove that that particular dog was vicious-- there was no evidence that pitbulls were by nature vicious, though they could be trained to be.

Moreover, even if Mrs. Carter could show that the dog was vicious, there was nothing to prove that the landlord knew about it or should have known about the dog's vicious nature.

The mere fact that the employees knew there was a dog living in the property in violation of the rules did not prove knowledge of viciousness.

The second case involves a dog escaping from the yard of a rental property.

Mr. Pillar rented a house to a couple who, unbeknownst to him, had a dog. In fact the lease specifically prohibited dogs unless they were agreed to in writing. The landlord had the authority under the lease to remove any pets present in violation.

The couple had a Rottweiler and it liked to wander the neighborhood. An officer of the local civic association said she was told the dog had been running loose all over the neighborhood and threatening neighbors. She contacted Pillar, the landlord, about it and also about the condition of the fence (falling down) around the house.

One day the dog went on its rounds of the neighborhood and entered the Hill's yard. It bit the Hill's daughter on the buttocks, calf and arm, requiring her to get medical attention and stitches.

The Hills sued the tenants and the landlord. The tenants settled for \$1,000, but the landlord was off the hook, said the court.

The Hills appealed saying that Pillar was responsible because he knew the dog was vicious and he had the right and ability to control the dog's presence at the rental house. In addition because the fence was in disrepair and the dog could escape, he had an additional liability.

The appeals court still held in favor of the landlord, but the reasons why should make you question whether you ever want to rent to someone with a dog. Pillar couldn't be held liable for a dog attack that occurred off the property of the rental house, primarily because there was no evidence that the dog escaped through the broken fence.

While landlords have been held liable for dog attacks on their own rental property, the Hills were unable to cite any occasion where landlords were held liable for off-premises attacks. One legal expert I spoke with disagrees, saying that the landlord would normally be held liable no matter where the attack took place if he knew or should have known that the dog was vicious and if he did not keep the fence in good repair. Just the fact that there is a fence burdens the landlord with a higher duty to keep it maintained and restrain the dog.

In both of these cases the tenant/dog owner was liable for damages, but the landlord wasn't. However, it is only by the flimsiest of serendipity that the landlord did not have to pay damages. Even so, the landlords' attorneys' fees had to be staggering.

Who Is Being Injured?

It is just too much of a risk to rent to tenants who have pets who could harm or cause harm to a visitor, another tenant or a neighbor.

A recent issue of *Pediatrics*, a journal published by the American Academy of Pediatrics, printed statistics about children bitten by dogs. Cases of 40 children were reviewed from three different hospitals. The median age of the children was 50 months, 60 percent were boys and 87 percent were white. Most of the dogs were medium to large-sized and knew the child. Offending breeds were German Shepherds 22 percent, Rottweilers 16 percent, German Shepherd mixes 11 percent, Pitbulls 9 percent, Huskies 7 percent and Wolf mixes 7 percent.

In 49 percent of the cases the dog belonged to a neighbor and in 30 percent of the cases it was a household member. Only 7 percent of the time was it a stray that did the damage and in only 5 percent of the cases was it a guard dog.

Your tenants' dogs are most likely to bite a neighbor's child, possibly one of your other tenants' children. Then you not only get sued, but you probably lose a tenant, too.

Guide, Signal and Service Dogs

The Fair Housing Law and the law in most states requires that landlords allow guide, signal and service dogs in their rental properties, even if they don't allow pets otherwise.

You needn't worry as much about misbehavior and biting by these animals, though, since they are extremely well trained---they have to be, their owners' lives depend on it. However, dogs are dogs, so you need to establish reasonable rules regarding how the animals must behave and how their tenant/owners must control them. These rules might be things such as:

- animal must always be under direct control of the owner
- animal is not allowed to run loose
- animal must not disturb neighbors and other residents of the building without legitimate cause
- tenant shall be responsible for any damage to real and personal property caused by the dog.

What's a Landlord to Do?

Think hard before you rent to people with dogs, and check up on any reports you get that a tenant has a dog. Allowing dogs in your rental property can do far more damage than just a torn up yard and filthy, damaged rental property, it could mean that you lose everything you own in a lawsuit.

Best solution: don't rent to people with dogs of any size. Second best solution, if you rent to them, write strict rules about the control and behavior of the dog and enforce them to the letter the instant there is a violation. And always make sure that you keep all fences and other restraints in good repair and respond to any neighbor or resident concerns.

Citations: Carter v. Metro North Associates, Supreme Court of New York, Appellate Div., 1st Dept., No. 1873 (1998); Hill v. Pillar, Court of Appeals of Texas, 1st Dist., Houston, No. 01-97-00994-CV (1999)

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