

Landlord Can't Be Sued in Dog Attack By CD Publications

New York: A woman injured when she tried to avoid a tenant's dog can't sue her landlord for her injuries absent evidence the landlord knew the tenant's dog was dangerous.

The tenant's dog lunged at the woman who was walking on the sidewalk next to the landlord's apartment complex. When the dog jumped at her, she fell and was injured.

She sued the landlord for her injuries, claiming the landlord was responsible by allowing its tenant to have the dangerous dog on its property.

... an injured plaintiff must show the landlord had notice the dog was being harbored on the premises, and knew or should have known the dog had vicious propensities.

In order to recover against a landlord for injuries caused by a tenant's dog, an injured plaintiff must show the landlord had notice the dog was being harbored on the premises, and knew or should have known the dog had vicious propensities.

The trial court granted the landlord's motion for summary judgment and agreed the plaintiff failed to establish that the landlord had any knowledge of the dog's dangerous propensities.

The tenant appealed the trial court's decision to dismiss her case but the appellate court affirms it. Since there was no evidence the landlord knew the dog was vicious, the landlord could not be held liable.

Lesson: The landlord escaped liability here because the injured plaintiff could not prove the landlord knew the dog was vicious – but now the landlord does know and will have to take steps to remove the dog or the tenant from the property. Most leases prohibit tenants from having dangerous animals on the property, even if the lease allows pets. The landlord will have to give the tenant a proper notice to either move out or get rid of the dog.

Lynette White, Appellant, v. Kings Village Corp., Respondent, et al., Defendant (and third-party action). (Index No. 40765/01) 2005 NY App. Div. LEXIS 8622.

Landlords Can only be Held Liable if They Know of Dangerous Animals

New York: A landlord cannot be held liable for injuries caused by his tenant's pit bull dog because there was no evidence the landlord knew of that particular dog's vicious propensities before the attack.

A landlord rented a house to a tenant who owned a pit bull dog. The dog subsequently attacked and injured a small girl. The girl, through her mother, sued the landlord for her injuries, claiming he should be held liable for renting to a tenant who kept a dangerous and vicious dog.

The plaintiff claimed the landlord knew, or should have known, of the dog's vicious propensities before the attack and failed to act to prevent the attack.

The landlord filed a motion for summary judgment and asked the court to find he did not breach any duty to the plaintiff and therefore could not be held liable.

The trial court agreed and dismissed the plaintiff's case.

Under state law, a landlord may be held liable for an attack and injuries caused by a tenant's dog if the landlord "has actual or constructive knowledge of the animal's vicious propensities and maintains sufficient control over the premises to require the tenant to remove or confine the dog."

The landlord testified that he rarely visited the property and knew nothing about this particular dog. In addition, the landlord claimed he had no knowledge of the dog's vicious tendencies before the attack.

The tenant testified at a deposition that the landlord did not know about this particular dog or that she kept a dangerous dog at the property. The plaintiff claimed the landlord should be held liable because he should have known the dog was there because all of the neighbors knew and because the tenant placed a "Beware of Dog" sign in the front window of his house.

The appellate court affirms the trial court's decision after the plaintiff appeals the decision to dismiss her case.

The appellate court holds that "the fact others may have been aware of the dog's allegedly vicious propensities does not establish" the fact the landlord who only visited the property once a year had notice of the dog's presence.

The fact the tenant placed a warning sign in her window, standing alone, is insufficient, says the appellate court to impute notice of the dog's viciousness onto the landlord.

Since the plaintiff failed to establish that the landlord had actual or constructive notice of the dog's dangerous and vicious propensities, the landlord cannot be held liable for the child's injuries.

Lesson: This may not be the holding in all states as some courts may find under the same facts that the landlord should have known about the dog. But, the injured party would still have to prove the landlord retained sufficient control over the property to be able to force the tenant to either get rid of the dog or at least keep the dog confined at all times. Landlords should not rent to tenants who have dangerous dogs – the liability risk is not worth the benefits to the landlord from the rental.

Victoria Smedley, as Mother and Guardian of Jessica Smedley-McClay, and Infant, Appellant, v. Darrel Ellinwood, Respondent, et al., Defendant. 2005 NY App. Div. LEXIS 8443.

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