

Landlord's Liability for Dog Bites

by Dale Alberstone

On October 16, 2006, the California Court of Appeal wrote a marvelous opinion explaining the liability and non-liability of a third party who is injured by a landlord's tenant's dog. While the case, entitled Chee v. Amanda Goldt Property Management, did not involve a dog "bite," it did involve a canine attack. This month's column will discuss a landlord's exposure to third parties for injuries caused by his tenant's dog.

Factual Background

The real property involved in the Chee case was a condominium complex in which the landlord leased one of the units to a tenant who owned a Jack Russell Terrier. Other units in the tenement were owned by persons who were unrelated to the landlord.

On March 19, 2001, the landlord's tenant's dog ran out of the tenant's unit and jumped on another resident of the building. That resident (who we will call the "neighbor") owned the condominium unit next door to the tenant's unit.

The dog caused the 71 year-old neighbor to fall to the ground and sustain numerous injuries.

The neighbor then filed a lawsuit against the dog's owner (i.e., the tenant) as well as against the tenant's landlord.

In the suit, the neighbor alleged that the landlord breached his duty of care by allowing "a dangerous condition to exist on his property, namely, his tenant's dog, whose characteristics and traits posed a risk of harm to persons in the common areas."

The lawsuit did not allege that the landlord had actual knowledge that the dog was dangerous (which, in fact, he did not), but did allege that the nature of the breed made it dangerous, particularly if it was not restrained on a leash. The neighbor further alleged that the landlord had a duty to inspect and to investigate the characteristics of the dog since it was kept on the premises by his tenant.

Not only did the neighbor sue for negligence, she also sued the landlord for nuisance on the basis that the dog interfered with her free use and enjoyment of her property.

The neighbor further claimed that the tenant created a nuisance by allowing her dog to run without a leash and to urinate and defecate in the common areas of the condominium complex. It was undisputed that the landlord knew that his tenant owned a Jack Russell Terrier, but prior to the incident in which the neighbor was injured, the landlord had never seen the dog or received any complaints about it. Also, he had no knowledge that the tenant's dog had any dangerous propensities or posed any threat of bodily harm.

The tenant explained in the litigation that the dog had never jumped or bitten anyone before the incident involving the neighbor.

Negligence: Landlord Not Liable

The Appellate Court first observed that a landowner owes a general duty of care in the management of his or her property. That duty, the justices explained, is attenuated when the premises are rented because the landlord is not in possession and usually lacks the right to control the tenant and the tenant's use of the property.

The Court set forth the general rule: ***"It is well established that a landlord does not owe a duty of care to protect a third party from his or her tenant's dog unless the landlord has actual knowledge of the dog's dangerous propensities and the ability to control or prevent the***

harm.”

The Court found that since the landlord did not have actual knowledge that the dog was dangerous, he owed the neighbor no duty to protect her from his tenant’s dog.

The neighbor next argued to the Court that even if the landlord lacked actual knowledge of the dangerous nature of the dog, he had a duty to inspect the premises. A reasonable inspection, the neighbor said, would have disclosed the presence of a dangerous dog.

The Court rejected that argument as well, holding: ***“A landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant’s dangerous animal.”***

Nuisance: Landlord Not Liable

The neighbor also argued that the landlord was liable for the nuisance even in the absence of knowledge of the dog’s behavior. The neighbor urged that the landlord was responsible because he allowed a nuisance to exist on the property, such as by not preventing the dog to run without a leash in the common areas of the building.

In parrying that position as well, the Court explained that nuisance liability arises from violation of a duty to another that interferes with the free use and enjoyment of his or her property. The Court explained that a landlord is not, as a general rule, liable for a nuisance created by his tenant after the premises are let, holding: ***“A landlord is not responsible to other parties for the misconduct or injurious acts of his tenant to whom his estate has been leased for a lawful and proper purpose when there is no nuisance at the time of the leasing.”***

Further, the Court ruled that to hold an owner of real property liable, the nuisance must be one which is in its very essence in nature a nuisance at the time of the renting, and not something which is capable being thereafter rendered a nuisance by the tenant.

Conclusion

The October 15, 2006 case does not make any new law, but provides an excellent summary and compilation of the laws discussed by many previous cases pertaining to dog bites and attacks.

For landlords, what is important to keep in mind is that if they know that their tenant has a dangerous dog, or for that matter, any dangerous animal, they should use their best efforts to cause the tenant to remove the pet from the premises. If the landlord does not implement those efforts, his knowledge of the animal’s dangerous propensities could render him/her liable for any injury caused to a third party.

On the other hand, the mere fact that a tenant might possess, for example, a pit bull, does not expose the landlord to liability for another’s injury. However, I hasten to add that if a landlord knows that the tenant is harboring a dangerous breed, it would be best to eliminate that animal from the property, even if it would require the eviction of the tenant as well.

It is perfectly proper for a landlord to refuse to rent to a tenant for having a dog, or any particular breed of dog. It is also proper (assuming that neither the lease nor a rent stabilization ordinance prevents it) for a landlord to provide written notice to the tenant to remove his dog from the unit.

There is nothing existing under California law which prohibits a landlord from discriminating against some kinds of pets or breeds, while allowing other animals or breeds.

The best recommendation I can give, however, is that each landlord maintain general comprehensive liability insurance that defends the landlord at the carrier’s cost in the event that the landlord is sued, and indemnifies the landlord from any liability which might be awarded against him by a jury or judge in such a lawsuit.

Dale Alberstone is a prominent real estate attorney who has practiced real property and business law in Century City for the past 30 years. He has been appointed to periodically serve as a judge pro tem of the Los Angeles Superior Court and is a former arbitrator for the American Arbitration Association. He also testifies as an expert witness for and against other attorneys who have been accused of legal malpractice.

Mr. Alberstone has been awarded an AV rating from Martindale-Hubbell. An AV rating, registered through Reed Elsevier, reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.

The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

Address correspondence to Dale S. Alberstone, Esq., ALBERSTONE & ALBERSTONE, 1801 Avenue of the Stars, Suite 600, Los Angeles, California 90067. Phone: (310) 277-7300.