

The Legal Intelligencer

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Liability for Pet Misconduct Extends to Landlords and Tenants

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Many residential landlords allow their tenants to keep pets on their rental properties. In doing so, these landlords may be opening themselves up for legal liability when such pets cause harm to other tenants living on these rental properties or individuals living in or visiting neighboring properties.

In *Underwood v. Wind*, the Superior Court of Pennsylvania dealt with whether a tenant and an out-of-possession landlord are liable for injuries suffered by the child of a neighboring property owner and others who were attacked by dogs living with the tenant at the rental property.

The tenant, who is related to the landlord, was living on the rental property, which was located only minutes away from where the landlord lived, with her two pit bull dogs.

Because the tenant had caused damage to another rental property that the landlord owned when the tenant was living there, the landlord conditioned the new rental arrangement to disallow the tenant from keeping the dogs there as well, according to the opinion.

Within a week of the tenant moving into the property, the landlord discovered that the dogs were nevertheless living there. They subsequently agreed that the tenant would immediately find a new home for the dogs.

The tenant never found that new home for the dogs. Instead, she kept the dogs with her at the property, apparently without the landlord's knowledge. During her occupancy, the dogs were not regularly chained in the back yard and had been known to escape through a gate in the back yard that had a faulty latch, the opinion noted.

Many months after moving into the property, a neighboring child was walking to her house with her friends when she was suddenly attacked from behind by the dogs who had escaped from the back yard, according to the opinion. Two good Samaritans driving by in their car who saw the attack stopped their car and rescued the child from the dogs. During the rescue, the good Samaritans were attacked by the

dogs as well.

After the attack, the landlord indicated that she did not know the dogs were living at the property and that the tenant had actually informed her that the dogs were gone, the opinion noted.

The child and the good Samaritans then filed suit against the landlord and the tenant for the injuries allegedly suffered by them.

At trial, the child and the good Samaritans were collectively awarded \$260,870.40 against the tenant and landlord for the injuries they established were sustained by them during the attack. The landlord and tenant then appealed the award to the Superior Court.

On appeal, the tenant challenged the legality of two of the jury charges given by the trial court.

The tenant first argued that the trial court erred as a matter of law by instructing the jury that the tenant was negligent per se because the dogs escaped from her property which "precluded the jury from having the opportunity to consider whether her explanation for the dogs' escape was reasonable."

The Superior Court determined that the jury charge with respect to whether the tenant was negligent per se was "legally sound and adequately informed the jury of the law of liability as it applies to dog owners whose dogs escape and harm someone."

The Superior Court pointed out that the jury charge reiterated the prevailing law that only an unexcused violation of Pennsylvania's Dog Law which was a cause of the injury is considered negligence in and of itself.

As such, the Superior Court believed that the jury charge was correct in that the jury found negligence per se only after concluding that the tenant violated the law by allowing the dogs to run free, that the violation was inexcusable in that the tenant's explanation for the dogs' escape was unreasonable, and that the violation was a substantial factor in bring about the injuries suffered by the victims of the attack.

The Superior Court next rejected the tenant's assertion that the trial court erred as a matter of law in instructing the jury that they could determine that the dogs had "dangerous propensities" simply by considering the dogs' conduct on the day in question when the dogs attacked the child and the good Samaritans.

Relying upon the Commonwealth Court's ruling in *Commonwealth v. Hake*, the Superior Court pointed out that the amendments to the Dog Law, which were enacted in 1996, effectively remove the previous "one free bite" interpretation of the Dog Law and in its place permit liability for the dog's first bite.

The Superior Court next addressed the landlord's contention that the jury charges were misleading or confusing because they did not make a clear distinction between applying the Dog Law to dog owners as compared to an out-of-possession landlord.

The Superior Court agreed that the trial court improperly lumped the tenant and landlord together under the Dog Law in that the landlord was not subject to the Dog Law because she was not a dog owner, which is statutorily defined as "every person having a right of property in such dog, and every person who keeps or harbors such dog or has it in his care, and every person who permits such dog to remain on or about any premises occupied by him."

The landlord also appealed on the basis that the jury charge incorrectly expanded the landlord's liability by adding the phrase "or should have known" to the correct standard of "knows of the presence of a dangerous animal."

The Superior Court declared that the jury charge was a flat out misstatement of the law based upon its previous holding in *Palermo v. Nails* and, on those grounds alone, the landlord was entitled to a new trial.

In *Palermo*, the Superior Court reiterated that "a landlord out of possession may be held liable for injuries by animals owned by his tenant when the landlord has knowledge of the presence of the dangerous animal and where he has the right to control or remove the animal by retaking possession of the premises."

LESSONS LEARNED

The Superior Court's ruling in *Underwood* should send a chill up the spine of landlords across the commonwealth who allow tenants to keep pets on their rental properties.

Although the Superior Court refused to expand liability to landlords who should have known about the presence of a dangerous animal on their properties, it certainly made clear that landlords who do knowingly allow the presence of such pets on their properties could very well be on the wrong end of a lawsuit. •

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