



LANDLORD LIABILITY FOR HARM CAUSED BY A TENANT'S DOG

When is a landlord liable for harm caused by his tenant's dog? That question was addressed by the North Carolina Supreme Court in the recent case of [*Curlee v. Johnson*](#), filed April 16, 2021.

Raymond Craven and Stacie Talada lived in a single-family home located in Johnston County with their children and dog, Johnny. They rented the home from John Johnson. In October 2014, a minor identified as "P.K." was visiting the property to play with the tenants' children and sustained an injury while all of the children were playing with Johnny. The injury was characterized as a "minor bite" by the director of Johnston County Animal Services, who investigated the incident. The director concluded that Johnny did not satisfy the definition of either a "dangerous dog" or a "potentially dangerous dog" under NC General Statutes Section 67-4.1. Although it was not required by Animal Services, the tenants purchased three "Beware of dog" signs and placed Johnny on a chain when children would come to play on the property.

Seven-year-old Ricky Curlee lived nearby. In March 2015, Ricky came to play with the tenants' children. When it came time for him to go home, Ricky walked inside the radius of Johnny's chain, and Johnny bit Ricky's face, causing severe injuries.

Ricky, through his guardian ad litem, filed suit against the tenants and the landlord to recover for his injuries. Deposition testimony of the tenants and the landlord indicated that the landlord was not aware of the "P.K. incident" prior to March 2015 when Johnny bit Ricky. Ricky's parents could not produce any evidence showing otherwise, and Ricky's father admitted that he had no proof that the landlord knew about the P.K incident. The plaintiff argued that the landlord should have known Johnny posed a danger based upon the "Beware of Dog" signs and the chain in the tenants' yard. This argument was supported by the deposition of a property management expert named Daryl Greenberg, who testified that a "Beware of dog" sign is a "flashing red light" to the landlord that there is a potential problem that creates a duty to inspect and take additional steps regarding safety.

The trial court granted the landlord's motion for summary judgment (judgment without trial), dismissing the complaint against the landlord. A 3-judge panel of the NC Court of Appeals affirmed the trial court's decision. However, one judge dissented, arguing that the landlord should

not have been entitled to summary judgment because there was a genuine issue of material fact as to whether the landlord knew the tenants' dog posed a danger. Since the decision was not unanimous, the case was appealed to the NC Supreme Court as a matter of right.

The Supreme Court's opinion stated the rule established by previous cases, which is as follows: "A landlord has no duty to protect third parties from harm caused by a tenant's animal unless, prior to the harm, the landlord (1) had knowledge that a tenant's dog posed a danger, and (2) had control over the dangerous dog's presence on the property. In one of those cases, *Holcomb v. Colonial Associates, LLC*, a contractor was injured when he visited a rental property to prepare an estimate for demolition work and sustained injuries when he fell after the tenant's two dogs began to threaten him. The landlord knew of two prior incidents where the tenant's dogs injured third parties on the property. In addition, according to the relevant lease, the landlord had the authority to "remove any pet within forty-eight hours of written notification from the landlord that the pet, in the landlord's sole judgment, creates a nuisance or disturbance or is, in the landlord's opinion, undesirable." The *Holcomb* court held that the landlord could be liable for a subsequent dog-caused injury because he knew of the previous attacks and retained control over the tenant's dogs through a provision of the lease.

In another case, *Stephens v. Covington*, an eight-year-old child who was visiting the property to play with the tenants' children was injured when he was bitten by the tenants' dog. As a precaution, the tenants kept the dog in a fenced area with "Beware of Dog" and "No Trespassing" signs posted. However, unlike the landlord in the *Holcomb* case, the landlord in the *Stephens* case had no knowledge of any prior attacks by the dog. The *Stephens* court upheld the trial court's ruling in the landlord's favor because the evidence failed to show that the landlord knew that the dog had dangerous propensities prior to his attack on the child.

In the *Curlee* case, the Supreme Court upheld the decision of the majority of the Court of Appeals, pointing to the fact that the evidence in the record clearly indicated that the landlord had no prior knowledge of the P.K. incident, and stating that it found unpersuasive the argument that the landlord should have known Johnny posed a danger based on the "Beware of Dog" signs and chain in the tenants' yard. According to the Court, "[e]vidence of such precautions alone is not sufficient to give a reasonable landlord constructive notice that his tenant is harboring a dog with dangerous propensities."

Although there was not a property manager involved in the management of the rental property in the *Curlee* case, we are of the opinion that a court would apply the same rule used by the *Curlee* court in determining whether a manager should be held liable for harm caused by a tenant's dog.

As noted above, the second part of the rule articulated by the Court in the *Curlee* case is that the landlord has control over the dangerous animal's presence on the property. The *Curlee* Court did not reach that issue because the plaintiff was unable to meet the first part of the rule, which is that the landlord had knowledge that the tenants' dog posed a danger. However, the Court in the

Holcomb case *did* reach the second part of the rule, and, based on the wording of the tenant's lease in that case, concluded that the landlord had control over the dogs' presence on the property since it could, in its sole judgment, require the tenant to remove the dogs. The wording cited in the *Holcomb* case is identical to wording appearing in paragraph 3 of NCR's Pet Addendum (Form 442-T). In our opinion, it is important that a landlord and property manager have the clear authority to remove a problematic pet from the property. However, they should understand well that the right to control an animal's presence on the property carries with it the responsibility to exercise that right if the landlord or property manager has reason to believe that the animal has dangerous propensities.

NC REALTORS® provides articles on legal topics as a member service. They are general statements of applicable legal and ethical principles for member education only. They do not constitute legal advice. If you or a client requires legal advice, the services of a private attorney should be sought. Always consult your broker-in-charge when faced with a question relating to the practice of real estate brokerage.

© Copyright 2021. NC REALTORS®. All rights reserved. No reproduction of any part may be made without the prior written consent of the copyright holder. Any unauthorized reproduction, use, disclosure or distribution is strictly prohibited.