

## The Problem of Pets in Rental Units

*Disclaimer: This article is written for informational purposes only and should not be relied upon as legal advice. In each case, specific advice should be obtained which will be responsive to the circumstances of the individual requiring it.*

While aggressive pets are often a source of problems to landlords, section 15 of the *Tenant Protection Act (TPA)* specifically rules out “no pets” provisions in tenancy agreements. It’s unavoidable that the close quarters of an apartment complex create safety concerns with people sharing common spaces, laundry rooms, elevators etc.

So...while landlords may try to nip the problem in the bud by simply not accepting people who have pets as tenants, the applicant will often be less-than-truthful on their rental application, claiming that they are pet-less, and then they move in along with their furry friends. Any no-pet provision in a lease is void and of no force and effect, even with everyone’s consent to include it in the lease.

But that doesn’t mean landlords can’t ever evict a tenant because they have a problem animal in their rental unit. The TPA tries to provide harmony in rental accommodation by setting out the rights and obligations of the parties, and providing remedies upon a breach. But whenever there is a right conferred, there are always limitations to those rights as well as competing rights. Such is the case with the TPA with respect to animals. People have the right to keep pets, but not an unconditional right.

For over a decade in Ontario we have had the *Dog Owner’s Liability Act* which provides for liability against the pet owner and the destruction of animals in certain circumstances. Last year, Conservative MPP Julia Munro introduced an amendment to this Act, wherein a dog becomes a “vicious dog” when a Court finds that it has inflicted serious injury in an unprovoked attack. Her amendment increased fines and provided for the mandatory destruction of the vicious dog, without attacking a particular breed. “*Punish the deed, not the breed*”, was her motto. This in response to the Attorney General’s introduction in October of Bill 132, amending the *Dog Owner’s Liability Act* banning pit bulls and other specific breeds. The Attorney General’s bill became law in March of this year.

The newly passed legislation defines several breeds, pit bulls and certain bull terriers, and members of classes of dogs with similar characteristics to those breeds. The Act provides for an outright ban on the breeding or selling of Pit Bulls except as otherwise permitted by the Act. The legislation requires the use of a leash and mandatory muzzling of the dogs still permitted to be owned through grandfathering provisions in the Act, when a member of a dangerous breed is in a public place. The Act also provides for fines or even jail terms for the owners of a dog which bites or attacks a human.

So how do these amendments concern landlords and interact with the TPA? When speaking of termination notices and applications, section 74(2) of the *Tenant Protection Act* says that the Tribunal can only evict a tenant if satisfied that the behaviour of the animal has interfered with the landlord or a tenant's reasonable enjoyment, or that the animal has caused a serious allergic reaction, or that the breed is inherently dangerous. But it is up to the adjudicator's as to whether or not to terminate the tenancy. Generally, a Tribunal member will "not" evict a tenant (I know I never did) unless there has been an incident, notwithstanding the "inherently dangerous" clause.

But there are risks for the landlord who takes no action when there is a problem animal and there are complaints from the other tenants. Landlords have always been in a position to be sued at the Tribunal if they do nothing to resolve tenant-tenant problems. While there is no provision in the *Tenant Protection Act* for a tenant to bring an application against another tenant, section 26 of the TPA says that a Landlord may not interfere with the reasonable enjoyment of a tenant. If a tenant is confronted with disturbing conduct by a fellow tenant (or their pet), the landlord is expected to ensure that the tenant is protected from this conduct by bringing its own action on behalf of the offended tenant. If it does not, the tenant being disturbed by the other tenant (or their pet) has a legitimate action against the landlord and may file his own application under section 32(1)5 of the TPA.

If a tenant in your building is in breach of Minister Bryant's canine legislation, it makes your job easier when trying to get rid of the tenant who owns the aggressive animal. Certain breeds of dogs are now recognized as inherently dangerous. A Tribunal Member would likely be making a serious error in law by not finding that the landlord is entitled to have the Tribunal consider eviction based on section 74(2)(c), without regard to whether or not the dangerous breed has yet to cause a problem. Where prior to the enactment of the new animal legislation it would be difficult to prove to a Member in an empirical fashion that "any" breed of dog is inherently dangerous, it should now be a simple argument.

So now, if a tenant fails to leash or muzzle the animal or take proper steps to comply with the animal legislation, the landlord can apply to evict the tenant based on interference with enjoyment, impaired safety, "and" for committing an illegal act, specifically, having an enumerated breed within the complex without being leashed and muzzled contrary to the *Dog Owner's Liability Act*. All for the same \$150 application fee!

Finally, if the Tribunal finds that the dog is of a breed set out in the animal legislation, and the tenant has not been complying with that legislation by leashing or muzzling the pet, it provides more ammunition for the landlord when the tenant pleads discretionary equitable relief from eviction under section 84(1) of the TPA. It is a fundamental principle of equity that people seeking equity must come to the Court with clean hands. By ignoring or even flaunting the new

law requiring leashing and muzzling of the dog, the tenant is now behind the eight ball in their quest for relief from eviction.

What about pet restrictions contained within the declaration or bylaws of a condominium corporation? In a recent precedent setting case, *MTCC 949 v. Irvine*, the Court held that a valid “no pets” clause in a declaration provision supersedes section 15 of the *Tenant Protection Act*, with the result that, unlike a non-condominium apartment landlord, a condominium (and the unit’s owner as landlord) can require a tenant to remove his or her pet.

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