

The Problem with Pets

As a residential landlord, you are subject to the rights and obligations pursuant to the *Residential Tenancies Act, 2006* (the “RTA”), the law that binds both residential landlords and their tenants in Ontario. The RTA provides that you are not entitled to “contract out” of the RTA. In other words, you cannot change the respective rights and obligations of you and your residential tenants by putting provisions in your lease that differ from what the RTA sets out. Those provisions are invalid and unenforceable. I mention this for you to keep in mind when thinking about tenants with pets.

The RTA states that a “no pets” provision in a lease is invalid. In other words, you can put that provision in your lease and even if the tenant signs it but then brings in a dog or even several pets, there is no way to evict that tenant for the breach of the lease.

However, when you are screening prospective tenants, you can choose a tenant that doesn’t have pets over one that does. You must comply with the *Human Rights Code* of Ontario that also governs residential landlords and requires you not to discriminate against prospective tenants on the basis of numerous factors (but that is too broad a subject to discuss here), but there is nothing in this legislation that protects pet owners from discrimination in obtaining housing. Of course, if the pet is a service dog or animal, that’s a different story altogether and you can’t discriminate against someone who has a service animal. (This is not your run of the mill guide dog for the blind. It now includes people who have pets to calm their anxiety, assist with their learning or developmental disability etc.)

If a tenant says they have no pet but then brings in a pet, or if a sitting tenant acquires a pet, there is generally nothing you can do to stop them or require them to get rid of the pet. The exception to this general rule is that you can serve the tenant with a pet a notice of termination if the pet is damaging the rental property (and you can claim monetary reimbursement for the cost to repair the damage) or if the pet is disturbing the reasonable enjoyment of the other tenants in the building (by barking, acting aggressively toward other tenants, biting other occupants and/or their pets, fouling the common areas, causing a severe allergic reaction of another resident etc.) In this situation, you will need well documented incidents, with dates and times that they occurred and you will generally need several incidents (unless it is extremely serious as in a serious bite or attack) in order to obtain an order from the Landlord and Tenant Board for termination. More than one termination notice may apply in some cases, such as where the pet has attacked other residents or they have felt seriously threatened by the pet and/or the owner’s conduct. Under the *Dog Owner’s Liability Act*, a dog owner is “liable for damages resulting from a bite or attack by the dog on another person or domestic animal”. Such an attack would not only disturb the reasonable enjoyment of the other tenants in the building but also constitute a safety issue which would necessitate a second notice of termination being served on the tenant.

Condominium apartments

The other problem with pets that residential landlords are facing occurs when a tenant rents a unit in a condominium building that has by-laws restricting or preventing pet ownership by the occupants. The *Condominium Act, 1998* (the “CA”) requires both owners and occupiers to comply with the CA and the condominium corporation’s declaration, by-laws and rules. This creates a two-tiered set of rules: the

condominium by-laws and rules governing the owner/landlord and the tenant and the RTA regime governing the landlord and tenant. Often, the two conflict. The rented condominium may have a no pets' by-law or one that allows owners to have only one pet or which limits the size of the pet. So what is an owner who has received an ultimatum from the condominium corporation requiring that the owner remove the pet from the condominium unit that the owner is renting out to a tenant who owns a pet?

There are two potential remedies. The condominium corporation has a potential remedy. Condominium corporations are particularly intolerant of aggressive pets given their potential liability to possible victims pursuant to the provisions of the *Occupier's Liability Act* pursuant to which they could be held liable in monetary damages to any victim of such an attack if a court found they had failed to meet their obligation to ensure the reasonable safety of all persons on their property. Condominium management also has a duty to uphold its rules, by-laws and other governing documents.

The condominium corporation may take the owner and/or his/her tenant to the Superior Court of Justice seeking an order for compliance with the condominium's governing documents. This may result in an order requiring the tenant to remove the pet. (*See Niagara North Condominium Corp. No. 125 v. Kinslow*).

Usually, however, the condominium presents the problem to the owner first and asks them to obtain a remedy that provides compliance the condominium is happy with. The owner/landlord may then seek a remedy under the RTA at the Landlord and Tenant Board and must then serve the tenant with a termination notice which advises that the landlord's reasonable enjoyment is being disturbed by the fact that the owner is being required by the condominium management to remove the pet from the building and that serious consequences will apply to the owner if (s)he fails to comply with the condo's governing documents. If the tenant fails to comply within 7 days, the landlord must then apply to the Landlord and Tenant Board for an order requiring the offending pet to be removed permanently or for eviction of the tenant. In such situations, the Landlord and Tenant Board has the authority to order that the tenant must either comply with the condominium's by-laws or vacate the rental unit. This option is less costly and more expeditious than the condominium corporation going to Superior Court, the cost of which will undoubtedly be charged back to the condominium owner and should be tried before any Superior Court proceedings have been commenced.