

A child was bitten by a dog while playing in a fenced-in common area of an apartment complex owned by a landlord. The child was the guest of a tenant living in the complex, and the dog was owned by another tenant. The owner of the dog knew that the dog had a propensity to bite, but the landlord did not have any notice of the dog's vicious propensities.

In an action by the child against the landlord, will the child be likely to prevail?

- A. No, because a landlord owes no duty to a tenant's guests.
- B. No, because the landlord did not have notice of the dog's vicious propensities.
- C. Yes, because a landlord's duty to protect a tenant's guests from dangerous conditions is nondelegable.
- D. Yes, because in these circumstances a landlord is strictly liable.

Explanation:

Dangerous conditions on land

(landlord's duties)

Warn tenant of known latent (hidden) defects on land

Safely perform repairs

Ensure common areas are in safe condition

Maintain areas necessary for safe use of land (eg, walls, roof)

Keep land in good repair (lease provision required)

Protect entrants from dangerous condition on land leased for public purpose

Landlords are generally not liable for harm that occurs on the leased premises. This is because they give up possession and control of the premises to their tenants and are unlikely to be aware of subsequent dangers. However, landlords **owe tenants** and other **foreseeable persons on the premises** (eg, their guests) a **duty to use reasonable care** to ensure the **safety of common areas** that remain **under the landlord's control (Choice A)**. A landlord who breaches this duty and causes the plaintiff physical harm is liable for negligence.

Here, the child's presence in the apartment complex was foreseeable since he was a tenant's guest. The child was then bitten by another tenant's dog in a *common area* of the apartment complex. As a result, the landlord owed the child a duty of reasonable care. But since the landlord had no reason to know that the dog posed a risk to those on his property, his failure to take precautions against that risk did not breach this duty of care. Therefore, the child is unlikely to prevail in an action against the landlord.

(Choice C) Landlords owe tenants and their guests a nondelegable duty to protect them from dangerous physical conditions on the property that remain under the landlord's control (eg, broken elevators). But a vicious dog is *not* such a condition. Additionally, it does not matter whether the landlord's duty was nondelegable here since there is no evidence that he assigned its performance to a third party whose negligence caused the child's injuries.

(Choice D) *Strict liability* for harm caused by a dog (or other animal) with vicious propensities extends to the dog's owners or possessors who know or should know of that propensity. But since the landlord neither owned nor possessed the dog, strict liability is inapplicable.

Educational objective:

Landlords owe foreseeable persons on the leased premises (eg, tenants and their guests) a duty to use reasonable care to ensure the safety of common areas that remain under the landlord's control.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 53 (Am. Law Inst. 2012) (lessor's duties).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.