# NYC CIVIL COURT COMMUNITY SEMINAR SERIES

## "Pet Evictions"

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MR. RONALD LANGUEDOC, ESQ.: My name is Ron Languedoc. I have been working as a tenant's attorney for the past 27 years here in New York City, and I have been asked to conduct this seminar on the issue of pets and landlord-tenant law, especially as it relates to evictions. I understand that in addition to the audience here in Manhattan we have an audience in Queens and Staten Island, so welcome to you as well. And I believe that this is being taped to be aired online at a later date.

What I'm going to do is I have prepared a presentation. I'm going to go through the presentation. I think it will take me about 25 minutes. And so then there should plenty of time if there are any questions, comments, or discussion of any of the topics that I've brought up, that would be great, I'd be happy to

facilitate that, but I'm first going to go through my outline before having questions.

I also want to say that my field has been tenant law. I've been a tenant advocate for virtually my entire legal career. But the plan here is to present this seminar in an unbiased way so that both owners and tenants would benefit from this. So that is the plan.

So first of all, these are topics that I plan to cover here. First I'm going to talk about lease clauses which prohibit harboring of pets and, you know, owners' attempts to enforce those lease clauses. I'm going to talk about the city council's pet waiver law, and I'm going to talk about the rights of tenants with disabilities with respect to pets. I'm going to talk about nuisance claims regarding pets, and I'm going to talk about the pet policies of the New York

City Housing Authority. So those are the five topics I plan to cover.

First, I'd like to start with just a list of some of the, what I would call policy considerations with respect to pets in residential housing in New York City. First and perhaps foremost would be the obvious fact that pets are a fact of life in New York City and they're popular and people, many, many people want to have them. And that obviously includes people who rent the units that they live in. The second is that New York City is, by far more than any other place in the United States, a city of renters. Roughly two-thirds of New York City residents rent the premises where they live, as opposed to being homeowners, and that's far more than anywhere else in the country. So there's an enormous amount of interest in New York City on the rights of people who rent and tenants and so on, and that includes the

issue of pets.

Secondly, on the owner's side, the owners obviously have an interest in maintaining their property, keeping their tenants happy, which would include both sides of tenants who want to have pets, as well as other tenants who may be allergic to pets or have concerns about nuisance conditions created by pets, as well as owner's homeowner insurance that all apartment building owners pay, which the rates can be affected by the presence of dogs, especially, in the building.

Secondly would be tenants' concerns about an owner who never really objects to having a pet until some other dispute comes along, and then the owner using that issue as a pretext for removing the tenant. And another issue would be the rights of the disabled, which have been recognized in the area of pets to be different and in some cases to supersede

the other interests in the law.

Now, in the area of looking at pet issues, many of these issues are part and parcel of landlord-tenant law generally. So it involves looking at leases, looking at whether any rent regulation applies to the unit: rent control, rent stabilization, Mitchell-Lama and the like, or whether the unit is owned as a co-op or a condo, or whether the unit is not subject to any type of regulation. You know, roughly half of the two million or so rental units in New York City are rent-regulated in some fashion, and the rights of the owners and the tenants in rent-regulated housing, with respect to pets and many other things, are very different from the one million or so units that are not regulated. So I'm going to be talking about that as well.

So let's turn to the issue of lease clauses. Almost every residential

lease in New York City is a preprinted form. They're not the same form, of course, and the forms change over the years, but a very standard part of that form is a clause that says a tenant may not harbor a pet without the written consent of the owner. So I'm going to kind of parse that out a little bit.

First of all, that is an enforceable provision. Whether or not the tenant was aware that that provision was in the lease at the time that they signed it, or whether it was preprinted or handwritten or whatever, it is an enforceable provision. So an owner, barring some legal restriction, the owner has the right to enforce that provision.

Now, the lease clause uses a strange word, "harbor," and what does that mean, what does the word harbor mean? Well, I looked into that, and the word harbor, harboring a pet, that doesn't

necessarily mean owning the pet, because you could own a pet and not have the pet at the unit, or you could not own the pet but have it at the unit. So it really refers to keeping the pet at the unit or the pet spending time at the unit, so that it's not even necessary that the pet sleeps over or stays over at the unit for you to be harboring a pet. There have been cases with people where the courts decided that a tenant was harboring a pet where she had a relative come over on a daily basis with a dog. So that could be considered harboring a pet.

Now, just a general principle of landlord-tenant law--this is something that a lot of people are confused about--is what happens when you are a rent-controlled tenant or a rent-stabilized tenant, or a Mitchell-Lama tenant, and you've signed a lease or a rental agreement of some type, and it's renewed

periodically over the years, or in the case of rent control it's not renewed, you just remain on in the unit. The law is very clear that, in those cases, the terms of the original lease are projected--that's the legal term of art--projected or to carry forward to continue throughout the tenancy, so that--and again, I say this because I've found in my experience with tenants that there's quite a bit of confusion about this, that those terms apply even after the lease expires, in the case of a rent-regulated tenant. So that if the original lease that the tenant signed had a clause prohibiting pets, that applies through the entire tenancy. Now, by the same token, if the original lease did not have a pet prohibition clause, or as is often the case with rent control there was never a lease, a written lease, then the owner does not have the right to add a provision later prohibiting pets,

and any attempt by an owner to do so would be considered void and inapplicable. And that is true even if the building changes ownership during the time that the tenant is living there. So a new owner may not come into an apartment building situation, for example, and revise the policy of the building with respect to rent-stabilized, rent-controlled tenants and say that we are now prohibiting pets. That is not allowed.

Now, co-op and condo owners operate under different systems, and the rules that their residency is governed by are almost completely set by the boards of those building, those developments, under their internal bylaws. So co-op and condo owners could be subject to changes in policies. And the same is true with the New York City Housing Authority, as many of you probably know. There's something like 300,000 units of public housing in

New York City, and the policies do change, and I'm going to get to that with regard to pets. So when I say that the terms cannot be changed, I'm referring specifically to rent-controlled and rent-stabilized tenants, not to other tenants.

Of course, if you're not a rent-regulated tenant and your lease expires, then you could stay on as a month-to-month tenant, in which case the terms of the original lease apply, or you could have a new lease or a lease renewal, and in that case the owner is free to change the terms of the tenancy, including pets, whether or not you can have pets. So that's another thing to keep in mind.

Now, having a pet in violation of a lease clause is grounds for eviction if it's a substantial breach. So it's unlikely that a tenant could be removed for having small, inoffensive pets such as goldfish or the like. I would just note

on the other side that New York City has a whole list of animals that it's illegal to own. I think ferrets is an example, and I think that they're pretty popular to have as pets, even though it's illegal. So I think that a no pet clause or not in the lease, an owner would have the right to go after a tenant that had a ferret or a boa constrictor or whatever, and I bring that up because I know of such a case that came to my attention a few weeks ago. So illegal pets are a whole separate category.

Now, the procedure to remove a tenant for violating a clause in the lease about pets would be to first give a notice to cure, followed by a notice of termination, followed by an eviction proceeding. And if the court decides in the holdover proceeding that the tenant has breached the lease, then the court would grant the tenant time to remove the

pet. The law allows for ten days' time to remove the pet. I think that many courts would feel that they have the right to extend the time if the tenant can show that she or he is in the process of relocating the pet and has started that process within the ten-day period.

One other thing about lease clauses is that they are subject to something in the law known as the statute of limitations. In the case of a breach of lease, it's six years. So if you have a pet for six years, you're protected by the statute of limitations, whether or not the owner knows that you have that pet. But it's pet specific. Okay?

Now I'm going to talk about the pet waiver law. That was a law that was enacted by the city council in the 1980s specifically to correct what they perceived to be the injustice of owners knowingly allowing tenants to have pets,

even though there were no pet clauses in the lease, and allowing the tenants to become accustomed to and liking having the pets, and then allowing a lot of time to pass and then choosing, perhaps for other reasons not even related to the pet, to go after the tenant for having the pet.

So what the city council did was they passed this law, the pet waiver law, or the pet law, which says that if the tenant openly and notoriously for three months or more, and the owner or his agent has knowledge that the tenant has the pet, and the owner fails within that three months to bring a lawsuit, either a holdover proceeding in housing court or some other lawsuit, to indicate the owner's objection to the pet, that the owner has waived the right to object as to that particular pet. Okay? So the way this works is a tenant--typically this comes up with dogs, most often. The

tenant, obviously, walks the dog--you know, almost everyone walks their dog--in view of building employees, or the owner himself if it's a resident owner. Even if the owner of the building per se does not see the tenant with the dog, if the employees see it, the knowledge is imputed to the owner. And what happens if the owner says, well, I never told those employees to report to me if they saw my tenants with a dog? Doesn't matter. The courts have said very clearly that the employees of the building are agents of the owner and it's reasonable to conclude that the owner has the knowledge, if the agents have seen it. You know, pets are something that are under the owner's domain, so to speak, and so if the superintendent, porter, janitor, security, concierge, doorman, doorwoman and the like, or even someone who is an independent contractor who has a regular

relationship with the owner and is regularly in the building, whether they've actually reported the pet to the owner or not, but these people have seen the tenant with the pet, then the knowledge is imputed to the owner and the three-month period starts running. Again, the waiver is pet specific. So it's three months as to each pet. If you get another pet, whether it's a replacement pet or an additional pet, the three months begins running as of the time the new pet arrives in your home and the owner has the knowledge.

If there's a dispute as to whether the owner has the knowledge or whether the tenant has been open and notorious about keeping the pet, then that's something that the court would decide after a trial, based on hearing the testimony of the different witnesses and whatever other evidence the parties may

have in terms of, I don't know, writings that might have been exchanged, emails and the like.

Let's see, the pet waiver law does not apply to New York City Housing. Okay? New York City Housing Authority projects, I mean. And it does not apply to one- and two-family dwellings. It does apply to co-ops, co-op shareholders. As far as condominium owners, there's a split of opinion. It's one of these things that happens in New York State and other states, that the appellate court, the First Department, which governs Manhattan and the Bronx, has said that the pet law does not apply to condominium owners, whereas the Second Department, which governs Brooklyn, Queens, and Staten Island, has said that the pet law does apply to condominium owners. So if you're a condominium owner, whether or not the pet law applies to you depends on what

borough you live in.

Okay, now I'm going to talk about discrimination laws. There are a number of laws on the books that prohibit discrimination based on disability. And the way it works in the law is that a person with a disability may be entitled to what is called in the law a reasonable accommodation for the disability in the area of housing. And that includes having a pet if the pet is a reasonable accommodation for the tenant's disability. Now, the obvious example of that would be what could be called a seeing eye dog or a service dog for a person who is blind, but the discrimination laws are not so narrowly applied, and people now maintain pets, people with disabilities maintain pets now for a variety of disabilities, not just blindness, so that the law has recognized people with psychiatric or emotional disabilities who want to or

require a pet because it aids them in coping with that type of disability, that the tenant should be allowed to have a pet.

Now, what this would mean is that if the tenant, or the person, is in an apartment that has a clause in the lease that says no pets, that the discrimination laws override that, so that the person can maintain--that's an exception to the lease provision, that the lease cannot be enforced against that person. But the tenant would have the burden of showing that he or she is a person with a disability and that it's a reasonable accommodation to require the pet. And that could be a fact-based decision of the court based on the evidence. It may even--it may be that the tenant's attorney could just provide, or the tenant or the tenant's attorney, could just provide the owner or the owner's attorney with

documentation such as doctor's letters and the like, perhaps something from a veterinarian or pet training facility, that verifies that the pet has been trained to assist the person. And perhaps upon receipt of these letters and documents the owner might back off and consent to the tenant keeping the pet. If not, there could be a hearing where these people have to come and testify, the doctors and so forth.

The tenant has a choice of forum as to this issue. The tenant could file a complaint with the New York City Human Rights Commission or the U.S. Department of Housing and Urban Development and a Fair Housing complaint. The agency could resolve the issue that way, and that could be helpful to the parties in that it wouldn't be necessary to deal with a housing court case, thereby avoiding the tenant's name being reported to tenant

screening bureaus, as well as avoiding the parties the expense of going to housing court. Or the tenant could raise the issue as a defense to a breach of lease case in housing court, and the housing court could make a decision on it. Or both things could happen. The tenant may file a complaint with HUD or the Civil Rights Commission, and the owner could bring a holdover proceeding in housing court and the tenant could ask for a stay of the eviction proceeding while the tenant's complaint is pending.

Now I'm going to talk about nuisance conduct. Nuisance is an old legal term of art which refers to conduct that is recurring and that is annoying or dangerous to the safety, health, or otherwise of the residents of the building or the owner of the building. It could include damage to the building as well as injury to people in the building,

residents of the building or employees of the building. And these issues come up frequently in New York City in the context of pets allegedly causing a nuisance. It could be barking or other noise. It could be aggressive behavior by dogs, biting, jumping at, scratching, growling, etc. It could be poor supervision on the part of the pet owner in terms of not keeping the dog on the leash or otherwise allowing the dog to sort of wander around the public areas of the building, not cleaning up after the pet just outside the building or inside the building, or as a result of having the pet in the unit and not keeping the pet and the unit clean. There could be offensive odors in the unit that spread into the building.

And there are also people who are called pet hoarders, or people who may feel that they're doing this out of sympathy for stray animals or whatever,

but that take in a lot of pets, way more than their ability to take care of them in the space that they have, and it results in a condition that's offensive to the people in the building. So it has been said, it has been ruled by the courts, however, that just merely having a particular breed of dog that is thought to be dangerous is not a nuisance. You know, typically we talk about pit bulls, Rottweilers, and Dobermans especially, because a lot of homeowner's insurance or apartment building owner's insurance, they would raise the premium on that insurance if there are pit bulls, Rottweilers, or Dobermans in the building. So owners have a financial interest, perhaps, in keeping those types of dogs out of the building, but the housing courts have said that that's not a ground for claiming a nuisance. So that cannot be considered a nuisance, although it might be possible

for the owner to have a lease when the tenant first moves in the unit and, say, restrict the breeds of pets that you can have.

Now, in the case of a nuisance, these are very difficult cases, often, for the attorneys and the parties to resolve. If it is established that the pet has on more than one occasion caused a nuisance in the building, that could be grounds for eviction of the tenant. The ten-day cure rule doesn't necessarily apply to nuisance type conduct, although many courts have granted a cure period if the court finds that the conduct is capable of being cured, such as requiring the tenant to have a muzzle on the dog or keep the dog on the leash, clean up after the dog, or otherwise ensure that the dog will not--or the cat or other pet--will not continue to create a nuisance in the building. But if the court finds that the conduct is not

capable of being cured, the court does not have to grant the tenant any additional opportunity to cure and could just proceed to evict the tenant based on the past history of nuisance conduct. So in deciding that, that would be very much of a case-by-case basis and it would be up to the court, based upon the evidence that they've heard, including the testimony of the tenants, the other witnesses, perhaps other people in the building and the like.

Okay, I'm going to just briefly talk about the New York City Housing Authority before I turn it over to questions. As I said at the beginning, the New York City Housing Authority is, well, it's governed by federal law and state law, but it's also very much of its own entity, and they do amend their policies from time to time. Their pet policy has been amended many times. As far as I'm aware, the pet policy that's in

effect now was put out or issued in March of 2009, and that states that a tenant, a public housing tenant may have one dog or one cat. The dog cannot weigh more than 25 pounds, and it cannot be a pit bull or Rottweiler or Doberman, or certain other breeds, and they have to pay a registration fee for having the pet, and they have to have their pet's veterinarian complete a certification form. The pet has to be neutered, etc. People that had pets before 2009, even if they don't meet these rules, may be allowed to keep them in what we could call grandfathering. Once again, the pet waiver law does not apply to public housing, but the discrimination laws do apply to public housing, so the rights of public housing residents with disabilities are protected under the same laws as other units.

So with that, I have completed my prepared remarks, and I thank you for your

kind attention.

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