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OHIO LANDLORD ASSOCIATION

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OHIO BOARD OF REALTORS

BED BUG LAW: LEGAL RIGHTS AND REMEDIES

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BED BUGS: LAW, RIGHTS AND REMEDIES

Topics

- 1. A Primer On Bed Bugs**
- 2. Ohio Law On Bed Bugs and Landlords**
- 3. Legal Practice Pointers for Landlords**

THE BED BUG

Cimex lectularius



Problems

- Bite/Suck Blood
- Swelling, Welts, Allergic Reactions, Diseases
- Public Nuisance, Code Violators

Treatment Methods

- Traditional, Use of Pesticides
- Temperature, ranging from 180 to 340 degrees
- Environmental, removal of hosting materials

BED BUG LAW IN OHIO



No written “bed bug” law *per se*, but some statutes may be applied, as well as 22 court decisions

STATUTES APPLICABLE

R.C. 5321.04 (“Landlord Obligations”)

(A) A landlord who is a party to a rental agreement **shall do** all of the following:

- (1) Comply with the requirements of **all applicable housing, health, and safety codes** that materially affect **health** and safety;
- (2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a **fit and habitable condition**;
- (3) Keep all common areas of the premises in a **safe** and sanitary condition.

5321.05 (“Tenant Obligations”)

(A) A tenant who is a party to a rental agreement shall do all of the following:

- (1) Keep that party of the premises he occupies and uses safe and sanitary

5321.07 (“Notice to remedy conditions; rent withholding; other)

(A) If a landlord fails to fulfill any obligation imposed upon him by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, or any obligation imposed upon him by the rental agreement, if the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any such obligations, or if a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes that apply to any condition of the premises that could materially affect the health and safety of an occupant, the tenant may give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance. The notice shall be sent to the person or place where rent is normally paid.

(B) If a landlord receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time considering the severity of the condition and the time necessary to remedy it, or within thirty days, whichever is sooner, and if the tenant is current in rent payments due under the rental agreement, the tenant may do one of the following:

- (1) Deposit all rent that is due and thereafter becomes due the landlord with the clerk of the municipal or county court having jurisdiction in the territory in which the residential premises are located;
- (2) Apply to the court for an order directing the landlord to remedy the condition. As part of the application, the tenant may deposit rent pursuant to division (B)(1) of this section, may apply for an order reducing the periodic rent due the landlord until the landlord remedies the condition, and may apply for an order to use the rent deposited to remedy the condition. In any order issued pursuant to this division, the court may require the tenant to deposit rent with the clerk of court as provided in division (B)(1) of this section.
- (3) Terminate the rental agreement.

5321.02 (“Retaliation of Landlord Prohibited”)

(A) Subject to section 5321.03 of the Revised Code, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, or bringing or threatening to bring an action for possession of the tenant's premises because:

- (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;
- (2) The tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code;

BED BUG CASE LAW IN OHIO



1. Springhill Town Homes v. Pounds,

Case No. 24894, 972 N.E. 2d 1121 (Ct. Appeals
2nd Dist., 6/22/2012)

Holding: Absent a contractual provision authorizing a deduction from the deposit for bed bug costs, a Landlord may not do so.

“Landlord was not entitled to apply any portion of tenants' security deposit towards the amount owed by tenants on a repayment agreement for extermination services, pursuant to a statutory provision that allowed for application of a security deposit towards past due rent or damages for failing to comply with a tenant's obligations, even though the repayment agreement was in writing and signed by the parties; repayment agreement was not a rental agreement, made no reference to a rental agreement, and was not a modification or replacement of the rental agreement.”

2. *Mathias v. Accor Economy Lodging, Inc.*, Case No. 03-1010 (US Court of Appeals, 7th Cir. 9/3/2003)

Holding: Upheld jury verdict awarding \$186,000 in punitive damages to hotel patron who suffered bed bug bites, when hotel had knowledge of condition but failed to remedy or disclose.

“Hotel's failure either to warn guests or to take effective measures to eliminate known bedbug infestation amounted to fraud.”

3. *Kenwood Gardens Association v. Shorter*, Case No. 10-1315 (Ct. Appeals, 6th Dist. 8/19/2011)

Holding: Bed bug infestation does not excuse Tenant's obligation to pay rent to landlord or into court escrow.

“As such, the fact that appellee did not exterminate the infestation until their second attempt in August is irrelevant. Pursuant to the lease agreement, appellants, as occupants of the apartment, were still obligated to pay rent during this process.”

**5. *Jenny Katz v. Simon Comisar*, Case No. 28 N.P. 10
(3/7/1930)**

Holding: Continued bed bug infestation constitutes a constructive eviction.

“Fact that a flat was infested with bedbugs without fault of tenant, but due to conditions existing in other flats in building, constituted a “constructive eviction”.’

6. *Bogner v. The Titlist Club, Llc*, Case No. Wo6-039 (Court of Appeals, 6th dist. 12/26/2003)

Holding: Constructive eviction affords Tenant with 3 remedies, but must pay rent. Also, in mold claim, expert testimony is required to prove lack of habitability.

“Pertaining to constructive eviction, R.C. 5321.07 provides that, if a landlord has been provided with written notice of and fails to remedy conditions of the premises that could materially affect the health and safety of an occupant, the tenant has three options: 1) place the rent in a court escrow account; 2) apply for a court order to have the landlord remedy the conditions and for a reduction in rent until such remedies are effected; or 3) terminate the rental agreement.”

7. In The Matter of I.H., Case No. 2010-07-157 (Court of Appeals, 12th Dist. 1/31/2010)

Holding: Bed bugs, and other issues were sufficient to remove custody of child from former spouse, showing risk of unintended consequences.

“The motion alleged that reunification was unsuccessful and, among other things, there were concerns with discipline and cleanliness of the children, and the home was infested with fleas and bed bugs. The court granted the motion, again placing the children in the temporary custody of BCDJFS.”

8. State v. Alcorn, Case No. 2012 WL 6094138 (CCP Montgomery, 12/7/2012)

Holding: Conviction for aggravated arson upheld on appeal.

“The present appeal stems from Alcorn's act of burning an abandoned couch in a grassy area between a carry-out store and a residence in Miamisburg. The State's evidence at trial established that Alcorn lit the couch on fire because he believed it was infested with bed bugs. The fire destroyed the couch and caused some vinyl siding on the carry-out building to melt. Firefighters arrived and doused the couch with an extinguisher. Police spoke to Alcorn, who admitted starting the fire. No one was injured in the incident. The owner of the carry-out, which was open at the time of the fire, testified that the cost to repair the melted siding was \$578.54.”

LEGAL RECOMMENDATIONS



1. Contract Protection: Bed Bug/Infestation Clause

- ❖ Allocation of responsibility between landlord and tenant
- ❖ Specify who pays for the cost of eradication
- ❖ Authorize the use of the deposit for costs
- ❖ Limitation of Liability clause!
- ❖ Indemnification clause
- ❖ Binding Arbitration clause

2. Bed Bug Policy

- ❖ Define response procedure to tenant complaint
- ❖ Define “turn over” policy and protocol

3. Practical Resolution of Situation

Even armed with strong contract language, often best to look for middle ground. Split costs, end lease, etc.

Copy of Sample Provision: www.torcotermite.com



EXTERMINATION/INFESTATION

Sample Bed Bug Clause or Lease Addendum:

- A. General Pest Control.** Landlord agrees to provide adequate pest and rodent control, using the services of a licensed pest control company for the control of general pests, such as ants, bees, spiders, earwigs and roaches (unless roaches are caused by the conduct of Tenant).
- B. Bed Bugs.** Bed bugs shall be the responsibility of Tenant to eradicate, using the services of a licensed pest control company. All costs of such service shall be paid by Tenant. In the event that Tenant fails to do so, Landlord, in its sole discretion may retain such services and do so at the cost of tenant. In the event that tenant fails or refuses to remit such payment, tenant expressly authorizes Landlord to apply the deposit toward any such costs, without limiting Landlord's right to seek additional recovery for damages and additional expenses incurred as a result of the infestation.
- C. Duty to Cooperate.** Tenant agrees to fully cooperate in any and all extermination procedures, preparation requirements, sanitation issues or other such requests. In the event of non cooperation, Tenant expressly agrees to waive any notice or access obligations of Landlord, and expressly authorizes the immediate entry and performance of necessary service.
- D. Limitation of Liability.** Tenant agrees that under no circumstance whatsoever shall Landlord be liable for damages of any nature, whether compensatory, incidental, punitive or statutory, and regardless of the actual amount of such damages. Among other things, landlord has no liability whatsoever for alleged problems with furniture, bedding, clothes or furniture. Nor is Landlord liable for medical process or medications. Under no circumstance shall Landlord be liable for any incidental or consequential damages whatsoever.
- E. Indemnification.** In the event that Tenant is found to have proximately causes infestation of other units, tenant shall bear the full cost of treatment for all units, and shall indemnify and reimburse Landlord for any such costs advanced.
- F. Arbitration.** Both Landlord and Tenant that any dispute between them involving bed bugs shall be resolved exclusively through binding arbitration, conducted by the AAA And using an arbitrator with competent knowledge of the pest control industry, the cost for which shall be borne equally between Landlord and Tenant.

Note, Don't Let Them Bite: Defining The Responsibilities of Landlords and Tenants In The Event of a Bedbug Infestation, 80 Geo. Wash. L. Rev. 243 (November, 2011)

A BEDBUG PRIMER

Bedbugs were common in the United States up until the late twentieth century, when widespread use of dichlorodiphenyltrichloroethane (“DDT”) and other pesticides virtually eradicated them in the country. They survived abroad, however, and in the early twenty-first century made a resurgence in North America. This comeback has not been completely explained, but an increase in international travel, the **bugs'** development of resistance to pesticides (including DDT), and lack of public knowledge and pest control efforts due to the **bugs'** hiatus in the United States likely all played a role. This bedbug resurgence is quickly becoming a full-scale crisis. In New York, for instance, the municipal government received about 500 complaints of infestations in 2004 and nearly 11,000 in 2009. Although urban centers are bearing the brunt of the crisis, bedbug infestations are a national problem: beyond major cities, such as New York, Los Angeles, and Washington, D.C., bedbugs have also established themselves in such rural areas as Ohio, Vermont, New Hampshire, and Maine. Nationally, calls to pest-management companies have increased by eighty-one percent since 2000. A national survey conducted in August 2010 found that nearly one in ten adults reported that they or someone they knew had a “recent problem with bedbugs.” Without an effective and efficient method to exterminate the **bugs**, the bedbug problem is only likely to worsen. Bedbugs are “experts at hiding.” They are as thin as a credit card and no longer than a pencil eraser. During the day, they conceal themselves in mattress seams, bed frames, cracks and crevices, clutter, wallpaper, or anywhere their small flat bodies can fit. At night, they emerge to feed: they puncture their human victims' skin, inject an anesthetic to prevent the victims from waking up, and suck the victims' blood. Reactions to bites vary widely: some people react to these bites immediately, whereas others do not react until weeks later, and still others never react at all. Those who do react develop slightly swollen, red, itchy bite marks, resembling flea or mosquito bites. These marks sometimes appear in lines of three along a vein—a pattern known among bedbug survivors as “breakfast, lunch and dinner.” In rare cases, victims experience anaphylaxis, a severe allergic reaction that affects the whole body.

The inconsistency of human reactions to bites, coupled with the bugs' small size and expertise at hiding, make confirming the origin, extent, or even existence of an infestation quite difficult; this in turn can create evidentiary problems in legal proceedings.

Bedbugs typically live for months but can live for as long as a year without a meal. Bedbugs breed quickly, with females laying eggs daily; a community can thus complete three to four generation cycles per year. Bedbugs' fast-breeding nature allows them to develop new resistances to pesticides quickly, and means that just a few bugs can become a full-blown infestation in a matter of weeks. Infestations are typically spread by human travel: when a traveler visits an infested location, bedbugs can hide in the traveler's luggage, clothes, or any other belongings in which they can conceal themselves. The traveler then brings the bugs with her to the bugs' new home. Even used furniture can serve as transport for bedbugs concealed in upholstery or joints. Bugs can also travel between rooms in a building through cracks or crevices in the wall; 39 multiunit apartment buildings thus provide a particularly fertile environment for infestations to spread. Infestations also commonly occur in single-family homes and hotels due to the opportunities those places provide for access to sleeping warm-blooded victims, but infestations are not limited to places where people sleep : bedbugs can infest any area in which humans spend time, and have also been found in office buildings, movie theaters, clothing stores, factories, and even airplanes, as well as iconic landmarks such as the Empire State Building and Lincoln Center for the Performing Arts.

There are a number of different approaches to eliminating infestations, including the use of pesticides, high-heat treatments, steam treatments, targeted vacuuming, and disposal of infested objects. Pest control agents may ask tenants to reduce clutter and wash bed linens at high heats; landlords may be asked to seal cracks and crevices in walls. No single method is universally effective, so pest control agents typically coordinate integrated treatment plans, which usually involve multiple visits by the agent and can span months. Although bedbugs are not believed to transmit diseases, the negative effects of an infestation include physical harm (allergic reaction to bites), mental health problems (anxiety and insomnia), and economic costs (healthcare expenses, lost wages, reduced productivity, and exterminator costs). Pest control bills alone can range from several hundred dollars for smaller infestations, to tens of thousands of dollars for extensive infestations. Broader societal costs include potential impacts to the tourism, retail, and entertainment industries: tourists shy away from cities with reputations as bedbug hotspots, and members of the general public think twice about visiting public places such as department stores and movie theaters where they fear a bedbug left by someone else may crawl into the merchandise or the clothing they are wearing. In the residential lease context, landlords and tenants often dispute who should bear the costs associated with an infestation because it is usually difficult to determine whether an infestation exists and where the bugs came from--and thus who is at "fault." These disputes have sometimes resulted in litigation under the common law doctrines of constructive eviction and implied warranty of habitability, and relevant state statutes.



The End

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