

Beware of Bedbugs

By Howard Bookstaff, Attorney

You've heard it for years: "Sleep tight – don't let the bedbugs bite!" Are property owners and managers responsible for these sneaky, hard-to-eradicate pests?

Just when you thought it was safe to go to bed, you receive a call from an angry resident. The resident claims to have bedbugs. Is this for real? With the resident's assistance, you inspect the unit. You don't see anything; however, the resident shows you hundreds of bite marks. You wonder whether this is something you should take seriously. What is your potential liability if you don't?

Bedbugs Case

In 2004, a case titled *Ludlow Properties LLC v. Peter H. Young* out of New York examined the question of whether an owner can be responsible for a resident's bedbugs. The issue came up when the owner was pursuing an eviction proceeding against the resident for nonpayment of rent. The lease commenced April 1, 2003; the monthly rent was \$1,015 through April 30, 2004 and the resident owed \$6,550.00.

The unit was a studio apartment with a sleeping loft raised on a brick wall on one side of the studio room with bathroom facilities within the unit on the other side. The resident slept in a loft bed until he realized the unit was infested with bedbugs because he saw a posting in the lobby of the apartment building notifying all residents that the exterminator would be in the building for a special service for bedbugs.

After reading the posting, the resident realized that bedbugs were the cause of the hundreds of bite marks he had noticed on his body during the past couple of weeks and why he was often startled awake many nights during this period.

Over the next few months, the resident made several attempts to get a restful night of sleep – none of which worked. First, he threw out his bed and all of his bedding and slept on towels on the floor. He quickly realized this method was useless as he was still bitten hundreds of times. Next, he put plastic sheeting on the floor in the sleeping area he prepared. This method proved just as useless.

He next bought an inflatable mattress to sleep on. Besides the mattress requiring inflation at least once during the night, the mattress was unacceptable as bedbugs still preyed upon his skin. Finally, he slept on a metal cot with wire mesh covering. This appeared to stop the biting of the bedbugs, but no real comfort was possible in this less than six foot metal cot.

During the trial, the resident testified that during Christmas vacation at this family's home in Massachusetts, he had to enter the home through the basement, take off all his clothes, place them in a plastic bag and seal the bag with duct tape. He then took a hot shower for a half hour and was required to wear his father's clothes all weekend to make sure he did not bring any of the bugs into his parent's home.

The Owner's Response

The owner received notice of the bedbug infestation almost a year before the eviction proceeding. The owner's extermination service established an attack plan to combat the bedbugs. The exterminator recommended that all sheets, quilts, comforters and pillow cases be removed from the beds and washed using hot water and detergent. All night stands, bureaus, dressers and closets were required to be emptied, and all furniture and stored items were required to be moved away from the walls.

Once the criteria were met, the exterminator could begin treatment, which entailed spraying the mattresses, box springs and bed frames with products labeled to target bedbugs. Walls in the bathroom and living room were to be drilled and dust was to be injected in the wood areas. Baseboards, cracks and crevices throughout the apartment were to be injected with aerosol products to flush out the bedbugs. The exterminator was to check outlets, picture frames, dressers and all furniture. Apparently, the exterminator's plan was effective; however, it took some time to get rid of the bugs.

The exterminator's report indicated that bedbugs are tenacious and adapt very well to their environment and can go a whole year without feeding. They can migrate to other apartments quickly through the walls on the interior and exterior. Bedbugs can go from an endemic to epidemic if not handled properly. The exterminator in the New York case had anticipated two extermination treatments along with sealing of the cracks in each apartment to control the bedbugs outbreak in the building which affected the nearly nine of the 60 units in the building. The infestation seemed to be clustered in a specific area of the building. Each extermination was expected to last two to three months.

The owner chose to adopt the methodology in the report to combat the bedbugs as suggested by his exterminators; however, the exterminator ended up exterminating in the unit on five occasions in the year 2003, starting in June.

The Court's Decision

The court found that the condition of the bedbugs was generally known to the owner early in June 2003 and with respect to the resident's unit particularly in late June 2003. The court also found that the presence of the bedbugs in the units affected the health, safety, welfare and use of the unit. The court stated that although bedbugs are classified as vermin, they are unlike the more common vermin such as mice and roaches, which, although offensive, do not have the effect on one's life as bedbugs do feeding upon one's blood in hordes nightly turning what is supposed to be bed rest or sleep into a hellish experience.

The court stated that the only reported cases involving bedbugs that the court was unable to find come from the early 1900s and predate New York's warranty of habitability. The court stated that the cases turn on the severity of the infestation and that, in this case, the bedbugs did not constitute mere annoyance but constituted an intolerable condition, notwithstanding the owner's efforts to exterminate them.

Under a theory of implied warranty of habitability, the court found that the resident's rent should be abated by 45 percent commencing the month after the owner became aware of the problem. The court stated that, based upon the small size of the unit, the severity of the bedbugs infestation, the effect the infestation had on the resident, the lack of evidence of the owner's effort to eradicate the bedbugs on a building-wide scale, the owner's diligent efforts to eradicate the bedbugs and the use the resident continued to make of the premises, the court granted the eviction but deducted 45 percent from the award of unpaid rent.

How to Deal With Bedbugs

Bedbugs should be taken seriously. If you receive notice that a resident is complaining about bedbugs, you should make a diligent effort to have a professional inspect the premises and determine the best protocol to proceed. Since bedbugs appear to be able to move through small cracks in walls, if bedbugs are present in a unit, caution should be taken to be sure that the exterminator is consulted to eradicate bugs not only from the affected unit but also any other places that the bugs may have traveled.

Bedbugs have been around for a long time and unfortunately are here to stay. By taking action at the first sign of the problem, you may be able to minimize your exposure.

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