

Landlords vs. Tenants: Who Pays When Bed Bugs Invade?

By Douglas Stern, Managing Partner Stern Environmental Group

When bed bugs invade an apartment, who calls the exterminator and who pays? The conundrum in the emerging field of bed bug law is pitting landlords against tenants and filling court dockets.

Legislation recently introduced in the New Jersey Legislature as Assembly Bill 3203 would force landlords to shoulder the entire financial burden of combating bed bugs by making them solely responsible for conducting annual inspections, distributing and displaying educational material created by the state, immediately treating reported bed bug infestations, and maintaining a bed bug-free environment throughout the apartment building or complex. Similar bills are under consideration in other states.

Citing the nationwide 500% increase in bed bug infestations and calling the common bed bug "a public nuisance," Bill 3203 states, "it is a matter of public welfare to protect New Jersey citizens' health from this pest." Noting that owners of multiple dwellings are "in the best position to coordinate the extermination bedbug infestations in that multiple dwelling," the bill directs, "Every owner of a multiple dwelling shall be responsible, at his own expense, for maintaining the multiple dwelling free of an infestation of bedbugs." Landlords who fail to act would be fined \$300 per infested apartment and \$1,000 per infested common area. Local health boards would have the power to act for and bill unresponsive landlords. ([You can read the complete text of New Jersey Bill 3203 on the Stern Environmental website.](#))

Given the exponential increase in bed bug infestations nationwide, landlords are leery of the possible financial repercussions of such legislation. In New York City, bed bug complaints jumped from 1,839 in 2005 to 8,830 in 2008. Violations issued by the Department of Housing Preservation and Development rose from 366 to 2,757 over the same period. New York and New Jersey apartment owners are legally tasked with providing pest control for tenants. It's the apartment owner's responsibility to provide tenants with a pest-free living environment. That wasn't always true. Since the 1908 case of *Jacobs v. Morand*, tenants had been legally obligated to pay their rent even if bed bugs had made their apartment inhabitable. That changed in 2004 with *Ludlow Properties, LLC v. Young* when Judge Cyril Bedford ruled in favor of a frustrated tenant who had refused to pay rent for six months because of a persistent bed bug problem, writing:

"Although bed bugs are classified as vermin, they are unlike ... mice and roaches, which, although offensive, do not have the effect on one's life as bed bugs do, feeding upon one's blood in hoards nightly turning what is supposed to be bed rest or sleep into a hellish experience."

Today, tenants seem to be winning the litigation war against landlords, but it's a tough fight. When bed bug infestations are discovered, tenants and landlords point the finger of blame at each other. "It gets back to the issue of responsibility," said attorney Ronald Languedoc. "In law, the party that asserts a claim usually has a burden of proof. I think it is probably hard to track down where, precisely, they came from and how they got in there."

Under current New York and New Jersey law, apartment owners bear the responsibility and financial expense of providing housing that is rat-free, roach-free and now bed bug-free. For cash-strapped apartment owners, there's the rub. Rats, roaches and other vermin are attracted by garbage and unclean conditions. The connection to proper maintenance, efficient trash collection and regular pest control is obvious. The cost of such regular

maintenance is an expected part of managing an apartment building. Just like electric, water and other utility costs, these expenses are figured into monthly rent payments and recouped.

Bed bugs are an entirely different problem. Bed bugs are not attracted by filth. They are insects of convenience like lice and fleas. These tiny insects crawl from one infected individual to another. They set up house near beds and in bedrooms, hiding in cracks and crevices during the day and creeping out at night to feed on the blood of their unsuspecting prey – humans. The size of an apple seed, bed bugs multiply quickly and are adept hitchhikers. You can get them from contact with an infected individual, visiting his home, brushing his clothing, standing next to him or borrowing his belongings. You can get bed bugs by sitting in a seat just vacated by an infected person on a subway, park bench, taxi or airplane. Since not all people react to bed bug bites, people often spread bed bugs without even knowing they have them.

Bed bugs can come into an apartment on someone's clothing, in suitcases and backpacks, in the creases of storage boxes, in the cracks and crevices of used furniture, in the upholstery of a rental sofa and in refurbished mattresses. Apartment owners have no control over what attracts bed bugs or how the annoying little buggers get into the building. You can understand their reluctance to take responsibility for a problem they didn't create and have no control over. Yet that is exactly what housing legislation requires them to do. Particularly exasperating are the strictures in New York City and under consideration in Jersey City and the New Jersey state legislature that prevent apartment owners from passing along the often hefty costs of eliminating bed bug infestations to their tenants.

The life cycle and living habits of bed bugs only confound the problem. A single female bed bug can produce up to 500 eggs during her one-year lifespan, laying about five eggs per day. Moving through five nymphal stages, bed bugs reach maturity in just five to eight weeks. They nibble on their human prey at night, feeding for up to 10 minutes every three to five days. The tiny bugs are often mistaken for other pests and their bites for mosquito or spider bites. Not all people react to their bites which look like raised, red welts and many don't react (itching is typical) for several days after being bitten. Some people are so embarrassed, they fail to report an infestation or uselessly try to treat it with Raid. By the time the problem is noticed or reported, a considerable infestation can have developed.

Often by the time they're identified, bed bugs have spread to other units in a building and the original culprit can be hard to identify. Because bed bugs spread easily through wall voids, elevator shafts, plumbing and wiring conduits, and heating and cooling ducts, next door units and those on the floors above and below an infested unit are also likely to be infested. Treatment of one unit can simply send bed bugs scurrying to find new living quarters. Even vacant apartments are not safe as bed bugs can live for one to seven months without a blood meal.

Eliminating bed bugs in a multi-unit apartment building can be a nightmare for everyone and an unexpected financial burden for the owner. Because of the many variables involved – the need for tenant cooperation, the bugs' minute and numerous hiding places and their tendency to spread quickly and easily -- multiple pest control treatments over a spaced period of time are necessary to completely eradicate bed bugs from an apartment building. Apartment owners are being asked to shoulder the financial burden without remuneration, sometimes without essential tenant cooperation, and with no guarantee that the whole mess won't happen again. It's not hard to understand why apartment owners feel new bed bug laws are unfair.

Douglas Stern is the managing partner of Stern Environmental Group and a [bed bug](#) extermination expert. His firm serves commercial and residential clients in New Jersey, New York City, New York, and Connecticut. His firm is located at 100 Plaza Drive in Secaucus, New Jersey. You can reach him toll free at 1-888-887-8376 or by email at info@sternenvironmental.com. Please visit us on the Web at www.SternEnvironmental.com.