Bed Bugs: Legal Remedies and Limitations to Eliminating a Community Health Problem

American Society of Law, Medicine & Ethics
Network for Public Health Law
Public Health Law Research Program

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Denise Chrysler, J.D.,

- Director, Network for Public Health Law — Mid-States Region
- J.D. - University of Michigan Law School, B.S. - Cornell University
- Research interests/areas of expertise:
  - Communicable disease, public health hazards, bed bugs, privacy, health information exchange and legal preparedness.
  - Extensive work on the Michigan BioTrust Project
  - 27 years in public health: Public Health Legal Director, Director of the Office of Legal Affairs, Privacy Officer, Freedom of Information Act Coordinator, member of the Departments Institutional Review Board, and Assistant Attorney General for the Michigan Department of Community Health
Panel Introduction

**Erik Foster, MS**

- Medical Entomologist, Michigan Dept. of Community Health
- MS from Michigan State University
- **Research/Areas of Expertise:**
  - Investigation, prevention and control for Zoonotic and vector-borne diseases
  - Community and provider outreach, education and training
  - Public Health Pests (lice, scabies, bed bugs) and emerging vector-borne diseases in Michigan
  - Reserve preventive medicine officer for the US Army Public Health Command
Panel Introduction

Peyton Whiteley, J.D.,

- Advocacy Coordinator, Legal Services of Northern Virginia
- Adjunct Faculty, University of Virginia School of Law
- J.D. from University of Virginia

Research interests/areas of expertise:
- Working at Legal Services of Northern Virginia since 1988
- Teaching Litigation/Housing Law
- Provides training and guidance in procedural and substantive issues
Bed Bugs 101: How Bed Bug Biology Creates Legal Uncertainty

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What are bed bugs?

- Bed bugs (*Cimex lectularius*) are small, oval, flat, reddish-brown insects.
- Adult bed bugs are about the size of an apple seed.
- They evolved from bugs that parasitize bats and birds.
- Live in and amongst our belongings, and not on our bodies.
- Do Not Fly
- Do Not Jump
How do bed bugs feed?

- Bed bugs feed **only on blood**
- To find us, they sense and seek out warmth and CO₂
- Do **Not** live on people’s bodies, but rather in the environment and belongings where people sleep and congregate
- They are normally found within 5-20 feet of a sleeping person
- They are normally active at night when there is little human activity, and feed almost painlessly
- Adults can survive more than 6 months without feeding (Nymphs: 3-4 mo.)
- Bed bug adults feed approx. every 4-10 days depending on temperature and other environmental factors
What is the bed bug life cycle?

- After digesting a blood meal, females lay and secure with “cement” 1-5 eggs per day.
- Bed bugs progress through five “nymphal” stages each requiring at least one blood meal before molting to the next stage.
- Total life cycle takes 4-6 weeks. Life cycle much longer at cooler temperatures or during times of famine.

Every adult bed bug has fed at least five times!
Where are bed bug infestations most commonly found?

- The pest management industry has the best information on bed bug infestations.
- According to a 2013 survey conducted by the University of Kentucky, 72% of professionals say that bed bugs are increasing in their region.
Where do bed bugs hide in the home?

Distribution of bed bugs found in 13 infested apartments.

- Mattress: 34.6%
- Boxspring: 13.4%
- Frame/Headboard: 22.6%
- Baseboard Areas: 1.4%
- Couch/Chair: 0.2%
- Nightstand/Dresser: 3.1%
- Walls/Ceiling: 2.3%

Source: University of Kentucky

Bed Bugs 101: How Bed Bug Biology Creates Legal Uncertainty
Signs of bed bugs in the home

- Fecal Stains
- Bed Bugs
- Cast Skin
- Eggs
- Human blood stains
- Bites

Bed Bugs 101: How Bed Bug Biology Creates Legal Uncertainty
What is the most common way they spread?

- Bringing used, uninspected and untreated items into the home
- Visiting a residence, business, or public location that has a bed bug infestation
- Staying in a hotel/motel that does not inspect or treat their rooms appropriately
- In multi-family housing, bed bugs will spread to adjacent units through visiting, on items, or through walls
- People who have infestations can unknowingly spread them to public locations such as schools, daycares, libraries, and health care facilities in the community
Who do bed bug infestations affect?

- Potentially everybody!
- Bed bugs do not discriminate
- HOWEVER, there are risk factors\(^1\) including:
  - **Individual risk factors**
    - Younger age
    - Increased household poverty
    - More than three adults living in same residence
  - **Environmental risk factors**
    - Living in high poverty neighborhoods
    - Buildings with more housing units

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Bed Bugs & Poverty

Bed bug infestations tend to affect the poor in ways that wealthier people are able to avoid:

1. High infestation rates in shelters, transitional living, and multi-unit housing
   - Lack of housing choice may cause infestations to go unreported or untreated (e.g. subsidized/HUD housing)
2. Extermination costs
   - Higher rate of prolonged infestation, and potentially injury and illness do to “do it yourself” or unlicensed pest control
3. Access to current educational materials
   - Lower percentage of internet connected households
Based on NYC Environmental Public Health Tracking System, 2009 data.

- Presence of public health pests (rats, roaches, bed bugs)
- Best practice insecticide use (median solid products)
- Dangerous use of inappropriate or illegal chemicals

* Based on NYC Environmental Public Health Tracking System, 2009 data.

Bed Bugs 101: How Bed Bug Biology Creates Legal Uncertainty
Are bed bugs a health issue?

- Some may argue that bed bugs are not a “health issue” because they have not been shown to transmit diseases!

What is the World Health Organization definition of health?

- “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

Are bed bugs a health issue?

What do the U.S. Centers for Disease Control and the U.S. Environmental Protection Agency say about bed bugs?

- “Although bed bugs are not known to transmit disease, they are a pest of significant public health importance.”
- “Bed bugs cause a variety of negative physical health, mental health and economic consequences.”
- “Although the exact dollar amount is not known, the economic losses from health care, lost wages, lost revenue and reduced productivity can be substantial.”

## Health

- Itchy bites
- Skin infection
- Sleep loss
- Social relationships (stigma)
- Psychological
  - Anxiety
  - Stress
  - Phantom itching

## Economic

- Decreased work productivity
  - Due to health consequences
  - Due to time needed for pest management
- Costs of medical care
- Costs of pest management
- Costs of property replacement

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**Bed Bugs 101: How Bed Bug Biology Creates Legal Uncertainty**
Common Skin Reactions

Reaction times and severity may change with repeated exposures, some people react immediately, some people have delayed reaction:

- **No reaction w/barely visible bite**
  - There is some evidence that older individuals have depressed reaction to bed bug bites

- **2-5 mm itchy, red, raised, inflamed lesions**
  - Usually resolve within a week (if bed bugs are eradicated)

- **Some patients experience complex skin reactions (hypersensitivity, secondary bacterial infection, keloid formation, etc.)**
NEVER base a treatment decision solely on the presence or absence of “bites”!!
Health and economic effects of bed bug infestations – Secondary Effects

**Health**

- Residents who are stressed by bed bug infestations may use dangerous products to battle bed bugs:
  - Pesticides applied incorrectly
  - Health and environmental consequences

**Economic**

- Community economics
  - Bed bugs may spread through the community to:
    - Schools
    - Libraries
    - Social services agencies
  - Bed bugs may cause people with “housing choice” to look elsewhere for a home, thereby degrading the local economy³

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Why the resurgence?

- Bed bugs never truly went away
- Increases in global travel
- Lack of public knowledge
- Lack of institutional knowledge due to the previous rarity of bed bugs in the U.S.
- Reported resistance of bed bugs to currently used classes of insecticides
- Economy
Challenges leading to legal action

- Cost of bed bug treatment
  - Average single-family home treatment $500-$1500
  - In multi-unit bed bug infestations, tenants and landlords often get into disputes over pest management costs
  - May cause bed bug infestations to go unreported in multi-unit buildings

Potter et al. (2013)
Challenges leading to legal action

- **Education**
  - Bed bug infestations are a relatively new thing for the general public. Infestations have been increasing for about 10 years.
  - High costs of treatment combined with lack of knowledge about bed bug control may cause tenants to:
    - Not report their infestation for fear of being evicted, stigmatized, or charged for treatment
      - Especially true for subsidized or HUD housing
    - Throw away their belongings
    - Move out without treatment, potentially spreading bugs to family or a new unit
    - Treat on their own, potentially prolonging infestations, or worse hurting themselves
Challenges leading to legal action

- Education (contd.)
  - High costs of treatment combined with lack of knowledge about bed bug control may cause property managers to:
    - Ignore bed bug complaints, or attempt to cover them up
    - Blame the tenant, creating an antagonistic relationship, thereby prolonging infestations
    - Attempt cheap treatments or “do it yourself” solutions
    - Avoid inspecting adjacent units or evaluating the extent of infestations in building
    - Direct tenants to throw away their property

- Bed bug management requires cooperation, experience, knowledge, and multiple methods to be successful
Successful bed bug management in multi-unit requires cooperation

If one of the parties involved in bed bug control in multi-unit housing is not working as part of the solution, the bed bug control will fail.

Bed Bugs 101: How Bed Bug Biology Creates Legal Uncertainty
Resident BMP’s

- Cooperate with landlord
- Immediately report bed bugs to landlord
- Don’t immediately throw out all belongings
- Cooperate with allowing access for inspections and repairs to unit
- Prepare for treatment according to guidance from landlord and PMP – keep the home clutter-free
- Don’t try to solve the problem yourself by using “bug bombs”
- If the landlord doesn’t take action, contact the local housing code authority
- Cooperate with building bed bug prevention policies
Landlord BMP’s

- Cooperate with resident
- When notified about bed bugs, landlords should immediately make efforts to correct the problem
- Landlords should utilize an experienced professional pest manager or a certified staff
- Landlords should enable pest manager to inspect adjacent units
- Educate residents about bed bugs and about building policies to prevent bed bug spread
- May use power of the lease to gain cooperation with treatment protocols
Pest Management Professional BMP’s

- PMPs MUST obtain Dept. of Agriculture business license in Michigan
- MUST employ certified pesticide applicators
- PMPs should educate landlords and tenants as to their roles in successful bed bug management
- PMPs should make every effort to detect bed bugs throughout potentially affected units
- PMPs should make sure to destroy bed bugs at all stages of development which may require return visits
- PMPs MUST use insecticides according to label use directions
Bed Bugs 101: How Bed Bug Biology Creates Legal Uncertainty
Tenant Remedies: beyond itching, scratching and being driven crazy, sometimes by landlords, governmental agencies and judges, as well as by the bed bugs.
Challenge #1: Obtaining court relief

- A Fairfax County Virginia Circuit Court Judge has written in a reported decision:

  “Bedbugs may be a genuine problem, but they hardly offend decency and morality.”
Challenge #2: Code enforcement

- Often “hands off”
- Say: “No jurisdiction”
- Lack of resources
- Low priority
- Lack of expertise
Bed Bugs Information and Prevention

Resources for Identifying, Treating and Preventing Bed Bug Infestations

Bed bugs are tiny pests that feed on blood and cause itchy, irritating bites. While the Environmental Protection Agency (EPA), the Centers for Disease Control and Prevention (CDC) and the United States Department of Agriculture (USDA) consider bed bugs a public health pest, they are not known to transmit or spread disease. Bed bugs do not cause damage to structures and they are not considered a public nuisance.

As a result, the City of Virginia Beach does not conduct inspections for bed bugs and cannot address infestations under the current state and local ordinances; however, defects on the interior or exterior of the structure which could allow pests into the unit can be addressed. In an effort to assist residents with the identification, prevention and elimination of bed bugs, Housing & Neighborhood Preservation has provided the following links to information and resources:
Challenge #3: Using law to address bed bugs

- State and local law:
  - Warranty of Habitability – govt and private enforcement
  - Landlord-Tenant Rights & Responsibilities
  - Landlord-Tenant Terms of Leases

- Does not address or does not fit this problem or is ambiguous
- Very few states have bed bug specific laws – for most must rely on housing law
- Lack of court opinions interpreting law
- Law varies state-to-state and within a state (e.g. variation local codes, interpretation and application of law)
Habitability & bed bugs

- **Statutory warranty of habitability and government code standards**
  - May make distinctions between more serious and less serious conditions, with code enforcement focused on more substantial problems
  - More/Less serious criteria difficult to apply to bed bugs
  - Assignment of responsibly under landlord-tenant law – may impact code enforcement’s response (e.g. law makes tenants responsible for pests within their units)
- **Main excuse given for lack of enforcement:**
  - Bed bugs do not transmit disease (unlike rats and roaches)
  - Thus, do not pose serious threat to public safety
  - Which means, government does not regulate or enforce rights
  - And so, infestations are left for private resolution
What might be a serious threat to public health or safety?

- Hypothetical: Low-income tenant with three school age child lives in housing complex infested with bed bugs; landlord’s extermination efforts not effective. Tenant works in a nursing home.

- Risk that tenant and children will spread bed bugs to nursing home and their schools?

- Can nursing home suspend without pay or fire tenant for residing in an infested property?

- Can schools exclude children?

- Could a store bar entry to customers from an infested property?

- Is possible threat to health and safety in the nursing home, in the schools, and in other public or private places enough to require local health code enforcement agency to require landlords to take effective remediation efforts?

Tenant Remedies
Landlord-Tenant Remedies

Four legal issues:
1. Who is primarily and/or ultimately responsible for eradication of pests?
2. Who is liable for some or all of the cost of remediation?
3. When can tenant be held responsible for remediation within unit or for areas outside of tenant’s unit?
4. When is negligence of the tenant or landlord relevant to determining liability? To what extent can this be assigned to tenant through a lease?
Identifying the law:
So many questions, so few answers....

- Does any tenant have a primary legal duty (greater than that of the landlord) to prevent or to control a bed bug infestation?
- If not all tenants have the same legal duty, how does state law assign primary or secondary liability among differently situated tenants?
- Does state common law establish principles of negligence applicable to liability for bed bug infestations?
- Does state statutory law establish liability for landlords or for tenants to address bed bug infestations?
- To what extent are tenants liable under either common law contract or tort theories for allowing a bed bug infestation to occur or to spread?
More questions …

- Does state law allow the issue of fault to help assign rights and responsibilities to landlords and to tenants?
- Is there a general statute or principle of common law that establishes the general duty of the landlord to provide and to maintain habitable housing?
- How does this general principle apply to bed bug infestations?
- Does state or local housing/heath law addressing insects or other pests apply to bed bugs?
- What, if any, remedies do local governmental code enforcement agencies have, once a bed bug infestation is identified or reported?
And more …

- Does a landlord or a tenant have to grant admission to housing for inspection by either a governmental agency or by a private contractor to verify presence of bed bugs?

- Do any tenants with special health conditions have a right under federal, state or local law to limit the inspection and remediation arrangements to address bed bugs?

- Are there any state or local established professional standards, including contractor licensing requirements, to regulate who can perform bed bug remediation measures?

- Is there any recognized certification or governmental inspection report to establish that a property is free of bed bugs?
And still more …

- Does state law grant authority for the local government to bring an enforcement action for failure of the landlord and/or the tenant to control a bed bug infestation?
- Does state law grant a private right of action for tenants to enforce habitability requirements; and, does this include existence of bed bug infestations?
- Under state law, is a tenant subject to eviction for: failure or refusal to pay for some or all of the costs associated with bed bug infestations; for failing to timely report the presence of bed bugs; for failing to cooperate with remediation measures; for allowing bed bugs to be introduced to a property; or, for any other reason associated with an infestation?
Continuing list of questions…

- Can a tenant be held liable in a lease or under relevant tort law to compensate a landlord or other tenants for money damages suffered as a result of a bed bug infestation spreading from the tenant’s unit?
- Is there any legal basis for a tenant to be compensated for loss of use of bed bug infested property, for cleaning expenses, etc. for an infestation which starts someplace outside of the tenant’s unit and spreads to the tenant’s housing?
- Does a landlord have an affirmative (or, any) duty to disclose to a prospective tenant that there has been in the recent, relevant past an infestation of bed bugs on the property?
Finally...

- Are there any limits on what a landlord can do to refuse to rent to a tenant who is living in or who has recently lived in a bed bug infested property?
- Is a landlord liable to other tenants for any infestation expenses they may suffer if the landlord fails to screen out a new tenant who introduces bed bugs to the property?
- Does state law limit what terms a landlord can include in a lease to require that the tenant compensate the landlord for any bed bug infestation expenses?
Recommendation #1: Get expert help

- Identify true expert on identifying and successfully remediating bed bug infestations
- Important for consultation
- Effective extermination efforts being used?
- What needs done to be effective?
- Virginia – Professor entomology has provided training to legal services attorneys to spot problems with poor remediation
- Improving governmental agency responses – Establish liaison with an expert, and possibly to develop in-house expertise
Recommendation #2: Develop legal strategies

- Ambiguity in law / uncertainty in outcome: use to negotiate individual settlement (assumes capable counsel)
- Some “reform” of local responses to infestations may be possible through creative litigation of individual cases.
- Landlord may need to produce as a witness a contractor (exterminator) hired to address a bed bug problem – use voir dire to challenge the qualifications of the contractor to testify in court as an expert on bed bug remediation.
- Produce a true bed bug remediation expert to testify for the tenants; May be important to a successful outcome, but the cost may make this impractical.
Rec#2: Develop legal strategies, cont.

- If a local code enforcement agency can be persuaded to adopt standards for bed bug remediation, the local agency may be a source of expert testimony for court and this may be a limited role which is acceptable and affordable for the local government agency to agree to fill in supporting private remediation efforts.
- Pursue alternative legal theories
Are there successful legal theories to protect tenants from the costs of bed bug infestations?

- In Virginia, one court refused to allow a tenant to sue a landlord of a bed bug infested property on a tort theory that the management knowingly leased an apartment in a building which was infested with bed bugs (asserting claims of negligence, gross negligence and intentional infliction of emotional distress).

- However, the court did allow the tenant to proceed with the lawsuit relying on a theory of liability under the state consumer protection statute, with a claim that concealing the existence of the infestation was a deceptive trade practice, as well as asserted claims for fraud and for breach of contract.

- Are tort or contract theories of liability generally better for landlords or for tenants?
Recommendation #3: Engage stakeholders

- Get community stakeholders to make the case for effective community solutions (including by code enforcement)
  - Schools – children bring in bed bugs, can’t learn if excluded
  - Employers – employees bring in bed bugs, impact others
  - Unions and employee representatives – home health workers, bus drivers, others at risk of bed bug “hitchhikers”
  - Businesses – Being identified with bed bugs repels tourists and customers; creates risk of liability
Thank you!

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Q&A

Type your question in the Q and A panel.
Thank you for attending.

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