

10-20-2017

Amending the Virginia Residential Landlord-Tenant Act Regarding Liability for Bedbug Extermination

Lisa Allen

Follow this and additional works at: <http://scholarship.richmond.edu/pilr>

 Part of the [Housing Law Commons](#), and the [Public Law and Legal Theory Commons](#)

Recommended Citation

Lisa Allen, *Amending the Virginia Residential Landlord-Tenant Act Regarding Liability for Bedbug Extermination*, 21 RICH. PUB. INT. L. REV. 59 (2017).

Available at: <http://scholarship.richmond.edu/pilr/vol21/iss1/6>

This Note is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

AMENDING THE VIRGINIA RESIDENTIAL LANDLORD-
TENANT ACT REGARDING LIABILITY FOR BEDBUG
EXTERMINATION

*Lisa Allen**

* Lisa Allen is a member of the class of 2018 at the University of Richmond School of Law and is Notes and Comments Editor of the *Richmond Public Interest Law Review* for Volume 21. She holds Bachelor of Science and Master of Arts degrees from the University of Rhode Island, and taught high school science for 23 years before coming to law school. Lisa worked at the Legal Aid Justice Center in the summer of 2017, and presented with Legal Aid colleagues on the subject of bedbug law at the 2017 Annual Statewide Legal Aid Conference.

ABSTRACT

An addition to the Virginia Code has caused complications for residential tenants who experience bedbugs in their rental units. A proposed amendment to this law will hold landlords liable for dealing with bedbugs infestations because landlords are in a position that makes them most able to afford treatment. This amendment would also address bedbugs effectively according to scientific research and align with federal housing guidelines.

INTRODUCTION

In March 2017, the Virginia legislature added a new section to the Virginia Residential Landlord-Tenant Act.¹ That law now states that tenants shall

[. . .] [be] financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied.²

This seems at first to be completely reasonable. If a tenant's poor house-keeping or unsanitary conditions in the residence causes an infestation, why should a landlord be obligated to pay for extermination? This law is supposed to place responsibility on those most able to prevent an infestation. In the case of roaches or rodents, we want tenants to take responsibility and to bear the brunt of punishment if they fail to keep a clean home.

There is, however, one significant problem with this legislation, which requires an amendment in the upcoming session. The amendment I am proposing will explicitly remove bedbugs from the pests included in the statute. The amendment should read, "The introduction of bedbugs to a home cannot be attributed to a specific negligent behavior on the part of any tenant. Accordingly, tenants shall promptly report infestations of bedbugs to their landlords, and landlords shall be financially responsible for providing professional extermination services to eradicate them. Tenants shall comply with pest professionals' guidance for successful extermination."

¹ H.B. 1869, 2017 Gen. Assemb., Reg. Sess. (Va. 2017).

² VA. CODE ANN. § 55-248.16 (2017).

This amendment serves several purposes. Removing bedbugs from the original blanket statement will bring the Virginia Code more in line with best practices for limiting the spread of this pest.³ It also would align with current scientific thinking about laying blame for bedbug infestations.⁴ Additionally, the Department of Housing and Urban Development (HUD) has guidelines for subsidized rental housing that include bedbug extermination in landlords' responsibilities.⁵ Setting up a conflict between different parts of the state landlord tenant law or between state law and federal subsidized housing law is an invitation to litigation, an unwelcome pest of another sort. The Virginia Code should clearly and explicitly support current scientific thinking, guide public and private landlords and tenants so that both know their rights and responsibilities without court intervention, and align properly with federal guidance on this subject.

I. SCIENTIFIC THINKING

One important reason for amending the legislation is to reflect entomologists' knowledge of best practices for limiting the spread of bedbugs. Even if residents diligently engage in prevention activities, bedbugs can still infest an area and an infestation may become well established before anyone notices. If an IPM [Integrated Pest Management] plan is in place that details specific roles in dealing with an infestation, bedbug experts can stop the infestation before it becomes overwhelming. In most cases, the longer an infestation remains unchecked, the harder and more expensive it will be to eliminate. Reliable and cost-effective early detection methods and educational efforts can help communities by lowering overall treatment costs and reducing new infestations.⁶ Bearing in mind the importance to all Virginians of controlling and containing rampant infestations, the implementation of IPM programs in all rental housing is a wise step in protecting our communities.

³ FED. BED BUG WORKGROUP, ENVTL. PROT. AGENCY, COLLABORATIVE STRATEGY ON BED BUGS 6 (2015), <https://www.epa.gov/sites/production/files/2015-02/documents/fed-strategy-bedbug-2015.pdf>.

⁴ *Id.*

⁵ *See, e.g.*, U.S. DEP'T OF HOUS. & URB. DEV., NOTICE H 2012-5, GUIDELINES ON ADDRESSING INFESTATIONS IN HUD-INSURED AND ASSISTED MULTIFAMILY HOUSING 4 (2012); *see also* 24 C.F.R. § 982.401(m) (2017) ("The dwelling unit and its equipment must be free of vermin and rodent infestation.").

⁶ FED. BED BUG WORKGROUP, *supra* note 3, at 7.

II. BLAME

Fear, shame, and guilt are the emotional results of bedbug infestations that limit a tenant's willingness to divulge the existence of a problem promptly.⁷ If a tenant believes his landlord will blame him and refuse to provide treatment, why would he share that information? Reluctance to disclose the existence of a bedbug problem can only lead to more intractable infestations.

Landlords and tenants both need to understand the magnitude of the bedbug problem in America in order to recognize the pointlessness of attempting to assign blame. Bedbugs have infested Manhattan locations of Victoria's Secret and Abercrombie and Fitch.⁸ Charleston, South Carolina has four firehouses afflicted with bedbugs.⁹ Two 911 dispatch centers in Jackson, Mississippi experienced infestations.¹⁰ No reasonable person would withhold treatment of these spaces because of a misguided belief that blame should first be established, or that slovenly conditions invited these infestations. How, then, is the infestation of a residence different? Unwashed dishes were never the cause of a bedbug infestation; nobody ever introduced bedbugs into their home intentionally. "Contrary to popular belief, the number of people in a house and the level of sanitation are not good indicators of the presence of bed bugs."¹¹ Whether bedbugs infest Victoria's Secret, a fire station, or a private apartment, no case for negligence can be made. In all of these locations, an IPM program implemented in advance of the accidental introduction of bedbugs could have mitigated the expense, discomfort, and stigma of an infestation.¹²

⁷ See Emily B. Hager, *What Spreads Faster Than Bedbugs? Stigma*, N.Y. TIMES (Aug. 20, 2010), <http://www.nytimes.com/2010/08/21/nyregion/21bedbugs.html?pagewanted=all&mcubz=2>.

⁸ Scott Bland, *Bloodsucking Bed Bugs Creep Back In*, ABC NEWS (July 25, 2010), <http://abcnews.go.com/Technology/victorias-secret-closes-bed-bugs-infestations-rise/story?id=11238695>.

⁹ Nobugsonme, *Four Charleston Firehouses Infested by Bed Bugs*, BEDBUGGER.COM (June 1, 2017), <http://bedbugger.com/2017/06/01/bed-bugs-charleston-firehouses/>.

¹⁰ Nobugsonme, *911 Dispatch Centers in Jackson Infested with Bed Bugs*, BEDBUGGER.COM (June 2, 2017), <http://bedbugger.com/2017/06/02/911-dispatch-centers-bed-bugs-jackson/>.

¹¹ Klaus Reinhardt & Michael T. Siva-Jothy, *Biology of the Bed Bugs (Cimicidae)*, 52 ANN. REV. ENTOMOLOGY 351, 361 (2007).

¹² See Va. Code Ann. § 55-248.16 (2017).

III. UNANTICIPATED PROBLEMS WITH HOME TREATMENT

Across the country and across the world, problems with bedbugs are growing at an alarming rate.¹³ DDT, that much despised pesticide, was responsible for the respite from bedbugs experienced in the 1940s and 1950s.¹⁴ Today's population of bedbugs, however, is almost completely resistant to DDT and pyrethrin insecticides which function with a similar mechanism.¹⁵ Demands to bring DDT back still linger because DDT was effective against bedbugs decades ago.¹⁶ Black market DDT is a frequent topic on bedbug websites.¹⁷ Unsophisticated sufferers are seeking to obtain and employ this dangerous insecticide in an attempt to control bedbugs.¹⁸

The presence of such persistent toxic compounds in an apartment may be as unwelcome as the pests. The shame and blame of having an infestation, the uncertainty about the costs of treating for bedbugs, and the online availability of unscientific treatment approaches and conspiratorial theories about governmental bans of DDT combine to create a situation in which infestations of bedbugs can become intractable. Bedbug eradication needs to be handled by professionals. Science needs to supersede blame. Establishing IPM protocols in advance of any infestations is a financially responsible, forward-thinking choice every landlord and property manager should be encouraged to make.

IV. HUD AND BEDBUGS

HUD is the federal department responsible for public housing and subsidized housing. Being financially responsible for many high-density housing projects has probably given HUD affiliates more experience than any other

¹³ See Nat'l Pest Mgmt. Ass'n, *2011 Bugs Without Borders Survey: New Data Shows Bed Bug Pandemic is Growing*, Pestworld, <http://www.pestworld.org/news-hub/press-releases/2011-bugs-without-borders-survey-new-data-shows-bed-bug-pandemic-is-growing/> (last visited Oct. 12, 2017).

¹⁴ See generally Michael F. Potter, *The History of Bed Bug Management - With Lessons from the Past*, 57(1) *Am. Entomologist* 14, 21 (2011).

¹⁵ C. Dayton Steelman et al., *Susceptibility of the Bed Bug Cimex lectularius L. (Heteroptera: Cimicidae) Collected in Poultry Production Facilities to Selected Insecticides*, 25(1) *J. of Agric. & Urb. Entomology* 41, 47-48 (2008).

¹⁶ See Flyover Country, *How Do We Eradicate Malaria? By Ignoring Eco-Fascists*, Hammer of Truth (Jan. 22, 2011), <https://hammeroftruth.com/2011/how-do-we-eradicate-malaria-by-ignoring-eco-fascists/> (ranting that the "eco-fascists" elimination of DDT is responsible for malaria and bedbug problems).

¹⁷ See, e.g., *Got Bedbugs? Bedbugger Forums*, Bedbugger.com, <http://bedbugger.com/forum/tags/ddt>.

¹⁸ *Id.*

landlords in dealing with infestations.¹⁹ How, then, does HUD handle bedbugs?

HUD's umbrella of properties encompasses public housing, Section 8 housing, Rent Supplement housing, Rental Assistance Payment contracts, and a wide assortment of both mortgage and rental supports.²⁰ In a HUD document explicitly addressing bedbug infestations in all these property arrangements, HUD encourages managers to implement IPM plans.²¹ Additionally, HUD suggests further steps should be taken to reduce the potential introduction of bedbugs to a property, such as training staff to inspect furniture of residents prior to move-in, conducting regular inspections of apartments, and training staff and tenants alike in recognizing signs of the presence of bedbugs.²² HUD's approach is scientific, preventive, and aggressive.

In all the previously listed forms of subsidized housing, HUD recognizes that the costs of treatment to eradicate bedbugs must be borne by the landlord.²³ HUD clients, by definition, lack the available income to hire professional exterminators themselves.²⁴ HUD must accept financial responsibility for extermination because an infested residence is uninhabitable. The only requirements that HUD imposes on the tenant are prompt reporting and compliance with exterminators.²⁵

V. DIFFERENTIATING LOCAL HOUSING AUTHORITY FROM OTHER LANDLORDS

Not every rental property is owned by a landlord with pockets as deep as the federal government, and not every tenant is as indigent as the public housing residents for whom HUD is responsible. As such, landlords may argue that they should not be forced to pay for extermination services.²⁶

¹⁹ See generally U.S. Dep't of Hous. & Urb. Dev., *supra* note 5.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See *id.*

²⁴ See U.S. Dep't of Hous. Urb. Dev., *supra* note 5; see also U.S. Dep't of Hous. & Urb. Dev., Housing Choice Vouchers Fact Sheet, https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Oct. 12, 2017).

²⁵ U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 5.

²⁶ *Bed Bug Notice Allows Owners to Shift Cost to Tenants and Evict Them*, NATIONAL LOW INCOME HOUSING COALITION, <https://nlihc.org/article/bed-bug-notice-allows-owners-shift-cost-tenants-and-evict-them>.

This is a specious argument that can only lead to increasing rates of infestation in our communities.

First, while there may be instances where tenants are more financially able to shoulder the burden of extermination services than landlords, ultimately, for the landlord, ownership of rental property is a financial investment. There are associated costs of doing business with any investment, and rental property ownership is no exception. Landlords, particularly those who own multi-family housing, are in the best position to protect these investments, and to amortize the costs of instituting IPM programs in their rental properties.²⁷ Leaving this potentially debilitating problem to chance is financially irresponsible.

Secondly, just as federal law requires that all subsidized housing should be free of infestation,²⁸ the Virginia Residential Landlord-Tenant Act (VRLTA) requires that “a landlord must make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.”²⁹ An apartment infested with bedbugs is not fit and habitable, some courts have found.³⁰ Virginia code also says the landlord shall “comply with the requirements of applicable building and housing codes materially affecting health and safety.”³¹ The presence of bedbugs creates an environment that is a threat to the health and safety of residents.³²

In addition, it bears mentioning that if the proposed amendment were made, a rental agreement could not be written to subvert its intention.³³ The Virginia Residential Landlord Tenant Act (VRLTA) specifically states that a “rental agreement shall not contain provisions that the tenant . . . [a]grees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs

²⁷ Frederick Masters & Corey Strauss, *An Infestation Of Bedbug Legislation*, LAW 360 (Nov. 3, 2015, 11:23 AM), <https://www.law360.com/articles/722275/an-infestation-of-bedbug-legislation>.

²⁸ 24 C.F.R. § 5.703(f) (2011).

²⁹ VA. CODE ANN. § 55-248.13(A)(2) (2015).

³⁰ Samuel R. Gilbert, *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, 252 (2011).

³¹ VA. CODE ANN. § 55-248.13 (2015).

³² See U.S. CTR. FOR DISEASE CONTROL & ENVTL. PROT. AGENCY, JOINT STATEMENT ON BED BUG CONTROL IN THE UNITED STATES (2010), <https://stacks.cdc.gov/view/cdc/21750/Email> (“Bed bugs cause a variety of negative physical health, mental health and economic consequences. Many people have mild to severe allergic reaction to the bites with effects ranging from no reaction to a small bite mark to, in rare cases, anaphylaxis (severe, whole body reaction). These bites can also lead to secondary infections of the skin such as impetigo, ecthyma, and lymphangitis. Bed bugs may also affect the mental health of people living in infested homes. Reported effects include anxiety, insomnia and systemic reactions.”).

³³ VA. CODE ANN. § 55-248.9 (2016).

connected therewith.”³⁴ Being explicit in excluding bedbugs from the 2017 amendment would protect tenants against signing away this protection in a lease.

VI. LEGAL INFESTATIONS

The language of the 2017 amendment to the VRLTA specifies that responsibility for paying for extermination should fall to the tenant if that tenant failed to report the problem promptly or if the infestation is his fault.³⁵ However, assigning blame or fault in bedbug infestations can be difficult as HUD has discovered. Namely, HUD recognizes that laying blame is impossible and that expecting their tenants to have the resources to pay for treatment is unproductive.³⁶ Instead, it has gone straight to the only plausible response: to place responsibility for bedbug treatment on the landlord.³⁷ Private landlords may see the 2017 VRLTA amendment as providing them with a legal justification for avoiding this expense, even though they are in the best position to assume and amortize it. Other sections of the VRLTA require that a landlord maintain a habitable property.³⁸ Where arguments can be made that hold two different parties financially responsible for an expense, inevitably, lawyers will become involved.

If a landlord and tenant hire dueling lawyers to represent their interests in court both trying to force the other to pay for bedbug eradication, who wins? Bedbugs and lawyers. The tenant endures a protracted debilitating nightly assault from bedbugs. The landlord’s property becomes more intractably infested as time passes. Infestations spread to neighboring apartments, widening the misery. The court looks uncomfortably at the seat occupied by a plaintiff tenant, wondering what exactly that plaintiff may have left behind. The lawyers may itch nervously, but their hourly billable rate exceeds that of most exterminators.³⁹ The courtroom provides solutions for many problems, but if a situation requires an exterminator, a lawyer is a poor substitute. Assigning responsibility explicitly to the landlord under the law

³⁴ *Id.*

³⁵ 2017 Va. Acts. 262.

³⁶ See U.S. DEP’T OF HOUS. & URB. DEV., *supra* note 5.

³⁷ See, e.g., *id.*; see also 24 C.F.R. § 982.401(m)(2) (2017) (“The dwelling unit and its equipment must be free of vermin and rodent infestation.”).

³⁸ VA. CODE ANN. § 55-248.13 (2015).

³⁹ *Pest Control Worker’s Salary*, RECRUITER.COM, <https://www.recruiter.com/salaries/perst-control-workers-salary/> (last visited Sept. 29, 2017).

2018] LIABILITY FOR BEDBUG EXTERMINATION 67

would at least have the benefit of keeping the lawyers out of the fray, reducing overall costs and encouraging a rapid response to reports of infestation.

CONCLUSION

It is clear that for reasons of public health and safety, the Code of Virginia needs to reflect current best practices in the war against bedbugs. To that end, legislators should examine for themselves the documents prepared by the Center for Disease Control and the Environmental Protection Agency.⁴⁰ They should read the recommendations by Housing and Urban Development, an agency well acquainted with the challenges of bedbug infestations.⁴¹ Legislators must consider the public health implications of leaving the financial responsibility for bedbug treatment in the hands of individual courts, with lawyers arguing over who is to blame for the presence of bedbugs in an apartment. They must recognize the benefit of clear and indisputable guidance in the law, and they must act accordingly.

⁴⁰ See U.S. CTR. FOR DISEASE CONTROL & ENVTL. PROT. AGENCY, *supra* note 32.

⁴¹ See U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 5.

