

# Cuyahoga County Bed Bug Conference

November 10, 2011



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# Responsibilities of Landlords and Tenants

## **Landlord Responsibilities:**

**Ohio Revised Code §5321.04 states in relevant part:**

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



# Responsibilities of Landlords and Tenants

## **Tenant Responsibilities:**

**Ohio Revised Code § 5321.05 states in relevant part:** A tenant who is a party to a rental agreement shall do all of the following:

- Keep that part of the premises that he occupies and uses safe and sanitary;
- Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;
- Tenant to keep premises in a safe and sanitary condition.

# Bed Bug Litigation

- **Ohio Case Law:**

*Katz v. Comisar* (March 7, 1930), 28 Ohio N.P. 10.

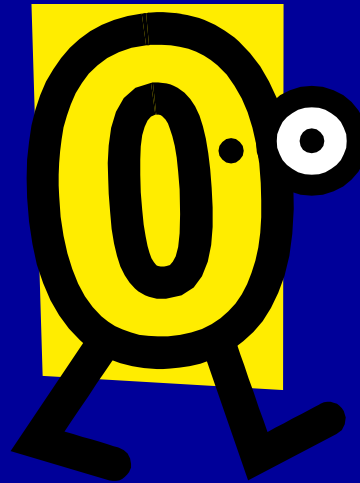
- Hamilton County Court of Common Pleas

- Landlord sued the tenant for unpaid rent. The tenant filed a counterclaim alleging when he went into possession of the premises, said premises were infested with bed bugs .

- The court noted that there was no guiding case law in Ohio and ruled that it was a constructive eviction. The Court ruled an innocent tenant has the right to presume when he enters into a lease he will get a dwelling that is fit and habitable.

# Bed Bug Litigation

- **Ohio Statutes:**



- **There is no pending legislation in the State of Ohio addressing the specific issue of liability for bed bugs in the area of landlord/tenant law.**

# Bed Bug Litigation

- **Other States:**

- As of February 2011, Illinois, Maine and New York have all adopted bed bug related laws the year prior.
- As of February 2011, there are 11 states considering bedbug legislation in 2010-2011.
- As of February 2011, several municipalities have addressed or are looking into proposed ordinances regarding bedbugs. The municipalities include New York City, Jersey City, San Francisco, Boston, Cincinnati, Detroit etc.

# Bed Bug Litigation

- **Other States: New York**

- *Ludlow Properties, LLC v. Peter H. Young, et al.* 2004 NY Slip Opinion 24208, 4 Misc 3d 515, June 10, 2004. In *Ludlow*, the Court ruled in favor of a tenant who refused to pay rent for six months because of a persistent bed bug problem. Decision reversed a long standing decision in a 1908 case which held the tenant must pay rent regardless of vermin infestation.
- New bill requires New York City landlord inform incoming tenants of the property's bed bug infestation history for the previous year. This includes the premises rented by the tenant and the building in which the premises are located.



# Bed Bug Litigation

- **Other States: *Maine***
  - **Landlords:**
    - Required by law to contact a pest control agent within 10 days of determining there is an infestation.
    - Must employ a pest control agent that carries current liability insurance to promptly treat infestation
    - Shall disclose to prospective tenants if an adjacent unit is currently infested with or being treated for bed bugs.
    - May not offer for rent a dwelling unit the landlord knows or suspects is infested with bed bugs.



# Bed Bug Litigation

- **Other States: *Maine Continued***
  - **Tenants:**
    - Must promptly notify a landlord when the tenant knows or suspects an infestation of bed bugs in the tenant's unit.
    - Must grant landlord and pest control agent access to the unit.
    - Must comply with reasonable measures to eliminate and control a bed bug infestation, as set forth by the landlord and the pest control agent or risk being financially responsible for all pest control treatments of dwelling unit arising from the tenant's failure to comply.

# Bed Bug Litigation

- **Other States: New Jersey**

- New Jersey passed a state-wide bed bug law in early February of 2010.
- This bill states that landlords of multiple-dwelling units must provide pamphlets to tenants and other information on bed bugs and preventative methods.
- Landlords must have bed bug infestations exterminated directly after learning about them.
- Landlords who do not take immediate actions may face fines of \$300 per infested bedroom and/or \$1,000 per infested common area.

# Advice to Clients

- Preventative Measures for Landlord's:
  - Lease provisions and/or addendums specifically addressing extermination compliance and tenant responsibility to notify landlord of infestation.
  - Education about bed bugs and infestations.



# Advice to Clients

- Bedbug infestation/complaints:
  - Document every step landlord takes when addressing bed bug complaint.
  - Address bed bug complaints immediately.
  - Treatment should be done by licensed pest management company.

# Advice to Clients

- Tenant Non-Compliance:
  - Make sure all notices to the tenant are in writing and in tenant's file.
  - If the tenant refuses to comply with treatment procedures, eviction may be available.
  - Landlord should make sure that tenant is given written notice as to what will happen if tenant refuses to prepare apartment or allow entry into the unit.
    - Could lead to potential liability and/or a claim by the tenant.

# **Cuyahoga County Bed Bug Conference**

**November 10, 2011**



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# Responsibilities of Landlords

**Mike had previously mentioned Landlord Responsibilities:  
Ohio Revised Code §5321.04 states in relevant part:**

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



# Responsibilities of Landlords

## - **HOWEVER.....**

- **In Ohio, Bed Bugs are not considered vermin, thus, not a health and safety issue under State LL/T Law.**
- **What can tenants do to urge landlord to treat a bedbug infestation?**





# Responsibilities of Landlords

- 1) **Check local code. In the City of Cleveland, insect infestations, while not a health and safety issue, are considered a public nuisance.**
- 2) **Landlords, when notified by the City, are required to abate the nuisance.**
- 3) **When notified by the City of the nuisance, a tenant now has the right to use the provisions of the Ohio LL/T law to compel compliance by the landlord.**

# Responsibilities of Landlords

- **Anywhere else in Ohio? Tenants should rely on the landlord's duty to keep property fit and habitable.**
- **Tenants should force the Court to look at this issue.**

**How to do this?**

# Responsibilities of Landlords

**1) First, a tenant should provide a notice in writing.**

Sample letters are available on our website at [www.clevelandtenants.org](http://www.clevelandtenants.org).

**2) Keep a Copy. Landlord cannot retaliate when a tenant asks for repairs, maintenance or extermination in a property.**

**3) Landlord has 30 days to comply.**

**4) If the landlord does not take care of the infestation, tenants can:**

Terminate the lease, file for an order to compel, or rent deposit.

# Responsibilities of Landlords

**Need help with the process?**

**Call CTO's RENTAL INFORMATION CENTER**

**(216)432-0609**

**Our specialists are available (for free) to assist tenants and landlords understand and exercise the protections provided by the law.**

# What can a landlord do?

## **Tenant Responsibilities:**

**Ohio Revised Code § 5321.05 states in relevant part:** A tenant who is a party to a rental agreement shall do all of the following:

- **Keep that part of the premises that he occupies and uses safe and sanitary;**
- **Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;**
- **Tenant to keep premises in a safe and sanitary condition.**

# **Responsibilities of** **Tenants**

- 1) Landlords should inform a tenant (in writing) of the bedbug infestation.**
- 2) If the landlord believes that the tenant has brought in the bedbugs, and that the infestation is only in the current unit, they should ask the extermination company for a letter stating that in their professional opinion, the bedbugs were brought in by the tenant and are only in that unit.**
- 3) Landlord still has responsibility to exterminate, but may charge the tenant or deduct the cost from the Security Deposit.**

# Lessons learned?

- **Bedbugs have not been an issue for decades, and, were largely ignored when the Ohio Landlord-Tenant law was initiated in 1975.**
- **Until case law or legislation is developed that create a course for the Courts to follow, the law is fairly vague on responsibilities related to bedbug infestations.**
- **Tenants and Landlords MUST communicate with each other when a bedbug infestation has occurred.**
- **Questions? Concerns? Call CTO at 216-432-0609. Free resource, happy to help.**

