

Testimony Commenting on H.B. 6759: An Act Concerning the Rights and Responsibilities of Landlord and Tenants Regarding the Treatment of Bed Bug Infestations.

Rory Coursey¹

Jerome N. Frank Legal Services Organization Landlord-Tenant Clinic

February 17th, 2015

Representative Butler, Senator Winfield, and Distinguished Members of the Housing Committee I am testifying on behalf of the Jerome N. Frank Legal Services Organization Landlord-Tenant Clinic, an organization which provides free legal representation to low-income tenants in disputes with landlords.

The Landlord-Tenant Clinic supports this bill's explicit allocation of the costs of bedbug extermination to the landlord but urges amending the bill in several areas.

- 1) The bill's allocation of costs of the bedbug extermination to the landlord effectively codifies the existing state of the law and allows courts to avoid the impossible task of determining the cause of a bedbug infestation.

Connecticut housing law currently requires landlords to “do whatever is necessary to put and keep the premises in a fit and habitable condition” unless a tenant intentionally causes damage.² This requirement includes dealing with pest and rodent infestations.³ There is no reason to exclude bedbugs from this category as they can cause health problems and turn “sleep into a hellish experience.”⁴ Connecticut courts have acknowledged that untreated bedbug infestations specifically can violate a landlord's obligations under Chapter 830, Section 47a-7.⁵

The bill's allocation of the costs of bedbug extermination without regard to fault allows state courts to bypass the all but impossible task of assigning fault for a bedbug infestation. The unique nature of bedbugs makes it very difficult to determine the source of the infestation.⁶ Bedbugs are small enough, as thin as a credit card before feeding, that they can hide undetected in clothing, upholstery, and bedding.⁷ A person could pick up a few bedbugs in almost any public place, including on public transportation, and bring them back to her apartment without knowing it.⁸ Bedbugs prodigious capacity

1 Rory Coursey is a student at Yale Law School. This testimony was prepared through the Jerome N. Frank Legal Services Organization Landlord-Tenant Clinic under the supervision of J.L. Pottenger, Jr., Nathan Baker Clinical Professor of Law, and Francis X. Dineen, Visiting Clinical Lecturer in Law at Jerome N. Frank Legal Services Organization.

2 Conn. Gen. Stat. Ann. § 47a-7

3 See, e.g., RIGHTS AND RESPONSIBILITIES OF LANDLORDS AND TENANTS IN CONNECTICUT, <http://www.jud.ct.gov/publications/hm031.pdf> (last visited Feb. 15, 2015); *Hous. Auth. City of Hartford v. Williams*, No. 92006-65824, 1992 WL 331874 (Conn. Super. Ct. Oct. 8, 1992) *Newbold v. Aboudi*, No. CV NH 8410-1080, 1986 WL 296395 (Conn. Super. Ct. Apr. 15, 1986); *Vazzano v. Harrison*, No. SPBR 833-00941, 1983 WL 187587 (Conn. Super. Ct. Apr. 27, 1983).

4 Samuel R. Gilbert, 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 (2011); *Ludlow Props., LLC v. Young*, 780 N.Y.S.2d 853, 856 (Civ. Ct. 2004).

5 See, e.g., *Godaire v. Wequonnoc Vill. Assoc., L.P.*, No. CV115014260, 2012 WL 6965390 (Conn. Super. Ct. Dec. 27, 2012); *Morel v. Marks Grp., LLC*, No. H-1532, 2011 WL 2712996 (Conn. Super. Ct. June 21, 2011); *Lewis v. 525-527 Main St. EH, LLC*, No. HCH562, 2009 WL 5184251 (Conn. Super. Ct. Dec. 1, 2009)

6 Samuel R. Gilbert, 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 (2011).

7 Michael F. Potter, BED BUGS, University of Kentucky Cooperative Extension Service, (revised May 2012) <http://www2.ca.uky.edu/entomology/entfacts/entfactpdf/ef636.pdf> (last visited Feb. 15, 2015).

8 Jennifer Lee, WHERE BEDBUGS RIDE AROUND BESIDES JUST BEDS, New York Times, (May 9, 2008), <http://cityroom.blogs.nytimes.com/2008/05/09/where-bedbugs-ride-around-besides-just-beds/> (last visited Feb. 15, 2015).

for reproduction could then create a full-blown infestation within weeks.⁹

Given the practical impossibility of determining who or what the bedbugs came in on, if judges are forced to make a determination of fault they may be forced to rely on the timing of the discovery of the infestation.¹⁰ Bedbugs are typically detected only when a person has a physical reaction to their bites which does not necessarily track to when the infestation began.¹¹ Bedbugs can hide for up to a year without feeding.¹² Humans also displays a variety of reactions for bedbug bites, ranging from no reaction at all to anaphylaxis.¹³ Courts do not have the capacity to determine what caused a bedbug infestation so it is appropriate that this bill assigns the extermination costs without regard to fault.

2) The terms of the bill should be amended to define “infestation” more clearly, to oblige landlords to immediately contract with a pest control agent to treat the infestation rather than first attempting to treat the infestation themselves, and to allow tenants to remove infested items from their units subject to regulations about proper disposal of said items.

1. *The term “infestation” should be explicitly defined as “the presence of bedbugs.”*

Bedbugs breed exponentially so the presence of just a few bedbugs turn into a severe infestation within weeks.¹⁴ This ability to breed so rapidly makes it important to begin extermination as soon as any bedbugs are discovered to have the best chance of success and to prevent the spread of bedbugs to other units or buildings.¹⁵ If landlords are able to delay hiring an exterminator until infestation reaches a certain level of severity, not only will tenants be forced to live with bedbugs for longer but the potential for spreading the bedbugs beyond the original unit increases.

The definition of “infestation” is also very important when it comes to a landlord's ability to rent units. If “infestation” is defined as anything other than “the presence of bedbugs” landlords would potentially be able to rent a unit containing bedbugs without informing tenants. The few bedbugs in the empty apartment could quickly turn into thousands when a new tenant moved in and thus provided a food source.¹⁶ Defining “infestation” as “the presence of bedbugs” would require both landlords and tenants to address any bedbug problem immediately and create the best chance of containing the problem before it spreads.

2. *Landlords should not be given an opportunity to try to exterminate the bedbugs before hiring a pest control agent.*

Bedbugs are incredibly hard for even licensed exterminators to get rid of and it is unlikely a lay person will be able to successfully eradicate an infestation.¹⁷ Pesticides are generally not effective as

9 Samuel R. Gilbert, 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 (2011).

10 *Id.*; N.H. Rev. Stat. Ann. § 540:13-e

11 Michael F. Potter, BED BUGS, University of Kentucky Cooperative Extension Service, (revised May 2012) <http://www2.ca.uky.edu/entomology/entfacts/entfactpdf/ef636.pdf> (last visited Feb. 15, 2015)

12 Harold J. Harlan, BED BUGS 101: THE BASICS OF CIMEX LECTULARIUS, 52 Am. Entomologist 99 (2003).

13 Stephen A. Kells and Jeff Hahn, PREVENTION AND CONTROL OF BED BUGS IN RESIDENCES: INFORMATION FOR HOMEOWNERS AND TENANTS, University of Minnesota Extension Service, (Aug. 23, 2006), <http://ento.psu.edu/publications/umn-kells-extension> (last visited Feb. 15, 2015); Samuel R. Gilbert, 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 (2011).

14 Samuel R. Gilbert, 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 (2011).

15 *Id.*

16 Samuel R. Gilbert, 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 (2011).

17 JOINT STATEMENT ON BED BUG CONTROL IN THE UNITED STATES FROM THE U.S. CENTERS FOR DISEASE CONTROL AND

bedbugs are resistant to many forms of pesticides and can detect and avoid most chemicals.¹⁸ The statutory language as it stands does not put any restrictions on what a landlord can do in his or her attempt to treat a bedbug infestation. The use of over-the-counter or homemade remedies is usually ineffective and can even breed further pesticide resistance.¹⁹ This bill lacks both any requirement that the landlord's treatment conform to any standards of effectiveness and any time limit for how long the landlord can attempt to treat the infestation before hiring a pest control agent. This language would allow a landlord to delay the costs of hiring an exterminator at the expense of a tenant's ability to live comfortably in their apartment and an increased risk of spreading the infestation.

3. *Tenants should not be prohibited from discarding infested possessions without the permission of the landlord or certification from the pest control agent that the treatment is complete.*

Prohibiting tenants from discarding their infested possessions could force tenants to continue living with vectors of reinfestation.²⁰ Very few treatments for bedbugs are totally effective. The only exception seems to be heat-treatment in which the temperature of the whole apartment is raised to over 113 degrees Fahrenheit, so one infested item could reintroduce bedbugs to the rest of the apartment.²¹ Since this bill does not specifically require heat-treatment a tenant could be forced to endure a prolonged bedbug infestation without any recourse. This requirement is especially punitive to tenants who do not have a washer and dryer set in their unit because it would prohibit them from washing their clothing, a potential treatment for bedbugs, without the permission of their landlord.²²

Forcing tenants to continue to live with infested possessions is unnecessary to contain the spread of bedbugs. Some municipalities have dealt with the potential for spreading bedbugs through discarded property by regulating the discard of such property. For instance, a Chicago ordinance requires that all infested property be totally enclosed in a plastic bag and be labeled as infested with bugs before being discarded.²³ The ordinance also prohibits infested articles from being discarded on a public way or recycled.²⁴ Adopting similar regulations would allow for the prevention of the spread of bedbugs without forcing tenants to live with infested items for longer than necessary.

PREVENTION AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY (2010); Michael F. Potter, BED BUGS, University of Kentucky Cooperative Extension Service, (revised May 2012) <http://www2.ca.uky.edu/entomology/entfacts/entfactpdf/ef636.pdf> (last visited Feb. 15, 2015).

- 18 Harold J. Harlan, BED BUGS 101: THE BASICS OF CIMEX LECTULARIUS, 52 Am. Entomologist 99 (2003); Samuel R. Gilbert, 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 (2011).
- 19 JOINT STATEMENT ON BED BUG CONTROL IN THE UNITED STATES FROM THE U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY (2010)
- 20 J.L. Gangloff-Kaufmann and C. Pichler, Guidelines for Prevention and Management of Bed Bugs in Shelters and Group Living Facilities, New York State IPM Program (2008), http://health.baltimorecity.gov/sites/default/files/BedBugs_Guidelines_for_Shelters_Group_Living_Facilities.pdf (last visited Feb. 15, 2015).
- 21 Michael F. Potter, BED BUGS, University of Kentucky Cooperative Extension Service, (revised May 2012) <http://www2.ca.uky.edu/entomology/entfacts/entfactpdf/ef636.pdf> (last visited Feb. 15, 2015); Gate E. Ridge, A HOME OWNER'S GUIDE TO HUMAN BED BUGS, Connecticut Agricultural Experimental Station, http://www.ct.gov/caes/documents/publications/fact_sheets/entomology/a_home_owners_guide_to_human_bed_bugs.pdf (last visited Feb. 15, 2015).
- 22 New Jersey Department of Health and Senior Services, BED BUG FACT SHEET, <http://www.nj.gov/health/eoh/phss/documents/bedbugfactsheet.pdf> (last visited Feb. 15, 2015).
- 23 Section 7-28-370 of the Municipal Code of Chicago
- 24 *Id.*