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## Landlord / Tenant

# An Overview of Bed Bug Litigation Basics

by Daniel W. Whitney, Jr.

**B**ed bugs litigation is still a relatively new practice area, and many attorneys have no idea that bed bug cases exist. For those that do, however, and know how to do them well, they are a growing and profitable niche. My firm has recovered over \$11 million for victims of bed bugs.

There are three main types of bed bug cases: apartment cases, hotel and vacation rental cases, and furniture cases. No matter the type of case, there are two constant factors to look for in evaluating a case. These are the underlying facts as to the history and notice of infestation, and the injuries, which are best portrayed using photographs of bed bug bites that have shock value, and mental health records addressing emotional distress from bed bugs.

This article provides an overview on litigating apartment cases.

### **Pre-existing infestation**

The typical apartment case involves a new tenant who moves into an apartment. They begin to notice itchy red bites and bed bugs either within a few days or up to several weeks. Eventually they realize bed bugs are present, and inform the landlord. The usual response is “We have never had that issue here,” or “You must have brought them.” Do not be deterred by such posturing if you are evaluating the case, because these are knee-jerk, company line statements that are often demonstrably false.

What likely happens next will be that the landlord either pays for and promptly schedules the necessary treatments, or they ignore the complaints. A typical treatment for bed bugs involves three chemical sprays scheduled 10 to 14 days apart. Because bed bugs easily spread from apartment to apartment through utility penetrations and other cracks and crevices, the standard of care includes

the pest control company inspecting each of the units adjacent to the infested unit to determine where the infestation may be coming from. Oftentimes, the landlord declines to pay the contractor to perform these inspections, which leads to an obvious problem of the treatments being performed, but the infestation returning due to adjacent infested units remaining undiscovered and untreated.

### **Post move-in infestation**

A second type of apartment case involves a tenant who has lived in an apartment for a long period of time and eventually discovers a bed bug infestation. When they report the infestation, and the landlord is responsible for treating it, or undertakes the treatment even if not responsible, the landlord must act reasonably. A landlord ignoring the complaint is one scenario that lends itself to a case. Another is that the landlord sends in an untrained maintenance worker with ineffective over-the-counter chemicals to fruitlessly spray about to no avail, or, hires a pest control company who similarly performs ineffective treatments.

When there are more than four or five chemical treatments over four to six weeks, and the infestation is not resolved, both the landlord and the pest control contractor have a duty to use different and more intensive treatment methods in order to resolve the infestation. I have had cases where dozens of ineffective treatments and gallons of chemicals were unloaded on a poor tenant over a year, without any impact on the infestation therein, due to improper application and failure to inspect adjacent apartments to determine the source of infestation. In one, an elderly woman suffered disfigurement from the bites and recovered a mid six-figure settlement.

## The smoking gun: The history and notice of infestation

Bed bug cases lend themselves to finding the “smoking gun” during discovery. It may be the prior tenant who discloses that they vacated the same unit due to an ongoing and untreated infestation; it may be a tenant in an adjacent unit who complained of infestation as well; or it could be subpoenaed pest control records that show the history of infestation and inadequate inspections and treatments. It is a rare case when one of these is not found.

Discovery focuses on tenant complaints, pest control records and the identities of tenants who live in the unit at issue and the adjacent units. If it is a garden apartment, with 9 to 12 different apartments, I reach out to them all. Instead of waiting for a defendant’s discovery responses to provide the contact information for these fact witnesses, it is best to simply subpoena the utility provider for the apartment complex at the beginning of the case for the identity and contact information of these individuals.

## Causes of action and parties

Typical causes of action are: (1) a consumer protection statute alleging the failure to disclose a material fact, which involves the history of infestation, and opens the door to attorney’s fees and potentially treble damages; (2) negligence, based on both common law and a violation of the applicable city or county code requiring landlords to provide apartments free of infestation and/or promptly perform extermination; and (3) fraud, based on representations made during the leasing process or representations in the lease. For example, there is a large management company that routinely represents that “As of the date of this lease, the apartment has been inspected for bed bugs and found to be free of infestation,” except they do not actually do an inspection, as discovery in multiple cases has determined.

Typical defendants are the management company, the property owner, and sometimes the pest control contractor. The pest control contractor who fails to perform adjacent inspections when treating an infested unit, or performs numerous treatments that fail to resolve the infestation, is a solid target that may also be a target of the landlord.

## Damages

With the right facts, bed bug cases are inflammatory. Landlords are generally despised. Add to that a landlord who ignores a tenant’s complaints, and/or chooses to protect profits instead of hiring a competent pest control company to properly treat an infestation, and an easily relatable story of unfair advantage being taken unfolds. Everyone has been taken advantage of at some point, we know it when we see it, and it is ugly. I believe the jury’s inclination is to punish such behavior.

Bodily injury from extremely itchy bites that sometimes leave disfiguring scars for months or years, and emotional distress from dealing with unsightly bites and disfigurement, and feelings of helplessness due to being unable to afford to leave a hellish situation, are the main components of damages. Property damage from tenants discarding infested furniture is another component.

An attorney who handles bed bug cases is in the unique situation of providing a service to a person in despair, who probably would not receive any meaningful help otherwise. A potential client who calls usually just wants help and advice, and is not aware that serious compensation is available. Some of my finest and favorite moments as an attorney have come from bed bug cases. More than one client has been shocked to receive large settlement checks in a situation where they never imagined recovering anything.

For questions about litigating bed bug cases, please feel free to contact me. A rising tide lifts all boats.



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