

Cleveland Housing Court



Judge Raymond L. Pianka

2012 Cuyahoga County
Bed Bug Conference

The National Perspective

- “[R]esearch, training, and public education are critical to an effective strategy for reducing public health issues associated with the resurgence of bed bug populations.”

Joint statement by
CDC & EPA issued 2010

Bed bug infestations up locally, nationally

Total number of cases doubled from last year; likely to double every year for some time.

BY MIK ANDERSEN
Lincoln Journal Star

His girlfriend left him over problems in the bedroom, a caller told Barb Ogg, of the University of Nebraska-Lincoln Extension Service.

It wasn't him.

It was the bed bugs.

Bed bug infestations have doubled locally since last year,

and they're likely to double every year for some time, Ogg said.

"I probably took between 10-15 calls," in one recent week, Ogg said.

About three-fourths of the complaints come from multi-unit dwellings — apartments, motels, retirement homes, halfway houses.

"This is the scary time of the year because school's starting and people are moving around and coming into apartments," Ogg said.

Tenants will learn later from neighbors their place had been treated for bed bugs, sometimes several times, Ogg said, and yet the problem remains.

County holding bed bug program on Oct. 20

A program on bed bugs will be 7 to 9:30 p.m. Oct. 20 at the Lancaster County Extension Office. The cost is \$15 and preregistration is required. Those interested can call 402-441-7180 to request a brochure or request one by sending an e-mail to bogg1@unl.edu.

The reddish-brown insects — last seen in great numbers before World War II — have rebounded nationally, infesting college dorms, hospital wings, homeless shelters and swanky hotels.

DDT, the main pesticide weapon against them, was banned in 1972 as a possible carcinogen and environmental hazard.

Bed bugs live in the crevices and folds of mattresses, sofas and sheets. Then, often before dawn, they emerge to feed on human blood.

It's believed they resurfaced in the U.S. around 2000, when hotel managers on the coasts ignored initial infestations. Pregnant females then hitched rides

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»More on bed bugs: Resources on bed bugs can be found at lancaster.unl.edu/pest/bugs.shtml

A real nightmare: Bedbugs biting all over U.S.

More than 95 percent of exterminators across the country report infestations, new survey finds

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By Lynn Bruno

manbc.com
updated 7:27:20 10 7:18:13 PM ET

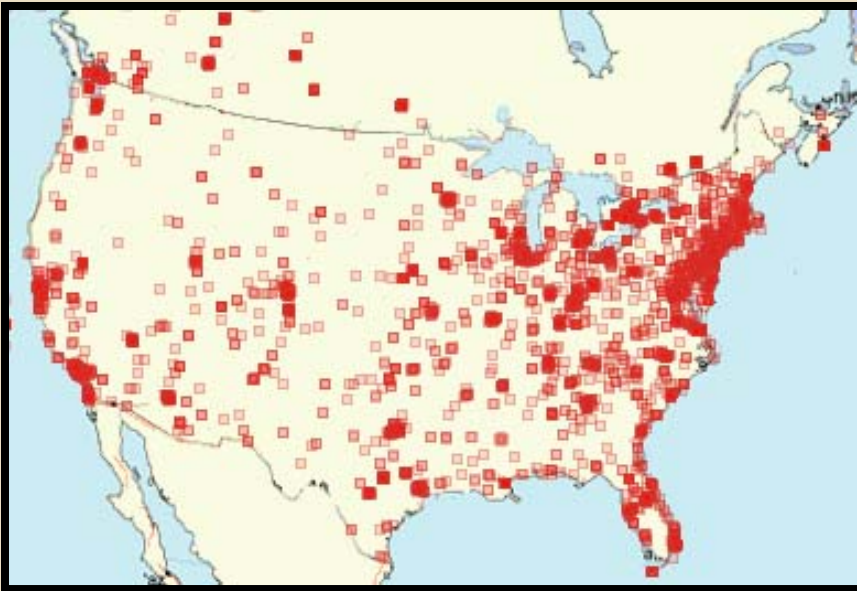
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Forget about fictional, glitter-skinned teen vampires. You're far more likely to have your blood sucked by bedbugs.

The tiny, sneaky insects are spreading so rapidly across the United States that almost no region or area is unbothered, a new survey suggests. Calls to exterminators nationwide about bedbugs are up 57 percent nationwide in the last five years, according to a new survey by the National Pest Management Association and the University of Kentucky. More than 95 percent of 519 U.S. exterminators participating in the survey reported finding at least one bed



Individual State Action



- Laws passed within last 10 years: Arizona, Hawaii, Illinois, Maine, and New York.
- Legislation pending: Massachusetts, New Jersey, North Carolina, Ohio, Oregon and Pennsylvania.

State Trends



- New York City Administrative Code - has bed bug specific provisions:
 - Landlords to maintain rental premises free from bed bug infestation.
 - Landlords must provide a one-year bed bug history to new tenants.



State Trends

Under Arizona's statute, landlords must:

- Maintain residential units free of infestation of bed bugs;
 - Provide existing tenants with copy of bed bug statute; and
 - Provide new and existing tenants with educational materials.
- And where the landlord fails to timely treat the infestation, the tenant may do so and deduct the greater of \$500 or $\frac{1}{2}$ the monthly rent.



State Trends



And Arizona requires Tenants to . . .



- Maintain unit free of bed bugs.
- Not move infested materials into unit.
- Notify landlord of presence of bed bugs within three days of discovery.
- Comply with protocol, such as pretreatment activities and reporting of presence of bed bugs after treatment.
- May agree to be responsible for treatment if renting a single family dwelling.

What's Happening in Ohio?

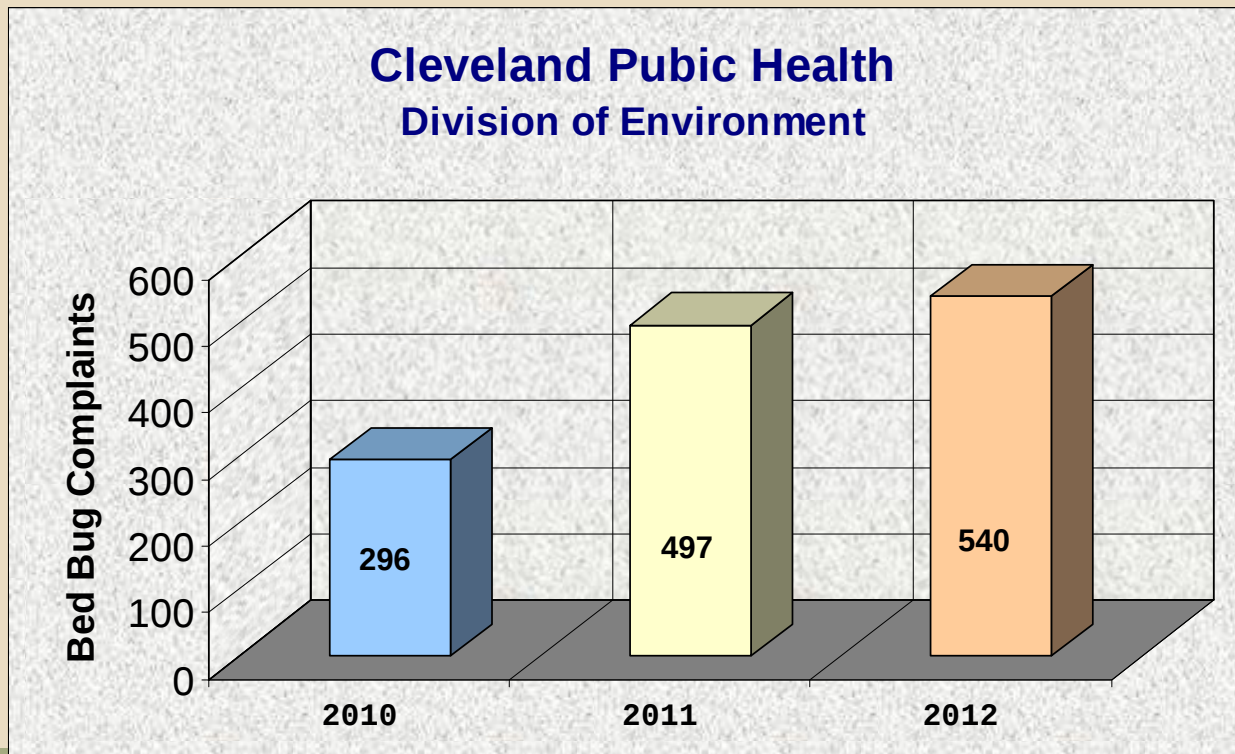


- Senate Bill 39 – to create Ohio bed bug infestation task force to study the problem and make recommendations.
- House Bill 129 – to establish a bed bug awareness program within the Department of Health.
- Senate Bill 360 – to require notice of infestation to certain health care or other providers.



Influx of Complaints and Cases

- Complaints of bed bugs to the City of Cleveland Department of Health have doubled over the last two years.
- Criminal code violation cases seen in Court have also increased.



Influx of Complaints and Cases



- Complaints of bed bugs on the Court's civil inspection docket have doubled from 2011 to 2012.
- Housing Court has established a task force in cooperation with the Court's General Division and the Clerk to ensure prompt identification and treatment within the Court's premises.



Duty Imposed by Ordinance

”All dwelling structures and the premises thereof shall be maintained free from sources of breeding, harborage and infestation by insects, vermin or rodents.”



**Cleveland Codified Ordinances
§ 369.17 Infestation by Pests**

Landlord's Responsibilities

R.C. §5321.04 requires landlords to:

- 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; and
- Keep all common areas of the premises in a safe and sanitary condition.



Tenant's Responsibilities



R.C. 5321.05 requires tenants to:

- Keep the part of the premises the tenant occupies and uses safe and sanitary;
- Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;
- Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes.



Implied Warranty of Habitability



- Lease agreement between the landlord and tenant is a contractual relationship with an implied warranty of habitability.
- Implied warranty is in addition to statutory duties.
- Attempt to waive implied warranty of habitability in residential lease by the use of “as is” clause is “inherently unconscionable.”



Anderson v. Ballard,
Lucas App. No. L-10-1007,
2010-Ohio-3926.

Ohio's First Impression



- Landlord sued for unpaid rent.
- Tenant counterclaimed asserting that when he moved into the unit, he found it was infested with bed bugs.
- The matter was tried to a jury which found that the infestation was due to conditions in other units in the building.
- The court found that the Tenant was constructively evicted. *Katz v. Comisar* (Mar. 7, 1930), 28 Ohio N.P. 10 (Hamilton Cty C.P.).

Kenwood Gardens Association, LLC v. Shorter,

Lucas App. No. L-10-1315, 2011-Ohio-4135.

- Tenants admitted that they brought the bed bug infestation to the premises.
- Upon notice of infestation, Landlord promptly hired professional exterminator.
- Tenants failed to properly prepare their unit for treatment.



The court decided . . .



- Tenants breached the lease by failing to pay rent during the infestation.
- Landlord did not breach the implied warranty of habitability where Tenants failed to cooperate with extermination efforts.
- Judgment for Landlord on the claim for money damages affirmed.



Spring Hill Town Homes v. Pounds,

Montgomery App. No. 24894, 2012-Ohio-2800.



- Tenants occupied the unit for 2.5 years before bed bug problem.
- Landlord exterminated and sought reimbursement from Tenants.
- Parties made a repayment agreement for the services.
- Tenants made only two payments under the agreement.
- Landlord brought eviction and money claim asserting back rent and balance of the repayment agreement.



The court decided . . .



- Repayment agreement for extermination services between Landlord and Tenants was enforceable absent evidence of economic duress caused by Landlord; and
- Security deposit could not be applied against balance owed under extermination cost repayment agreement.



Factors Determining Cause



- Type of dwelling – single family or multi-suite.
- Lease provisions.
- Inspections.
- History of infestation in building and/or unit.
- History of infestation at tenant's previous location.
- Whether the parties are well informed about bed bugs.

Factors cont'd

- Whether the infestation was timely reported.
- Whether the infestation was professionally treated.
- The extent and location of the infestation.
- The opinion of a properly credentialed exterminator.



Tenant's Claim for Personal Property

- Tenant suffered bed bug bites 2 months after she moved into the unit.
- Tenant notified Landlord, who promptly exterminated.
- Tenant never returned to unit and disposed of most of her personal property including a newly purchased bed.
- As part of a contested claim for money damages, Tenant sought compensation for the loss of property.



The evidence indicated that ...

- Infestation was confined to Tenant's bedroom.
- No infestation in wall or baseboards of bedroom.
- Majority of bugs and casts were on Tenant's bookcase adjacent to the bed.
- Landlord's exterminator was unable to state with reasonable certainty how the introduction occurred.
- Tenant was uninformed about bed bugs and did not seek information on how to manage the situation.



The Court concluded . . .



- Tenant failed to establish that Landlord (or a previous tenant or adjacent unit) was responsible for introducing the bed bugs.
- Landlord was not liable to Tenant for the possessions she threw away due to the infestation.

Chesterfield LLC v. Mackow, et al.
Cleveland M.C. 2008 CVG 16093

What does it all mean?



- Education/Awareness
- Inspections - prior to renting/moving in
- Addendums to clarify rights/obligations
- Integrated Pest Management Program
- Inspections – periodically and at move-out
- Payment Agreements

Resources



www.ccbh.net/bed-bugs/

www.nysipm.cornell.edu/whats_bugging_you/bed_bugs/bedbugs_faqs.asp#legal

www.nyc.gov/html/doh/bedbugs/html/home/home.shtml#

www.nyc.gov/html/doh/downloads/pdf/vector/bed-bug-guide.pdf

health.utah.gov/epi/diseases/bedbugs/BedBug_Booklet_Landlords.pdf

“An ounce of prevention is worth a pound of cure.”



Benjamin Franklin

