

BED BUGS

OBLIGATIONS AND REMEDIES
WHEN BEDBUGS INFEST
RESIDENTIAL LEASED DWELLINGS

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QUESTION: Where in the property code does one find state laws/statutes dealing with a residential landlord's duty to repair or remedy the conditions of leased premises?

ANSWER:

Texas Property Code, Chapter 92, Subchapter B. Texas Property Code, Chapter 92, Subchapter B consists of Texas Property Code sections 92.051 through 92.061.

THERE IS NO SPECIFIC LAW EXPLICITLY DEALING WITH BED BUG INFESTATIONS IN LEASED RESIDENTIAL DWELLINGS, BUT TEXAS PROPERTY CODE, CHAPTER 92, SUBCHAPTER B DISCUSSES WHEN A LANDLORD HAS A DUTY TO REPAIR OR REMEDY CONDITIONS THAT MATERIALLY AFFECT THE HEALTH OR SAFETY OF AN ORDINARY TENANT.

TEX. PROP. CODE §92.052(a) ESTABLISHES A GENERAL DUTY ON A LANDLORD TO REPAIR OR REMEDY A CONDITION LIKE A BED BUG INFESTATION SUBJECT TO THE MAJOR CAVEAT/EXCEPTION ON SLIDE 7.

A landlord shall make a diligent effort to repair or remedy a condition if:

(1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid;

(2) the tenant is not delinquent in the payment of rent at the time notice is given; and

(3) the condition:

materially affects the physical health or safety of an ordinary tenant.

ISSUES FOR A LANDLORD WHOSE TENANTS OWE RENT:

**IF A TENANT IS BEHIND IN THE PAYMENT OF RENT,
SHOULD A LANDLORD REMEDY A BED BUG
INFESTATION?**

**THE LONGER AN INFESTATION IS LEFT UNREMEDIED
THE GREATER AN INFESTATION WILL BECOME AND
LIKELY SPREAD TO OTHER DWELLINGS.**

**IF BED BUGS SPREAD TO A LANDLORD'S OTHER
DWELLING UNITS, HOW WILL THAT AFFECT THE
LANDLORD'S REPUTATION AND BOTTOM LINE?**

TEXAS PROP CODE § 92.052(b) ESTABLISHES AN EXCEPTION TO A GENERAL DUTY OF A LANDLORD TO REPAIR/REMEDY UNDER TEXAS PROP CODE § 92.052(a)

Landlord has no duty to repair/remedy a condition **other than normal wear and tear caused by:**

- The tenant;
- A lawful occupant in the tenant's dwelling;
- A member of the tenant's family; or
- A guest or invitee of the tenant.

[Texas Prop. Code § 92.052(b)]

IF A BED BUG INFESTATION IS CAUSED BY THE NEGLIGENT OR INTENTIONAL CONDUCT OF THE TENANT OR ANY INDIVIDUALS NOTED ABOVE, THE LANDLORD WILL NOT HAVE A DUTY TO REPAIR OR REMEDY THE CONDITION. HOWEVER, IT MAY BE DIFFICULT TO PROVE THAT THE INFESTATION IS CAUSED BY THE TENANT.

IN MANY CASES IT IS GOING TO BE DIFFICULT TO DETERMINE WHO CAUSED THE BED BUG INFESTATION

After all, can't **Bed Bugs migrate** from one dwelling unit to another via vents, holes in walls, spaces between doors and thresholds or door jams?

Isn't it possible that Bed Bugs can be in the unit at the time a tenant enters a lease, but a **tenant doesn't have an opportunity to notice** Bed Bugs until a tenant has been in a unit for a while or that bedbugs are in a unit but **infestation hasn't gotten to a point where they are noticed until later?**

Merely because a tenant on inspection thinks and says that a unit is free of Bed Bugs doesn't mean a dwelling unit is free of Bed Bugs.

DETERMINING SOURCE OF BED BUGS (Cont.)

Bed Bugs are good at hitching rides on rodents, and rodents can carry bedbugs from one rental unit to another.

Due to the difficulty of determining the source of the Bed Bug infestation, are lease provisions that assign the cost of repair to the tenant going to be difficult to enforce?

THE FOLLOWING SLIDES IN
GENERAL DEAL WITH THE
SITUATION WHERE THE TENANT,
A LAWFUL OCCUPANT IN THE
DWELLING, A GUEST OR INVITEE
OF THE TENANT HAVE NOT
CAUSED THE CONDITION OR THE
INFESTATION.

WAIVER BY AGREEMENT OF LANDLORD'S DUTY TO REMEDY INFESTATION IF TENANT IS NOT AT FAULT

1: A landlord and a tenant may agree for the tenant to repair or remedy, **at the landlord's expense**. [Tex. Prop. Code § 92.006(d)]

2: A landlord and a tenant agree for the tenant to repair or remedy a condition, **at the tenant's expense**. However this waiver is likely to occur RARELY because there are many requirements of a valid waiver including but not limited to:

- at beginning of the lease term the landlord owns **only one** rental dwelling;
- at beginning of the lease term the dwelling is **free from Bed Bugs**;

- the landlord has no reason to believe the condition is **likely to occur or reoccur**;
- the lease is in writing;
- the agreement for repairs by the tenant is **either underlined or printed in boldface** in the lease or in a separate written addendum;
- the agreement is **specific and clear; and**
- the agreement is made knowingly, voluntarily, and for consideration.

[see Tex. Prop. Code § 92.006(e)]

Tenants could also make the argument that if a previous Bed Bug infestation had occurred in a dwelling, that because of the likelihood of re-infestation, the landlord can never waive their duty to repair or remedy the condition when the tenant is not at fault.

CONDITIONS UNDER WHICH A LANDLORD IS LIABLE UNDER TEXAS PROPERTY CODE, CHAPTER 92, SUBCHAPTER B.

TEX. PROP. CODE § 92.056(b) states generally that:

a landlord is liable to a tenant if :

- (1) the tenant has given the landlord **notice to repair** or remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;
- (2) the condition **materially affects the health or safety** of an ordinary tenant;

- (3) the tenant has given the landlord a subsequent **written notice** to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given above by sending the written notice by certified mail, return receipt requested, or by registered mail;
- (4) the **landlord has had a reasonable time** to repair or remedy the condition after the landlord received the tenant's notice(s);
- (5) the **landlord has not made a diligent effort to repair** or remedy the condition after the landlord received the tenant's notice(s); and

(6) the tenant was **not delinquent in the payment** of rent at the time any notice(s) required above.

Under Tex. Prop. Code sec. 92.056(d) there is a rebuttable presumption that seven days is a reasonable amount of time for a landlord to repair or remedy a condition.

It is to a tenant's advantage to provide his first and thus only written notice to the landlord to repair/remedy the condition by certified mail, return receipt requested or registered mail.

A landlord is considered to have received a notice to repair/remedy when the landlord or the landlord's agent has actually received the notice or when the U.S. Postal Service has attempted delivery.

REMEDIES AVAILABLE TO A TENANT UNDER TEX. PROP. CODE WHEN A LANDLORD IS LIABLE UNDER TEXAS PROPERTY CODE § 92.056(b) FOR FAILURE TO REPAIR/REMEDY A INFESTATION

- (1) terminate the lease (some judicial remedies are curtailed);
- (2) have the conditions repaired or remedied;
- (3) deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy; and
- (4) obtain judicial remedies.

[Tex. Prop. Code § 92.056(e)]

REMEDIES AVAILABLE TO TENANT WHO TERMINATES A LEASE PURSUANT TO TEXAS PROPERTY CODE § 92.056(e)(1)

- a **pro rata refund of rent** from the date of termination or the date the tenant moves out, whichever is later;
- a **deduction of the tenant's security deposit from the tenant's rent** without necessity of lawsuit or obtain a refund of the tenant's security deposit according to the law;
- **judicial remedies** including:
 - Civil penalty of one month's rent plus \$500.00;
 - Tenant's actual damages; and
 - Court costs and attorney's fees.

[see Tex. Prop. Code § 92.056(e), Tex. Prop. Code § 92.056 (f) and Tex. Prop. Code § 92.0563(a)]

COMPLEX RULES TO FOLLOW FOR TENANT TO REPAIR/REMEDY OR REPAIR/REMEDY AND DEDUCT DUE TO BEDBUG INFESTATION?

THIS IS A DANGEROUS MINEFIELD FOR THE TENANT. SOME of the rules include (and they are discussed very generally) are:

1. The landlord must have a duty to remedy the Bed Bug infestation, as previously discussed;
2. The duty to repair or remedy must not have been waived in the written lease, as previously discussed;
3. The landlord must have been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant;

4. The tenant must provide written notice, as set out in the statute, of the tenant's intention to repair or remedy the condition; and
5. Limit on who can repair: the repairs need to be made by a company listed in the yellow or business pages of local directory or the classified advertising section of the local newspaper. Unless the landlord and the tenant agree otherwise, the repairs cannot be made by the tenant, the tenant's immediate family, or the tenant's employer, employee, or a business that the tenant has an ownership interest in.
6. Tenant deduction for the cost of the repair or remedy may not exceed \$500 or one month's rent, whichever is greater. If the tenant's rent is subsidized, then the amount that the tenant may be entitled to deduct will be the fair market value of the rent, not the amount that the tenant pays.

[see Tex. Prop. Code. § 92.0561]

JUDICIAL REMEDIES:

- (1) An order directing the landlord to take reasonable actions to repair or remedy the condition;
- (2) Rent Reduction, from the date of the first notice, until condition is repaired or remedied (in proportion to the reduced rental value resulting from the condition);
- (3) Civil penalty of one month's rent plus \$500;
- (4) Tenant's actual damages; and
- (5) Court costs and attorney's fees.

[see Texas Prop. Code § 92.0563(a)]

MISCELANEOUS ISSUE #1: CLOSING OF RENTAL UNIT BY LANDLORD IN LIEU OF REMEDYING OR REPAIRING

Circumstances under which a landlord may close the rental unit is addressed in Tex. Prop. Code § 92.055. In general, a landlord can give notice to the tenant by certified mail, return receipt requested, that the landlord is terminating the tenancy and will immediately demolish the rental unit or no longer use the rental unit for residential purposes. Generally, after the tenant moves out, the unit may be reoccupied after six months of vacancy, provided a local health official or building inspector certifies that no condition exists that will materially affect the health or safety of an ordinary tenant. The tenant's remedies, if the landlord closes the rental unit, depend on whether or not the tenant had given the landlord notice of the condition, and are fully discussed in Tex. Prop. Code sec. 92.055.

MISCELLANEOUS ISSUE #2: LANDLORD AFFIDAVIT OF DELAY FOR REPAIR OR REMEDY

In some cases, a landlord can delay a tenant from invoking their right to repair or remedy the condition by filing an affidavit which states that for reasons such as an inability to find parts or repairmen, that the landlord cannot promptly repair the condition. This may extend the timetable for up to 15 or 30 days, depending on the reason for the delay. However, there are complicated rules on this matter, and if the landlord makes an **affidavit in bad faith**, the landlord can be sued for: (1) an order directing the landlord to take reasonable actions to repair or remedy the condition; (2) Rent Reduction, from the date of the first notice, until condition is repaired or remedied (in proportion to the reduced rental value resulting from the condition); (3) Civil penalty of one month's rent plus **\$1,000**; (4) Tenant's actual damages; and (5) Court costs and attorney's fees.

[see Tex. Prop. Code § 92.0562 & Tex. Prop. Code § 92.0563(a)]