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SB 529 – Real Property – Landlord and Tenant – Bedbugs
Hearing before the Judicial Proceedings Committee, Feb. 15, 2022

Position: SUPPORT (FAV)

Bed bugs are a growing menace to the health and safety of renters and the public. Public Justice Center has assisted renters who have suffered severe, negative health outcomes from bed bugs. Currently there is little guidance in the law for addressing bed bugs. SB 529 proposes a comprehensive framework for addressing bed bugs in rental housing, and the Public Justice Center urges the Committee to issue a favorable report.

I have attached an opinion from one such PJC client case in *Simmons v. Aradu Properties*, District Court of Maryland for Baltimore City Case No. 010100190942014, in which former MSBA President Judge Mark Scurti opined “that a bed bug infestation does pose a threat to life, health, and safety” and ordered the landlord to pay the tenant \$6,850 in damages among other relief.

By way of background, the CDC and EPA have provided guidance on bed bugs:

Bed bugs are small, flat insects that feed on the blood of sleeping people and animals. They are reddish-brown in color, wingless, and range from 1 to 7 millimeters in length. They can live several months without a blood meal....

Bed bugs are experts at hiding. They hide during the day in places such as seams of mattresses, box springs, bed frames, headboards, dresser tables, cracks or crevices, behind wallpaper, and under any clutter or objects around a bed. Their small flat bodies allow them to fit into the smallest of spaces and they can remain in place for long periods of time, even without a blood meal. Bed bugs can travel over 100 feet in one night, but they tend to live within 8 feet of where people sleep.

One of the easiest ways to identify a bed bug infestation is by bite marks that appear on the face, neck, arms, hands, and any other body parts. However, these bite marks may take as long as 14 days to develop in some people so it is important to look for other clues when determining if bed bugs have infested an area. These signs may include the exoskeletons ... of bed bugs after molting, bed bugs in the fold of mattresses and sheets, a sweet musty odor, and rusty-colored

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blood spots from their blood-filled fecal material that is often excreted on the mattress or nearby furniture.

Centers for Disease Control and Prevention and U.S. Environmental Protection Agency, *Joint Statement On Bed Bug Control In The United States 3* (2010) (“Joint Statement”).¹

Bed bugs are a serious health and safety concern that the General Assembly should address:

- **Bed bugs reproduce and spread rapidly.** Female bed bugs lay between 3-5 eggs per day, producing as many as 500 eggs in their life cycle. Mich. Dep’t of Cmty. Health, *Michigan Manual for the Prevention and Control of Bedbugs 4* (2010) (“Michigan Manual”).² The Baltimore City Health Department estimates that, left untreated, one bed bug can become over 30,000 bed bugs in just six (6) months. Baltimore City Health Dept., Healthy Homes Bureau, *Battling Bed Bugs Safely: A Guide to Preventing and Eliminating Bed Bugs 2* (2010).³ According to the CDC and EPA, “Bed bugs are usually transported from place to place as people travel. Bed bugs travel in the seams and folds of luggage, overnight bags, folded clothes, bedding, furniture, and anywhere else where they can hide.” Joint Statement at 3.
- **Bed bugs are not the product of poor housekeeping or unsanitary conditions.** “The presence of bed bugs in human dwellings is not caused by a lack of cleanliness. They are an equal opportunity pest that only requires a warm, sleeping body and a place to hide nearby. Bed bugs have been found in both five-star hotels and homeless shelters.” Michigan Manual at 3.
- **Allocating “fault” between the landlord or tenant is virtually impossible according to HUD** “... because bed bugs could conceivably be introduced to a property by the owner, agent, on-site personnel, contractors, vendors, government representatives, etc. In effect anyone who has or had access to a property.” Memorandum re: The Reemergence of Bed Bug Infestation within Our Communities from Edward Hinsberger, Director, U.S. Dept. of Housing and Urban Dev., Chicago Regional Office, Region V, 2 (March 15, 2011) (“Chicago HUD Memo”) (on file with author).
- **Multi-unit buildings are particularly susceptible to the rapid spread of a bed bug infestation.** The EPA and CDC state: “Control in multi-unit family homes is much more difficult than in single family homes because bed bugs frequently travel between units, either by direct transport by humans or through voids in the walls. There are additional costs and complexities associated with coordinating and encouraging participation from multiple residents.”
- **Treatment for an infestation of bed bugs is often expensive and protracted.** The EPA and CDC recognize that there is no silver bullet to remediate bed bugs and

¹available at <http://stacks.cdc.gov/view/cdc/21750>.

² available at

http://www.michigan.gov/documents/emergingdiseases/Bed_Bug_Manual_v1_full_reduce_326605_7.pdf

³ available at http://health.baltimorecity.gov/sites/default/files/BCHD_Bed_Bug_Manual_2011%28small%29.pdf

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recommend that owners and residents adopt an Integrated Pest Management (IPM) approach to treatment. Joint Statement at 4. This approach generally involves a number of chemical and non-chemical treatments and control mechanisms including:

- using monitoring devices,
 - removing clutter where bed bugs can hide,
 - applying heat treatment,
 - vacuuming,
 - sealing cracks and crevices to remove hiding places,
 - using non-chemical pesticides (such as diatomaceous earth), and
 - judicious use of effective chemical pesticides
- **The EPA and CDC state: “Bed bugs cause a variety of negative physical health, mental health and economic consequences.”** Joint Statement at 2. The statement continues: “Many people have mild to severe allergic reaction to the [bed bug] bites, with effects ranging from no reaction to a small bite mark to, in rare cases, anaphylaxis (severe, whole-body reaction). These bites ... can also lead to secondary infections of the skin such as impetigo, ecthyma, and lymphangitis.” *Id.* Specifically, as the bed bug is feeding on human blood, a small amount of the bed bug’s saliva is injected under the skin, often causing an allergic reaction and the red, itchy swelling at the sight of the bite. Michigan Manual at 6. Allergic reactions to bed bugs are often a progressive condition, *i.e.*, some individuals become more sensitive to bed bug bites with repeated exposures over time, which can result in “more severe localized or even generalized allergic reactions.” *Id.* And, unfortunately, topical insecticides and treatments are generally ineffective; only anti-histamines or anti-inflammatory medications provide some relief. *Id.* at 8.
 - **The most consistent, well-documented adverse impact of bed bugs, however, is on the mental health of those residing in an infested home.** As the CDC and EPA note: “Bed bugs may also affect the mental health of people living in infested homes. Reported effects include anxiety, insomnia and systemic reactions.” Joint Statement at 2. Persons living in a bed bug infestation “often experience a strong repulsive reaction to the idea of being fed on by bugs when unconscious and unaware. This may manifest as mild to severe anxiety and stress.” Michigan Manual at 8. Due to the unsightly blotches and fear of spreading bed bugs to family, friends and co-workers, people suffering from an infestation often become increasingly isolated, thereby further exacerbating anxiety and stress. Williams & Willis *supra* at 145; *see* Michigan Manual at 8 (“Because bed bugs can be transmitted between people, people suffering with an infestation may feel isolated from friends and family”); HUD PIH Notice 2012-17 at 1 (“The presence of bedbugs may also contribute to stress or anxiety.”). Bed bug infestations carry the unwarranted stigma that the victim is somehow unhygienic adding to the social isolation and anxiety. Williams & Willis, *supra* at 145. Stress and anxiety related to the infestation frequently leads to sleepless nights and paranoid behavior.
 - **HUD guidance to public housing strongly encourages Public Housing Authorities to proactively develop plans to address bed bugs** and train staff and residents on identifying bed bugs, conduct periodic inspections for bedbugs, educate residents about

bedbugs including ways to minimize the risk of becoming infested, and encourage residents to come forward with bed bug complaints promptly in order to engage in early treatment. PIH Notice 2012-17 at 2-3. The Notice further requires the PHA to make contact with the tenant within 24 hours of a bed bug complaint, develop a plan for the tenant to prepare the apartment for treatment, obtain a professional bed bug inspection timely, and implement the IPM plan as soon as possible without charging the tenant for these services. *Id.* at 4.

SB 529 treats the public health scourge of bed bugs with the urgency and fairness it requires. Tenants have the obligation to report infestations and allow for treatment. Landlords have the obligation to treat the infestation and pay the cost – which further incentivizes tenants to report an infestation in the first place.

Public Justice Center asks that the Committee **issue a report of FAVORABLE on SB 529**. If you have any questions, please contact: Matt Hill, hillm@publicjustice.org, 410-625-9409, ext. 229.

CATHERINE SIMMONS

Plaintiff,

v.

ARADU PROPERTIES, LLC

Defendant.

* IN THE
* DISTRICT COURT
* OF MARYLAND
* FOR

* BALIMORECITY

* Case No.: 010100190942014

* * * * *

OPINION AND ORDER

On January 26, 2015, Plaintiff Catherine Simmons, by and through counsel, moved pursuant to Maryland Rule 3-534 to clarify and/or amend judgment rendered on January 22, 2015. Upon consideration of the Plaintiff's motion to Clarify and/or Amend Judgment it is, on the 30th day of January 2015, ordered as set forth below:

PROCEDURAL HISTORY

The initial hearing on the rent escrow matter was held on October 20, 2014, when this honorable Court ordered an escrow account be established. Ms. Simmons paid the rent due of \$825.00 per month for October and November. A second hearing was held on November 10, 2014 following the inspection completed by the Baltimore City Housing Inspector. It was at this hearing the court requested the Plaintiff Catherine Simmons submit a memorandum supporting her assertion that the bed bugs in her home constitute a threat to her household's life, health, or safety pursuant to the Baltimore City Public Local Law (PLL) §§9-9 and 9-9A, as well as a violation of the implied warranty of fitness, PLL §9-14.2. The most recent hearing was held on January 22, 2015 before this honorable Court, where the Court found in favor of the Plaintiff, abating the rent, and awarded both damages and attorney's fees.

DISCUSSION

The Plaintiff, Catherine Simmons, asserted that the infestation of bed bugs in her home constitutes a threat to her household's life, health, or safety pursuant to Baltimore City Public Local Law §§ 9-9, 9-9A, and 9-14.2 and that she is eligible for relief in the form of a rent abatement. Further, she asserted that the landlord committed a retaliatory act against her as defined by the Maryland Annotated Code, Real Property Article § 8-208.1 by raising the rent after she complained about her existing living conditions.

The Public Local Law of Baltimore City § 9-9 does not specifically enumerate bed bugs as a condition which would constitute a serious threat to life, health, or safety. Public Local Law §9-14.2 provides monetary relief to tenants where the tenant has established the existence of a serious threat to life, health, or safety, notice to the landlord, and the landlord's failure or refusal to take action. At issue before this Court was whether an infestation of bedbugs would constitute a serious threat to life, health, or safety. Ms. Simmons testified that in July, both she and her husband notified the landlord, Mr. Agbu, by email and in-person of the bedbug infestation. According to testimony, Mr. Agbu treated the infestation in the downstairs unit where the problem originated, but he did not take any steps to remediate the problem occurring in the Simmons's apartment. The bedbug infestation was an ongoing problem as of January 2015.

Physical Health Consequences

In 2010, the U.S. Centers for Disease Control and the U.S. Environmental Protection Agency issued a joint statement titled "Joint Statement on Bed Bug Control in the United States." Here, both agencies agreed that "bed bugs cause a variety of negative

physical health, mental health, and economic consequences.” Joint Statement at 2. The statement further identifies that bed bug bites can cause mild to severe allergic reactions ranging from “no reaction to a small bite mark, to, in rare cases, anaphylaxis.” *Id.* Bed bug bites can also lead to secondary skin infections such as “impetigo, ecthyma, and lymphangitis.” *Id.* Additionally, the Michigan Manual for the Prevention and Control of Bed Bugs indicates that the allergic reactions to bites can be progressive over time. Mich. Dept. of Cmty. Health, *Michigan Manual for the Prevention and Control of Bed Bugs* (2010), http://www.michigan.gov/documents/emergingdiseases/Bed_Bug_Manual_v1_full_reduce_336605_7.pdf. Bed bugs have been identified as the cause or exacerbating factor of other conditions which may adversely impact the physical health of the occupants. Specifically, bed bugs host and spread mold spores potentially spreading harmful mold growth: Katelyn Williams & Monte S. Willis, *Bed bugs in the 21st Century: The Reemergence of an Old Foe*, 43 *Lab Med* 141, 145 (2012). In addition allergens and other secondary consequences of bed bugs can also trigger reactions in persons with asthma. Mich. Dept. of Cmty. Health, *Michigan Manual for the Prevention and Control of Bed Bugs* (2010) at 7.

Mental Health Consequences

According to the joint statement issued by the CDC and the EPA, “Bed bugs may also affect the mental health of the people living in infested homes.” Joint Statement at 2. The infestations can lead to isolation as there is a fear of spreading bed bugs to others, as well as the stigma that the person suffering from bed bugs is unhygienic. Williams & Willis, *supra* at 145. Further the “repulsive reaction to the idea of being fed on by bugs when unconscious and unaware...may manifest as mild to severe anxiety and stress.”

Michigan Manual at 8. These reports all support the courts finding that bed bugs pose a threat to the mental health of the occupants of the infested residence.

Remedy

Other jurisdictions have concluded that a bed bug infestation poses a threat to the life, health, and safety of the occupants. The Missouri Court of Appeals affirmed the ruling of the trial court that the landlord had breached the implied warranty of habitability by failing to remediate the infestation of bed bugs in the tenant's apartment and that the tenants were entitled to a full abatement of rent. *Kolb v. DeVille I Properties, LLC*, 326 S.W.3d 896, 901 (Mo. Ct. App. 2010).

The New York Circuit Court in came to a similar conclusion when they found that the bed bug infestation was a serious threat to the health and safety of the tenant, and that the tenant was eligible for an abatement of rent based upon the implied warranty of habitability. *Ludlow Properties, LLC v. Young*, 780 N.Y.S.2d 853, 856 (N.Y. Civ. Ct. 2004). The court found abatement of 45% of the rent was an appropriate remedy. *Id.* There have been rent abatements ranging from 20% to 100% for bedbug infestations. See *Morel v. Marks Group, LLC*, No H- 1532, 2011 (Conn. Super. Ct June 21, 2011) (full rent abatement for the violation of the warranty of habitability); *Jefferson House Associates, LLC v. Boyle*, 6 Misc. 3d 1029(A), 800 N.Y.S.2d 348, 2005 (50% abatement for six months and then 20% abatement for fifteen months thereafter).

Attorney's Fees

Maryland Code, Real Property§ 8-208.1 prohibits the landlord from taking retaliatory action against the tenant for reporting violations or complaints. The Plaintiff

began an escrow action in October, citing mold and bed bugs as threats which diminished the value of the rental property. In November, the Defendant Patrick Agbu, agent of Aradu Properties, LLC wrote a letter to Ms. Simmons, notifying her of an increase in her rent. Based upon the testimony and evidence, this court determined that action to be retaliatory and in violation of § 8-208.1. This court finds that reasonable attorney's fees, to be determined upon the submission of the affidavit, are an appropriate measure in this case.

CONCLUSION

The court recognizes there is no Maryland case law specifically on the subject of bedbugs as a threat to life, health, and safety of the occupants in a multi-home dwelling. However, the Court finds the reports and case law from other jurisdiction to be persuasive in supporting its' finding that a bed bug infestation does pose a threat to life, health, and safety.

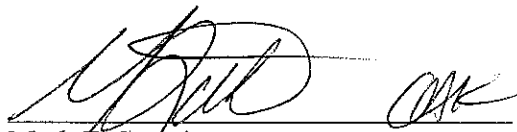
For the above-stated reasons, and upon consideration of the Plaintiff's Motion to Clarify and/or Amend Judgment, it is hereby, ORDERED this 30th day of January 2015, by the District Court of Maryland for BaltimoreCity,

ORDERED, that a money judgment in the amount of \$6,850.00 against the Defendant, Aradu Properties, LLC in favor of the Plaintiff Catherine Simmons is hereby ENTERED;

ORDERED, that Ms. Simmons is awarded a total rent abatement of \$3,750.00. All money in the escrow account in the amount of \$3,300.00 is hereby awarded and DISBURSED to Ms. Simmons, with an additional credit against that judgment of \$200.00/

per month in lieu of abated rent from Ms. Simmons for February and each month thereafter in which the bed bug infestation has not been remediated to the satisfaction of the court up to \$450.00, with any further remedial action to be determined by the Court as necessary;

ORDERED that reasonable costs and attorney's fees against Defendant Aradu Properties, LLC are hereby awarded to Plaintiff's attorney, Public Justice Center, Inc. in the amount of \$2,112.00.

A handwritten signature in black ink, appearing to read 'Mark F. Scurti', is written over a horizontal line. To the right of the main signature, there is a smaller, less legible handwritten mark.

Mark F. Scurti
Judge, District Court of Maryland
Baltimore City