


2-21-2018

## Don't Let the Bed Bugs Bill: Landlord Liability for Bed Bug Infestations in Georgia

Megan M. Harrison

*Georgia State University College of Law*, mharrison24@student.gsu.edu

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Civil Law Commons](#), [Consumer Protection Law Commons](#), [Contracts Commons](#), [Health Law and Policy Commons](#), [Housing Law Commons](#), [Law and Society Commons](#), [Legal Remedies Commons](#), [Litigation Commons](#), [Property Law and Real Estate Commons](#), [Public Law and Legal Theory Commons](#), [Social Welfare Law Commons](#), [State and Local Government Law Commons](#), and the [Torts Commons](#)

---

### Recommended Citation

Megan M. Harrison, *Don't Let the Bed Bugs Bill: Landlord Liability for Bed Bug Infestations in Georgia*, 34 GA. ST. U. L. REV. 479 (2018).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol34/iss2/6>

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

# DON'T LET THE BED BUGS BILL: LANDLORD LIABILITY FOR BED BUG INFESTATIONS IN GEORGIA

Megan M. Harrison\*

## INTRODUCTION

Although the historical relationship between bed bugs and humans dates back to ancient Egypt, the common bed bug, or *Cimex lectularius*, vanished from the beds of Americans around World War II.<sup>1</sup> In the late 1990s, however, our bloodsucking bedfellows returned.<sup>2</sup> Bed bug infestations are a growing public health issue.<sup>3</sup> Bed bugs are now found in all fifty states, with populations in five states reaching epidemic levels.<sup>4</sup> Both the Environmental Protection Agency (EPA) and the Center for Disease Control and Prevention (CDC) consider bed bugs a “pest of significant public health importance.”<sup>5</sup>

---

\*J.D. Candidate, 2018, Georgia State University College of Law. I would like to thank Professor Courtney Anderson, Wingo Smith, Miriam Gutman, Amy Mei Willis, and the GSU Law Review staff for their help and support preparing this manuscript. Their help was invaluable. All mistakes are my own.

1. Pascal Delaunay et al., *Bedbugs and Infectious Diseases*, 52 CLINICAL INFECTIOUS DISEASES 200, 200 (2011); Daniel W. Whitney & Melissa A. Graf, *The Prosecution and Defense of Bed Bug Lawsuits*, 25 TOXICS L. REP. 37, 39 (2010).

2. Michael F. Potter, *The Perfect Storm: An Extension View on Bed Bugs*, 52 AM. ENTOMOLOGIST 102, 102 (2006). Reports of infestations first appeared in the Northeastern parts of the county, expanded to the South and Midwest, and finally traveled up the West Coast and to Hawaii. Alice L. Anderson, *Bedbug Infestations in the News: A Picture of an Emerging Public Health Problem in the United States*, 70 J. ENVTL. HEALTH 24, 26 (2008).

3. Bed bugs do not spread disease, but infestations have substantial, negative impacts on physical, mental, and economic health. Ali H. Alalawi, *Bed Bugs Epidemic in the United States*, 4 ENTOMOLOGY, ORNITHOLOGY & HERPETOLOGY 143, 145 (2015); Julie Aultman, *Don't Let the Bedbugs Bite: The Cimicidae Debacle and the Denial of Healthcare and Social Justice*, 16 MED. HEALTH CARE & PHIL. 417, 426 (2012). Regardless, because bed bugs are not vectors of contagious illness, infestations are not generally a high priority when allocating limited government funds. Vanessa Abejuela-Matt, *Bedbugs Biting Back? A Multifactorial Consideration of Bedbug Resurgence*, 1 J. PATIENT-CENTERED RES. & REVS. 93, 95 (2014).

4. Alalawi, *supra* note 3, at 145; Potter, *supra* note 2, at 102–03. These five states are New York, Ohio, California, Florida, and Illinois. Alalawi, *supra* note 3, at 147.

5. ENVTL. PROT. AGENCY, PESTICIDE REGISTRATION (PR NOTICE) 2002-1 7 app. (2002)

Despite their name, bed bugs are not limited to the bed, the bedroom, or even the home.<sup>6</sup> Infestations exist in both public and private settings, and anyone visiting an infested area can leave with several hitchhiking bugs in tow.<sup>7</sup> Bed bugs spread quickly, and infestations are costly.<sup>8</sup> Due to their small size, quick reproduction, and pesticide resistance, controlling and remediating bed bug infestations is distinctly challenging.<sup>9</sup> Untreated or inadequately treated infestations quickly spread because bed bugs travel room-to-room through cracks in walls and ventilation.<sup>10</sup> Bed bugs present a particularly intractable infestation even for experts.<sup>11</sup> Infestations in multi-unit apartment complexes are the most frequent, the most expensive, and the most challenging to control.<sup>12</sup> Low-income

---

[hereinafter EPA, PESTS OF SIGNIFICANT PUBLIC HEALTH IMPORTANCE].

6. Anderson, *supra* note 2, at 26.

7. *Bender v. Green*, 874 N.Y.S.2d 786, 792 (N.Y. Civ. Ct. 2009) (noting “any individual venturing out into the world today, particularly an individual that travels, risks bringing bedbugs home”); *see also* Samuel R. Gilbert, *Don’t Let Them Bite: Defining the Responsibilities of Landlords and Tenants in the Event of a Bedbug Infestation*, 90 GEO. WASH. L. REV. 243, 256–57 (2011). For example, bed bugs have infested courtrooms, theaters, schools, office buildings, and even dance clubs. MARCIA L. ANDERSON, ENVTL. PROT. AGENCY, *BED BUGS GO TO SCHOOL: STAFF* (2012); NAT’L PEST MGMT. ASS’N, 2015 EXECUTIVE SUMMARY 1, 1–2 (2015); Robert Arnold, *Bed Bugs Reported at Baytown Movie Theater*, CLICK 2 HOUSTON (Sept. 16, 2016 7:34 PM), <http://www.click2houston.com/news/bed-bugs-reported-at-baytown-movie-theater> [<https://perma.cc/QR9B-MCE3>]; David Foster, *Bedbugs Infest Two State Office Buildings in Trenton*, TRENTONIAN (Sept. 28, 2016, 5:22 PM), <http://www.trentonian.com/article/TT/20160928/NEWS/160929726> [<https://perma.cc/89UW-H9CH>]; Wendy E. Normandy, *Courtroom Cleared After Bed Bug Scare*, DAILY SOUTHTOWN (June 7, 2016, 5:33 PM), <http://www.chicagotribune.com/suburbs/daily-southtown/news/ct-sta-courthouse-bed-bug-st-0608-20160607-story.html> [<https://perma.cc/HJ25-USZ6>]. Bed bugs will thrive in upscale hotels, designer clothing stores, and the cleanest of mansions. Anderson, *supra* note 2, at 25.

8. DEP’T OF HEALTH & HUMAN SERVICES, CTR. FOR DISEASE CONTROL & PREVENTION, U.S. ENVTL. PROT. AGENCY, JOINT STATEMENT ON BED BUG CONTROL IN THE UNITED STATES FROM THE U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) 3 (2010) [hereinafter JOINT STATEMENT].

9. *See* Delaunay et al., *supra* note 1, at 202; Potter, *supra* note 2, at 102–03.

10. Aultman, *supra* note 3, at 420–21. Bed bugs spread through both active and passive dispersal. Delaunay et al., *supra* note 1, at 202. Active dispersal occurs when the bedbug travels a short distance to find a host. Aultman, *supra* note 3, at 420. In a multi-unit apartment complex, actively dispersing bed bugs will spread into adjacent units, crawling through ventilation or cracks in walls in search of food. Delaunay et al., *supra* note 1, at 202. In passive dispersal, bed bugs travel to new buildings, cities, states, and countries while tucked in the luggage, clothing, and possessions of unsuspecting humans. *Id.*

11. Potter, *supra* note 2, at 102–03. Pest management companies report more difficulties treating bed bugs than any other infestation. Michael Potter et al., *Battling Bed Bugs in the USA*, Proceedings of Sixth International Conference on Urban Pests 401, 402 (2008).

12. OHIO BED BUG WORKGROUP, OHIO DEP’T OF HEALTH, FINAL REPORT AND RECOMMENDATIONS TO THE GOVERNOR & OHIO GENERAL ASSEMBLY 10 (2011), <https://aging.ohio.gov/resources/publications/bedbugs-report2011.pdf> [<https://perma.cc/Y6G2-CMR7>];

tenants, in particular, often lack the financial means to respond effectively to infestations.<sup>13</sup>

The current structure of landlord–tenant law encourages behaviors that contribute to the spread of bed bugs.<sup>14</sup> In response to growing infestations, some states are passing bed bug-specific legislation to clarify landlord and tenant roles when bed bugs infest rental complexes.<sup>15</sup> However, in the absence of such laws, it is unclear which party is responsible for the costs of an infestation.<sup>16</sup> Notably, for purposes of liability, identifying the source of a bedbug infestation is difficult, especially in multi-unit facilities, and it is almost impossible to prove fault.<sup>17</sup> The legal ambiguity, coupled with high extermination costs, encourages disputes over liability.<sup>18</sup> While parties debate, infestations are left untreated and spread, increasing the cost of future remediation.<sup>19</sup> To reduce bed bug populations across communities, prevent litigation, and curb the spread of infestations, a legal solution is necessary.<sup>20</sup>

Georgia is not among the states with legislation clarifying landlord–tenant roles in bed bug infestations.<sup>21</sup> Untreated bed bug infestations are a public health concern and necessitate a reexamination of Georgia landlord–tenant law to explore options for incentivizing landlord–tenant behaviors that curtail, rather than contribute to, the spread of the bugs. Part I of this note outlines the bed bugs' biology and places landlord–tenant disputes in a public

---

Aultman, *supra* note 3, at 420.

13. Aultman, *supra* note 3, at 420.

14. Gilbert, *supra* note 7, at 257–58; BENJAMIN ADRIAN ET AL., U. WASH., TACKLING BED BUGS: A STARTER GUIDE FOR LOCAL GOVERNMENT 22 (2016).

15. See, e.g., ARIZ. REV. STAT. ANN. § 33-1319 (2017); ME. REV. STAT. ANN. tit. 14, § 6021 (2017) (defining landlord and tenant duties).

16. See Gilbert, *supra* note 7, at 243–58; Whitney & Graf, *supra* note 1, at 2.

17. See Whitney & Graf, *supra* note 1, at 2; Gilbert, *supra* note 7, at 248.

18. See Gilbert, *supra* note 7, at 250.

19. *Id.* at 257–58.

20. See OHIO BED BUG WORKGROUP, *supra* note 12, at 8 (“Current interpretation is that landlords may not refuse to remediate infestations, but the law is unclear as to who is responsible for paying such treatments.”).

21. See NAT'L PEST MGMT. ASS'N, STATE BED BUG SPECIFIC LAWS 1–3 (Aug. 1, 2015); see also DOUG FARQUHAR, NAT'L CONF. OF STATE LEGISLATURES, STATE BED BUG POLICY, [http://www.ncsl.org/Portals/1/Documents/enviro/health/Bed\\_Bug\\_PP\\_11-16.pdf](http://www.ncsl.org/Portals/1/Documents/enviro/health/Bed_Bug_PP_11-16.pdf) (last visited Oct. 27, 2017) [<https://perma.cc/L5RM-E7PG>].

health context. Part II examines Georgia case law, statutes, and local codes, and argues that although current law and policy seemingly require landlords pay to remediate bed bug infestations, a clear assignment of liability is necessary to reduce the burgeoning bed bug population. Finally, Part III proposes the Georgia legislature adopt a statutory solution similar to recent bed bug legislation in other states.

### I. Background

Bed bugs and humans have slept together for thousands of years.<sup>22</sup> While the bed bug almost disappeared after World War II, our unwanted bedfellows returned about fifteen years ago and spread across the United States.<sup>23</sup> Bed bugs now cause “substantial loss[es] of economic revenue, both nationally and internationally.”<sup>24</sup> In Georgia, the number of bed bug infestations is growing.<sup>25</sup>

---

22. Michael F. Potter, *The History of Bed Bug Management – With Lessons from the Past*, 57 AM. ENTOMOLOGIST 14, 14–15 (2011).

23. Changlu Wang, *Bed Bugs: Prevalence in Low-Income Communities, Resident’s Reactions, and Implementation of a Low-Cost Inspection Protocol*, J. MED. ENTOMOLOGY, Apr. 5, 2016, at 1, 1. While the bedbug’s comeback is not fully understood, several factors are thought to contribute, including low public awareness, widespread insecticide resistance, increased travel, and lack of effective public and private management tools. *Id.* Research on the proliferation and prevalence of bedbugs is lacking. *Id.* at 2. No records of bedbug populations are kept by health organizations such as the World Health Organization or the Center for Disease Control. Alice Anderson, *The Decade of Bedbugs and Fear*, 5 ENVTL. HEALTH INSIGHTS 53, 53 (2011). Most existing data collected on the expanding bed bug population tracks self-reported infestations called in to public health agencies or pest control operators. Wang, *supra*, at 1–2. However, the rapid increase of bed bugs is undisputed. *See, e.g.,* Abejuela-Matt, *supra* note 3, at 93; Wang, *supra*, at 3.

24. Anderson, *supra* note 23, at 54.

25. While no state or national agency tracks numbers of bed bug infestations, news reports and internet posts show bed bug infestations throughout Georgia. *See* S. Heather Duncan, *Bedbug Infestations Not Uncommon at Middle Georgia Hotels, Apartments*, TELEGRAPH (Apr. 21, 2012, 9:45 PM), <http://www.macon.com/news/article28648711.html> [<https://perma.cc/PGS2-FZ79>]; Desirae Duncan, *Albany Housing Authority Fights Bedbugs*, WALB NEWS 10 (July 25, 2016, 7:28 AM), <http://www.walb.com/story/32520011/albany-housing-authority-fights-bedbugs> [<https://perma.cc/UT2R-YED5>]. Orkin, a pest control company, publishes a yearly list of cities requiring the most bed bug treatments. *Orkin’s Top 50 Bed Bug Cities List Chicago Tops List for Fourth Year in a Row*, ORKIN (Jan. 13, 2016), <http://www.orkin.com/press-room/orkins-top-50-bed-bug-cities-list-chicago-tops-list-fourth-year-row> [<https://perma.cc/QE9A-B5CQ>]. In 2016, Atlanta jumped to number 19 on the list, moving up six spots. *Compare id., with Chicago Tops Bed Bug Cities List for Third Year in a Row*, ORKIN, <http://www.orkin.com/press-room/chicago-tops-bed-bug-cities-list-third-year-row/> (last visited Oct. 29, 2017) [<https://perma.cc/BJ3R-ZEUD>].

### A. *Bed Bugs: About*

The general physiology of bed bugs contributes to the difficulty of the legal questions surrounding them. Bed bugs reproduce quickly when food sources are present, so the introduction of just a small number of bed bugs quickly leads to a full-blown infestation.<sup>26</sup> Further complicating extermination methods, bed bugs may live for over a year in the absence of a host.<sup>27</sup> They are most active in the early hours before dawn, when they emerge to feed.<sup>28</sup> Bed bugs are drawn to warm bodies and the carbon dioxide emissions of humans, and are “extremely efficient at finding and extracting their blood meals.”<sup>29</sup> Unless feeding or searching for food, the bed bug hides beyond the reach of most pesticides, tucked deep in the cracks of walls and headboards, and in the seams of mattresses and clothes.<sup>30</sup>

#### 1. *Physical and Psychological Harms*

Bed bug bites occur most frequently on exposed areas of skin—generally, the arms, neck, and face of an unsuspecting sleeper.<sup>31</sup> Bed bug saliva has an anesthetic effect, so bites are usually painless.<sup>32</sup> Reactions vary significantly, and some people will not react at all or even notice the bed bugs’ bites.<sup>33</sup> Typically, a few hours after a bite, the surrounding skin becomes raised and irritated, forming small,

---

26. Delaunay et al., *supra* note 1, at 201. In only six months, one pregnant bed bug can create 31,700 bed bug offspring. Alalawi, *supra* note 3, at 143 fig.1. A female bed bug produces two to three eggs a day—around 200 to 500 eggs in a lifetime. Delaunay et al., *supra* note 1, at 201. The resulting nymphs undergo five molting stages, each requiring a blood meal, before reaching adulthood. *Id.* If a host is available, a nymph can molt every three to seven days. *Id.* A bed bug will reach maturity in about nine weeks. Anderson, *supra* note 2, at 24.

27. Delaunay et al., *supra* note 1, at 200.

28. Anderson, *supra* note 2, at 25.

29. *Id.*

30. *Id.* Adults are reddish-brown, flat and oval-shaped, and measure between one to seven millimeters. JOINT STATEMENT, *supra* note 8, at 3.

31. Anderson, *supra* note 2, at 25. Bed bugs are tiny, but visually identifiable, though they spend most of the daylight hours hiding. *Id.*

32. Delaunay et al., *supra* note 1, at 203.

33. *Bed Bug FAQs*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/parasites/bedbugs/faqs.html> (last visited Oct. 29, 2017) [<https://perma.cc/JF95-J7E8>].

itchy skin lesions or welts.<sup>34</sup> Although bites may go unnoticed, they can result in more serious medical complications.<sup>35</sup> Severe infestations can cause anemia, and children living with infestations may become “listless and pale.”<sup>36</sup> In rare cases, allergic reactions trigger life-threatening anaphylaxis.<sup>37</sup>

Although physical symptoms are generally mild, infestations seriously impact mental health.<sup>38</sup> Bed bugs are “serious psychosocial stressor[s].”<sup>39</sup> Infestations can trigger “moderate-to-severe” psychological effects, including PTSD.<sup>40</sup> People facing infestations describe fears of waking up to find themselves covered in feasting bugs.<sup>41</sup> Unsurprisingly, debilitating anxiety and insomnia commonly occur.<sup>42</sup> Because bed bugs target areas of skin exposed when sleeping, the aesthetic results affect individuals both socially and economically, limiting job prospects and public interaction, especially when bites frequently occur on the face.<sup>43</sup> Though infestations are not caused by uncleanliness or dirty households, such associations persist, and people with bed bugs may develop socially-avoidant behaviors to avoid real or imagined stigma.<sup>44</sup> Neighbors

---

34. *Id.*

35. Aultman, *supra* note 3, at 419.

36. Anderson, *supra* note 2, at 24; Aultman, *supra* note 3, at 419.

37. Anderson, *supra* note 2, at 24.

38. See Jerome Goddard, *Psychological Effects of Bed Bug Attacks (Cimex lectularius L.)*, 125 AM. J. OF MED. 101, 101 (2012). Infestations may result in “major depressive episodes, anxiety-spectrum disorders, including acute stress disorders, adjustment disorders, and specific phobias.” Evan Rieder, et al., *Psychiatric Consequences of Actual Versus Feared and Perceived Bed Bug Infestations: A Case Series Examining a Current Epidemic*, 53 PSYCHOSOMATICS 85, 88 (2012).

39. Rieder et al., *supra* note 38, at 90.

40. Goddard, *supra* note 38, at 102.

41. *Id.*

42. Christopher Eddy & Susan C. Jones, *Bed Bugs, Public Health and Social Justice Part 1, A Call to Action*, 73 J. ENVTL. HEALTH 8, 9 (2011); Goddard, *supra* note 38, at 101. Anxiety often continues even after the infestation is eradicated. Rieder et al., *supra* note 38, at 90. To avoid re-infestation, victims of bed bug infestations may create self-imposed restrictions on their interactions with the outside world, banning visitors or limiting public outings. Aultman, *supra* note 3, at 424; Rieder et al., *supra* note 38, at 90.

43. Eddy & Jones, *supra* note 42, at 8–10.

44. See David E. Cassidy et al., “*Sleep Tight, Don’t Let the Bed Bugs Bite*”: *The Impact of Bed Bugs on Our Daily and Legal Lives*, FDCC QUARTERLY 101, 108 (2011); Goddard, *supra* note 38, at 101; Whitney & Graf, *supra* note 1, at 2.

may ostracize tenants in multi-unit apartment complexes, in particular, especially if bed bugs spread.<sup>45</sup>

Additionally, growing desperation may cause tenants to adopt maladaptive behaviors more injurious than the bugs themselves, such as frantic overspending on treatment methods or pesticide overuse.<sup>46</sup> Some tenants, driven by anxiety, douse their homes, bodies, and beds with dangerous chemicals or pesticides.<sup>47</sup> Over-the-counter pesticides do not effectively exterminate bed bugs, but they can cause serious health problems in humans after prolonged exposure.<sup>48</sup>

## 2. *Economic Harms*

Economic costs from bed bug infestations significantly affect both the individual and society at large. Households living with bed bug infestations may experience losses in “occupational or educational productivity.”<sup>49</sup> Although the EPA and CDC do not cite exact numbers, their Joint Statement on Bed Bugs states, “the economic losses from health care, lost wages, lost revenue, and reduced productivity” are “substantial.”<sup>50</sup> Even the involvement of experts does not guarantee complete eradication and still results in staggering extermination costs.<sup>51</sup> Treating a single unit can range from \$500 to

---

45. Rieder et al., *supra* note 38, at 88.

46. JOINT STATEMENT, *supra* note 8, at 3; Rieder et al., *supra* note 38, at 90.

47. Abejuela-Matt, *supra* note 3, at 95. One common rumor claims gasoline and kerosene will kill bed bugs. Heeding this advice, people have smeared gasoline all over themselves and their children before sleeping. Liz Goff, *FDNY Warns Don't Use Gasoline Products on Bedbugs*, QUEENS GAZETTE (Sept. 3, 2011), [http://www.qgazette.com/news/2011-03-09/Front\\_Page/FDNY\\_Warns\\_Dont\\_Use\\_Gasoline\\_Products\\_On\\_Bedbugs.html](http://www.qgazette.com/news/2011-03-09/Front_Page/FDNY_Warns_Dont_Use_Gasoline_Products_On_Bedbugs.html) [https://perma.cc/U2ER-63FM].

48. See Alalawi, *supra* note 3, at 145. Some home treatment methods are particularly dangerous and endanger neighbors or the home itself. For example, one Kentucky woman started a fire which burned down two buildings, leaving around thirty people homeless after she soaked her mattress in isopropyl alcohol to get rid of bed bugs. *Don't Use Kerosene to Kill Bed Bugs; Be Cautious with Alcohol*, BEDBUGGER.COM (June 18, 2014), <http://bedbugger.com/2014/06/18/dont-use-kerosene-to-kill-bed-bugs-be-very-cautious-with-alcohol/> [https://perma.cc/manage/create/]. Even non-chemical treatment methods can be dangerous. Heat treatment, a popular non-chemical alternative, started at least one fire. Whitney & Graf, *supra* note 1, at 2; Chris Glorioso, *I-Team: Bedbug Treatments Leave Homes in Flames*, NBC N.Y. (July 3, 2013, 9:11 PM), <http://www.nbcnewyork.com/news/local/Bed-Bug-Treatment-Radiant-Heat-Fire-Ice-Debate-Hazards-214087061.html> [https://perma.cc/73VJ-T2BF].

49. Rieder et al., *supra* note 38, at 89.

50. JOINT STATEMENT, *supra* note 8, at 3.

51. Rieder et al., *supra* note 38, at 88; JOINT STATEMENT, *supra* note 8, at 4.



\$1,200, and multiple treatments are generally required.<sup>52</sup> In a multi-unit complex, it is also necessary to treat adjacent units.<sup>53</sup>

The economic harms of bed bug infestations are not limited to extermination fees. Often, those living with an infestation discard personal property, including mattresses.<sup>54</sup> Landlords generally require tenants to throw out their possessions as part of the treatment process.<sup>55</sup> Low-income tenants, in particular, may be unable to replace certain essential items removed during extermination, and as a result, they are forced to choose between paying for a new mattress or paying rent and sleeping on the floor.<sup>56</sup>

### B. *Bed Bugs: A Public Health Problem*

Because bed bug infestations pose negative health consequences, are environmentally communicable, and impact community health, scholars sometimes consider bed bugs a public health problem.<sup>57</sup> Public health professionals recognize a variety of factors, including housing and environment, as social determinates of health.<sup>58</sup> Public health law examines the “legal powers and duties of the state, in collaboration with its partners . . . to assure the conditions for people to be healthy.”<sup>59</sup> Bed bugs are more than an individual problem, as

52. Aultman, *supra* note 3, at 425.

53. CRAIG HOLLINGSWORTH, PROTOCOLS FOR THE PREVENTION AND CONTROL OF BED BUGS IN MULTIUNIT HOUSING 9 (2009). Because tenants may be unaware of infestations, especially in earlier stages, it is often most effective to inspect and treat the entire building. *Id.*

54. Wang, *supra* note 23, at 1. Mattresses, couches, and chairs are the most common items which require removal. *See* Aultman, *supra* note 3, at 421–22. In extreme circumstances, some people continue to replace furniture and belongings until they can no longer afford to pay rent and are evicted. *See* Wang, *supra* note 23, at 1.

55. *See* Aultman, *supra* note 3, at 424.

56. *Id.*; Courtney Collins, *Bed Bugs: An Expensive Pest Problem That Low-Income Renters Often Pay For*, TEX. PUB. RADIO (Oct. 9 2017, 10:21 AM), <http://tpr.org/post/bed-bugs-expensive-pest-problem-low-income-renters-often-pay> [<https://perma.cc/2YFZ-4AWF>].

57. Wang, *supra* note 23, at 1.

58. Jonathan E. Fielding et al., *A Framework for Public Health in the United States*, 32 PUB. HEALTH REV. 174, 175–76 (2010). Social exclusion, a consequence of the stigma associated with bed bug infestations, is also a social detriment to health. ELIZABETH COMACK & JAMES LYONS, CANADIAN CENTRE FOR POLICY ALTERNATIVES, WHAT HAPPENS WHEN THE BED BUGS DO BITE? THE SOCIAL IMPACTS OF A BED BUG INFESTATION ON WINNIPEG’S INNER-CITY RESIDENTS 5 (2011).

59. Lawrence O. Gostin, *A Theory and Definition of Public Health Law*, 10 J. HEALTH CARE L. & POL’Y 1, 1 (2007).

untreated infestations spill over into the population at large.<sup>60</sup> Thus, legal interventions aimed at curbing the spread of bed bugs are based on the same rationale as governmental policies to control communicable disease.<sup>61</sup> In fact, public health professionals cite to government failure to react appropriately to early reports of bed bug infestations as one factor that contributed to their spread.<sup>62</sup>

The United States public health system is a broad network of various federal, state, and tribal agencies, as well as more than 2,700 local health departments (LHDs).<sup>63</sup> State statutes define the roles of public health agencies and local governments.<sup>64</sup> Thus, public health programs, policy, and infrastructure vary from state to state and locality to locality.<sup>65</sup> The federal government acknowledges the public health significance of bed bugs. In 2002, for example, the U.S. Department of Health and Human Services (HHS), of which the CDC is a part, joined with the EPA and the U.S. Department of Agriculture (USDA) to recognize bed bugs as a pest of “significant public health importance.”<sup>66</sup> However, this classification lacks any statutory or regulatory impact.<sup>67</sup> Still, in 2009, the EPA and the CDC reaffirmed bed bugs’ public health significance, acknowledging the “negative physical health, mental health and economic

---

60. Wang, *supra* note 23, at 1–2. Individual infestations affect the public as a whole, as bed bugs easily hitchhike out of homes and into public areas. Aultman, *supra* note 3, at 417–21. Thus, untreated infestations should be viewed as a community—not an individual—problem. *Id.*

61. George A. Mensah et al., *Law as a Tool for Preventing Chronic Diseases: Expanding the Spectrum of Effective Public Health Strategies*, 1 PREVENTING CHRONIC DISEASES 1, 5 (2004) (describing “legal tools, remedies, and mechanisms” used by public health experts to control the spread of chronic disease).

62. Abejuela-Matt, *supra* note 3, at 95; see COMACK & LYONS, *supra* note 58, at 2. The diffusion of responsibility through multiple agencies resulted in general governmental inaction until around 2008, when bed bugs approached the peak of their natural population curve. Anderson, *supra* note 23, at 53.

63. Justeen K. Hyde & Stephen M. Shortell, *The Structure and Organization of Local and State Public Health Agencies in the U.S.: A Systematic Review*, 42 AM. J. PREVENTATIVE MED. S29, S31 (2012).

64. *See id.* at S33.

65. *Id.* at S32.

66. EPA, PESTS OF SIGNIFICANT PUBLIC HEALTH IMPORTANCE, *supra* note 5, at 1, 7 (defining “significant public health importance” broadly to include all “pest[s] that pose a widely recognized risk to significant numbers of people”).

67. *See id.* at 7. Confusingly, other CDC publications state bed bug infestations are merely an “annoyance” and “should not be considered a medical or public health hazard.” *Bed Bug FAQs*, *supra* note 33 (explaining that bed bugs are not dangerous); see also TEX. DEP’T OF STATE HEALTH SERVS. BED BUG FACT SHEET 1 (2014).

consequences” of infestations.<sup>68</sup> That same year, the EPA sponsored the first National Bed Bug Summit,<sup>69</sup> which led to the formation of the Federal Bed Bug Workgroup.<sup>70</sup>

LHDs, not federal agencies, are on the front line of bed bug prevention.<sup>71</sup> Although states define the duties of public health agencies differently, LHDs generally intervene when the ability to control a potential hazard is “beyond the ability of an individual and poses a considerable danger to the community.”<sup>72</sup> Because bed bugs do not spread disease, some LHDs do not consider bed bugs a public health hazard and claim bed bug infestations fall outside their jurisdiction.<sup>73</sup> Even if LHDs are motivated and properly equipped to address bed bugs, they often lack legal authority to inspect units or ensure remediation.<sup>74</sup>

---

68. *Bed Bugs: A Public Health Issue*, ENVTL. PROT. AGENCY, <https://www.epa.gov/bedbugs/bed-bugs-public-health-issue> (last visited Oct. 29, 2017) [<https://perma.cc/L424-4433>]. The Joint Statement noted four primary difficulties with bed bug control, one of which was the failure of landlord–tenant law to clearly assign liability for costs of treating infestations. JOINT STATEMENT, *supra* note 8, at 2.

69. *Bed Bug Summits*, U.S. ENVTL. PROT. AGENCY, <https://archive.epa.gov/epa/bedbugs/bed-bug-summits.html> (archived version) (last visited Oct. 29, 2017) [<https://perma.cc/TQM4-KZED>]. The second National Bed Bug Summit took place in 2011. *Id.* Among other goals, summit attendees discussed methods for “controlling bed bugs in structured settings, such as . . . multi-family and public housing.” U.S. ENVTL. PROT. AGENCY, FEDERAL AGENCIES TO CONVENE NATIONAL BED BUG SUMMIT FEBRUARY 1–2 (2011).

70. FEDERAL BED BUG WORKGROUP, COLLABORATIVE STRATEGY ON BED BUGS 18 (2015). In 2015, the Work Group published a Collaborative Strategy on Bed Bugs to clarify the federal government’s role in bed bug control. *Id.* at 3.

71. See FEDERAL BED BUG WORKGROUP, *supra* note 70, at 3–4, 19.

72. Jennifer S. Bard, *Introducing Law Students to Public Health Law Through a Bed Bug Scenario*, 43 L.J. MED. & ETHICS 7, 9 (2015).

73. See OHIO BED BUG WORKGROUP, *supra* note 12, at 8; see also *Bed Bugs*, N.M. DEP’T PUB. HEALTH, <https://nmhealth.org/about/erd/ehb/bbp/> (last visited Oct. 29, 2017) [<https://perma.cc/8W7Y-WMDP>] (“We don’t have jurisdiction to enforce abatement, conduct bed bug testing, conduct home or health facility inspections, track complaints or provide resolution for disputes between landlords and tenants, or provide resolution for disputes between consumers and businesses (including hotels and housing facilities).”); *Bed Bugs*, RICHLAND PUB. HEALTH, (Aug. 22, 2012), <http://richlandhealth.org/for-homes/bed-bugs> [<https://perma.cc/B2CE-K87Y>] (“Richland Public Health often receives complaints about bites from bed bugs. While they are a nuisance, bed bugs have never been known to carry any diseases and therefore are not something that the Health Department has jurisdiction over.”).

74. OHIO BED BUG WORKGROUP, *supra* note 12, at 4–6, 8 (“Another factor that varies among jurisdictions is the presence or absence of a nuisance abatement, housing or motel/hotel program. LHDs without these code enforcement programs have no capacity to respond to bed bug complaints.”).

Georgia's public health system consists of three administrative levels, with the Department of Public Health (DPH) at the top.<sup>75</sup> Counties are then grouped into eighteen districts, which coordinate with 159 different county boards of health.<sup>76</sup> The DPH acknowledges the public health importance of bed bugs.<sup>77</sup> The DPH may "employ all legal means appropriate" for "safeguard[ing] and promot[ing]" the health of Georgia residents.<sup>78</sup> In 2013, the DPH promulgated a regulation containing the only explicit reference to bed bugs in the Georgia code.<sup>79</sup> The DPH requires tourist accommodations take "effective and appropriate measures" to eliminate "rodents and flies, roaches, bed bugs, and other insects."<sup>80</sup> However, the regulations are silent on control measures in the context of private rental units.<sup>81</sup>

---

75. KATHLEEN R. MINER ET AL., EMORY UNIV., STRUCTURE AND FUNCTION OF PUBLIC HEALTH IN GEORGIA 5 (2015). Although states organize their health departments differently, trends are categorized into four models. Hyde & Shortell, *supra* note 63, at S32. Georgia utilizes a "shared" or "hybrid" model characterized by joint administration from state and local agencies. MINER ET AL., *supra*, at 5; *see also Mission and Values*, GA. DEP'T PUB. HEALTH, <http://dph.georgia.gov/mission-and-values> (last visited Oct. 29, 2017) [<https://perma.cc/C4BX-57R6>]. Kentucky and Florida also utilize the hybrid model. MINER ET AL., *supra*, at 5.

76. MINER ET AL., *supra* note 75, at 6. Fulton County, which has a Department of Health and Wellness, is the only exception. *Id.* Local health districts allow counties to share administrative costs and staff, including a district health director. *Id.* Constrained by only state law and DHS regulations, local health boards pass rules and regulations and set priorities for county health departments. *Id.*; *see also Public Health Regulations*, GA. DEP'T PUB. HEALTH <https://dph.georgia.gov/public-health-regulations> (last visited Oct. 29, 2017) [<https://perma.cc/2WQW-CQY5>].

77. *See Infestations of Public Health Importance*, GA. DEP'T PUB. HEALTH, <http://dph.georgia.gov/infestations> (Apr. 17, 2017) [<https://perma.cc/5PDF-4KH3>]. The DPH website lists bed bugs, head lice, and scabies as "infestations of public health importance." *Id.* The DPH provides guidance and education on bed bug infestations, which includes publishing a bed bug handbook and brochure. *Id.* Notably, the Georgia Bed Bug Handbook states, "bed bugs are considered more of a nuisance than a health concern." GA. DEP'T PUB. HEALTH, BED BUG HANDBOOK 6 (2010).

78. O.C.G.A. § 31-2A-4 (2017); *see also Public Health Regulations*, *supra* note 76. This power includes the power to enter and inspect "public or private property" for "conditions deleterious to health" and to enforce compliance with health regulations. O.C.G.A. § 31-2A-4(11).

79. NAT'L PEST MGMT. ASS'N, *supra* note 21, at 1.

80. *Id.*

81. *See* April Burkhart, *Tenants in Rental Properties May Be on Their Own When It Comes to Bed Bugs*, ATHENS BANNER-HERALD (July 8, 2013, 7:44 PM), <http://onlineathens.com/health/2013-07-08/tenants-rental-properties-may-be-their-own-when-it-comes-bed-bugs> [<https://perma.cc/XL5T-4SSN>] (interviewing a Georgia local health department employee who states, "It's not that we don't want to be involved; we're not authorized to get involved . . . [W]e really don't have the authority to go in and shut an apartment complex down or force a landlord to do anything."); *see also* O.C.G.A. § 31-2A-4.

### C. *Landlords and Tenants and Bed Bugs, Oh My!*

Landlords and tenants often dispute liability for treatment of bed bug infestations, as treatment is extremely costly in price, time, and labor.<sup>82</sup> State law controls a landlord's responsibility for treating infestations, as further refined by local county or city ordinances and individual lease agreements.<sup>83</sup> Widespread uncertainty exists regarding landlord liability for infestations in rental property, especially for infestations in multi-unit apartment complexes.<sup>84</sup> The lack of legal clarity incentivizes landlord inaction and tenant non-disclosure, contributing to the further spread of infestation.<sup>85</sup> To protect themselves, many landlords now require tenants to sign a "bed bug addendum" with each lease.<sup>86</sup> The terms heavily favor landlords and shift the costs of bed bug infestations to tenants, but the addendums do not provide any clarity, as their enforceability remains uncertain.<sup>87</sup>

---

82. Aultman, *supra* note 3, at 418, 421; Michael Wong et al., *Strategies for Housing Authorities and Other Lower-Income Housing Providers to Control Bed Bugs*, J. HOUSING & COMMUNITY DEV. 20, 20 (2013).

83. See Gilbert, *supra* note 7, at 257.

84. *Id.*

85. *Id.*; NAT'L CTR. FOR HEALTHY HOUS., WHAT'S WORKING IN BED BUG CONTROL IN MULTI-FAMILY HOUSING: RECONCILING BEST PRACTICES WITH RESEARCH & THE REALITIES OF IMPLEMENTATION 37 (2010).

86. See Elizabeth Owens, *Ga. Woman Battling Management Over Bed Bugs*, WRDW 12 (June 7, 2012, 7:01 PM), [http://www.wrdw.com/home/headlines/News\\_12\\_On\\_Your\\_Side\\_Bed\\_Bugs\\_in\\_Apartment\\_157901795.html](http://www.wrdw.com/home/headlines/News_12_On_Your_Side_Bed_Bugs_in_Apartment_157901795.html) [<https://perma.cc/RL58-SLER>].

87. See Jay Gormley, *It's Tenant vs. Landlord in Irving Bed Bug Fight*, CBS 11 NEWS (April 15, 2011, 8:44 PM), <http://dfw.cbslocal.com/2011/04/15/its-tenant-vs-landlord-in-irving-bed-big-fight> [<https://perma.cc/2Z4M-QSSB>] (stating "bed bug addendum's [sic] are rare," and interviewing a local attorney who "had never seen such a clause"); see also OHIO BED BUG WORKGROUP, *supra* note 12, at 8 ("Some landlords are now writing bed bug waivers into their rental agreements declaring the unit is currently free of infestation and that the tenant is responsible for eradication should bed bugs become introduced. To the workgroup's knowledge, this has not yet been challenged in court."). For an example of a lease containing a standard-form bed bug addendum in Georgia, see FULTON CTY. BD. OF COMM'RS, AGENDA ITEM SUMMARY: ITEM #14-0474 971-72, 996-97 (2014) [hereinafter "FULTON CTY. ITEM #14-0474"]. Under one term, tenants may be held responsible for collateral damages experienced by a landlord as a result of an infestation, including the cost of relocating other tenants and any lost rental income. *Id.* Tenants reporting bed bugs may risk eviction, taking bed bugs with them as they go. *Id.* Under another term in the same addendum, the very presence of bed bugs in the apartment constitutes a material violation of the lease, regardless of fault, and is grounds for eviction. *Id.* at 996-99; see also Aultman, *supra* note 3, at 421.

Disputes and delays over bed bug treatment disproportionately harm low-income tenants.<sup>88</sup> A variety of social factors converge to make low-income communities particularly susceptible to bed bug infestations.<sup>89</sup> Low-income families are more likely to rent, rather than own, their homes.<sup>90</sup> Tenants are more mobile and more likely to live in units with high turnover, increasing the risk bed bugs will move in along with new neighbors.<sup>91</sup> Additionally, low-income housing usually consists of older, dilapidated structures and higher occupant densities—factors highly conducive to the spread of bed bugs.<sup>92</sup> Low-income tenants are acutely unable to expend resources necessary to fully exterminate an infestation.<sup>93</sup> For many, paying for expert pest control treatment is financially impossible.<sup>94</sup>

When landlords dispute liability and tenants lack affordable and effective pest control options, infestations are left untreated.<sup>95</sup> Additionally, when tenants fear liability for pest control costs, they are less likely to report infestations and more likely to use ineffective self-treatment methods.<sup>96</sup> These behaviors hurt the interests of both parties, as extermination is the most effective and the least costly when the exterminators identify and treat infestations early, before the bugs spread.<sup>97</sup> The impact extends well beyond the landlord and

---

88. COMACK & LYONS, *supra* note 58, at 6.

89. Alalawi, *supra* note 3, at 146; Eddy & Jones, *supra* note 42, at 8–10; Wong et al., *supra* note 82, at 20. Initial studies on bed bug infestations indicate initial population resurgences occurred primarily in high and middle-income hotels and apartments. Wang, *supra* note 23, at 1.

90. Eddy & Jones, *supra* note 42, at 11; Mary Shaw, *Housing and Public Health*, 25 ANN. REV. PUB. HEALTH 397, 410 (2004).

91. HOLLINGSWORTH, *supra* note 53, at 2. High tenant turnover increases the risk of bed bugs. Wang, *supra* note 23, at 6. A “significant negative correlation” exists between infestations and the length of time a tenant remained in the same apartment. *Id.* at 4.

92. *See* Eddy & Jones, *supra* note 42, at 8–10 (discussing how low-income housing conditions contribute to the spread of bed bug infestations).

93. *See* Wang, *supra* note 23, at 6–7 (“Low-income communities are more susceptible to the burden of bed bug infestations due to financial constraints. Successful bed bug elimination campaigns will hinge upon implementation of more effective bed bug management programs in these communities.”).

94. *Id.* at 1–2. Currently, no existing over-the-counter pesticides are effective against bed bugs. Abejuela-Matt, *supra* note 3, at 95. Experts warn against using aerosolized pesticides, or bug sprays, as they only scatter bugs. *Id.*

95. CURT COLWELL ET AL., ILL. DEP’T OF PUB. HEALTH, REPORT OF THE SUBCOMMITTEE ON BED BUGS 2–3 (2011).

96. HOLLINGSWORTH, *supra* note 53, at 3.

97. Potter, *supra* note 22, at 15.

tenant—such behavior also increases the risk of infestation in the community.<sup>98</sup> Thus, landlord–tenant law must be re-examined to ensure the allocation of liability does not facilitate the spread of bed bugs.

## II. Analysis

Georgia landlord–tenant law fails to effectively deal with the specific hazard bed bugs pose in modern urban apartment complexes. While common law allowed landlords to lease residential units with no regard for the tenant’s living conditions, mid-twentieth century statutory reforms addressed the harsh treatment of tenants.<sup>99</sup> All states now have an implied “warranty of habitability” for residential leases.<sup>100</sup> The Georgia General Assembly adopted this concept much earlier, in 1865, when it codified the landlord’s duty to repair in what is now O.C.G.A. § 44-7-13.<sup>101</sup> This early recognition of the landlord’s implicit duty to repair echoes Georgia’s public policy favoring landlord liability.<sup>102</sup> While several stories in the Georgia news showcase landlords and tenants fighting over bed bug extermination costs, no current Georgia case law directly addresses

---

98. *Id.*; see also *Thompson v. Crownover*, 381 S.E.2d 283, 285 (Ga. 1989) (stating unsafe residential housing constitutes “a menace to the health and safety” of all Georgians).

99. See generally Mary Ann Glendon, *The Transformation of American Landlord–Tenant Law*, 23 B.C. L. REV. 503 (1982) (arguing modern reforms recognize that tenants lacked bargaining power to assert their right to safe, decent, sanitary housing); Nancy Terrill, *New Act Is a Step Toward Landlord–Tenant Equality in Georgia*, 28 MERCER L. REV. 351, 351–52 (1976) (detailing other landlord–tenant reforms in this era, including recognition of leases as contracts, the covenant of quiet enjoyment, the end to landlord self-help, and protections against housing discrimination).

100. See NAT’L CONFERENCE OF COMM’RS ON UNIF. STATE LAWS, UNIFORM RESIDENTIAL LANDLORD TENANT ACT § 2.014(a)(2), §2.014 cmt. (1974) (including terms requiring landlords keep residential units in “a fit and habitable condition”).

101. See O.C.G.A. § 44-7-13 (2017) (“The landlord must keep the premises in repair. He shall be liable for all substantial improvements placed upon the premises by his consent.”). The language has not changed substantially since 1895. See *Thompson*, 381 S.E.2d at 284.

102. *Thompson*, 381 S.E.2d at 285 (“The General Assembly has consistently expressed the public policy of this state as one in favor of imposing upon the landlord liability for damages to others from defective construction and failure to keep his premises in repair. The expressed public policy in favor of landlord liability is matched by an equally strong and important public policy in favor of preventing unsafe residential housing. The General Assembly has found that people with low incomes are forced to live in unsafe housing and that such living conditions constitute a menace to the health and safety of all the residents of Georgia. The General Assembly has also found a direct correlation between unsafe residential housing and excessive financial burdens placed on municipalities, counties, and the state as a whole.”).

this issue.<sup>103</sup> However, a Fulton County resident who moved into a bed bug-infested apartment complex recently settled with her landlord for \$34,000.<sup>104</sup> The DPH regulation, the only explicit reference to bed bugs in the Georgia Code, only pertains to tourist accommodations.<sup>105</sup>

Under Georgia law, a tenant may have a cause of action for a landlord's failure to remediate a bed bug infestation: (1) under O.C.G.A. §§ 44-7-13 and 44-7-14 (discussed further below), (2) as a violation of the landlord's duty of ordinary care,<sup>106</sup> or (3) as a violation of local housing code or specific lease covenants.<sup>107</sup> However, because no law clearly defines liability specifically to bed bugs, uncertainty—and all associated disputes and delays—persist.<sup>108</sup>

#### A. Landlord Duty of Repair Under Sections 44-7-13 and 44-7-14

The landlord's duty to repair is made up of several different obligations.<sup>109</sup> Section 44-7-13 creates a contractual duty to repair for

103. *Ellis v. Hartford Run Apartments, LLC*, 779 S.E.2d 103, 105–06 (Ga. Ct. App. 2015) (discussing a residential landlord's duty to repair a unit with severe mold and roaches, noting roaches crawled on tenants in their sleep); *see also* Adam Murphy, *Bed Bugs Invade Forest Park Senior Housing Center*, CBS 46 (Mar. 5, 2014, 9:18 PM), <http://www.cbs46.com/story/24632423/bed-bugs-invade-forest-park-senior-housing-center> [<https://perma.cc/2WBE-KFSU>]; Adam Murphy, *Tenants Complain About Bed Bugs at Skyway Apartments*, CBS 46 (May 10, 2012, 5:29 PM), <http://www.cbs46.com/story/17399710/tenants-complain-about-bed-bugs-at-skyway-apartments> [<https://perma.cc/T2ZJ-PN6B>]; Owens, *supra* note 86.

104. Amended Complaint for Damages, *Taylor v. Hammond Residential Grp., Inc.*, No. 13-EV-018570-G (St. Ct. of Fulton Cty. Feb. 2, 2016). This lawsuit included multiple claims such as negligence, misrepresentation, breach of warranty of habitability, and bad faith. *Id.*

105. *See supra* Part I.

106. O.C.G.A. § 51-3-1 (“Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.”).

107. *Thompson*, 381 S.E.2d at 285. This list is, by necessity, incomplete. Different factual circumstances will give rise to different types of claims. For example, certain breaches of duty may give rise to a claim under O.C.G.A. § 51-1-6. Additionally, if infestations are extreme enough to force tenants to abandon the property, tenants may also have a claim for constructive eviction. If lease terms assign pest control responsibility to the landlord, tenants also have a cause of action for breach of contract if the landlord fails to remediate the infestation. Alexander Ruskell, *Landlord Responsibility: What Really Bugs Landlords – Keeping on Top of Infestations*, 8 LANDLORD'S BOTTOM LINE BULLETIN 1, 7 (May 2005).

108. *See, e.g.*, O.C.G.A. § 44-7-13.

109. *Colquitt v. Rowland*, 463 S.E.2d 491, 492–93 (Ga. 1995). While tenant damages for the landlord's failure to repair are generally limited to rent abatement or other compensatory damages, in



landlords.<sup>110</sup> Under this section, landlords are liable for the cost of repair.<sup>111</sup> Damages are usually limited to cost-of-repair, which is offset by rent abatement.<sup>112</sup> Section 44-7-14 deals with the landlord's tort duties and limits the landlord's liability for damages from failure to repair or defective construction.<sup>113</sup> Under this section, the landlord is not liable for damages to third parties resulting from the tenant's negligence.<sup>114</sup> Landlords who fail to fulfill their duty to repair, however, are liable to both tenants and third parties for both personal injury and property damage.<sup>115</sup> In residential leases, Georgia courts recognize a landlord's violation of the duty to repair as negligence per se.<sup>116</sup>

The landlord's duty to repair cannot be waived under O.C.G.A. § 44-7-2(b)(2).<sup>117</sup> Thus, whether remediation of bed bug infestations falls within the scope of the landlord's duty to repair depends upon the judicial interpretation of the word "repair."<sup>118</sup> Notably, Georgia courts hold the landlord's duty to repair "does not include a duty of maintenance."<sup>119</sup> While the difference between "repair" and

---

extreme cases, courts have awarded punitive damages. *See* *McWilliams v. Hayes*, 379 S.E.2d 528, 529 (Ga. Ct. App. 1989) (upholding jury verdict awarding a tenant \$1,346 in actual damages and \$5,000 in punitive damages when the landlord repeatedly failed to repair a residential unit).

110. *Colquitt*, 463 S.E.2d at 492–93 (“[T]he lines between these code sections have been blurred . . . [O.C.G.A. § 44-7-13] imposes contractual, but not tort, liability on a landlord, . . . [while] OCGA § 44-7-14 deals with a landlord's tort liability . . .”) (footnotes and citations omitted). The duty to repair is not waivable in a residential lease. O.C.G.A. § 44-7-2(b).

111. *Colquitt*, 463 S.E.2d at 492.

112. *Id.*

113. O.C.G.A. § 44-7-14 (“[T]he landlord is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant . . . [T]he landlord is responsible for damages arising from defective construction or for damages arising from the failure to keep the premises in repair.”).

114. *Id.*

115. *Id.*

116. *Id.*; *Thompson v. Crownover*, 381 S.E.2d 283, 285 (Ga. 1989).

117. O.C.G.A. § 44-7-2(b)(2).

118. *Ellis v. Hartford Run Apartments, LLC*, 779 S.E.2d 103, 107 (Ga. Ct. App. 2015); *Pharr v. Burnette*, 280 S.E.2d 881, 882 (Ga. Ct. App. 1981). Alternatively, pest control could also be considered a “substantial improvement.” O.C.G.A. § 44-7-13. If so, tenants could pay for pest control services and recuperate costs from the landlord, provided the tenant can prove the landlord approved the treatment. *Roberts v. Roberts*, 422 S.E.2d 253, 254 (Ga. Ct. App. 1992). Landlords are also “liable for all substantial improvements placed upon premises by his consent.” *Id.*

119. *See* *Gainey v. Smacky's Invs., Inc.*, 652 S.E.2d 167, 169–70 (Ga. Ct. App. 2007); *Martin v. Johnson-Lemon*, 516 S.E.2d 66, 69 (Ga. 1999) (“By its plain and unambiguous terms, OCGA § 44-7-14 does not impose a duty of maintenance on an out-of-possession landlord, only a duty of repair.”); *see*

“maintenance” is unclear, landlords must keep premises in a condition “reasonably necessary to make them fit for the use intended by the lessee and known to the lessor.”<sup>120</sup> Arguably, as bed bugs make sleep a nightly terror, an infested apartment is not fit for any residential tenant.<sup>121</sup> With this understanding, pest control treatment would be a repair.<sup>122</sup>

If bed bug remediation is a “repair,” the tenant must prove the landlord received verbal or written notice of the infestation.<sup>123</sup> Notice gives rise to the landlord’s subsequent duties to inspect and repair within a reasonable time.<sup>124</sup> If the landlord then fails to make repairs after a reasonable time, the landlord is liable for resulting damages.<sup>125</sup> Notably, the landlord retains liability until the repair is complete.<sup>126</sup> As bed bug extermination is uncertain and generally requires multiple treatments, a well-established infestation may render

---

*also* Dougherty v. Taylor & Norton Co., 63 S.E. 928, 930 (Ga. Ct. App. 1909) (discussing the difference between “repair” and “improvement”).

120. *Ellis*, 779 S.E.2d at 107; *see also Pharr*, 280 S.E.2d at 882 (defining repairs as “any upkeep . . . necessary to the preservation of the premises in their entirety in the same condition as to the tenantability as they were at the time of the execution of the lease”); *Martin*, 516 S.E.2d at 69 (finding landlord did not violate the duty of repair when a pool lacked depth markings because additional depth markings did not restore the pool “to its original condition due to loss or destruction”); *Sidhi Inv. Corp. v. Thrift*, 785 S.E.2d 552, 556 (Ga. Ct. App. 2016) (finding a commercial landlord did not violate the duty to repair when an invitee slipped on a greasy substance because an “unknown substance on the floor” caused the injury, not “faulty construction” or an “imperfect structure” needing repair).

121. *Bender v. Green*, 874 N.Y.S.2d 786, 791 (N.Y. Civ. Ct. 2009) (“It has been well established that insect infestation is a condition which is considered to adversely impact upon the health and safety of the occupants of a residential premise.”); *Ludlow Props. LLC v. Young*, 4 Misc.3d 515, 519–20 (N.Y. Civ. Ct. 2004) (finding bed bugs did not constitute a “mere annoyance” but rather an “intolerable condition”).

122. *See Bender*, 874 N.Y.S.2d at 791.

123. *Haynes v. Kingstown Props., Inc.*, 578 S.E.2d 898, 900 (Ga. Ct. App. 2003); *Phillips v. King*, 448 S.E.2d 780, 781 (Ga. Ct. App. 1994). A landlord warrants a rental unit is in good repair at the time it is rented and is liable only for latent defects which could have been discovered by the exercise of ordinary care. *Biggs v. Long*, 441 S.E.2d 677, 684 (Ga. Ct. App. 1994). Ordinary care does not include an affirmative duty to inspect the premises for latent defects before renting it. *Davis v. Smith*, 314 S.E.2d 471, 472 (Ga. Ct. App. 1984).

124. *Ellis*, 779 S.E.2d at 107 (holding a landlord’s failure to remediate a mold and roach infestation when landlord and tenant disputed proper notice constituted a sufficient question of fact for the jury); *see also Ball v. Murray*, 86 S.E.2d 706, 707–08 (Ga. Ct. App. 1955); *Gledhill v. Harvey*, 190 S.E. 61, 62 (Ga. Ct. App. 1939).

125. *Ellis*, 779 S.E.2d at 107.

126. *Mason v. Gracey*, 375 S.E. 2d 283, 287 (Ga. Ct. App. 1988); *Oglesby v. Rutledge*, 21 S.E.2d 497, 500 (Ga. Ct. App. 1942).

landlords indefinitely liable for property damage and personal injury, despite ongoing pest control efforts.

*B. Premises Liability Under Section 51-3-1*

Under § 51-3-1, a property owner is liable for “injuries caused by his failure to exercise ordinary care in keeping the premises . . . safe.”<sup>127</sup> After the tenant assumes possession of the rental unit, § 44-7-14, not § 51-1-3, controls the landlord’s tort liability.<sup>128</sup> However, an “out-of-possession” landlord remains liable for ordinary care in common areas.<sup>129</sup> This type of unit-based liability assignment makes little sense when dealing with a pest well known for moving through cracks, ventilation, and electrical outlets in search of food.

In negligence claims under a premises liability theory, tenants must prove the landlord had knowledge of the dangerous condition.<sup>130</sup> Generally, a tenant’s equal or superior knowledge of the dangerous condition will defeat their claim.<sup>131</sup> However, in cases where the tenant repeatedly provided notice to a landlord who refused to fix the problem, the tenant’s equal or superior knowledge is not automatically determinative.<sup>132</sup> Rather, the question becomes whether the tenant could have prevented the injury “either by avoiding the problematic area or by using it more cautiously.”<sup>133</sup> As untreated infestations will unavoidably spread, tenants may use premises liability claims when infestations go untreated or reemerge.

---

127. O.C.G.A. § 51-3-1 (2017).

128. *Plott v. Cloer*, 464 S.E.2d 39, 40 (Ga. Ct. App. 1995).

129. *Id.* at 40; *see also* *Martin v. Johnson-Lemon*, 516 S.E.2d 66, 68–69 (Ga. 1999).

130. *Andres v. Roswell-Windsor Village Apartments*, 777 F.2d 670, 672 (11th Cir. 1985).

131. *Carey v. Bradford*, 461 S.E.2d 290, 291 (Ga. Ct. App. 1995); *Andres*, 777 F.2d at 672.

132. *Phillips v. King*, 448 S.E.2d 780, 781 (Ga. Ct. App. 1994) (“Although plaintiff’s knowledge of the dangerous condition was at least equal to that of defendant, this will always be the case when a tenant has repeatedly complained about a dangerous condition and a landlord has failed to fix it.”).

133. *Id.* at 781.

*C. As Refined by Housing Codes, Local Ordinances*

*1. Local Housing Code*

Cities and counties further define the scope of the landlord's duty to repair.<sup>134</sup> Local housing codes outline landlord and tenant duties in a variety of situations, including infestations.<sup>135</sup> Many Georgia counties and cities adopt a version of the International Property Maintenance Code (IPMC).<sup>136</sup> Under the IPMC, the landlord's liability for pest control ends before the lease begins.<sup>137</sup> However, liability falls on the tenant to remediate infestations that occur during the lease period "unless infestations are caused by defects in the structure."<sup>138</sup> The Atlanta City Code, in contrast to the IPMC, assigns extermination responsibility to the landlord, but errs in its reliance on fault. Although tenants renting single-unit dwellings bear responsibility for pest control, Atlanta City Code § 25(b)(5) states the "extermination of insects, rodents and other pests" is the "specific responsibility" of the landlord.<sup>139</sup> The tenant, however, must not engage in behaviors likely to cause infestation, such as bringing in infested, second-hand furniture.<sup>140</sup> Additionally, if the landlord can show the tenant introduced the bed bugs, the tenant faces liability for treatment.<sup>141</sup>

---

134. Total Equity Mgmt. Corp. v. Demps, 381 S.E.2d 51, 55 (Ga. Ct. App. 1989).

135. See Hill v. Tschannen, 590 S.E.2d 133, 135 (Ga. Ct. App. 2003).

136. See, e.g., ALPHARETTA, GA. CODE OF ORDINANCES § 5-4 (2014); COBB CTY., GA. CODE OF ORDINANCES § 18-186 (2017); DECATUR, GA. CODE OF ORDINANCES § 10.1.2 (2016); FULTON CTY., GA. CODE OF ORDINANCES § 14-38 (2017); SANDY SPRINGS, GA. CODE OF ORDINANCES § 105-20 (2017).

137. INTERNATIONAL PROPERTY MAINTENANCE CODE § 309 (2015). For dwellings containing two or more units, the landlord also remains responsible for pest control in "public or shared areas." *Id.* § 309.4.

138. *Id.* § 309; see also DEKALB CTY., GA. CODE OF ORDINANCES § 18-37(d) (2017). DeKalb County has not adopted the IPMC, but the DeKalb County Code contains a similar pest control provision. DEKALB CTY., GA. CODE OF ORDINANCES § 18-37(d) (stating tenants "shall be responsible for the extermination of any insects . . . whenever infestation is caused by [landlord failure] to maintain a dwelling in a reasonable . . . insect-proof condition, extermination shall be the responsibility of the owner.").

139. ATLANTA, GA. CODE OF ORDINANCES § 25(b)(5), (c)(8).

140. *Id.* § 25(c)(4).

141. See *id.* § 25(c)(4).

Unfortunately, neither the Atlanta City Code nor the IPMC provides a real solution. Under the IPMC, tenants—the party least able to bear the costs of bed bug remediation—are fully liable for pest control treatments. While this does clearly assign liability, courts, in light of the strong public policy favoring landlord liability, may find such ordinances limiting the duty to repair in conflict with, and preempted by, state law.<sup>142</sup> The Atlanta City Code assigns liability to the landlord but encourages disputes—and their associated treatment delays—about whether tenant behaviors caused infestation. By failing to incentivize fast reporting and treatment, and by placing liability on a party least able to pay, both fail to account for the specific public health risk created by the environmentally-communicable nature of bed bugs. Bed bug proliferation is a foreseeable consequence when liability is allocated to the party least able to pay for effective, expert remediation.<sup>143</sup>

## 2. *Lease Terms and Bed Bug Addendums*

To protect against the legal uncertainty of bed bug infestations, the property management industry now recommends requiring tenants to agree to specific lease provisions assigning responsibility for bed bug infestations.<sup>144</sup> Such addendums now occur frequently in Georgia.<sup>145</sup>

---

142. See *Hill v. Tschannen*, 590 S.E.2d 133, 135 (Ga. Ct. App. 2003).

143. See *Cassidy et al.*, *supra* note 44, at 39; see also *Ludlow Props., LLC v. Young*, 4 Misc.3d 515, 519 (N.Y. Civ. Ct. 2004) (“[Bedbugs] are unlike the more common . . . vermin . . . , which, although offensive, do not have the effect on one’s life as bedbugs do, feeding upon one’s blood in hoards nightly, turning what is supposed to be rest or sleep into a hellish experience. Therefore, the cases involving abatements for ‘vermin’ (i.e. mice and roaches) are of limited precedential value . . .”).

144. Ruskell, *supra* note 107, at 7. Bed bug addenda clauses making the presence of bed bugs a material violation of the lease, or which assign costs to tenants, regardless of enforceability, may discourage tenants from notifying their landlord of an infestation, thus nullifying their legal claims. Letter from Marcia Rosen et. al., The Hous. Justice Network, to the Honorable Carol J. Galante, Acting Assistant Sec’y for Hous. (May 31, 2012). Other terms may drastically expand the notice a tenant must provide. Many leases now require tenants notify their landlords if they experience any unexplained bites or skin irritation, even if the tenant does not suspect an infestation. Wendy R. Wilson, *TAA Approves New Bed Bug Addendum*, TEX. APARTMENT ASS’N, <https://web.archive.org/web/20161002133833/http://www.taa.org/taa-news/2459-taa-board-approves-new-bed-bug-addendum> (last visited Oct. 29, 2017) [<https://perma.cc/3D97-7KMW>].

145. See *FULTON CTY. ITEM #14-0474*, *supra* note 87, at 971, 997. Under one term, tenants may be held responsible for collateral damages experienced by a landlord as a result of an infestation, including the cost of relocating other tenants and any lost rental income:

Resident shall pay all reasonable costs of cleaning and pest control

As long as Georgia considers bed bug remediation as part of the landlord's duty to repair, lease terms waiving landlord damages or reassigning cost will likely be unenforceable.<sup>146</sup> Additionally, considering the standard-form nature of the addenda, the current crisis in affordable housing, the low-income tenant's lack of bargaining power, and Georgia's public policy favoring landlord liability and disfavoring "unsafe residential housing," a strong argument exists that many of these terms may be unconscionable.<sup>147</sup> However, if courts find local housing codes define the scope of the landlord's duty to repair, pest control would no longer be considered a repair in counties that adopted the IPMC or similar codes.<sup>148</sup> Thus, § 44-7-2(b) would not control, and landlords and tenants could waive or assign pest control duties.

Regardless, lease terms do not need to be enforceable to affect landlord and tenant behavior. Landlords may refer to questionable lease provisions to delay remediation, and tenants may still delay reporting out of fear of liability or eviction. Unrepresented tenants,

---

treatment Management incurs to remedy Resident's breach of the Apartment Rental Contract. If Management must move other residents out of apartments in order to treat adjoining or neighboring apartments, then Resident shall be liable for payment of any lost rental income and other expenses incurred by Management to relocate the neighbors and perform pest control treatment to eradicate an infestation in other apartments.

*Id.* at 997. Under another term in the same addendum, the very presence of bed bugs in the apartment constitutes a material violation of the lease, regardless of fault, and is grounds for eviction:

In the event bed bugs are determined to be in the apartment, Management shall have the right to terminate the lease and require Resident to vacate the apartment and remove all furniture, clothing, and personal belongings in order to treat the apartment and building. Management shall have the right to terminate the lease and obtain possession of the apartment – regardless of who is responsible for causing the infestation or presence of bed bugs . . . .

*Id.* at 971.

146. *See* O.C.G.A. § 44-7-2(b)(2) (2017). At the time of publication, no case law specific to bed bug addenda exists in any state. For a case mentioning a bed bug addendum, but decided on other grounds, see *East Coast the Fairways Apartments LLC v. Leach*, No. LT-8261-11, 2013 WL 3213638 (Super. Ct. N.J. June 27, 2013).

147. *See* O.C.G.A. § 11-2-302 ("If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract . . . ."); *see* *Country Club Apartments v. Scott*, 271 S.E.2d 841, 842 (Ga. 1980).

148. *But see* *Phillips v. King*, 448 S.E.2d 780, 781 n.1 (Ga. Ct. App. 1994) ("[N]either O.C.G.A. § 44-7-13 nor the policy it embodies are limited to the rectification of specific housing code violations.").

presented with lease terms in court or in mediation, may be unable to advocate for their rights. If courts enforce such terms, the group most likely left bearing the bills for bed bugs may not be able to take proactive steps to prevent their proliferation.

#### *D. Landlord Defenses*

The landlord, however, retains several affirmative defenses. Landlords may argue a tenant assumed the risk, perhaps because the tenant moved in despite knowledge of other bed bug infestations in the complex.<sup>149</sup> However, proving a tenant's assumption of risk may be more difficult in the landlord-tenant context.<sup>150</sup> In other circumstances, a showing of contributory negligence results in the proportional reduction of damages.<sup>151</sup> Landlords must meet a tough evidentiary burden, as the clandestine, hitchhiking nature of bed bugs makes it nearly impossible to determine the origins of an infestation.<sup>152</sup> Additionally, such allocation of liability forces landlords to choose between disputing fault—risking both bed bug proliferation and liability for unknown damage amounts—or paying to treat an infestation for which they are not legally responsible.<sup>153</sup> If the landlord can prove the tenant is responsible for the bed bug infestation, the tenant will likely be liable for the cost of remediation regardless of their actual ability to pay for treatment.<sup>154</sup>

---

149. *Id.* at 781 (“[W]hatever force the doctrines of superior knowledge and assumption of risk may have . . . they have certainly been relaxed in recent years in the landlord-tenant setting.”).

150. *Plant v. Lowman*, 216 S.E.2d 631, 632 (Ga. Ct. App. 1975).

151. *Id.*

152. Whitney & Graf, *supra* note 1, at 2 (suggesting the most difficult issue in bed bug litigation is proving “which party is actually responsible for introducing the insects”); Gilbert, *supra* note 7, at 250.

153. See Cassidy et al., *supra* note 44, at 112; Whitney & Graf, *supra* note 1, at 2; Gilbert, *supra* note 7, at 258.

154. See generally *Greenforest Baptist Church, Inc. v. Shropshire*, 471 S.E.2d 547 (Ga. Ct. App. 1996). But see *Bender v. Green*, 874 N.Y.S.2d 786, 792 (N.Y. Civ. Ct. 2009) (finding a landlord breached the warranty of habitability, even though the tenants most likely caused the bed bug infestation, as the tenants were not “negligent in any manner,” and “any individual venturing out into the world today, particularly an individual that travels, risks bringing bedbugs home”).

### *E. Evicting Bed Bugs*

When landlords refuse to remediate infestations, tenants often feel justified in withholding rent.<sup>155</sup> In landlord–tenant law, much of the bed bug litigation arises in dispossessory actions for non-payment of rent, where tenants are unlikely to be represented by counsel.<sup>156</sup> Though tenants with bed bugs may be entitled to rent abatement or other damages, Georgia law treats non-payment of rent as a material violation of the lease, warranting eviction, regardless of cause.<sup>157</sup> The summary eviction process favors quick resolution of the possession of the property, and tenants must respond quickly to prevent a default judgment.<sup>158</sup> When landlords evict tenants with bed bugs, some bed bugs travel along to the new location, but others remain behind in the empty, but still infested, unit.<sup>159</sup>

### *F. State Statutory Solutions*

Five states have laws that specifically address bed bugs in a landlord–tenant context.<sup>160</sup> Maine assigns liability to the landlord regardless of fault.<sup>161</sup> Of the four remaining state laws, one offers no clarity on the issue of liability, whereas the other three adopt some sort of fault-based standard.<sup>162</sup> The Florida statute clearly holds

155. Cassidy et al., *supra* note 44, at 112.

156. Additionally, while tenants may be entitled to compensatory damages or even punitive damages, the amount of money at stake in these lawsuits is generally low. Though there are some reports of five and six figure bed bug lawsuits, in general, the financial stakes are not high enough to attract private lawyers. See Gilbert, *supra* note 12, at 270–71.

157. See O.C.G.A. § 44-7-50 (2017).

158. See *id.* §§ 44-7-5, 44-7-51.

159. Some clauses require tenants to confirm they did not have a bed bug infestation at their last rental unit or, if they did, that their personal property has been treated. FULTON CTY. ITEM #14-0474, *supra* note 87, at 996–97. If an evicted tenant cannot afford treatment but must move, they may struggle to find housing. NAT'L CTR. FOR HEALTHY HOUS., *supra* note 85, at 29.

160. NAT'L PEST MGMT. ASS'N, *supra* note 21, at 1; see also FARQUHAR, *supra* note 21, at 34 (providing information on bed bug ordinances at the city level).

161. See ME. STAT. tit. 14, § 6021-A (2016); FLA. STAT. ANN § 83.51 (2017). Maine requires landlords inspect units for bed bugs within five days of oral or written notice from the tenant. ME. STAT. tit. 14, § 6021-A. If the landlord determines a bed bug infestation exists, the landlord must contact a pest control agent within ten days. *Id.*

162. See ARIZ. REV. STAT. ANN. § 33-1319 (2016) (forbidding counties and cities from adopting bed bug regulations for private landlords); N.H. REV. STAT. ANN. § 540:13-e (2016); VT. ADMIN. CODE § 12-5-25:6.0 (2016).



landlords liable for pest control, but retains fault-oriented defenses. Florida landlords are required to “make reasonable provisions” for “the extermination of . . . bedbugs.”<sup>163</sup> However, under another term, landlords are not responsible for any “conditions created or caused” by the tenant’s negligence.<sup>164</sup>

Vermont landlords are fully liable for extermination costs in two circumstances. First, landlords are liable when an infestation is caused by the landlord’s failure to maintain the dwelling.<sup>165</sup> This standard may require courts to determine whether the landlord failed to maintain the dwelling. Thus, landlords facing steep extermination fees are encouraged to litigate. Vermont landlords are also liable when an infestation exists in two or more units in a dwelling.<sup>166</sup> While this standard provides more of a bright line, the landlord’s liability arises only after infestations spread, providing tenants with an incentive to wait to report infestations.

The New Hampshire statute effectively addresses treatment delays resulting from disputes over fault. The law requires the landlord pay to treat the infestation, but allows landlords to subsequently recover such costs if the tenant is responsible for the infestation.<sup>167</sup> Under this law, if a landlord thinks a tenant is responsible for bed bugs, the landlord may bill the tenant for the “reasonable costs of remediation,” but only for “the tenant’s own unit.”<sup>168</sup> The statute also creates a rebuttable presumption of tenant liability if no surrounding units reported an infestation in the past six months.<sup>169</sup> By shifting the burden of proving the origin of infections to the tenant, the rebuttable

---

163. FLA. STAT. ANN § 83.51(2)(a) (2017). While landlords may require tenants to temporarily vacate the premises for up to four days, landlords must abate rent during this period, but are not liable for damages. *Id.*

164. FLA. STAT. ANN § 83.51(4).

165. VT. ADMIN. CODE § 12-5-25:6.0.

166. *Id.*

167. N.H. REV. STAT. ANN. § 540:13-e. Landlords may evict tenants who fail to pay but must prove that the tenant introduced the bed bugs and that the landlord offered the tenant a “reasonable repayment agreement.” *Id.*

168. *Id.*

169. *Id.* *But see* Kolb v. DeVille Props., LLC, 326 S.W.3d 896, 902 (Mo. App. 2010) (holding evidence that other “tenants residing in the apartment immediately prior to and immediately after [the plaintiff-tenant] did not have any problem with bed bugs” has “little relevance” because bugs may die or move on during absences of occupancy).

presumption expands the likelihood that tenants will struggle to pay extermination costs for infestations they did not knowingly cause.

Finally, the statute creates four non-exclusive factors for judicial determinations of fault for bed bugs. The four factors to determine fault include: (1) existence and extent of bed bugs in other units before and during tenancy; (2) where bed bugs were first discovered; (3) existence and extent of prior remediation efforts in or around the surrounding unit before the current infestation; and (4) whether the tenant had bed bugs in their prior dwelling unit.<sup>170</sup> Although this provides more legal clarity, it does not prevent—and in fact, even seems to encourage—bed bug-related litigation and eviction. A clear delineation of duties rendering the landlord immune from liability for damages, but assigning responsibility to remediate, will end disputes and their associated delays and costly consequences.

### III. Proposal

Georgia needs a state-wide statutory solution to clarify landlord and tenant duties for bed bug infestations in single-unit and multi-unit rental complexes.<sup>171</sup> The Georgia legislature should recognize that untreated bed bug infestations are a public health risk,<sup>172</sup> and adopt legislation to promote judicial efficiency by preempting the need for bed bug-related litigation through clearly assigned landlord and tenant duties and remedies.<sup>173</sup> To effectively curb the spread of bed bugs, Georgia's statutory scheme should contain three key provisions.<sup>174</sup> First, liability for extermination costs should be

---

170. N.H. REV. STAT. ANN. § 540:13-e(b).

171. See FARQUHAR, *supra* note 21, at 39. While a state-wide statutory solution would most effectively remedy the problem, the Georgia General Assembly may be unlikely to pass such a reform. Individuals who wish to organize for better bed bug laws may find more success at the county and city level. Changes on the county or city level, such as changes clarifying the scope of the landlord's duty to repair, would offer an effective and more easily obtainable solution.

172. See ADRIAN ET AL., *supra* note 14, at 22; COLWELL ET AL., *supra* note 95, at 2–4; Gilbert, *supra* note 7, at 256–59.

173. See *Ludlow Props., LLC v. Young*, 4 Misc.3d 515, 519 (N.Y. Civ. Ct. 2004) (“[The] prevalence of cases in which bedbugs are involved is sure to increase” as bed bug populations grow); see also ME. STAT. tit. 14, § 6021-A (2016). Maine's bed bug statute is divided into four sections: definitions, landlord duties, tenant duties, and remedies. ME. STAT. tit. 14 § 6021-A.

174. Many other considerations, such as the landlord's duty to disclose previous infestations or the rental of infested units, are also implicated. However, this Note focuses on statutory provisions to

allocated to the landlord regardless of fault.<sup>175</sup> Second, the legislation should require tenants provide landlords with immediate notice of bed bug infestations and cooperate with treatment. Finally, the statutory scheme should preclude all bed bug-related claims against landlords in reasonable compliance with treatment requirements and provide landlords with enforcement mechanisms for non-cooperative tenants.

### A. No-Fault Landlord Liability

#### 1. Landlord Liability

Georgia should adopt a law requiring residential landlords to provide reasonable pest control services to treat bed bug infestations. First, Georgia law may already assign pest control responsibility to the landlord.<sup>176</sup> Thus, this provision is less of a change than a clarification. Georgia's "expressed public policy in favor of landlord liability," and "in favor of preventing unsafe residential housing" favors this provision.<sup>177</sup> Landlords are the party most able to bear and distribute costs.<sup>178</sup> In a multi-unit complex, landlords are uniquely situated to coordinate pest control treatment in multiple units, a best practice for effective extermination.<sup>179</sup> Moreover, bed bug insurance is becoming a more common and available option for landlords, expanding their ability to offset extermination costs.<sup>180</sup> Finally, landlords can distribute the costs of bed bug treatments through rent increases, and some already do so.<sup>181</sup>

---

encourage extermination of active infestations.

175. NAT'L CTR. FOR HEALTHY HOUS., *supra* note 85, at 37 ("When residents understand that they will not be charged or penalized for reporting a pest infestation and that the building management and staff have committed to providing a pest-free home, they are more likely to report infestations before they get out of hand.").

176. *See supra* Part II.

177. *Thompson v. Crownover*, 381 S.E.2d 283, 283 (Ga. 1989).

178. *See COMACK & LYONS, supra* note 58, at 18–19, 22.

179. COLWELL ET AL., *supra* note 95, at 4.

180. *See, e.g., Bed Bug Insurance Solutions*, AON, <http://www.aon.com/risk-services/bed-bug-insurance.jsp> (last visited Oct. 29, 2017) [<https://perma.cc/ZQ5S-WP5Y>].

181. COMACK & LYONS, *supra* note 58, at 19. For example, one landlord increased rent by 2.5% to cover the cost of bed bug treatments. *Id.*

## 2. *No-Fault Provisions*

Statutory solutions must clearly assign responsibility for exterminating bed bug infestations to landlords, regardless of fault.<sup>182</sup> Fault-based standards fail to promote judicial efficiency or public health, as disputes and delays in treatment are inevitable. The most challenging aspect of bed bug litigation is proving the origins of an infestation.<sup>183</sup> The uncertainties of eradication, the resiliency of bed bugs, and their quick reproductive cycle make fault a particularly difficult question. Further, tenants may unknowingly visit infested places and inadvertently bring bed bugs back home without a lapse of ordinary care.<sup>184</sup>

However, legislation should still protect landlords in situations where tenants cause infestation through risky behavior, such as continually bringing in used furniture, or where one tenant causes multiple, repeat infestations. Landlords should be allowed to recover treatment costs from tenants when the landlord can show the tenant's behavior caused the infestation, and the landlord promptly and successfully treated the infestation. Allowing landlords to recuperate costs after treatment is completed ensures landlords will not be responsible for recurring treatment costs caused by uncooperative tenants while limiting treatment delays associated with disputes.

## 3. *Means of Treatment*

The Georgia statute should require that landlords use a licensed pest management company within a reasonable time of receiving notice and confirmation of a bed bug infestation.<sup>185</sup> To most effectively reduce disputes around bed bug extermination, statutes

---

182. *See Bender v. Green*, 874 N.Y.S.2d 786, 794 (N.Y. Civ. Ct. 2009) (awarding tenants a \$2,724.21 abatement in rent even though “bedbugs were introduced . . . through no fault of the [landlord], and in all likelihood by the [tenants] themselves”); ME. STAT. tit. 14, § 6021-A (2016).

183. Whitney & Graf, *supra* note 1, at 5.

184. *See Bender*, 874 N.Y.S.2d at 791, 792.

185. *See, e.g.*, ME. STAT. tit. 14, § 6021-A.2.B (“Upon a determination that an infestation of bedbugs does exist in a dwelling unit, the landlord shall within 10 days contact a pest control agent . . .”). For an example of a statute which requires landlords to hire pest control experts to remediate all vermin infestations, see COLO. REV. STAT. § 38-12-505 (2017).

must also clearly define what bed bug extermination includes.<sup>186</sup> Generally, over-the-counter treatments will not eliminate a bed bug infestation.<sup>187</sup> Some state statutes define the types of extermination treatments that may be used.<sup>188</sup> However, this creates restrictions on property management and pest control companies. Because research on bed bug extermination methods is expanding, Georgia law should not delineate specific treatment methods. Requiring expert treatment, however, is not unduly restrictive. Leading pest control companies and government bodies adopt an “integrated pest management” (IPM) approach, including expert treatment, as best practices for bed bug treatment.<sup>189</sup> When landlords waste time using ineffective extermination methods, infestations spread and become more costly and difficult to control.<sup>190</sup>

#### *B. Tenant Cooperation: Notice, Compliance, and Education*

Because landlords cannot adequately treat a unit for bed bugs without tenant cooperation, the Georgia law must mandate that tenants cooperate with notice and treatment requirements.<sup>191</sup> Once a tenant is aware of a possible bed bug infestation, the tenant must

---

186. For example, though Florida law requires that landlords of dwelling units “other than single family homes” make “reasonable provisions” to exterminate bed bugs, the law fails to clarify what “reasonable provisions” might include. FLA. STAT. ANN. § 83.51 (2017).

187. COMACK & LYONS, *supra* note 58, at 18.

188. *See, e.g.*, VT. ADMIN. CODE § 12-5-25:6.0 (2016) (“Extermination shall be accomplished by eliminating the harborage place of pests and bedbugs, by removing . . . their food or breeding ground and by treatments including but not limited to poisoning, spraying, fumigating, heat treating or trapping.”). New Hampshire law employs an interesting outcome-based approach which defines the landlord’s liability for remediation as any “action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for at least 60 days.” N.H. REV. STAT. ANN. § 540:13-e (2016). For a summary of effective treatment methods, see NAT’L CTR. FOR HEALTHY HOUS., *supra* note 85, at 1–2.

189. JOINT STATEMENT, *supra* note 8, at 4. For example, the EPA, the CDC, the Federal Bed Bug Workgroup, and the Georgia Department of Public Health all recommend an IPM approach. *Id.*; FEDERAL BED BUG WORKGROUP, *supra* note 70, at 4–5, 17 (“[Integrated pest management] is an effective and safe approach to pest management that relies on a combination of common-sense practices that present the least possible hazard to people, property and the environment.”) IPM experts recommend property managers identify and utilize a specific pest control management company to remediate bed bug infestations. FEDERAL BED BUG WORKGROUP, *supra* note 70, at 10.

190. JOINT STATEMENT, *supra* note 8, at 4.

191. COLWELL ET AL., *supra* note 95, at 4.

provide immediate notice to the landlord.<sup>192</sup> Once notice is provided, the tenant must cooperate fully with the demands of the extermination process, including temporary relocation and removal of personal property.<sup>193</sup>

### 1. *Snitching on Bed Bugs: Notice Requirements*

Immediate and proper notice gives rise to the landlord's legal duty to repair and allows more efficient and cost-effective extermination plans.<sup>194</sup> However, even if tenants do not fear financial liability, other factors, such as social stigma, may prevent them from reporting a bed bug infestation.<sup>195</sup> Reporting delays facilitate the spread of bed bugs, increase the cost of treatment, and run counter to the policy goals of the proposed legislation. Thus, bed bug legislation should require tenants report suspected bed bug infestations to their landlords.

Notice requirements are less effective when tenants do not know enough about bed bugs to properly identify infestations. To educate tenants, some states require that landlords provide tenants with informational material on bed bug infestations.<sup>196</sup> Although it is possible to mandate the provision of educational materials, creating this new legal requirement may not be necessary. Many landlords already provide educational materials on bed bugs, indicating a strong incentive to educate tenants already exists.<sup>197</sup> Legislation should still account for the possible consequences of creating notice requirements without mechanisms for tenant education.

---

192. ME. STAT. tit. 14, § 6021-A.3.A (2016) (“A tenant shall promptly notify a landlord when the tenant knows of or suspects an infestation of bedbugs in the tenant’s dwelling unit.”).

193. *See, e.g., id.* § 6021-A.3.C (2016) (“A tenant shall comply with reasonable measures to eliminate and control a bedbug infestation . . .”).

194. *See* Wang, *supra* note 23, at 6. Relying solely on tenant reports of bites is not an effective detection method, as tenants are not always aware of bed bug infestations. *Id.* at 1, 6. In one study, 49% of residents found with an infested apartment did not know their apartment was infested. *Id.* at 5.

195. COMACK & LYONS, *supra* note 58, at 18–19. One landlord interviewed stated, “People don’t want to tell me, and they’ll tell me when they become desperate.” *Id.* Another commented, “People will not come forward and tell you. They feel embarrassed. They feel uninformed. They think it is a hygiene problem which we know it’s not.” *Id.*

196. ARIZ. REV. STAT. ANN. § 33-1319 (2017).

197. *See* FULTON CTY. ITEM #14-0474, *supra* note 87, at 998–99.

## 2. *Cleaning Out the Closet: Tenant Cooperation*

Tenants must be required to comply with instructions from pest control experts for treating and discarding personal property. Forced to share their beds with the bugs, tenants are often desperate to get rid of the infestation and are thus highly incentivized to cooperate with the treatment process. Treatment, however, is labor-intensive, often requiring significant effort from tenants.<sup>198</sup> In multi-unit complexes, successful pest management requires “diligent participation” from multiple stakeholders, including tenants, landlords, and pest control agents.<sup>199</sup> As part of the treatment process, tenants are often required to declutter apartments, launder clothes, disinfect personal property, and discard items that cannot be disinfected.<sup>200</sup> While the economic impact of replacing furniture and other items can be significant, tenants must bear this unfortunate consequence of infestation.<sup>201</sup>

### C. *Enforcement*

#### 1. *Claim Preclusion*

Georgia law should preclude all claims for tenant damages except as a remedy for landlord inaction. Under Georgia law, the landlord is liable for repairs “until the repairs are actually accomplished.”<sup>202</sup> Successful treatment of bed bug infestations usually requires multiple treatments over an extended period. Thus, a landlord could be liable for damages during the entire remediation process. Claim preclusion, in conjunction with a no-fault liability standard, limits the landlord’s financial burden by eliminating liability once the landlord begins a reasonable extermination process. Although courts may be required

---

198. NAT’L CTR. FOR HEALTHY HOUS., *supra* note 85, at 9–12, 17–18.

199. JOINT STATEMENT, *supra* note 8, at 4; FEDERAL BED BUG WORKGROUP, *supra* note 70, at 4; Abejuela-Matt, *supra* note 3, at 97.

200. NAT’L CTR. FOR HEALTHY HOUS., *supra* note 85, at 9–12.

201. *See* ME. STAT. tit. 14, § 6021-A.3 (2016) (stating provisions “may not be construed to require the landlord to provide the tenant with alternate lodging or to pay to replace the tenant’s personal property”).

202. *Booker v. J.T. Bickers Realty Co.*, 194 S.E.2d 490, 492 (Ga. Ct. App. 1972) (stating landlords are liable for “failure to make repairs within reasonable time after due notice” despite repair attempts, as landlords are “responsible until the repairs are actually accomplished”).

to determine what constitutes a reasonable extermination process, claim preclusion furthers the goal of judicial efficiency by limiting the circumstances in which tenants may bring claims. Because landlords must take steps to remediate the infestation, claim preclusion does not negatively impact public health goals.

## 2. *Tenant Failure to Cooperate*

Legislation should include enforcement mechanisms for tenants' failure to cooperate with notice or treatment requirements. Various bed bug subcommittees recommend fining tenants for repeated failure to cooperate.<sup>203</sup> Charging low-income tenants fines they are unable to afford is unlikely to be an effective solution by itself.<sup>204</sup> Tenants may refuse to cooperate with extermination if they do not understand the rationale behind seemingly unreasonable requests.<sup>205</sup> Thus, tenant education can be an important tool for overcoming non-compliance.

Because tenant cooperation is essential to successful pest control, however, landlords cannot be liable for exterminating infestations if tenants may impede their efforts without consequence. Legislative language should take into consideration that not all tenants are able to perform physically-demanding tasks and therefore may be willing, but legitimately unable, to comply.<sup>206</sup> However, when educated and able tenants repeatedly refuse to cooperate, a fine or enforcement mechanism is justified.<sup>207</sup> To avoid the further spread of bed bugs,

---

203. COLWELL ET AL., *supra* note 95, at 5. Landlords also express support for stronger enforcement mechanisms. COMACK & LYONS, *supra* note 58, at 22; NAT'L CTR. FOR HEALTHY HOUS., *supra* note 85, at 29.

204. COMACK & LYONS, *supra* note 58, at 22; NAT'L CTR. FOR HEALTHY HOUS., *supra* note 85, at 29 (recommending willfully uncooperative tenants be given notices requesting cooperation and detailing consequences, and charging the resident for lack of compliance).

205. NAT'L CTR. FOR HEALTHY HOUS., *supra* note 85, at 27–29.

206. NAT'L CTR. FOR HEALTHY HOUS., *supra* note 85, at 37 (dividing issues in tenant compliance between “tenants who can’t do their part in pest control” and “tenants who won’t do their part in pest control”). Maine landlords must offer “reasonable assistance” to tenants who are “not able to comply with bedbug inspection or control measures,” though landlords may charge tenants a “reasonable amount” for such services. ME. STAT. tit. 14, § 6021-A.2.F (2016).

207. COMACK & LYONS, *supra* note 58, at 22. Under Maine law, a landlord may bring an action against an uncooperative tenant for non-compliance and receive costs and damages for non-compliance along with an order granting the landlord access to premises for bed bug control and requiring tenants



however, non-payment of a fine should not itself be grounds for eviction.<sup>208</sup>

### 3. *Landlord Failure to Remediate Infestations*

Finally, legislation should also contain a remedy for tenants dealing with uncooperative landlords.<sup>209</sup> Landlords who fail to take reasonable steps to treat bed bug infestations should be fined. Additionally, tenants should retain a cause of action for actual and punitive damages when landlords fail to begin treatment within a reasonable time after receiving proper notice. To ensure enforcement when clients are insolvent or damages are low, the law should allow the prevailing party to recuperate attorney's fees.

## CONCLUSION

Bed bugs are back, and infestations are increasing across the United States. State governments must proactively ensure existing legal structures do not incentivize the further spread of the bugs. Georgia landlord–tenant law does not address the public health risk posed specifically by bed bugs, as opposed to cockroaches, rats, or other vermin. Questions of landlord liability are of particular consequence to low-income tenants, who are disproportionately impacted by the bed bug resurgence and often cannot afford the cost of treatment. Currently, the structure of Georgia landlord–tenant law encourages actions that contribute to the spread of bed bugs. The evidentiary difficulties of bed bug litigation, coupled with the unique biology of bed bugs, support a no-fault system allocating treatment costs to landlords. To fully address the problems associated with treatment delays in liability disputes, landlord liability must be coupled with additional statutory provisions to facilitate tenant cooperation. A statutory clarification promotes Georgia's public

---

comply with specific control measures. ME. STAT. tit. 14, § 6021-A.4.C.

208. NAT'L CTR. FOR HEALTHY HOUS., *supra* note 85, at 29 (recommending managers “avoid eviction” when dealing with uncooperative residents, “since the resident will likely both take the problem to the next residence and cause migration due to disruption during the [move]”).

209. *See* ME. STAT. tit. 14, § 6021-A.4.B.

**2018]**

**BED BUGS BILL**

**511**

policies of supporting safe residential housing, public health, and judicial efficiency. The Georgia legislature should proactively ensure Georgians are free from these unwelcome bedfellows.