

GOOD NIGHT. SLEEP TIGHT. DON'T LET THE BEDBUGS BITE.

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Imagine, for a moment, a basic B-movie horror/action plot. The opening moments of the flick establish that some sort of monster has invaded a small, out-of-the-way town. The hero(ine) seems to be the only one who realizes something is amiss, but the rest of the townsfolk ignore him/her as if he/she were a later-day Cassandra. Slowly the pests expand throughout the town until their presence nearly overwhelms everything. The hero(ine), who until then had been ostracized, steps up to battle this plague-like foe and leads the campaign of eradication. The “good guys” win and the bugs are slain, but flush with victory the burghers relax and a bug escapes. “What harm can one bug do,” they ponder as they celebrate, and thus the sequel is set up. Give the movie a cheesy title fitting for its genre (“Bugbite!”) and sell the distribution rights.

This plot probably sounds like something you’d never admit to watching, but you too would be yelling at the foolish characters on the screen about the warning signs that are blatantly obvious to anyone without celluloid for brains. Sadly, we’ve been just like the silly people of that backwoods town, as bedbug-shaped neon warning signs are beginning to pop up. For the latter half of the Twentieth Century, exposure to bedbugs in the United States was limited to the children’s bedtime nursery rhyme that tops this article. Due to the heavy use of pesticides in the 1940s, the *cimex lectularius* and its kin were almost completely eradicated within our nation’s borders. Bedbugs biting, as a concept, were just something that helped complete the requirements of verse and meter. Unfortunately, they’re back.

Short-term rentals (i.e., hotel and motel rooms) have been at the forefront of habitability litigation. The most egregious example of ignoring this problem comes from Chicago, by way of the Seventh Circuit Court of Appeals. The inestimable Judge Richard Posner delivered a scathing opinion on landlords who fail to take appropriate steps to mitigate bedbugs in Mathias v. Accor Economy Lodging, Inc., 347 F.3d 672 (7th Cir. 2003). Writing for the court, Judge Posner decried the landlord’s efforts to hide the pests from view, stating that the “failure either to warn guests or to take effective measures to eliminate the bedbugs amounted to fraud and probably to battery as well.”

In Accor, the site management of the lodging knew that many rooms had been infested. These rooms were added to an internal do-not-rent registry but the staff took no other action to rid them of the unwanted occupants. The effort at hiding the problem was so pervasive that a respectable pest control vendor was rebuffed even after the vendor begged management to permit free treatment of the rooms. That’s not something you see every day, yet management still decided to ignore the problem. To make matters worse, guests who complained about the pests were transferred but told that the bugs were ticks under some mistaken belief that claiming an infestation of disease-carrying insects was far less of a problem. Then again, considering that the plaintiff was the first to bring suit against the management for this infestation, the dodge seemed to have worked for several months. The problem actually existed for months until one guest fought back. The jury was not amused and awarded \$191,000.00 to each plaintiff in the Accor lawsuit, a result which the Seventh Circuit upheld.

The Accor lawsuit is the banner case regarding avoidance-as-strategy. There are also a couple of reported New York cases concerning landlord-tenant disputes, though none illustrate the problem with concealment – and the willful ignoring of the problem – as well as Accor. The first is a scenario where the landlord did not take proper action: Ludlow Properties, LLC v. Young, 780 N.Y.S.2d 853 (Civil Court, City of New York 2004). In Young, the resident attempted to deal with the bedbug infestation himself until he could stand it no longer, as the landlord failed to act. Rent

strike is permitted in that state, so he withheld rent and his landlord sued to evict. The court concluded that while rent was due, the premises' habitability had been reduced by nearly half due to the infestation.

On the other hand, even where landlords act promptly and reasonably, they can still see rent abatement occur when pests encroach upon their residents' dwellings. In a fact pattern where the landlord treated the premises repeatedly, the pests appeared to have entered with the residents, and the residents themselves appeared to be less believable than the landlord's personnel, a rent abatement was still awarded. The court in Bender v. Green, 874 N.Y.S.2d 786 (Civil Court, City of New York 2009), concluded that despite the landlord's best efforts, the "presence of bedbugs in the Subject Premises did constitute a breach of the warranty of habitability."

The lesson we learn is that bedbugs do not pose a binary question— i.e., did the landlord act to cure the problem or not. Instead, the question of habitability depends on the level of the pests' presence, and even when the landlord acts reasonably, rationally, and promptly, there still will be a negative impact upon the habitability of the premises. As a result, bedbugs must be eradicated quickly and you must follow up on the infestation with regular inspections. If you do not, that one B-movie villain may pop up for an unwanted sequel, and it won't be the box office raking in top dollar...