

Legal Aspects of Bed Bugs Enforcement

International Executive House Keepers Association
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Legal Aspects – Presentation Overview

- Current CT Law on bed bugs
 - Hotel/Motel common law duties
 - Landlord’s responsibilities and right of access
 - Hotel, motel and similar lodging
 - Tenant’s rights and responsibilities
 - Tenants vs. Transients
 - Housing and health code enforcement

Landowner's Common Law Duties

- Non-delegable duty to maintain property in a **reasonably safe** condition under existing circumstances.
- Failure to do so allow a party injured to recover from the owner.
- Recoverable only when injured party establishes **actual or constructive notice**.

Grogan v. Gamber Corporation

19 Misc.3d 798, 858 N.Y.S.2d 519 (2008)

- “To constitute constructive notice, a defect must be visible and apparent, and it must have existed for a sufficient length of time prior to the accident for the owner to have discovered the defect and remedied it.”
- “A party injured by the owner’s failure to fulfill its duty may recover from the owner even though the responsibility for maintenance has been transferred to another.”

CT General Statutes (CGS)

Section 47a-1. Definitions.

- (d) "Landlord" means the owner, lessor or sublessor of the dwelling unit, the building of which it is a part or the premises.
- (l) "Tenant" means the lessee, sublessee or person entitled under a rental agreement to occupy a dwelling unit or premises to the exclusion of others or as is otherwise defined by law.
 - Includes tenants in hotel/motel and similar lodging
 - "Transient" defined in CGS 47a-2(c)

CGS 47a-7. Landlord's responsibilities.

- **Sec. 47a-7. Landlord's responsibilities.** (a) A landlord shall: (1) Comply with the requirements of chapter 368o and all applicable building and housing codes **materially affecting health and safety** of both the state or any political subdivision thereof; (2) make all repairs and do whatever is necessary to put and keep the premises in a **fit and habitable condition**, except where the premises are intentionally rendered unfit or uninhabitable by the tenant, a member of his family or other person on the premises with his consent, in which case such duty shall be the responsibility of the tenant;

CGS 47a-7, cont.

Greater duty takes precedence.

- 47a-7(b) If any provision of any municipal ordinance, building code or fire code requires a **greater duty** of the landlord than is imposed under subsection (a) of this section, then such provision of such ordinance or code **shall take precedence** over the provision requiring such lesser duty in said subsection.

**CAN LANDLORD TRANSFER THE
OBLIGATION TO REMEDY BED
BUGS OR OTHER VIOLATIONS
TO TENANT?**

**CONTROLLED BY
CGS 47a-7(c) and (d).**

CGS Sec. 47a-7, cont.

Landlord transfer of duty to tenant

- 47a-7(c) The landlord and tenant of a **single-family** residence may agree in writing that the tenant perform the landlord's duties specified in subdivisions (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, or remodeling, provided the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

C.G.S. Sec. 47a-7, cont.

Landlord transfer of duty to tenant

- (d) The landlord and tenant of a dwelling unit **other than a single-family** residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling if (1) the agreement of the parties is entered into in good faith; (2) the agreement is in writing; (3) the work is not necessary to cure noncompliance with subdivisions (1) and (2) of subsection (a) of this section; and (4) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

WHAT CAN HAPPEN IF THE
LANDLORD FAILS TO MEET HIS
DUTIES UNDER CGS 47a-7?

Violation of CGS 47a-7(a) = NO RENT

- **Sec. 47a-4a. Effect of failure to comply with section 47a-7.** A rental agreement shall not permit the receipt of rent for any period during which the landlord has failed to comply with subsection (a) of section 47a-7.

CGS 47a-12

Tenant's remedies.

- **Sec. 47a-12. Breach of agreement by landlord. Tenant's remedies.** (a) If there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 47a-7 which materially affects health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach. If the breach is not remedied within fifteen days after receipt of the notice, the rental agreement shall terminate on such date.

How much is the landlord expected to do to get rent?

- The defendant contends that he should not suffer a loss of rent because of his efforts to rid the building of vermin. This claim misperceives the nature of the litigation. Whether or not a landlord has complied with his statutory obligations does not depend particularly, if at all, upon his due care or bonafides. Rather, the issue is whether the landlord has complied with contractual obligations which have been imposed upon him by law. The statute which is now [§ 47a-7\(a\)](#) has been aptly described as establishing a **warranty or covenant of habitability upon which a tenant's obligation to pay rent is contingent.** [LeClair v. Woodward, 6 Conn.Cir. 727, 730 \(1970\)](#); see *Todd v. May*, supra, 758.

Constructive eviction.

The resurgence of the cockroaches, in the number in which they appeared, prevented the use of the apartment as a dwelling unit. And the court finds as a fact that the resurgence was sufficient cause for the abandonment of the premises.

More important is the requirement that a constructive eviction be occasioned by some fault [FN1](#) of the landlord—whether misfeasance or nonfeasance. [Thomas v. Roper, 162 Conn. 343, 349 \(1972\)](#); [Reid v. Mills, 118 Conn. 119, 122 \(1934\)](#); *Amsterdam Realty Co. v. Johnson*, supra. In this regard, the court finds that the defendant's extermination program was not comprehensively implemented in view of the existing problem. [Tankus v. Genta, 1986 WL 296380](#).

- A constructive eviction occurs when the landlord, while not actually evicting the tenant, has done or suffered some act by which the premises are rendered unfit for the purpose for which they were leased. [Johnson v. Fuller, 190 Conn. 552-559 \(1983\)](#); [Amsterdam Realty Co. v. Johnson, 115 Conn. 243, 248 \(1932\)](#). To support a constructive eviction, there must be some fault on the part of the landlord, but the fault may be nonfeasance as well as misfeasance. [Thomas v. Roper, 162 Conn. 343, 349 \(1972\)](#); *Amsterdam Realty Co. v. Johnson, supra*. In this regard, **the court finds, as it did in *Newbold v. Aboudi, supra*, that the defendants' extermination attempts were not sufficiently comprehensive in view of a known and existing problem.** A constructive eviction, which the court concludes was proved to have occurred in July, 1984, relieved the plaintiff from his obligation to pay rent upon his surrender of the premises. [Amsterdam Realty Co. v. Johnson, supra at 249.](#)

Other tenant actions.

CGS 47a-14:

Tenant rent receiverships

§ 47a-11. Tenant's responsibilities

A tenant shall: (a) [Comply with all obligations primarily imposed upon tenants by applicable provisions of any building, housing or fire code materially affecting health and safety](#); (b) [keep such part of the premises that he occupies and uses as clean and safe as the condition of the premises permit](#); (c) remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner to the place provided by the landlord pursuant to [subdivision \(5\) of subsection \(a\) of section 47a-7](#); (d) keep all plumbing fixtures and appliances in the dwelling unit or used by the tenant as clean as the condition of each such fixture or appliance permits; (e) use all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises in a reasonable manner; (f) not wilfully or negligently destroy, deface, damage, impair or remove any part of the premises or permit any other person to do so; (g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises or constitute a nuisance, as defined in [section 47a-32](#), or a serious nuisance, as defined in [section 47a-15](#); and (h) if judgment has entered against a member of the tenant's household pursuant to subsection (c) of [section 47a-26h](#) for serious nuisance by using the premises for the illegal sale of drugs, not permit such person to resume occupancy of the dwelling unit, except with the consent of the landlord.

Is it enough to say:
“Tenant won’t allow
access?”

LANDLORD MUST USE LEGAL AND REASONABLE MEANS OF ENTRY

“In a landlord-tenant setting it would appear that the landlord should, under the circumstances of the tenant's refusal of entry for repairs, file and obtain an order of access from the Superior Court under [C.G.S. Section 47a-18](#), when a tenant refuses access under [C.G.S. Section 47a-16](#). (cont. next page)

The landlord has remedies under C.G.S. Section 47a-15 for tenants breach. Failing those actions, the landlord would be hard-pressed to establish the **necessary showing of 'lacking any reasonable means.'**” **Gayle v. Young**, Not Reported in A.2d, 1995 WL 118775, Conn.Super.,1995.

LEGAL ENTRY BY A LANDLORD

- CGS 47a-16 LANDLORD'S RIGHT OF ENTRY
- CGS 47a-18 LANDLORD'S REMEDY ON
TENANT REFUSAL

CGS 47a-16.

Landlord's right of entry.

- **47a-16. When landlord may enter rented unit.** (a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed to repairs, alterations or improvements, **supply necessary or agreed to services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.**

(b) A landlord may enter the dwelling unit without consent of the tenant in case of **emergency**.

CGS 47a-16, cont.

(c) A landlord shall not abuse the right of entry or use such right of entry to harass the tenant. The landlord shall give the tenant reasonable written or oral notice of his intent to enter and **may enter only at reasonable times, except in case of emergency.**

(d) A landlord may not enter the dwelling unit without the consent of the tenant except (1) in case of emergency, (2) as permitted by section 47a-16a, (3) pursuant to a **court order**, or (4) if the tenant has abandoned or surrendered the premises.

CGS 47a-18

Court order for entry.

- **47a-18. Judicial relief if tenant refuses entry.**
If the tenant refuses to allow entry pursuant to section 47a-16 or section 47a-16a, the landlord may obtain a declaratory judgment or injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages and reasonable attorney's fees.

Current CT Law on Bed Bug Enforcement

- Enforced through general provisions of the public health, housing and landlord/tenant statutes.
- Also enforced through municipal or district ordinances adopted pursuant to the Municipal Powers Act (CGS 7-148).

Infestation enforced under a local housing code.

- The Housing Code of New Haven (§ 309) makes the landlord responsible for extermination when two or more units or the common parts in a dwelling house are infested with insects . Although not every code violation is ipso facto a violation of [§ 47a-7](#), an infestation that is sufficiently severe to warrant a finding that it is capable of materially affecting the tenant's health and safety is a breach of the statutory warranty. [Steinegger v. Rosario, 35 Conn.Sup. 151, 156-57 \(1979\)](#); [Todd v. May, 6 Conn.Cir. 731, 737, \(1973\)](#). Recently, in *Newbold v. Aboudi*, CVNH 8410-1080 (1986) (NH H.D. # 352), the court found that [§ 47a-7\(a\)](#) was violated by a severe cockroach infestation.

CGS 19a-36

CT Public Health Code

- **Sec. 19a-36. (Formerly Sec. 19-13). Public Health Code. Fees. Fencing of naturally formed swimming pools. Use of private wells or installation of replacement wells.** (a) The Commissioner of Public Health shall establish a Public Health Code and, from time to time, amend the same. The Public Health Code may provide for the preservation and improvement of the public health.

... (7) **Any person who violates any provision of the Public Health Code shall be fined not more than one hundred dollars or imprisoned not more than three months or both.**

CPHC – Abatement of Nuisance

Section 19-13-B2

19-13-B2. Abatement of nuisance (a) Any local director of health, upon information of the existence of a nuisance or any pollution occurring within his jurisdiction, or when any such nuisance or pollution comes to his attention, shall, within a reasonable time, **investigate** and, upon finding such nuisance or pollution exists, shall issue his **order** in writing for the abatement of the same.

(b) Such order shall specify the nature of such nuisance or pollution and shall designate the time within which such abatement or discontinuance shall be accomplished; and if such order is not complied with within the time specified, the facts **shall be submitted to the prosecuting authority**. Copies of all orders shall be kept on file by the director of health in his office and copies of the same shall be furnished the state commissioner of health on request.

CGS 19a-206.

Duty of directors of health.

(see CGS Chapter 368f for Municipal
District Health Directors)

CGS 19a-206.

- **19a-206. (Formerly Sec. 19-79). Duties of municipal directors of health. Nuisances and sources of filth. Injunctions. Civil penalties. Authority of town director within city or borough.** (a) Town, city and borough directors of health or their authorized agents shall, within their respective jurisdictions, examine all nuisances and sources of filth injurious to the public health, cause such nuisances to be abated and cause to be removed all filth which in their judgment may endanger the health of the inhabitants. **Any owner or occupant of any property who maintains such property, whether real or personal, or any part thereof, in a manner which violates the provisions of the Public Health Code enacted pursuant to the authority of sections 19a-36 and 19a-37 shall be deemed to be maintaining a nuisance or source of filth injurious to the public health.** Any local director of health or his authorized agent or a sanitarian authorized by such director may enter all places within his jurisdiction where there is just cause to suspect any nuisance or source of filth exists, and abate or cause to be abated such nuisance and remove or cause to be removed such filth.

CGS 19a-206, cont.

(b) When any such nuisance or source of filth is found on private property, such director of health shall order the owner or occupant of such property, or both, to remove or abate the same within such time as the director directs. If such order is not complied with, within the time fixed by such director: (1) Such director, or any official of such town, city or borough authorized to institute actions on behalf of such town, city or borough, may institute and maintain a civil action for injunctive relief in any court of competent jurisdiction to require the abatement of such nuisance, the removal of such filth and the restraining and prohibiting of acts which caused such nuisance or filth, and such court shall have power to grant such injunctive relief upon notice and hearing;

CGS 19a-206, cont.

(b)(2) the owner or occupant of such property, or both, shall be subject to a civil penalty of two hundred fifty dollars per day for each day such nuisance is maintained or such filth allowed to remain after the time fixed by the director in his order has expired, except that the owner or occupant of such property or any part thereof on which a public eating place is conducted shall not be subject to the provisions of this subdivision, but shall be subject to the provisions of subdivision (3). Such civil penalty may be collected in a civil proceeding by the director of health or any official of such town, city or borough authorized to institute civil actions and shall be payable to the treasurer of such city, town or borough, and (3) the owner or occupant of such property, or both, shall be subject to the provisions of sections 19a-36, 19a-220 and 19a-230.

CGS 19a-206, cont.

(c) If the director institutes an action for injunctive relief seeking the abatement of a nuisance or the removal of filth, the maintenance of which is of **so serious a nature as to constitute an immediate hazard to the health of persons other than the persons maintaining such nuisance or filth**, he may, upon a verified complaint stating the facts which show such immediate hazard, apply for an ex parte injunction requiring the abatement of such nuisance or the removal of such filth and restraining and prohibiting the acts which caused such nuisance or filth to occur, and for a hearing on an order to show cause why such ex parte injunction should not be continued pending final determination on the merits of such action. If the court finds that an immediate hazard to the health of persons other than those persons maintaining such nuisance or source of filth exists, such ex parte injunction shall be issued, provided a hearing on its continuance pending final judgment is ordered held within seven days thereafter and provided further that any persons so enjoined may make a written request to the court or judge issuing such injunction for a hearing to vacate such injunction, in which event such hearing shall be held within three days after such request is filed.

CGS 19a-206, cont.

(d) In each town, except in a town having a city or borough within its limits, the town director of health shall have and exercise all the power for preserving the public health and preventing the spread of diseases; and, in any town within which there exists a city or borough, the limits of which are not coterminous with the limits of such town, such town director of health shall exercise the powers and duties of his office only in such part of such town as is outside the limits of such city or borough, except that when such city or borough has not appointed a director of health, the town director of health shall, for the purposes of this section, exercise the powers and duties of his office throughout the town, including such city or borough, until such city or borough appoints a director of health.

CGS 19a-206, cont.

(e) When such nuisance is abated or source of filth is removed from private property, such abatement or removal shall be at the **expense of the owner or occupant of such property, or both**, and damages for such abatement or removal may be recovered against them by the town, city or borough in a civil action as provided in subsection (b) or in a separate civil action brought by the director of health or any official of such city, town or borough authorized to institute civil actions.

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