

Bedbugs and Other Creatures from Hell by Ken Volk

Bedbug infestation has become very prominent on the Arizona landlord-tenant landscape. Due to their pernicious nature, causing harm to both body and property, the Arizona Residential Landlord and Tenant Act affords special consideration to this 21st century pestilence. Under A.R.S. § 33-1319, which applies to all rentals except single family homes, a landlord is prohibited from renting premises known to be infested with bedbugs, and a tenant may not move into a rental with personal property harboring these pests. Also under A.R.S. § 33-1319 residential landlords are required to provide educational materials about bedbugs to existing and new tenants.

The foregoing notwithstanding, landlords regularly violate this law, leasing out infested premises. And from a short tour of the apartment it is all but impossible for a tenant to determine if there are bedbugs present. They could be in the walls. They could be dormant. From a tenant's perspective, the presence of bedbugs at the commencement of tenancy, or soon thereafter, could be argued to be prima facie evidence that the landlord knew, or should have known, about the infestation.

Because bedbugs cannot be eliminated from a single dwelling unit without fumigating the entire building, and such treatment is very expensive, landlords invariably try to shift the blame onto the tenants in order to have them foot the bill. They will even try to evict the tenants for causing the infestation, when in fact the tenants are truly victims.

So it is important to establish the source of the bedbugs, if possible. Numerous factors can come into play. Are there prior infestations in neighboring dwellings, meaning that the bedbugs probably travelled through the walls? Have you observed property, such as beddings, furnishings and even electronics, frequently sitting at disposal sites such as in or near dumpsters? This would be indicative of a widespread pestilence in the apartment community. Did you suffer from a bedbug infestation where you previously lived? Did you bring in used furnishings that conceivably could have harbored the pests? Were you exposed to bedbugs elsewhere, such as at work? Did you have any visitors that had been exposed to bedbugs and could have conveyed them into your dwelling?

How you answer these questions can help determine who is responsible for the infestation. Additionally, at some point you should bring your own professional exterminator to provide an evaluation, which could support your contention that the bedbugs have been there long term. Be advised that the landlord's exterminating company should not be trusted to be truthful and supportive of your position. He who pays the piper calls the tune.

The mere presence of bedbugs, whether right away or some period of time after move-in, is unlikely to be remedied. Again, the whole building must be treated at one time, which landlords almost never do. So you would be well advised to not give the landlord the opportunity to exterminate. It just won't work. Why prolong your suffering?

But if you are determined to give your landlord the chance to cure, a 5-day notice and/or a 10-day notice(s) of noncompliance can be given under A.R.S. § 33-1361. The remedies under this law would be to terminate or seek injunctive relief (which means the court would order the landlord to remove the infestation). Given the egregious nature of bedbugs, it is conceivable a

judge would be sympathetic to you. But I would not hold my breath on that, and, moreover, justice courts generally doesn't have jurisdiction over injunctive relief, which must be sought through superior court. No easy task for a layman.

Beyond the terms of A.R.S. § 33-1319, because bedbugs are so horrendous, such an infestation equates to an irreparable circumstance in the same sense as a fire or flood. Thus, pursuant to A.R.S. § 33-1366 bedbug infestation is considered "casualty damage," which requires that you to immediately vacate and shortly thereafter terminate.

Is this overwhelming and confusing? Are you in dire straits, having lost your furniture and being tormented by biting bedbugs? Welcome to Arizona. But you are not alone. Arizona Tenants Advocates has pioneered approaches to dealing with bedbugs. We can help you evaluate the best options. We can help you draft the proper documents, walk you through the notice process, and refer you to exterminators who are on the side of tenants, not landlords, and will give you a realistic extermination report.

You're victimization stops at our door. We are Arizona Tenants Advocates, and we are here to advocate for you.