

CHAPTER 48

HB 482-FN – FINAL VERSION

2013 SESSION

13-0760

05/01

HOUSE BILL *482-FN*

AN ACT regarding infestation of bed bugs in rental housing.

SPONSORS: Rep. Long, Hills 42

COMMITTEE: Judiciary

ANALYSIS

This bill addresses landlord, tenant, and municipality responsibility for bed bug infestations.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

13-0760

05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT regarding infestation of bed bugs in rental housing.

Be it Enacted by the Senate and House of Representatives in General Court convened:

48:1 Declaration of Purpose. The general court hereby finds that bed bug infestations in buildings across New Hampshire cause measurable economic loss to property owners and occupants, as well as significant physical and emotional suffering to occupants. The general court further finds that lack of remediation of bed bug infestations increases the spread of the pest as occupants move from one building to another, and declares that the public interest requires that reasonable measures be taken to promote prompt and effective remediation.

48:2 New Paragraph; Housing Standards; Minimum Standards; Bed Bugs. Amend RSA 48-A:14 by inserting after paragraph I the following new paragraph:

I-a. The premises are infested by bed bugs and the landlord is not conducting a periodic inspection and remediation program. In this paragraph "remediation" means action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for a period of at least 60 days;

48:3 New Paragraph; Minimum Standards. Amend RSA 48-A:11 by inserting after paragraph II the following new paragraph:

III. Enact, in the sections of their housing codes dealing with infestations of insects, provisions directed at the unique problems posed by infestations of bed bugs, provided that such provisions are no less protective of the residents of dwelling units in which bed bug infestations are found than are the provisions dealing with infestations of other kinds of insects.

48:4 New Paragraph; Prohibited Practices Relative to Landlords and Tenants. Amend RSA 540-A:3 by inserting after paragraph IV the following new paragraph:

IV-a. Entry to make emergency repairs as authorized by RSA 540-A:3, IV includes, but is not limited to, entry by the landlord to evaluate, formulate a plan for remediation of, or engage in emergency remediation of an infestation of rodents or insects, including bed bugs, provided such infestation-related emergency entry took place within 72 hours of the time that the landlord first received notice of the infestation.

48:5 New Paragraphs; Prohibited Practices. Amend RSA 540-A:3 by inserting after paragraph V the following new paragraphs:

V-a. No landlord shall willfully fail to investigate a tenant's report of an infestation of insects, including bed bugs, or rodents in the tenant's rented or leased premises, within 7 days of receiving notice of such alleged infestation from the tenant or a municipal health or housing code authority, or fail to take reasonable measures to remediate an infestation.

V-b. No tenant shall willfully refuse the landlord access to the premises to:

(a) Make emergency repairs as authorized in paragraphs IV and IV-a of this section; and

(b) Evaluate whether bedbugs are present after the landlord has received notice that bed bugs are present in a dwelling unit adjacent to the premises or a dwelling unit that is directly above or below the premises, provided the landlord gives the tenant 48 hours written notice of his or her need to enter the premises to evaluate whether bed bugs are present.

V-c. No tenant shall willfully refuse to comply with reasonable written instructions from a landlord or pest control operator to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs, provided that such instructions are given to an adult member of the tenant household such that the tenant household has a reasonable opportunity to comply, and in all cases at least 72 hours prior to remediation.

V-d. Notwithstanding any other provision of this chapter, a landlord may only enter a tenant's dwelling unit without the consent of the tenant:

(a) To make emergency repairs pursuant to paragraphs IV and IV-a; or

(b) If the landlord has obtained an order authorizing the entry from a court of competent jurisdiction pursuant to RSA 540-A:4.

48:6 New Section; Infestation of Bed Bugs. Amend RSA 540 by inserting after section 13-d the following new section:

540:13-e Infestation of Bed Bugs: Liability for Costs of Remediation.

I. In this section:

(a) "Infestation of bed bugs" means the presence of bed bugs in real property rented for residential purposes.

(b) "Remediation" means action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for at least 60 days.

II. The landlord shall bear the reasonable costs of remediation of an infestation of bed bugs, but may recover those costs if the tenant is responsible for the infestation.

III. If a landlord alleges that a tenant is responsible for an infestation of bed bugs, the landlord may bill the tenant, in writing, for the reasonable costs of remediation of the infestation of bed bugs in the tenant's own unit. If within 30 days of the completion of remediation the tenant has not paid the landlord for the reasonable costs of remediation, or entered into a repayment agreement with the landlord, such failure shall be considered grounds for eviction for nonpayment of rent pursuant to RSA 540:2, II(a).

IV. In an eviction action for nonpayment of rent based on failure to pay the reasonable costs of remediation, or in an action for damages for the reasonable costs of remediation of an infestation of bed bugs, the landlord shall bear the burden of proving both that the tenant was responsible for the infestation and that the landlord offered the tenant the opportunity to enter into a reasonable repayment agreement.

V. In an eviction action for nonpayment of rent based on failure to pay the reasonable costs of remediation of an infestation of bed bugs, or in an action for damages for the reasonable costs of remediation of an infestation of bed bugs:

(a) Notwithstanding paragraph IV, there shall be a rebuttable presumption that the tenant is responsible for the infestation if during the 6 months prior to the inception of the defendant's tenancy, and throughout the defendant's tenancy, there were no

reports, to the landlord or a municipal health or housing authority, of the presence of bed bugs in the defendant's unit or the dwelling units of a multiple-unit building that are adjacent to or directly above or below the defendant's unit, or by previous tenants in a single-family home. For the purposes of this subparagraph, the defendant's own report to the landlord or a municipal health or housing authority shall not be considered a report.

(b) In evaluating which party is responsible for the infestation, the court shall consider the totality of the evidence, including but not limited to the following:

(1) The existence and extent of bed bugs in other units or common areas anywhere in the building prior to and during the tenant's tenancy;

(2) In which unit bed bugs were first discovered;

(3) Whether and to what extent, prior to the infestation that is the subject of the litigation, the landlord undertook remediation efforts in the tenant's unit and the units adjacent to and directly above and below the tenant's unit; and

(4) Whether the tenant had bed bugs in the dwelling unit in which he or she resided immediately prior to moving to the unit that is the subject of the litigation.

48:7 New Subparagraph; Bed Bugs. Amend RSA 540:2, II by inserting after subparagraph (f) the following new subparagraph:

(g) Willful failure by the tenant to prepare the unit for remediation of an infestation of insects or rodents, including bed bugs, after receipt of reasonable written notice of the required preparations and reasonable time to complete them.

48:8 New Subparagraph; Prohibited Practices; Remedies. Amend RSA 540-A:4, IX by inserting after subparagraph (c) the following new subparagraph:

(d) The provisions of subparagraph (a) shall not apply to any violation of 540-A:3, V-a, V-b, or V-c.

48:9 Effective Date. This act shall take effect January 1, 2014.

Approved: June 4, 2013

Effective Date: January 1, 2014

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 48-A

HOUSING STANDARDS

Section 48-A:14

48-A:14 Minimum Standards Established. – No landlord, as defined by RSA 540-A:1, I, renting or leasing a residential dwelling in a municipality which has not adopted ordinances, codes or bylaws pursuant to this chapter shall maintain those rented premises in a condition in which:

- I. The premises are infested by insects and rodents where the landlord is not conducting a periodic inspection and eradication program;
I-a. The premises are infested by bed bugs and the landlord is not conducting a periodic inspection and remediation program. In this paragraph "remediation" means action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for a period of at least 60 days;
- II. There is defective internal plumbing or a back-up of sewage caused by a faulty septic or sewage system;
- III. There are exposed wires, improper connectors, defective switches or outlets or other conditions which create a danger of electrical shock or fire;
- IV. The roof or walls leak consistently;
- V. The plaster is falling or has fallen from the walls or ceilings;
- VI. The floors, walls or ceilings contain substantial holes that seriously reduce their function or render them dangerous to the inhabitants;
- VII. The porches, stairs or railings are not structurally sound;
- VIII. There is an accumulation of garbage or rubbish in common areas resulting from the failure of the landlord to remove or provide a sufficient number of receptacles for storage prior to removal unless the tenant has agreed to be responsible for removal under the rental agreement and the landlord has removed all garbage at the beginning of the tenancy;
- IX. There is an inadequate supply of water or whatever equipment that is available to heat water is not properly operating;
- X. There are leaks in any gas lines or leaks or defective pilot lights in any appliances furnished by the landlord; or
- XI. The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 65 degrees F.; or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 65 degrees F. in all habitable rooms.

Source. 1979, 305:7, eff. Aug. 21, 1979. 2013, 48:2, eff. Jan. 1, 2014.

TITLE LV

PROCEEDINGS IN SPECIAL CASES

CHAPTER 540

ACTIONS AGAINST TENANTS

Section 540:13-e

540:13-e Infestation of Bed Bugs: Liability for Costs of Remediation. –

I. In this section:

(a) "Infestation of bed" means the presence of bed bugs in real property rented for residential purposes.

(b) "Remediation" means action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for at least 60 days.

II. The landlord shall bear the reasonable costs of remediation of an infestation of bed bugs, but may recover those costs if the tenant is responsible for the infestation.

III. If a landlord alleges that a tenant is responsible for an infestation of bed bugs, the landlord may bill the tenant, in writing, for the reasonable costs of remediation of the infestation of bed bugs in the tenant's own unit. If within 30 days of the completion of remediation the tenant has not paid the landlord for the reasonable costs of remediation, or entered into a repayment agreement with the landlord, such failure shall be considered grounds for eviction for nonpayment of rent pursuant to RSA 540:2, II(a).

IV. In an eviction action for nonpayment of rent based on failure to pay the reasonable costs of remediation, or in an action for damages for the reasonable costs of remediation of an infestation of bed bugs, the landlord shall bear the burden of proving both that the tenant was responsible for the infestation and that the landlord offered the tenant the opportunity to enter into a reasonable repayment agreement.

V. In an eviction action for nonpayment of rent based on failure to pay the reasonable costs of remediation of an infestation of bed bugs, or in an action for damages for the reasonable costs of remediation of an infestation of bed bugs:

(a) Notwithstanding paragraph IV, there shall be a rebuttable presumption that the tenant is responsible for the infestation if during the 6 months prior to the inception of the defendant's tenancy, and throughout the defendant's tenancy, there were no reports, to the landlord or a municipal health or housing authority, of the presence of bed bugs in the defendant's unit or the dwelling units of a multiple-unit building that are adjacent to or directly above or below the defendant's unit, or by previous tenants in a single-family home. For the purposes of this subparagraph, the defendant's own report to the landlord or a municipal health or housing authority shall not be considered a report.

(b) In evaluating which party is responsible for the infestation, the court shall consider the totality of the evidence, including but not limited to the following:

(1) The existence and extent of bed bugs in other units or common areas anywhere in the building prior to and during the tenant's tenancy;

(2) In which unit bed bugs were first discovered;

(3) Whether and to what extent, prior to the infestation that is the subject of the litigation, the landlord undertook remediation efforts in the tenant's unit and the units adjacent to and directly above and below the tenant's unit; and

(4) Whether the tenant had bed bugs in the dwelling unit in which he or she resided immediately prior to moving to the unit that is the subject of the litigation.