

## Mind Your Business – Tia’s Tips for Better Rental Management

By Tia Politi, ROA President

### **Bedbugs, and Spiders, and Bats, Oh My!**

#### **Pest control in rental properties: Who’s responsible?**

ORS Chapter 90 clearly requires landlords to turn over a rental property free of pests at the beginning of tenancy, but provides little guidance for responsibility for pest control during the tenancy. So, who is responsible when pests invade a rental property? As usual, it depends. The law of damages implies that if a problem was fully or partly caused by the negligence or direct actions of one party or the other, that party is fully or partly responsible for the resulting damage. There are few clear-cut guidelines, and the following information is simply my opinion based on experience. Determining financial or personal responsibility in any disputed situation requires a bit of reasoning, thought and investigation, relying on the reasonable person standard.

Pests are everywhere. Some are just minor nuisances like flies and mosquitos; others cause property damage, such as raccoons, or wood-eating insects like termites and carpenter ants. The worst are deadly, such as brown recluse spiders, or for people with severe allergies: bees, wasps and yellow jackets. Pests include insects and spiders, rodents and mammals, feral cats, and even snakes.

Some pests, like ants or spiders, don’t need an invitation, they are able to squeeze through the tiniest of openings, and while they can be attracted to some substance on or in a property, it can be difficult to draw a direct correlation between tenant behavior and infestation. Other pests like bedbugs or cockroaches are hitchhikers and only come along for the ride, pretty much guaranteeing that the tenant or a visitor caused the problem. And tenants can invite pests to the property by purposeful or negligent behavior, such as failing to maintain the home and grounds in a sanitary condition, keeping chickens or other livestock, or feeding wildlife. But the final consideration is, and always should be, whether the cause of an infestation correlated to tenant behavior can be actually proven in a court of law by a preponderance of the evidence.

Bats – I live in a house that has larger shingle siding and some of the openings are large enough to house bats. I love it. They eat lots of bugs and don’t bother me or my pets; however, if they managed to get into my attic space that would be a problem, and if they got into one of my rentals it would be my responsibility to get rid of them. I confess to being a bit of a reality-show geek, and one of the shows I used to watch was *Billy the Exterminator*. I learned some great techniques for pest removal from Billy. With bats, he would find out where they were getting in and out, seal up all but one entry point, then during daylight hours tack a long, lightweight piece of weighted mesh fabric or screen above the opening. At night when the bats left to feed, they were able to push aside the screen to get out, but were unable to get back in. He would then seal up the entry point and get to work cleaning up the nesting area. While researching bedbugs, I learned about bat bugs which are very similar and can cause similar problems, so best to bat-proof your rentals.

Bedbugs – The general consensus is that bedbugs are hitchhikers and can be considered a tenant-caused problem. In multifamily units, though, bedbugs have been known to migrate from one unit to another

through electrical outlets and other openings. That can make it difficult to clearly identify a culprit. There are specially trained bedbug detection dogs that may be able to determine ground zero for the source of the infestation, but if there is no clear source, the landlord may have to provide treatment at their own expense. If it can be proven with certainty that a tenant caused an infestation, they are financially responsible to pay for eradication, but it can be difficult to prove that a house or unit was bedbug-free on move in, so some landlords are taking the extra step of hiring bedbug detection dogs to certify their units clear, providing concrete evidence that a tenant is responsible for the problem if a dispute arises.

If caught early, bedbug eradication is relatively easy; if allowed to develop into a large infestation, eradication could take weeks or months. Inspecting for bedbugs is extremely invasive, and eradication requires a substantial investment of time and effort by the resident. If you have a confirmed bedbug problem in a unit, I advise you to treat first and point fingers later. Treatment is quite costly, but only becomes more so the longer an infestation goes on. While a landlord may or may not be able to pass on the costs of treatment depending on the circumstances, first get the problem under control yourself. I would not let tenants take charge of this process, as they may be mostly concerned about cost and may try things that are dangerous or ineffective, exacerbating the problem.

One landlord I know lives in the lower half of a two-unit duplex, and his tenant above reported bedbugs. Instead of treating the problem, he has told his tenant to take care of it (which he hasn't), and sprayed foam into all access points leading to his unit. So far, he has avoided getting them, but the problem is still there and growing and he will have to deal with it eventually, likely at a far higher cost.

With increased reports of bedbugs in our area, the smart landlord will do their best to educate their residents. To that end, I have created a free two-page handout **Bedbug Notice** that you may find useful to provide. The handout can be found on the Members Only section of our website ([www.laneroa.com](http://www.laneroa.com)).

Bees, Hornets, Wasps, Yellow Jackets – A landlord would be hard-pressed to justify charging a tenant for removal of a ground nest of aggressive yellow jackets, a bald-faced hornet nest, or honey bees living in the walls of the unit. (Honey bees are essential for pollinating the food we all eat, so please don't kill them. There are beekeepers who can remove the hive.) Biting or stinging insect infestations become more urgent for a landlord if there are household members who are allergic to the sting or bite of these kinds of pests, and whose lives are endangered by the presence of the pests. If I ask a tenant to stand back and spray poison on such insects, I may be exposing them to risk as well, so I would likely deal with that situation at my own expense. Paper wasp nests can be easily swept or washed off the exterior of a property, so as long as I have a tenant who is not allergic, I ask them to remove paper wasp nests.

Cats – The feral cat population is out of control everywhere, and I have experienced issues with kind-hearted residents who feel bad for them and either feed them regularly, or allow them to live under the unit by removing the foundation vents. Once under the house, the cats urinate, defecate and claw out the under-floor insulation, creating a nasty situation for the property owner. Tenants can and should be charged for the removal and repair of any damage if they allow or contribute to this problem. For some tenants, it's an ongoing issue which they can't seem to stop, and I have had to terminate the tenancies of residents who refuse to modify their behavior.

Cockroaches – If the property was cockroach-free on move in, it's likely they hitchhiked in with the tenant or one of their guests. If the property is a stand-alone single-family home, I would pass on the charge for eradication, especially if they have lived in the property for some time. In the case of a tenant who reports roaches close to move in, it may not be so clear. In a multi-family unit, it's also much harder to say, as, like bedbugs, they can easily spread from one unit to another, and are very difficult to completely eradicate. Some buildings have ongoing roach problems that require regular periodic treatment.

Fleas – In my experience, fleas are a tenant-caused problem obligating residents to pay for treatment, but rat fleas are a different story. If you have a property with rats, the fleas that live on the rats under the house or in the walls and ceilings can find their way inside. These are the worst fleas because they can carry bubonic plague – rare, but still present in the world. So just because your resident has fleas doesn't necessarily mean they caused the problem.

Flies – Common house flies are not a landlord's problem. State law does not require landlords to provide window screens, but the Eugene Housing Code says you must. I do provide screens and I think it's a reasonable thing for landlords to provide.

One of my tenants recently reported drain flies in the bathroom sink drains. I had never heard of such a thing, but looked it up on the internet and guess what? There are tiny flies that live in sink drains. They are very hardy and can withstand many different types of chemicals, but in my research, I found that hydrogen peroxide down the drains periodically can eradicate them. If your residents report drain flies, ask them to do that, and consider providing the peroxide, or not.

Food pests – Food pests are a tenant-caused problem for them to resolve. If there is no accessible food, there will be no pests.

Gophers & Moles – Usually, a mole or two isn't going to cause a problem, but I once declined to take over management of a country property that had an enormous gopher problem. The colony literally had dozens of hills in an area of about a half-acre right next to the house, and the owners didn't want to do anything about it. The turned-up ground created a morass of tripping hazards creating a liability issue for all concerned. Not the tenant's problem to solve.

Mice, Voles – You can ask to have your tenants do their best to trap them or put out poison, and many landlords ask tenants to do their best to get rid of them on their own, but with my personal rentals, I don't. I just put poison under each of my rentals every year because mice and voles are ubiquitous, and can literally get through a hole the size of a lag bolt. Trapping is difficult, icky, and time consuming. When my household experienced a mouse infestation many years ago, we tried trapping, but the varmints bred faster than we could trap them. Poison took less than a week and the problem was solved, but if the tenant has pets and eats a poisoned rodent, it can make them sick, so you may choose to try a different method.

Raccoons – Coons are wily critters with an uncanny ability to break into attic spaces. Your tenant can't control them, but they can exacerbate the problem by feeding them. I once had a tenant who loved and

fed them. The neighbors were unhappy and so was the owner. We served a notice of termination, and once the tenant was gone and stopped feeding them, the problem eventually resolved itself. If you are thinking of trapping and removing things like feral cats, raccoons or possums check city or county code as it might be against the law to trap and relocate these pesky critters unless they are inside the unit.

Rats – There is broad consensus that rats in the dwelling unit are a landlord's problem to eradicate (affirmed locally by a change in the Eugene Housing Code). Rats dig under foundations and chew through floors, walls and ceilings to gain entry, and while tenant behavior can attract them, rats don't seem to need an engraved invitation. Using poison on rats is not recommended because it can create another problem: the smell of their decomposing bodies in or under the rental unit. It's nasty, which is why exterminators generally use traps to get rid of them. Rats and chicken coops or compost piles seem to go hand-in-hand so don't allow these uses on your properties.

Scorpions – Rare in rainy Western Oregon, scorpions have been known to establish nests in sun-drenched rock piles, but there are incidences of scorpions nesting in or under homes. These would be a landlord's responsibility to eradicate.

Skunks – These odiferous critters love to take advantage of breached foundation vents and nest in open areas under sheds and houses; they are the landlord's problem, not the tenant's. Property owners would be well-advised to make sure all areas are sealed up with wire fencing or other effective barrier to prevent entry in the first place. For skunks, or larger mammals like feral cats under the rental unit, one of my contractors has created a great method for getting them out. Purchase a live trap of the appropriate size, cut out the back non-opening end of it, and seal up all access points except for one under the affected building, then attach the open end of the trap securely to that opening. The animals will be frightened to go through it at first, but eventually will get hungry or thirsty enough to push the flap open and get out, but they won't be able to get back in. Once you're sure that every unwanted intruder is out, remove the trap and seal up the opening.

Snakes – Common garden snakes are generally not damaging, hazardous or inclined to nest in houses, and are not something that needs to be addressed unless they do establish a nest under the house or are otherwise entering the domicile. Rarely seen west of the Cascades, and even more rarely a problem for residents, we do have rattlesnakes in Oregon. Certainly, tenants should not be responsible to pay for the eradication of dangerous creatures from the home.

Spiders – Common household spiders or spiders in the yard generally would not be something requiring action by the landlord; however, if you discover some sort of problem with a deadly breed of spider, such as the brown recluse, I would make sure that problem gets resolved and not require the tenant to take corrective action or pay for it. We had residents years ago who wanted us to spray the yard for common spiders. We clearly felt the spiders posed no problem, and therefore was an unreasonable request, but offered to have it done if they would pay for it, but they declined.

Tiny House Ants – In my experience, most landlords have their tenants take responsibility for eradicating tiny ants. I too, was of that mindset until my home was attacked. My family and I lived in our previous home for 15 years with nary an ant problem. We had lived in our current home for 13 years when we

were infested by sugar ants. Nothing has changed about the way we live that would suggest we did anything to attract them. We purchased Terro and diligently set about eradication. After about three months, just as we felt we were getting a handle on the problem, a new colony moved in and we started the process again. This went on and on. Every time it looked like we were winning, here they would come from a totally different place – first it was the kitchen, then they attacked the dog food beside our sliding glass door, then the upstairs bathroom, then from under the fireplace, then in an upstairs bedroom. This year, in addition to the sugar ants, a new type of tiny ant seemed to find our home suitable for residency. These new ants swarm in much greater numbers and aren't attracted to the Terro.

We finally got rid of them, but would have been better off to have hired an exterminator to begin with. If I was a tenant, I would find it ludicrous for my landlord to charge me for an exterminator when I did everything within my power to get them gone. I tell this story to point out that no matter how faithful a resident might be in trying to eradicate the little buggers on their own, it can take an unreasonable amount of time and effort. Maybe there are other products that can do the job, and I encourage landlords to share tips in the bulletin, but the bottom line is, how much effort and expense can a landlord expect a resident to exert?

Wood-eating insects – Residents can attract termites and carpenter ants by keeping rotting wood in the yard or against the house, so make it clear that this is a prohibited behavior. Other than that, in general, residents don't contribute to these critters and they would be a landlord's responsibility to eradicate.

**An ounce of prevention is worth a pound of cure, so here are steps you can take to help make your property less attractive to pests:**

- 1) Keep shrubs, trees and tree limbs well away from the roof and siding.
- 2) Check for entry points and seal up everything you can find (spray foam is fun); larger gaps and holes can be filled with steel wool to discourage mice.
- 3) Create a bug barrier to entry by treating the perimeter of the property with borax, diatomaceous earth, or insect killer once or twice a year.
- 4) Repair any wet or dry rot in the structure to avoid attracting termites or carpenter ants.
- 5) Don't permit residents to compost food waste on the property.
- 6) Don't permit residents to keep chickens.
- 7) Don't permit residents to leave food out for their domesticated pets or assistance animals.
- 8) Don't permit residents to feed feral cats or wildlife.
- 9) Don't permit residents to pile anything against the side of the structure.
- 10) Make sure foundation vents are solid. Upgrade from basic screens to rigid, framed vents.

At what point is it wise to step in or bring in a professional? Immediately for a pest that is potentially hazardous to the health and safety of the residents, or damaging to the property; and eventually, if what the landlord or the tenant is doing isn't working. When the decision is made to hire a professional, be prepared for possible concerns from residents who may have chemical sensitivities, or fears about possible health risks of chemical pest control. Tenants may also object to the idea of pests suffering from ingesting poison, or from being injured or killed by trapping. There are online websites and blogs

that tout natural remedies for pest control, and there are pest control companies that specialize in humane removal and natural pest control solutions.

Residents are our customers, and as caring and intelligent business owners, we want to do our best to keep them happy, but natural methods may take longer, require more intensive involvement on the landlord or tenant's part, and cost more. It seems reasonable to charge the tenants for the higher costs incurred for a special type of removal of a particular pest, if tenant objections incur higher expense for the landlord.

Responsibility for pests is sometimes clear and other times cloudy, but if there is concrete evidence that a tenant caused or contributed to a pest problem by their willful or negligent behavior, it is appropriate to charge them for remediation. When in doubt, landlords should imagine themselves in a courtroom explaining their reasoning to a judge because that's who could be the final arbiter in case of a dispute over responsibility.

***This column offers general suggestions only and is no substitute for professional legal counsel. Please consult an attorney for advice related to your specific situation.***