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SPECIFIC ISSUES CONCERNING P.A. 16-51 – BEDBUGS

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November 8, 2016

1. Tenant-protective nature of the act

P.A. 16-51 is intended and designed to treat bedbug infestations as a public health issue, rather than a search for fault. The plain purpose is to protect tenants, who are “consumers” of housing under traditional consumer law, from the injuries caused by bedbugs. In that sense, the act is clearly a remedial statute for the benefit of such consumers. While the act contains many provisions to accommodate landlord interests and concerns, its purpose remains subject to the legal doctrine that remedial statutes are to be construed liberally in favor of the intended beneficiaries of the statute.

2. Enforcement by health departments and code enforcement agencies

The act says expressly that “nothing in this section shall be construed to preclude a tenant from contacting any agency at any time concerning an infestation of bed bugs” (Sec. 1(b)(1)). The act is also explicit that it does not “limit or restrict the authority of any state or local housing or health code enforcement agency” (Sec. 1(d)(3)). In other words, the procedure contained in this act is not the exclusive method for requiring the eradication of bedbug infestations in rental housing. The tenant can contact a code enforcement agency initially instead of contacting the landlord, or can contact an agency at any time after the landlord has been notified. In particular, if the landlord does not respond quickly, the tenant does not have to delay contacting an enforcing agency for inspection and enforcement. While the act provides a judicial remedy for tenants (Sec. 1(d)(1) and Sec. 2), the far more practical remedy for a tenant whose landlord fails to respond and treat promptly in accordance with the act will be to contact the appropriate municipal enforcing agency.

The language of the act also means that a code enforcement agency continues to have whatever powers it has now under state public health law and local codes and is not limited by the act. Any type of order that could have been issued prior to this act will still be available to the agency after the effective date of this act. P.A. 16-51 controls responsibilities as between landlords and tenants but not between code enforcement officials and those who are subject to their orders. For example, if a health situation is subject to a particular compliance timeline under an agency-enforced health or housing code, a code agency can order compliance with that timeline, even if it is more accelerated than the schedule in this act. Similarly, if the agency concludes that treatment by a licensed professional is needed, it can order that treatment be performed by a professional rather than by the landlord. Agency orders to vacate continue to be subject to the Uniform Relocation Assistance Act, including the relocation responsibilities it imposes on municipalities and the municipalities' rights to recoupment from landlords under certain circumstances.

3. Landlord inspection and treatment without a professional

The act gives the landlord a limited authority to inspect and treat for bedbugs without hiring a licensed professional (Sec. 1(b)(1)). A landlord who inspects without a professional must notify the tenant within two days of what was found. The notice must explicitly tell the tenant to contact the health department if he or she thinks that the bedbugs are not being eradicated and must provide contact information. This provision is designed particularly for the situation in which the landlord determines, after a non-professional inspection, that there are no bedbugs and that no treatment is planned; but it is applicable to all non-professional inspections. A landlord who treats without a professional must get a professional inspection within five business days after completion of the treatment.

4. Landlord entry

The act does not change the law on landlord entry (Sec. 1(b)(2)(A)). As provided by C.G.S. §47a-16, except in an emergency, the landlord cannot enter an apartment without the tenant's consent. It is implicit in the extended timelines authorized by the act (Sec. 1(b)(1)) that bedbug infestations, like other insect infestations, are not emergencies under §47a-16 solely because they involve bedbugs. If a tenant unreasonably denies access, the landlord's remedy is to get a court order under Section §47a-18 and Sec. 1(d)(2) of the act.

5. Liability for cost of treatment

The act provides that the landlord is responsible for all costs of inspection and treatment of a bed bug infestation, except as otherwise provided (Sec. 1(b)(1)). The only exception is very narrow. The tenant may be held liable for the cost of bed bug treatments for failure to comply with inspection and treatment measures, but only if that failure is both “knowing” and “unreasonable” (Sec. 1(b)(2)(B)). This is a high standard, similar to a “deliberate and willful” standard, where a tenant unreasonably, with full knowledge and understanding of the essential nature of the particular compliance, unreasonably refuses to do so. If the issue involves access to the unit, it would be expected that the landlord would have exhausted all reasonable means to accommodate the tenant’s schedule. Even in those cases where a tenant can be held financially liable under this exception, the landlord is not excused from complying with the act’s requirements to promptly treat for bed bugs. The act explicitly provides the landlord with a judicial remedy for tenant non-compliance (Sec. 1(d)(2)).

6. Landlord assistance to tenants

Many tenants will not have the capacity, resources, understanding, or skill to properly prepare an apartment for treatment by the landlord. At the same time, it is essential that all relevant units be treated. P.A. 16-51 addresses this in two ways. First, it says explicitly that the landlord must make assistance available to a tenant who “is not physically able” to comply (Sec. 1(b)(3)(A)). This standard applies to anyone with physical restrictions, without regard to whether he or she meets the definition of disabled or handicapped within the meaning of laws protecting persons with disabilities. Any person who cannot do the lifting or moving required to prepare a dwelling unit for treatment is covered. Second, however, the act also makes clear that it does not preempt the reasonable accommodation requirements of state and federal housing laws, such as fair housing acts and the Americans with Disabilities Act, if those requirements are broader (Sec. 1(b)(3)(C)). Those laws define “disability” broadly as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” “Major life activities” include but are not limited to “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” See, for example, 42 USC Sec. 12102. The right to reasonable accommodation thus applies to both physical and mental disability. Helping to prepare an apartment for treatment will normally be a reasonable accommodation under those laws for tenants whose disability limits their ability to prepare the apartment without assistance.

The landlord assistance requirement of P.A. 16-51 is thus applicable to cases in which the occupant is either physically disabled or is entitled to a reasonable accommodation under state or federal law because of a physical or mental disability. These requirements apply to occupants of all ages in all dwelling units but are of particular importance in units occupied by seniors, where they are likely to apply to a large percentage of the occupants.

7. Recoupment of preparation assistance costs by landlords

Within the limits of fair housing law, the act allows the landlord to charge the tenant for preparation of an apartment for treatment. Many tenants, however, will not be able to afford these costs. The act addresses this issue in several ways:

First, it makes explicit that the landlord does not have to charge the tenant – it merely permits the landlord to charge (Sec. 1(b)(3)(A)). Nothing in the act requires landlords to pass on the cost of preparation assistance to their tenants.

Second, it requires that any charges be reasonable (Sec. 1(b)(3)(A)). An unreasonable charge is not enforceable.

Third, it requires the landlord to offer a “reasonable repayment schedule” (Sec. 1(b)(3)(A)). A repayment schedule is not “reasonable” unless it is reasonable for the tenant and must therefore necessarily be based on the tenant’s ability to pay. A demand that the tenant repay in unaffordable amounts would be per se unreasonable. A repayment schedule, which functions as a surcharge on the rent, cannot extend for more than six months unless the tenant agrees to a longer duration for periodic repayments. This limitation is for the protection of the tenant. It thus does not allow a landlord to require the entire cost of the preparation assistance to be paid off within a six-month period, unless the tenant can reasonably afford monthly payments large enough for full repayment within that time period. The six-month installment period is not a limitation on the tenant’s liability but rather a limitation on how long the tenant can be forced to pay a surcharge on the rent, i.e., the time period in which repayment can be accomplished through a monthly add-on. If there is a remaining balance at the end of six months, it can be recouped by the landlord from the security deposit at the end of the tenancy (Sec. 1(b)(3)(B)) or can be the subject of a lawsuit (most likely in small claims court), just as the landlord can sue for any other claim against the tenant (Sec. 1(d)(3)).

Fourth, a repayment fee is not “rent.” It is an additional fee that is separate from the rent (Sec. 1(b)(3)(A)). The act makes clear that failure to make the payments is not a ground for eviction based on non-payment of rent or any other ground (Sec. 1(b)(3)(B)). This prevents the eviction of low-income or disabled tenants, who are the victims of bedbug infestations and the intended beneficiaries of the act, because they reported a

bedbug infestation to the landlord but cannot afford the extra cost of preparing the unit. The landlord has other remedies to collect the payment. Nothing in the act precludes the landlord from evicting for non-payment of rent, however, if the tenant fails to pay the actual rent. In the absence of an agreement to the contrary, Connecticut case law holds that a tenant's monthly payment must be applied to the rent before it can be applied to other charges.

In addition, fair housing law prevents a landlord from charging for a reasonable accommodation unless the accommodation imposes "an undue financial and administrative burden" on the landlord. This is a fact-based determination that depends on the cost of making the reasonable accommodation, the landlord's financial resources, the benefit to the tenant, and whether there are less expensive ways to accommodate.¹ To the extent that the imposition of charges would violate the Fair Housing Act, P.A. 16-51 provides that the Fair Housing Act prevails (Sec. 1(b)(3)(C)).

8. Landlord's liability for alternative lodging and replacement of property

The act provides that "nothing in this section" shall be construed to require a landlord to provide alternative lodging or replace tenant personal property (Sec. 1(b)(C)(3)). It also provides, however, that the remedies in the act are "in addition to any other remedies available at law, or in equity, to any person" (Sec. 1(d)(3)). The landlord is thus not routinely liable for alternative lodging and property replacement. However, these provisions do not preclude a claim for alternative lodging or property replacement if the loss is due to the landlord's negligence, willful misconduct, or breach of his duties under C.G.S. §47a-7(a). Similarly, the act does not prevent the landlord from suing a tenant for bedbug-related costs if the infestation is the result of the tenant's individual negligence and thus in violation of the tenant's duties under C.G.S. §47a-11. The landlord nevertheless is required under this act to eliminate the infestation and provide preparation assistance if necessary.

¹ See, for example, "Reasonable Accommodations Under the Fair Housing Act," Joint Statement of the Department of Housing and Urban Development and the Department of Justice, May 17, 2004, especially Questions #7, #9, and #11, available online at www.hud.gov/offices/fheo/library/huddojstatement.pdf. See also *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2 Cir., 1995) (landlord "can be required to incur reasonable costs" as part of a reasonable accommodation, as long as they "do not pose an undue hardship or a substantial burden" on the landlord).