

Mini- Storage Messenger

QUESTION: Am I liable for bug/rodent infestations?

Answer: The short answer to the question is generally no, however, there can be instances where if proper precautions are not taken, that you could face exposure for tenant losses due to infestation of bugs, rodents, etc.

You need to do three things to minimize your exposure to this type of liability: 1) disclaim such liability in your lease agreement; 2) monitor and inspect your property for potential infestation and if such evidence is found take normal action to treat the infestation; and 3) if you become aware of a unit or units that are damaged by infestation, treat the unit and surrounding units and inspect the surrounding units if necessary, so as to minimize any damage going forward.

I equate infestation to a roof leak. Generally you do not have a duty to know the roof is leaking in to one of your units, but once you are aware that the roof is leaking most prudent operators understand that they need to inspect adjoining units or, the whole building and inspect the roof to make sure that they have stopped the problem once it developed and protect against further damage. The same is true with infestation.

As with anything in self storage, while the operator is generally not liable for what happens “behind the door”, once you are aware of an issue you have to address it and infestations are somewhat more obvious than other issues. You need proper disclaimers in your lease advising the tenants one or more of the following: 1) you do not generally treat for bugs/rodents, if this is true; 2) placing the responsibility on the tenant to protect against bugs and rodents, for example, in an outside vehicle storage situation; 3) warning of the existence of pesticides used at the facility; and 4) the usual disclaimers that you are not in the unit and have no way of knowing what may happen to the property once it is stored by the tenant. This is your best defense. It is also a good idea to advise tenants of any known threats for example, if you are on a wooded lot or next to large fields, certainly some warning about mice might be more appropriate than say the 10th floor of a self storage facility in downtown New York City.

You also need to monitor the facility for signs of potential damage and in many cases try to stop the infestation even if you say in your lease you do not exterminate. Certainly one of the best things you can do is institute some type of preventative extermination to show that you did

what was reasonably necessary to try to avoid having tenants' property damaged or destroyed by bugs or rodents. This effort must be stepped up if and when you find evidence of an infestation, for example, when you get a unit back from a tenant and it is full of mouse droppings you know you must begin treating that unit and the surrounding areas as well as perhaps, depending on your state checking the adjoining units for any damage.

As you already know, I am not a fan of entering the unit unless it is absolutely necessary however, similar to a roof leak where I may instruct my clients to enter adjoining units, I recommend you try to make contact with the adjoining tenants under the pretext of inspection, inspect and, if it becomes necessary, install extermination materials while in the unit. If the tenant is uncooperative, you may choose to cut the lock and enter, or you may choose not to enter and may have a defense against tenant if tenant brings a claim. It may still be advisable to consider, in certain circumstances, entering the units to determine the nature of any damage and, to stop the damage by properly exterminating.

One of the dirty little secrets of the apartment industry, the hotel industry and the consignment furniture industry (and perhaps cutting edge news to the self storage industry), is that bed bugs are back. Bed bugs were eliminated from this country back in the 1960s using a chemical called DDT which is now a known carcinogen as is thus unavailable. With the tremendous "shrinking of the globe," bed bugs have been brought back into the country, and because of the elimination of the availability of DDT have become very difficult and expensive to exterminate and are therefore rampant. For those who that thought bed bugs were just something in a goodnight wish, they are not. They are tiny bugs which bite and often live in soft padding of things such as mattresses, couches and other things you would find stored in self-storage. They can live on cotton padding and moisture for a long time although they do prefer blood.

Unfortunately, with bed bugs turning up in so many apartments, hotels and other places where your tenants might be exposed to them and then bring them into your facility in a stored mattress, couch, clothing, etc. and, since bed bugs love cool moist environments it is more likely than not that you already have a unit with bed bugs in it. Since you cannot stop and inspect every piece of furniture going into every self storage facility there is not way you can stop bed bugs from coming into your facility. I am not saying that you are liable for someone's damage to their own property if they bring in bed bugs. However, when the bed bugs migrate to other units

under the walls and then you receive a complaint by another tenant who did not bring the bed bugs in (by the way, exterminators can basically tell what the original source of the bed bugs is by inspection,) you may be responsible for exterminating to prevent the spread or you may become liable for property damage if you do not react properly. Once you are aware that bed bugs are spreading you do have a duty, in my opinion, to exterminate and to prevent the spread of bed bugs any further so that they do not go home with people and infest more apartments, etc., as well as spread throughout your facility and ruin more furniture.

Thus, not all infestations are easily noticeable from the outside and, while I do not recommend going into units unnecessarily, solid lease language disclaiming your liability as best as possible, a solid inspection treatment plan, and noticing evidence from your facility or your tenants about potential infestations and proper follow up treatment and inspection thereafter will greatly minimize your potential liability to your tenants.

You can send your questions, comments, or suggestions for future topics to Jeffrey Greenberger at info@selfstoragelegal.com or mail them to Jeffrey Greenberger c/o Katz Greenberger & Norton LLP, 105 E. Fourth Street, Suite 400, Cincinnati, Ohio 45202 or you can reach Mr. Greenberger at (513) 721-5151, or visit his website at www.selfstoragelegal.com.