

1616 AMSTERDAM HOLDINGS, L.P.,
PHILIP TAGER, GENERAL PARTNER
STEVEN E. CARTER, GENERAL PARTNER

Petitioner-Landlord

-against-

VICKI RICHMAN, pro se,
EILEEN V. CASEY, pro se,
500 West 140th Street, #5G,
Apartment 5G,
New York, New York 10031-6139

Respondents.

Demand for
Bill of Particulars
(CPLR 3042a)
and for
Names and Addresses
(CPLR 3101(a)1,2,4)

Index No.: 80042/07

PLEASE TAKE NOTICE that Vicki Richman and Eileen V. Casey, the *pro se* respondents, demand, pursuant to CPLR 3042(a) and CPLR 3101(a)1,2,4,¹ that you serve on them, separately or collectively, within thirty days of service of this notice, a verified bill of particulars regarding these items and data:

1. The names, addresses, and phone numbers of the general partners of the limited partnership cited in the first line of the equitable bill.²
2. The name, address, and phone number of any attorney representing the petitioners.
3. A copy of the full petition.³
4. A copy of the document or instrument that the petitioner claims is “a rental agreement in writing wherein respondent promised to pay to landlord \$1437.80 per

¹As shown in the Verified Answer and Counterclaim, the address of the putative “agent” is misleading, inaccurate, and irrelevant. In any case, the person “in control of and responsible for the maintenance and operation of the dwelling” is not the person responsible for receiving payments or bringing actions to court. The cited name is different from the maker of the affidavit.

² The respondents hold the general partners necessary parties without whom the counterclaim may not go forward, pursuant to CPLR 1001(a).

³The respondents were never served. The respondents were able to copy only one page of the petition in the clerk’s office.

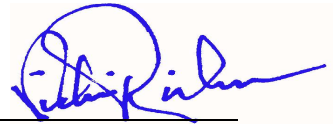
- month”; or, in the alternative, a detailed description of the document or instrument, including its date of execution, the names of the signatories, and the literal text of what the respondents are alleged to have agreed to.
5. A copy of the predicate notice sent to the respondents prior to the petition; or, in the alternative, the text of the predicate notice with the date sent.
 6. A full accounting of the petitioner’s charges and the respondents’ payments from January through July, 2007.⁴
 7. A full accounting of the respondents’ security deposit held by the petitioner, including the bank, the account number, and the amount of interest it has earned.
 8. An explanation of the “air-conditioning fee,” including citation of the source document or instrument mandating such a fee, with the literal text, and including the date the respondents installed the air-conditioning.⁵
 9. A copy of each canceled check paying the “legal fee” of \$250.00; or, in the alternative, the names and addresses of the attorneys receiving any or all of that fee.
 10. A copy of “a currently effective registration statement on file with the Office of Code Enforcement”; or, in the alternative, its literal text, including its date, the name, address, and phone number of the registrant, and the rent for this apartment.
 11. A copy of the cited registration with the state Division of Housing and Community Renewal; or, in the alternative, the text of the registration, with the names of the tenants, the amount of rent, and the date of registration.
 12. The name, address, apartment, and phone number of a person who resides in this building or within 200 feet of it, and is responsible for its janitorial services.⁶

The petitioner is seeking to evict the respondents for nonpayment.

⁴RPAPL §741. The petition fails in each of the five necessary elements for nonpayment eviction.

⁵See the Verified Answer and Counterclaim, page 5, note 13.

⁶Housing Maintenance Code §D26-22.05, renamed Administrative Code §27-2054.



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appellant, *pro se*



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appellant, *pro se*

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August 8, 2007

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Verified Answer
and Counterclaim

Index No.: 80042/07

I. Introduction

1. The respondents are domestic partners under a rent-stabilized lease in common; the title and signature pages of the original lease are Exhibit A.
2. Contrary to the claims of the petition, the respondents were not served, either with the petition or with a predicate notice.
3. On August 2, 2007, the respondents copied the first page of the court clerk's copy of the petition and submitted a verbal answer to the clerk; these written pleadings expand and supplement the verbal answer.
4. While the court hears the affirmative defense and counterclaim, the respondents are willing and ready to pay an escrow amount to the court.
5. On submission of these pleadings, the court may ask the respondents for a lower escrow payment than the amount claimed by the petitioner:

At the very least, a tenant should be permitted to present an official record establishing the violation, and its duration, in lieu of depositing the money.¹

¹*Amanuensis v. Barnett Brown et al.*, 65 Misc. 2d 15,24, para. 63 (1971), 318 N.Y.S.2d 11.

6. The respondents will put forth this affirmative answer:
 - a) The petition was not served on the respondents.
 - b) The petition cites no one who may maintain the proceedings.²
 - c) The contents of the petition are inadequate and inaccurate, and they fail statutory constraints.³
 - d) The petitioner has failed to maintain a habitable building, subjecting the tenants to: unsanitary and malodorous conditions; repeated confrontations with intruders and their belongings on stairwells and hallways; and criminal assaults;⁴
7. The respondents will put forth this counterclaim:
 - a) Offering only a post-office box to receive rent and voicemail numbers, petitioner has actively hidden the identities of the true owners and managers of this building; Exhibit B.
 - b) The respondents discerned their identities from public records and distributed the information to all tenants; Exhibit C.
 - c) Respondent Casey is the acting president of the tenants association; Respondent Richman is the acting secretary.
 - d) By misstating the terms of the respondents' agreement with the petitioner's predecessor, by filing a false petition, and by failing to serve the respondents, the petitioner sought to retaliate against the respondents and stop them and the tenants association from seeking redress.⁵

II. Answer

8. The respondents bought this building on May 3, 2007, and introduced themselves to the tenants as "Perseus Capital Management"; Exhibit B.
9. Perseus Capital Management is a limited-liability company; the sole owner is Steven E. Carter, one the general partners petitioning this court.
10. Mr. Carter is not a reclusive investor retaining a building manager; he is both an owner and the manager.
11. The petition cites Olga Riley, at 561 West 144th Street, NYC 10031, (212)343-2058, as responsible for "the maintenance and operation of" this building:

²RPAPL §721.

³RPAPL §741.

⁴*Javins v. First Nat. Realty Corp.*, 428 F. 2d 1071, 1078 (1970); *Amanuensis*, *supra* at page 1, note 1, citing p. 18, para. 18; *111 East 88th Partners, v. Peter Simon et al.*, 106 Misc. 2d 693, 695, para. 17 (1980), 434 N.Y.S.2d 886.

⁵RPL §223-b(1-5).

- a) Olga Riley is cited in the introductory letter as an agent of “Perseus Capital Management,” with a post-office box and a different phone number; the name Perseus appears nowhere on the petition.
 - b) The building on 144th Street is another residential tenement owned by the same general partners, Philip Tager and Steven E. Carter, who own the building where the respondents reside.
 - c) The building on 144th Street has no business office apparent to the respondents and no one named Olga Riley on the directory.
 - d) The petition is verified by Carlos Perez-Hall, identified only as “one of the attorneys,” without an address or phone number.⁶
 - e) The so-called “verified” petition fails to cite anyone with personal knowledge of the respondents’ payments or agreement to pay.
12. The petitioner bought this building on May 3, 2007; most of the claim cites a time when the petitioner did not own the building.
13. The data could only have been gleaned from whatever records the predecessor chose to give the petitioner; no one cited can verify their accuracy.
14. The petitioner is unaware of the respondents’ letter to the predecessor on December 27, 2007; Exhibit D.
15. The respondents cited the lack of habitability of this building:
- a) The front door is unlocked; anyone may and does enter the building freely.
 - b) Intruders have established virtual residence in the hallways and stairwells.
 - c) We live with human excrement, pools of urine, soiled laundry, used condoms, and antisocial and criminal behavior.
 - d) There is no intercom from the street to any apartment; we are unable to screen visitors or even receive certified mail.⁷
 - f) The elevator is inoperable for at least half the time, without warning; when it runs, it smells of urine, and it shakes so violently that tenants believe they are risking their lives.⁸
 - e) The predecessor removed the resident janitor in the summer of 2006; the petitioner removed the resident building superintendent last May;⁹
16. The tenants responded to the removal of the resident super with their letter of July 25, 2007, days before they recovered the petition from the court clerk; the general

⁶See paragraph 3 of the Demand for a Bill of Particulars.

⁷It is a long-standing policy of USPS carriers to go no farther than the lobby to deliver certified mail, after reaching the recipient by intercom. By contrast FedEx and UPS carriers go up to the apartment, even without an intercom.

⁸The elevator is inoperable as we write this pleading and has been so for at least four days, Friday through Monday.

⁹See *111 East 88th Partners v. Peter Simon et al.* (106 Misc. 2d 693 [1980], 434 N.Y.S.2d 886) for virtually the same grievances heard by the court. The tenants withheld their rent; the court lowered their rent by 55% and imposed punitive damages on the landlord. After reading the decision in the more recent *Ludlow Properties v. Peter H. Young* (4 Misc.3d 515 [2004], 780 N.Y.S.2d 853), the respondents sought to lower their rent by 60%; see exhibits D and J.

- partners refused to sign for the USPS document at their office address; the “agent” refused to sign for it at the post-office box; included with Exhibit D.
17. The tenants association filed a grievance with the DHCR; the respondents were the tenant reps; it shows a criminal assault from the lack of interior security; Exhibit E.
 18. The respondents, acting for themselves only, lowered their rent payments by 60%, and the preceding landlord accepted every payment for five months with no legal action, or even a threat; the petitioner accepted the same payments for two months, including July 2007, the month in which the petition was filed; Exhibit J.
 19. The preceding landlord’s acceptance of payment after reading the letter constitutes a contract for preferential rent, at least for the duration of lack of habitability.¹⁰
 20. The court has repeatedly ruled that dilatory collection by the landlord is a waiver of at least some of the claim:

But what in these three cases warrants summary disposition forthwith restoring the landlord to possession when the landlord has himself done nothing for a year? Although the statute contains no express grant of authority to dismiss on this ground, there are some outrages not even a Judge can ignore. My power to act is inherent in the Civil Court's power to entertain summary proceedings. It is a power to supervise, a power I exercise by dismissing the petitions.¹¹
 21. The *Grafman dictum* may be weakened in this case by the shorter time period — seven months instead of a year — but is strengthened here by the respondents’ repeated payments, and the landlord’s repeated endorsed acceptances, without objection, of the instruments describing the payments as preferential rent.
 22. Immediately prior to the eviction petition the landlord offered to renew the respondents’ lease; Exhibit F.
 23. The offer cited an incorrect expiring lease, and it entirely ignored the stabilization time constraints¹²; our lease expires on July 31, 2008.
 24. Our letter objecting to the renewal offer was refused by the general partners, and a Perseus agent refused a copy delivered to the post-office box; Exhibits D and G.
 25. The maximum regulated rent is \$1426.36 until July 31, 2008; on June 26, 2006, the respondents signed a two-year renewal, raising the rent of \$1352.00, registered with the DHCR, by 5.5%; Exhibit H.
 26. The canceled payments one month before the renewal lease became effective and three months after are the verso of Exhibit H.

¹⁰Rent Stabilization Code §2521.2,

¹¹ *Gramford Realty Corp. v. Alfredo Valentin et al.*, 71 Misc. 2d 784,785 (1972), 337 N.Y.S.2d 160. See also *Midman Realty Corp. v. Kane*, NYLJ, Jan. 20, 1971, p. 19, col. 4.

¹²Rent Stabilization Code §2523,5(a).

27. The respondents installed their air-conditioning over five years before the petitioner bought the building; no previous owner had charged any such fee.
An owner must charge a tenant for an air conditioner at the time the units are initially installed, or within a reasonable period of time after its installation. If the owner fails to charge the tenant within a reasonable period of time after the installation, the owner waives the right to collect the charge.¹³
28. The petitioner has owned the building for less than four months and has no direct knowledge of our rent history.
29. The landlord seems to believe that we have had no lease since August 1, 2007.
30. Although the petitioner alleges arrears only through June 2007, the respondents will consider charges and payments from January through July, 2007:
- a) The legal regulated rent over those seven months is \$9984.52.
 - b) The amount paid by the respondents over that time is \$3993.85.
 - c) The amount in dispute is no more than the difference, \$5990.67.
 - d) Over a much shorter period of time, five months, from February through June, 2007, the petitioners are asking for over \$900 more.

III. Counterclaim

31. Even before the petitioner bought the building on May 3, 2007, the respondents led the tenants association in filing a grievance with the DHCR; Exhibit E.
32. After the petitioner removed the resident building superintendent, the petitioners amended their grievance, as shown in Exhibit E.
33. The respondents attempted to inform the petitioner and the mortgage bank of the additional violations, but the letters were repeatedly refused; Exhibit D.
34. The tenants made the names, addresses, and phone numbers of the general partners of the petitioner available to all tenants; Exhibit C.
35. The petition is largely spurious and inflated, ignoring that the petitioner and its predecessor accepted payments from the respondents for every cited month.
36. The general partner Steven E. Carter has a history of condominium conversions.
37. Building conditions and this eviction are in anticipation of a conversion.
38. The petition is retaliation against the respondents for their lawful efforts to improve habitability for all tenants and stop the unlawful conversion tactics.¹⁴
39. Subject to the discretion of the court, the respondents may amend this claim pursuant to law; for now the respondents call the court's attention to *111 East 88th Partners v. Peter Simon et al*, virtually the same as this case; the court lowered the rent and awarded punitive damages.¹⁵

¹³DHCR Fact Sheet #27, "Air-Conditioners."

¹⁴RPL §223b.

¹⁵*Supra*, page 3, note 9.

IV. Conclusion

40. The respondents have paid rent every month in dispute, deducting 60% for lack of habitability; the petitioner fails to acknowledge any payment made by the respondents, and in fact overcharges the respondents.
41. Typically the courts presume retaliation only in a holdover under RPL §223b.
42. The respondents have sufficient evidence to show that the nonpayment petition is largely spurious and inflated, supporting a presumption of retaliation.
43. Even if the court determines that the respondents owe the landlord, the court has reason to rule for an amount lower than what the petitioner is claiming.
44. The court also has reason to rule that the petitioner owes the respondents for the petitioner's harassment and retaliation.

New York, New York
August 8, 2007
Respectfully submitted,



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Eileen V. Casey, *pro se*

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Exhibit a

The first and signature pages of the initial rent-stabilized lease. Each is recto. Neither is verso.

Exhibit b

The letter introducing the petitioner to the tenants of this building.

Exhibit C

The notice citing the identities of this building's owners and managers. The respondents displayed and distributed it in plain view in the mail room.

Exhibit D

The respondents' letter to the petitioner's predecessor and the predecessor's bank. Also, the respondents' letter to the petitioner and its mortgage bank, with evidence that the petitioner refused delivery.

Exhibit e

The grievance by the tenants of this building, filed with the state Division of Housing and Community Renewal. It shows a criminal assault in the lobby of this building. It includes an amendment citing the petitioner.

Exhibit f

The petitioner's offer to renew the respondents' lease. The petitioner submitted two copies of the lease, each without the required verso. The recto was the obsolete legal-size boilerplate. The DHCR now uses letter size. For ease, the respondents have reduced the document to letter size.

Exhibit g

The respondents' reply to the renewal offer.

Exhibit h

The rent-stabilized renewal lease now in effect, with the accepted rent payments one month before the new lease, and three months after.

Exhibit J

The respondents' rent payments from December, 2006, through July, 2007, as accepted by the landlords.