



December 27, 2006

William Robbins  
Sole Member, 500140 LLC  
18 West Parkway  
Clifton, NJ 07014-1228

Independence Community Bank  
primary mortgage  
195 Montague Street  
Brooklyn, NY 11201-3631

RCG Longview II, L.P.  
subordinate mortgage  
Seven Penn Plaza, Suite 310  
New York, NY 10001-0032

Mehmet A. (Luca) Capin  
Capin & Associates, Inc  
57 West 38<sup>th</sup> Street, Fourth Floor  
New York, NY 10018-1924

Saruhan Capin          Saruhan Dingil  
Solar Realty Management Corporation  
P.O. Box 1970, JAF Station  
New York, NY 10116-1970

Mr. Robbins owns our building, which is managed by Mr. Capin and his assistants. Mr. Capin also brokered the owner's purchase. The repeated failures, breaches, and incompetence of the owner and manager/broker lead us to reduce our rent payments by 60%, beginning January 2007.

In violation of housing law, we have no lock on our entrance door, from the street to the lobby, and no intercom from the street to our apartment. In violation of our contract to pay rent, we have only one permanent employee, the building superintendent. No porter works in this building any longer.

Our earlier letter stressed our lack of an elevator for about two months. There have since been minimal repairs, but the elevator still goes out of service for about 36 hours every week. We can never be sure if and when the elevator will be usable. That letter also cited the lack of a lock and an intercom, and the reduction in the number of on-site building employees by 50%. Further, as we have learned after our last letter, there has been a mechanics lien against our building since June 15, 2006, by Tremont Locksmiths & Hardware Inc., 515 East Tremont Avenue, New York NY 10457.

Early this year a new entrance door to this building was installed, but without a lock. At the same time, work began on a new intercom system. In late spring the work stopped. We infer that the mechanics lien is for the landlord's failure to pay debts for the new door and intercom work. Two weeks ago an unknown person tried to remove the new door from the frame. He was stopped just at the last bolt, with the door hanging precariously as a hazard to all who passed. The intercom cables were also destroyed.

As officers of the Tenants Association for this building, we phoned Tremont Locksmiths, at (718) 731-8800. On learning who was calling, the receptionist connected us to man called "Mr. Z." The New York Department of State has the CEO of Tremont Locksmiths as Zvi Zohar. "It's against the law," Mr. Z told us, "to take an entrance door, even for nonpayment. We don't do that."

Violating law, lowering habitability, and reducing services are grounds for reducing rent. See Ludlow Properties, LLC, v. Young, 4 Misc.3d 515, 780 NYS2d 853 (2004). Those offenses also violate the terms of the two mortgages, cited in the head to this letter, and are grounds for foreclosure.

In particular, the Independence contract holds: “The mortgagor will maintain the buildings on the premises in good repair; if all or any portion thereof is rented . . . , then the mortgagor will maintain same in good rentable condition at all times, whether or not occupied. Neither the value of the mortgaged premises nor the lien of this mortgage will be diminished or impaired . . .” (paragraph 4, page 3). The mechanics lien appears to diminish or impair the mortgagee’s lien.

From the RCG subordinate loan: “The Mortgagor will cause the Mortgaged Property to be maintained in good condition and repair. . . . The Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property or the use thereof and shall promptly repair, replace or rebuild . . . any part of the mortgaged property which may be destroyed by any casualty or become damaged, worn or dilapidated . . .” (paragraph 8, page 5).

The various limited-liability companies Mr. Robbins has created for his investments, including 500140 LLC, which owns our home, all use the business address and post-office box number for Capin and Associates and for Solar Realty Management. We tenants send our rent to the Solar Realty postal-box address. The stationery and invoices for Mr. Robbins’s holdings, including statements to tenants, all cite Solar as the owner and conceal Mr. Robbins’s investment. On the Independence mortgage, Mr. Robbins claimed the Solar Realty Management address as his own.

However, on the RCG mortgage, Mr. Robbins used his personal address, in Clifton, New Jersey. Mr. Robbins’s contract with RCG holds, with our emphasis added: “Mortgagor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Mortgagor . . . ) and shall maintain and utilize separate stationery, invoices, and checks” (clause [i], paragraph 46, page 16). The one and only place that Mr. Robbins has used his real identify, and has not hidden behind the Capin landlord-front industry, is on the RCG mortgage, which forbids him from concealing who he is and where he lives. However, Mr. Robbins’s continual use of Capin to hide from his tenants remains an RCG mortgage violation.

We have alerted you earlier that we see such offenses against our tenancy as grounds for withholding rent. The tenant’s typical redress, cited in Ludlow (*id.*), is to refuse all the rent, until the court rules on how much the tenant may deduct for violations, damages, and withdrawal of services, and on how much the tenant owes. We have elected, however, to anticipate any court action you choose to initiate by using the Ludlow formula to calculate how much rent we shall pay beginning January 2007.

In reducing the rent by 45%, the Ludlow court held that “bed bugs . . . constituted an intolerable condition,” but ruled that only the tenant’s vacancy, or constructive eviction, could cancel any obligation at all to the landlord. We do not wish to debate whether living without a lock to the entrance door and without an intercom – with the building open to intruders, burglars, and unsanitary conditions, with freedom of movement in and out of our apartment by our guests and ourselves severely limited – rises to the same “intolerable condition” as sleeping with bedbugs.

But an open building, without a lock or intercom, is a condition that the landlord was easily able, but has repeatedly failed, to correct. The omission was apparently simple evasion of the expense. By contrast, a bedbug infestation is not easily corrected no matter how strong and willing the effort. The Tremont Locksmiths mechanics lien seems to show that all the landlord had to do to get the job done was to pay the bill. In Ludlow, the offense was not the will of the landlord but was nonetheless “intolerable.” Whatever the degree of tolerableness, the habitability of a building accessible to all who chose to enter for any purpose – illegal, dangerous, obnoxious, annoying, or threatening to life and

property – is compounded by the landlord’s open, willful, and unrepentant refusal to correct the violation.

The court has held that “essential services shall be defined as: . . . superintendent services, maintenance of front or entrance door security (including but not limited to lock and buzzer), . . . elevator services . . .” (Lowe v. Division of Housing and Community Renewal (N.Y.Sup. 05/19/2004), unpublished, 2004 NY Slip Op 50427(U), 2004.NY.0004805 <http://www.versuslaw.com>, index number 10837/03, paragraph 26). Repeatedly the courts have ruled, in the words of the Hon. Kaye, that “landlords have a ‘common-law duty to take minimal precautions to protect tenants from foreseeable harm,’ including a third party’s foreseeable criminal conduct” from an open building such as ours, especially after the landlord’s plain-view refusal to correct the liability (Burgos v. Aqueduct Realty Corp., 684 NYS2d 139, 706 NE2d 1163, 92 NY2d 544,545-548[1998], citing: Jacqueline S. v. City of New York, 81 NY2d 288, 293-294, rearg denied 82 NY2d 749; Nallan v. Helmsley-Spear, Inc., 50 NY2d 507, 519-520; Miller v. State of New York, 62 NY2d 506, 509).

We won’t wait until someone is assaulted, injured, maimed, or killed, and then strive to produce preponderant evidence of the proximate cause, before seeking to end our daily danger and discomfort. We shall act now to protect ourselves. Therefore, also considering the hazardous and unreliable elevator with the lack of security, we shall use the same 45% used by the Ludlow court in lowering the rent.

Our rent also pays for a porter, who cleans the hallways, removes the garbage, and assists tenants. We estimate that 40% of our rent pays for employees, repairmen, and contractors. Of that, we figure 35% is for two on-site employees: 20% for a super, and 15% for a porter. Therefore, we shall deduct 15% of our rent for the dirty hallways and littered garbage caused by the absence of the porter.

After the two deductions, of 45% and 15%, we shall pay 40% of our rent-stabilized payment – or a reduced rent of \$570.55 – beginning January 2007.

  
Vicki Richman

  
Eileen V. Casey