

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRENDA HARRISON	:	
	:	
<i>Plaintiff,</i>	:	Civil Action No. 18-cv-03431-TJS
	:	
v.	:	
	:	
PELHAM COURT LP	:	
	:	
and	:	
	:	
RUSHMORE MANAGEMENT,	:	
	:	
<i>Defendants.</i>	:	

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF’S COMPLAINT**

Defendants, Pelham Court LP (“Pelham Court”), the owner of the apartment building at issue, and Rushmore Management (“Rushmore”), the property manager (hereinafter, Pelham Court and Rushmore may be referred to collectively as the “Landlord”), hereby file this Answer and Affirmative Defenses to Plaintiff’s Complaint, and in support thereof state as follows:

INTRODUCTION

1. Admitted in part, denied in part. It is admitted that the Plaintiff is a Philadelphia resident. Landlord lacks knowledge or information sufficient to form a belief as to whether Plaintiff has any legally recognized disability, whether she meets any legally relevant definition of “low income” and whether she has been confined to her apartment for weeks at a time during the last fourteen years; therefore, said allegations are denied. By way of further response, for most of the last fourteen years, Pelham Court did not own the apartment building where the Plaintiff resides because Pelham Court purchased the building in March of 2017. Prior to

completing the purchase of the building in March of 2017, Pelham Court contracted to modernize the elevators in the building for the benefit of all of the tenants at a price of \$350,000.00.

2. Admitted in part, denied in part. It is admitted that Plaintiff has unilaterally withheld a substantial sum of rent payments. Landlord lacks knowledge or information sufficient to form a belief as to whether Plaintiff has any legally recognized disability and whether it was “impossible” for her to leave her apartment during elevator down time; therefore, said allegations are denied. It is also denied that withholding rent was the Plaintiff’s only recourse.

3. Admitted in part, denied in part. It is admitted that on or about November 16, 2017, Landlord issued a lease termination notice to the Plaintiff effective as of December 31, 2017 because the Plaintiff did not agree to the Landlord’s lease renewal terms, which included a requirement that the Plaintiff pay for the heat and hot water in her apartment. It is also admitted that the elevators in the apartment building were not operational while the major elevator modernization project was being completed. The allegations about discrimination and retaliation are denied as conclusions of law that must be decided by the Court. To the extent that these allegations are deemed to be factual in nature, they are denied because they are not true.

4. Denied. To the extent that Plaintiff is alleging that she is entitled to the relief referenced in this paragraph, said allegation is denied as a conclusion of law that must be decided by the Court.

JURISDICTION AND VENUE

5. Admitted. It is admitted that the Plaintiff’s Fair Housing Act claims raise a federal question.

6. Admitted.

PARTIES

7. Admitted in part, denied in part. It is admitted that Plaintiff is a Philadelphia resident who currently resides in the Pelham Court Apartments in Philadelphia. Landlord lacks knowledge or information sufficient to form a belief as to whether Plaintiff has any legally recognized disability and therefore this allegation is denied.

8. Admitted.

9. Admitted.

FACTS

10. Admitted in part, denied in part. It is admitted, on information and belief, that the Plaintiff is approximately 62 years old. Landlord lacks knowledge or information sufficient to form a belief as to whether Plaintiff has any legally recognized disability and therefore this allegation is denied.

11. Admitted in part, denied in part. It is admitted that Plaintiff has made at least one reference to having an “aide” in an email to the Landlord. However, Landlord lacks knowledge or information sufficient to form a belief as to whether the remaining allegations of this paragraph are true and therefore said allegations are denied.

12. Denied. The allegations of this paragraph constitute a conclusion of law that must be decided by the Court.

13. Denied. Landlord lacks knowledge or information sufficient to form a belief as to whether the allegations of this paragraph are true and therefore said allegations are denied.

14. Admitted in part, denied in part. It is admitted that Plaintiff is the sole tenant in her

apartment unit. It is also admitted that Plaintiff has made at least one reference to having an “aide” in an email to Landlord. However, Landlord lacks knowledge or information sufficient to form a belief as to how many aides the Plaintiff has, or what services they may perform for her, and therefore said allegations are denied.

15. Admitted.

16. Admitted.

17. Denied. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore said allegations are denied.

18. Denied. Since Pelham Court did not complete the purchase the apartment building at issue until March of 2017, Landlord lacks knowledge or information sufficient to form a belief as to what happened in the building prior to the purchase; therefore, said allegations are denied. By way of further response, what happened prior to Pelham Court’s ownership of the apartment building at issue is legally irrelevant. Furthermore, one of the primary reasons that Landlord immediately contracted for the major elevator modernization project was to ensure reliable elevator service for all of the tenants.

19. Denied. The Landlord’s response to paragraph 18 of the Plaintiff’s Complaint is incorporated herein as though set forth at length.

20. Denied. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore said allegations are denied.

21. Denied. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore said allegations are denied.

22. Admitted in part, denied in part. It is admitted that the Plaintiff sent written

communications to the Landlord about withholding rent for elevator down time, and that she she has in fact withheld substantial sums of rent. In connection with purchasing the apartment building in March of 2017, Landlord immediately contracted for the major elevator modernization project. Landlord lacks knowledge or information sufficient to form a belief as to whether the Plaintiff has any legally recognized disability and therefore said allegation is denied.

23. Denied. Landlord lacks knowledge or information sufficient to form a belief as to whether this allegation is true because Pelham Court did not purchase the apartment building at issue until March of 2017. Furthermore, what happened prior to Pelham Court's purchase of the building in March of 2017 is legally irrelevant.

24. Denied. To the extent that the Plaintiff is referring to an alleged 2013 email as stated in paragraph 23 of her Complaint, said allegation is denied because Pelham Court did not purchase the apartment building at issue until March of 2017. Landlord lacks knowledge or information sufficient to form a belief as to what happened in the building prior to March of 2017. Furthermore, what happened in the building prior to March of 2017 is legally irrelevant.

25. Denied. Landlord's response to paragraph 24 of Plaintiff's Complaint is incorporated herein as though set forth at length.

26. Admitted in part, denied in part. It is admitted that Plaintiff has withheld rent payments for periods of elevator down time. Landlord lacks knowledge or information sufficient to form a belief as to whether the Plaintiff has any legally recognized disability, and whether she was "being trapped in her home," and therefore said allegations are denied.

27. Admitted in part, denied in part. Landlord's response to paragraph 26 of the Plaintiff's Complaint is incorporated as though set forth at length.

28. Denied as stated. Landlord sent a lease termination notice to the Plaintiff in November

of 2017 because she did not agree to the Landlord's lease renewal terms, which terms included a requirement that she pay for the heat and hot water use in her apartment. In response, Plaintiff then filed a complaint with the Philadelphia Fair Housing Commission (the "Commission").

29. Denied as stated. The Commission's Final Order dated June 7, 2017 is a writing which speaks for itself. To the extent that the Plaintiff is alleging that said Final Order has any legal bearing on the Plaintiff's claims as set forth in this action, said allegation is denied as a conclusion of law that must be decided by the Court.

30. Admitted in part, denied in part. It is admitted that Plaintiff withheld rent in July of 2017 for elevator down time. Landlord lacks knowledge or information sufficient to form a belief as to whether the Plaintiff was completely unable to leave her apartment and therefore said allegation is denied.

31. Admitted in part, Denied in part. It is admitted that Plaintiff sent the referenced letter to the Landlord. However, Landlord lacks knowledge or information sufficient to form a belief about whether the allegations set forth in said letter are true and thus said allegations are denied.

32. Denied. Landlord sent a lease termination notice to the Plaintiff in November of 2017 because she did not agree to the Landlord's lease renewal terms, which terms included a requirement that she pay for the heat and hot water use in her apartment.

33. Admitted.

34. Admitted in part, denied in part. It is admitted that the notice referenced a 7.00% rent increase. It is denied that the notice required the Plaintiff to agree to three new lease terms.

35. Admitted. It is admitted that the referenced language was included in the notice.

36. Denied. Landlord sent a lease termination notice to the Plaintiff in November

of 2017 because she did not agree to the Landlord's lease renewal terms, which terms included a requirement that she pay for the heat and hot water use in her apartment. The allegation about retaliation is denied as a conclusion of law that must be decided by the Court. To the extent that said allegation is deemed to be factual in nature, the allegation is denied because it is not true. Landlord lacks knowledge or information sufficient to form a belief as to whether the Plaintiff has any legally recognized disability, and whether elevator down time made it "impossible" for her to enjoy the use of her apartment, and therefore said allegations are denied.

37. Denied. The Landlord's response to paragraph 36 of Plaintiff's Complaint is incorporated herein as though set forth at length.

38. Admitted.

39. Denied as stated. Plaintiff also crossed-out the language requiring her to pay for the heat and hot water charges in her apartment.

40. Denied as stated. The Plaintiff's explanatory letter also stated that she was not in agreement with the addendum requiring her to pay for the heat and hot water use in her apartment.

41. Admitted.

42. Denied. The letter, which speaks for itself, stated that the Plaintiff's counter-offer was being rejected because the Landlord considered each term of the proposed lease renewal to be integral (including the language requiring the Plaintiff to pay for the heat and hot water use in her apartment).

43. Admitted. It is admitted that the referenced language was included in Mr. Kasacci's letter.

44. Denied as stated. Landlord did not threaten the Plaintiff; rather, Landlord informed the

Plaintiff of the standard legal consequences that would happen if she refused to vacate after the lease term had terminated.

45. Admitted in part, denied in part. It is admitted that in connection with Pelham Court's purchase of the apartment building in March of 2017, Landlord immediately contracted for a major elevator modernization project. The allegations about discriminatory and unlawful lease terms are denied as conclusions of law that must be decided by the Court. To the extent that said allegations are deemed to be factual in nature, the allegations are denied because they are not true.

46. Admitted.

47. Denied.

48. Denied as stated. Plaintiff never asked to be moved to a first floor apartment unit and, if she had, Landlord would have made a good faith effort to accommodate her.

49. Denied as stated. Landlord's response to paragraph 48 of the Plaintiff's Complaint is incorporated herein as though set forth at length.

50. Denied as stated. The elevators were inoperable during the time that the modernization project was completed for the benefit of all of the tenants.

51. Denied. Landlord lacks knowledge or information sufficient to form a belief as to whether the Plaintiff was "trapped" in her apartment while the elevators were being modernized and thus said allegation is denied.

52. Denied. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and thus said allegations are denied.

53. Admitted that the Plaintiff withheld rent during the period that the elevators were being modernized.

54. Admitted in part, denied in part. It is admitted that the Plaintiff filed a second complaint with the Commission. Landlord lacks knowledge or information sufficient to form a belief as to whether the Plaintiff was “trapped” in her apartment while the elevators were being modernized and thus said allegation is denied.

55. Denied as stated. The Commission’s Final Order dated May 23, 2018 is a writing which speaks for itself. To the extent that the Plaintiff is alleging that said Final Order has any legal bearing on the Plaintiff’s claims as set forth in this action, said allegation is denied as a conclusion of law that must be decided by the Court.

COUNT I – PLAINIFF’S FHA DISCRIMINATION CLAIM

56. Landlord hereby incorporates its responses to paragraphs 1 to 55 of Plaintiff’s Complaint as though set forth at length.

57. Admitted. It is admitted that the quoted language is an excerpt of 42 U.S.C. § 3604(f)(2).

58. Denied. The allegations of this paragraph are denied because they constitute conclusions of law that must be decided by the Court. To the extent that any of the allegations of this paragraph are deemed factual in nature, said allegations are denied because they are not true.

59. Denied. The allegations of this paragraph are denied because they constitute conclusions of law that must be decided by the Court. To the extent that any of the allegations of this paragraph are deemed factual in nature, said allegations are denied because they are not true. By way of further response, the Plaintiff has not suffered any actual harm, especially in light of the relief awarded to her by the Commission.

60. Denied. The allegations of this paragraph are denied because they constitute

conclusions of law that must be decided by the Court. By way of further response, the Plaintiff has not suffered any actual harm, especially in light of the relief awarded to her by the Commission.

COUNT II – PLAINTIFF’S FHA RETALIATION CLAIM

61. Landlord hereby incorporates its responses to paragraphs 1 to 60 of Plaintiff’s Complaint as though set forth at length.

62. Admitted. It is admitted that the quoted language is an excerpt of 42 U.S.C. § 3617.

63. Denied. The allegations of this paragraph are denied because they constitute conclusions of law that must be decided by the Court. To the extent that any of the allegations of this paragraph are deemed factual in nature, said allegations are denied because they are not true.

64. Denied. The allegations of this paragraph are denied because they constitute conclusions of law that must be decided by the Court. To the extent that any of the allegations of this paragraph are deemed factual in nature, said allegations are denied because they are not true.

65. Denied. The allegations of this paragraph constitute a conclusion of law to which no further response is required. To the extent that any of the allegations of this paragraph are deemed factual in nature, said allegations are denied because they are not true. By way of further response, the Plaintiff has not suffered any actual harm, especially in light of the relief awarded to her by the Commission.

66. Denied. The allegations of this paragraph constitute a conclusion of law which must be decided by the Court. By way of further response, the Plaintiff has not suffered any actual harm, especially in light of the relief awarded to her by the Commission.

COUNT III – PLAINTIFF’S REASONABLE ACCOMODATION CLAIM

67. Landlord hereby incorporates its responses to paragraphs 1 to 66 of Plaintiff’s Complaint as though set forth at length.

68. Admitted. It is admitted that the quoted language is an excerpt of 42 U.S.C. § 3604(f)(3).

69. Denied. The allegations of this paragraph constitute a conclusion of law to which no further response is required. To the extent that any of the allegations of this paragraph are deemed factual in nature, said allegations are denied because they are not true.

70. Denied. The allegations of this paragraph constitute a conclusion of law to which no further response is required. To the extent that any of the allegations of this paragraph are deemed factual in nature, said allegations are denied because they are not true. By way of further response, the Plaintiff has not suffered any actual harm, especially in light of the relief awarded to her by the Commission.

71. The allegations of this paragraph constitute conclusions of law that must be decided by the Court. By way of further response, the Plaintiff has not suffered any actual harm, especially in light of the relief awarded to her by the Commission.

WHEREFORE, the Defendants, Pelham Court LP and Rushmore Management, respectfully request that this Honorable Court deny the relief requested by the Plaintiff in her Complaint and enter an Order dismissing the Plaintiff’s claims.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Pelham Court did not complete the purchase of the apartment building at issue until March of 2017; therefore, all of the Plaintiff's allegations concerning what happened prior to March of 2017 are legally irrelevant.

Second Affirmative Defense

Under applicable law, an apartment building landlord who acts in good faith to keep the elevators properly serviced and who promptly responds to all elevator issues, but is unable to keep the elevators operating 100% of the time, is not deemed to have violated the Fair Housing Act even though the tenants have been inconvenienced by elevator down time.

Third Affirmative Defense

At all relevant times, Landlord has made good faith efforts to keep the elevators at Pelham Court properly serviced, and Landlord has promptly addressed all elevator issues. The evidence of this includes the Landlord's prompt response to an elevator outage at Pelham Court that was caused by an electrical surge in the building when PECO restored power after an outage that lasted 36 hours due to a fire or explosion at a nearby PECO substation. Landlord's good faith concerning the elevators is also evidenced by the fact that Landlord contracted for a major elevator modernization project at a price of \$350,000.00 before finalizing the purchase of the apartment building in March of 2017, and the modernization project was successfully completed.

Fourth Affirmative Defense

Plaintiff cannot show that Landlord had any willful intent to discriminate or retaliate against her, or that Landlord willfully kept the elevators in a state of disrepair.

Fifth Affirmative Defense

The Plaintiff cannot show that she has suffered any actual harm, especially in light of the relief awarded to her by the Commission.

Sixth Affirmative Defense

Landlord justifiably sent the notice of termination to Plaintiff in November of 2016 when she did not agree to the Landlord's renewal terms, which renewal terms included a requirement that she pay for the heat and hot water in her apartment. This argument is supported by the fact that the Commission, in its Final Order dated May 23, 2018, determined that this issue "shall be worked out between the parties."

Seventh Affirmative Defense

Plaintiff failed to take reasonable steps to mitigate her alleged damages as evidenced, among other things, by her failure to request a move to a first floor apartment unit while the elevators were being modernized. If she had made this request, Landlord would have made a good faith effort to accommodate her.

Eighth Affirmative Defense

The Plaintiff's filing of this action, shortly after the issuance of the Commission's Final Order dated May 23, 2018 granting her relief, violates the spirit of the Commission's written directive stating that "There shall be no harassment or retaliation by either party."

Ninth Affirmative Defense

Landlord has made good faith efforts to accommodate tenants at Pelham Court with disabilities by, among other things, installing a keyless entry system which makes entry physically easier, and by adding chairs in the lobby, a bench and railings on all stairways.

Tenth Affirmative Defense

Plaintiff has failed to state claims upon which relief may be granted.

Eleventh Affirmative Defense

Upon information and belief, all or some of Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitation.

Twelfth Affirmative Defense

Upon information and belief, Plaintiff's claims are barred, in whole or in part, by the doctrines of accord and satisfaction, release, waiver, estoppel and/or laches.

Thirteenth Affirmative Defense

Upon information and belief, Plaintiff's claims are barred, in whole or in part, by the doctrine of res judicata.

Fourteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because at all relevant times, the Landlord's decisions and actions were motivated by lawful, legitimate, non-discriminatory and non-retaliatory factors.

Respectfully Submitted,

Date:

By: /s/ Joel S. Todd
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Attorneys for the Defendants

CERTIFICATE OF SERVICE

I, Joel S. Todd, Esquire, attorney for the Defendants, hereby certify that a true and correct copy of the Defendants' Answer and Affirmative Defenses to Plaintiff's Complaint was served upon all counsel of record on the date set forth below via electronic filing with the Court's ECF notice system.

Date:

By: /s/ Joel S. Todd
James Tupitza, Esq.
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