

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

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CHRISTIAN GRAY,

Index No.
006086/20

Tenant-Petitioner,

-against-

AMERICAN PACKAGE COMPANY, INC.,

AFFIRMATION

Owner-Respondent,

-and-

THE DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Respondent.

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Margaret B. Sandercock, an attorney admitted to the practice of law before the courts of
the State of New York, does hereby affirm, pursuant to CPLR Section 2016 and under the
penalties of perjury, that the following is true;

1. I am a member of Goodfarb & Sandercock, LLP, counsel to petitioner in this proceeding.
I submit this affirmation in support of petitioner’s motion to restore the case to the
calendar for a hearing to determine respondent landlord’s compliance with its prior
agreement to eradicate mold from petitioner’s unit at 226 Franklin St., Brooklyn, NY.
2. I have represented petitioner since the commencement of this HP case in the summer of
2020. Facts stated herein are based on my personal knowledge.
3. I annex hereto as Exhibit A the order to show cause and supporting documents by which
this proceeding was commenced; as Exhibit B, respondent landlord’s answer; and as
Exhibit C the stipulation by which the proceeding was marked “off calendar” for mold
evaluation and eradication by the landlord. Annexed hereto as Exhibit D collectively are
a follow up scope of work prepared by Edward Olmsted, petitioner’s mold expert, and a

report dating from August 2021 with accompanying laboratory work demonstrating that the mold has not been eliminated from petitioner's unit.

4. Petitioner has been unable to reside in his unit since a flood Columbus Day weekend, 2019. Since August 2021, both Mr. Olmsted, through the owner's mold evaluator, and I, through the landlord's counsel, have been trying to get the landlord to continue with required mold eradication as set forth in Exhibit D. We have not been successful, as apparently the owner's mold evaluator has been unsuccessful in obtaining the consent of the landlord to perform further work.

Factual Background:

5. The building 226 Franklin St., Brooklyn, NY is a large interim multiple dwelling subject to the Loft Law with numerous a/k/a street addresses, including 97 Green Street. Petitioner is the protected occupant of unit G21.
6. During Columbus Day weekend 2019, there was a flood into petitioner's unit. Petitioner was not responsible for causing the flood. The principal of the landlord was abroad at the time and did not authorize his employees to arrange a cleanup until he returned to New York and as a result, no cleanup commenced for about six weeks after the flood. It became evident to petitioner that there was mold in his unit as in some locations it was visible and the unit smelled bad.
7. This proceeding was commenced in the summer of 2020 because the landlord did not make arrangements to professionally evaluate and eradicate the mold. Petitioner employed Edward Olmsted, a well know industrial hygienist, to evaluate the mold and in due course, the stipulation annexed as Exhibit C was entered into.

8. The parties dispute whether the full scope of work called for in Exhibit C was performed. But regardless of whether the scope of work was fully performed, Mr. Olmsted reevaluated the premises in August 2021 after the mold eradication the landlord was willing to conduct was completed, and determined that even after this mold eradication, the unit still contained mold. In fact, the condition of the unit was worse than previously believed because not all of the mold was visible prior to partial demolition of the unit. He conducted laboratory testing, included in Exhibit D, showing that the mold was not eradicated, and proposed a scope of work, also included in Exhibit D, to eradicate the remaining mold. He has spoken repeatedly to the owner's mold evaluator without success in getting the landlord to authorize continued work.
9. I have made arrangements with petitioner to provide access to his unit in each and every instance the landlord, its evaluators and or remediators requested access. I am aware of no instance in which respondent wanted access to petitioner's unit when such access was not provided.
10. Respondent landlord has bought out, pursuant to MDL Sections 286(6) and (12), the Loft Law rights and fixtures of the vast majority of Loft Law tenants in the building. Petitioner and a few other tenants have rejected the landlord's initiative, which was apparently intended to vacate the building. The undersigned is counsel to the tenant association; it appears that the landlord is using various means, including in the case of this unit, failing to eradicate mold and rebuild the unit, to encourage those tenants who did not accept buyouts to waive their rent regulatory rights and move out of the building. There is a harassment case pending before the Loft Board based on these facts.

I. THE PROCEEDING MUST BE RESTORED TO THE CALENDAR

11. The evident purpose of the stipulation between the parties, Exhibit C hereto, was to eradicate the mold in unit G21, and to restore the unit to a condition in which petitioner can occupy the unit. This is true regardless of whether the work agreed to by respondent landlord was in fact done, and whether or not the mold condition is worse than previously believed, therefore requiring an expansion of the scope of work.
12. As set forth in Exhibit D, the unit still contains mold and petitioner cannot live there. Some of the installations in the unit have been dismantled in order to diagnose and / or treat the mold and would have to be repaired and or replaced, for occupancy of the unit to be possible. Petitioner's expert reevaluated the unit in August 2021, within the time limits provided by the stipulation, and since that time both the expert and the undersigned have requested the landlord to continue its work and expand the scope of the work as needed so that the unit can be occupied. Requests for voluntary cooperation in that regard have produced no results. Petitioner is still out of possession.
13. The case must be restored to the calendar for a hearing to determine the following issues: whether the work called for under the stipulation was completed; whether the unit still contains mold such that petitioner cannot live there; and what steps must be taken by respondent landlord in order that petitioner can live in the unit.

WHEREFORE, petitioner respectfully requests that the Court grant him the relief sought herein, and such other relief as to the Court seems just and proper.

Dated: New York, NY
June 14, 2022


Margaret B. Sandercock