

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART B
-----X
DEXTER CARTER,

Petitioner

-against-

MORNINGSIDE I ASSOCIATES

Respondent

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT

Respondents
-----X

DECISION & ORDER

Index No.: HP# 1595/13

HON. SABRINA B. KRAUS

BACKGROUND

This summary HP proceeding was commenced by **DEXTER CARTER** (Petitioner) against **MORNINGSIDE I ASSOCIATES** (Respondent) and **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** (DHPD) seeking compliance and assessment of Civil Penalties and correction/repairs of violations for **20 MORNINGSIDE AVENUE, APT 4E, NEW YORK, NY 10026** (Subject Premises).

PROCEDURAL HISTORY

This proceeding commenced by Order to Show Cause returnable September 13, 2013, directing the correction of violations. An inspection of the Subject Premises by DHPD was done on August 29, 2013, and two class "A" violations, twelve class "B" violations, and one class "C" violation, were placed on the Subject Premises.

The class "A" violations were for painting the ceilings and walls throughout the Subject Premises and the refrigerator gaskets. The Class "B" violations were for the defective hallway

floor, ceiling and wall in hallway, kitchen walls, defective door knobs, defective bell and buzzer for the intercom, defective window sash, missing electrical outlet covers in bathroom, defective ceiling light fixture in hallway, unsafe electrical wiring in ceiling of the bathroom, remove obstructions in the bathtub, and secure loose ceiling fixture in bathroom. The class "C" violation was for the broken or defective wood floor by the radiator in the second room.

On September 13, 2013, the proceeding was adjourned to September 19, 2013. On September 19, 2013, the parties entered into a Consent Order, stating Respondent would correct all the violations, and access would be provided by Petitioner on September 20, 2013, October 1, 2, and 3, 2013. In addition to the violations found on August 29, 2013, DHPD included another class "B" violation for the stove, in Schedule A of the Consent Order.

On October 1, 2013, Petitioner moved by Order to Show Cause, seeking compliance and assessment of Civil Penalties based on a breach of the September 19, 2013 Consent Order. The proceeding was adjourned to November 1, 2013, for the results of a re-inspection, specifically for the class "C" violation.

On November 1, 2013, Petitioner failed to appear, and the motion was denied for nonappearance. The results of the reinspection found that the class "C" violation for the broken or defective floor had been complied with.

On November 15, 2013, Petitioner moved again by Order to Show Cause, seeking compliance and assessment of civil penalties. Petitioner alleged the stove was not working, the refrigerator was not working, the intercom was not working, and the windows were defective. The motion was adjourned to January 9, 2014, for a hearing. The parties agreed to interim access on December 5, 2013.

On January 9, 2014, Petitioner's motion for civil penalties was settled for \$550.00, by stipulation, and the proceeding was adjourned to January 31, 2014, with interim access for correction of all other outstanding violations set for January 21, 2014. On January 31, 2014, all the other violations alleged were corrected and, by stipulation, the parties agreed to a hearing date of March 6, 2014, to resolve the issue of Respondents compliance with the intercom violation. Petitioner does not have a landline phone in the Subject Premises, but does own a cellular phone. Respondent argues Petitioner should be required to provide Respondent with the cellular phone number, in order to connect to the intercom system. Petitioner argues he should not be required to provide his cellular phone number, rather Respondent should be required to provide Petitioner with an alternative way to access the intercom. On March 6, 2014, the court heard testimony from Petitioner and reserved decision.

DISCUSSION

Petitioner's *pro se* order to show cause for compliance is granted to the following extent: Petitioner is not a rent regulated tenant, but he receives a Section 8 subsidy. Petitioner has been a tenant in the Subject Premises for ten years, and has had a working intercom through approximately 2010, when Respondent renovated the Subject Building. After 2010, the intercom was no longer working as it had. Petitioner testified the intercom only worked by telephone, however, he does not have a landline phone in the Subject Premises. Petitioner testified he does own a cellular phone, but is unwilling to provide his cellular phone number to Respondent, in order for him to access the intercom. Petitioner felt this would cause a financial hardship, and also testified his financial ability to maintain a cellular phone was sporadic. Respondents only appeared by counsel, and offered no testimony.¹

¹ Respondent's counsel appeared late for the hearing, which was scheduled for 2:15 pm. Respondent's counsel also failed to return to the courtroom after Petitioner rested and offered no witness or evidence.

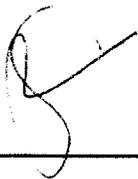
The Multiple Dwelling Law § 50-a(3) requires landlords to install an “intercommunication system” designed to permit an apartment occupant to release, from the apartment, an automatic self-locking door giving public access to a buildings main entrance. (*Doyle v. Metropolitan Insurance and Annuity Comapny* 35 A.D. 3d 262). Although some tenants may elect to have their cellular phones connect to the intercom system, the law does not require that. If Petitioner did not have a cellular phone, Respondent would have the same requirement to provide a phone line to the Subject Premises, in order for Petitioner to access the intercom. Petitioner testified he uses his cellular phone when he has the financial ability to pay for the service. If he was required to provide his cellular phone number to access the intercom, and at some point was unable to afford the service and it was terminated, he would be unable to access the intercom. Respondent’s compliance with the law cannot be contingent on Petitioner’s ability to maintain a cellular phone.

Based on the forgoing, Petitioner’s order to show cause is granted to the extent that the Court finds Respondent has not complied with the portion of the September 19, 2013, consent order, in that Respondent has not corrected the violation for the intercom (violation number 9960365). Respondent is to provide Petitioner with a working intercom and correct said violation within 30 days. Petitioner is ordered to provide access to Respondent upon 24 hours written notice to Petitioner.

This constitutes the decision and order of this Court.

Dated: New York, New York

March 7, 2014



Sabrina B. Kraus, JHC

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