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| **CIVIL COURT OF THE CITY OF NEW YORK****County of Kings: HOUSING PART B**--------------------------------------------------------------------x

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| [REDACTED],Petitioner, -against-[REDACTED], and The NEW YORK CITY Department of Housing Preservation and Development, Respondents. | :::::::::::::::::::: | Index No. HP: [REDACTED] |

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**PETITIONER’S MEMORANDUM OF LAW**

LAW FIRM NAME

ATTORNEY NAME

Address

Telephone:

Facsimile:

*Pro Bono Attorneys for Petitioner*

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**STATEMENT OF THE CASE**

 This is a housing maintenance violations case. [REDACTED], the Petitioner in this proceeding, is the tenant of record at [REDACTED] New York, NY 10017 (the “Apartment”). [REDACTED] has lived in this rent-stabilized apartment for the past 39 years. Affidavit of [REDACTED], dated July xx, 2018 (“[REDACTED] Aff.”) at ¶ 2. Upon information and belief, [REDACTED], a respondent in this case, purchased [REDACTED] in October 2017 for $3.9 million. *Id.* at ¶ 3. [REDACTED] is located in a fashionable neighborhood in Brooklyn, and, upon information and belief, [REDACTED] is renovating the building and intends to rent its apartments for significantly more money than [REDACTED] currently pays. *Id.* They have asked [REDACTED] to leave, but she would like to continue living there. *Id.* In light of this refusal, [REDACTED] and [REDACTED] (“Respondents”) have permitted the Apartment to fall further and further into disrepair despite [REDACTED] numerous entreaties to make essential repairs.

 [REDACTED] simply asks that Respondents restore her apartment to a livable condition. She initially brought a Housing Part (“HP”) action in February of 2018, demanding that Respondents repair several deleterious conditions in her apartment, including rodents, cracked walls, mold, broken floor tiling, and the absence of heat or hot water. Affirmation of [REDACTED] (“[REDACTED] Affirm.”), Ex. A & B. In response, the Honorable Daniele Chinea issued an order to correct the numerous violations identified by the Department of Housing Preservation and Development (the “HPD”), dated March 9, 2018 (the “Order to Correct”). [REDACTED] Affirm.,Ex. C. From March 14 to March 20, 2018, Respondents made a few of the repairs listed in the Order to Correct, but left many other conditions unresolved. [REDACTED] Aff. at ¶¶ 7–10. As a result of those inadequate repairs, several conditions remain in the apartment, including cracked walls throughout the apartment, bubbling kitchen tiling, and a continuing rodent infestation. *Id.* at ¶¶ 8–10.

 In fact, one of the most egregious conditions – the absence of hot water –was not repaired at all until very recently: [REDACTED] had been receiving only a trickle of hot water from her faucets until Respondents finally fixed the issue on June 25, 2018. *Id.* at ¶¶ 13–14. Respondents ultimately restored [REDACTED] hot water because [REDACTED] bathroom pipes burst, flooding her apartment and the apartment below and therefore necessitating that Respondents make immediate repairs. *Id.* at ¶ 13. Even then, Respondents initially only stopped the flooding, and left [REDACTED] without water *at all* for the entire weekend of June 23 and 24. *Id.* at ¶¶ 13–14. When [REDACTED] daughter called Respondents demanding that they restore water to her apartment because [REDACTED] needed water to take her diabetes medicine, Respondents replied that she should “eat a banana.” *Id.* at ¶ 14.[[1]](#footnote-1) [REDACTED] continues to lack adequate hot water pressure in her apartment.

Additionally, during the repairs made to the apartment during March 14 through March 20, Respondents moved some of [REDACTED] belongings into the apartment next door, purportedly because they were in the way of their repairs. *Id.* at ¶ 11. However, they did not return [REDACTED] belongings for *months* afterwards, despite the fact that she requested them several times. *Id.*  In fact, [REDACTED] only got her belongings back because Respondents’ workmen were renovating the apartment next door, and they allowed her to enter and retake her possessions while they were making repairs. *Id.* at ¶ 12. In the meantime, [REDACTED] had to buy a new shopping cart and an umbrella, because those possessions were locked away. *Id.* at ¶ 12.

Respondents’ callous indifference to [REDACTED] reasonable requests underscores the apathetic–or deliberately ineffective–response Respondents have undertaken pursuant to this Court’s Order to Correct. [REDACTED] has contacted Respondents countless times requesting that they restore her apartment to a livable condition. *Id.* at ¶ 4. Respondents have variously replied to these requests with refusals, empty promises to make repairs that never take place, or simply not replied at all. [REDACTED] Aff. ¶ \_\_. [REDACTED] counsel has also contacted Respondents’ attorney on five separate occasions, receiving only a single response to contact him in two days. *See* [REDACTED] Affirm., Ex. D; *see also* [REDACTED] Affirm., Ex. E.

 These persistent violations have created significant challenges for [REDACTED] and her family. She fears for the structural integrity of the walls in her home, and as a consequence experiences significant stress. *Id.* at ¶ 19. She fears falling in her kitchen – as an elderly woman, she struggles to walk on the uneven floor. *Id.* at 19. The challenge is even greater for her husband – a similarly elderly man who until recently was wholly bedridden as a result of two strokes and remains unsteady on his feet. *Id.* at ¶¶ 2 & 19. Adding to these stressors is the fact that Respondents have refused to take any steps to rectify these problems and have responded to her requests–when they respond at all–with indifference.

In the face of Respondents’ intransigence and apathy, [REDACTED] asks that this Court hold Respondents in contempt for their failure to comply with the order to correct.

**ARGUMENT**

**I. RESPONDENTS SHOULD BE HELD IN CIVIL CONTEMPT FOR THEIR FAILURE TO COMPLY WITH THE ORDER TO CORRECT**

A party that does not comply with a lawful court order may be held in civil contempt under Section 27-2124 of the New York City Administrative Code, Section 5104 of the New York Civil Practice and Rules, and Section 753(a)(1) of the Judiciary Law. Civil contempt is appropriate where “the rights of an individual have been harmed by the contemnor’s failure to obey a court order.” *Dept. of Envtl. Protection of City of New York v. Dept. of Envtl. Conservation of State of N.Y.*, 70 N.Y.2d 233, 239 (1987). Contempt aims to vindicate a private party’s rights and “compensate the injured private party for the loss of or interference with [those] right[s].” *McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983); *Dep’t of Envtl. Protection*, 80 N.Y.2d at 239.

A court may find civil contempt upon a showing of “reasonable certainty” that (1) a party disobeyed a lawful order expressing an unequivocal mandate, (2) that the disobeying party had knowledge of the order, and (3) failure to comply with that order prejudiced the rights of the injured party. *McCormick*, 70 N.Y.2d at 583. In the context of an order to correct in an HP action, “the landlord’s failure to effect the repairs [specified in the order] necessarily prejudices the tenant.” *Brown v. 315 E. 69 St. Owners Corp.*, 2006 N.Y. Misc. LEXIS 562, at \*5 (N.Y. Civ. Ct. N.Y. Cnty. Mar. 21, 2006) (citing *Various Tenants v. HPD*, 153 Misc. 2d 221, 222 (1st Dep’t 1992).

Here, the evidence is clear that a contempt order should issue. The Order to Correct unequivocally directs Respondents to repair [REDACTED] walls, repair her kitchen tiling, and eradicate the mice in her home. *See* [REDACTED] Affirm., Ex. C (Respondents “shall correct all violations listed on annexed inspection report and on Schedule A”); *see also* [REDACTED] Affirm., Ex. B (inspection report stating “repair the broken or defective plastered surfaces and paint in a uniform color all walls & ceiling in the entire apartment”; “properly repair with similar material the broken or defective wood floor in the kitchen”; “abate the nuisance consisting of mice in the entire apartment”). Respondents’ attorney signed the order to correct, establishing their knowledge of the order. *Schlueter v. E. 45 Dev. LLC*, 806 N.Y.S.2d 448, 448 (Civ. Ct. N.Y. Cnty. 2005) (attorney signature establishes knowledge of order). Finally, Respondents have failed to effect the repairs specified in the order, and thus have necessarily prejudiced [REDACTED]. The Court’s order specified that Respondents must repair [REDACTED] walls and floor, and eradicate the mice in her apartment within 30 days. *See* [REDACTED] Affirm., Exs. B & C. To date, nearly five months after [REDACTED] initiated this HP proceeding and x days after the Order to Correct, those repairs have yet to been completed. [REDACTED] Affidavit, at ¶¶ 7–10.

Respondents’ failure to repair the underlying conditions in the Order to Correct has defeated, impaired, impeded and prejudiced [REDACTED] right to live in an apartment without conditions that threaten her health and safety, as well as the health and safety of her family. Their failure to make the required repairs has also caused damages, including, but not limited to, pain and suffering and the diminution in value of her apartment.

**II. PETITIONER SHOULD BE AWARDED ACTUAL DAMAGES FOR THE DIMINISHED VALUE OF HER HOME**

Section 773 of the Judiciary Law provides that a court may award damages for actual loss or injury caused by “reason of the misconduct proved against the offender,” in an amount “sufficient to indemnify the aggrieved party.” Actual damages are meant to compensate an aggrieved party for their losses resulting from another’s contempt. *State of N.Y. v. Unique Ideas*, 44 N.Y.2d 345, 349 (N.Y. 1978). In the event that actual loss is not established, a court may issue a fine totaling $250, plus costs and expenses of litigation. N.Y. Jud. Law § 773, ¶ 2.

In the context of tenant-initiated HP proceedings, when a court finds a party in contempt of its orders, it can “establish an actual loss in the form of an abatement.” *315 E. 69 St. Owners Corp.*, 2006 N.Y. Misc. LEXIS 562, at \*6. Actual damages are measured by “the decreased value of the [s]ubject [p]remises as plagued by the conditions for the relevant periods.” *Randolph v. New York City Hous. Auth. E. Riv. Houses*, 2014 N.Y. Misc. LEXIS 2987, at \*14–15 (N.Y. Civ. Ct. N.Y. Cnty. July 8, 2014). In *Randolph*, the court confirmed that the calculation of damages “is similar to the calculation for a rent abatement.” *Id.* at 15. In that case, the tenant lived in an apartment that, among other things, lacked hot water and peeling paint and plaster for twenty-seven months. *Id.* at 11. The court found that the conditions reduced the value of the apartment by 80% and awarded the tenant $10,194.00 in damages. *Id.* at 17.

Additionally, a court can consider diminution of quality of life and out-of-pocket expenses when awarding damages. In *Brown v. New York City Housing Authority East River Houses*, for example, a pregnant mother had to live without hot water for approximately thirteen months. NYLJ 1202625719927, at \*1 (Civ., NY, decided October 17, 2013). The court found the respondent in contempt of stipulations to restore hot water, and awarded actual damages for the tenant’s “severely diminished [] quality of life.” *Id.* at 14. The court awarded $19,205.00, calculated per day based on the status of the tenant’s pregnancy and the respondent’s clear awareness of the cause of the problem. *Id.*

[REDACTED] has suffered significant diminution in the quality of her life. Respondents’ refusal to make the necessary repairs has caused her a great deal of anxiety and stress – sometimes she cries for hours at a time, or goes entire days without eating. [REDACTED] Affidavit, at ¶ 18. She has begun taking medicine for high blood pressure, which she never had to do before. *Id.* And she recently visited her doctor because she is constantly shaking, crying, and irritable because of the stress she feels at home. *Id.*

She feels trapped in her apartment, because Respondents’ repairmen are constantly in her building and making loud noises, including playing the radio early in the morning, hammering nails, and breaking wood. *Id.* Despite feeling trapped in her apartment, [REDACTED] also is afraid of living there – she fears her walls, especially the cracked kitchen wall, will collapse and hurt her. *Id.* at ¶ 19. She worries about walking on her kitchen tiling, which, because it is uneven and buckling, could cause her to fall. *Id.* As a consequence of this stress, [REDACTED] often finds herself unable to sleep. *Id.* at ¶ 18. Perhaps worst in her mind is the indifferent attitude Respondents have taken towards her suffering – she feels as though they are intentionally refusing to maintain her apartment in order to drive her out and increase their profits. *Id.* at ¶ 20.

**CONCLUSION**

[REDACTED] has called [REDACTED] her home for over thirty-nine years. Respondents have compelled her to live in deplorable conditions in violation of this Court’s order, forcing her to return to court to rid herself of the stress and fear these conditions have caused. In light of Respondents’ blatant failure to properly correct the housing violations described in the Order to Correct and still in existence in [REDACTED] apartment, this Court should hold Respondents in civil contempt and award actual damages based on [REDACTED] loss of enjoyment and value of her home and her diminished quality of life.

Dated: \_\_\_\_\_\_\_\_\_, 2018

 New York, New York

Respectfully submitted,

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 [REDACTED]

1. The lack of hot water pressure was not included in the initial order to correct, but must be rectified for [REDACTED] to be able to live comfortably in her apartment. [↑](#footnote-ref-1)