

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Ind. No.

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SUMMONS

RICHARD B. DENNEY,

Plaintiff,

Plaintiff designates New
York County as the place
of trial.

-against-

250 PACIFIC LLC and BCB PROPERTY
MANAGEMENT INC.,

The basis for such venue
is the address of
Defendant BCB Property
Management Inc.

Defendants.

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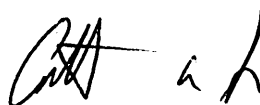
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or if the Complaint is not served with this Summons to serve a notice of appearance on the Plaintiff within twenty (20) days after service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
November 14, 2013

GRAD & WEINRAUB, LLP
Attorneys for Plaintiff

By:



Catharine A Grad
Attorneys for Plaintiff
305 Broadway, Suite 1201
New York, New York 10007
(212) 732-0400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RICHARD B. DENNEY,

Ind. No.

Plaintiff,

VERIFIED
COMPLAINT

-against-

250 PACIFIC LLC and BCB PROPERTY
MANAGEMENT INC.,

Defendants.

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Richard R. Denney ("Plaintiff") by his undersigned attorneys, as and for his Complaint against Defendants (collectively, "Defendants"), respectfully sets forth and alleges as follows:

A. Introduction

1. This is an action brought by Plaintiff, tenant of Apt. 10 (the "Apartment") at 250 Pacific Street (the "building"), located in Brooklyn, New York, ("the building") against Defendants, owners of the building. Defendants have wrongfully treated and continue to wrongfully treat Plaintiff as a market rent tenant, denying him a variety of benefits to which he is legally entitled, as well as charging him an amount in excess of the legal rent for the Apartment.

2. Upon information and belief, Defendants have received J-51 tax benefits from the tax year of 2002/2003 through the tax year of 2011/2012. As a matter of law, as a recipient of J-51 tax benefits, Defendants are prohibited from taking advantage of certain provisions of the Rent Stabilization Law ("RSL") enacted in 1993 that allow apartments to be excluded from regulation when their rent reaches a certain level

(referred to as “luxury decontrol”).

3. Nonetheless, upon information and belief, Defendants have wrongfully availed themselves of luxury decontrol so as to deregulate the Apartment. They have charged and collected an increased rent without following the proper procedures. Defendants have also failed to file required registration documents with the State of New York Division of Housing and Community Renewal (“DHCR”), registering the Apartment as rent stabilized at a legally regulated rent.

4. In this action, Plaintiff seeks a judicial declaration that the Apartment is subject to the RSL, an order that current and future rents be established at the statutory amount permitted by the RSL, an award of monetary damages and treble damages for rent overcharges imposed and collected by Defendants, reasonable attorneys’ fees, costs and disbursements, and other injunctive relief further described in this Complaint.

B. The Parties

5. Plaintiff Richard B. Denney is a tenant of Apartment 10 at 250 Pacific Street, Brooklyn, New York, pursuant to a lease, dated February 28, 2012, (the “Lease”) with a term from March 1, 2012 to June 30, 2013, which Lease treats Plaintiff as a market rent tenant at a monthly rental amount of \$2,650.00.

6. Upon information and belief, Defendant 250 Pacific LLC, is a New York Limited Liability Company, with a principal place of business in the County of New York, City and State of New York, and is the landlord of the Plaintiff and an “owner” as that term is defined by the RSL and Rent Stabilization Code (“RSC”) §2520.6(i).

7. Upon information and belief, Defendant BCB Property Management Inc., a New York Corporation with its principal place of business in the County, City and State

of New York, is the current managing agent of the building, and is an owner as that term is defined by RSC §2520.6(i).

C. The Statutory and Regulatory Framework (All Statements in this Sub-Paragraph C are made upon information and belief)

8. In 1993, the RSL was amended to provide that certain units could be deregulated if they became vacant and the legal regulated rent or the legal maximum rent exceeded \$2,000.00 per month (referred to as “luxury decontrol”). L. 1993 Ch. 253, §§4, 6, effective July 7, 1993. Administrative Code of the City of New York. §26-504.2(a). In 1997, these provisions were amended to provide that units may be excluded from regulation “where, subsequent to vacancy, such legal regulated rent, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law is two thousand dollars or more.” L. 1997, ch. 116, §19: RSL §26-511(14). These provisions were further amended effective June 24, 2011, to increase the amount of the legal rent that allowed a unit to be deregulated upon vacancy from \$2,000.00 to \$2,500.00 per month. L. 2011, ch. 97.

9. When a housing accommodation becomes legally deregulated under the provisions cited above, the owner is no longer bound by the provisions of the RSL. For example, the owner may increase the rent to market rates; the owner is free to refuse to renew a tenant’s lease; the owner may increase the rent upon vacancy of the unit by whatever amount the owner chooses; the owner may renew the lease upon different terms and conditions from the original lease; the owner can reduce the services that are provided to the tenant; and the owner is no longer covered by the prohibitions against harassment of tenants as set forth in the RSL. In addition, tenants may not initiate proceedings at the DHCR for relief under the rent regulatory statutes.

10. The amendments to the RSL specifically provide, however, that these deregulation provisions do not apply to owners who receive benefits pursuant to Real Property Tax Law (“RPTL”) §489.

11. RPTL§489, enacted in 1955, is an enabling statute, authorizing cities to promulgate local laws to provide multiple dwelling owners with tax incentives to rehabilitate their properties or convert them to residential use. The law further authorizes cities to impose rent regulation on building owners as a *quid pro quo* for receiving tax benefits.

12. In 1960, pursuant to RPTL §489, New York City adopted the J-51 program, now codified at §11-243 of the Administrative Code of the City of New York. The enabling law specifically provides that J-51 benefits are only available to dwellings that are subject to rent control or rent stabilization. The J-51 program is administered by the New York City Department of Housing Preservation and Development (“HPD”), *See* 28 Rules of the City of New York (“RCNY”) §5-01 *et seq.* Pursuant to the J-51 program, eligible owners are granted abatements in their real estate taxes for a percentage of the “certified reasonable cost” of the rehabilitation, and/or exemptions from increases in real estate taxes resulting from an increase in the assessed value of the property due to the rehabilitation. HPD issues a “certificate of eligibility” for each J-51 benefit granted, which sets forth the amount of the tax abatement, if any, and the period of years that the abatement and/or exemption is in effect.

13. The RSL and the regulations promulgated thereunder set forth the procedures for calculating the lawful rent and for determining the amount by which a tenant has been overcharged in cases where owners have illegally treated Housing

Accommodations as unregulated. Under these regulations, the failure to properly and timely comply with the annual registration requirements for rent stabilized units bars the owner from applying for or collecting any rent increase in excess of the base date rent, plus any lawful adjustments allowable prior to the failure to register. RSC §2528.4[a].

14. The regulations also bar an owner of a rent stabilized unit who fails to provide the tenant with a rent stabilization lease rider in the form prescribed by law upon the execution of a renewal lease from collecting any guidelines lease adjustment authorized for any current lease from the commencement date of such lease, RSC §2522.5[c].

15. For the purposes of determining an overcharge, the legal regulated rent of a rent stabilized unit is deemed to be the rent charged on the “base date,” as defined by RSC §2520.6(p), plus any subsequent lawful increases or adjustments. RSC §2526.1[a][3]. In a case where the legal rent on the base date cannot be determined, either because records of the legal rent do not exist, were not provided, were inherently unreliable, or were created by fraud or the owner’s violations of the law, the base date rent is calculated on the basis of what is known as the “default formula.” The default formula is an agency-established procedure, approved by the appellate courts, by which the base rent is set by comparison with similar regulated units in the building or the neighborhood.

D. Statement of Facts

16. At all times relevant herein, the building has been a privately owned, rental apartment building, containing approximately 25 apartments and built, upon information and belief, in or about 1929.

17. Upon information and belief, in or about 2002, Defendants and/or their predecessors in interest requested and were granted a J-51 property tax exemptions and abatements.

18. Upon further information and belief, at all times from the tax year of 2002/2003 through June 30, 2012, Defendant and/or their predecessors in interest have been in receipt of J-51 benefits for the building.

19. Defendant 250 Pacific LLC was in receipt of a J-51 tax abatement for the building as of March 1, 2012.

20. Accordingly, upon information and belief, as of March 1, 2012, when Plaintiff's lease commenced, the luxury deregulation provisions did not apply to the building.

21. Defendants, however, treated Plaintiff as if his tenancy was not subject to the RSL and as if the Apartment was not rent regulated.

22. The Lease states that the Apartment is not subject to Rent Stabilization and that Plaintiff does not have a right to a renewal lease.

23. Defendants charged Plaintiff rent in the sum of \$2650 from March 1, 2012 through October 31, 2013.

24. Upon information and belief, the legal regulated rent for the Apartment at the time that Plaintiff became a tenant was less than \$2500.00.

25. Division of Housing and Community Renewal ("DHCR") documents reflect that the tenant who occupied the Apartment as of November of 2009 paid rent in the sum of \$459.51.

26. DHCR documents further reflect that the rent-stabilized tenant who

occupied the apartment prior to Plaintiff paid rent in the sum of \$489.91 for the period of June 1, 2010 through May 31, 2011.

27. Upon information and belief, the base date rent for the Apartment, however, cannot be determined because of the lack of reliable records of the legal rent, fraud, and/or intentional violations of law on the part of Defendants.

28. Upon expiration of the Lease, Defendants offered Plaintiff a renewal lease on a form that stated that the renewal was for an apartment not subject to Rent Stabilization Law and provided for a rent of \$2800.00, which exceeds the increase allowed by the RSC.

29. As a result of the actions of Defendants, Plaintiff has been denied his rights under the RSL to renewal leases under the same terms and conditions as the statutory amounts; to the statutory protections from removal and harassment; and to the same services as were provided on the base date, as well as other rights under the RSL.

**FIRST CAUSE OF ACTION FOR A DECLARATORY JUDGMENT AND
PERMANENT INJUNCTION**

30. Plaintiff realleges each and every allegation contained in paragraphs 1 through 29 of this Complaint.

31. Defendants continue to deprive Plaintiff of his rights afforded under the RSL. Defendant has treated the Apartment as if it was deregulated and has treated Plaintiff as if his tenancy was not subject to the RSL.

32. Plaintiff is entitled to renewal leases on forms approved by the DHCR and required by the RSL at legal regulated rents.

33. Justiciable and present controversies therefore exist between Plaintiff and the Defendants concerning the Apartment. The failure of the Defendants to offer Plaintiff a rent stabilized lease at the legal regulated rent places Plaintiff in jeopardy of being

required to pay illegal market rents and/or sign leases that do not comply with law or possibly be forced to defend eviction proceedings for refusing to sign illegal leases.

34. Plaintiff has no adequate remedy at law sufficient to protect him from the threat of or the actuality of payment of unlawful rents or eviction.

35. Plaintiff is entitled to a Declaratory Judgment declaring that his apartment is subject to Rent Stabilization Laws and that Defendants are required to offer a renewal lease on forms approved by the DHCR and required by the RSL at legal regulated rents.

**SECOND CAUSE OF ACTION FOR MONETARY DAMAGES: RENT
OVERCHARGE**

36. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 35 of this Complaint.

37. At all times relevant hereto the tenancy of Plaintiff was and continues to be subject to the provisions of the RSL.

38. Defendants have nonetheless charged Plaintiff market rate rent or rents at rates otherwise in excess of rent stabilization rent levels.

39. Defendants have thus overcharged Plaintiff in an amount equal to the difference between his monthly rent and security deposit and the appropriate legal regulated rent- stabilized rent.

40. As a result of Defendants' rent overcharges, Plaintiff has been damaged, and is entitled to an award of money damages against Defendants in an amount to be determined at trial.

41. In addition, Plaintiff is entitled to an award of interest on the rent overcharges.

THIRD CAUSE OF ACTION FOR TREBLE DAMAGES

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41 of this Complaint.

43. At all relevant times, the rent overcharges by Defendants were willful, thus entitling Plaintiff to an award of treble damages.

44. Wherefore, plaintiff is entitled to treble damages of all moneys collected in excess of the legal regulated rent, with interest thereon, as provided by law

FOURTH CAUSE OF ACTION FOR LEGAL FEES AND EXPENSES

45. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44 of this Complaint.

46. Plaintiff is entitled to recover his reasonable attorneys' fees, costs, expenses, and disbursements herein from Defendants pursuant to the RSL §2526.1(d) and/or Real Property Law §234.

WHEREFORE, Plaintiff respectfully requests Judgment against Defendants as follows:

(I) On the **FIRST** Cause of Action, declaring that Apartment 10 and Plaintiff's tenancy at Apartment 10 at 250 Pacific Street, Brooklyn, New York are subject to the RSL and RSC, and that Defendants are required to offer renewal leases on forms approved by the DHCR;

(II) On the **SECOND** Cause of Action, awarding Plaintiff monetary damages against Defendants in an amount to be determined at trial;

(III) On the **THIRD** Cause of Action, awarding Plaintiff monetary damages which

treble all money that plaintiff paid to defendants in excess of the legal regulated rent;

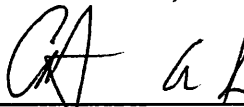
(IV) On the **FOURTH** Cause of Action, awarding Plaintiff attorneys' fees in a sum to be determined by the Court;

(V) Awarding Plaintiff such other and further relief as this Court finds just and proper.

Dated: New York, New York
October 30, 2013

GRAD & WEINRAUB, LLP

By:



Catharine A Grad
Attorneys for Plaintiff
305 Broadway, Suite 1201
New York, New York 10007
(212) 732-0400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RICHARD B. DENNEY,

Ind. No.

Plaintiff,

VERIFICATION

-against-

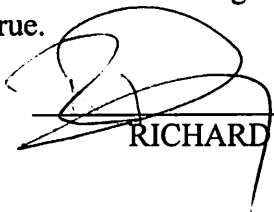
250 PACIFIC LLC and BCB PROPERTY
MANAGEMENT INC.,

Defendants.
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STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

RICHARD B. DENNEY, being duly sworn, deposes and says:

I am the Plaintiff in this action. I have read the Verified Complaint. The contents are true to my knowledge, except as to those matters alleged upon information and belief, and, as to those matter, I believe them to be true.



RICHARD B. DENNEY

Sworn to before me this
30th day of October, 2013



NOTARY PUBLIC

CATHARINE A. GRAD
Notary Public, State of New York
No. 4964401
Qualified in New York
Commission Expires _____

4/2/14

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:

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RICHARD B. DENNEY,

Plaintiff,

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SUMMONS AND VERIFIED COMPLAINT

Attorneys for Plaintiff

**Grad & Weinraub, LLP
305 Broadway, Suite 1201
New York, New York 10007
(212) 732-0400**

Signature (Rule 130-1.1-a)
