

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART R

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YORKROAD ASSOCIATES, LLC,

Petitioner-Landlord

**HON. SABRINA B. KRAUS**

-against-

**DECISION & ORDER**  
**Index No.: L&T 58679/2015**

DAMIEN CORRIGAN  
1360 York Avenue, Apartment L4  
New York, NY 10021

Respondent- Tenant

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X

**BACKGROUND**

This summary nonpayment proceeding was commenced by **YORKROAD ASSOCIATES, LLC** (Petitioner) against **DAMIEN CORRIGAN** (Respondent), the rent-stabilized tenant of record, seeking to recover possession of 1360 York Avenue, Apartment L4 New York, NY 10021 (Subject Premises) based on the allegation that Respondent has failed to pay rent due for the Subject Premises.

**PROCEDURAL HISTORY**

Petitioner issued a rent demand dated February 13, 2015, seeking \$8006.66 in arrears for July 2014 through February 2015, at a monthly rent of \$2402.40. The petition is dated March 13, 2015.

Respondent appeared *pro se* on April 3, 2015, and filed an answer asserting breach of warranty of habitability and a general denial. The proceeding was initially returnable on April

13, 2015. Respondent appeared by counsel, and the parties stipulated to adjourn the proceeding to May 15, 2015, for settlement or trial.

Respondent filed a supplemental answer and counterclaims dated May 1, 2015. This pleading asserted lack of jurisdiction, breach of warranty of habitability, partial constructive eviction, and a claim for attorneys' fees. Annexed to the supplemental answer was a report from Edward Olmstead (EO) pertaining to mold conditions in the Subject Premises and an inspection that took place on April 27, 2015.

On June 26, 2015, Petitioner moved for a protective order regarding a Notice to Admit served by Respondent. The motion was resolved by stipulation on July 14, 2015. The stipulation provided that the parties would stipulate to the admission of certain documents at trial. The stipulation also provided that: Petitioner is the owner of the subject building; that Respondent is the tenant of record of the Subject Premises at a monthly rent of \$2386.83; and that there was \$19,964.56 in unpaid rent through July 2015.

The proceeding was adjourned over a number of additional dates. On September 9, 2015, the proceeding was assigned to Part R for trial. The trial commenced and continued on September 16 and 30. The trial concluded on October 23, 2015, and the proceeding was adjourned to November 30, 2015 for post trial submissions. On November 30, 2015, the parties made their post trial submissions and the court reserved decision.

#### **PRIOR RELATED HP PROCEEDING**

There was a prior related HP Proceeding between the parties under Index Number 6122/2015. The court has requisitioned the file from said proceeding, takes judicial notice of the entire contents of the file, and considers same to be part of the record of the trial herein.

The proceeding was initially returnable on May 22, 2015. An inspection of the Subject Premises was done by HPD on April 15, 2015. The inspection resulted in three class “A” violations and seventeen class “B” violations being placed on the Subject Premises for conditions including: broken/defective windows; painting and plastering throughout the Subject Premises; a missing radiator cover; securing a loose sink in the bathroom; repairing the toilet so it flushed properly; repairing the defective waste line for the kitchen sink; broken/defective wood floor throughout the Subject Premises; deflected cabinet below the sink in the bathroom; leaky/defective bathtub faucets; and broken/defective ceramic tiles on the bathroom wall.

The parties entered a consent order on July 14, 2015, resolving the proceeding (Ex I). In addition to providing for the correction of the violations by Petitioner, the Order incorporated a scope of work that had been agreed to by EO and Petitioner’s representative after a meeting at the Subject Premises on June 30, 2015. The scope of work provided: that the contents of the Subject Premises would be HEPA vacuum cleaned, and protected from work areas, and that Respondent would remove clothing and personal items from the Subject Premises prior to the commencement of the work; that the wool flooring in the living room, bedroom and hallway would be removed; that the bathroom walls would be gutted and the vanity removed and discarded; that any water damaged Sheetrock walls and ceiling would be removed; that the kitchen sink cabinet would be removed and discarded; that damaged plaster on the walls and ceiling of the kitchen, living room and children’s bedroom would be “scraped to a stable substrate”; and that the work would be done in accordance with New York City Department of Health mold guidelines.

The Order further provided that Habitat Safe would be rebuilding the Subject Premises, but that prior to the rebuilding, an inspection and testing for residual mold growth would be done in accordance with criteria accepted by the American Conference of Governmental Industrial Hygienists and the American Industrial Hygiene Association.

### **FINDINGS OF FACT**

Respondent is the tenant of record for the Subject Premises, and Petitioner the landlord, pursuant to a lease between the parties dated May 27, 1997 (Ex 1) most recently renewed in April 2015, for a one year term from June 1, 2015 through May 31, 2016, at a monthly rent of \$2386.83 (Ex 3). The legal registered rent for the Subject Premises as of January 14, 2015 was \$2311.51 (Ex 4). There is a valid MDR effective through August 2016 (Ex 5).

At the commencement of the trial, the parties' stipulated that Respondent's first and second affirmative defenses pertaining to personal jurisdiction were withdrawn. The petition was amended to include all rent due through September 2015, and the parties agreed that there was \$24,738.22 due for this period.

The Subject Premises is a two bedroom one bathroom apartment in the basement of the subject building.

Respondent has lived in the Subject Premises since June 1996. Shortly after moving in Respondent experienced some problems with leaks from the upstairs apartment. Several times there was water intrusion into the bathroom in the Subject Premises from the bathroom of the apartment above.

In February 2014, Respondent came home from work and saw that the Subject Premises had experienced significant water intrusion. There was water coming from the upstairs

bathroom and the leaks were in the hallway, the bathroom and the kitchen. In the bathroom, water was streaming down all four walls. Respondent “panicked” and started throwing down towels and tried to bail water out of the bathroom into the tub. Respondent ran upstairs and banged on the door of the upstairs apartment but there was no answer. Respondent left a note for that tenant and then found Peter the Super and told him there was a bad flood from the upstairs apartment. Peter tried to access the apartment above but got no answer, Peter checked some other units in the line and told Respondent about a half hour later that the flood was probably coming from the apartment above.

Respondent put buckets in the Subject Premises to collect the dripping water. Respondent wanted to call the fire department, but Peter wanted to wait of the upstairs tenant to return. Peter told Respondent Petitioner generally had difficulty getting access to the apartment above.

The following day Respondent went to work, the leak was ongoing and Respondent left buckets in place to collect the leaking water. Respondent returned to the Subject Premises at lunch time to empty the buckets. The buckets took approximately three hours to fill. Respondent saw Peter that evening and told him that the leak was ongoing. Peter said that he did not know where the tenant of the upstairs apartment was and that there was nothing he could do about the leak. The ongoing leak continued unabated for a total of five to six days. Each of these days Respondent touched base with Peter, who continued to advise Respondent that the tenant’s whereabouts were unknown and that the tenant had refused Petitioner access for decades.

After five or six days the water stopped leaking, there was still some dripping but the ongoing flow had stopped. Respondent went to the upstairs apartment, a young man opened the door, apologized for the incident and said that the water had been turned off and that everything was now okay. The man identified him self as Alec and stated he was living in the apartment. Respondent advised Peter that the leak had finally stopped.

At this point, the Subject Premises looked like it had been destroyed. Major damage was present in the bathroom, the kitchen and the master bedroom. The floor was completely saturated with water. The walls and ceiling were a mess. Parts of the ceiling in the kitchen were hanging and later fell.

Respondent continued to speak with Peter about the conditions in the Subject Premises on an ongoing basis. Respondent mentioned it when he ran into Peter in the common areas of the building, but Peter never came to inspect the damage to the Subject Premises himself. Respondent told Peter that after the Subject Premises dried they should discuss the repairs. It took a few weeks for the Subject Premises to dry out. Respondent used a dehumidifier, fans and open windows to dry out the Subject Premises. After the Subject Premises dried out, Respondent again told Peter substantial repairs were needed. Respondent told Peter he thought the bathroom was a total loss and Peter stated Petitioner had not approved a new kitchen or bathroom. These discussions continued over the next two to three months, at no time during this period did Peter express any interest in coming into the Subject Premises and observing the damage themselves.

Respondent assumed that Peter had communicated the situation with the leak and needed repairs to Petitioner, but eventually, in April 2014, Respondent called the management office

directly. Respondent spoke with a woman in the management office and stated that repairs were badly needed in the Subject Premises. The woman told Respondent to put his request in writing and send it to management so that they could evaluate the request. Respondent testified that he wrote a note but got no response.

In August 2014, Respondent went into the living room stood on the carpet and his feet got wet. That evening Respondent pulled back the carpeting and discovered that the living room floor had been saturated with water. This leak was from the hot water pipe under the kitchen sink. Respondent turned off the water. Respondent observed that the floor under the sink was also wet, and that water had traveled under the dishwasher into the living room and the children's bedroom.

At this time the Peter was on vacation in Albania, Respondent spoke with the Peter's son who said the Peter would return in a day or two. Within a day or two, on or about August 23, Respondent told Peter there had been another bad leak resulting in significant damage. Respondent brought Peter to the Subject Premises to view the damage. Peter proposed calling in a plumber the following Monday, but Respondent insisted that something be done immediately, as he was to leave on vacation to Ireland for ten days. Peter got some tools and changed the pipe under the sink and stopped all remaining dripping water.

Additionally, the night before Respondent had left for Ireland there was a third leak from the upstairs bathroom for approximately 30 minutes where water was coming out of the drain pipe as it had on prior occasions. By the time Respondent got back from Ireland on September 2, 2015, a fourth interim flood had caused additional damage, including collapsed plaster and condensed moisture droplets on the walls. Respondent decide to a hire a lawyer.

On September 10, 2014, Respondent's counsel wrote a letter to Petitioner's managing agent detailing the extent of the damages in the Subject Premises and requesting immediate repairs (Ex A-1). The parties agreed to arrange access dates for two different contractors to inspect the Subject Premises.

Jennifer Sundt (JS) had an appointment to meet Dion at the Subject Premises on October 8, 2014. Dion took photographs of the Subject Premises on this date and did a walk through with JS. Dion told JS he was a mediator sent by Petitioner. Peter was also present for part of Dion's visit to the Subject Premises on this date. Dion told JS that Petitioner would get two bids from outside contractors for the work needed. Petitioner did have two contractors inspect the Subject Premises and Respondent and JS agreed that either was acceptable to them to do the work.

By the end of October Petitioner was still seeking additional access dates for the proposal of the second contractor to be finalized (Ex A-6). However, Petitioner delayed another month and at the end of November had Peter advise Respondent that he planned to start work himself and that neither of the two contractors would be retained by Petitioner.

Respondent did not feel that Peter was qualified to do the work required and at that point denied the access requested by Peter until the parties could reach an agreement as to how the work was to proceed (Ex E).

In December 2014, Respondent started to withhold rent.

EO also testified for Respondent. EO was deemed an expert witness in mold and water intrusion. EO was first retained by Respondent in April 2015 to investigate water damage in the

Subject Premises and determine whether there was a mold condition. EO did a walk through of the Subject Premises with Respondent and a visual inspection on April 12, 2015.

EO used a moisture meter to measure areas where there was damage. EO found most of the areas tested were dry. In the kitchen there was still a leak around the sink. EO took tape lift samples for mold from approximately 12 different surfaces. EO looked at the tape lift samples under a microscope and determined that there was mold growth in the Subject Premises. EO found evidence of mold growth under the floors, in the bathroom and kitchen, in the master bedroom.

EO prepared a report regarding the inspection which was admitted into evidence (Ex A-15). EO concluded that as of April 2015, the Subject Premises was a “total loss.” EO found visible green mold growth under the wood floor in the living room, damaged floors throughout the Subject Premises, damaged walls in the bathroom with mold growth, damage to the kitchen walls, active mold growth and an ongoing leak with wet floors and cabinets which were damaged and had mold growth, and severe damage to the wall in the master bedroom that is adjacent to the bathroom. EO found that the levels of mold inside the Subject Premises were very elevated compared to the outside sample. EO proposed a scope of work and recommended that the Subject Premises remain unoccupied until a cleanup was completed. EO advised Respondent that he should consult with a physician to determine whether it was safe to continue to occupy the Subject Premises and that Respondent should exercise caution in that regard.

EO went back to the Subject Premises in late June 2015 to meet with Anthony and discuss the scope of work. EO went back in August for testing. As of that date most of the floors in the Subject Premises had been replaced, the walls had been repaired, the bathroom had

been repaired and all damaged plaster had been replaced. The testing done by EO showed that the mold had been fully removed and the job had been satisfactorily completed.

EO testified that he did not believe that Peter could have done the work required by the scope of work because of the containment proscriptions, although he acknowledged that a Peter with the proper equipment and training might be able to comply with the scope of work. EO also noted that it was a not a one person job.

JS also testified for Respondent. JS and Respondent were a couple for ten years and have two children together. They have a son who is 15 and a daughter who was born in 2003. In the summer of 2003, JS and Respondent separated and JS took the children to Texas. They returned to New York in late 2003. After their separation JS and Respondent split custody of the children.

JS is an attorney and she has an MBA and a JD. JD has been admitted to practice law in New York since 2012. JS lived in the Subject Premises from June 1996 through July 2003. JS testified that during this period there were four incidents of water intrusion in the Subject Premises, and that the first two incidents occurred in 1998.

In August 2014, Respondent was picking up the children who had been living full time with JS since February 2014. JS was frustrated that the children were no longer staying with Respondent, and Respondent told JS that he couldn't have the children in the Subject Premises because of conditions that existed. Prior to February 2014, the children stayed with Respondent at the Subject Premises four nights a week, three weeks per month. JS and Respondent stopped that in February 2014 because their son has asthma and they felt it was not safe for the children to be exposed to the conditions in the Subject Premises. As of the date of JS's testimony, the

children had not returned to the Subject Premises since February 2014. Although JS acknowledged the work had been done, JS did not want the children back in the Subject Premises until Respondent had arranged for the Subject Premises to be professionally cleaned.

JS went to inspect these conditions at the Subject Premises on Friday August 29, 2014. On this date JS observed that the floor in the living room was buckled, the carpet had been rolled back and floor tiles had popped out. JS observed damage to the walls and bubbling by the window sills. JS also observed water stains on the walls.

JS observed damage in the master bedroom, including holes, peeling plaster, a wet floor and dripping water from the ceiling. JS also observed damage in the bathroom of the Subject Premises including water stains, leaking water from the ceiling, the sink vanity was tilted to the left and there was no running water in the sink. The ceiling around the bathtub was stained and bubbling and tiles were tapped and buckled.

In the kitchen, JS observed that the water to the kitchen sink had been turned off, peeling plaster, and bubbling/water stained walls. JS also observed a hole above the window sill in the kitchen.

In the children's bedroom JS observed that the floor was buckling. JS disposed of the children's belongings because they were wet. JS observed that the carpet was covered in plastic and discolored in some areas. A week after the August 29 visit, JS returned to the Subject premises and took photos of the conditions she observed. These photos were admitted into evidence (Ex G 1-26).

Petitioner began repairs to the Subject Premises on July 16, 2015. Anthony did the repairs. By August 2015, the necessary repairs in the Subject Premises had been substantially completed, and Respondent described the Subject Premises as being in “fantastic shape.” JS testified that as of the date of the trial all the work had been done except that the radiator was still missing a cover and the windows in the Subject Premises did not open and shut properly.

From September 2014 through July 2015, Respondent found it increasingly difficult to remain in occupancy of the Subject Premises. Respondent did sleep in the Subject Premises during this period, but also often slept on the couches of other friends to minimize time spent in the Subject Premises. Respondent could not use his kitchen sink, and often avoided using the kitchen at all due to the falling plaster. Respondent did use the bathroom during this period.

Respondent testified that he stopped using the master bedroom as of February 2014 and that he slept on the couch in the living room through August 2014.

Jessica Feedor (JF) testified for Petitioner. JF is the office manager for Midas Management. JF has worked at Midas for 12 years and has been the office manager for the last seven to eight years. JF was responsible for supervising the subject building, from March 2014 to December 2014, then Dion took over responsibility for the building.

JF testified that based on her review of the tenant file Petitioner had received no letters from Respondent between February 2014 and September 2014 and that she never spoke with Respondent on the phone from March through December 2014. Incredibly, JF testified that she had no knowledge that repairs were necessary in the Subject Premises during the period that she was responsible for the subject building. JF testified that she had never met Respondent and had never spoken to Respondent. The court did not find JF’s testimony to be very credible or that

she had any knowledge of the events that were the subject of the trial. The court does not accord much weight at all to JF's testimony.

Petitioner next presented the testimony of Peter Ljekosevs (Peter) the Peter for the building.<sup>1</sup> Peter testified that he has worked in the subject building for 29 years. Peter is familiar with the Subject Premises. Peter testified that Respondent advised him of a leak in the Subject Premises in late August 2014 and that Peter went with Respondent to the Subject premises to observe the condition. Peter took pictures of the inside of the Subject Premises and could not believe how extensive the damage to the Subject Premises was. Peter shut the water from the kitchen sink, and told Respondent that when he returned from his vacation he should contact Peter so that Peter could have a plumber come in and fix the leak. When Respondent returned from vacation, Peter testified that Respondent told him he wanted the issue to be resolved in court.

Peter testified that he was aware of a prior leak causing damage to the Subject Premises from the toilet overflowing in the apartment above. Peter did not recall the date of said incident. Peter said a second flood from the same toilet occurred a few weeks after the first flood. Peter testified that he told Respondent he would plaster and paint the Subject Premises once the Subject Premises had fully dried but that Respondent told Peter not to worry about doing the repairs. The court did not find Peter to be a credible witness and does not give great weight to his testimony.

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<sup>1</sup> Peter first attempted to testify without an interpreter, due to difficulties with his initial direct testimony, an interpreter was ordered for Peter's continued testimony but Peter stated he could not understand the interpreter and insisted on testifying in English.

Peter was recalled for additional testimony on October 23, 2015. Peter testified that he had no recollection of any repairs in the Subject Premises in 2014. Peter's testimony was not any more credible the second time around.

The next witness presented by Petitioner was Dion Fotopoulos (Dion). Dion works for Midas Management as a property manager. Dion testified that he did not communicate with Respondent regarding the Subject Premises in September 2014 and that he received no requests for repairs in the Subject Premises in 2014. This testimony is not accurate. Exhibit A-1 in evidence is a letter faxed to Midas Management dated September 10, 2014 detailing the necessary repairs in the Subject Premises. Later in his testimony, Dion acknowledged communications with Respondent's counsel in September 2014, but testified that counsel did not communicate to him that there was a mold condition. Again this is belied by the very fits letter (Ex A-1) which specifically references a mold condition in at least two areas of the Subject Premises.

Dion did not have the scope of work the parties originally agreed to when he testified. Dion testified he could not recall the cost of the proposal from the contractors or even whether he ever consulted with a second contractor. Dion acknowledged that he took pictures on his first visit to the Subject Premises but he was not in possession of those pictures when he testified. Dion testified that he was not aware he was being called to the witness stand on the day of his testimony and that was the reason he did not have the related docuemnts/pictures with him.

The next witness presented by Petitioner was Michael Padernacht (MP). MP works for Midas Management. MP acknowledged receiving a letter from Respondent with a rent check requesting repairs to the Subject Premises, but MP stated that the letter only addressed a request

for extermination. MP has never been to the Subject Premises. MP received and reviewed the scope of work prepared by EO. MP believed the Peter was capable of doing the work outlined. After MP consulted with counsel he decided to agree to have the work performed by outside contractors.

### **DISCUSSION**

New York Real Property Law §235-b provides for an implied warranty of habitability. Landlords of residential premises are required to keep the premises “fit for human habitation” and free of conditions that are dangerous, to the life, health or safety of the tenants ( *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316 at 327).

If the landlord breaches the warranty of habitability, the proper measure for damages is “ ... the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach ( *Park West Management Corp.* 47 N.Y.2d 316, 329).”

The Court must weigh the severity of the violation and duration of the conditions giving rise to the breach, as well as the effectiveness of steps taken by the landlord to abate those conditions (*N. Town Roosevelt Assoc. v. Mullen*, NYLJ, Oct. 27, 1980. P.6, col. 45; *Concord Village Management v. Rubin*, 101 Misc.2d 625).

The court finds that Respondent established that in February 2014 there was a leak in the Subject Premises from the overflowing toilet in the apartment above, which continued unabated for a period of five days. Petitioner was on actual notice of this leak based on the daily conversations between Respondent and Peter. Petitioner took absolutely no action to inspect the Subject Premises or address Respondent’s requests for repairs until August 2014 when a second

incident of water intrusion occurred from a pipe under the kitchen sink. Two more leaks followed and Petitioner did not commence any repairs until July 2015.

The court credits Respondent's position that Peter was not qualified to do the work required to remediate the mold. Petitioner failed to rebut this claim by presenting any credible evidence at trial to the contrary.

Based on the foregoing, the court finds Respondent is entitled to a rent abatement of 50% from March 2014 through August 2014 totaling \$6934.53, and a 70% abatement for the period from September 2014 through November 2014 totaling \$4854.17. From late November 2014, Respondent did hinder Petitioner's attempts to access the Subject Premises. While Peter was not qualified to do the mold remediation, it is not clear that other work could not have been undertaken by Peter from that point forward to ameliorate conditions in the Subject Premises. Therefore, the amount of the abatement Respondent is entitled to from December 2014 through June 2015 will be reduced to 50%, totaling \$8127.94. Respondent is entitled to a 25% abatement for the month of July 2015, totaling \$596.70, as some conditions had already been addressed, and the court finds that Respondent is not entitled to any further abatement beyond July 2015. Thus the total abatement due to Respondent is \$20,513.34.

Based on the foregoing, Petitioner is awarded a final judgment as against Respondent in the amount of \$4224.88 for all rent due through September 2015. Issuance of the warrant is stayed five days for payment.

This constitutes the decision and order of the Court.<sup>2</sup>

Dated: New York, New York  
January 5, 2016

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Sabrina B. Kraus, JHC

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2 Parties may pick up Trial Exhibits within thirty days of the date of this decision from the second floor record room, Window 9, located at 111 Centre Street. After thirty days, the exhibits may be shredded in accordance with administrative directives.

