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TENANTS CLOSE TO GROUND ZERO EXPECTED TO SUE TO BREAK LEASES

By Tom Perrotta

THE FIRST landlord-tenant lawsuit resulting from the World Trade Center attack may be filed in Supreme Court as soon as today, as tension builds among Battery Park residents and owners whose apartment buildings have been battered by dust and debris.

The Sept. 11 attacks that destroyed the World Trade Center Towers have transformed a stylish tip of the Manhattan into a dingy, difficult to reach and, some say, dangerous place. Last week, tenant associations representing 88 Greenwich St., 100 John St., 15 Park Row and 17 John St. all voted for a rent strike, according to their attorney, Jack L. Lester. Mr. Lester said tenants of 88 Greenwich have decided to sue to win the right to break their leases without cost. The suit would rest on claims that their apartment building is uninhabitable because of dust and debris, that the air is unsafe and that many residents are suffering from post-traumatic stress requiring to them to leave for their well being, he said.

Carl F. Schwartz, an attorney at Harrick, Feinstein who represents 88 Greenwich LLC, the building's owner, said early last week that tenants have been offered a 20 percent rent reduction for at least six months, starting Nov. 1, and the opportunity to break their lease and lose only the security deposit.

Mr. Lester said he was unaware of the offer, and added it could prevent a suit if his tenants accept it.

The tenants at 88 Greenwich are not alone. Many others in Battery Park believe their apartments are unsafe and require further environmental testing by an agency of their choosing and paid for by the landlord before they return and start paying rent.

Uncertain of their rights and believing they are entitled to more compensation, tenants have formed associations throughout the Battery Park area and have retained lawyers. Though attorneys who represent the area's landlords and tenants agree that neither side wants to resort to litigation, some disputes are reaching a point where neither side is willing to budge.

"We are trying to avoid litigation if possible," said Steve Swaney a resident at 333 Rector Place and the president of the building's recently formed tenant

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association. Mr. Swaney said that today his group would deliver a letter to the building's owner, Rockrose Development Corp., saying that the company's offer to this point which includes a free month's rent and a 20 percent rent rebate for remaining lease periods, according to a Rockrose attorney is unacceptable. In the letter, the tenants request a month's free rent and a rent reduction of 50 percent for the remainder of their leases, as well as the right to renew a lease at the reduced price for another year. They also want the right to cancel a lease without penalty if they give 30 days notice.

Mr. Swaney said Rockrose representatives did not contact residents until five days after the attacks, and have employed cleaning crews who kicked dust around with brooms and dustpans rather than using special equipment to contain it. Information and regular updates, he said, are important.

"We're doing everything we can to be responsive to these kinds of complaints," said Edward Bear, of Belkin Burden Wenig & Goldman, which represents Rockrose. "Most things tenants are complaining about we have no control over construction in the area, noise, sirens."

Mr. Bear said all Rockrose tenants, which include residents at 333 Rector, 41 River Terrace and 21 River Terrace, have been given a rebate for one month's rent and 20 percent off the remainder of their lease. He said the company hired a cleaning company that it believed was properly certified, and that the building has passed habitability tests. Tenants, he said, can get out of their leases by paying a one-month penalty. Coupled with the rebate, he said, it amounts to losing a security deposit. He said complaints about a lack of communication were valid, but added that Rockrose moved its office from Madison Avenue to Park Avenue South on Sept. 12, and the company was without communication.

Mr. Bear said he too would like to avoid litigation, but that he believes Rockrose is being more than fair.

"Legally, I do not believe that these people are entitled to as much as Rockrose is offering them," he said. "I don't see how a court can fashion a remedy any more generous than what Rockrose has offered."

Mr. Swaney and his fellow tenants have not retained a lawyer, though they are talking to David Rosenberg of Marcus Rosenberg & Diamond. Mr. Rosenberg said he has been retained by the tenants of 41 River Terrace and 21 River Terrace. Mr. Rosenberg said Rockrose's offer, which he said includes signing a liability release form as well as the one-month penalty, is not consistent with circumstances that constitute constructive eviction. If the building is uninhabitable, he said, a tenant's lease obligations are terminated.

Defining "inhabitable" may be the most important aspect of any landlord-tenant litigation that reaches the courts. Michael McKee, associate director of the New York Tenants & Neighbors Association, said that the extraordinary circumstances surrounding the attacks may make it a bit easier for tenant lawyers to win something difficult to come by in New York: the right to break a lease. "I think some tenant attorneys are being very conservative about this, and are telling tenants it's hard to do and here's what you're up against," he said. "Others are

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being more adventurous, thinking that judges may be willing to listen."

Samuel J. **Himmelstein**, an attorney at **Himmelstein**, McConnell, Gribben & Donoghue who has been retained by about a dozen tenants but no associations, said he expects most disagreements to be negotiated out of court.

"On the other hand," he said, "As I sit and listen to these people's stories I try to put myself on the bench as a judge. This would seem to be one of those events where the law might have to bend a little."

Remarking on the kind of situation that might cause a court to diverge from its normal course, Mr. **Himmelstein** noted one story of a couple who do not want to bring their 7-year-old back to their apartment, which overlooks the World Trade Center rubble. They feel it is not a good idea to raise her there.

For the most part, though, he said lawyers who are retained by tenants need to concentrate on warranty of habitability clauses in leases and, to a lesser extent, the emotional trauma caused by the attacks. Some of his clients, he said, also have physical reactions to the dust and surroundings, such as an increase in asthma attacks.

But, he said, arguing for compensation because the neighborhood is now a shambles and lacks subway service and cabs is not likely to be successful.

Both Mr. **Himmelstein** and David F. Frazier, a fellow attorney at his firm, agree that tenants will do best if they organize into large groups.

Scott E. Mollen, a landlord attorney at Herrick, Feinstein and a Law Journal columnist, said his advice to clients is to clean their buildings and keep tenants informed of what steps have been taken to ensure a building is fit for living. He also suggests increasing security at buildings. "Most smart owners are sitting down and offering reasonable concessions that are commensurate with the situation," he said.

Nathan Berman of 17 John St. Associates, which owns 17 John St., feels that some tenants are going too far in their requests. "A phenomenon I find totally mind boggling is some tenants in decontrolled buildings who don't want to leave the area, but just want their rent to be cheaper," he said.

Mr. Berman noted that landlords were not likely to receive special treatment for banks or service providers like Con Edison. He said tenants are not being asked to pay for the week they were evacuated, and he is asking for 60 days notice for those who want to break their leases. If someone has a severe hardship, he said, such as having lost a job, then he would not require notice. "We've had one or two people simply pick up and leave," he said. "We will not pursue those people legally."

He also said he is puzzled about the rationale behind a rent strike, as most of the things tenants are complaining about are beyond a landlord's control.

"It's incomprehensible how people would organize to take advantage, in a way, of

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a tragedy, and take their frustration out on a landlord who probably suffered less physical discomfort, but monetarily a lot more than any individual tenant."

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