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2020-08-26

### MGSA II v. Roman

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#### Recommended Citation

"MGSA II v. Roman" (2020). *All Decisions*. 177.

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**CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART D**

-----X Index No. 007906/18  
MGSA II

Petitioner,

-against-

**DECISION/ORDER**

Johwanna Roman

Respondent,

-----X  
**HON. STEVEN WEISSMAN:**

Petitioner was represented by: Law Offices of Stuart Jacobs  
Vladimir Ampov, Esq.  
Mehjabeen Rahman, Esq.

Respondent was represented by: Mobilization For Justice  
Marina Gonick, Esq.

In this summary nonpayment proceeding an abatement hearing was held on June 3, 2019 (counter 11:16:06 - 11:35:33; 11:41:39 - 12:2:39; 12:58:50 - 1:02:25); June 18, 2019 (10:52:41 - 11:29; 12:17:47 - 12:58); July 15, 2019 (10:47:10 - 11:17:10; 12:10:31 - 1:00); August 1, 2019 (10:24:06 - 11:05:38; 12:40:41 - 12:59); November 26, 2019 (10:34:53 - 10:47:43). There were scheduled dates on August 29 and October 24, 2019, but no testimony was taken on those dates, the matter simply having been adjourned at petitioner's request because counsel Ampov was leaving the firm and they needed to have a new attorney get up to speed and take over the hearing. On November 26<sup>th</sup> petitioner failed to produce what it stated would be its last witness for what would have been the last day of the hearing, but, because then counsel Ms. Rahman was also leaving the firm they wanted yet another adjournment. The Court determined that petitioner should have been prepared to proceed on said date, deemed it had waived the right to produce any further witnesses or evidence, and gave the parties until January 6, 2020, to submit post-hearing memorandums of law. Respondent did submit said memorandum, petitioner failed to

submit any memorandum.

Respondent testified in her own behalf. She indicated there had been ongoing repair issues in the apartment since at least 2016 (there was one serious “C” violation from 2016 for lead paint which is still outstanding according to the latest violations listed on the NYC Department of Housing Preservation & Development [HPD] website), admitted she had no written proof of notice to petitioner of said conditions, the only notice she was able to give was to the building superintendent and through court stipulations in this and prior proceedings wherein she raised all of the repair issues raised herein, coupled with NYC Housing Authority (NYCHA) §8 Housing Quality Standards (HQS) inspections and HPD inspection reports. Respondent also steadfastly alleged that she would call the petitioner’s office and no-one would answer the phone. The Court notes that, by notice dated July 9, 2019 (admitted into evidence on the Court’s own motion), NYCHA notified the parties that, before it could consider respondent’s request for restoration of her NYCHA benefits, “... the apartment *must pass* inspection and all conditions must be found satisfactory as per federal Housing Quality Standards (HQS).” (Emphasis in original document). Ms. Johnson of NYCHA testified that the apartment failed an HQS inspection on July 9, 2019, and (as also stated in the notice referenced above), petitioner had 20 days from the date of the notice to confirm to NYCHA that the listed conditions had been corrected and that, as stated in the notice, “Failure to do so may result in the denial of the former Section 8 participants request for restoration.” In other words respondent could permanently lose her subsidy if petitioner failed to make the necessary repairs.

The conditions listed in the NYCHA notice mirrored some of respondent’s testimony as to the conditions existing in her apartment, i.e. - kitchen, livingroom and bathroom floors; painting in kitchen and bathroom; radiators not working and not properly installed; inadequate heat. Respondent also testified to a lead paint violation placed by HPD on May 17, 2016, a bad smell in her child’s bedroom which caused her child to sleep in either the livingroom or in respondent’s bedroom, as well as other issues including mold and water leaks. The Court notes that, pursuant to the HPD website, as of June 10, 2020, the lead paint, bathroom floor and kitchen painting violations were still outstanding on their records.

Petitioner’s witness, Daniel Caller, the property manager, alleged that there was a failure

by respondent to give access. As respondent's counsel pointed out in the post hearing memorandum, on April 2, 2019, the Court sent a Resource Assistant to respondent's apartment to report if access was given and if petitioner's workers appeared and were ready to work on the repair issues. The Resource Assistant's report was that respondent was home and ready to give access, but the petitioner's workers never appeared. Further, respondent's memorandum also points out that, though petitioner claimed no access, as indicated by changes to the HPD violations report whereby petitioner claimed they had completed some of the repairs, this was only possible if access had been given.

Respondent is a 15 year resident in the apartment, living there with her two minor children, ages 6 and 16 at the time of the hearing. She testified that she only withheld rent when repairs were not done, otherwise always paying her rent timely. She also testified that she had given petitioner access in 2017, 2018 and 2019, but repairs remained undone, and some of the problems were caused by incompetent workers causing new problems while trying to repair old ones. In one instance she stated that the plumber, there to repair her bathroom sink, noticed that the toilet was leaking. He removed both the toilet and sink, placing the toilet in the newly reglazed bathtub, ruining that reglazing job, and then left her without a working bathroom for an entire weekend. She, and her children, were forced to use a neighbor's bathroom throughout the weekend. She also alleged that she had installed the bathroom floor shortly prior to petitioner's workers coming to repair the bathroom, and in attempting to do those repairs they ruined her floor. Respondent is requesting at least a 50% abatement of all rent due from January, 2018, through and including December, 2019, and a "rolling" abatement to continue until all repairs have been made and the apartment passes the NYCHA HQS inspection.

Respondent's testimony, done room by room, raised the following repair issues throughout her apartment:

Second (small) Bedroom (her son's bedroom) - radiator leaks; floor under radiator rotted from leak; wall behind radiator damaged; very bad smell in room (causing headaches and dizziness causing her son to sleep in the livingroom or master bedroom); lead paint violation for heat riser (she says it was painted only).

Bathroom - bathtub needs reglazing (damaged by petitioner's plumber); alleged mold (for which

there were HPD violations placed in 2019); leaks at the toilet, sink and faucets; floor tiles lifting and cracking. Respondent stated that in March/April, 2019, petitioner attempted repairs in this room. They put new tiles down but never fixed the leaks and the new tiles almost immediately started shifting, lifting and cracking; they did not seal around the sink and toilet; claims they used wall tiles on the floor, which are thinner than floor tiles and are very slippery when wet; they did not close holes in the subfloor before putting tiles down - she claimed you could see through the holes into the garbage room below her apartment - and the tiles were not properly glued nor grouted. She stated that, at the time of her testimony (on June 3 & 18, 2019 & July 15, 2019), these issues were still outstanding, that the petitioner sent someone to inspect her apartment who came, looked, left and never came back. Respondent believes the bathroom is a hazard because the tiles are slippery, loose and cracking.

*Kitchen* - ceiling leaks; walls and ceiling water damaged; broken floor tiles; roaches; smells coming up from below floor; used wall tiles on floor which are slippery, uneven and a tripping hazard as they are not level with the older floor tiles; painting from five months prior is yellowing and spotted; gas shutdown by Consolidated Edison - stove replaced with an electric stove using an extension cord for power which she had to buy herself (there are no electric outlets near the stove position); had no stove for a week forcing her to spend more on prepared foods.

*Livingroom* - radiator leaks; floor under radiator rotted from leak; new radiator installed - is smaller than original, had to be placed on wood to raise it to height of pipe connection but floor underneath not fixed prior to installation; no heat in 2018 due to condition of old radiator.

*Master Bedroom* - alleged mold on walls (the Court notes there was no violation for mold in the bedroom but respondent testified that there were black/grey/green spots on two walls); ceiling leak began in 2018 - ceiling fell; radiator leaks, was removed but new radiator was too small and never installed, thus there was no heating capability in this room at the time of hearing; floor under radiator rotted due to leak; wall behind radiator damaged. She testified that after the ceiling was fixed it began staining again very quickly. Her daughter slept in this bedroom, her bed was damaged by leaks and had to be replaced, her toys and other personality were damaged.

On cross-examination respondent testified that the radiator issues, sink and toilet leaks

had all existed since 2018. She stated the reason she waited two months to bring this proceeding back to court after the June 6, 2018, court stipulation was that petitioner told her to work with the super on the repairs, but then the super just kept putting her off and did no work. On the access dates in September, 2018, one person came from petitioner's office who then called his supervisor and, apparently, was told to leave the apartment. No work was done and this person allegedly told respondent there was too much work for one person to do. Respondent did acknowledge that she, and her family, were able to eat, bathe and sleep in the apartment, subject to the headaches and dizziness that she and her children suffered with. She stated she kept the bathroom window closed at all times because she is on the first floor and there are privacy issues with an open bathroom window; that she cleans the bathroom weekly, including wall and floor tiles; that she used no floor covering in the bathroom; that there was still dampness under the sink; the bathtub was still leaking even after repairs were made (it was last repaired in April, 2019, started leaking again by July, 2019). She believes, and said the super told her, that the air conditioner from the apartment above hers was leaking into her bedroom; that she is not aware of any other leaks above her other than the neighbors a/c unit; that she had not spoken to this upstairs neighbor.

It is quite evident to the Court that there were, and remained throughout the proceeding's pendency, major repair issue throughout respondent's apartment, including but not limited to radiator leaks, missing radiator, leak in the master bedroom, leaks in the bathroom at the sink/toilet/bathtub, painting throughout apartment, floor and wall tiles damaged, bad odors (possibly from garbage room below respondent's apartment and damaged sub-flooring).

The Court makes the following findings of fact: there were, and remain, major repair issues in respondent's apartment, existing since 2016-2018 to the present; that petitioner has failed to make many repairs; that repairs that have been made were poorly and improperly done, thus the issues reoccurred; that petitioner received notice of these repair issues from respondent, NYCHA and HPD, yet failed to adequately respond; that due to these ongoing and recurring repair issues, respondent, and her family, have had reduced use of the apartment, all being a violation of the warranty of habitability. This reduction in use effects every room in the apartment: both bedrooms have inadequate or no heat; the livingroom has inadequate heat; the

kitchen, bathroom and livingroom have floor issues; the entire apartment needs painting and plastering; there is evidence of possible mold in the bathroom and master bedroom; there are water leaks in the kitchen, bathroom and master bedroom. Though respondent testified, truthfully, that she and her family have not left the apartment and are able to eat, bathe and sleep in the apartment, that does not diminish the fact that there were, and remain, repair issues that reduce the use of the apartment, are a violation of the warranty of habitability, and that respondent has had to, and continues to have to, work around in order to live and take care of her children.

Taking all of the above into consideration, the Court determines that there has been from at least January, 2018, through the ending of this hearing, a 55% reduction in respondent's use of her apartment and grants her an abatement of 55% of the rent due and owing from January, 2018, through and including December, 2019. Further, there remaining serious repair issues as of the June, 2020, HPD inspection report, the respondent is to receive a 25% abatement of all rent due and owing from January, 2020, until such time as the remaining repairs are properly, and fully, completed and the apartment is found to be properly repaired by an inspection by either NYCHA or HPD. Since petitioner did not put any evidence into the record as to the amount of unpaid rent nor of the monthly rental amount, the Court is unable to give specific amounts for the abatements rendered.

This is the decision and order of the Court. Copies are being emailed to both sides.

Dated: Bronx, New York  
August 26, 2020

  
**STEVEN WEISSMAN**  
**JUDGE, HOUSING COURT**  
\_\_\_\_\_  
STEVEN WEISSMAN, JHC