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Filing Fees Waived Per R. 1:13-2

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| MADELINE TURNER, | : | SUPERIOR COURT OF NEW JERSEY |
| | : | LAW DIVISION |
| | : | SALEM COUNTY |
| Plaintiff, | : | DOCKET NO. SLM-L-120-95 |
| | : | |
| v. | : | <u>CIVIL ACTION</u> |
| | : | |
| RUTH GROSS, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF THE HOUSING AUTHORITY OF THE CITY OF SALEM, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF SALEM, THE CITY OF SALEM, EARL GAGE, MAYOR OF THE CITY OF SALEM, THE OFFICE OF THE HOUSING INSPECTOR, AND THE COMMON COUNCIL OF THE CITY OF SALEM, | : | AMENDED COMPLAINT PURSUANT TO N.J.S.A. 2A: 39-1 <u>et seq.</u> , 42 U.S.C.A 1437d <u>et seq.</u> , 24 C.F.R. 966.4, N.J.S.A. 2A:42-76, N.J.A.C. 5:28-1.1 <u>et seq.</u> , the Municipal Code of the City of Salem, AND Rules 1:6-2, 4:52-1 and/or 4:67-2 |
| Defendants. | : | |

COMES NOW Plaintiff, Madeline Turner, by and through counsel and hereby bring this action and amends her original Complaint for the reasons set forth below:

STATEMENT OF FACTS

1. Plaintiff is a residential tenant of Defendant Housing Authority of the City of Salem (SHA) currently residing at

84 Anderson Drive, Salem, New Jersey.

2. Defendant Housing Authority of the City of Salem (hereinafter "**SHA**") is a federally subsidized public housing authority created under the laws of New Jersey and subject to both state and federal regulation. N.J.S.A. **40A:12A-1** et seq.; 42 U.S.C.A. 1437d et seq.

3. Defendant Ruth Gross (hereinafter "Gross") is the executive director of the SHA and is responsible for the day to day activities at the housing authority. These responsibilities include, but are not limited to, overseeing housing authority employees, protecting tenants rights as regulated by the state and federal laws, and ensuring that the tenants reside in safe, decent and affordable housing.

4. Defendant Board of Commissioners of the Housing Authority of the City of Salem (hereinafter "Board") is a legislatively enacted body designed to oversee the SHA. N.J.S.A. **40A:12A-1** et seq.

5. Defendant City of Salem (hereinafter "City") is a municipality organized under the laws of the State of New Jersey.

6. Defendant Earl Gage, Mayor of the City of Salem, (hereinafter "Mayor") is the duly elected Mayor of the City of Salem.

7. Defendant Office of the Housing Inspector of the City of Salem (hereinafter "Inspector") is the public office duly authorized by the City of Salem to ensure that the housing of the citizens of Salem meets minimum housing standards as set out in the

state and local legislation.

8. Defendant Common Council of the City of Salem (hereinafter "Council") is an entity composed of elected officials charged with governing and overseeing the enforcement of local ordinances in the City of Salem.

9. The Plaintiff and Defendant SHA entered into a written lease agreement in or around 1988 for the property located at 81 Anderson Drive, Salem; New Jersey.

10. Plaintiff had lived at 81 Anderson Drive with her family until the Court ordered her temporary transfer to 84 Anderson Drive on May 3, 1995. She has seven children who reside in the unit with her.

11. The unit located at 81 Anderson Drive has been in a state of disrepair since Plaintiff first moved into it and conditions **which** were once minor became major problems for Plaintiff and her family. These conditions include, but are not limited to the following:

- a. inoperable heating units in most of the rooms;
- b. severe roach infestation;
- c. inoperable toilets;
- d. sewage running down the walls of the downstairs bathroom and hall closet whenever the upstairs toilet is flushed;
- e. water pouring down the walls of the downstairs bathroom whenever the shower is turned on in the upstairs bathroom (this is the only **shower/bathtub** in the house);
- f. the bathtub is falling through the ceiling into the bathroom below;

- g. the sinks throughout the unit are clogged and filled with stagnant water;
- h. electrical problems;
- i. flooring throughout the unit is weak;
- j. the kitchen and bathroom underflooring have been exposed to the bare plywood and
- k. inoperable smoke alarms.

12. Plaintiff has made numerous requests for repairs both to the management at their office and directly to the maintenance men and office employees when they came to her unit for inspections.

13. Repairs did not get made in a timely or workmanlike fashion; many repairs have never been made.

14. Plaintiff's complex went through a modernization process in 1994. Plaintiff's unit was not modernized like the other units in the complex.

15. Plaintiff notified Defendants SHA, Gross and Board by and through counsel, of her intent to withhold her rent of \$149.00 per month until repairs were made to her unit.

16. Defendants SHA, Gross, and Board refused to make repairs.

17. By ordinance, the city of Salem must establish "**minimum** standards for maintenance of all real property located within the City of Salem and also for establishing procedures for the enforcing of said standards." **5:01** Minimum Housing Standards, Municipal Code of the City of Salem. See attached Exhibit "**A**".

18. Plaintiff, by and through counsel attempted to have Defendant City of Salem Housing Officer inspect Plaintiff's Unit to determine its fitness for human occupancy.

19. Defendant Inspector refused to inspect the property. See attached Exhibit "**B**", Affidavit of Roy Myers, Housing Officer for the City of Salem.

20. Defendants City, Mayor and Common Council refused to order Inspector to inspect the property in contravention of their own ordinance.

21. Plaintiff, by and through counsel, retained Scott Lang owner and president of Regional Home Inspection Services of New Jersey, Inc. to inspect the unit. He determined that the unit was unfit for human occupancy. See attached Exhibit "**C**", Affidavit of Scott Lang.

22. Defendants **SHA** and Gross subsequently hired Roy Myers, the Housing Officer for the City of Salem to inspect Plaintiff's unit. He too, determined that the unit was unfit for human occupancy. See attached Exhibit "**B**".

23. Under both state and federal law, Defendants had an obligation to transfer Plaintiff and her family to a safe and habitable unit.

24. Pursuant to 24 CFR § 966.4(h) Defendants SHA, Gross and Board had a duty to offer Plaintiff and her family standard alternative accommodation because they refused to **make repairs** to Plaintiff's unit and in fact, could not have made the necessary repairs within a reasonable time.

25. Pursuant to the Relocation Assistance Act, N.J.S.A. 20:4-1 et seq., Defendants City, Mayor, Common Council and Inspector had a duty to provide Plaintiff and her family with Relocation Assistance once Defendant Inspector determined that the family's unit should be condemned. ✓

26. Defendants Gross, SHA, and Board did not transfer Plaintiff and her family to a habitable unit after being advised by Inspector that the unit was unfit.

27. Defendant Inspector took no official action to condemn Plaintiff's unit after determining that the unit was unfit thus circumventing the need to provide Plaintiff with relocation assistance.

28. On Wednesday, April 19, 1995, Defendant SHA and Plaintiff were before the Honorable G. Thomas Bowen regarding a Motion to Dismiss a non-payment of rent case which had been filed by SHA in January, 1995. SHA's counsel conceded that the matter lacked proper jurisdiction and the matter was dismissed.

29. Plaintiff attempted to proceed on her habitability defense against SHA but was denied because the underlying complaint for eviction had been dismissed.

30. Plaintiff's counsel made an oral motion on Order to Show Cause so that the dangerous conditions upon which Plaintiff and her children were forced to reside could be addressed.

31. SHA's counsel consented to have the motion heard that same day and testimony was given.

32. The Honorable G. Thomas **Bowen** interrupted the Plaintiff's testimony so that the Court could view Plaintiff's residence, as had previously been requested by **SHA's** counsel.

33. The view was completed on April 19, 1995 and a teleconference was set for April 27, 1995.

34. On April 28, 1995 there occurred a teleconference between the Court, Plaintiff's counsel, Defendant SHA's counsel, and a representative from DYFS. At the conclusion of the teleconference, the Court ordered that Plaintiff and her family be transferred **from** 81 Anderson Drive to 84 Anderson. See attached Exhibit "D". A return date was set for May 4, 1995.

35. On May 4, 1995, Plaintiff and SHA's respective counsel met **with** the Honorable G. Thomas **Bowen** in chambers. Plaintiff's counsel was given leave to amend Plaintiff's complaint and to join other Defendants. See attached Exhibit "E".

36. During the in chambers conference, counsel also set forth the terms of their proposed settlement concerning issues related to Plaintiff's temporary transfer to 84 Anderson Drive. That Order was ultimately entered into on July 21, 1995. See attached Exhibit "F".

37. Plaintiff and her family have been living at their temporary residence, 84 Anderson Drive, in unsafe and unsanitary conditions, which despite repeated promises and orders the **SHA** has refused to address. Those conditions include but are **not** limited to the following:

- a. The upstairs bathroom leaks into the downstairs bathroom and hall closet whenever the upstairs toilet is flushed or shower is used; (the upstairs shower is the only shower in the unit)
- b. Electrical problems;
- c. The downstairs toilet does not flush properly;
- d. Interior doors throughout the house are broken or missing;
- e. There are no screens or storm windows in the storm doors;
- f. **Neither** storm door has hardware;
- g. Bailing is not secure; and
- h. Holes in walls and doors.

FIRST CAUSE OF ACTION

Unlawful Entry and Detainer
N.J.S.A. **2A:39-1** et seq.

38. Plaintiff reaffirms and realleges paragraphs one through thirty-seven herein.

39. Plaintiff and her family have been constructively evicted by Defendant SHA, Gross and Board's actions in refusing to make substantial repairs to Plaintiff's permanent unit, 81 Anderson Drive, and in failing to maintain the unit in a safe, decent and sanitary manner.

40. Plaintiff and her family were forced to remain in 81 Anderson Drive despite its uninhabitability. They had no where else to go that was affordable and large enough to **accommodate** a family of eight.

41. Despite her repeated requests, Defendants **SHA**, Gross and Board refused to repair and maintain Plaintiff's unit in a safe, decent and sanitary manner or, in the alternative, to provide Plaintiff's family with affordable substitute housing pursuant to 24 CFR § 966.4(h) attached hereto as Exhibit "G".

42. By information and belief, Defendants **SHA**, Gross, and Board had and continue to have vacant units on its properties that could have been used to house Plaintiff and her family.

43. When the Interlocutory Order was entered transferring Plaintiff and her family to 84 Anderson Drive, it was believed that Plaintiff and her family were being placed in a safe and habitable unit, but within twenty-four hours of the transfer structural, electrical and plumbing problems were found to exist. These problems were and continue to be reported to Defendant **SHA** but have not been repaired or addressed.

44. As a result, Plaintiff and her family continue to be constructively evicted in their temporary home as Defendant's Gross, **SHA** and Board have refused to make substantial repairs and in refusing to make repairs necessary to maintain the unit.

45. These actions constitute an unlawful entry and detainer in violation of N.J.S.A. **2A:39-1 et seq.**

46. Pursuant to N.J.S.A. **2A:39-8**, this Court has Jurisdiction to proceed in a summary fashion.

WHEREFORE, Plaintiff respectfully requests-that the Court:

A. Order and compel Defendants to immediately transfer

Plaintiff to a safe, decent and sanitary unit until such time as either one of their units can be repaired and made habitable;

B. In the alternative, Order and compel Defendants to make immediate repairs to 84 Anderson Drive so that Plaintiff and her family can live in safe, sanitary housing while their permanent unit is being rehabbed.

C. Order and compel Defendants to physically and financially ensure the transfer of Plaintiff's possessions from each unit she is transferred to, up to and including the final transfer back to 81 Anderson Drive;

D. Order and Compel Defendants to aggressively treat the roach and other pest infestation until the infestation is eradicated.

E. Award Plaintiff her family's actual damages;

F. Award Plaintiff a 100% rent abatement for all the months that 81 -Anderson Drive has been unfit for human occupancy and a reasonable rent abatement for the conditions which existed in the unit prior to the time that the unit was determined to be unfit for human occupancy;

G. Award Plaintiff a reasonable rent abatement for the conditions existing at 84 Anderson Drive from May, 1995 until such time as the conditions have been repaired or Plaintiff has been transferred to a safe, decent, and habitable unit;

H. Order that a Certificate to Occupy be **issued** before Plaintiff be returned to 81 Anderson Drive;

I. Assess all costs of litigation against Defendants,

including, but not limited to the costs incurred in hiring the independent housing inspector to inspect Plaintiff's unit and testify on her behalf;

J. Assess reasonable attorney's fees against Defendants;
and

K Award Plaintiff any other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Breach of Duty of Habitability/Duty to Repair

47. Plaintiff reaffirms and realleges paragraph one through forty-six herein.

48. Defendants **SHA**, Gross and Board are under a duty to make repairs to Plaintiffs' unit pursuant to the terms of the parties' lease, 24 CFR § 966.4(h); and Plaintiff's underlying warranty of habitability.

49. Defendants **SHA**, Gross and Board have breached their duty by not making repairs to either unit in a timely fashion.

50. In breaching their duty to make timely repairs, Defendants **SHA**, Gross and Board have caused actual damages to Plaintiff. Those damages include, but are not **limited** to, the following:

a. Loss of use and enjoyment of her possessions;

- b. Loss of use and enjoyment of substantial areas of her apartment; and
- c. Mental and emotional distress.

Court: WHEREFORE, Plaintiff respectfully requests that the

A. Relieve Plaintiff of any obligation to pay rent until all the repairs to her temporary unit have been completed or she and her family have been housed in suitable substitute housing or renovations and repairs to her permanent unit, 81 **Anderson** Drive, have been completed;

B. Order and compel Defendants to immediately transfer Plaintiff to a safe, decent and sanitary unit until such time as either one of their units can be repaired and made habitable;

C. In the alternative, Order and compel Defendants to make immediate repairs to 84 Anderson Drive so that Plaintiff and her family can live in safe, sanitary housing while their permanent unit is being rehabbed.

D. Order and compel Defendants to physically and financially ensure the transfer of Plaintiff's possessions from each unit she is transferred to up to and including the final transfer back to 81 Anderson Drive;

E. Order and Compel Defendants to aggressively treat the roach and other pest infestation until the infestation is eradicated.

F. Award Plaintiff her family's actual damages;

G. Award Plaintiff a 100% rent abatement for all the

months that 81 Anderson Drive has been unfit for human occupancy and a reasonable rent abatement for the conditions which existed in the unit prior to the time that the unit was determined to be unfit for human occupancy;

H. Award Plaintiff a reasonable rent abatement for the conditions existing at 84 Anderson Drive from May, 1995 until such time as the conditions have been repaired or Plaintiff has been transferred to a safe, decent, and habitable unit;

I. Order that a Certificate to Occupy be issued before Plaintiff be returned to 81 Anderson Drive;

J. Assess all costs of litigation against Defendants, including, but not limited to the costs incurred in hiring the independent housing inspector to inspect Plaintiff's unit and testify on her behalf;

K. Assess reasonable attorney's fees against Defendants;
and

L. Award Plaintiff any other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Failure to follow the requirements set forth
in the New Jersey State Housing Code

(N.J.S.A. **2A:42-76**; N.J.A.C. **5:28-1** et seq.)

51. Plaintiff reaffirms and realleges paragraphs one through fifty herein.

52. The New Jersey State Housing Code sets forth **minimum** standards to guide the officer(s) who are authorized by adopting

local ordinance(s) to exercise the powers set forth in the act, in determining the fitness of a building for human habitation, use or occupancy. N.J.X.C. **5:28-1.1** et seq.

53. The New Jersey State Housing Code requires, among other things that:

- a. plumbing fixtures be maintained in good working condition (N.J.A.C. 5:28-1.4(d));
- b. every electrical outlet and fixture must be maintained in good and safe condition and connected to the source of electrical power (N.J.A.C. **5:28-1.6**);
- c. heating facilities must be properly installed, maintained in good and safe working condition and be capable of safely and adequately heating all habitable rooms and bathrooms (N.J.A.C. **5:28-1.8**);
- d. every unit be free from rodents, vermin and insects (N.J.A.C. **5:28-1.10(f)**);
- e. every exterior window and door must be supplied with properly fitting screens which are in good repair from May through October ((N.J.A.C. **5:28-1.10(f)**);

54. Nothing in the New Jersey State Housing Code would exempt Public Housing Authorities from complying with its regulations.

55. Defendants SHA, Gross, and Board have failed to maintain and repair Plaintiff's unit in compliance with the requirements of the New Jersey State Housing Code.

56. Defendants City, Mayor, Inspector and Council have failed to enforce the New Jersey State Housing Code on all residential properties within the City limits.

57. Specifically, Defendants City, Mayor, Inspector and

Council have refused and continue to refuse to allow the Defendant Inspector to inspect the rental properties owned by Defendant **SHA** to determine fitness of the dwellings for human habitation, use, or occupancy.

58. By information and belief, the present housing inspector would inspect units owned by Defendant SHA if permitted to do so by Defendants City, Mayor, and Council.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Order that Defendant **SHA's** properties are subject to the provisions of the New Jersey State Housing Code;

B. Order that 84 Anderson Drive or any alternative unit that Plaintiff and her family are temporarily transferred to be inspected for compliance with the provisions of the New Jersey State Housing **Code;**

C. Order that 81 Anderson Drive be inspected for compliance with the provisions of the New Jersey State Housing Code before Plaintiff and her family may be returned to that unit;

D. Specifically Order that the Office of the Housing Inspector is the entity responsible for determining, inspecting, and insuring compliance with the New Jersey Housing Code for **all** Salem residences, including those residences owned by the Salem Housing Authority; and

E. Any further relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Failure to apply the Minimum Housing Standards of the Municipal Code of the City of Salem on the Housing Authority of the City of Salem, its agents and employees

(Chapter V., Municipal Code of the City of Salem)

59. Plaintiff reaffirms and realleges paragraphs one through fifty-eight herein.

60. By information and belief, Defendant Council created the Minimum Housing Standards of the Municipal Code of the City of Salem in or **arund** 1975. These Standards have been amended by municipal ordinance on several occasions.

61. Defendant Council last attempted to amend Chapter V., the Minimum Housing Standards of the Municipal Code of the City of Salem on or about December 3, 1990. Ordinance No. 90-17, Salem Common Council.

62. By information and belief, Ordinance No. 90-17 was to have repealed the Minimum Housing Standards and replace it with the Property Maintenance Code of the City of Salem.

63. By information and belief, "**The** Property Maintenance Code of the City of Salem" has never been completed or adopted by Defendant Council. As a result, the "Minimum Housing Standards" remains in effect.

64. Pursuant to the terms of the '*Minimum Housing Standards' the Housing Inspector must inspect:

Whenever a petition is filed with the Chief Housing Inspector or Housing Inspector by a public authority or at least five (5) residents of the municipality charging that any building is unfit for human habitation or occupancy or use or whenever it appears to the Housing Inspector (on his motion) that any building is unfit for human habitation or occupancy or use... "Minimum Housing Standards" H-103.0(a) (Repair, Closing and Demolition of Unfit Premises Pursuant to N.J.S.A. 40:48-2.5)

65. The "Minimum Housing Standards," as amended by Ordinance No. 8803, requires that the Housing Inspector inspect every dwelling unit in Salem before that unit may be rented. Ordinance No. 8803, An Ordinance Revising and Amending Sections H-302.1 and H-405.1 of Chapter V, Minimum Housing Standards of the Municipal Code of Salem (adopted 7/17/88).

66. Pursuant to Ordinance No. 8803, No owner "shall rent, lease, let or allow to be occupied, whether for consideration or not. . .any dwelling, dwelling unit, hotel, rooming house or rooming unit" unless a Certificate To Occupy has been obtained from the Office of the Housing Inspector (Id. at H-405.1)

67. **By** information and belief, Defendant SHA did not obtain a Certificate To Occupy before placing Plaintiff and her family in the unit located at 81 Anderson Drive.

68. By information and belief, Defendant SHA has never sought a Certificate to Occupy before placing a tenant family in one of its units.

69. By information and belief, Defendant Inspector has never issued a Certificate to Occupy for a Salem Housing Authority unit.

70. The Office of Defendant Housing Inspector refused to

inspect 81 Anderson Drive upon receipt of Plaintiff's complaint that the unit was unfit for habitation, use or occupancy claiming that it did not inspect units owned by Defendant **SHA**.

71. By information and belief, Defendant Housing Inspector has inspected a number of properties owned by Defendant **SHA** upon the specific request of Defendant SHA.

72. By information and belief, at no time has the "Minimum Housing Standards" been amended to exclude residential property owned by Defendant SHA from the terms and conditions set forth in the ordinance.

73. The "Minimum Housing Standards" requires, among other things that:

- a. each unit have structurally sound handrails where there are more than four (4) steps (**H-302.6.2**);
- b. that there be screens in all exterior doors and windows from June 1 through October 15th of each year (**H-302.9.2**);
- c. units be kept free of insect infestation and that the landlord be responsible for the extermination of the same in the case of multiple dwelling units (**H-303.7**);
- d. the interior structure of the dwelling be structurally sound, free from defects, painted (with non-lead based paint) and decorated (**E-303.8**);
- e. heating facilities must be properly installed, maintained and be in good working condition (**H-400.4**); and
- f. there be at least one (1) working **smoke** alarm in each dwelling unit (**H-400.7**).

74. Defendants SHA, Gross and Board, in failing to

maintain Plaintiff's unit, violated all of the above-listed requirements of the "Minimum Housing Standards."

75. Defendants City, Mayor and Council failed to protect and secure the health and safety of Plaintiff and her family in refusing to enforce the requirements of the "Minimum Housing Standards" on Defendants **SHA**, Gross, and Board.

WHEREFORE Plaintiff respectfully requests that the Court:

A. Order Defendants **SHA**, Gross, and Board to act in accordance with the terms of the "Minimum Housing Standards" and any other municipal ordinance which may supersede it.

B. Order Defendants City, Mayor, Council, and Housing Inspector to **enforce** the terms and regulations of the "Minimum Housing Standards" and any other municipal ordinance which may supersede it against Defendant **SHA**, its agents and employees.

C. Specifically Order that Defendant Office of the Housing Inspector inspect every dwelling unit owned by the Housing Authority of the City of Salem prior to each new tenancy to determine whether a Certificate to Occupy should be granted for each specific **unit** and grant or deny the same.

D. Specifically Order that Defendant Office of the Housing Inspector is to inspect any dwelling unit owned by the Housing Authority of the City of Salem upon receipt of a complaint concerning unfitness for habitation, use, or occupancy.-'

E. Assess all costs of litigation against Defendants, including but not limited to the costs incurred in hiring the

independent housing inspector to inspect Plaintiff's unit and testify on her behalf;

F. Assess reasonable attorneys fees against Defendants;

G. Award Plaintiffs any other relief that the Court deems just and proper.

CAMDEN REGION&LEGAL SERVICES, INC.

BY: 

DONNA M. CANTOR
Staff Attorney

Date: September 21, 1995

CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)

I **certify** that the matter in controversy is not the subject of any other action or arbitration proceeding, and that no other parties should be joined in this action.

Defendant **SHA** lost its action to terminate Plaintiff's lease for non-payment of rent, LT-268-95, on September 5, 1995.

CAMDEN REGIONAL LEGAL SERVICES, INC.

BY: 

DONNA M. CANTOR
Staff Attorney

DATED: September 21, 1995