

IN THE CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART X

Present: Room 854

NINTH AVENUE REALTY, LLC	)
	)
Petitioner-Landlord/	)
Counterclaimee,	)
	)
-against-	)
	)
	)
	)
Respondent-Tenants/	)
Counterclaimants.	)
	)

L&T INDEX NO. [REDACTED]  
File No. [REDACTED]

TO: NINTH AVENUE REALTY, LLC  
[REDACTED]

**RESPONDENT-COUNTERCLAIMANT'S REQUEST FOR PRODUCTION OF  
DOCUMENTS, FIRST SET OF INTERROGATORIES, AND  
REQUEST FOR ADMISSIONS**

The Respondent-Counterclaimants [REDACTED] by counsel Adam D. Dolce, and pursuant to the CPLR §§ 3120, 3123, and 3130 [*et seq.*], hereby submits its Request for Production of Documents, the First Set of Interrogatories, and Request for Admissions to the Petitioner, NINTH AVENUE REALTY LLC.

Counterclaimants request that Ninth Avenue Realty, LLC answer the following Interrogatories and Admissions in writing and under oath, and to return said answers, admissions, and documents to Adam D. Dolce at his mailing address indicated below within twenty (20) days of the date of service as stated on the Certificate of Mailing attached hereto.

**GENERAL DEFINITIONS**

1. "Apartment" means [REDACTED]
2. "Building" means the structure located at 408-410 W. 44<sup>th</sup> Street, New York, NY 10036.

3. "Building Permit" or "Construction Permit" means any written authorization received by You from the New York City Department of Buildings, or any agency governing construction and renovations in New York City, relating to construction and/or renovations on the Apartment
4. "Certificate of Occupancy" relates to the definition given it by the NYC Department of Buildings under the provisions of the New York City Administrative Code, Title 27.
5. "Document" or "Documents" include any written, printed, typed, or other graphic or photographic representation or reproduction of any nature, any electronic representation or communication, and any audio or video recordings in your possession, custody, or control, or known by you to exist or to have existed. All copies of documents containing any alterations or annotations, or that differ in any other way from the originals or copies referred to in the preceding sentence, are deemed separate documents from the originals or copies.
6. "Heat" or "Central Heat" means and relates to the internal temperature, including the mechanism monitoring/providing this internal temperature, of the Apartment, Building, or Individual Apartment Units as defined and contemplated by the New York City Administrative Code, Title 27.
7. "Identify" used in reference to an individual person, means to state the person's full name and present or past known address.
8. "Identify" used in reference to any other person, means to state the type of entity, the person's full name, occupation and present or last known address, and last known employment.
9. "Identify" used in reference to a document, means to state:
  - i. its date;
  - ii. the author or addresser;
  - iii. the addressee;
  - iv. all recipients of all copies;
  - v. its subject matter;
  - vi. the type of document;
  - vii. the name and last known address of the person who presently has custody of it.
10. "Identify" used in reference to a communication, means to state:
  - i. its date;

- ii. the place where it occurred;
  - iii. the type of communication;
  - iv. its substance;
  - v. the identity of the person who made it;
  - vi. the identity of the person who received it or a copy and all other persons present;  
and
  - vii. the name and last known address of the person who presently has custody of it.
11. "Individual Apartment Units" means other apartments in the Building You lease and/or rent to persons seeking residence in New York City,
  12. "Lease Agreement" means any contract, writing, or mutual understanding executed by You for the rental of the Apartment located in Your Building.
  13. "Monthly Obligations" or "Rental Obligations" means the amount of rent due from the Tenants for the benefit of You, bestowed per month under the terms of the Lease or Renewal Agreement based on the year of each agreement.
  14. "Person" means and includes any individual, family, corporation, business, partnership, sole proprietorship, union, trust, association, any unincorporated organization or governmental or political subdivision thereof, federation, joint stock company, or any kind of entity.
  15. "Renewal Agreement" means any Lease Agreement entered on or after the original date of the tenancy specified in the original Lease Agreement.
  16. "Rent Registration Statement" means and relates to the annual rent stabilization form You are required to provide as contemplated by the New York City Administrative Code, Title 26.
  17. "Residential Use" relates to the intent and occupation of the Apartment or Individual Apartment Units by Persons for living purposes.
  18. "Super" or "Superintendent" means the on-site resident-employee for the Building believed to be named Jose Castro.
  19. "Tenants," "Respondents," and/or "Counterclaimants" means the individuals [REDACTED] [REDACTED] whether referenced separately or together.
  20. "You" or "Your" or "Petitioner" means Ninth Avenue Realty, LLC, and/or any and all employees, agents, and representatives acting within the scope of their employment under Ninth Avenue Realty, LLC.

## **REQUEST FOR PRODUCTION OF DOCUMENTS**

### **Instructions**

1. Pursuant to the CPLR § 3120 the Respondent-Counterclaimants [REDACTED] [REDACTED] hereby request that the named Plaintiff, Ninth Avenue Realty, LLC to produce and furnish a legible, true and correct copy of the following documents to the mailing address as given below.
2. This request for production of documents is directed towards all information known or available to Ninth Avenue Realty, LLC. Where requested documents do not exist, please state the documents do not exist.
3. This is a continuing request for documents. If after serving the requested documents, Ninth Avenue Realty, LLC obtains further documentation pertaining to that request for production, Ninth Avenue Realty, LLC is requested to serve a supplemental answer setting forth copies of those additional documents.

### **Documents Requested**

4. Produce the original Lease Agreement executed between You and the Tenants executed sometime on or before April 1<sup>st</sup>, 2011.
5. Produce each subsequent Renewal Agreement between You and the Tenants executed sometime on or before April 1<sup>st</sup>, 2012, April 1<sup>st</sup>, 2013, and April 1<sup>st</sup>, 2014, respectively.
6. Produce a list of the names of the Persons who have previously entered into a Lease Agreement with You for the Apartment from 1998 through April 2011.
7. If the Apartment was not part of the original dwelling, but was later created by partition or other construction, please provide any and all Building/Construction Permits sought as they relate to the addition, construction, and/or renovation of the Apartment You would have received from 1998 to the present.
8. Produce a true copy of the Certificate of Occupancy for the Building and/or, if applicable, for the Apartment.
9. Produce Rent Registration Statements filed on the Apartment for years 2008 through 2014.

## **RESPONDENT'S FIRST SET OF INTERROGATORIES**

### **Instructions**

1. In answering these interrogatories, You are required to furnish all information that is presently available to you or that can be obtained through reasonable inquiry; including information in the possession of your attorneys, accountants, advisors or other person directly or indirectly employed at, or connected with, you or your attorneys, and anyone else otherwise subject to your control.
2. Answer each interrogatory separately and fully in writing and under oath; unless it is objected to, in which event the reason for each objection must be stated in lieu of the answer.
3. If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information, answer to the extent possible specifying your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
4. A question that seeks information contained in or information about or identification of any documents may be answered by providing a copy of such document for inspection and copying, or by furnishing a copy of such document without a request for production.
5. Your reply to each interrogatory should include attachments of as many pages as necessary to fully and completely respond and should be identified by the number corresponding to each interrogatory as set forth below.
6. If you claim that an attorney-client privilege or the attorney work-product doctrine is applicable to any document the identification of which is sought by the interrogatories, state and identify as to each document:
  - i. Date the document was prepared or executed;
  - ii. Drafter or author of document;
  - iii. Each and every person who prepared or assisted in the preparation of the document;
  - iv. Each and every person who received the document;
  - v. Present location and custodian of the document; and
  - vi. Explain the circumstances upon which you base your claim of privilege.

7. Grammar and syntax as used in these interrogatories shall be construed and interpreted to give proper meaning to its context. By way of illustration, and not by way of limitation, the singular may be construed to include the plural, the plural the singular, and use of gender or tense may be construed to include all genders and tenses.

### **Interrogatories**

8. **Interrogatory #1:** Identify the Person answering these interrogatories by stating that Person's full name, home address, business address, home telephone number and business telephone number.
9. **Interrogatory #2:** Were You aware the Apartment did not have Heat or even the mechanisms to provide Heat?
10. **Interrogatory #3:** Did any previous Persons, leasing the Apartment prior to the Tenants, complain to or inform you the Apartment did not have Heat?
11. **Interrogatory #4:** If yes to either 2 or 3, directly above, when were You made aware of this?
12. **Interrogatory #5:** How long has the Super worked for You?
13. **Interrogatory #6:** During the time the Super worked for You, did he always work at the Building?
14. **Interrogatory #7:** If no, when did he begin working at the Building?
15. **Interrogatory #8:** Does the Super live in an Individual Apartment Unit located within the Building?
16. **Interrogatory #9:** Identify the Person You contracted or used to install Heat in the Apartment on February 1<sup>st</sup>, 2014.

## PETITIONER'S REQUEST FOR ADMISSIONS

### Instructions

1. This Request for Admissions is directed towards all information contained in the records and documents in Ninth Avenue Realty, LLC's custody or control or available to the same upon reasonable inquiry. Your answer to each request shall specifically admit or deny the matter, or set forth in detail the reasons why you cannot truthfully admit or deny the same.
2. Each individual request is to be deemed a continuing one and Ninth Avenue Realty, LLC, or an authorized agent or officer of the same, is expected to supplement their answer should information be obtained after the initial response is provided.
3. As to those individual requests Ninth Avenue Realty, LLC fails to answer in whole or in part, the subject matter of that admission will be deemed confessed and stipulated as fact to the court. Moreover, if Ninth Avenue Realty, LLC fails to admit the truth of any matter requested under CPLR § 3123 and the Respondent-Counterclaimants thereafter proves the truth of the matter, the Respondents may apply to the Court for an order requiring you to pay the reasonable expenses incurred in making such proof; including reasonable attorney's fees.

### Request for Admissions

4. **Request No. 1:** Admit that You currently own and have owned the Building since the date of a deed transfer executed on or around June 30<sup>th</sup>, 1998 between You, the grantee, and the entity then known as Durst Partners, LLC, the grantor.
5. **Request No. 2:** Admit that the Building contains more than six Individual Apartment Units other than the Apartment used by the Tenants.

6. **Request No. 3:** Admit that You lease to Persons, for residential use, these other Individual Apartment Units.
7. **Request No. 4:** Admit the Tenants have rented the Apartment from You since April 2011.
8. **Request No. 5:** Admit that You employ the Super.
9. **Request No. 6:** Admit that the Super was notified as early as December 2012 that the Apartment did not have Heat nor the apparatus to provide Heat.
10. **Request No. 7:** Admit you received the Document attached with these papers as **Exhibit A**<sup>1</sup> sometime on or around January 24<sup>th</sup>, 2014.
11. **Request No. 8:** Admit you posted the Document attached with these papers as **Exhibit B**<sup>2</sup> on the Apartment's door on or around January 27<sup>th</sup>, 2014.
12. **Request No. 9:** Admit You installed Heat in the Apartment on February 1<sup>st</sup>, 2014.
13. **Request No. 10:** Admit You received the Document attached with these papers at **Exhibit C**<sup>3</sup> sometime shortly after February 6<sup>th</sup>, 2014.
14. **Request No. 11:** Admit You posted the Document attached with these papers as **Exhibit D**<sup>4</sup> on the Apartment's door on or around February 19<sup>th</sup>, 2014.
15. **Request No. 12:** Admit You posted the Document attached with these papers as **Exhibit E**<sup>5</sup> on the Apartment's doors on or around April 30<sup>th</sup>, 2014.

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<sup>1</sup> Exhibit A is a true and accurate copy of the Notice to Withhold Rent/Demand Letter sent by counsel on January 22<sup>nd</sup>, 2014

<sup>2</sup> Exhibit B is a true and accurate copy of a purported Notice to Quit posted on or around January 27<sup>th</sup>, 2014

<sup>3</sup> Exhibit C is a true and accurate copy of a letter sent by counsel to the law office of Rose & Rose, attorneys presumably retained by Ninth Avenue Realty, LLC

<sup>4</sup> Exhibit D is a true and accurate copy of a purported Notice to Quit posted on or around February 19<sup>th</sup>, 2014

<sup>5</sup> Exhibit E is a true and accurate copy of a purported Notice to Quit posted on or around April 30<sup>th</sup>, 2014



16. **Request No. 13:** Admit You received the Document attached with these papers as **Exhibit F**<sup>6</sup> sometime shortly after May 12<sup>th</sup>, 2014.

17. **Request No. 14:** Admit with the exception of one month's Rental Obligation, the Tenants have paid their Monthly Obligations since the inception of their Lease Agreement to the present date.

Dated: August 17, 2014

Request for Discovery prepared and submitted:

By: \_\_\_\_\_

Adam D. Dolce, Esq.

[REDACTED]  
[REDACTED]  
[REDACTED]

*Attorney for the Respondent*

RETURN DISCOVERY RESPONSES TO MAILING ADDRESS BELOW:<sup>7</sup>

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<sup>6</sup> Exhibit F is a true and accurate copy of a letter sent by counsel to Ninth Avenue Realty, LLC on or around May 12<sup>th</sup>, 2014

<sup>7</sup> Electronic Responses can also be provided to the email at [dolce.adam@gmail.com](mailto:dolce.adam@gmail.com)

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that paper and electronic versions of the foregoing Respondent's Request for Admissions, Documents, and Interrogatories were sent to the Petitioner's counsel, identified below, by certified mail this \_\_\_\_ day of \_\_\_\_\_, 2014.

Dated: August 17, 2014

Respectfully,

By: \_\_\_\_\_

Adam D. Dolce, Esq.

  
  


*Attorney for the Respondent*

Mailed from: