

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DARRELL MAYS and TARA MAYS

Index No.

Plaintiff(s),

Summons

-against-

JOHN ROBERTSHAW, individually and as Trustee of the
ROBERTSHAW CHARITABLE REMAINDER TRUST,
dated June 22, 2016 and ELIZABETH ROBERTSHAW

Date Index No. Purchased: March 1, 2019

Defendant(s).

To the above named Defendant(s)

JOHN ROBERTSHAW and ELIZABETH ROBERTSHAW

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR §§ 503 and 507
which is the residence of the Plaintiffs and location of the real property

Dated: 3/1/2019

CHIPMAN BROWN CICERO & COLE, LLP

by 

Adam D. Cole

Attorneys for Plaintiff

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New York, New York 10017
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DARRELL MAYS and TARA MAYS,

Plaintiffs,

Index No.

-against-

JOHN ROBERTSHAW, individually and as Trustee of the
ROBERTSHAW CHARITABLE REMAINDER TRUST,
dated June 22, 2016 and ELIZABETH ROBERTSHAW,

Defendants.

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Plaintiffs Darrell Mays and Tara Mays (the “Mays” or “Plaintiffs”), by their attorneys Chipman, Brown, Cicero & Cole LLP, as and for their Complaint against Defendants, John Robertshaw, in both his individual capacity and as Trustee of the Robertshaw Charitable Remainder Trust, dated June 22, 2016, and Elizabeth Robertshaw (collectively, the “Defendants”), allege as follows:

INTRODUCTION

1. On the very first exciting day of their \$43,000 per month Manhattan townhouse mansion rental, the Mays discovered they had a rodent problem. The townhouse mansion (the “Mansion”) consists of approximately 10,000 square feet of living space and straddles 166 East 81st and 179 East 80th Streets. The Mansion had been marketed, through Defendants’ broker, the Corcoran Group, as an “extraordinary and truly rare property,” thereby justifying its sizeable monthly rent.

2. Over the course of only a week or two thereafter, the “problem” that emerged was that the “extraordinary and truly rare” Mansion was extraordinarily and truly infested with vermin. Over the next six months, multiple attempts were made in vain to battle the severe infestation, with

the Mays finding themselves continuously disposing of dead rodents, dodging live rodents, cleaning rodent droppings and living with the toxic odor caused when unlocated dead rodents decompose. Indeed, the Mays ultimately became prisoners to the infestation and were forced to choose between staying close to home to be available to endure the gruesome and repugnant chore of disposing of the newly-dead or enjoying a vacation only to return to the toxic stench of decomposed vermin. Under any definition, the Mansion was, and remains, uninhabitable for its purpose as a residence where humans are meant to live.

3. Defendants knew when they marketed the purportedly “extraordinary and truly rare property” both for sale over the course of at least one year, and then for lease, that the Mansion was infested with vermin and, as a result, was unfit for human habitation and was dangerous to health, life and safety. Defendants also knew, or should have known, that the Mansion’s central functions – such as its air conditioning, heating, refrigerator, washer and other elements – were in disrepair and failing.

4. Defendants nevertheless represented to the Mays before and on June 30, 2018 that the Mansion was “fit for human living and there is no condition dangerous to health, life or safety.” Both representations were knowingly false when made. Defendants also promised before and on June 30, 2018 that the Mansion would provide the Mays with two years of quiet enjoyment. The promises were also knowingly false.

5. Relying upon Defendants’ false representations and promises, the Mays entered into two-year leases (the “Leases”), agreeing to pay \$43,000 per month for the opportunity to make the Mansion their home. Copies of the Leases are attached as Exhibit “A”.

6. The vermin infestation constitutes a breach of the Defendants’ express warranty of habitability, entitling the Mays to damages or a 100% abatement in past and future rent. In this

case, however, Defendants' affirmative representations that the Mansion was fit for human living and there was no condition dangerous to health, life or safety, were knowingly false when made, were fraudulent, and thus entitle the Mays to rescind the Leases. Stated simply, the Defendants knew that the Mansion was infested with vermin and not only failed to advise the Mays, but they then lied about it.

7. The vermin infestation along with the Mansion's failing systems also resulted in a revolving door of handymen, pest control service people, repair people and contractors that on an almost weekly, and sometimes daily, basis interfered with the Mays' quiet enjoyment of what was supposed to have been an "extraordinary and truly rare property." In particular, over the course many months – and sometimes daily – the Defendants' "handyman" – Jerek – was dispatched to investigate water leaks, refrigerator malfunctions, heating malfunctions, air conditioning malfunctions and to try seal the rodents' entry points into the Mansion. When he was unable to accomplish his tasks – a common occurrence – a never ending parade of air conditioning and heating repair people, appliance repair people and other contractors filled the Mansion, thereby directly interfering with the Mays' daily lives.

8. During one two-week stint, contractors attempted to remediate the infestation by removing large kitchen appliances and engaging in a patchwork of "band-aide" type repairs that those same contractors confirmed would likely prove unsuccessful in beating back the vermin. Indeed, the demolition-type work failed, the Mansion remains infested and the Mays have lived for months in a manner contrary to the very purpose of the Leases and to any semblance of quiet enjoyment. For these separate reasons, the Mays are entitled to rescind the Leases, to damages and/or to a 100% rent abatement.

9. Ultimately, after six months of enduring conditions that rendered their purported “home” unfit for human habitation under any definition, and with no foreseeable end in sight, the Mays notified the Defendants that they intended to vacate the Mansion on March 5, 2019, which would have occurred earlier had they been able to retain the services of a moving company on limited notice. In short, the Mays have been constructively evicted by the severe and unending rodent infestation along with the unending stream of exterminators, repair persons and contractors dispatched in an attempt to remediate the scourge and to repair the Mansion’s failed systems.

10. By this action, the Mays seek in the first instance rescission of the Leases on the ground that they were fraudulently induced, have been materially breached and have failed their fundamental purpose. Alternatively, the Mays are entitled to an abatement of 100% of the rent payments already made and any remaining rent due under the Leases due to Defendants’ repeated and material breaches of the contractual warranty of habitability and implied warranty of quiet enjoyment.

THE PARTIES

11. Plaintiffs Darrell and Tara Mays, as of the date of this Complaint, reside at the Mansion located at 166 East 81st Street and 179 East 80th Street, New York, New York. The Mays have been constructively evicted and are vacating the Mansion at the earliest moment on which they were able to secure the services of a moving company.

12. Upon information and belief Defendants John and Elizabeth Robertshaw (the “Robertshaw Defendants”) reside at 43 Field Road, Clinton Corners, New York.

13. Upon information and belief, prior to November 18, 2016, Defendants John and Elizabeth Robertshaw owned the Mansion located at 166 East 81st Street and 179 East 80th Street, New York, New York.

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