

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

A SEELAH DIAMOND and RUTH BRITT, on behalf of
themselves and a class of those similarly situated,

Plaintiff(s),

-against-

NEW YORK CITY HOUSING AUTHORITY and
OYESHOLA OLATOYE, in her official capacity as
Chairperson of the New York City Housing Authority,

Defendant(s).

Index No.

Summons

Date Summons Filed: April 12, 2018

To the above named Defendant(s)

NEW YORK CITY HOUSING AUTHORITY and
OYESHOLA OLATOYE, in her official capacity as Chairperson of the New York City Housing Authority
250 Broadway
New York, New York 10007

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(a) and 507
which is where Def. NYCHA has its principal office and a substantial part of the events/omissions giving rise to the claims occurred

Dated: New York, New York

April 12, 2018

Willkie Farr & Gallagher LLP

by M. Eaton

Mary Eaton

Attorneys for Plaintiff

A' SEELAH DIAMOND and RUTH BRITT

787 Seventh Avenue
New York, New York 10019
(212) 728-8000

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

-----X

A'SEELAH DIAMOND and RUTH BRITT, on
behalf of themselves and a class of those similarly
situated,

INDEX NO.

Plaintiffs,

- against -

COMPLAINT

NEW YORK CITY HOUSING AUTHORITY and
OYESHOLA OLATOYE, in her official capacity as
Chairperson and Chief Executive Officer of the New
York City Housing Authority,

Defendants.

-----X

Plaintiffs designate the County of New York as place of trial.

Plaintiffs A'Seelah Diamond and Ruth Britt, by and through their attorneys, The Legal Aid Society and Willkie Farr & Gallagher LLP, individually and on behalf of a class of those similarly situated (collectively, "Plaintiffs"), file this Complaint against Defendants New York City Housing Authority ("NYCHA") and Oyeshola Olatoye, Chairperson and Chief Executive Officer of NYCHA, in her official capacity (collectively, "Defendants"). Plaintiffs respectfully allege as follows:

PRELIMINARY STATEMENT

1. NYCHA was created in 1935 to provide decent, affordable housing for low- and moderate-income New Yorkers. Today, NYCHA promises the over 400,000 residents of its 326 housing developments "A Home to Be Proud Of."¹ This promise includes a pledge to "provide[]

¹ *A Home To Be Proud of, A Handbook for Residents*, New York City Housing Authority (the "Resident

hot water around-the-clock and heat in accordance with the New York City Administrative Code during the heating season (from October 1 until May 31).” As Defendant Olatoye, NYCHA’s Chairperson and Chief Executive Officer, recently testified, providing “basic services like heat and hot water go to the heart of NYCHA’s responsibility as a landlord.”

2. NYCHA, however, has knowingly abandoned this mission, broken its promise and openly flouted the law. Before the 2017-2018 heating season was even halfway through, the vast majority of NYCHA residents went without heat and hot water for substantial lengths of time, including during the worst cold spell in New York in over 50 years.

3. This is no mere allegation. In sworn testimony before the New York City Council on February 6, 2018, NYCHA executives admitted that, during the period from October 1, 2017 through January 22, 2018, about 143,000 of its approximately 175,000 housing units experienced heat and hot water outages, leaving approximately 323,098 NYCHA residents without access to the fundamental services to which all New York City tenants, whether in public or private housing, are entitled by law. By NYCHA’s own reckoning, in other words, it failed to meet its “most basic responsibilities” as a landlord for approximately 80% of its housing units.

4. During their testimony, NYCHA representatives admitted that heat and hot water outages of this magnitude were “staggering,” and Defendant Olatoye conceded that NYCHA’s “performance and the interruptions in service” that resulted in such wide-spread deprivation of essential heat and hot water were “unacceptable.”

5. But this denial of heat and hot water was more than just “staggering” and “unacceptable.” NYCHA left tenants to fend for themselves and, upon information and belief,

Handbook”), available at <http://www1.nyc.gov/assets/nycha/downloads/pdf/nycha-tenant-handbook-2017.pdf>.

many did so by layering on clothes and blankets and attempting to warm their homes via stoves and/or space heaters and boiling their own hot water. NYCHA is well aware of the dangerous position this put residents in; indeed, its Resident Handbook warns residents “[n]ever use your stove to heat your apartment. Poisonous carbon monoxide (CO) gas has no smell, builds up, and is deadly...” But, having left hundreds of thousands of residents without heat, NYCHA could easily anticipate that its residents would resort to such forms of self-help to protect themselves from the ravages of minus 20°F wind chills.

6. NYCHA’s abrogation of its responsibilities also imposed financial damage on its tenants. Every tenant that suffered a prolonged heat and/or hot water outage was denied the habitable residence to which he or she is entitled under New York law. Moreover, tenants of some NYCHA developments pay their own electricity bills, which escalated when they were forced to attempt to heat their homes via electric stoves or electric space heaters. Still other tenants bought space heaters for the first time to survive the frigid weather. These are expenses which residents of public housing can ill afford and which they incurred only as a result of NYCHA’s breaches of its legal duty. Some NYCHA residents, particularly the elderly, were forced to choose between purchasing space heaters to keep warm and going without necessary medication, since they were not able to afford both.

7. NYCHA’s abdication of its legal obligations was hardly unforeseeable or the product of excusable neglect. For years, NYCHA has been aware that the heating systems for many of its buildings and developments have either outlived their useful lives or required the attention of skilled technicians to adequately service them. Nevertheless, NYCHA utterly failed to make or implement appropriate capital plans to replace antiquated or broken equipment,

resorting to the use of various stop-gap measures – such as temporary boilers – at multiple developments. NYCHA has also failed to ensure it has adequate staffing in place to service its heating equipment or to develop an adequate pipeline of trained personnel to maintain its boilers as staffing levels fell, with the result that those servicing its aging boilers are either overworked or under-skilled, or both. NYCHA’s malfeasance has thus generated a “humanitarian crisis,” as the Public Advocate put it, putting the health, welfare and even the lives of low- and moderate-income New Yorkers at risk.

8. Rather than taking adequate steps to avoid, or at least mitigate, the damages to its residents that its mismanagement has caused, NYCHA appears to have resorted instead to “cook[ing] the books” to minimize the number and duration of heat and hot water complaints logged in NYCHA records.

9. For example, in January of this year, a NYCHA spokesperson claimed that “97% of apartments had consistent heat.” After being compelled to produce data to the New York City Council about this heating season’s heat and hot water outages, however, NYCHA was ultimately forced to admit that this statement was not true.

10. NYCHA also claimed that the average heat and hot water outage during the October 2017 through January 2018 period was 48 and 52 hours, respectively. But those figures appear to drastically understate the deprivations numerous NYCHA tenants have been forced to endure. Many NYCHA tenants have reported losing heat and hot water for substantially longer periods – some as long as seven days or more. And, during hearings before the New York City Council this past February, it became clear that those statistics cannot be correct since data furnished by NYCHA shows that approximately 20% of reported outages are not marked as either completed

or resolved in NYCHA's own books.

11. NYCHA has also publicly claimed that, during the critical cold spell, it resolved and closed complaints of lack of heat within five hours. But this statistic is also misleading, if not altogether untrue. In sworn testimony before the City Council, NYCHA executives explained that heat complaints are closed out based on a random sampling of apartments and *without checking with those tenants who lodged complaints*. Even where NYCHA units are fitted with heat sensors, such that NYCHA is able to determine the apartment temperature real-time and without an in-person visit, NYCHA does not even bother to check its own records. And in some instances, reportedly, NYCHA closed out heat complaints based on the ambient temperature of apartments where tenants had resorted to space heaters or oven use to keep warm, which is utterly nonsensical.

12. As New York City Comptroller Scott Stringer noted, practices like these are “outrageous,” particularly coming from a state agency whose mandate is to increase opportunities for low- and moderate-income New Yorkers by providing safe, affordable housing and facilitating access to social and community services.

13. In this action, Plaintiffs A'Seelah Diamond and Ruth Britt – both NYCHA tenants who were unlawfully denied heat and hot water during the 2017-2018 heating season – seek, on behalf of themselves and all other similarly-situated NYCHA residents, redress for NYCHA's failure to live up to its legal obligation to maintain a habitable living condition for each of its tenants. To that end, Ms. Diamond and Ms. Britt assert claims for breach of the warranty of habitability (implied in every residential lease in New York State) which unequivocally requires provision of adequate heat and hot water.

14. As compensation for such breaches, Plaintiffs are entitled to money damages for

the loss of habitable use of their homes, the cost of any increases in directly-paid electricity charges resulting from use of alternative heating sources, the cost of purchasing space heaters or other alternative heat sources, and/or any other incidental expenses caused by NYCHA's failure to supply hot water and heat. Plaintiffs also seek an award of punitive damages for NYCHA's knowing and purposeful failure to meet its most basic obligations as New York City's largest landlord.

15. Plaintiffs further seek a declaratory judgment that NYCHA has breached the warranty of habitability and injunctive relief requiring NYCHA to maintain heat and hot water services in accordance with state law.

JURISDICTION AND VENUE

16. This Court has jurisdiction pursuant to Article 6, Section 7, of the New York State Constitution because the acts and omissions giving rise to the cause of action occurred within the State of New York.

17. Pursuant to CPLR §§ 503(a) and 507, venue is proper in the County of New York because it is the county where NYCHA is headquartered and where certain Plaintiffs reside.

18. Plaintiffs have suffered damages in excess of \$25,000.

PARTIES

19. Plaintiff A'Seelah Diamond and her husband, Tyrone Diamond, are the tenants of record at 2155 Pitkin Avenue, Apartment 2D, Brooklyn, New York 11207, within NYCHA's Fiorentino Plaza development.

20. Plaintiff Ruth Britt is the tenant of record at 300 East 143rd Street, Apartment 3C, Bronx, New York 10451, within NYCHA's Patterson Houses development.

21. Defendant New York City Housing Authority is the largest public housing authority in the United States. The New York State Legislature created NYCHA via what is now Public Housing Law § 401, which established NYCHA as “body corporate and politic with all the powers, rights, and duties set forth” in the Public Housing Law. NYCHA is the New York state agency designated to administer the public housing program for the City of New York and receives funding from the U.S. Department of Housing and Urban Development, the State of New York, and the City of New York.

22. NYCHA currently owns and operates 176,066 public housing apartments in 2,462 buildings, located in 326 housing developments throughout the five boroughs. NYCHA serves a total of over 400,000 residents of these housing developments.

23. NYCHA is headquartered at 250 Broadway, New York, New York 10007.

24. Defendant Oyeshola Olatoye is the Chairperson and Chief Executive Officer of NYCHA. As such, she is responsible for the administration of NYCHA and the maintenance of NYCHA properties. She maintains an office at 250 Broadway, New York, New York 10007.

STATUTORY AND REGULATORY FRAMEWORK

25. Under New York’s Real Property Law, a landlord is deemed to covenant and warrant that residential premises are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous, or detrimental to their life, health, or safety.

26. Pursuant to the New York City Administrative Code, a landlord must keep its premises in good repair and is responsible for compliance with the requirements of the Housing Maintenance Code. The New York State Multiple Dwelling Law contains similar requirements.

27. An owner of a multiple dwelling must provide residents with heat and hot water.
28. Under the New York State Multiple Dwelling Law, landlords are required to “supply ... both hot and cold water at all times of the year, during all hours,” for all buildings three or more stories in height erected on or after April 18, 1929.
29. Under Section 27-2028 of the New York City Administrative Code, heat must be provided between October 1 and May 31 as follows: (i) Between 6:00 a.m. and 10:00 p.m., each apartment must be heated to a temperature of at least 68 °F whenever the outdoor temperature falls below 55 °F; and (ii) between 10:00 p.m. and 6:00 a.m., each apartment must be heated to a temperature of at least 55 °F whenever the outdoor temperature falls below 40 °F.
30. The New York City Health Code contains heating requirements identical to those of the New York City Administrative Code.
31. NYCHA concedes that it is responsible for heating its residents’ apartments in accordance with New York City law. For example, during her sworn testimony before the New York City Council, Cathy Pennington, NYCHA’s Acting Executive Vice President of Operations, testified that NYCHA was “required to comply” with New York’s “local heating requirements”. Recently, NYCHA’s newly appointed General Manager, Vito Mustaciuolo, similarly admitted that “[p]roviding heat and hot water to all NYCHA residents is our duty as a landlord and required by law.” NYCHA’s Resident Handbook also makes clear that NYCHA is legally bound to meet certain basic heating requirements:

NYCHA provides hot water around-the-clock and heat in accordance with the New York City Administrative Code during the heating season (from October 1 until May 31).

The New York City Administrative Code requires that a minimum temperature of

68 degrees Fahrenheit be maintained in each apartment when the outside temperature falls below 55 degrees Fahrenheit between 6:00 a.m. and 10:00 p.m. during the heating season.

The Code also requires a minimum temperature of 62 degrees Fahrenheit be maintained in each apartment (regardless of the temperature outside) between 10:00 p.m. and 6:00 a.m.

FACTUAL ALLEGATIONS

32. NYCHA was created in 1935 to provide decent, affordable housing for low- and moderate-income New Yorkers. Today, NYCHA is home to one in 14 New Yorkers and is the largest public housing authority in North America, with 326 complexes, 178,000 apartments and over 400,000 residents throughout the five boroughs. It is the largest landlord in New York City.

33. For many years, however, NYCHA has failed in its responsibility to ensure that it was properly positioned to meet its legal obligations to provide heat and hot water. Just last year, for example, the City Comptroller's Office's preliminary review of Department of Building inspection data showed that 39.5% of NYCHA boiler inspections reported defects, a reported defect rate that is five times the citywide average. NYCHA's own plan documents admit that 43% of the Authority's 1,980 boilers were identified as "having failing and/or obsolete equipment which cannot be replaced" and must be replaced "immediately."

34. The problem is exacerbated by NYCHA's failure to maintain a qualified workforce to service those boilers that remain in operating condition. In 2013, for instance, NYCHA employed 391 boiler heat plant technicians. By 2017, however, that number had fallen to 248, a decline of approximately 37%. As NYCHA executives have conceded, this gave rise to a "crisis of resources." Yet NYCHA has done next to nothing to resolve this "crisis." In order to work as

a heating plant technician (or “HPT”), NYCHA personnel must complete a training course given by a NYCHA-approved organization and pass a civil service exam, but no such training has been offered since 2016 and no exams have been scheduled since 2015. The result is that NYCHA has no pipeline to fill these critical positions and those presently serving as HPTs are overworked. Whereas boiler technicians working in the private sector typically service one and a half heating plants, NYCHA HPTs typically service four. Many of those HPTs lack the skill set to maintain NYCHA’s portfolio of boilers, exacerbating the problem further.

35. NYCHA also has a history of closing heat and hot water complaints without inspecting the particular apartments in question or verifying whether those apartments have in fact had their heat and hot water restored. If an outage is reported, NYCHA generates a robocall informing tenants of the issue. NYCHA then investigates and tests whether heat and hot water have been restored by conducting a random sampling of apartments believed to be impacted. If the random sampling bears out, another robocall is generated informing tenants that the matter has been addressed and all complaints that pre-date the outage by four hours are then marked closed. But NYCHA does not bother to check with the tenants who reported outages or lodged complaints to ensure that their service has been restored. As a consequence, there have been multiple reports of tenants reporting heat and hot water outages only to receive robocalls minutes later that the issue has been resolved when in fact it has not. Even for those NYCHA apartments that have been fitted with heat sensors, NYCHA has failed to take the most rudimentary steps to ensure that its obligations to tenants are being met. For those apartments, it would be an easy matter for NYCHA to look at its real-time records and verify whether heat has been restored. But NYCHA does not do that either and instead relies on its defective robocall system to close out complaints. In

addition, it has been reported that NYCHA has closed out heat complaints based on the ambient temperature of apartments where tenants resorted to space heaters or oven use to keep warm.

36. Rather than confront these problems, NYCHA has displayed callous indifference towards the well-being of its tenants, at times actively misrepresenting the scope and magnitude of the heat and hot water crisis. For example, during the “bomb cyclone” in January, NYCHA claimed that “97% of apartments had consistent heat.” This was patently false. As part of the New York City Council’s efforts to get to the bottom of the crisis and its causes, NYCHA was compelled to produce data about this season’s heat and hot water outages. That data revealed that approximately 80% of NYCHA’s housing units and about 323,098 NYCHA residents had experienced little or no heat or hot water.

37. NYCHA also claimed that the average heat and hot water outage during the October 2017 through January 2018 period was 48 and 52 hours respectively. Those figures standing alone are sufficient to justify the relief sought here. But in reality, they dramatically understate the deprivations numerous NYCHA tenants have been forced to endure. During the hearings before the New York City Council this past February, for instance, it was revealed that no less than 20% of the reported heat and hot water outages are still listed in NYCHA’s records as open; that is, they are not marked as having been completed or resolved. This is consistent with the first-hand accounts of many NYCHA tenants, who have reported losing heat and hot water for weeks at a time.

38. NYCHA has also publicly claimed that, during the critical cold spell, it resolved and closed complaints of lack of heat within five hours. But for the reasons explained above, this statistic is not merely misleading, it is demonstrably untrue. Because many complaints are closed

without adequate testing, numerous tenants have reported ongoing heat and hot water outages even after receiving robocalls that the problem has been “fixed.”

39. Plaintiff A’Seelah Diamond resides in the Fiorentino Plaza NYCHA development with her husband and their three minor children, ages 11, 8, and 2 years old. Ms. Diamond has lived in her apartment for six years, and her family’s current monthly rent is \$1,282.00.

40. During December 2017 and January 2018, Ms. Diamond experienced regular heat and hot water outages in her home. In late December 2017, she filed at least three repair tickets with NYCHA to report heat outages and another three to report hot water outages in her apartment. In January 2018, Ms. Diamond filed at least four repair tickets to report heat and hot water outages.

41. On January 3, 2018, Ms. Diamond’s apartment had inadequate heat. The following day, January 4, 2018, there was absolutely no heat or hot water in the apartment.

42. Ms. Diamond purchased three space heaters on January 5, 2018 in order to combat the cold. She also attempted to use her oven and stove to heat the apartment, which regularly triggered the kitchen’s carbon monoxide detector. Throughout the heat outage, Ms. Diamond’s family of five was forced to sleep in her bedroom under multiple comforters in order to stay warm. The extreme cold also exacerbated Ms. Diamond’s 11-year old daughter’s asthma.

43. The complete lack of heat and hot water in Ms. Diamond’s apartment continued until January 8, 2018, when both services were finally restored.

44. Plaintiff Ruth Britt resides in the Patterson Houses NYCHA development by herself. Ms. Britt has lived in her apartment for 39 years, and her current monthly rent is \$285.00.

45. From October 2017 until late January 2018, Ms. Britt was completely without heat in her home.

46. During this time, Ms. Britt also experienced regular hot water outages.

47. In the beginning of January 2018, NYCHA invited tenants to sit in a “heating bus” outside of their NYCHA residential buildings. The “heating bus” was a yellow school bus. Ms. Britt found the bus unusable given that there was no bathroom on it.

48. During the heat outages, Ms. Britt used three space heaters – in her bedroom, living room, and kitchen – in order to combat the cold. When Ms. Britt used the bathroom, she brought one of the space heaters with her.

49. Under its own stated guidelines, NYCHA “has a target first response within 24 hours for emergency calls,” which include “lack of heat or hot water.” NYCHA further acknowledges the danger of forcing residents to use their ovens and stoves for heat, stating that doing so “can increase the risk of [carbon monoxide] poisoning.”

50. On February 9, 2018, The Legal Aid Society sent a letter (the “February 9 Letter”)² to Defendant Olatoye detailing the heat and hot water outages Plaintiffs experienced from December 27, 2017 through at least January 16, 2018. The February 9 Letter also outlined NYCHA’s obligations to provide its tenants with heat and hot water, and explained that a lack of heat or hot water is a breach of the warranty of habitability under New York law.

51. Because a landlord’s breach of the warranty of habitability entitles a tenant to damages, generally calculated in terms of a rent abatement, the February 9 Letter closed with a demand for a full rent abatement to each household for each day they experienced a heat and/or hot water outage from December 27, 2017 through January 16, 2018, or longer, as necessary to fully compensate these tenants for the denial of the heat and hot water to which they were entitled.

² A copy of the February 9 Letter is attached hereto as Exhibit 1.

52. NYCHA responded to the February 9 Letter some seven weeks later. In a letter to counsel dated March 29, 2018 (the “March 29 Letter”),³ NYCHA General Manager Vito Mustaciuolo explicitly refused to provide any rent relief to affected tenants on the basis that there were extreme weather conditions this year.

53. This is not the first time NYCHA has refused to provide tenants with rent abatements due to the heat and/or hot water outages while continuing to collect full rent. In fact, despite its open acknowledgment that it is legally bound to provide adequate heat and hot water to all its tenants, and its concession that it violated applicable New York law by failing to furnish those basic services, NYCHA informed the New York City Council that it has not even discussed a rent rollback or abatement for any of the affected tenants and does not plan to.

54. NYCHA’s flat refusal to provide rent abatements or other economic relief is entirely without foundation and demonstrates NYCHA’s callous disregard for the health and welfare of its tenants and its bad faith. NYCHA’s own statistics show that the heat and hot water outages this year both pre-dated and post-dated the “bomb cyclone” that struck New York City in January of this year. In any case, as NYCHA knows, New York law imposes an unqualified obligation on all landlords to keep rental premises habitable. Even if it were true that the heat and hot water outages that plagued NYCHA developments this year were limited to the periods during the bomb cyclone – and it is not – extreme weather is neither a defense nor an excuse.

55. Plaintiffs therefore seek this relief in New York County Supreme Court because it is the only forum able to grant the full relief Plaintiffs seek. Plaintiffs cannot seek damages for breach of the warranty of habitability in a New York Housing Court proceeding, and Plaintiffs

³ A copy of the March 29 Letter is attached hereto as Exhibit 2.

cannot reasonably withhold rent in the hopes that doing so will encourage NYCHA to reach a mutually agreeable settlement, as in so doing they would risk the commencement of eviction proceedings by NYCHA.

CLASS ACTION ALLEGATIONS

56. Plaintiffs A'Seelah Diamond and Ruth Britt bring this action pursuant to CPLR 901 on behalf of themselves and a class defined as all NYCHA residents who were deprived of heat and/or hot water at any point from October 1, 2017 to May 31, 2018 (the "Heating Season"), in violation of applicable law and were damaged thereby (the "Class").

57. The Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable. According to NYCHA's 2017 Fact Sheet, there are currently 174,282 families living in 176,066 NYCHA apartments, and it has been reported that thousands of these units lost heat and/or hot water during this year's Heating Season, including during the cold spell of December 2017 and January 2018. During the period of heat and hot water outages, NYCHA's Office of Intergovernmental Relations issued a series of "Cold Weather Updates." In Cold Weather Update #9, issued on January 11, 2018, NYCHA reported that between December 27, 2017 and January 10, 2018 it addressed 40,558 work orders related to heat and 18,742 work orders related to hot water.

58. There are questions of law and fact common to the Class that predominate over any questions affecting only individual members. Specifically, all Class members are NYCHA residents who experienced heat and/or hot water outages during the 2017-2018 Heating Season, and all causes of action referenced herein are applicable to all Class members.

59. The claims of the representative parties are typical of the claims of the Class. Each

named Plaintiff and all Class members allege that NYCHA failed to provide adequate heat and/or hot water at various times during the 2017-2018 Heating Season. Each named Plaintiff and all Class members request damages in the form of a full rent abatement to each household for each occasion on which they experienced a heat and/or hot water outage and, where applicable, reimbursement for the purchase price of space heaters and any increased electrical costs resulting from their use.

60. The named Plaintiffs and the proposed Class are represented by The Legal Aid Society and Willkie Farr & Gallagher LLP, whose attorneys are experienced in class action litigation. The named Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

61. A class action is superior to other available methods for the fair and efficient adjudication of the controversy here. Prosecution of separate claims by individual Class members would unduly burden the Court and create the possibility of conflicting decisions.

FIRST CAUSE OF ACTION:
BREACH OF THE WARRANTY OF HABITABILITY

62. Plaintiffs repeat the allegations contained in the preceding paragraphs as if fully set forth herein.

63. There exist or have existed in Plaintiffs' residences conditions – specifically, outages of heat and/or hot water – dangerous or detrimental to life, health, and safety.

64. These conditions were not caused by Plaintiffs.

65. Defendants have failed to maintain Plaintiffs' residences in a habitable and usable fashion.

66. Defendants have failed to maintain Plaintiffs' residences in accordance with the uses reasonably intended by Plaintiffs.

67. Defendants had notice of heat and/or hot water outages, but either failed to correct them, or allowed them to remain uncorrected for days or even weeks at a time.

68. By reason of their failure to make timely repairs and maintain heat and/or hot water services, Defendants have breached the warranty of habitability under New York Real Property Law § 235-b.

69. As a result of this breach, Defendants have caused the value of Plaintiffs' apartments to be diminished, and Plaintiffs are entitled to a full rent abatement for each occasion they experienced heat and/or hot water outages, reflecting the diminution in the value of Plaintiffs' homes in an amount to be determined at trial, along with consequential and punitive damages.

70. Defendants' breach of the warranty of habitability has caused Plaintiffs to suffer damages in excess of \$25,000.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue a preliminary injunction:

- i. ordering Defendants to provide Plaintiffs and all other NYCHA tenants with heat and hot water consistent with NYCHA's obligations under New York law;
- ii. enjoining Defendants from failing to provide Plaintiffs and all other NYCHA tenants with heat and hot water consistent with NYCHA's obligations under New York law;

- B. Issue a permanent injunction:
- i. ordering Defendants to provide Plaintiffs and all other NYCHA tenants with heat and hot water consistent with NYCHA's obligations under New York law;
 - ii. enjoining Defendants from failing to provide Plaintiffs and all other NYCHA tenants with heat and hot water consistent with NYCHA's obligations under New York law;
- C. Enter a declaratory judgment:
- i. declaring that Defendants have violated and are violating N.Y. R.P.L. § 235-b, N.Y.C. Admin. Code §§ 27-2024-2025, 2028, 2029, 2031, N.Y. Mult. Dwell. Law §§ 75(3), 78, and N.Y.C. Health Code § 131.07(c) by failing to provide Plaintiffs and all other NYCHA tenants with adequate heat and hot water;
- D. Award Plaintiffs and the Class consequential damages for the violations alleged herein in an amount to be determined at trial;
- E. Award Plaintiffs and the Class punitive damages for the violations alleged herein in an amount to be determined at trial;
- F. Award Plaintiffs costs and disbursements, including reasonable attorneys' fees, pursuant to CPLR § 909 and the New York State Equal Access to Justice Act, CPLR §§ 8600 *et seq.*; and
- G. Grant such further and other relief as this Court may deem just and proper.

Dated: April 12, 2018
New York, New York

By: _____ /s/ Mary Eaton
Mary Eaton

WILLKIE FARR & GALLAGHER LLP
Wesley Powell
Mary Eaton
Martin Seidel
787 Seventh Avenue
New York, New York 10019
T: (212) 728-8000
Counsel for Plaintiffs

THE LEGAL AID SOCIETY
Judith Goldiner
Lucy Newman
Jennifer Levy
199 Water Street, 3rd Floor
New York, New York 10038
T: (212) 577-3300
Counsel for Plaintiffs