

FILE

*Graham Realty, Inc. v.
Brenda Chapin*

*The Legal Aid Society
Briggs Neighborhood Office
Civil Division
Avon, Franklin 33210*

To: Applicant
From: Joseph Murray, Supervising Attorney
Date: July 27, 2004
Re: Graham Realty, Inc. v. Brenda Chapin

Our client, Brenda Chapin, is a tenant living in an apartment owned by Graham Realty, Inc. (GRI). She has withheld her monthly rent of \$1,000 for seven months because of the poor condition of her apartment. GRI is suing her for eviction and recovery of back rent. We have tried to settle the matter, but negotiations have broken off because of GRI's refusal to make any concessions regarding much-needed repairs in our client's apartment and the common areas of the building. The matter is set to be heard next week before the Housing Division Court.

To successfully defend against GRI's suit for eviction and recovery of back rent, we will have to prove that GRI breached the implied warranty of habitability. Assuming that we can prove such a breach, we also intend to seek damages available to Ms. Chapin as a result of GRI's breach.

Please draft a case planning memo for the summary eviction proceeding before the Housing Division Court. Citing the relevant legal authority, your memo should identify:

- 1) the elements we must establish to prove that GRI breached the implied warranty of habitability and the evidence available to establish these elements; and
- 2) the remedies available to Ms. Chapin, the elements of those remedies, and the evidence available to us to establish those elements. (You need not concern yourself with admissibility issues.)

You should also discuss whether there is any relief that Ms. Chapin might be entitled to pursue that *cannot* be obtained in this summary proceeding. If there is, state what it is and explain why.

Follow our office's "Case Planning Memorandum Guidelines" in drafting your memo. These guidelines include an excerpt of a case planning memorandum used in an unrelated case. As the guidelines instruct, do not include a separate statement of facts because here at the Legal Aid Society, these memos are strictly internal documents used to prepare for court.

Case Planning Memorandum Guidelines

Our office follows the practice of using a case planning memorandum (CPM) to prepare for court. A CPM is an internal document that identifies and evaluates, as applicable, the client's claims, counterclaims, defenses, and/or remedies. For each of these, cite the **Legal Authority**, including statutory and case law as applicable; the **Elements** that must be proven in order to establish the client's right to prevail; and the **Supporting Evidence** available to establish each element, including testimonial evidence, documentary evidence, and physical evidence.

A CPM should not include a separate statement of facts, as it is intended as a reference tool for attorneys already familiar with the case. Attached as an example is an excerpt from a CPM drafted for *Jimenez v. Brown Apartments*, a case we litigated in January 2002.

Excerpt from *Jimenez* Case Planning Memorandum

Claim: Breach of Franklin Fair Housing Law/Unlawful Housing Discrimination

Legal Authority: Section 530 of the Franklin Fair Housing Law prohibits a landlord from rejecting a prospective tenant's rental application solely because the application does not meet a particular income-to-rent ratio. A landlord's rejection of an application, notwithstanding the tenant's proof of actual ability to pay, is prima facie evidence of a violation of this section. (*Mooney v. Lutz Management Co.*)

Element #1: The landlord refused to lease residential premises to a prospective tenant because the tenant did not meet the minimum income-to-rent ratio.

Evidence available to show Brown Apartments refused to rent to David Jimenez based on his income level:

- Testimony of Jimenez that he completed Brown's standard rental application form, including providing information about his income.
- Copy of the application Jimenez submitted to Brown.
- Copy of Brown's standard rental application form, stating (in very fine print) that all tenants must have monthly income equal to four times monthly rent.
- Letter from Brown rejecting Jimenez's rental application.

Element #2: The prospective tenant established actual ability to pay rental amount.

Evidence available to show Jimenez's actual ability to pay rent charged by Brown:

- Jimenez's bank statement showing \$5,000 in savings account.
- Written financial reference from previous landlord.

Remedy: Punitive Damages

Legal Authority: A court will award punitive damages to a tenant for a violation of § 530 when such conduct is a pervasive practice by a landlord. (*Chong v. Riverside Apartments, LLC*—punitive damages upheld where landlord exhibited repeated disregard for the rights accorded tenants under § 530.)

Element: The landlord's pervasive practice is to reject applicants based on income level without considering actual ability to pay rent.

Evidence available to prove that Brown's pervasive practice violates § 530:

- Copy of Brown's standard rental application form.
- Testimony of Brown's rental agent that the standard rental application form is used for all prospective tenants in Brown's five high-rise complexes in Avon.
- Copy of Brown's rental agent manual, which states that "rental agents must screen each prospective tenant for compliance with minimum income requirements using payroll statements only. . . ."

*The Legal Aid Society
Briggs Neighborhood Office
Civil Division
Avon, Franklin 33210*

To: File
From: Virginia Eilson, Intake Officer
Date: July 26, 2004
Re: Intake Notes: *Graham Realty, Inc. v. Brenda Chapin*

I interviewed Brenda Chapin, who has retained us to represent her in the summary eviction proceeding that is pending against her, *Graham Realty, Inc. v. Brenda Chapin*.

Client resides at Graham Towers, on the seventh floor in apartment 7B. Graham Towers is owned by Graham Realty, Inc. (GRI). When client moved into the apartment a year ago, some repairs were needed. She doesn't want to move if the apartment is repaired. "The housing market is so tight that I don't think I can find anything that would be better than this place at the price, but I want it to be fixed up." Client says her block is becoming "fancier." Herb London, GRI's building manager, told Ms. Albert, the owner of the grocery store at the corner and a friend of Ms. Chapin, that GRI wants to cash in on these apartments.

Client has about two years left on a 3-year lease at \$1,000 per month. Utilities are not included in the rent. Graham Towers is a large and very old apartment building in the Briggs section of Avon. The apartment consists of two bedrooms, a living room, bathroom, and kitchen.

Client lives in the apartment with her two daughters, Harriett, age 3, and Mary, age 14. Her husband passed away two years ago. She was initially shown the apartment by Herb London. At that time, she noticed some of the repairs that were needed. Mr. London assured her that the repairs would be made, and she signed the lease. She paid rent for five months, but repairs weren't made and things got worse. Beginning in January 2004, client stopped paying her rent to try and force the owner to make the needed repairs.

Now GRI is suing to evict her and to collect the \$7,000 in back rent.

Client complains that the bathroom ceiling leaks. A few chunks of plaster have fallen, injuring her daughter Mary; see copy of letter in file. Client wants to be reimbursed for daughter's medical bills as well as her (client's) lost wages. The ceiling looks like it is about to fall. One wall in the bathroom is discolored by a smelly, slimy green fungus that is spreading. She says the smell is overpowering.

Herb London promised to repair numerous cracks and holes in walls in the apartment and to paint. Nothing has been done to date. More plaster is falling from ceilings and walls. The entire apartment needs painting and plastering. "Why should I have to keep my promise to pay rent if he didn't keep his promise to fix the place?"

Heat and hot water sometimes don't work. Client has had to use her electric stove to heat apartment sometimes and has had to buy and use electric space heater. She has had to heat water on the stove to use for washing dishes and bathing. The space heater cost \$79. Her electric bills have skyrocketed because of her additional use of the heater and the stove.

Client is very angry about rats. There are rat holes in the bedrooms and kitchen. She regularly sets traps and has killed four rats. GRI's building superintendent (Victor) came up and killed a rat once. She has had to throw away food in boxes (cereal, rice, etc.) after rats got into them. Rat droppings are everywhere, but there is no extermination service. Her daughters complain that they are afraid that the rats will come out as soon as the lights are turned off at night. She wants GRI punished for ignoring her situation.

In addition, the elevator has been unreliable, sometimes out of service for three to four days at a time. All of her neighbors get angry when elevator is broken.

Client says she has constantly complained. Speaks to Victor often and has called London many times. She doesn't usually get through but leaves messages on London's answering machine and with secretary. Sent a letter to Herb London listing complaints; see copy of letter in file. She has taken pictures of some of the conditions (will bring them in if we need them) and reported her problems to the Avon Department of Buildings. Inspector came several times and gave her a copy of report. See copy of report in file. During inspections, the hot water was working.

Client believes that the repairs should be made immediately. She is willing to pay some of rent but "not much" from time she moved in until the repairs are completed. "Why should I pay good money for an apartment that is in bad condition and not worth nearly what GRI is charging? Some of my neighbors have moved out. Mr. London isn't renting those vacant units. Victor told me he's holding on to them, waiting for the rest of us to give up and leave in disgust. I really don't want to be forced out, but I refuse to pay \$1,000 a month to live in a dump."

804 7th Avenue, Apt. 7B,
Avon, Franklin 33210

May 21, 2004
Re: Problems in Graham Towers Apt. 7B

Mr. Herb London
Graham Realty, Inc.
222 French St.
Avon, Franklin 33210

Dear Mr. London,

Over the past months, I have repeatedly called your office in an effort to get you to make repairs in my apartment. Usually when I call and give your secretary my name, I am told that you are not in. Other times I have left a message on your answering machine. On the few occasions when you have actually taken my calls, I have explained that there are a number of problems in the apartment. In all, my notes indicate that I have called eight times to complain.

In addition to my phone calls to you, I have spoken with Victor, the building superintendent, on many occasions about the problems in my apartment. I have even shown him the conditions that need to be fixed. Each time we talk, he tells me that he needs your permission before he can do anything. In spite of all my attempts, no repairs have been made in my apartment.


I am now upset about three particularly disturbing developments. First, two weeks ago, while my 14-year-old daughter, Mary, was using the bathroom, a large chunk of plaster fell from the ceiling, knocking her to the floor and causing a gash in her scalp, which required 10 stitches to close. This was very painful and we are both quite upset. My daughter missed a day of school and I missed a day of work. We also had to pay the hospital, and when I asked you to reimburse me, you refused. All of this could have been prevented if you had fixed the leaks in the ceiling that I have been complaining about for months.

Second, as you well know, we frequently do not have any heat in the building. When this happens, we are forced to make do by operating our electric stove, as well as the space heater we were forced to buy. It still isn't warm enough in the bedrooms. Furthermore, it is not safe to run the stove all night long. While we do not want to do anything that creates a fire hazard, we also do not want to freeze on cold nights.

Finally, late last night, Mary woke me up screaming because she was awakened by a rat that ran across her bed. We have complained about the rats before, but the problem is getting worse. My daughters are afraid to go to sleep for fear that a rat will bite them.

This situation is intolerable. You must do something to repair our apartment immediately, pay my daughter's medical bills, and compensate us for the pain you have caused. Thank you.

Very truly,


Brenda Chapin

City of Avon Department of Buildings, Office of the Building Inspector

Violation Report

Address: 804 7th Avenue, Apt. 7B, Avon, Franklin 33210

Date: July 6, 2004

HPD #	Range	Block	Lot	CD	Census Tract	Stories	A Units	B Units	Owner
3394	801-807	90210	2141	10	21800	8	100	0	Graham Realty Inc.

There are 5 violations listed below for Apartment 7B. Arranged by category—

A class: 0 B class: 2 C class: 3

Class Definitions

- A: "Non-hazardous," such as minor leaks, chipping or peeling paint when no children under the age of six live in the home, or lack of signs designating floor numbers. An owner has 90 days to correct an A violation before fines will be assessed.
- B: "Hazardous," such as public doors not self-closing, inadequate lighting in public areas or lack of posted Certificate of Occupancy. An owner has 30 days to correct a B violation before fines will be assessed.
- C: "Immediately hazardous," such as inadequate fire exits, the presence of rodents or lead-based paint, or lack of heat, hot water, electricity, or gas. An owner has 24 hours to correct a C violation before fines will be assessed.

Apt.	Date Reported	HazardClass	Violation ID#	Description
7B	February 2004	B	270421	repair broken or defective plastered surfaces and paint walls and ceilings in the entire apartment.
7B	February 2004	C	270422	abate the nuisance consisting of rodents in entire apartment.
7B	March 2004	B	321123	abate the nuisance consisting of evidence of a water leak on the bathroom ceiling
7B	March 2004	C	321124	abate the nuisance consisting of mold-like substance existing along the south wall of the bathroom from ceiling to floor.
All	April 2004	C	398927	restore elevator service.

Avon Gazette

Section C:

Real Estate July 20, 2004

Uptown Boomtown

By Emily Saylor

Marianne Conrad moved to Graham Towers fourteen years ago, when more than half the apartments were vacant and neighborhood drug dealers preyed on residents. Now the courtyard mailboxes carry the names of lawyers and doctors alongside those of pensioners, and rumors of co-op conversion swirl.

"A year ago, I could have bought a house in the Briggs section of Avon, but not now," Ms. Conrad says. "I can't afford it. And I'm basically middle-class. Unless you're upper management and making close to \$300,000, I don't think anyone else can afford it, either. Today, a shell of a building in this area goes for \$250,000. And I'm talking about no roof, no windows."

She's determined, however, not to let this boom pass her by completely. "I'm a social character, and I know lots of folks in Briggs, so I hear about things," Ms. Conrad says. "I'm always looking for my little niche, so I went three months ago and got a real estate license. Now if I hear about a house, I need to sell it."

Reaction to these changes is mixed at Graham Towers. Most tenants are pleased to see recent renovations to the building's exterior. However, longtime residents are apprehensive about the gentrification of the towers. According to Ms. Conrad, they are also concerned that "management is trying to force existing tenants out by ignoring necessary repairs so they can bring in well-heeled tenants and charge substantially higher rents."

In 1994, movie producer Dan Jackson used Graham Towers as the all-too-believable setting for a crack factory in "Broken Dreams." Ten years later, a company Jackson co-founded with his sister, Nicki, is just as keenly capturing the moment: Urban Box Office Network is the first major media outlet to move its headquarters to Briggs. Given the trend at Graham Towers and in the neighborhood, it won't be the last.