

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRENDA HARRISON  
6803 Emlen Street  
Philadelphia, PA 19119

Plaintiff,

v.

PELHAM COURT LP  
2021 Arch Street,  
Philadelphia, PA 19103

and

RUSHMORE MANAGEMENT  
111 S. Harrison Street  
East Orange, NJ 07018

Defendants.

**CIVIL ACTION NUMBER:**

**COMPLAINT**

**JURY TRIAL DEMANDED**

**CIVIL COMPLAINT**

**INTRODUCTION**

1. For the last fourteen years, Brenda Harrison, a disabled, low-income Philadelphia resident, has been confined to her fourth-floor apartment for weeks at a time when the elevators in her building break down or are taken offline by her landlord.

2. Ms. Harrison's only recourse during these outages has been modest: pursuant to Pennsylvania law she withholds a small portion of her rent, all while pleading to have the elevators repaired, and reminding her landlord of the disability that makes it impossible for her to leave her apartment when the elevators are not operational.

3. In response to her pleas, and with a months-long elevator outage planned, her landlord attempted to end the controversy once and for all, by imposing discriminatory terms upon her, and then terminating her lease in retaliation when she refused to accept them.

4. Ms. Harrison now brings suit against Defendants under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, seeking actual damages, punitive damages, injunctive relief, and attorney's fees and costs.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over the subject matter in this action pursuant to 28 U.S.C. § 1331.

6. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events, acts, or omissions giving rise to the claims occurred within the Eastern District of Pennsylvania and Defendants conduct business in this district.

### **PARTIES**

7. Plaintiff Brenda Harrison is a Philadelphia resident with multiple disabilities who currently resides in the Pelham Court Apartments at 6803 Emlen Street, Philadelphia, PA 19119.

8. Defendant Pelham Court LP is the owner of record for the Pelham Court Apartments and is a Pennsylvania limited partnership (Entity No. 3749265) whose registered address is c/o M. Burr Keim Company, 2021 Arch Street, Philadelphia, PA 19103.

9. Defendant Rushmore Management is the property manager for Pelham Court Apartments and is a New Jersey limited liability corporation located at 111 S. Harrison Street, East Orange, NJ 07018.

### **FACTS**

10. Ms. Harrison is a 62-year old woman with multiple disabilities.

11. Ms. Harrison has fibromyalgia, vascular disease, and arthritis, which prevent her from climbing stairs, and cause other serious mobility deficiencies that require assistance from home health aides, canes, and a walker.

12. Each of Ms. Harrison's medical conditions, alone or combined, are disabilities as defined by the Fair Housing Act.

13. Ms. Harrison is low-income, declared to be disabled by the Social Security Administration and, as a result, receives Social Security Disability Insurance benefits.

14. Ms. Harrison lives alone but has two home health aides that bring her groceries, take her to appointments, and help with chores around the house.

15. Pelham Court Apartments ("Pelham Court") is a large apartment building with approximately 90 units located in the Mt. Airy neighborhood of Philadelphia.

16. Pelham Court is separated into three wings, each with its own elevator – but residents in one wing cannot access the elevators in a different wing because there are no pathways or corridors between the wings on the second, third, and fourth floors of the building.

17. Ms. Harrison moved into Pelham Court in 2004, and she chose the building in part because of its accessible elevators near her fourth-floor apartment.

**The elevators constantly break, disrupting all aspects of Ms. Harrison's life**

18. Over the past fourteen years, the elevators in Ms. Harrison's wing of the building have broken numerous times.

19. In previous years of living at Pelham Court, Ms. Harrison would, with the help of friends and neighbors, climb over a three-foot partition between her balcony and her neighbor's balcony to use the elevators in a different wing of the building.

20. However, as her health further deteriorated, she could no longer access any elevators when the single elevator in her wing of the building was down.

21. Instead, Ms. Harrison would be trapped in her apartment until the elevators were fixed.

22. Ms. Harrison therefore responded to these numerous elevator outages by sending letters to Pelham Court's property managers, reminding them of her disability while also informing them that she would withhold a portion of her rent due to the elevator not working.

23. For example, in 2013 Ms. Harrison emailed Isaac Scheinerman, who upon information and belief was an agent for Pelham Court, about the elevator being inoperable during February and March of that year.

24. Ms. Harrison implored Mr. Scheinerman to fix the elevators, stating that the inoperable elevators had been "a tremendous hardship for me due to my handicap and inability to climb the stairs."

25. Ms. Harrison told Mr. Scheinerman that the elevator outage prevented her from visiting her father in hospice, causing her to be unable to see him before he ultimately passed away.

26. Each time the elevator stopped working, Ms. Harrison deducted one third of her normal monthly rent as a result of being trapped in her home due to her disability.

27. The same situation repeated itself numerous times, including in March, June, and July of 2017, when the elevators were out at different points for several days.

28. In 2017, Ms. Harrison filed a complaint against Pelham Court with the Philadelphia Fair Housing Commission after it threatened to evict her for withholding rent while the elevators were out of service. *See* Order at Ex. A.

29. The Fair Housing Commission found that this eviction threat violated the Philadelphia Fair Housing Ordinance, and that Ms. Harrison was entitled to keep and withhold rent for the period between March 10, 2017 and March 29, 2017 as a matter of law. *Id.*

30. In July of 2017, Ms. Harrison again deducted a portion of her rent due to the elevator not working for eight days, rendering her unable to leave her apartment due to her disability.

31. In her letter notifying Defendants, Ms. Harrison reiterated that the elevator's disrepair had severely impacted her life: "[b]ecause of my disabilities, the lack of elevator service rendered me unable to leave my apartment to perform . . . day-to-day tasks . . . including the inability to make and/or keep medical appointments and attend my place of worship. Every aspect of what remains of my life was interrupted without elevator service."

**Pelham Court imposes discriminatory lease terms and retaliates against Ms. Harrison by terminating her lease**

32. Upon information and belief, Pelham Court set out to force Ms. Harrison to leave the property, or, in the alternative, to force her to accept living in an apartment which she could not leave for weeks at a time because of her disability.

33. In November 2017, Pelham Court sent Ms. Harrison a "Notice (sic) Termination Lease and Notice to Increase Rent." *See* Ex. B.

34. The notice stated that Ms. Harrison could renew her lease if she agreed to a 7% rent increase and three new lease terms.

35. One of the terms stated:

Please note the following: Elevator use and maintenance is not an obligation of the Landlord to the Tenant. Therefore, Landlord does not accept responsibility for elevator down time due to mechanical error or maintenance. By signing this agreement, Tenant agrees as such and that there is to be no rent deduction due to elevator down time.

*Id.*

36. Pelham Court sent the retaliatory termination notice knowing that it was about to shut down the elevator service in Ms. Harrison's wing of the building for months and knew that

Ms. Harrison would assert her legal right to withhold rent, because the lack of an elevator made it impossible for someone with a disability like hers to fully enjoy the use of her apartment.

37. Upon information and belief, this lease term was specifically enacted to prevent a disabled resident like Ms. Harrison from taking any action when the elevators went down, while forcing her to leave the property if she disagreed.

38. Ms. Harrison did not agree to this lease term.

39. Instead, Ms. Harrison returned the signed agreement renewing her lease for the higher rent rate, but crossed out the new lease term and signed her initials next to the strikethrough. *Id.*

40. Ms. Harrison explained her actions in a letter:

Enclosed is my signed Lease Renewal for 2018. Please note that I am not in agreement with your addendum...I do not agree to forfeit my legal rights to make a deduction to my rent when the elevator is inoperable. As you are already aware, I have serious mobility issues and am disabled.

Ex. C.

41. Six days later, Ms. Harrison received a letter from Emanuel Kosacci, a lawyer representing Pelham Court. *See Ex. D.*

42. The letter stated that Pelham Court was terminating its lease because of Ms. Harrison's failure to accept the lease term regarding non-working elevators.

43. Specifically, Ms. Kosacci wrote the following:

**[E]ach and every term of the proposed lease renewal are integral and non-negotiable in the Landlords' (sic) eyes.** As such your counter offer is hereby REJECTED and your actions are interpreted as a rejection of my clients (sic) offer to renew your lease according to the terms outlined in their proposal. Accordingly, my client will NOT BE RENEWING your lease at the conclusion of your current lease term.

*Id.* (emphasis added).

44. The letter next threatened Ms. Harrison with eviction:

Should you fail to return possession on or before [December 31, 2017], my client will be forced to file suit for Eviction, which may include Attorney's Fees and Court Costs. As previously stated, the Holdover provisions of your current lease control, should you stay in the property past this date, which provisions may significantly increase your rental payment during your eviction process.

*Id.*

**Pelham Court goes forward with planned elevator upgrades without accommodating Ms. Harrison, trapping her in her apartment**

45. At the same time, it was imposing discriminatory and unlawful lease terms on Ms. Harrison, Pelham Court was preparing to undertake planned elevator upgrades that would shut down the elevator in Ms. Harrison's wing of the building.

46. Pelham Court sent notices to tenants stating that "elevator modernizations will commence on Monday, November 27, 2017, in the North-East Zone elevator. We are estimating the elevator to take approximately 3-5 weeks, which will require the elevator to be shut down and out of service due to the construction of the new elevator." *See* Ex. E.

47. Upon information and belief, Pelham Court and Rushmore moved other tenants with disabilities from upper floors to first floor units.

48. Upon information and belief, Pelham Court and Rushmore had accessible vacant units throughout the building, including vacant units on the first floor in the Northeast wing where Ms. Harrison resided.

49. Despite this, and despite their knowledge of Ms. Harrison's disabilities, Pelham Court and Rushmore failed to move Ms. Harrison to an accessible unit while the elevator in her wing of the building was under construction.

50. The elevators were out from November 27, 2017 until February 1, 2018. *See* Ex. F.

51. During this time, as was the case in the past when the elevators were down, Ms. Harrison was trapped in her fourth-floor apartment.

52. Ms. Harrison missed numerous doctors' appointments, was unable to attend church, or otherwise leave to attend social events.

53. Ms. Harrison again wrote to Pelham Court LP and Rushmore and stated that she was withholding one-third of her monthly rent for the elevators being out from November 27, 2017 to February 1, 2018.

**Ms. Harrison challenges Pelham Court's discriminatory lease term in the Philadelphia Fair Housing Commission and wins**

54. While trapped in her apartment during the elevator outage, Ms. Harrison again filed a complaint against Pelham Court with the Philadelphia Fair Housing Commission charging that Pelham Court retaliated against her for exercising her legal rights.

55. After a contested hearing, the Fair Housing Commission found that the lease term demanded by Defendants was illegal and again held that Ms. Harrison had a legal right to withhold her rent. *See* Ex. G.

**COUNT I:  
FAIR HOUSING ACT – DISCRIMINATION  
(Plaintiff Brenda Harrison v. Pelham Court LP and Rushmore Management)**

56. Plaintiff Brenda Harrison incorporates paragraphs 1 through 55 by reference as fully set forth herein.

57. The Fair Housing Act prohibits “discriminat[ing] against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap.” 42 U.S.C. § 3604(f)(2).

58. Pelham Court LP and Rushmore Management violated § 3604 by, among other things:



- a. discriminating against Ms. Harrison in the terms of her lease by stating that she could not withhold rent for times when the elevator was inoperable;
- b. discriminating against Ms. Harrison by shutting down the elevator to her apartment knowing that she would be unable to leave her unit; and
- c. discriminating against Ms. Harrison by terminating her lease when she would not agree to the proposed discriminatory terms.

59. Pelham Court LP and Rushmore Management's conduct was motivated by evil motive or intent or involved the reckless or callous indifference to the federally protected rights of Ms. Harrison, and she is therefore entitled to punitive damages.

60. As a result of Pelham Court LP and Rushmore Management's violation of § 3604 of the Fair Housing Act, Ms. Harrison suffered damages, including economic loss, humiliation, mental anguish and emotional distress.

**COUNT II:**  
**FAIR HOUSING ACT – RETALIATION**  
**(Plaintiff Brenda Harrison v. Pelham Court LP and Rushmore Management)**

61. Plaintiff Brenda Harrison incorporates paragraphs 1 through 60 by reference as fully set forth herein.

62. The Fair Housing Act makes it “unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of [her] having exercised or enjoyed . . . any right granted protection by [the Act].” 42 U.S.C. § 3617.

63. Ms. Harrison exercised her rights under the Fair Housing Act when she, among other things:

- a. complained about the lack of elevator service, citing her disability and the hardship that the lack of elevator service caused her because of her mobility issues;
- b. withheld rent based on the elevator being inoperable;
- c. made a reasonable accommodation request when she asked Pelham Court LP and Rushmore to remove the discriminatory lease term forbidding her from withholding rent in the event the elevator became inoperable; and
- d. moved other tenants to accessible units during elevator outages but refused to do the same for Ms. Harrison.

64. Pelham Court LP and Rushmore Management retaliated against Ms. Harrison by terminating her lease, demanding that she leave her home of fourteen years, and threatening her with an eviction filing and the associated court costs and attorney's fees.

65. Pelham Court LP and Rushmore Management's conduct was motivated by evil motive or intent or involved the reckless or callous indifference to the federally protected rights of Ms. Harrison, and she is therefore entitled to punitive damages.

66. As a result of Pelham Court LP and Rushmore Management's violation of § 3617 of the Fair Housing Act, Ms. Harrison suffered damages, including economic loss, humiliation, mental anguish and emotional distress.

**COUNT III:**  
**FAIR HOUSING ACT – REASONABLE ACCOMMODATION**  
**(Plaintiff Brenda Harrison v. Pelham Court LP and Rushmore Management)**

67. Plaintiff Brenda Harrison incorporates paragraphs 1 through 66 by reference as fully set forth therein.

68. The Fair Housing Act prohibits landlords from refusing reasonable accommodations for persons with disabilities, and “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [persons with disabilities] equal opportunity to use and enjoy a dwelling...” is a violation of the Act. 42 U.S.C. § 3604(f)(3).

69. Pelham Court and Rushmore Management refused reasonable accommodations for Ms. Harrison when they:

- a. rejected Ms. Harrison’s proposed modified terms for her lease renewal in November 2017;
- b. failed to provide Ms. Harrison with reasonable accommodations during multiple elevator outages despite the availability of accessible units and despite their knowledge that she was disabled; and
- c. moved other tenants with disabilities to accessible units but failed to do the same for Ms. Harrison.

70. Pelham Court LP and Rushmore Management’s conduct was motivated by evil motive or intent or involved the reckless or callous indifference to the federally protected rights of Ms. Harrison, and she is therefore entitled to punitive damages.

71. As a result of Pelham Court LP and Rushmore Management’s violation of § 3604 of the Fair Housing Act, Ms. Harrison suffered damages, including economic loss, humiliation, mental anguish and emotional distress.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Brenda Harrison demands judgment in her favor and against Defendants Pelham Court LP and Rushmore Management for:

- (a) a declaratory judgment finding that Defendant's actions violate the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601 *et seq.*;
- (b) actual damages for economic loss, humiliation, mental anguish, and emotional distress;
- (c) punitive damages;
- (d) reasonable attorney's fees and costs under 42 U.S.C. § 3613(c);
- (e) injunctive relief in the form of a court order enjoining Defendants from imposing discriminatory lease terms on Ms. Harrison or terminating her lease for twelve months; and
- (f) any other relief as this Court deems just and equitable.

**JURY DEMAND**

72. Plaintiff Brenda Harrison demands a trial by jury on all relevant issues.

Dated: August 2, 2018

PUBLIC INTEREST LAW CENTER

/s/ George A. Donnelly  
Dan Urevick-Ackelsberg (PA 307758)  
George A. Donnelly (PA 321317)  
Public Interest Law Center  
1709 Benjamin Franklin Pkwy., 2nd Floor  
Philadelphia, PA 19103  
215-627-7100  
dackelsberg@pubinlaw.org  
gdonnelly@pubintlaw.org

WILLIG, WILLIAMS & DAVIDSON

/s/ Ryan Allen Hancock  
Ryan Allen Hancock (PA 92590)  
Willig, Williams & Davidson  
1845 Walnut Street, 24<sup>th</sup> Floor  
Philadelphia, PA 19103  
Telephone: (215) 656-3600  
Facsimile: (215) 567-2310  
rhancock@wwdlaw.com