

THE REAL DEAL

Residential landlords offer rent abatements to tenants stranded by Sandy

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By Katherine Clarke

In the wake of Hurricane Sandy, several of the city's largest residential landlords have announced that they are providing comprehensive rent abatements to tenants who lost power or water during the storm.

Both tenants of luxury and more affordable housing may see some relief. Rose Associates, owner of high-end rental properties such as Le Rivage and the Chelsea Landmark, said it will issue abatements for residents of Rose-owned buildings which were under evacuation orders, as well as to those who lost power or water as a result of the storm. Meanwhile, CW Capital, the owner of the East Village's Stuyvesant Town and Peter Cooper Village, will do the same. At 2 Gold street, the Financial District building recently deemed uninhabitable, landlord TF Cornerstone has waived November rents.



Real estate attorney Adam Leitman Bailey and Le Rivage

While some landlords have been quick to issue abatements, the reimbursement of rent in such a situation is not an exact science, said real estate attorney **Adam Leitman Bailey**.

“In both regulated and unregulated buildings, the requirement to pay rent in a less than completely functional apartment is on a sliding scale, not an on/off switch,” he said. “Unless the parties can agree to an appropriate dollar adjustment to the rent while the apartment or building is being repaired or while certain utilities are shut down, it will be up to the housing court to figure out how much is a reasonable discount.”

Rose's abatements apply only to residents of 1,600 apartments at the Chelsea Landmark, the Ellington, Le Rivage, the Madison Belvedere and the Metropolis, the company said in a statement, and not to Rose-managed buildings. The rebates are far more extensive than those found in a standard lease agreement, it said. Resident of Le Rivage, which is located at 21 West Street, well within evacuation Zone A, are still without electricity and will receive a 34-day rent credit, Rose said.

If an apartment is deemed uninhabitable, forcing the tenant to find another place to stay, housing courts generally find that tenants are entitled to a full refund on their rent, **Bailey** said in his memo. That refund would likely be calculated by the number of days the tenant was unable to live in the apartment.

However, "if the apartment is substantially unusable, but the tenant is still living there anyhow, the court will have to determine a reasonable percentage downward adjustment to the rent for the affected period," **Bailey** said.

Tenants would likely get 25 percent of the rent refunded for lack of hot water, 25 percent for lack of heat and 50 percent for lack of electricity, he said, though he advised that none of those figures are hard and fast rules.

On the commercial side, tenants may have a much harder time getting rent reimbursements, he said.

"Commercial landlord-tenant relationships depend strictly on the lease agreement between the parties," he said. "Whatever the lease says goes. Many of the leases my office have been reviewing do not relieve the tenant of rent as a result of a utility shutdown."