

**Western Division Housing Court**  
***Unofficial Reporter of Decisions***

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## **ABOUT**

This is an unofficial reporter for decisions issued by the Western Division Housing Court. The editors collect the decisions on an ongoing basis for publication in sequentially numbered volumes. Currently, this unofficial reporter is known as the “Western Division Housing Court Reporter.” Inasmuch as the reader’s audience is familiar with this unofficial reporter, the reader is invited to cite from these decisions by using the abbreviated reporter name “W.Div.H.Ct.”

## **WHO WE ARE**

This is a collaborative effort by and among several individuals representative of the Court, the local landlord bar, the local tenant bar, and government practice:

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Starting with Volume 12, an additional **high quality version** of each volume is also posted on our website. These are not released via email because their file sizes are typically too large. High quality versions are marked as such on their title page (near the bottom left) and have their own digital signatures.

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The Court finds that Plaintiff satisfied its prima facie case for possession. Defendant repeatedly caused significant property damage at The Rainville, by repeatedly breaking windows, both in common areas and in the Premises, by causing significant damage to the walls of the Premises, and by tampering with hard-wired smoke detectors. The Court has previously entered orders that he be temporarily barred from the Rainville for this conduct. See Docket No. 22H79CV000898. Defendant has been hospitalized [REDACTED] over at least the past several months on more than one occasion. Based on his representations [REDACTED] [REDACTED], the Court permitted him to reoccupy the Premises, at which time he caused additional property damage.

[REDACTED], Defendant has failed to take the steps necessary to live independently in the Premises without causing significant damage. The Court is concerned about the safety of other residents of the Rainville and the employees who work there given [REDACTED] [REDACTED]. In an attempt to accommodate his apparent disabilities, the Court has allowed him several opportunities to obtain help and support to be able to live in the Premises, but Defendant offered no credible evidence to demonstrate [REDACTED] [REDACTED]. This conduct cannot be tolerated in a multi-family housing environment.<sup>1</sup>

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<sup>1</sup> [REDACTED]. Given that the Rainville participates in a program to assist needy individuals and has a long waiting list, the Court is unwilling to require

Although Defendant claims he does not owe any rent, the evidence shows that the sum of \$1,752.40 of rent remains unpaid through the date of trial.<sup>2</sup> Accordingly, the following order shall enter:

1. Judgment for possession and \$1,752.40 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Execution shall issue by application after expiration of the appeal period in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 5/31/2023

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

---

Plaintiff to preserve Defendant's tenancy to see if he would be able to live independently at the Rainville after completing the program.

<sup>2</sup> Because this is a summary process case, the Court will enter damages only for unpaid rent and court costs. If Plaintiff seeks to recover for the damages caused by Defendant, it may bring a separate civil action against him.

CA

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-3836

CARABETTA MANAGEMENT COMPANY,

Plaintiff,

v.

JAQUELINE DELGADO,

Defendant.

ORDER

After hearing on May 25, 2023, for further hearing on the landlord's motion for entry of judgment and for review, at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day Counsel, the following order shall enter:

1. The landlord reports that the outstanding balance of use and occupancy is \$9421.65 through the month of May 2023.
2. The tenant is working with the Tenancy Preservation Program (TPP) and a new RAFT application is now pending.



3. The tenant has suffered health issues and recent hospitalizations [REDACTED] and is extremely challenged by technology, which has contributed to her earlier failure to pursuing her RAFT application.
4. The tenant reports that her SSI is being restored and may begin as soon as for June 2023, and if not by July 2023.
5. The tenant's mother Andrea Cotto Gomez joined the hearing and committed to paying for the tenant's rent for June 2023.
6. The electric utilities have been shut off and the tenant will be seeking hardship relief from the utility company based on her health issues to have the utilities restored. While the electric is off, the tenant will stay with her mother.
7. Given the record regarding testimony about the tenant's health issues, the court will provide the tenant with further opportunity to secure her resources including SSI and RAFT, working closely with TPP, contingent upon her (or her mom) paying the landlord June 2023 use and occupancy timely..
8. This matter shall be scheduled for further review and further hearing on the landlord's motion for entry of judgment on **June 29, 2023, at 9:00 a.m.**

So entered this 30<sup>th</sup> day of May, 2023.

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Robert Fields, Associate Justice

CC: Tenancy Preservation Program  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-0010

_____	)	
MARSHALL GABRIEL,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW
	)	AND ORDER FOR JUDGMENT
RAHIZA CORREA,	)	
	)	
DEFENDANT	)	
_____	)	

This summary process case came before the Court on May 4, 2023 for a bench trial. Plaintiff appeared self-represented. Defendant appeared through counsel. Plaintiff seeks to recover possession of 16 Chapel Street, Springfield, Massachusetts (the “Premises”) from Defendant based on non-payment of rent.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Plaintiff is the owner of the Premises. Defendant has a Section 8 voucher through the Housing Choice Voucher Program issued on July 1, 2021. The public housing agency administering the voucher is Way Finders.

On June 24, 2022, Plaintiff signed a “Request for Tenancy Approval” form providing Way Finders with information about the Premises. It specified that the monthly rent was \$1,866.00. On the same date, Plaintiff signed a lease agreement pursuant to which he agreed to rent the Premises to Defendant beginning on October

1, 2022 for monthly rent in the amount of \$1,866.00. Defendant signed the lease on July 15, 2022.

At the time, Defendant was living with her five children in an Emergency Assistance shelter apartment. She received rehousing assistance through CHD's Homebase program, which, by letter dated September 21, 2022, committed to funding Defendant's security deposit of \$1,866.00 and the rental broker's fee of \$1,866.00. The Homebase program also committed to paying Defendant's portion of the first month's rent in the amount of \$504.00.<sup>1</sup> On October 5, 2022, Homebase paid Plaintiff \$2,370.00, representing the security deposit plus the tenant's share of the first month's rent.

The Premises passed inspection and Defendant took possession on October 1, 2022. Way Finders reviewed Defendant's income and housing composition and set her portion of the rent at \$316.00. Given the contract rent of \$1,866.00, the housing assistance payment by Way Finders was set at \$1,550.00. Way Finders did not, however, make the rental assistance determination until November 29, 2022. In the meantime, Defendant, who had been told earlier by CHD that her rent share was \$504.00, paid \$504.00 on or about November 1, 2022.

When Plaintiff learned that Way Finders had set Defendant's portion at \$316.00, he refused to sign the mandatory Housing Assistant Payment ("HAP") contract. He believed that he was entitled to a total of \$2,370.00 per month, the amount CHD paid at the outset of the tenancy. Defendant is mistaken. He signed the Request for Tenancy Approval form citing a monthly rent of \$1,866.00, and signed a

---

<sup>1</sup> The Court has no evidence from which to find how Homebase determined Defendant's rent share, which is a different amount than Way Finders subsequently calculated.

lease with Defendant for the same monthly rent. CHD's payment of \$2,370.00 does not change the fact that the total contract rent to which Plaintiff is entitled is \$1,866.00.<sup>2</sup>

Because Plaintiff has refused to sign the HAP contract, he has received no payments after October 2022 other than the \$504.00 paid by Defendant in November 2022. He has refused to accept other payments because of his belief that he is entitled to receive more than \$1,866.00 per month, despite his express agreement to that figure. Therefore, the fact that he has not been paid is not the fault of Defendant. Moreover, he is not entitled to evict Defendant for failing to pay rent because his summons and complaint in this case is defective in that it states no reason for the eviction. Plaintiff's claim for possession is hereby dismissed.

Turning to Defendant's counterclaims, the Court finds insufficient evidence to rule that Plaintiff engaged in discrimination based on receipt of public assistance. Although he refused to sign the HAP contract, the Court finds that it is not because he refused to accept Defendant as a tenant based on her receipt of public assistance, but instead because genuinely believed he was entitled to monthly rent of \$2,370.00 based on the initial payment he received. Although misguided, Plaintiff has consistently indicated a willingness to allow Defendant to rent the Premises, subject to full payment from Way Finders. Therefore, the Court finds in favor of Plaintiff on Defendant's discrimination claim.

With respect to Defendant's security deposit claim, the Court finds that Plaintiff received a security deposit on Defendant's behalf from the Homebase

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<sup>2</sup> CHD's agreement to pay a security deposit in the amount of \$1,866.00 is further evidence that all parties, including CHD, understood the total monthly rent to be \$1,866.00.

program, and that he did not comply with the requirements set forth in the security deposit statute, G.L. c. 186, § 15B. Accordingly, the Court rules that Plaintiff must immediately return the security deposit to Defendant. See G.L. c. 186, § 15B(3)(a).<sup>3</sup>

The Court finds that Defendant's water was shut off due to Plaintiff's failure to pay the bill. Plaintiff was unaware that the water bill was unpaid because the mailings were being sent to the Premises, as opposed to his home address. The very day Plaintiff learned that the water was shut off, he paid the bill and had the water restored. In order to be liable under G.L. c. 186, § 14, Plaintiff must have willfully or intentionally failed to furnish water or must have directly or indirectly interfered with the furnishing of water by another. The Court finds that Plaintiff testified credibly that he was unaware of the pending water shut off until the day it was suspended and that he immediately paid the bill upon notice, restoring the water supply the same day. The Court rules that Plaintiff is not liable under G.L. c. 186, § 14.

The Court further rules that the evidence does not support a finding that Plaintiff acted unfairly and deceptively in trade or commerce. The Court finds him to be credible as to his confusion over the interaction between Homebase and Way Finders and the different payments each agreed to make. The evidence does not show that Plaintiff has had previous experience dealing with these two agencies, and there is clearly a disconnect between the information he received from the two separate agencies. Therefore, the Court finds no basis to impose liability under c. 93A.

In her answer, Defendant moves for injunctive relief to protect her from losing her voucher if Plaintiff refuses to sign the HAP contract. For the reasons set forth

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<sup>3</sup> The Court rules that Plaintiff is not obligated to pay interest on the security deposit as he held it for less than one year. See G.L. c. 186, § 15B(3)(b).

herein, the Court has balanced the risk of irreparable harm to Defendant against the risk of irreparable harm to Plaintiff and concludes that Defendant is entitled to the relief request. Based on the foregoing, and in light of the governing law, the Court enters the following order:

1. Pursuant to Defendant's request for a preliminary injunction, the Court orders Plaintiff to sign the HAP contract within seven days of this order. If Way Finders refuses to pay the housing assistance payment retroactively, either party may file a motion for further review.
2. Judgment for possession and \$158.00 in damages shall enter in favor of Defendant. The Court calculated this amount of damages by offsetting the amounts due Plaintiff against the amount due Defendant; namely, \$1,708.00 due Plaintiff (representing the amount of Defendant's portion of rent that has accrued between November 2022 and May 2023 (\$2,212.00) less the \$504.00 payment she made in November 2022) against \$1,866.00, the amount of the security deposit paid by CHD on Defendant's behalf, which security deposit must be refunded to Defendant as a result of Plaintiff's violation of the security deposit statute.
3. The legislative fee for issuance of injunctive relief (G.L. c. 262, § 4) is hereby waived.

SO ORDERED.

DATE: 5/30/2023

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 21-SP-3103

PAUL GAUTHIER,	)	
	)	
PLAINTIFF	)	
v.	)	SUMMARY PROCESS
	)	APPEAL BOND ORDER
HANNA A. WACHIRA,	)	
	)	
DEFENDANT	)	
v.	)	
	)	
FLAGSTAR BANK FSB,	)	
	)	
THIRD PARTY DEFENDANT	)	

This summary process case came before the Court on May 16, 2023 for a hearing to set or waive the appeal bond pursuant to G.L. c. 239, §§ 5 and 6. Plaintiff and the Third Party Defendant appeared with counsel. Defendant appeared self-represented.

Judgment for possession of the property located at 40 Bissell Street, Springfield, Massachusetts (the “Premises”) entered in favor of Plaintiff on April 21, 2023. Defendant filed a timely notice of appeal. Defendant seeks waiver of the appeal bond. She is entitled to a waiver of the bond where she demonstrates both indigency as defined in G. L. c. 261, § 27A, and the existence of a nonfrivolous defense. See G. L. c. 239, § 5 (e). Here, the Court finds that Defendant has satisfied the latter requirement given that she has raised defenses under 24 C.F.R. § 203.604 contending that the foreclosing bank did not conduct a face-to-face interview. With respect to

indigency, however, the Court finds that Defendant failed to meet the legal standard. Although she checked the box on her affidavit indicating that she receives Medicaid, based on Defendant's testimony at the bond hearing, the Court finds that she is confusing Medicaid (which she does not receive) with Medicare (which she does receive). She presented no testimony or evidence that she receives MassHealth benefits or any other form of public assistance. She certified that her monthly income, inclusive of social security benefits, is \$4,645.00, which is significantly above the poverty guidelines. Accordingly, Defendant is not entitled to a waiver of the appeal bond.

In a post-foreclosure summary process case involving a third-party purchaser, the condition of the bond shall be "all costs and a reasonable amount as rent from the day that the purchaser obtained title" to the Premises (in this case, January 14, 2020) until delivery of possession, together with "all damage and loss" which the purchaser may sustain by not taking possession of the property. See G.L. c. 239, § 6. Here, Plaintiff requests that the bond be set at the fair rental value of the Premises from the day he obtained title and continuing through the trial date, a total of 38 months.

Based on the testimony of a real estate broker who has been licensed for approximately 20 years and owns a real estate agency with approximately 450 units under management and 20 agents, the Court finds that the fair rental value of the Premises in February 2020 was \$2,000.00 per month, and that the current fair rental value of the Premises is \$2,500.00 per month.

Defendant contends that she can only afford \$950.00 per month. Based on her financial statement, however, her net monthly income is \$3,757.26. Some of her



deductions are questionable, such as \$350.00 per month for gas, and others appear discretionary (\$260 for clothing, \$205.00 for internet). The Court finds that, although she might prefer to spend no more than \$950.00 per month for her use and occupancy of the Premises, she can and should pay more.

Although the Court takes into account Defendant's ability to pay as one factor, the Court considers other important factors in determining the reasonable amount for both the bond and the use and occupancy payments going forward. Defendant last made a mortgage payment in 2008 and has been employed in the interim, yet claims she has no significant assets or savings. Plaintiff purchased the Premises in January 2020 and has been responsible for various expenses, including real estate taxes, yet has never received any payments from Defendant. Given the appeal, it is likely to be many months before Plaintiff will be able to take possession of the Premises. Given these factors, the Court determines that the bond shall be set at \$76,000.00 (38 months at \$2,000.00 per month).<sup>1</sup> As a condition of the bond, Defendant shall pay use and occupancy of \$2,000.00 per month to Plaintiff.<sup>2</sup>

Based on the foregoing, the following order shall enter:

1. Defendant's motion to waive the appeal bond is denied.
2. Plaintiff's motion to set the appeal bond is allowed as follows:

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<sup>1</sup> The Court is aware that Defendant is unlikely to be able to pay the bond amount; however, given that Defendant made mortgage payments for approximately one year in 2007-2008 and has continued to live in the Premises for more than 15 years without making another payment, it would be manifestly unfair to set a minimal bond.

<sup>2</sup> Although Plaintiff established that a fair rental value in 2023 for a home such as the Premises is \$2,500.00 per month, the Court concludes that a fair balancing of the interests is to use the same \$2,000.00 figure for use and occupancy that it used in calculating the bond.

- a. Within fifteen days from the date of this order, as a condition for the entry of this action in the Appeals Court, Defendant shall deposit with the Clerk of Court such bond in the amount of \$76,000.00.
  - b. As a further condition of the bond, beginning on June 5, 2023 and on the fifth of each month thereafter during the pendency of this appeal, Defendant shall pay Plaintiff \$2,000.00 for her continued use and occupation of the Premises. These payments are to be made directly to Plaintiff.
3. Plaintiff may move to dismiss the appeal if Defendant fails to make the required payments. See G.L. c. 239, § 5(h); see also *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 137 n. 19 (2018) (“the statute permits dismissal of an appeal ... when a tenant fails to post the ... use and occupancy payment”).

SO ORDERED.

DATE: 6/14/23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
SUMMARY PROCESS  
NO. 23H79SP000549

**EDWARD LADOUCEUR, JR.,**

Plaintiff

VS.

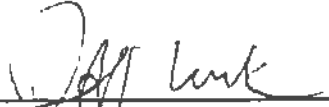
**LISA BARNES,**

Defendant

**ORDER**

After hearing, the plaintiff's *Motion for Issuance of Execution* is **ALLOWED**. Execution for possession shall issue on September 29, 2023 provided the defendant makes monthly use and occupancy payments to the plaintiff in the amount of \$700.00 by the fifth (5<sup>th</sup>) day of each month commencing in June 2023. If the defendant fails to make any one use and occupancy payment by the date due, the plaintiff's attorney shall file a non-compliance affidavit with the court attesting to the defendant's failure to make payment. The plaintiff's attorney shall serve the defendant with a copy of the non-compliance affidavit on the same day it is filed with the court. The clerk shall issue the execution on the fourth (4<sup>th</sup>) day after the non-compliance affidavit is filed. However, if prior issuance of the execution the defendant files with the court (with a copy delivered to the plaintiff's attorney) a counter-affidavit stating that all required use and occupancy payments were made, the clerk shall schedule the matter of issuance of execution for hearing.

**SO ORDERED this 30<sup>th</sup> day of May, 2023.**

  
\_\_\_\_\_  
Jeffrey M. Winik  
Associate Justice (recall appt)



Plaintiff has not filed a complaint in this court under G.L. c. 30A, § 14 seeking judicial review. Instead, on May 1, 2023, Plaintiff filed this motion for injunctive relief. Because the case comes to this Court as a request for injunctive relief, the Court considers in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. See *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Here it is clear that Plaintiff is at significant risk of suffering irreparable harm if she is forced to leave the family shelter. She seeks a stay because she is in the process of obtaining guardianship over her young grandchild who goes to a school near the shelter and who is likely to suffer if forced to relocate to a different school. The Probate and Family Court has a hearing scheduled in June, but there is no certainty that the hearing will go forward as scheduled or that Plaintiff will immediately get custody of her grandchild after the hearing is held. Meanwhile, she is living in a shelter despite being ineligible because she is not the parent or guardian of a child under the age of 21 who is living in the premises. See 70 CMR 67.02.

As of the date of this hearing, Plaintiff has little to no likelihood of success on the merits of her claim. Plaintiff cannot overcome the fact that she is currently ineligible for EA and cannot demonstrate that she is likely to regain eligibility in the near future. As for the harm associated with her grandchild changing schools, the child's mother could apply for EA herself. Given these circumstances, and the fact that Plaintiff has been residing in the shelter without eligibility since February 1, 2023, the Court motion for injunctive relief is DENIED.

SO ORDERED.

DATE: 5/30/23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice



1. Plaintiff shall serve a copy of this order upon Defendant by a duly appointed constable or deputy sheriff, and Plaintiff shall file the return of service indicating the time and manner of service.
1. Defendant must vacate the Premises within seven business days after completion of service.
2. If Defendant believes she is entitled to continue to occupy the Premises, within said seven days, she must serve and file a motion seeking to amend this order.
3. If Defendant fails to file such a motion or vacate the Premises as ordered herein, Plaintiff may treat her as a trespasser and enlist the assistance of law enforcement to enforce the terms of this order.
4. Upon Defendant vacating the Premises, Plaintiff may change the locks.
5. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

DATE: \_\_\_\_\_

5/30/2023

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice



CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-413

CHRISTINE TURCOTTE,  
  
Plaintiff,  
  
v.  
  
MICHAEL BEAUSOLEIL,  
  
Defendant.

ORDER

After hearing on May 26, 2023, at which both parties appeared without counsel, the following order shall enter:

1. For the reasons stated on the record, the court finds and so rules that the plaintiff landlord has not met her burden of proof under an injunctive standard upon which the court need issue an order; (likelihood of success on the merits, irreparable harm, balancing of harms favors an order, public policy).

2. More specifically, the landlord failed to satisfy the court that there is any danger or real potential of danger caused by the defendant tenant's fan set upon in his unit.
3. By agreement of the tenant, however, he will forthwith provide the landlord with the name of the manufacture, make, and model of the fan system. This may allow the landlord to ascertain whether the manner in which it is being used is safe or not.

So entered this 30<sup>th</sup> day of May, 2023.

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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-402

JOEL ANDREWS,  
  
Plaintiff,  
  
v.  
  
KEMPTON POLLARD,  
  
Defendant.

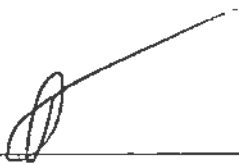
ORDER

After further hearing on May 30, 2023, on the plaintiff tenant's motion for injunctive relief at which the tenant appeared without counsel and the defendant landlord appeared through counsel, the following order shall enter:

1. The subject premises (third floor) have been condemned by the City of Springfield Code Enforcement Department.
2. The landlord reported that he is administratively appealing the city's condemnation.

3. The landlord shall provide housing for the tenant until the condemnation is lifted or by leave of court. Said housing shall consist of a hotel or motel accommodation with cooking facilities as near to the premises as is practicable.
4. If said accommodations do not have cooking facilities, the landlord shall also provide the tenant with a daily food stipend of \$50.
5. This matter shall be scheduled for review on **June 5, 2023, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 31<sup>st</sup> day of May, 2023.



---

Robert Fields, Associate Justice

CC: Court Reporter



2. During the pendency of this appeal, Defendant shall pay Plaintiff his share of the monthly rent in full and on time.
3. Plaintiff may move to dismiss the appeal if Defendant fails to make the required payments. See G.L. c. 239, § 5(h); see also *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 137 n. 19 (2018) (“the statute permits dismissal of an appeal ... when a tenant fails to post the ... use and occupancy payment”).

SO ORDERED.

DATE: 5/31/23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice



- 4 Prior to the time Defendants took possession, the Premises were in good  
condition and free from serious conditions of disrepair
- 5 Defendants agreed in the lease not to make any alterations or  
improvements
- 6 Plaintiff agreed in the lease not to enter the Premises without 24 hours  
advance notice except in cases of emergency, abandonment, court order  
or where impractical to give such notice
- 7 Defendants agreed to use small picture nails when hanging pictures/wall  
art on the walls
- 8 On December 22, 2021, the parties settled the SP Case by a settlement  
agreement at a time all were represented by counsel. The relevant  
terms of the settlement agreement are as follows
- a Plaintiff applied the last month rent deposit to September 2021,  
waived rent for October 2021, November 2021 and December 2021 in  
the total amount of \$3,900.00, and waived use and occupancy for  
January 2022 in exchange for Defendants' agreement to vacate on or  
before January 10, 2022. Plaintiff would be entitled to recover the  
amounts waived if Defendants failed to vacate as agreed
  - b Plaintiff agreed to return the security deposit in accordance with the  
security deposit statute, G.L.c. 186, § 15B



- c The parties acknowledged that all terms related to the settlement were contained in the agreement and no changes could be made except in writing and executed by each party
- 9 In connection with the settlement agreement, Plaintiff agreed to release, remise and forever discharge Defendants from all liabilities through the date of the release. Likewise, Defendants agreed to release, remise and forever discharge Plaintiff from all liabilities through the date of the release.
- 10 Defendants did not vacate until January 14, 2022.
- 11 Defendants communicated with Plaintiff on January 10, 2022 asking for a brief extension because Mr. Abdelazime was ill with COVID.
- 12 Plaintiff did not respond to Defendants' request for extra time.
- 13 Defendants informed Plaintiff that they had vacated as of January 14, 2022, and on January 15, 2022, Plaintiff confirmed that they had vacated.
- 14 Plaintiff sent a letter with respect to the disposition of the security deposit on February 10, 2022.
- 15 Plaintiff entered the Premises in August 2022 with a good faith belief that a water leak might exist therein, based on water dripping into the other unit in the building.
- 16 Defendants used the Premises to grow numerous plants. The Premises were kept moist and humid to ensure a good growing atmosphere.

- 17 As a result of the moist environment in the Premises, the living room floor buckled and mold like substances grew on certain surfaces
- 18 Defendants installed lights (and likely other items) on the walls and ceilings in the Premises related to their grow operation, and these items caused damage when removed
- 19 Defendants caused damage to the walls and ceilings of the Premises as a result of their grow operation that was beyond reasonable wear and tear given the one year tenancy Plaintiff received an estimate of \$3,840 00 to repair and paint the entire apartment
- 20 Defendants damaged the floors with their grow operation Plaintiff received an estimate of \$2,700 00 to remove and replace the living room floor and \$1,500 00 to refinish water damaged hardwood floors on the second floor
- 21 Defendants damaged the bathroom sink basin Plaintiff's received an estimate of \$480 00 to repair same Defendants clogged the toilet in an unnatural manner and broke window blinds Plaintiff received an estimate of \$250 00 to unclog the toilet and \$100 00 to replace broken window blinds
- 22 Plaintiff held a security deposit in the amount of \$1,300 00 and accrued interest of \$1 28

The settlement agreement in the SP Case is enforceable by its terms Although Defendants failed to vacate on January 10, 2022, they notified Plaintiff on that date

that Mr. Abdelazime was sick with COVID and that they would need a brief extension of time. Mr. Abdelzime's illness was an unanticipated and reasonable excuse for a slight deviation from the terms of the agreement. Plaintiff did not object, nor did she demonstrate that she suffered any adverse consequence due to the delayed move out. The vacate was delayed by only four days. The Court rules that Defendants substantially complied with the terms of the agreement. Accordingly, the waived rent and use and occupancy cannot be recovered by Plaintiff.

Because the settlement agreement is enforceable, the release signed by Defendants is likewise enforceable. Therefore, their counterclaims related to interference with quiet enjoyment related to Plaintiff's entry to the Premises,<sup>1</sup> failure to communicate and failure to maintain habitable conditions fail. The facts underlying these claims arose prior to the settlement agreement and release and the claims were waived as part of the consideration for the rent waiver.

The Court is left to adjudicate the claims and counterclaims not subject to the release, namely those related to damages to the Premises caused by Defendants and Plaintiff's handling of the security deposit. Regarding the damages, the Court rules that Defendants caused significant damage to the Premises in excess of reasonable wear and tear, largely due to their grow operation. The estimates received by Plaintiff to repair the ceilings, walls and floors, as well as the sink basin, toilet and window blinds, are reasonable. Plaintiff did not sustain her burden of proving that

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<sup>1</sup> Even if the claim was not waived, the Court finds that Defendant entered due to a legitimate emergency and, given the justification, her unannounced entry would not constitute a substantial interference with the tenancy in any event.

Defendants are responsible for the storm door replacement, the garbage disposal, the kitchen cabinet door, the exterior door locks

With respect to the security deposit, the Court rules that Plaintiff did not violate the security deposit law <sup>2</sup> Plaintiff was entitled to apply the security deposit to the costs of repairs, and because the cost of repairs far exceeds the amount of the security deposit, Defendants are not entitled to recovery of any part of the deposit

In light of the forgoing findings of fact and rulings of law, the Court rules that Defendant is entitled to recover \$8,870 00 in damages to the Premises. Deducting the deposits held by Plaintiff, the net amount of the damages due Plaintiff is \$7,568 72. Accordingly, judgment shall enter in favor of Plaintiff for damages in the amount of \$7,568 72.

SO ORDERED

DATE 5 31-23

  
Jonathan J. Kane, First Justice

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<sup>2</sup> "The lessor shall, within thirty days after the termination of occupancy under a tenancy at will or the end of the tenancy as specified in a valid written lease agreement, return to the tenant the security deposit or any balance thereof." G.L.c. 186, § 15B(4)

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO ~~22~~-SP 2378

_____	)	
CARR PROPERTY MANAGEMENT, INC	)	
	)	
PLAINTIFF	)	
v	)	FINDINGS OF FACT, RULINGS OF LAW
	)	AND ORDER
WALLACE B DARDEN,	)	
	)	
DEFENDANT	)	
_____	)	

This summary process case came before the Court on April 5, 2023 for a bench trial. Both parties appeared through counsel. Plaintiff seeks to recover possession of 114 Emerson Road, E103, Longmeadow, Massachusetts (the "Premises") from Defendant based on alleged lease violations.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

In February and June 2022, Defendant misused his oven to dry clothes, causing smoke to activate his smoke detectors. In both cases, he was in his unit and unaware of any problem, including not knowing that the smoke detectors were sounding. Defendant does not dispute that these events occurred, nor does he dispute the receipt of the notice to quit. Plaintiff established its prima facie case for possession based on the allegations in the notice to quit.

In his defense, Defendant asserts his right to a reasonable accommodation. In June 2022, after the second stove incident, he agreed to unplug his stove and refrain

from using it and, since that date, there have been no further incidents involving the stove. Defendant made a formal reasonable accommodation request on November 9, 2022 seeking to resolve this case by a dismissal after a period of compliance.

The Court heard extensive testimony from management and neighbors about their concerns for Defendant's well being. Several neighbors testified as to his declining mental state and increasing confusion. Although the Court appreciates their concerns, this case is not about Defendant's confusion, or his inability to understand the eviction process, but is about whether his condition poses a direct threat to the safety and health of other residents of the building.

Despite the legitimate concerns of the neighbors, Defendant's cognitive impairment in itself does not constitute a lease violation. His misuse of the stove and failure to react to the smoke does pose a direct threat to the safety and health of other residents, however, his agreement to disconnect and not use his oven satisfies those concerns. Based on the testimony of his case worker for Greater Springfield Senior Services, his memory and cognitive state might require a more supportive living environment, but unless and until his conduct causes a significant risk to others, it is not the basis for an eviction. Nonetheless, given Defendant's lack of response when smoke detectors were sounding in his own unit, the Court requires further steps be taken to understand whether Defendant's apparent lack of comprehension regarding emergency safety devices could pose a risk to himself and other residents.

Based on the foregoing, and in light of the governing law, the following order shall enter:

1. Defendant must continue to keep his stove unplugged and he must refrain from using it for any reason.

- 2 Defendant must engage in a further interactive process with respect to his reasonable accommodation request to determine if additional in home services are necessary to ensure that his continued independent living does not pose a direct threat to other residents
- 3 The case shall remain open for at least six months to monitor whether Defendant has engaged in further conduct that creates a direct threat to the health and safety of other residents
- 4 If Plaintiff alleges that Defendant has engaged in further conduct that creates a direct threat to the health and safety of other residents, it may schedule a hearing for entry of judgment
- 5 If this case has not been brought forward for six months after the date this order enters, it shall be dismissed

SO ORDERED

DATE 5 31 23

Jonathan J Kane  
Hon Jonathan J Kane, First Justice

cc Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20-CV-0716

KATIE JONES AND BENJAMIN LAFLAMME,	)	
	)	
PLAINTIFFS	)	
v.	)	RULING ON PETITION FOR
	)	ATTORNEYS' FEES AND ENTRY
PAIXAO PROPERTIES, INC.,	)	OF FINAL JUDGMENT
	)	
DEFENDANT	)	

This matter is before the Court on Defendant's post-trial petition for an award of attorneys' fees and costs. Following a bench trial, the Court entered an order on February 14, 2023 pursuant to which Plaintiff and Defendant were each allowed to recover reasonable attorneys' fees and costs. Defendant's counsel, Jaclyn Packard, submitted a petition for such fees and costs. Plaintiffs' counsel did not file an opposition to Defendant's petition or did he file a separate petition for an award of attorneys' fees and costs.

In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtac Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const.*



*Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorneys' fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389. The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. *See Heller*, 376 Mass. at 629.

With respect to Counsel's hourly rate, Attorney Packard petitions for an hourly rate of \$160.00. A judge may discern, from his own experience as a judge and expertise as a lawyer, the rate for which an attorney should be paid. *Heller*, 376 Mass. at 629. Based on the undersigned's background and experience, the Court deems the rate to be reasonable given the market value for legal services in Housing Court matters in Western Massachusetts. The \$511.94 in costs sought by Defendant, namely the filing fee and service of process costs for the summons and complaint and trial subpoenas, is also reasonable.

The petition seeks compensation for 32.1 hours of work. In this matter, after a bench trial conducted over nearly five hours, Defendant prevailed on its claim for contractual damages in the amount of \$9,150.00 and it defended against claims for breach of warranty and breach of the covenant of quiet enjoyment. After taking into

account all of the relevant circumstances, the Court rules that Defendant's petition for attorney's fees and costs is reasonable.<sup>1</sup>

In light of the foregoing, final judgment shall enter for Defendant in the amount of \$4,952.50 in damages, \$4,898.00 in attorneys' fees and \$511.94 in costs.

SO ORDERED.

DATE: 5/31/2023

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>1</sup> The award of attorneys' fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO 23 CV 0129

ARVI KAASIK,

PLAINTIFF

v

JUAN C GONZALEZ,

DEFENDANT

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FINDINGS OF FACT, RULINGS  
OF LAW AND ORDER FOR JUDGMENT

This civil damages case came before the Court for a bench trial on March 21, 2023. Plaintiff appeared through counsel. Defendant appeared self represented. This matter began as a summary process case with docket number 22H79SP002060 ("SP Case") pursuant to which Plaintiff sought to recover possession of 152 Oak Street, 1<sup>st</sup> Floor, Indian Orchard, Massachusetts (the "Premises"). The SP Case was transferred to the civil docket after Defendant vacated.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds as follows:

- 1 Monthly rent was \$1,300.00 per month.
- 2 Defendant paid \$2,600.00 at the outset of the tenancy, which represented a last month's rent deposit and a security deposit.
- 3 The amount of unpaid rent due Plaintiff through the vacate date is \$13,000.00.

- 4 Plaintiff applied the deposits to the amount of unpaid rent, leaving a balance due of \$10,400 00
- 5 Plaintiff incurred filing fees of \$205 00 as well as a \$300 00 fee for service of a 48 hour notice
- 6 Plaintiff, who lived on the second floor of the house, frequently entered the Premises without notice or permission On one occasion, Plaintiff entered the Premises when Defendant's 9 year old daughter was home On other occasions, Defendant found Plaintiff in the Premises when he came home from work for lunch
- 7 Defendant verbally agreed to vacate the Premises on March 31, 2022, but did not vacate because he had nowhere to go at that time
- 8 After Plaintiff failed to vacate, Defendant locked the back door and the basement door, significantly restricting that access Plaintiff had enjoyed during the previous months
- 9 For periods of time, Plaintiff had no heat or hot water

Massachusetts law provides that a landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant shall be liable for actual and consequential damages, or three months rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee G L c 186, § 14 This statutory right of quiet enjoyment protects a tenant from serious interference with the tenancy, meaning any acts or omissions that impair the

character and value of the leasehold *Doe v New Bedford Housing Auth* , 417 Mass 273, 285 (1994)

The Court finds that Plaintiff's conduct constitutes serious interference with Defendant's tenancy Defendant testified credibly about Plaintiff's unauthorized entries, the denial of access and the loss of heat and hot water Plaintiff did not deny Defendant's claims As a result of Plaintiff's interference with his quiet enjoyment, Defendant is entitled to statutory damages for violations of G L c 186, § 14 in the amount of three month's rent or actual damages, whichever is greater In this case, the evidence of actual damages was scant, therefore, the Court finds that statutory damages result in the greater recover Defendant is entitled to an offset of \$3,900 00 on account of his defenses

Based on the foregoing, and in light of the governing law, the following order shall enter

- 1 Plaintiff is entitled to \$10,905 00 on his claims, and Defendant is entitled to an offset of \$3,900 00 based on his defenses
- 2 Judgment shall enter in favor of Plaintiff in the amount of \$7,005 00

SO ORDERED

DATE

5 31 23

Jonathan J Kane  
Jonathan J Kane, First Justice

cc Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO 22 CV 0314

DAESHAVANA ROBINSON,

PLAINTIFF

v

VICTOR GEORGE,

DEFENDANT

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FINDINGS OF FACT, RULINGS  
OF LAW AND ORDER FOR JUDGMENT

This civil damages case came before the Court for a bench trial on March 22, 2023. Plaintiff, the former tenant, appeared self represented. Defendant, the former landlord, appeared through counsel. This matter began as a summary process case with docket number 22H79SP000159 ("SP Case") pursuant to which Defendant sought to recover possession of 34 Suffolk Street, Apt, 2L, Springfield, Massachusetts (the "Premises") from Plaintiff. The SP Case was transferred to the civil docket after Defendant vacated for a trial on the counterclaims she alleged in the SP Case. Plaintiff asserts claims based on breach of warranty, interference with quiet enjoyment, retaliation and violation of the security deposit statute.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds as follows:

1. The Premises is one unit in a four unit building.
2. Plaintiff moved into the Premises from a shelter on March 16, 2020.

- 3 Way Finders, Inc paid first, last and security deposit after the unit  
passed inspection
- 4 Plaintiff complained about roaches immediately upon moving into the  
Premises
- 5 Defendant had Terminex treat the Premises at least twice prior to the  
Fall of 2021, at which time Defendant arranged for recurring treatments
- 6 Defendant did not receive complaints from other tenants in the building  
about the presence of roaches or mice
- 7 On July 27, 2021, Defendant notified Plaintiff and the other tenants of  
his intent to have the building evaluated for a possible sale
- 8 After entering into an agreement with a real estate agent to sell the  
property, Defendant served Plaintiff with a notice to quit on November  
30, 2021
- 9 Defendant Plaintiff contacted the Springfield Code Enforcement  
Department sometime in the Fall of 2021
- 10 On April 27, 2022, Plaintiff informed Defendant that she had vacated  
and left the keys in the mailbox
- 11 On May 20, 2022, Defendant returned \$503.00 from Plaintiff's security  
deposit. The letter enclosing the money order listed various work that  
Defendant had done to repair, paint and clean the Premises, but did not  
provide any documentation supporting the deduction of \$397.00

The Court will address each of Plaintiff's claims for damages separately

A Breach of Warranty

Implied in every tenancy is a warranty that the leased premises are fit for human occupation *Jablonski v Clemons*, 60 Mass App Ct 473, 475 (2004), *see Boston Housing Auth v Hemingway*, 363 Mass 184 (1973) The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State sanitary code *See Davis v Comerford*, 483 Mass 164, 173 (2019), citing *Boston Hous Auth* , 363 Mass at 200 201 & n 16 A tenants obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability " *Id* , citing *Berman & Sons, Inc v Jefferson*, 379 Mass 196, 198 (1979) The warranty of habitability applies only to "substantial violations or significant" defects *See McAllister v Boston Housing Authority*, 429 Mass 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim)

Here, Plaintiff asserts various conditions of disrepair, but the only conditions about which she testified in any detail involved an infestation of roaches and mice, and clogged drains With respect to these infestations, Plaintiff did not provide any evidence of how and when she informed Defendant of the problem Defendant acknowledges that she complained of roaches immediately after moving in, and Defendant had Terminex perform treatments Plaintiff offered no evidence (photographs, witnesses, code enforcement reports, etc ) to support her claim that the problems continued or that she notified Defendant of the need for further



treatments Defendant's wife, who assisted in the management of the property, testified credibly that no other tenants in the building complained about roaches or mice.<sup>1</sup> Accordingly, the Court rules in favor of Defendant with respect to the warranty claim.

**B. Interference with Quiet Enjoyment**

Massachusetts law provides that a landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant shall be liable for actual and consequential damages, or three months rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee. G. L. c. 186, § 14. This statutory right of quiet enjoyment protects a tenant from serious interference with the tenancy, meaning any acts or omissions that impair the character and value of the leasehold. *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994).

The Court finds that Plaintiff failed to establish that Defendant acted in a manner that seriously interfered with Plaintiff's tenancy. Plaintiff testified that Defendant failed to remove snow, but the photographs she offered do not establish anything more than snow fell and had not been removed. There is no evidence of how long the snow remained before it was cleared, and Defendant testified that he came to clear the snow when Plaintiff contacted him about it. The evidence does not show that the failure to remove snow was repeated or unreasonably delayed. Outside of the

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<sup>1</sup> Plaintiff also claimed other conditions of disrepair, including a clogged sink drain and issues with her porch stairs, but the Court finds that these issues were neither substantial code violations nor significant defects.

issue around snow removal, Plaintiff presented no credible evidence whatsoever that Defendant acted improperly toward her. The Court rules in favor of Defendant on Plaintiff's claim for breach of quiet enjoyment.

C. Retaliation/Reprisal

Pursuant to G.L.c. 186, § 18, a landlord who takes reprisals against a tenant for the tenant's complaint to a code enforcement agency is liable for damages of not less than one month's rent or more than three month's rent. § 18, first para. "The receipt of notice of termination of tenancy, except for nonpayment of rent, or, of increase in rent, within six months after the tenant has made such report or complaint shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant for engaging in such activities." § 18, second para.

Here, Plaintiff offered no evidence of when she contacted Code Enforcement. She testified that she called in September 2021 and an inspection was done in November 2021, but she did not offer any reports or other evidence to support her testimony as to when she called Code Enforcement. Given that Defendant had already notified Plaintiff of his intent to sell the building in July 2021, the Court finds that, even if Plaintiff had created the rebuttable presumption of reprisal, Defendant was already in the process of selling the building and therefore rebutted the presumption by demonstrating an independent and separate reason to serve Plaintiff with the notice to quit. The Court finds in favor of Defendant on the claim of retaliation/reprisal.

D Security Deposit Violation

Pursuant to G L c 186, § 15B(3)(a), Defendant was obligated to hold the security deposit in a separate, interest bearing account in a bank located in Massachusetts beyond the claim of creditors, and to provide Plaintiff with a receipt of same. If Defendant intended to withhold some of the security deposit after Plaintiff vacated, he was required to provide an itemized list of damages, sworn to under the pains and penalties of perjury, providing written evidence (such as estimates, bills, invoices or receipts), indicating the actual or estimated costs of repair. See G L c 186, § 15B(4)(iii).

Defendant failed to demonstrate compliance with the security deposit statute. Once Plaintiff asserted that Defendant failed to properly handle her security deposit, the burden shifted to Defendant to prove that he followed the law. He provided no evidence that the deposit was held in a separate interest bearing account outside of the reach of his creditors. Moreover, upon returning the security deposit, Defendant did not provide any written documentation of the actual or estimated costs of repair, signed under the pains and penalties of perjury, as required by the statute. Although Defendant only deducted \$397.00 and returned \$503.00, his failure to comply with the security deposit statute entitles Plaintiff to damages in an amount equal to three times the amount of such security deposit, plus interest at the rate of five per cent from the date when such payment became due.<sup>2</sup> See G L c 186, § 15B(6). In this

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<sup>2</sup> The Court has no evidence showing that Defendant complied with the requirement of G L c 186, § 15B(3)(b) to pay interest for each year he held the security deposit.

case, three times the security deposit is \$2,700 00, and Defendant will be credited the \$503 00 he returned to Plaintiff. Plaintiff is also entitled to interest in the amount of \$135 00.<sup>3</sup>

Based on the foregoing, and in light of the governing law, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff in the amount of \$2,332 00.

SO ORDERED

DATE 5/31/23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>3</sup> This figure is calculated at a rate of \$45 00 per year (5% of \$900 00) for the periods of March 2020 to March 2021, March 2021 to March 2022 and from her move out through the trial date.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1149

TYEKA ROBINSON, )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 CHANEL KERSEY, )  
 )  
 DEFENDANT )

FINDINGS OF FACT, RULINGS  
OF LAW AND ORDER

This summary process case based on non-payment of rent case came before the Court on May 23, 2023 for a bench trial. Both parties appeared self-represented. Plaintiff seeks to recover possession of 100 Caton Lane, Indian Orchard, Massachusetts (the "Premises").

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

At a time that Plaintiff and Defendant were involved in a relationship, Plaintiff invited Defendant and her family to move into the Premises. They did not enter into a landlord-tenant relationship and Defendant did not have exclusive possessory rights to any part of the Premises. Each party had children at the time Defendant moved in, and Defendant's daughters slept in the finished basement. The relationship ended and Plaintiff told Defendant that she would have to live in the basement with her daughters and start paying a share of the expenses of the house. The Court finds that there was no meeting of the minds with respect to establishing a landlord-tenant

relationship and the basement where Defendant and her family was living had no kitchen nor a full bathroom with a tub or shower.

Based on the foregoing, the Court rules that Plaintiff did not need to resort to summary process to have Defendant removed from the property. Defendant is a mere licensee, occupying the Premises at the invitation of Plaintiff, and not as a tenant. Therefore, Plaintiff's reliance on a non-payment eviction case to recover possession is misplaced. She has provided adequate and reasonable notice to Defendant that she must vacate the Premises. Because Defendant is a licensee whose license has been terminated, Plaintiff has the right to require her to vacate immediately. However, given the totality of the circumstances, including the fact that Defendant has children, the Court rules that Defendant may remain at the Premises through the end of May to make arrangements to have her belongings removed.

The following order shall enter:

1. Defendant and her family shall vacate the Premises no later than May 31, 2023.
2. Defendant shall be provided with unfettered access to the basement living space for the duration of her occupancy at the Premises.
3. Plaintiff shall not unreasonably deny or obstruct Defendant's efforts to remove her belongings. To the extent that Defendant has belongings in the main part of the house, Plaintiff shall make the necessary arrangements to allow Defendant to retrieve these items.
4. If Defendant does not vacate the Premises on or before May 31, 2023, Plaintiff shall be entitled to judgment for possession retroactive to May 23,

2023 and issuance of the execution (eviction order) upon expiration of the statutory 10-day post-judgment period.

SO ORDERED.

DATE: 5/31/23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-SP-3093

SUGARLOAF CRESTWOOD LP D/B/A )  
SUGARLOAF ESTATES, )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 BILLY ROMAN, )  
 )  
 DEFENDANT )

FINDINGS OF FACT, RULINGS  
OF LAW AND ORDER FOR JUDGMENT

This summary process matter came before the Court for a bench trial on May 31, 2023. Plaintiff appeared through counsel. Defendant appeared with his guardian ad litem ("GAL").<sup>1</sup> The premises in question is located at 42 River Road, Apt. 41, Sunderland, Massachusetts (the "Premises").

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Defendant moved into the Premises in October 2020 with two of the other named defendants who have since vacated. On April 9, 2021, he executed an amendment by which he was added to the lease. Defendant was served with a notice to terminate tenancy dated July 27, 2022, and he does not dispute receipt thereof. The notice indicated a termination date of August 31, 2023. Defendant continues to reside in the Premises.

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<sup>1</sup> Community Legal Aid has represented Defendant on a limited representation in the past, but did not file an appearance for this trial.



Defendant does not contest the allegations set forth in the notice to quit. In his answer (which the Court allowed to be filed late), Defendant raised no legal defenses or claims. At trial, Defendant acknowledged his verbal abuse of Plaintiff's employees, including leaving various voicemails admitting his intent to harass certain employees until they quit their jobs. He made reference to taking matters into his own hands, even if leads to jail. The property's former property manager testified credibly that she felt threatened, intimidated and scared by Defendant's conduct. Because of Defendant's behavior, the on-site management office was closed and staff members relocated to ensure their safety. The property manager received a transfer to a different property because she was unwilling to deal with the issues caused by Defendant.

Defendant testified that he has certain disabilities and that he had been under a lot of stress due to various reasons, including his financial situation and an abusive relationship with his ex-girlfriend. He did not produce evidence in support of his assertions. He said that his misbehavior was a cry for help, and that he is now taking medications and engaging in therapy to address this mental health issues.<sup>2</sup> Defendant acknowledged that he cannot afford the rent and has not been paying rent for many months. Although Plaintiff is not seeking monetary damages in this case, it asserts that the balance of unpaid rent and use and occupancy is approximately \$40,000.00 as of the date of trial.

Based on the foregoing findings, the evidence and testimony at trial and the inferences drawn therefrom, and in light of the governing law, the Court enters the following order:

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<sup>2</sup> To the extent Defendant's testimony operates as a request for a reasonable accommodation, the Court finds that it would be unreasonable to require Plaintiff to continue to allow Defendant to occupy the Premises. First, Defendant's behavior that led to the notice to quit was egregious, significantly disrupted the management of the property, and placed employees in actual fear for their health and safety. Second, given that more than \$40,000.00 is owed in unpaid rent, allowing Defendant to remain in the Premises with no likelihood of any substantial repayment of the arrears would result in a financial hardship to Plaintiff.

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue upon written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: May 31, 2023

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO 23 SP 0402

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ANGEL VILLAR,

PLAINTIFF

v

JUAN COTTO,

DEFENDANT

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FINDINGS OF FACT, RULINGS OF LAW  
AND ORDER FOR JUDGMENT

This summary process case came before the Court on May 25, 2023 for a bench trial. Both parties appeared and represented themselves. Plaintiff seeks to recover possession of 63 Clifton Avenue, Springfield, Massachusetts (the "Premises") from Defendant based on non payment of rent.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Defendant occupies the Premises. Monthly rent is \$1,00.00 per month. Defendant has not paid rent for six months through the date of trial. Defendant acknowledges receipt of the notice to quit. Based on the foregoing the Court finds that Plaintiff has established its prima facie case for possession and damages.

Defendant did not file an answer. At trial, Defendant contends that the Premises suffered from various conditions of disrepair, although he offered no evidence in support of his testimony. Plaintiff's property manager testified credibly that the

conditions about which Defendant complains were caused by his own conduct, except for a leak in the bathroom ceiling. With respect to the leak, the Court finds that Plaintiff promptly addressed the issue and that the property manager was never given notice by Defendant that the leak continued after the repair. Based on the foregoing, the Court finds that Defendant is not entitled to any abatement of rent based on his claims of conditions of disrepair.

Defendant's primary defense appears to be that the RAFT program was willing to pay \$3,960.00 toward the rent arrears but that Plaintiff would not accept a repayment plan for the balance. Plaintiff offered to accept repayment of the arrears at a rate of \$200.00 per month, but Defendant declined, insisting that Plaintiff use his last month's rent as a credit toward the arrears. Plaintiff would not agree and Defendant's RAFT application timed out approximately two weeks ago. The Court finds that, under the circumstances presented here, Plaintiff's unwillingness to accept the RAFT assistance does not constitute a legal defense to Plaintiff's claim for unpaid rent.

Accordingly, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession and \$6,000.00 in damages, plus court costs.
2. Execution shall issue by written application after expiration of the 10-day appeal period.

SO ORDERED

DATE

5/31/23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

cc Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO 21 CV-0569

KIMBERLY HENDERSON, ET AL ,	)	
PLAINTIFFS	)	
v	)	FINDINGS OF FACT AND RULINGS
STEPHEN BOSCO,	)	OF LAW REGARDING c 93A AND
DEFENDANT	)	ENTRY OF JUDGMENT

In this case, which commenced as a summary process action commenced by Defendant Bosco ("Mr Bosco"), a jury returned a verdict on March 2, 2023 with respect to claims for breach of warranty and quiet enjoyment. The Court reserved Plaintiff Henderson ("Ms Henderson")'s claim under G L c 93A ("c 93A")

As indicated on the special verdict form, the jury found that Mr Bosco violated the implied warranty of habitability and awarded Ms Henderson \$1,000.00 in damages. The jury found that the conditions of disrepair did not constitute a breach of quiet enjoyment, however, answering "no" to the question of whether Mr Bosco acted at least negligently or recklessly in failing to adequately address the conditions of disrepair. The jury further found that Mr Bosco interfered with Ms Henderson's right to quiet enjoyment by seeking to collect rent owed to the former owner and awarded \$2,500.00 in emotional distress damages. Because the amount of actual damages was less than statutory damages, the jury awarded \$2,925.00 (representing

three months' rent) on the quiet enjoyment claim. With respect to amount of rent owed to Mr. Bosco, the court found that he was entitled to \$7,615.00.<sup>1</sup>

For purposes of its c. 93A ruling, the Court adopts the "Agreed Facts" set forth in the Joint Pretrial Memorandum. In addition, based on the evidence produced at trial, the Court finds that, from the date Mr. Bosco purchased the building, Ms. Henderson suffered from, among other conditions, problems with heat and hot water, drafty windows and doors, broken or missing screens, holes in her porch, broken kitchen cabinets and the presence of mice and roaches. She informed Mr. Bosco of these conditions soon after the purchase when he visited to look through the unit. She and her family also endured non-residents entering the building and using the common areas, where they encountered syringes, blood and excrement.

The Court further finds that the conditions of disrepair in Ms. Henderson's unit were eventually corrected, although Mr. Bosco did not receive a letter of compliance from the Holyoke Board of Health. The Board of Health suspended in-person inspections and gave leeway to property owners due to considerable delays connected to the COVID-19 pandemic. The Board of Health is not currently requiring Mr. Bosco to correct code violations.

Mr. Bosco served Ms. Henderson with a notice to quit demanding payment of rent for numerous months prior to his purchase of the building, which unpaid rent was due to the previous owner. Mr. Bosco did not produce an assignment from the

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<sup>1</sup> The evidence at trial established that the amount of unpaid rent was \$17,575.00. It is unclear how the jury reached its finding as to the amount of rent to which Ms. Henderson was entitled. The Court does not find that the jury made an error in its calculations; instead, the Court concludes that the jury abated the rent for a period of months to account for the conditions of disrepair.

previous owner at trial. Mr. Bosco admitted, in his responses to Ms. Henderson's request for admissions, that he sought to collect rent that was not due to him.

Ms. Henderson alleges violations of c. 93A based on breach of the implied warranty of habitability and interference with quiet enjoyment. With respect to the c. 93A claim based on breach of warranty, Ms. Henderson established at trial that the apartment suffered from numerous code violations and the jury found in her favor and awarded \$1,000.00 in damages. A failure by a landlord to cure a code violation within a reasonable time after notice constitutes a violation of the landlord-tenant regulations that the Attorney General has promulgated pursuant to c. 93A. See 940 Mass. Code Regs. 3.17, *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 470 (2017). Such a c. 93A violation does not necessarily result in the recovery of additional actual damages, but it might permit actual damages to be multiplied or provide a separate basis for an award of attorneys' fees and costs. *Id.*

In determining what is a reasonable time after notice for repairs to be made, the Court relies upon the jury finding that Mr. Bosco did not interfere with Ms. Henderson's right to quiet enjoyment by acting at least negligently or recklessly in failing to adequately address conditions of disrepair. The jury apparently calculated damages and a rent abatement under the strict liability standard applicable to warranty of habitability claims (see *Goreham v. Martins*, 485 Mass. 54, 63-64 (2020)), but they did not find that Mr. Bosco was negligent in the time it took for repairs to be made. There was adequate evidence adduced at trial to support the jury's findings, particularly given the testimony about COVID-related delays and the challenges Mr.

Bosco faced in addressing certain problems, such as the old heating system in the building

The Court is not unsympathetic to Ms. Henderson's claims that she suffered with conditions of disrepair in her apartment, however, the Court would be substituting its own judgment for that of the jury if it finds separate liability under c. 93A given that the jury concluded that Mr. Bosco did not act negligently in addressing the conditions.<sup>2</sup> The jury is the ultimate fact finder and questions of the weight of the evidence and credibility of the witnesses were for the jury to resolve. See *Chervin v Travelers Ins. Co.*, 448 Mass. 95, 111 (2006)

Likewise, the Court does not award multiple damages under c. 93A on the warranty claim. The award of multiple damages under c. 93A requires that Defendant's conduct be a willful or knowing violation of law. Given the jury's finding that Mr. Bosco was not at least negligent or reckless in addressing the conditions, the Court finds that Mr. Bosco's conduct in addressing the conditions was not a willful or knowing violation of law. Accordingly, with respect to Ms. Henderson's claims related to conditions of disrepair, the Court rules that Mr. Bosco did not violate c. 93A.

Turning to Mr. Bosco's demand for rent owed to the prior owner, his conduct was unfair and deceptive. He acknowledged that he had no way to establish that he had the right to collect the unpaid rent from 2019 and early 2020. The Court finds his testimony on the matter not to be credible. He claims that he thought he received an

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<sup>2</sup> Even if the Court includes the difference between the total amount of rent owed based on the undisputed evidence that Ms. Henderson did not pay rent for 19 months (\$17,575.00) and the amount of rent the jury found to be due Mr. Bosco (\$7,615.00) as warranty damages, it does not change the Court's reasoning. The jury found that Mr. Bosco violated the warranty of habitability given the jury's finding that Mr. Bosco was not negligent in the manner in which he addressed the conditions.



assignment from the seller when he purchased the building, but such a document would have included with the closing documents. Mr. Bosco is a sophisticated businessperson who owns over 200 rental units and, presumably, his real estate purchase and sale transactions are well documented. The Court infers that no assignment was ever signed, but instead, around the time of the purchase, Mr. Bosco learned from the prior owner that Ms. Henderson owed rent and decided to collect it himself. Even if he did not have malicious intent, his conduct was both willful and knowing. The jury found that Ms. Henderson suffered \$2,500.00 in actual damages for Mr. Bosco's conduct. The Court rules that Mr. Bosco is liable under 93A, and trebles the actual damages to \$7,500.00, and awards costs and reasonable attorneys' fees. The actual damages, trebled, exceed the statutory damages of \$2,925.00. Ms. Henderson is entitled to rely on whichever theory of damages provides her with the greatest measure of damages. *Moynahan*, 91 Mass. App. Ct. at 470.

Based on the foregoing and in light of the governing law, the Court enters the following order:

1. Ms. Henderson is entitled to judgment for damages in the amount of \$885.00. The Court calculates the damages by adding together the warranty damages of \$1,000.00 and the quiet enjoyment damages of \$7,500.00, and subtracting \$7,615.00 in unpaid rent.
2. No judgment shall enter until attorneys' fees have been awarded. Ms. Henderson's counsel shall have fifteen (15) days from the date of this order to file a petition for reasonable attorneys' fees and costs, along with supporting documentation. Mr. Bosco shall then have fifteen (15) days from

receipt of the petition to file any opposition, after which the Court will assess attorneys' fees without need for further hearing, unless the Court so requests

SO ORDERED

DATE 6 2 23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 21-SP-2533

HOME SAVERS COUNCIL OF GREENFIELD  
GARDENS,

Plaintiff,

v.

JAYME JORDAN,

Defendant.

ORDER

After hearing on May 26, 2023, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day (LFD) counsel and at which a representative from the Tenancy Preservation Program joined the hearing, the following order shall enter:

1. Based on the record before the court, the court is concerned that the tenant's failures to properly engage in these proceedings and comply with the various requirements of her subsidized tenancy which resulted in her loss of her subsidy,

stem from her mental health disabilities, the physical eviction currently schedule for June 6, 2023, shall be cancelled.

2. The costs incurred by the landlord in scheduling and cancelling said physical eviction shall be passed on to the tenant.
3. A referral was made to the Tenancy Preservation Program (TPP) which agreed to meet with the tenant directly after the hearing.
4. Additionally, TPP will meet with the parties on Tuesday, May 30, 2023, at 11:00 a.m. at the office of the landlord to assist the tenant with recertification.
5. In addition to the above, TPP has agreed to work with the tenant regarding her RAFT application, seeking additional funds from other sources (e.g., Community Action).
6. TPP shall provide a copy of this order to RAFT so that they understand that if there are sums outstanding after any rental arrearage funds from RAFT and/or other agencies, the court will fashion an ordered "payment plan" for said remaining balance.
7. In accordance with G.L. c.235, s.23, the execution shall be returned to the court.
8. The tenant shall pay \$178 (the tenant's old portion of the rent) to the landlord in good faith as a payment towards her use and occupancy.
9. LFD counsel explained to the court that though she could not enter any addition appearance at this time, she will seek from her agency (Community Legal Aid) further representation for this tenant, stating that it is a priority-type matter).

10. Either party may file a motion to bring this matter back before the court for hearing. Said moving party, if a motion is filed, shall send courtesy copies of said motion to TPP and Attorney Cunningham-Minnick.

So entered this 3<sup>rd</sup> day of June, 2023.

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Robert Fields, Associate Justice

CC: TPP

Jennifer Cunningham-Minnick, Esq., Community Legal Aid LFD Counsel  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-354

**JAMES NESBITT and TIFFANY TAN,**

**Plaintiffs,**

**v.**

**PAULA DELAURENTIS,**

**Defendant.**

**ORDER**

After hearing on May 31, 2023, the following order shall enter:

1. Instead of fully hearing the defendant's motion to enforce the access order (and thus any sanctions sought in such motion is not waived), the parties agree to the access terms in Paragraph #8 of the court's May 3, 2023, Order. Additionally the parties agreed that the landlord shall copy by email any notices requesting access to the tenants' counsel *and* that the landlord may not enter the premises

(other than in a *bona fide* emergency) if the tenants are not present or refuse entry.

2. The parties further agreed that the landlord and her attorney may have access to the premises on June 3, 2023, between 9:00 a.m. and 11:00 a.m. for an inspection. During that time, the landlord (and/or her attorney) may take photographs of items of disrepair, while taking extra care to avoid invading the tenants' privacy and personal effects.
3. The landlord and her attorney may also access the basement for a two-hour period following the inspection to remove some or all of the landlord's personal belongings and to inspect the de-humidifier.
4. The parties and their agents shall not audio record each other. That said, the tenants were not certain they could shut off the audio recording feature of their surveillance system. The tenants shall notify the landlord and her attorney when they first arrive as to whether or not they were able to do so or not.
5. A hearing by Zoom shall be scheduled for **June 5, 2023, at 2:00 p.m.** for hearing on the parties' cross-motions for fees and for the landlord's motion for use and occupancy.

So entered this 2nd day of June, 2023.

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Robert Fields, Associate Justice

CC: Court Reporter

12

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-407

25 HIGHLAND APARTMENTS, LLC,

Plaintiff,

v.

JOHN R. WALTERMIRE and EVELISSE  
DELGADO,

Defendants.

ORDER

After hearing on May 25, 2023, at which the plaintiff appeared through counsel and the tenant, Waltermire, appeared with Lawyer for the Day, the following order shall enter:

1. This matter shall be scheduled for hearing on **June 14, 2023, at 2:00 p.m.**
2. Attorney Gordon Shaw (Lawyer for the Day) shall reach out to the tenant's criminal defense attorney Michelle Dame to inform her of the details of this matter.



3. The clerks office is requested to send a copy of this order to Attorney Dame.  
Attorney Dame is requested to appear at the June 14, 2023, 2:00 p.m. hearing and advise her client about his 5<sup>th</sup> Amendment Constitutional protections against self-incrimination. It is the court's understanding that counsel may bill the state for her appearance on that occasion in this matter.
4. Without making any factual determinations, the tenants are required to not engage in any criminal behavior between now and the next hearing. If the landlord alleges a violation of this term, it may file an emergency motion to be heard prior to the next scheduled hearing date.

So entered this 5<sup>th</sup> day of June, 2023.

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Robert Fields, Associate Justice

CC: Michelle Dame, Esq. (tenant's criminal defense counsel)  
Goodhines Law Offices, 175 State Street, Suite 400, Springfield MA 01103  
Gordon Shaw, Esq. (Lawyer for the Day)  
Court Reporter

12

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4845

OUTING PARK APARTMENTS II,  
  
Plaintiff,  
  
v.  
  
DAWN S. HOGUE,  
  
Defendant.

ORDER

After hearing on May 30, 2023, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The outstanding use and occupancy through May 2023 is \$1,691 plus \$201.25 in court costs.
2. A representative from Way Finders, Inc. joined the hearing and reported that there is a RAFT application has been completed by both parties, has been assigned to a case worker, and is pending.

3. The tenant has not received RAFT within the past 12 months so may be eligible for as much as six months' rent (the rent being subsidized---currently the tenant's portion is \$256.
4. The costs incurred by the landlord to schedule and cancel the physical eviction shall be added to the tenant's RAFT application as well as the costs of this summary process action. The tenant will also upload "hardship" documentation required by the RAFT application.
5. Both parties shall cooperate with complying with RAFT obligations.
6. It is anticipated that even if RAFT grants funds for this tenancy, there will be \$155 outstanding. The tenant has agreed to pay the landlord \$155 by tomorrow, May 31, 2023. The tenant shall also pay the landlord June 2023 rent timely.
7. Given the foregoing as well as the tenant's credible testimony regarding her experiencing domestic violence, the physical eviction currently scheduled shall be cancelled by the landlord.
8. Given that this matter is for *cause* for repeated late rent payments, the tenant agrees that this matter shall remain open for three rental periods after the balance reaches \$0.

So entered this 5<sup>th</sup> day of June, 2023.

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Robert Fields, Associate Justice  
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-SP-2922

\_\_\_\_\_  
3 CHESTNUT, LLC D/B/A SILVERBRICK SQUARE, )

PLAINTIFF )

v. )

JANAYRA WILLIAMS, )

DEFENDANT )  
\_\_\_\_\_ )

MEMORANDUM AND ORDER OF  
DISMISSAL

This summary process case came before the Court on May 25, 2023 for a bench trial. Plaintiff appeared through counsel. Defendant appeared and represented herself. Plaintiff seeks to recover possession of 122 Chestnut Street, L003, Springfield, Massachusetts (the “Premises”) from Defendant based on non-payment of rent. The Premises are on the first floor of a large apartment building located within a multifamily apartment complex in the downtown area.

In *Adjarvey v. Central Div. of the Hous. Court Dep't*, 481 Mass. 830 (2019), the Supreme Judicial Court stated that “[a] tenant is entitled to actual receipt of the notice to quit within the time prescribed and before an eviction action is brought” (quotation omitted). *Id.* at 850. In this case, Plaintiff purportedly served a notice to quit upon Defendant by having it delivered to the Premises. Plaintiff produced a business record through its Delinquency Coordinator with an affidavit of service by the

property manager attesting that the notice to quit was attached to Defendant's door.<sup>1</sup> There is no indication that the notice to quit was also sent by either by first class mail, postage prepaid, or by certified mail, so the Court cannot draw any inference that Defendant received the notice via the mail. Moreover, there is no evidence of any communication between Defendant and an agent of Plaintiff after delivery of the notice from which the Court could conclude that Defendant received it, nor is there any evidence of constructive receipt (by another occupant of the Premises, for example).<sup>2</sup>

"It is the landlord's burden to 'show that [it] gave a notice which complied with the statute. The statute does not proscribe how notice is to be given.' . . . It is nonetheless evident that a notice taped to a door is not 'given to the tenant,' until the tenant receives actual or constructive notice of it." *Youghal, LLC v. Entwistle*, 484 Mass. 1019, 1022 (2020), quoting *Ryan v. Sylvester*, 358 Mass. 18, 19 (1970). "[A] legally adequate notice to quit is not jurisdictional but rather [is] a condition precedent to a summary process action that is part of the landlord's prima facie case." *Cambridge St. Realty, LLC v. Stewart*, 481 Mass. 121, 127 (2018). Where a tenant does not actually or constructively receive (or timely receive) the notice to quit, "the summary process complaint must be dismissed." *Youghal*, 484 Mass. at 1022.

The Court credits Defendant's statement of nonreceipt. She testified that she was often away from the Premises during the relevant time period taking care of ill family members. She further testified that non-residents have been able to get into the

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<sup>1</sup> The property manager was not a witness at trial, nor was any person who witnessed delivery.

<sup>2</sup> Although Plaintiff contends that Defendant willfully evaded service of various documents related to this case, the sole issue before the Court is actual receipt of the notice to quit.

building in the past and that, on one occasion, her door mat was stolen from in front of her door. Without any credible evidence from Plaintiff of actual or constructive receipt, the Court concludes that Defendant never received the notice to quit.

Accordingly, the case is **DISMISSED**.

SO ORDERED.

DATE: 6.6.23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter



the bathroom (toilet, sink, shower/tub) is functional. Defendant shall not interfere with the contractors in any way.

2. Access shall be provided at 1:00 p.m. today (June 5, 2023) and for such time tomorrow (June 6, 2023) as necessary to ensure a working bathroom.
3. If the bathroom is not functional by 3:00 p.m. tomorrow, Plaintiff shall provide alternative housing in the form of a hotel room in a reasonably close proximity to the Property (recognizing that available hotels may not be in the same city). If the hotel room does not have cooking facilities, Plaintiff shall provide a daily food stipend of \$75.00 for Defendant and his two children. The alternative housing shall continue until the Property has a functioning bathroom or further Court order, whichever occurs first.
4. Plaintiff shall continue to work diligently to address the remaining conditions of disrepair, and Defendant shall not unreasonably deny access or interfere with the work.
5. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

DATE: 6-6-23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0469

MARLENE A. CHRISTY REVOCABLE TRUST )  
C/O CHASE PROPERTY SERVICES, INC. )

PLAINTIFF )

v. )

JENNIFER CRUZ AND JAVIER FONTANEZ, )

DEFENDANTS )

ORDER

This case came before the Court on June 12, 2023 on Plaintiff's motion for temporary restraining order and request for preliminary and permanent injunction. Plaintiff appeared through counsel. Defendant failed to appear. The apartment in question is located at 117 Main Street, Unit 3-L, South Hadley, Massachusetts (the "Premises").

After hearing, the Court finds that electric service has been disconnected at the Premises since on or before May 25, 2023. Defendants are responsible for paying for utilities. The absence of electricity in a residential dwelling is a violation of the State Sanitary Code and poses a threat to the health and safety of other tenants if Defendants run extension cords from outside of the unit to bring power to the Premises. In considering in combination Plaintiffs' claim of injury and chance of success on the merits against the harm to Defendants if the injunctive relief is

granted,<sup>1</sup> the Court finds that injunctive relief is warranted. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

In light of the foregoing, the following order shall enter as a preliminary injunction:

1. Defendants may not occupy or reside at the Premises, and may not permit any other person to occupy or reside at the Premises, until the electricity is restored.
2. Plaintiff may enter the Premises on an emergency basis if it is apparent that perishable items in the Premises are causing offensive odors, and it may dispose of such perishable items.
3. This order shall remain in place until further Court order, whether upon motion filed in this case or upon return of possession of the Premises to Plaintiff by voluntary surrender or eviction.
4. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

DATE: 6-6-23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

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<sup>1</sup> The Court notes that Defendants cannot establish a likelihood of irreparable harm as they did not appear for the hearing.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO 23 CV 0198

MASON SQUARE APARTMENTS, )

PLAINTIFF )

v )

STAR OVIDIA BENITEZ, )

DEFENDANT )

ORDER

This case came before the Court on June 1, 2023 on Plaintiff's motion to enforce the Court's order entered on April 11, 2023. Plaintiff appeared through counsel. Defendant failed to appear. The apartment in question is located at 837 State Street, Unit 121, Springfield, Massachusetts (the "Premises").

After hearing, the Court finds that the Premises are unsafe and not in habitable condition. Defendant has failed to take steps to bring the Premises into a sanitary condition, and the Court finds that the odors from her unit and her use of candles in such an environment pose a direct threat to the health and safety of the other residents in this 139 unit building. Although Defendant initially cooperated with the Tenancy Preservation Program ("TPP"), her case coordinator has been unable to get a response from Defendant in over three weeks. Accordingly, given the foregoing, the following order shall enter:

- 1 Defendant and her family must temporarily vacate the Premises seven days

after service of this order<sup>1</sup> unless the Premises have been brought into a safe and sanitary condition by that date

- 2 If Defendant vacates the unit pursuant to this order, she may file a motion to return to the Premises upon the Premises being put into a safe and sanitary condition
- 3 Plaintiff may enter the Premises upon 24 hours advance notice to address any urgent housekeeping matters, such as rotting food or fire hazards
- 4 Defendant shall cooperate with TPP and follow its recommendations
- 5 The parties shall return for review of this matter in the Springfield session on July 6, 2023 at 9 00 a m

SO ORDERED

DATE 6 6 23

  
Jonathan J. Kane, First Justice

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<sup>1</sup> Plaintiff must have this order served by a constable or deputy sheriff and file the return of service with the Court

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO 23 SP 0899

KIMBERLY REID, )  
                          PLAINTIFF )  
                          ) )  
v                              ) )  
                              ) )  
DEANDRA WATSON, )  
                          DEFENDANT )

ORDER

This no fault summary process case came before the Court on May 11, 2023 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self represented. Plaintiff seeks to recover possession of 565 Wilbraham Road, Springfield, Massachusetts (the “Premises”)

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Plaintiff purchased the Premises in October 2021. Defendant was already residing in the Premises when Plaintiff purchased the building. Defendant has a voucher through the Massachusetts Rental Voucher Program (MRVP), and her rental assistance is administered by Way Finders, Inc.<sup>1</sup> Plaintiff had Defendant served with a 60 day notice terminating her tenancy effective on February 1, 2023. Defendant does not contest receipt of the notice to quit. Although this case was terminated with a

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<sup>1</sup> Although neither party provided the Court with documentary evidence of the voucher contract, in order to receive assistance through MRVP, a landlord is required to include a lease addendum in a form document published by the Department of Housing and Community Development. Neither party asked the Court to consider what rights this lease addendum may give either party with respect to this eviction case.

no fault notice to quit, Plaintiff elected to end the tenancy for a number of reasons, including Defendant's failure to pay her portion of the rent

Defendant lives in the home with her two children, her granddaughter and her brother. She did not file an answer. She raised numerous issues with respect to conditions of disrepair in the unit, however, because she did not file an answer, the Court will not allow her allegations to defeat Plaintiff's claim for possession. Instead, the Court will bifurcate the issue of damages and allow either party to request a trial to assess damages.

With respect to the question of possession, although Plaintiff is entitled to judgment, the Court has discretion in a no fault eviction case to grant a stay of execution. See G.L.c. 239, § 9. Given that Defendant is in possession of a mobile Section 8 voucher that would be jeopardized by an eviction, and given further that she provides housing for her children, grandchild and brother, the Court will stay issuance of an execution to provide her with additional time to move. In light of the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of the execution is stayed through July 31, 2023 on the condition that Defendant pay her share of the rent for June 2023 in full no later than June 9, 2023 and for July 2023 no later than July 7, 2023. If Defendant fails to make a required payment, Plaintiff may schedule a motion to issue the execution.
3. If Plaintiff seeks to recover the rent arrears or if Defendant seeks to recover monetary damages for the conditions of disrepair in the Premises, either

party may file a motion to schedule a trial for the assessment of damages. If a trial is requested, the damages trial will be transferred to the civil docket.

- 4 As stated on the record at trial, Plaintiff shall conduct an inspection to determine the scope of needed repairs between 12:00 p.m. and 2:00 p.m. on May 15, 2023. Defendant shall not unreasonably deny access for repairs.
- 5 The parties shall appear in person in the Springfield session for review on compliance on July 27, 2023 at 9:00 a.m.

SO ORDERED

DATE 6/6/23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-CV-0852

\_\_\_\_\_  
TOWN OF CHESTER, )  
 )  
                  PLAINTIFF )  
 )  
v. )  
 )  
ALBERT G. HOLLAND AND )  
U.S. BANK TRUST NATIONAL ASSOCIATION, )  
NOT IN ITS INDIVIDUAL CAPACITY BUT )  
SOLELY AS OWNER TRUSTEE FOR RCF2 )  
ACQUISITION TRUST,<sup>1</sup> )  
 )  
                  DEFENDANTS )  
\_\_\_\_\_ )

ORDER CONTINUING MOTION  
TO APPOINT A RECEIVER

This code enforcement matter came before the Court on June 1, 2023 on Plaintiff's motion to appoint a receiver. The property in question is located at 1 Crane Road, Chester, Massachusetts (the "Property"). Defendant Holland is the owner of record and appeared self-represented. Defendant U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for RCF2 Acquisition Trust (the "Bank") is the mortgagee and appeared through counsel. The proposed receiver, Witman Properties, Inc. (the "Proposed Receiver"), appeared with counsel.

Pursuant to the Court's prior order on May 18, 2023, Mr. Holland was to file a proposed correction plan for addressing the outstanding violations, including a

<sup>1</sup> The Court shall amend the caption to reflect the correct name of the Defendant, which is currently listed as U.S. Bank Trust NA.



detailed scope, cost and timeline of the work to be performed, prior to today. He did not do so. The Proposed Receiver provided a proposal, but neither Mr. Holland nor the Bank had an opportunity to review it in detail prior to the hearing. The proposal includes approximately \$59,000 for taxes, fines and fees, for which Plaintiff was to provide a breakdown, which it did not do.

Prior to appointing a receiver, the Court will give both Mr. Holland and the Bank an opportunity to file written oppositions to the receiver's proposal. As part of the oppositions, these parties may incorporate their own written proposals to complete the necessary work.<sup>2</sup> Plaintiff shall file and serve a breakdown of the taxes, fines (including the daily amount) and fees that have been assessed against the Property.

Based on the foregoing, Plaintiff's motion for the appointment of a receiver is continued to **June 23, 2023 at 11:00 a.m.** in-person in the Springfield session. The following interim order shall enter:

1. Written oppositions to the Proposed Receiver's proposed plan and Plaintiff's breakdown of taxes, fines and fees are due by June 14, 2023.
2. Any responses to the oppositions are due by June 22, 2023.

SO ORDERED.

DATE: 6.6.23

  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>2</sup> This will be Mr. Holland's final opportunity to present a written plan to correct the code violations.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO 23 CV 0418

WICKED DEALS, LLC, )

PLAINTIFF )

v )

ORDER

CHRISTINE FIGUEROA, EZELL GONZALEZ, )  
TANYA KENT AND KATHLYN RAMOS, )

DEFENDANTS )

This case came before the Court on June 1, 2023 on Defendant Kent's and Defendant Ramos' emergency motion to stop an eviction. Plaintiff appeared with counsel and Ms Kent and Ms Ramos appeared self represented

Ms Kent and Ms Ramos reside at 105 Parallel Street, Springfield, Massachusetts (the "Premises"). Defendants Figueroa and Gonzalez, who reside in 105 Parallel Street, rented the Premises to Ms Kent and Ms Ramos without authority of the property owner. The Court entered an order on May 30, 2023 requiring Ms Kent and Ms Ramos to vacate within seven days, as they had no legal right to possession. Ms Kent and Ms Ramos appeared at this hearing to seek additional time to move. Given that they believed they had the authority to reside in the Premises, their motion will be allowed as follows:

1. Provided that Ms Kent and Ms Ramos pay Plaintiff \$1,000.00 by June 5, 2023 for their use and occupancy of the Premises in June, they shall be

permitted to reside in the Premises through the month of June. They shall not have the right to allow any others to reside in the Premises.

2. If Ms. Kent and Ms. Ramos have not vacated the Premises as of July 1, 2023, Plaintiff may treat them as trespassers and enlist the assistance of law enforcement to enforce the terms of this order.
3. Upon Ms. Kent and Ms. Ramos vacating the Premises, Plaintiff may change the locks to 105 Parallel Street.
4. Nothing herein prevents Ms. Kent and Ms. Ramos seeking relief against Defendants Figueroa and Gonzalez in a separate legal proceeding.

SO ORDERED

DATE 6/6/23

  
Hon. Jonathan J. Kane, First Justice

cc Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-SP-4468

HONG QIAN,

PLAINTIFF

v.

SERENNA PROULX,

DEFENDANT

ORDER REGARDING REPAIRS

On June 1, 2023, the Court heard Defendant's motion for order that Plaintiff not conduct electrical repairs herself and not to scrape possible lead paint in Defendant's home located at 169 Prospect Street, 2d floor, Springfield, Massachusetts (the "Premises"). Both parties appeared self-represented.

After hearing, the following order shall enter:

1. Plaintiff shall not do any electrical or plumbing work in the Premises unless such work is done by a licensed contractor.
2. Plaintiff shall not scrape paint in the Premises unless she has had a lead paint assessment done by a lead inspector licensed in Massachusetts, including any areas of the Premises that she intends to scrape.
3. Plaintiff must provide at least 24 hours advance notice before entering the Premises for repairs, and Defendant shall not unreasonably deny or delay access.

4. The City of Springfield Code Enforcement Department shall schedule a reinspection of the Premises.

SO ORDERED,

DATE: 6/7/23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: City of Springfield Law Department

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0402  
AND DOCKET NO. 23-CV-0416

JOEL ANDREWS,

PLAINTIFF

v.

KEMPTON POLLARD,

DEFENDANT

AND

ORDER FOR ALTERNATIVE HOUSING

EDWIN ORTIZ,

PLAINTIFF

v.

KEMPTON POLLARD,

DEFENDANT

This case came before the Court on June 5, 2023 on review of previous Court orders related to the condemnation of the third floor of 15 Cedar Street, Springfield, Massachusetts (the "Premises"), where both Plaintiffs reside as tenants. All parties appeared self-represented.<sup>1</sup>

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<sup>1</sup> Joseph M. Lally, Esq. filed an appearance for Defendant in 23-CV-0402, but he did not appear for the hearing. Because of the emergency nature of the proceeding, the Court allowed Defendant to proceed without counsel, but Attorney Lally must appear at all future Court events in 23-CV-0402 so long as he has an appearance in the case.

Defendant acknowledges that the condemnation order remains under administrative appeal. He also testified that the second floor tenant recently passed away and that he would provide temporary housing for Mr. Andrews and Mr. Ortiz on the second floor of the Premises. Mr. Andrews claims that one of the two bedrooms on the second floor is occupied. Defendant claims to have no knowledge of another occupant on the second floor, and that he did not give permission for anyone to occupy the bedroom. Defendant lives on the first floor and has an available bedroom.

After hearing, the following order shall enter:

1. Until such time as the condemnation order for the third floor is lifted or rescinded, or until a summary process action has concluded with respect to the Plaintiffs, Defendant shall provide alternative housing elsewhere in the Premises. One of the Plaintiffs can use a second-floor bedroom, and the other can use a first-floor bedroom. They shall be provided the same common area access as they enjoyed when they lived on the third floor.
2. Unless their belongings on the third floor need to be moved to make repairs or by further order of this Court or the Springfield Code Enforcement Department, Plaintiff may leave their personal belongings in their third floor rooms, and they may go back and forth to the third floor during daytime hours. They may not reside on the third floor so long as the condemnation is in place.
3. Upon the condemnation being lifted or rescinded, Plaintiffs shall be restored to their former rooms on the third floor, subject to any eviction proceedings that may have returned possession to Defendant.

4. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

DATE: 6-9-23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-2323

JONATHAN and JUNE GAGNON,

Plaintiffs,

v.

HEATHER BYRNE,

Defendant.

ORDER

After hearing on May 25, 2023, at which the plaintiffs appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The landlord's motion to strike the tenant's counterclaims is allowed. Such claims shall be retained by the tenant for adjudication in another action.
2. Judgment shall enter for the landlords for possession and for \$17,856 plus court costs.

3. Execution may issue in due course upon the filing *and service* of a Rule 13 application.

So entered this 13<sup>th</sup> day of June, 2023.

Robert Fields  
Robert Fields, Associate Justice <sup>with permission</sup> (AW)  
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-0687

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GLENMORE CLARKE,  
PLAINTIFF

v.

TERESA YOUNG,  
DEFENDANT

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FINDINGS OF FACT, RULINGS  
OF LAW AND ENTRY OF  
JUDGMENT

This no fault summary process case came before the Court on May 17, 2023 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented.<sup>1</sup> Plaintiff seeks to recover possession of 81 Knollwood Street, 1<sup>st</sup> Floor, Springfield, Massachusetts (the “Premises”).

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Plaintiff owns the Premises and resides with his wife (hereinafter, “Ms. Clarke”) on the second floor. Defendant and her family moved into the Premises in 2019. Defendant initially occupied the Premises pursuant to a written lease, but the most recent written lease has expired. Defendant stipulates to receipt of the notice to quit. The notice terminated the tenancy as of February 1, 2023. Defendant continues to reside in the Premises. Monthly rent is \$1,500.00. In his complaint,

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<sup>1</sup> Defendant has two adult children living in the Premises, Brianna Clark and William Clark. They did not sign the lease themselves, but are permitted occupants of Defendant.

Plaintiff seeks \$533.21 in unpaid rent.<sup>2</sup> Plaintiff has established its prima facie case for possession.

Defendant filed an answer alleging conditions of disrepair, interference with quiet enjoyment (including a utility shut-off) and violation of the security deposit statute. At trial, did not testify about conditions of disrepair or the security deposit, and those counterclaims are hereby dismissed.<sup>3</sup> The bulk of her testimony involved claims of interference with quiet enjoyment based primarily on the conduct of Ms. Clarke. Defendant testified (without any supporting evidence) that she obtained a harassment protection order against Ms. Clarke and that, as a result of the conflicts between them, Ms. Clarke regularly plays music unreasonably loudly and intentionally stomps on the floor when Plaintiff is not home. Defendant claims she has called the police about Ms. Clarke's conduct at least twenty times.

Defendant further claims that Ms. Clarke shut off the electricity to her unit from the basement breaker, leading Defendant to file a request for emergency relief in this Court (22CV0755). Defendant testified that when Plaintiff returned home later the same day, he restored her electricity.<sup>4</sup> A couple of days after filing a motion in this Court, Defendant found her tires slashed. She asserts that no other cars in the neighborhood were vandalized and asks the Court to conclude that the circumstantial evidence points to Ms. Clarke as the vandal.

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<sup>2</sup> Defendant claims she withheld this sum in November 2022 after her car tire was vandalized. She believes that the perpetrator of the vandalism was Plaintiff's wife; hence, she deducted the cost of tire repair from her rent. Plaintiff acknowledges that no other rent is owed.

<sup>3</sup> At trial, Defendant claimed that Plaintiff's wife, Ms. Clarke, retaliated against her for various reasons, but Ms. Clarke is not the landlord and Defendant did not assert a claim of retaliation in her answer. Therefore, the Court will not entertain a retaliation claim as part of this case.

<sup>4</sup> Plaintiff alleges that the electricity shut off was due to an overloaded circuit and that he paid an electrician to check the breaker box and repair any problem in the system.

The Court finds Defendant credible with respect to the behavior of Ms. Clarke. Even without direct evidence of Ms. Clarke stomping on the floor, playing music at high volume or shutting off Defendant's electricity, the weight of the evidence leads the Court to find that Ms. Clarke has, in fact, engaged in a pattern of conduct that interfered with Defendant's quiet enjoyment of the Premises.<sup>5</sup> Ms. Clarke did not testify, so the Court cannot assess her credibility as to Defendant's allegations. Defendant does not claim that Plaintiff himself interfered with her quiet enjoyment, however, so the question for the Court is whether Plaintiff can be held responsible for the conduct of his wife.

Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ... " G. L. c. 186, § 14 (emphasis added). This statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). In analyzing whether there is a breach of the covenant, the Court examines the landlord's "conduct and not [its] intentions." *Doe*, 417 Mass. at 285. A tenant must show some negligence by the landlord in order to recover under the statute. *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997).

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<sup>5</sup> With respect to the tire slashing allegation, the Court finds insufficient evidence to find that it was done by Plaintiff's wife.

In this case, Plaintiff must be held accountable for his wife's conduct if he was aware that it caused a serious interference with Defendant's tenancy; otherwise, a landlord could evade liability under G.L. c. 186, § 14 simply by allowing other family members disturb tenants living in the same house. The Court infers from the totality of the evidence that Plaintiff was in fact aware of some if not all of his wife's conduct and did not (or was unable to) stop it. Instead, he attempted to evict Defendant because of the conflicts between her and his wife, although that case was dismissed without reaching the merits. The Court thus imputes Ms. Clarke's conduct to Plaintiff and finds Plaintiff acted negligently in not protecting Defendant from the serious interference with her tenancy.

Pursuant to G.L. c. 186, § 14, Defendant is entitled to statutory damages of three months' rent in the amount of \$4,500.00.<sup>6</sup> As of the date of trial, Plaintiff claimed unpaid rent of \$533.21.<sup>7</sup> After offsetting the unpaid rent, Defendant is entitled to \$3,966.79 in damages. The Court declines to award any additional damages for the one day that Defendant was without electricity as the electricity shut-off arises from the same set of facts that establishes Defendant's quiet enjoyment claim.

Accordingly, given the foregoing, and in light of the governing law, the following order shall enter:

1. Judgment for possession shall enter in favor of Defendant.<sup>8</sup>

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<sup>6</sup> The Court has no evidence of actual damages and thus awards statutory damages.

<sup>7</sup> Because the Court finds insufficient evidence that Ms. Clarke slashed her tires, Defendant is not entitled to withhold this sum.

<sup>8</sup> Pursuant to G.L. c. 239, § 8A, "[t]here shall be no recovery of possession under this chapter if the amount found by the court to be due the landlord equals or is less than the amount found to be due the tenant or occupant by reason of any counterclaim or defense under this section."

2. Judgment for damages in the amount of \$3,966.79 shall enter in favor of Defendant.

SO ORDERED.

DATE: 6.15.23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 21-CV-772

TOWN OF ORANGE HEALTH DEPARTMENT,

Plaintiff,

v.

DEREK and KRYSTAL EAGLES,

Defendants.

ORDER

After hearing on May 26, 2023, on the Receiver's Motion for Authorization to Borrow Funds at which only the Receiver appeared (through counsel), the following order shall enter:

1. It appears that this receivership is all but wrapped up and the funds being sought by the Receiver are not required in order for the completion of this matter. As such, the motion is denied without prejudice.



2. That said, the court fully appreciates that it may be very appropriate for receivers to seek to borrow funds as part of their receiverships and same is contemplated in the supporting statute and the court has allowed same in other matters. It simply does not seem sufficiently necessary in this matter.

So entered this 15<sup>th</sup> day of June, 2023.



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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH

Hampshire, ss.

Housing Court Department  
Western Division  
Docket No: 23-SP-1815

EDGEWINN LP  
Plaintiff

v.

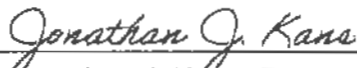
HEATHER SKOW  
Defendant

INTERIM ORDER

This matter came before the Court on June 13, 2023 for a Housing Specialist Status Conference at which the Plaintiff appeared through counsel and the Defendant did not appear. The following Interim Order shall issue:

1. Counsel for Plaintiff reported that the Defendant has been civilly committed to a hospital in Worcester and the Plaintiff has been unable to effectuate service on the Defendant at the hospital. It is unclear whether the Defendant had notice of the date and time for the Status Conference or even with notice whether the Defendant would have been able to attend.
2. Given the allegations set forth in the Notice to Quit, the Defendant is ordered to stay away from the property known as the Edgewood Apartments located at 134 Union Street in Westfield unless advance authorization is given by the Court.
3. To prevent against unauthorized access, Plaintiff may temporarily change the locks to Defendant's apartment, although it shall permit any person authorized by Defendant to enter the apartment by appointment and with an escort.
4. Upon discharge, Defendant may seek a court order allowing her to return to the unit.
5. This matter is scheduled for Summary Process Trial on July 20, 2023 at 9am in person in the Springfield session of the Housing Court.

Dated: 06-14-23

  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0470

ROBERTO TORRES RIVERA, )

PLAINTIFF )

v. )

JUANA COLON AND ANTHONY ANDOLINO, )

DEFENDANTS )

ORDER

This case came before the Court on June 12, 2023 on Plaintiff's motion for an emergency order for injunctive relief. All parties appeared self-represented. The apartment in question is located at 17-19 Ruskin Street, Springfield, Massachusetts (the "Premises"). Mr. Torres lives on the second floor (#19) and Ms. Colon lives on the first floor (#17). Mr. Andolino is the property manager.

Mr. Torres has security cameras installed throughout the Premises. He contends that Ms. Colon's family member removed one of his cameras. He seeks authority to maintain his cameras at the property. Ms. Colon wants assurances that the cameras do not record audio, and she does not want them pointed in any areas under her exclusive control. Mr. Andolino does not object to the use of cameras so long as it does not cause friction between the tenants. After hearing, the following order shall enter:

1. Mr. Torres may keep his security cameras on the following conditions:
  - a. The cameras may not record audio.

- b. The cameras may not capture any of the back yard, which the parties have agreed is for the use of Ms. Colon.
  - c. The camera in the basement may capture only the part of the basement designated for Mr. Torres' exclusive use.
2. If Ms. Colon contends that Mr. Torres' cameras violate this order, she shall inform Mr. Andolino, who shall review Mr. Torres' camera footage to ensure that he is complying with this order. If the tenants, with Mr. Andolino's assistance, are unable to reach an agreement to adjust the cameras to Ms. Colon's satisfaction, any of the parties may schedule this case for further proceedings.
3. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

DATE: 06-16-23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0151

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SPRINGFIELD HOUSING AUTHORITY,  
  PLAINTIFF  
v.  
ISAIAH CLARKE,  
  DEFENDANT

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ORDER ALLOWING DEFENDANT  
TO REOCCUPY THE PREMISES

This case came before the Court on June 9, 2023. Plaintiff appeared with counsel. Defendant appeared self-represented. Defendant’s mother also appeared. A Tenancy Preservation Program (“TPP”) was not present. The premises in question are 357 Central Street, #24, Springfield, Massachusetts (“the Premises”).

Defendant has been approved for PCA services seven-days per week to give Defendant his medications. Defendant receives Department of Developmental Services assistance and is in the process of receiving Department of Mental Health services as well.

After hearing, the following order shall enter:

1. Defendant may return to the Premises immediately.
2. Defendant may not be left in the Premises unattended at any time, including overnights.
3. The Court shall appoint a guardian ad litem (“GAL”) for Defendant. The GAL is authorized to do the following:

- Investigate the facts of the proceeding and gather information relevant to this case, including communicating with Mr. Clarke's mother, who has been attending recent Court events, and with Attorney Chesky on behalf of Plaintiff.
  - Report to the Court at the next scheduled hearing regarding the various in-home and outside services being provided to Mr. Clarke and the circumstances under which he would be eligible to move to a more supportive housing environment.
  - Determine whether TPP has an open case with Mr. Clarke and determine if TPP is able to provide any services related to Mr. Clarke's housing.
4. Plaintiff shall issue two separate temporary parking permits (good for 60 days) to allow Defendant's mother and his father to stay overnight, provided that the parents provide Plaintiff with the necessary information for issuance of the permits (driver's license, registration, etc.).
  5. Plaintiff shall inspect the Premises upon 24 hours' advance notice and shall diligently make necessary repairs.
  6. The parties and the GAL shall appear on **July 11, 2023 at 9:00 a.m.** for review.

SO ORDERED.

DATE: 6/16/2023

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: ACM Cunha (for GAL appointment)

CK

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-661

KENNETH FRANKLIN,  
  
Plaintiff,  
  
v.  
  
LADAWN OWNES,  
  
Defendant.

ORDER FOR ENTRY OF  
JUDGMENT FOR THE TENANT<sup>1</sup>

This matter came before the court for trial on June 16, 2023, at which the tenant appeared but for which the landlord failed to appear after proper notice. After hearing, the following order shall enter:

1. **The Landlord's Claims for Rent, Use, Occupancy, and Possession:** Due to the landlord's failure to appear, his claims for rent, use, occupancy, and possession are dismissed without prejudice.
2. **The Tenant's Claim Based on Loss of Electrical Service (Breach of the Covenant of Quiet Enjoyment):** Due to the landlord's failure to pay his electric

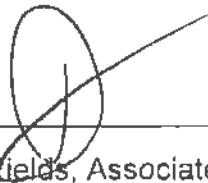
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<sup>1</sup> This Summary Process matter was consolidated with 22SC120.

bill, the electric service for the tenant was curtailed on August 17, 2022, and the premises were without said service for 9 days.

3. The landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his acts or inactions cause a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997) .
4. The loss of electrical service required the tenant to stay in a hotel at a cost of \$1,016.30 and caused the loss of \$200 in food, totaling damages of \$1,216.30. The statutory award, however, pursuant to G.L. c.186, s.14, is \$1,650 (three months' rent) being higher, the court shall award the tenant \$1,650 for this claim.
5. **Conclusion and Order:** The landlord's claims for use and occupancy and for possession are dismissed without prejudice. Judgment shall enter for the tenant (Ladawn Ownes) in the amount of **\$1,650<sup>2</sup>**.

So entered this 20<sup>th</sup> day of June, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

<sup>2</sup> The tenant brought another claim to the attention of the court regarding her belief that the landlord did not credit \$2,900 that she and/or RAFT paid. That claim was not adjudicated herein due to the fact that the tenant required receipts that she requested in her unanswered discovery demand. Any such claims regarding the accounting of rent, use, and occupancy are not barred by these proceedings.



CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-SP-321

KELLIE HOLSBORG,

Plaintiff,

v.

GARY A. BURCHARD and CLAUDINE M.  
BURCHARD,

Defendants.

RULING ON ATTORNEY FEE  
PETITION AND ENTRY OF FINAL  
JUDGMENT

This matter came before the court for trial in March 2023, and the court issued a written decision on March 22, 2023, in which the plaintiff was the prevailing party in her claims for violation of the Consumer Protection Act at G.L. c.93A. As a prevailing party on said claim, she was afforded the opportunity to petition the court for reasonable attorney's fees. After consideration of the petition for such fees, and also after consideration of the opposition filed by the defendants, the following order shall enter:

**1. Reasonable Attorney's Fees:** The determination of reasonable attorney's fees is within the discretion of the judge. *Fontaine v Ebtac Corp.*, 415 Mass. 309, 324

(1993). In ruling on a petition for statutory attorney's fees, a court "should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). Time spent on unnecessary work, duplicative work, or claims on which the party did not prevail, should be excluded. *Simon v. Solomon*, 385 Mass. 91, 113 (1982).

**2. Hourly Rate:** Counsel for the plaintiff, Joshua Hocherg, has petitioned for an hourly rate of \$300 and in their opposition, the defendants do not dispute the hourly rate. Attorney Hochberg provided with her petition an affidavit in support of her hourly rate from Attorney Alexander Sohn, a practicing attorney in Berkshire County with familiarity with billing rate in that county. In addition, this court is very aware of the quality of Attorney Hochberg's litigation skills over his more than a dozen of years in practice as he has litigated extensively in our court. Based on the above considerations, the court finds \$300 to be a reasonable hourly rate<sup>1</sup>.

**3. Number of Hours:** The billing sheets submitted show a total of 259.8 hours at the various rates noted above (and clearly delineated) totaling \$57,039. The petitioner then reduces the total by 10% plus other deductions, bringing the total to \$49,986.

**4. Analysis of Hours:** Although the legal issues were not unusually complex, the factual evidence was considerable, there was an increase of hours due to the jury

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<sup>1</sup> The court is also satisfied with the billing rate of \$300 for Andrew Hochberg, \$250 for Attorney William Landa, and with the \$75 hourly rate for the law clerk Ari Drayman.

nature of the trial (as opposed to a bench trial), and there was use of an expert. Though the defendants' filed opposition to the petition, it is replete with conclusory assertions such as "unreasonable" and "excessive" they do not sufficiently articulate the basis for their position and the court does not see any basis to find the hours listed for those dates unusual in any way.

**5. Costs:** Though the petition lists \$4,889.90 in costs, it only seeks to recover \$299.90. The opposition's challenge to the costs associated with CRH Consulting, LLC is moot given the much lower amount being sought by the plaintiff and the court finds sufficient basis for awarding \$299.90 in costs.

**6. Award of Attorney Fees and Costs:** Based on the foregoing, counsel for the plaintiff, Joshua Hochberg, shall be awarded \$49,986, in attorney's fees and \$299.90 in costs.

**7. Conclusion and Order:** In accordance with the above, as well as the court's November 2, 2022, jury verdict, and the court's March 22, 2023, Order the following final judgment shall enter: Judgment for the plaintiff, Kellie A. Holsborg, for **\$40,724** and for **\$49,986** for attorney's fees and **\$299.90** in costs.

So entered this 20<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-893

JOHN SCALIA,  
  
Plaintiff,  
  
v.  
  
LISA CATALDO,  
  
Defendant.

ORDER

This matter came before the court for trial on June 16, 2023, with each party represented by counsel. After consideration of the evidence admitted therein, the following findings of fact and conclusions of law and order for judgment shall enter:

1. **Background:** The plaintiff, John Scalia (hereinafter, "landlord"), owns a two-family house in Holyoke, Massachusetts. The defendant, Lisa Cataldo (hereinafter, "tenant"), resides on the second floor at 16 Canby Street, Holyoke (hereinafter, "premises" or "property"). The tenancy began in June 2014, with a

monthly rent of \$800. The landlord terminated the tenancy with a no-fault rental period notice to quit. The tenant filed an Answer, asserting several claims including breaches of the covenant of quiet enjoyment and violations of the security deposit laws.

2. **The Landlord's Claim for Use and Occupancy and Possession:** The parties stipulated to the landlord's *prima facie* case for \$6,400 in use and occupancy through June 2023, and for possession. What remains for the court's adjudication are the tenant's counterclaims and as much as they act as defenses to possession in accordance with G.L. c.239, s.8A.
3. **Breach of Quiet Enjoyment, Leaking Roof:** The roof at the premises began to leak in 2021 and continued until November 2022 when it was professionally repaired. For those two years, the water dripped through the bathroom ceiling and through the light fixture therein, as well as by the entrance hallway. The leak grew worse over time. The landlord installed tarps in the attic with the hope of collecting the intruding water and preventing it from entering the tenant's unit. When that was not successful, the landlord installed a tarp system within the bathroom to redirect the water into the tenant's bathtub. Eventually, immediately prior to the roof repair in November 2022, the landlord placed tarps on the roof itself to stave off the penetration of water.
4. Though the landlord mentioned that it was very difficult to secure a professional roofer during the COVID pandemic, he was quite candid in stating that the delay was really due to his needing time to save up enough funds for the job.

5. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his acts or inactions cause a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).
6. There is no question that the roof leaks caused serious interference with the value of the premises. There is also no real question that the landlord's conduct was "at least negligent", at least in the length of time he allowed the leaks to persist before finally hiring a professional roofer to make repairs<sup>1</sup>.
7. Accordingly, the court finds that the landlord's conduct and omissions regarding the needed roof repairs and the resulted water penetration into the tenant's unit over a very protracted period of time breached her covenant of quiet enjoyment and the court awards her three months' rent of **\$2,400** plus reasonable attorney's fees and costs.
8. **Breach of Quiet Enjoyment, Boiler Refill Problems:** For approximately five or six years the furnace/boiler which provided heat to the tenant's apartment did not have an automatic water refill system. During that time, the tenant had to routinely check the water level and manually add water to ensure heat and during the coldest weather had to do so with great frequency, multiple times per week and even in the middle of the night.

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<sup>1</sup> Though the landlord testified that the delay was caused by having to save enough funds for the roofing repair, he did not provide any evidence of financial impossibility as the basis for the delay.

9. Though the absence of an automatic water refill system does not in of itself necessarily violate the covenant of quiet enjoyment, saddling the obligation to refill the water level upon a tenant is a *per se* violation of the covenant, as it had such a serious impact on the tenancy as to constitute a breach of quiet enjoyment in violation of G.L. c. 186, s. 14. *Simon v. Solomon*, 385 Mass. 91 (1982). The court also finds that the landlord knew of this situation and failed to address it for many years until he had a new boiler/furnace installed with an automatic refill system and, as such, was at least negligent regarding same. *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).
10. Accordingly, the court finds a violation of a separate prong of G.L. c.186, s.14, separate and distinct from the violation of the statute due to the roof leaks addressed above and awards the tenant three months' rent totaling **\$2,400** plus reasonable attorney's fees and costs.
- 11. Violations of the Security Deposit Law:** At the commencement of the tenancy, the landlord required, and the tenant paid, a security deposit in the amount of \$800. Thereafter, the landlord never provided the tenant with any information about the deposit including the identity of the bank or account in which it was deposited. In accordance with G.L. c.186, s.15B, the landlord's forfeited his rights to retain any portion of those funds (Section 6 of that statute) and his failure to return it to the tenant after the tenant filed an Answer on April 21, 2023 in which a claim for said security deposit was made and is viewed by the court as a *demand* for the return of the deposit, results in an award of three times the deposit, plus 5% interest from when it was paid, plus reasonable attorney's fees and costs.

See, G.L. c.186, s.15B (7). See, Castenholz v. Cairra, 21 Mass. App. Ct. 758 (1986).

12. As such, the tenant shall be awarded **\$2,760** (3 X \$800 = \$2,400 plus interest of 5% over 9 years of \$360) plus reasonable attorney's fees and costs.

13. **Conclusion and Order:** Based on the foregoing, an order awarding the tenant possession plus \$1,160 plus reasonable attorney's fees and costs shall enter for the tenant. This is an order *and not yet a judgment* to allow for the tenant's counsel to petition for attorney's fee and costs.

14. **Attorney's Fees and Costs:** As a prevailing party on several claims with fee-shifting provisions, counsel for the tenant has twenty days from the date of this order noted below to file and serve a petition for fees and costs. Counsel for the landlord shall have twenty days after receipt of same to file and serve an opposition. The court shall enter an order on the attorney's fees petition along with a final entry of judgment at that time.

So entered this 20<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1343

B & LG REALTY, LLC

)

PLAINTIFF

)

v.

)

ORDER FOR ENTRY OF JUDGMENT

JODIE ARTHUR,

)

DEFENDANT

)

This no fault summary process case came before the Court for a bench trial on June 15, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 23 Essex Street, 1<sup>st</sup> Floor, Holyoke, Massachusetts (the "Premises") from Defendant.

The parties stipulated to Plaintiff's prima facie case, including receipt of the notice to quit terminating the tenancy as of March 1, 2023. No rental arrears are owed. Defendant did not file an answer and articulated no defenses at trial. The Court finds that the Premises were rented to Defendant's grandmother, who recently deceased, and that Defendant, who moved into the Premises in May, 2018, has not vacated. She is searching for new housing.

The Court has discretion in a no fault eviction case to grant a stay on judgment and execution. See G.L. c. 239, § 9. The Court finds that Defendant meets the criteria for a stay of up to six months from the end of her tenancy, conditioned upon payment

of use and occupancy during the stay.<sup>1</sup> Based upon the foregoing, and in light of the governing law, the following order shall enter:

1. Plaintiff is entitled to judgment for possession, but entry of judgment shall be stayed until September 1, 2023, subject to the terms herein.
2. Defendant shall pay use and occupancy in the amount of \$950.00 per month for July and August 2023 by the 5<sup>th</sup> of each month, provided that she continues to reside at the Premises.
3. Defendant shall make diligent efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all applications and inquires for rental, including dates, addresses and method of contact.
4. If Defendant has not vacated by September 1, 2023, Plaintiff may move for entry of judgment, which judgment will enter retroactively to the date this order is entered on the docket, and immediate issuance of the execution.<sup>2</sup>

SO ORDERED.

DATE: 6/21/23

By: Jonathan J. Kane  
Jonathan J. Kane, First Justice

<sup>1</sup> Defendant resides in the Premises with her one-year old. She testified that she has no disabilities and is under 60 years of age.

<sup>2</sup> Defendant is not precluded from seeking an equitable stay on use of the execution.

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
SUMMARY PROCESS ACTION  
NO. 23H79SP000285

**BEACON HILL MANAGEMENT LIMITED PARTNERSHIP, MANAGING  
AGENT FOR BC BERKSHIRE PEAK LLC,**

Plaintiff

VS.

**KASSIE L. STEVENS,**

Defendant

**FINDINGS OF FACT, RULINGS OF LAW AND  
ORDER OF JUDGMENT**

**Order For Judgment and Issuance of Execution**

This matter came before the court on June 14, 2023 for a hearing on the plaintiff's *Motion to Enforce Agreement and Issuance of Execution*. After considering the facts and arguments presented by the parties, the motion is **ALLOWED**.


In January 2023 the plaintiff commenced a summary process action against the defendant based upon nonpayment of rent. On March 13, 2023 the parties entered into a written agreement. Under the terms of the agreement a judgment for possession and damages (unpaid rent) would not enter provided the defendant complied with the following payment terms of the agreement: commencing in April 2023 and each month thereafter the defendant would pay (1) \$350.00 per month towards the unpaid rent balance, and (2) \$1,015.00 per month for rent (accepted for use and occupancy only). The claim for possession and damages would be dismissed if the defendant complied with the payment terms.

The defendant did not make any of the payments required under the provisions of the agreement. As of June 14, 2023 the defendant's rent arrearage increased to \$8,817.75. The plaintiff stated that it was unwilling to enter into a second agreement.<sup>1</sup>

Accordingly, it is **ORDERED** that:

1. Judgment enters for the plaintiff on the claim for possession and damages in the amount of \$8,817.75, plus costs of \$195.55.
2. Execution shall issue in due course.

**SO ORDERED this 21<sup>st</sup> Day of June, 2023.**



Jeffrey M. Winiak  
Associate Justice (On Recall)

---

<sup>1</sup> The defendant applied to RAFT for financial assistance. Even if the defendant was found to be eligible for the maximum possible RAFT payment, she would still owe the plaintiff a significant amount of unpaid rent.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4599

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

JA'VONI and DIAMOND WHITE,

Defendants.

ORDER

After hearing on May 25, 2023, at which the landlord appeared through counsel and the tenants appeared *pro se*, the following order shall enter:

1. The tenants paid May 2023 use and occupancy plus the \$179 as required in the court's previous order, albeit late.
2. A representative from Way Finders, Inc. joined the hearing and reported that the tenants have reapplied for RAFT (# [REDACTED]) due to the former application "timing out".

3. The Way Finders, Inc. representative reported that the former application "timed out" for failure of the landlord to submit certain paperwork. The representative also reported that once the landlord completes its submission to RAFT, the application will be complete.
4. The tenants shall continue to pay their use and occupancy timely and in full plus \$179 by the fifteen of each month until the arrearage is paid.
5. This matter shall be dismissed upon the tenants reaching a \$0 balance.

So entered this 21<sup>st</sup> day of June, 2023.

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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-1082

BERMATT PROPERTIES, LP,

Plaintiff,

v.

MAGGIE CORTES,

Defendant.

ORDER

This matter came before the court for trial on June 5, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se* and accompanied by a case worker, Ms. Kane, from CSO. After hearing, the following order shall enter:

1. **The Landlord's Claim for Possession:** The parties stipulated to the landlord's claim for possession, having agreed to service of a proper no-fault notice to quit and summons. The parties also stipulate to an outstanding rent balance through June 2023 of \$3,500. That said, no judgment shall enter today.

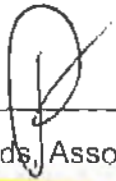
2. **Discussion:** The parties agree that the underlying reason for this eviction is that the tenant's roommate vacated and that without a new roommate the tenant can not afford the rent.
3. The tenant had requested a reasonable accommodation from the landlord to be afforded time to secure an alternate roommate back in November 2022. Ms. Kane (from CSO) testified credibly that she assisted the tenant in securing a roommate until the landlord informed the tenant and Ms. Kane in December 2022 that the landlord was going to pursue eviction whether or not the tenant can secure an alternate roommate. Based on this, Ms. Kane and the tenant stopped their search for a roommate.
4. Mid-trial, the parties agreed to afford the tenant---as a reasonable accommodation---the opportunity to work further with Ms. Kane to secure an acceptable roommate. Additionally, the tenant will pursue RAFT and/or other sources of rental arrearage funds---though it is understood that Way Finders, Inc. may not find the tenant eligible unless she has a roommate making the tenancy sustainable. As such, the tenant may choose to delay her RAFT application until a roommate is secured and approved by the landlord.
5. **Order:** The tenant shall provide the landlord verification from her treating physicians to support her request for reasonable accommodation. Any such information and documentation shall be protected and not shared by landlord's counsel.
6. The parties shall engage in good faith reasonable accommodations dialogue. As soon as the tenant identifies a potential new roommate, she is to have that



person submit an application with the landlord, which will process that applicant in good faith.

7. This matter shall be reviewed on **July 24, 2023**, at 9:00 a.m.

So entered this 21 day of June, 2023.



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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT  
CIVIL ACTION NO.: 23-CV-0209

CITY OF CHICOPEE, )  
Plaintiff )

v. )

DONNA L. SLATE, )  
Defendant )

ORDER TO CORRECT VIOLATIONS

Property Address: 177 Nonotuck Street, Chicopee, Massachusetts (the "Property")

After hearing held on May 26, 2023 on the City of Chicopee's motion for an order to comply with the State Sanitary Code, the Court enters the following Order:

1. Defendant shall allow the City access to the Property to conduct such inspections of the residence and garage as deemed to be reasonably necessary. The City shall provide no less than 48 hours' advance written notice of any inspection.
2. Within sixty (60) days, Defendant shall correct all existing violations at the Property and bring the Property into compliance with the State Sanitary Code and City of Chicopee Code as follows:
  - a. cut the overgrown grass.
  - b. repair and/or replace the porch railing.
  - c. remove the multiple unregistered cars on the premises.
3. If Defendant fails to comply with the above, the City may enter the Property with no less than seven (7) days' advance written notice to remedy the violations at its own discretion and place a lien on the Property to recover the reasonable costs thereof. The lien shall be duly recorded in the Hampden County Registry of Deeds.
4. Defendant is enjoined from transferring the Property until such time as the conditions complained of have been abated or unless this Court allows said transfer.
5. The City's costs shall be paid by Defendant.

6. This parties shall appear for review on **July 21, 2023 at 9:00 a.m.** in the Springfield session.

SO ORDERED.

DATE: 6.21.23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT  
DEPARTMENT OF  
THE TRIAL COURT  
CIVIL ACTION  
No. 19-CV-1055

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CITY OF SPRINGFIELD  
CODE ENFORCEMENT DEPARTMENT  
HOUSING DIVISION,

Plaintiff

v.

HEIRS AND ASSIGNS OF RICHARD I. HILL (owner),  
CAMILLA HOLMES (tenant),  
NATIONSTAR MORTGAGE, LLC (mortgagee-in-possession),  
MICHAEL BEGLEY (interested party) and  
SECRETARY OF HOUSING AND URBAN DEVELOPMENT (mortgagee),

Defendants

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ORDER

This code enforcement matter came before the Court on June 2, 2023 for hearing on a motion filed by McKnight Community Development Corporation ("CDC") to intervene in this action. Plaintiff opposes the motion. The property in question is located at 92 Cornell Street, Springfield, Massachusetts (the "Premises"). The previous owner, Richard Hill, has deceased.

The instant action commenced by petition by Plaintiff to enforce various State codes (sanitary, electrical, plumbing and building). Pursuant to G.L. c. 111, § 127I, the Court appointed TM Properties as Receiver. The Receiver's rehabilitation plan was approved by the Court. The rehabilitation of the Premises is estimated at \$173,203.74 and the work is anticipated to be completed by December 22, 2023.

Several parties claim rights in the Premises, including the Estate of Richard Hill, Nationstar Mortgage, LLC, the Secretary of Housing and Urban Development and Michael Begley, who purports to possess a deed from Mr. Hill. This Court allowed Mr. Begley to intervene in this matter as an interested party for purposes of receiving notice. The Court noted that it was making no finding as to ownership of the Premises by allowing Mr. Begley to intervene.

Now, CDC moves to intervene based on allegations that Mr. Hill agreed to convey the Premises to it. As it did on Mr. Begley's motion to intervene, the Court will allow CDC to intervene as an interested party. *See Beacon Residential Management, LP v. R.P.*, 477 Mass 749, 753 (2017) (Rule 24(a)(2) requires only that the applicant claim an interest relating to the property in suit, even if the claim may ultimately fail on the merits). Because the instant action is a code enforcement proceeding, however, CDC may not file counterclaims or crossclaims herein. Any disputes regarding title to the Premises or monetary damages must be brought in a separate civil action. This case shall address only the correction of code violations at the Premises.

Accordingly, CDC's motion to intervene is ALLOWED to the extent that it shall be named as an interested party for purposes of notice in this action.

SO ORDERED.

DATE: 6-21-23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0028

CITY OF SPRINGFIELD CODE )  
ENFORCEMENT DEPARTMENT )  
HOUSING DIVISION, )  
 )  
PLAINTIFF )  
 )  
v. )  
 )  
JOSE R. ORTIZ, ET AL., )  
 )  
DEFENDANTS )

ORDER FOR ACCESS TO  
MAKE REPAIRS

This case came before the Court on June 9, 2023 after the Court's May 26, 2023 order was not complied with because law enforcement failed to require Ms. Ruiz leave her apartment temporarily for repairs to be made as set forth in the Court's May 26 order. To avoid any further confusion, the Court reiterates and restates its previous order as follows:

1. Ms. Ruiz and all other occupants must temporarily vacate her unit at 410 Liberty Street, 3d Floor, Springfield, Massachusetts (the "Premises") between the hours of 8:00 a.m. and 5:00 p.m. on the following dates this month: June 22, June 23, June 26 and June 27 in order for repairs to be completed.
2. Mr. Ortiz's contractors may have access during the entire period of 8:00 a.m. to 5:00 p.m., but given Ms. Ruiz's concerns about her safety around Mr. Ortiz, Mr. Ortiz may only be at the Premises briefly at 8:30 a.m. and

again briefly at 4:00 p.m. to check on the work. Mr. Ortiz shall promptly leave after his 4:00 p.m. visit to ensure that he is not present when Ms. Ruiz returns at 5:00 p.m.

3. Either Mr. Ortiz or Ms. Ruiz may enlist the assistance of law enforcement (a constable duly appointed by the City of Springfield, a deputy from the Hampden County Sheriff's Department or Springfield police officers) to keep the peace when Mr. Ortiz is at the Premises.

SO ORDERED.  
DATE: 6-21-23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1402

ECP HOLDINGS, LLC,

PLAINTIFF

v.

PAUL GRZYBOWSKI,

DEFENDANT

ORDER FOR ENTRY OF JUDGMENT

This nonpayment summary process case came before the Court for a bench trial on June 21, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 13 Prospect Street, Apt. 1, Orange, Massachusetts (the "Premises") from Defendant.

The parties stipulated to Plaintiff's prima facie case, including receipt of the notice to quit. Rent is \$450.00 per month. Defendant has resided at the Premises for twenty years. He does not dispute Plaintiff's assertion that outstanding rent is \$3,600.00 and that no money has been paid to Plaintiff since they purchased the Premises. Defendant did not file an answer and asserts no legal defenses, although he articulated reasons why he fell behind in the rent due to his loss of work.

Based upon the foregoing, and in light of the governing law, the following order shall enter:

1. Judgment for possession and \$3,600.00 in damages plus court costs shall enter in favor of Plaintiff.



2. Execution (eviction order) shall issue upon written application after expiration of the appeal period, but it shall be stayed through July 31, 2023 provided that Defendant pays Plaintiff \$450.00 for use and occupancy (rent) for July 2023 by July 5, 2023.
3. If prior to July 31, 2023, Defendant can demonstrate that he has a RAFT application pending, or that he has obtained the necessary funds to pay the judgment amount, he may file a motion with this Court (with a copy served on Plaintiff's counsel) to stay use of the execution.

SO ORDERED.

DATE: 6-21-23

By: Jonathan J. Kane  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1652

EDGEWATER TOWERS, LLC,

PLAINTIFF

v.

DEREESE GOLDEN, ET AL.,

DEFENDANTS

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)

ORDER FOR JOINDER

This nonpayment of rent summary process case came before the Court on June 20, 2023 for a bench trial. Plaintiff appeared through counsel. Defendants appeared self-represented.<sup>1</sup> Defendants have a Section 8 voucher administered by the Springfield Housing Authority ("SHA"). The apartment in question is located at 136 Plainfield Street, Springfield, Massachusetts (the "Premises").

The crux of Defendants' defenses and counterclaims is that the Premises repeatedly failed Section 8 inspections by SHA. Defendants showed the Court a notice from SHA that the housing assistance payments to Plaintiff would terminate months ago, but Plaintiff reports that the housing assistance payments continue to be made by SHA.

Because Defendants are self-represented, they did not subpoena any records from SHA (nor from the Springfield Code Enforcement Department). The Court is

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<sup>1</sup> Orien and Jaedyn Golden are adult children of Dereese and Charlene Golden. They were present for the first day of trial. They do not intend to testify, and without objection by Plaintiff's counsel, the Court excused them from attending the second day of trial.

without any reliable evidence about the results of the Section 8 inspections or the status of the housing assistance payments. The Court finds that the absence of SHA prevents complete relief from being granted in this case, and therefore joins SHA as a Defendant. See Mass. R. Civ. P. 19(a). In light of the foregoing, the following order shall enter:

1. Springfield Housing Authority is hereby made a defendant. A witness familiar with the business records shall appear for the next trial date, and said witness shall bring all documents relating to inspections of the Premises during 2022 and 2023, as well as records relating to the housing assistance payments made on behalf of Defendants in the same time period.
2. The City of Springfield Code Enforcement Department shall file with this Court, no later than July 7, 2023, all inspection reports and letters of compliance, if any, for the Premises for 2022 and 2023.
3. Trial is hereby continued to July 11, 2023 at 9:00 a.m.

SO ORDERED.

DATE: 7/24/2023

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Springfield Housing Authority Legal Department  
City of Springfield Code Enforcement Department  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4592

NAVJIWAN FULLER,  
  
Plaintiff,  
  
v.  
  
MOLAVEN DUARTE  
  
Defendant.

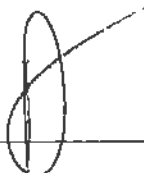
ORDER

After hearing on May 30, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se* and at which a representative from the Tenancy Preservation Program also appeared, the following order shall enter:

1. The parties reported to the court that the tenant paid her May 2023 use and occupancy since the last hearing in April 2023.
2. The arrearage for this tenant's portion (\$500 per month) totals \$3,500.

3. A representative from Way Finders, Inc. joined the hearing and reported that the RAFT application "timed out" due to it missing a letter from the landlord regarding ownership and verification that the tenant's roommate has vacated the premises.
4. The tenant is currently in the process of obtaining SSI and is working with BHN in that effort.
5. The tenant shall work with TPP to re-apply for RAFT and hopefully if the landlord is made whole by RAFT funds the tenant will be successful with her SSI application and be able to afford the rent moving forward<sup>1</sup>.
6. The tenant currently has no income due to a medical leave from work. It is the hope that by the time this matter is returned for further hearing as noted below, both RAFT and SSI will be engaged.
7. This matter shall be scheduled for hearing on **July 12, 2023, at 9:00 a.m.**

So entered this 21<sup>st</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: TPP  
Court Reporter

<sup>1</sup> This matter has been referred to TPP already and TPP reported that they have scheduled an intake with the tenant, and the parties shall cooperate with TPP's efforts to assist this tenancy.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4313

LACHENAUER, LLC,  
  
Plaintiff,  
  
v.  
  
SHARON ORTIZ,  
  
Defendant.

ORDER

After hearing on May 23, 2023, on the landlord's motion for entry of judgment at which both parties appeared through counsel, the following order shall enter:

1. The tenant reported to the court that she is a Section 8 tenant who suffers from disabilities and that she will be seeking motion for leave to file a late Answer with Counterclaims and Defenses.
2. The tenant also reports that she has a RAFT application pending.

3. Counsel for the tenant explained that she believes that she can show a nexus between the tenant's disability and the tenant's failures to comply with the terms of the parties' earlier agreement.
4. Given that RAFT funds may be able to pay for the entire amount of arrearage, that the tenant may suffer from disabilities that have contributed to her failure to comply with the terms of the parties' agreement, and that the tenant has an attorney who has filed a full appearance, the landlord's motion is denied without prejudice.
5. The tenant shall pursue her RAFT application diligently.
6. The tenant shall file a motion for late filing of an Answer forthwith and the court shall schedule a hearing for said motion.

So entered this 21<sup>st</sup> day of June, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1121

MONTGOMERY SECOND CORPORATION, )  
)  
PLAINTIFF )  
v. )  
)  
DIADELISSE COLON, )  
)  
DEFENDANT )

FINDINGS OF FACT, RULINGS  
OF LAW AND 8A ORDER

This summary process case came before the Court on June 12, 2023 for a bench trial. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 14 Charles Street, 2R, Chicopee, Massachusetts (the "Premises") from Defendant based on non-payment of rent.

Based on all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Plaintiff owns the Premises, which is part of a multifamily property. Defendant stipulated to the amount of monthly rent (\$1,350.00) and the unpaid rent through June 2023 (\$13,750.00). She also stipulated to receipt of the notice to quit that terminated her tenancy in February 2023. Defendant continues to reside in the Premises. The Court finds that Plaintiff established its prima facie case for possession.

Defendant filed an answer alleging conditions of disrepair. She testified about repeated leaks from the floor above and periods of time without smoke detectors. She



concedes that the necessary repairs have been made. After her testimony concluded, Plaintiff stipulated to a finding of breach of the warranty of habitability and damages in the amount of three months' rent. The Court finds that Defendant is not entitled to any other damages in this case, and thus awards her \$4,050.00 on account of her affirmative defenses.<sup>1</sup>

Accordingly, based on the foregoing and in light of the governing law, the following order shall enter:

1. Plaintiff is entitled to unpaid rent through the date of trial in the amount of \$13,750.00, which is offset by the \$4,050.00 for Defendant's claim, leaving a balance of \$9,700.00 due Plaintiff.
2. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date of this order to deposit with the Court the sum of \$9,700.00, plus court costs in the amount of \$162.25 and interest in the amount of \$ 341.47, for a total of \$ 10,203.72 by bank check or money order. If such payment is made, judgment for possession shall enter for Defendant. If such payment is not then received, judgment shall enter for Plaintiff for possession and unpaid rent of \$9,700.00 plus court costs and interest.

SO ORDERED.

DATE: 6/21/23

  
Jonathan J. Kane, First Justice

cc: Court Reporter

<sup>1</sup> Defendant's answer did not delineate "affirmative defenses" or "counterclaims" but only asserted that she experienced conditions of disrepair for a period of time. The Court treats her testimony at trial as both an affirmative defense and a counterclaim. The difference is insignificant because the award of damages is simply an offset against the rent owed.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-830

QUABOAG VALLEY COOPERTIVE  
CORPORATION,

Plaintiff,

v.

MAUREEN RIPLEY,

Defendant.

ORDER

After hearing on May 23, 2023, on the landlord's Motion to Obtain Title to the Manufactured Home, the following order shall enter:

1. The landlord informed the court that the named defendant Maureen Ripley passed away on November 14, 2020, and filed a Suggestion of Death to that effect.

2. The landlord now comes before the court seeking an order that the court deem the unit abandoned and convey title to the landlord so it can either renovate or remove the subject manufacture home.
3. The court is not moved by any filings of the landlord to veer from the requirements of G.L c. 140, s.32J or Summary Process, all of which provide remedies at law for the landlord in this situation. Accordingly, the landlord's motion is denied, without prejudice.
4. Anticipating that the landlord will obtain judgment for possession and use and occupancy it may then proceed under G.L. c.140 and levy on an execution and cause a sheriff's sale to collect its judgment and/or have the home removed.
5. In the interim, should the landlord require injunctive relief to protect the safety of the park's residents (the landlord's counsel asserted such concerns on the record), it may file such an action.
6. As such, the court should schedule this for trial.

So entered this 21<sup>st</sup> day of June, 2023.

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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-CV-0317

\_\_\_\_\_  
TOWN OF CUMMINGTON, )  
 )  
                  PLAINTIFF )  
 )  
v. )  
 )  
SAUL CASDIN, )  
 )  
                  DEFENDANT )  
\_\_\_\_\_ )

ORDER FOR INSPECTION

This code enforcement matter came before the Court on June 12, 2023 on Plaintiff's motion for further enforcement of the Court's December 27, 2022 order. The property in question is located at 216 Berkshire Trail Rt 9, Cummington, Massachusetts (the "Property"). Plaintiff appeared through counsel with Health Agent Charles Kaniecki. Defendant appeared self-represented.

The December 27, 2022 order denied Plaintiff's request for the appointment of a receiver but required that town officials be permitted to conduct "a walk-through [of the Property] wherein the inspector points out each item that requires removal, or storage inside a structure, or another manner of storage." The order noted that the walk-through might not be able to take place until the snow cleared.

When Mr. Kaniecki requested dates for the walk-through inspection, Defendant said that he was not ready or willing to have anyone on the Property. His denial of access is a repudiation of the Court's order. His continued refusal to abide by Court

orders could result in a finding of contempt. In order to give Defendant an additional opportunity for compliance, Plaintiff's motion is **ALLOWED** as follows:

1. Defendant shall not unreasonably deny access for an inspection of the Property at 10:00 a.m. on July 19, 2023.
2. The inspection shall be an exterior inspection only.
3. The inspection shall be conducted by Mr. Kaniecki. Mr. Kaniecki is entitled to be accompanied by a law enforcement official whose purpose would be to keep the peace during the inspection.

SO ORDERED.

DATE: 6-21-23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-740

EBROOK, LP,

Plaintiff,

v.

MICHAEL RUNNELLS,

Defendant.

ORDER

After hearing on June 21, 2023, on the tenant's emergency motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. For the reasons stated on the record, the physical eviction currently scheduled shall be cancelled. The landlord shall immediately notify the moving company and the sheriff.

2. The landlord reports that the outstanding balance includes \$2,174 in use and occupancy through June 2023, plus court costs of \$205.01, plus costs of scheduling and cancelling the physical eviction. The landlord shall provide the tenant with invoices for the costs incurred regarding the physical eviction.
3. The tenant shall pay the landlord \$500 today and an additional \$500 by July 12, 2023, towards the arrearage.
4. A representative from Way Finders, Inc. joined the hearing by Zoom and she and the tenant and landlord counsel were going to meet in a Zoom breakout room directly following the hearing to get a RAFT application underway. This was particularly important given that the tenant is presently in Puerto Rico due to health issues (COVID) and will not return until next month. Both parties shall diligently comply with all RAFT requirements, promptly.
5. The tenant will diligently follow up with the landlord regarding its own recertification and also with the Springfield Housing Authority regarding his subsidy program re-certification.
6. The tenant is directed to reach out to Community Legal Aid to assist in his efforts to re-secure his rental subsidy and with this litigation as well. Community Legal Aid may be reached at 855-252-5342 and/or 413-781-7814.
7. The tenant shall have the electrical service restored in his name and shall not re-occupy the premises until he does so.
8. This matter shall be scheduled for a review hearing on **July 27, 2023, at 9:00 a.m.**, live and in-person at the Springfield Session of the court.

So entered this 22nd day of June, 2023.

  
\_\_\_\_\_

Robert Fields, Associate Justice

CC: Court Reporter



AR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-479

DEBORAH FERGESON,  
  
Plaintiff,  
  
v.  
  
HONG QIAN,  
  
Defendant.

ORDER

After hearing on June 16, 2023, at which both parties appeared without counsel, the following order shall enter:

1. Without any findings of fact or wrongdoing the defendant agrees to comply with the terms of this order.
2. The defendant shall provide the tenant with at least 48 hours advance written notice when she either needs access to the plaintiff's unit or to the common areas of the premises.

3. The defendant shall either place the plaintiff's personal property that was removed by her from the garage (for repairs) either back to the garage or into the vacant adjacent apartment unit in a manner that is secure from harm. Once the garage repair is complete, the items are to be returned to the garage.
4. The defendant pointed out that she believes that some of the items are "trash" (such as bags of leaves). The defendant is instructed to defer to the plaintiff if she believes an item is "trash".
5. The defendant shall not audio record the plaintiff without her permission.
6. Any and all communication between the parties shall be in writing.
7. This matter shall be consolidated with the summary process action between the parties, *Hong Qian v. Deborah Ferguson*, 23-SP-2068, which is scheduled to return to court for trial on June 30, 2023, at 9:00 a.m.

So entered this 22<sup>nd</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter



entry of judgment, which judgment will enter retroactively to the date this order is entered on the docket, and immediate issuance of the execution.

SO ORDERED.

DATE: 6/22/23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Carmen Morales, TPP of Pioneer Valley

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NG. 23-SP-1506

IRONSIDES SUMNER, L.I.C,

PLAINTIFF

v.

KAILA COPPEDGE,

DEFENDANT

ORDER FOR ENTRY OF JUDGMENT

This nonpayment summary process case came before the Court for a bench trial on June 20, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 28 Sumner Avenue, 2R, Springfield, Massachusetts (the "Premises") from Defendant.

The parties stipulated to Plaintiff's prima facie case for possession, including Defendant's receipt of the notice to quit. The Court finds that Defendant did not agree to a rent increase to \$1,450.00 per month, and therefore the monthly rent is \$1,400.00. Defendant acknowledges that she has not paid rent for eight months. Therefore, the outstanding rent balance through trial is \$11,200.00.

Defendant did not file an answer or articulate any defenses at trial. The parties agreed to defer entry of judgment and issuance of an execution to allow Defendant time to relocate. The Court incorporates their agreed-upon terms regarding a move-out date into the following order:

1. Plaintiff is entitled to judgment for possession and damages in the

amount of \$11,200.00, plus court costs of \$209.30, but entry of judgment shall be stayed until August 1, 2023, subject to the terms herein.

2. Defendant shall pay use and occupancy in the amount of \$1,400.00 on or before July 5, 2023.
3. If Defendant has not vacated by August 1, 2023, or if Defendant fails to make the required payment, Plaintiff may move for entry of judgment, which judgment will enter retroactively to the date this order is entered on the docket, and immediate issuance of the execution.<sup>1</sup>

SO ORDERED.

DATE: 6/22/23

By: Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>1</sup> Judgment shall enter for monetary damages only if possession is no longer an issue.



of rent owed.

2. If Plaintiff fails to vacate by July 1, 2023 as stipulated in the December 8, 2022 agreement, Defendant can file a motion for entry of judgment for possession only.
3. Upon possession reverting to Plaintiff, Plaintiff may request a hearing on damages. Upon receipt of such a request, the Court will transfer this case to the civil docket and schedule the hearing.<sup>1</sup>

SO ORDERED.

DATE: 6/22/23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

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<sup>1</sup> Defendant shall provide her new address to the Court in order to receive notice of the hearing on damages.



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-0895

ORANGE STREET PROPERTIES, LLC, )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 LUANNE ROSS, )  
 )  
 DEFENDANT )

ORDER REGARDING STAY  
ON EXECUTION

Following a bench trial on May 16, 2023, the Court entered an order pursuant to G.L. c. 239, § 9 granting a stay of judgment and execution. One of the conditions of the stay was that Defendant would work with Tenancy Preservation Program (“TPP”) to assist her in recovering her rental voucher and locating replacement housing. At the hearing on June 20, 2023, the Court finds that no progress has been made on either front. At this time, the Court concludes that Defendant is not entitled to an extended stay. In light of the foregoing, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession.
2. Execution may issue for possession upon written application of Plaintiff after the 10-day appeal period.
3. Use of the execution shall be stayed through July 31, 2023. Defendant shall continue to pay use and occupancy (rent) each month during the stay.

4. Defendant may request a further stay at the next Court date if she can demonstrate that she has found replacement housing for which she has been accepted.
5. Within fourteen (14) days, Plaintiff shall take the steps necessary to place the hinges on the door leading to the Premises from the common hallway on the interior side of the door.
6. The parties shall return for further review on July 18, 2023 at 2:00 p.m.

SO ORDERED.

DATE: 6/23/23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22SP4894

RB HOMES LLC,

)

)

PLAINTIFF

)

)

v.

)

ORDER FOR WAGE GARNISHMENT

)

KYLE WHELIAN,

)

)

DEFENDANT

)

This matter came before the Court on June 12, 2023 on a motion for attachment of wages. Defendant Whelian failed to appear.

On April 7, 2023, judgment entered in favor of Plaintiff RB Homes LLC ("RB") against Mr. Whelian in the amount of \$10,963.68. An execution subsequently issued in the amount of \$11,053.86. RB seeks an attachment of wages as a post-judgment remedy.

Mr. Whelian is reported to be employed by Adam Quenneville Roofing and Siding, Inc. ("Quenneville") located at 160 Old Lyman Road, South Hadley, MA 01075, whose registered agent, Adam A. Quenneville, is located at the same address. It appears from the information provided to the Court the Mr. Whelian is paid weekly. Fifteen percent of his weekly wages shall be attached. Under the current pay rate of \$48.10 per hour at 40 hours per week for gross pay of \$1,924, the deduction totals \$288.60 per week.

Quenneville is hereby ORDERED to deduct 15% of Mr. Whelian's gross wages (which amounts to \$288.60 per 40 hour work week) until the amount of the execution is paid in full. The deduction shall begin as of July 21, 2023 and be made by check payable to Richard O. Blaser, Esq. f/b/o RB Homes LLC. The check shall be mailed weekly to Attorney Blaser at 27 Carriage Lane, South Hadley MA 01075. Mr. Whelian may seek a modification or termination of this court order by filing and serving a motion. Upon payment of the full balance due, RB shall file a satisfaction of judgment and dismiss the case.

SO ORDERED.

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice



the Court allowed.<sup>1</sup> A new execution was issued and the levy was rescheduled to occur at 10:00 a.m. today. Defendant filed another emergency motion to stay the levy, this time based on assertions in a motion (without an affidavit) that the officer conducting the levy might “trash” most of her belongings rather than move them to a licensed and bonded public warehouse.

General Laws c. 239, §§ 3 and 4 govern the eviction process. The Court is without any credible admissible evidence that the officer will not comply with the law. Defendant’s claim that she asked the officer to move her belongings to a friend’s house is immaterial to the Court’s decision whether to stay the levy. Section 4(a) requires the officer to “store the [Defendant’s] property with a warehouser or other storage facility of the defendant’s choosing if the defendant notifies the officer of his choice in writing at or before the time of removal of the property.” The statute defines “warehouser or other storage facility” as a “public warehouse licensed and bonded pursuant to section 1 of chapter 105, located in the Commonwealth and within a 20 mile radius of the land or tenements from which the personal property is removed.” G.L. c. 239, § 4(a). The officer, therefore, does not have to acquiesce to removal of Defendant’s belongings to a private home.<sup>2</sup>

The execution first issued in this case nearly ten weeks ago. Defendant has had sufficient time to prepare for this date. Accordingly, the levy will not be cancelled. Plaintiff. To assuage Defendant’s concerns that her possessions will be disposed of, however, the Court enters the following order:

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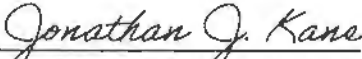
<sup>1</sup> The execution listed her address as 59 Meetinghouse Road, Amherst, Massachusetts.

<sup>2</sup> Moreover, if Defendant is concerned that the officer and moving company may not remove many of her belongings determined to be “trash”, it would not matter if the items were being moved to a licensed and bonded public warehouse or elsewhere.

1. The motion to cancel the levy is DENIED.
2. After the levy is complete, possession of the Property shall revert to Plaintiff.
3. Any items not removed from the Property for storage in a licensed and bonded public warehouse will be left at the Property. Defendant shall have until 5:00 p.m. on July 3, 2023 to move any such items to a location of her choice. Defendant shall have access to the Property only by appointment through a representative of Plaintiff, who shall not unreasonably deny access. Plaintiff may have a representative present to observe the process. After July 3, 2023, all items remaining in the Property may be discarded by Plaintiff, and Defendant shall have no right of access to the Property for any reason.

SO ORDERED.

DATE: 6.26.23

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

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COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-994

BEACON RESIDENTIAL MANAGEMENT, LLP,  
  
Plaintiff,  
  
v.  
  
JOSEPH ZUCCO,  
  
Defendant.

ORDER

After hearing on June 21, 2023, on the tenant's motion to vacate the default judgment at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The tenant met his burden for the vacation of the default judgment, explaining that he has grave health issues as well as technical difficulties that caused his default. He also asserts valid defenses to the for-cause eviction matter, seeking a reasonable accommodation to the landlord's no-pet policy.



2. Accordingly, the default judgment entered in this matter is hereby vacated.
3. The parties shall engage in a good faith reasonable accommodations dialogue.
4. The tenant is suggested to reach out to the Massachusetts Fair Housing Center in Holyoke, Massachusetts, which can be reached at 413-539-9796 to seek assistance in this matter.
5. A Status Conference with the judge shall be scheduled for **July 27, 2023, at 9:00 a.m.**

So entered this 26<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-1183

GMC PROPERTY MANAGEMENT, LLC,  
  
Plaintiff,  
  
v.  
  
ERNESTINA WOODARD,  
  
Defendant.

ORDER

After hearing on June 16, 2023, on the tenant's motion to stop a physical eviction scheduled for June 20, 2023, at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day Counsel, the following order shall enter:

1. **Violence Against Woman Act:** The tenant has asserted a colorable claim that she is entitled to protections of the Violence Against Women Act (hereinafter, "VAWA"). 34 U.S.C. ss. 12291 et seq. [246-249].

2. VAWA lays out how information regarding domestic violence is shared and addresses the burdens regarding said information and the nexus between those assertions and the underlying eviction matter, but for now the court is satisfied that it has been timely raised and that it is a basis for allowing the tenant's motion to cancel the currently scheduled physical eviction. See, *Boston Housing Authority v. Y.A.*, 482 Mass. 240 (2019). The landlord shall immediately so inform the moving company and constables of said cancellation.
3. The tenant states that she can pay \$100 towards the costs incurred by the landlord in scheduling and cancelling the physical eviction and shall do so by Tuesday morning, June 20, 2023.
4. Lawyer for the Day Counsel, Christa Douaihy from Community Legal Aid, stated that she shall continue her appearance on behalf of the tenant to include the filing of a motion to vacate the default judgment and to file a late Answer and for the hearing on same, as scheduled below.
5. The tenant shall file and serve motions to vacate the default judgment and to file a late Answer by no later than June 30, 2023. The landlord shall file and serve its opposition thereto by no later than July 14, 2023, and hearing on same shall be scheduled for **July 20, 2023, at 9:00 a.m.**
6. Given that there are very serious and complex claims being raised by both parties, including the VAWA claims, and there is also a Section 8 Voucher Program subsidy that may have been terminated, but unclear upon which party's malfeasance said termination may have occurred, the court respectfully urges Community Legal Aid to very seriously consider full representation in this matter

and be prepared to discuss the issue of continued representation at the next hearing scheduled above.

7. **Access:** After the hearing, the parties entered into a separate Agreement of the Parties regarding access for repairs at the premises whereby:

- a. The tenant agrees to drop key at landlord's office with \$100 payment on June 20, 2023, by 9:00 a.m.
- b. Tenant to vacate the unit on June 27 and June 28, 2023, from 8:00 a.m. to 4:00 p.m. to allow landlord to make necessary repairs.
- c. Landlord to call tenant at 413-930-5051 when they complete work on each day.

So entered this 26<sup>th</sup> day of June, 2023.



Robert Fields, Associate Justice

CC: Christa Douaihy, Esq. (Community Legal Aid)  
Court Reporter

CR

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-480**

**ZONAILY IGLESIAS,**  
**Plaintiff,**  
**v.**  
**OUTING PARK,**  
**Defendant.**

**ORDER**

After hearing on June 16, 2023; on the plaintiff tenant's complaint for injunctive relief at which tenant appeared with Lawyer for the Day counsel and the defendant landlord appeared through counsel, the following order shall enter:

1. The tenant's complaint seeks an order that the landlord exterminate and make repairs and also provide reasonable accommodations for her need for a three-bedroom unit and one that is either on the first floor or with elevator service.

2. More specifically, regarding the tenant's reasonable accommodations request, the tenant asserts that she has a son [REDACTED] that requires that her two young children live in separate bedrooms.
3. The landlord stated that the tenant is on the waiting list for a three-bedroom unit and also for a lower floor unit and agreed that as soon as the tenant comes up on the waiting list for either a lower floor unit or a three-bedroom unit she will be notified.
4. The landlord shall also have the tenant's unit treated for insects every two weeks and if this is not effective, the tenant shall so notify the landlord.
5. The parties shall continue to engage in further reasonable accommodations dialogue.
6. The tenant may wish to follow up with Community Legal Aid (413-781-7814) for further legal assistance and may also wish to reach out to the Massachusetts Fair Housing Center in Holyoke for assistance with her reasonable accommodations requests---which can be reached at 413-539-9796.

So entered this 26<sup>th</sup> day of June, 2023.

Robert Fields

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0380

\_\_\_\_\_  
CITY OF SPRINGFIELD CODE ENFORCEMENT )  
DEPARTMENT, HOUSING DIVISION, )  
 )  
                    PLAINTIFF )  
 )  
v. )  
 )  
SUPERIOR CCM, LLC (owner), )  
OLGA RIOS (tenant), and )  
ANTONIA GARDNER (tenant), )  
 )  
                    DEFENDANTS )  
\_\_\_\_\_ )

ORDER FOR ALTERNATIVE HOUSING

This code enforcement matter came before the Court on June 26, 2023 on Defendant Rios’s emergency motion related to alternative housing. All parties appeared through counsel.

On June 23, 2023, this Court ordered Defendant Superior CCM, LLC (“Superior”) to immediately provide alternative housing to Ms. Rios and to continue to provide it until the electrical code violations in her unit had been corrected and inspected by Plaintiff, or until further Court order. Superior reserved and paid for four nights at the Holiday Inn Express in Springfield. Ms. Rios was unable to check in, however, because she did not have a credit or debit card to give the hotel as security for any incidental expenses incurred during her stay.

Superior asserts that it met its obligation by reserving the room and cannot be held responsible for Ms. Rios’ inability to offer a credit or debit card at check-in. The

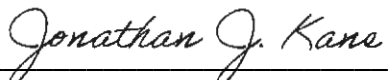
Court disagrees. Superior cannot escape its obligation to provide alternative housing simply because Ms. Rios could not provide the hotel with a card; otherwise, court orders to provide alternative housing would be effective only to the extent that a tenant had a certain degree of financial resources.

In light of the foregoing, the following order shall enter:

1. Superior shall reserve and prepay for four nights (June 26, 2023 through and including June 29, 2023) at the Holiday Inn Express in Springfield, MA, and shall provide a credit card or other security for incidentals as required by the hotel.<sup>1</sup>
2. Superior shall pay Ms. Rios, in immediately available funds, the sum of \$350.00, reflecting a daily food stipend for the period of June 23, 2023 (the first night Superior was ordered to provide the stipend) to June 29, 2023.
3. The parties shall return for review of the outstanding code violations on **June 30, 2023 at 11:00 a.m.**

SO ORDERED.

DATE: 6.27.23

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>1</sup> If Ms. Rios incurs any incidental expenses while staying at the hotel, Superior may seek reimbursement of said expenses by Ms. Rios.



CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-43

LORD JEFFREY APARTMENTS,  
  
Plaintiff,  
  
v.  
  
BRUCE WACHTA,  
  
Defendant.

ORDER

After hearing on June 26, 2023, on the defendant tenant's motion to vacate the default entered on April 24, 2023, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared with Limited Appearance counsel, the following order shall enter:

1. For the reasons stated on the record, and particularly the court's appreciation that the tenant's assertion of VAWA protections, appear very applicable to his situation with former defendant Renee Rioux, the default shall be vacated.

2. This matter shall be scheduled for a Case Management Conference with the undersigned judge by Zoom on **July 14, 2023, at 2:00 p.m.** to determine what remains of the fault claims asserted by the landlord in its *for-cause* eviction notice to quit now that the tenant has ejected Ms. Rioux and maintains a G.L. c.209A restraining order against her. Because the tenant's VAWA protections have become integral to these proceedings, LAR counsel<sup>1</sup> is encouraged to provide further representation to the tenant at the above scheduled Case Management Conference.

So entered this 27<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Franci Gazzaniga, Community Legal Aid (LAR counsel for the tenant)  
Court Reporter

<sup>1</sup> Franci Gazzaniga, Esq. appeared LAR on behalf of the tenant and is copied herein to encourage her appearance at the next court event noted above.

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-2881

68 JAMES STREET REALTY TRUST,  
  
Plaintiff,  
  
v.  
  
DALIA and MARQUIS SKINNER,  
  
Defendants.

ORDER

This matter came before the court for trial on June 23, 2023, at which the plaintiff landlord appeared through counsel and the defendant tenants appeared *pro se*. After consideration of the evidence admitted therein, the following findings of facts and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, 68 James Street Realty Trust (hereinafter, "landlord") owns a multi-family dwelling located at 38 Alden Street in Springfield, Massachusetts (hereinafter, "premises" or "property"). The defendants, Dalia

and Marquis Skinner (hereinafter, "tenants") have been residing at the premises since November 2017. The landlord terminated the tenancy with a no-fault notice to quit and thereafter commenced this Summary Process action. The tenants filed an Answer with various counterclaims and defenses.

2. **Landlord's Claim for Possession and for Use and Occupancy:** The amount of rent, use and occupancy outstanding through June 2023 totals **\$12,100**. The amount is reached due to the tenants' non-payment for August 2022 through June 2023. The landlord had sought to raise the rent to \$1,300 for June 2022 but the tenants never agreed, and that higher figure was never established. The landlord also established its *prima facie* claim for possession having served the tenants with a no-fault notice of termination in June 2022 which was effective on August 1, 2022.
3. **Preliminary Matter; Prior Cases:** As a preliminary matter, the landlord argued that the tenants' claims stemming from their allegations of disrepair should be barred by the Agreement filed in an earlier litigation between the parties, *Raymond Houle, Agent for Pine Street Trust v. Dalila Santiago, et al.*, 19-SP-160. Upon review of that case<sup>1</sup>, there is no indication that the tenants settled any such claims. In fact, the only indication of claim settlement is that in Paragraph #2 of the Agreement dated September 8, 2021, the landlord settled its claims against the tenants. Moreover, the agreements filed in that case prior to its dismissal (on

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<sup>1</sup> As stated on the bench during the trial, the court took judicial notice of the two prior matters between the parties: *Raymond Houle, Agent for Pine Street Realty Trust v. Dalila Santiago and Marques Skinner*, 19-SP-160 and *Pine Street Realty Trust (Raymond Houle) v. Dalila Santiago and Marques Skinner*, 21-SP-3386.

April 13 and June 10, 2021) list many of the same conditions of disrepair complained of in this instant trial.

4. **Breach of the Covenant of Quiet Enjoyment:** There have been conditions of disrepair at the premises throughout the tenancy which have included those listed by the city inspectors in the various reports admitted into evidence. The most serious of those have included a chronic leak from the bathroom into the living room ceiling, mold build up in the bathroom, faulty stairs and stair handrail, and intermittent heat insufficiencies. Though the landlord has made some repairs they are too often insufficient, and the problems re-occured. A perfect example is the bathroom leak into the living room ceiling which has been "addressed" numerous times but continues to be a worsening problem. Similarly, the landlord has bleached and painted over the mold in the bathroom as much as 20 times over five years but has never addressed the underlying cause of the mold<sup>2</sup>.
5. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Aizlab v. Mourgis*, 424 Mass. 847, 851 (1997).

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<sup>2</sup> Though the landlord asserted that the mold is solely caused by, and is the responsibility of, the tenants the landlord provided no supporting evidence whatsoever.

6. The court finds and so rules that the landlord's failures to properly address these conditions of disrepair over a protracted period of time breached the tenants' covenant of quiet enjoyment and G.L. c.186, §14 and the court hereby awards the tenants damages equaling three months' rent for this claim totaling (\$1,100 X 3) **\$3,300**.
7. **Breach of the Warranty of Habitability:** In addition to the conditions of disrepair captured in the above breach of quiet enjoyment claim, the landlord failed to install a screen door for the entirety of the tenancy. This is a per se violation of the State Sanitary Code at 105 C.M.R. 410.540(C).
8. It is usually impossible to fix damages for breach of the implied warranty with mathematical uncertainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in the actual condition. *Haddad v. Gonzalez*, 410 Mass. 855, 576 N.E.2d 658 (1991).
9. The court finds and so rules that the fair rental value of the premises was reduced by 5% as a result of a failure to install screen doors for the entire tenancy. The tenant's damages for the landlord's breach of the warranty of habitability was therefore \$765 (\$1,100 x 5% for six months of the year each year for four years, for 20 months X 5% of \$1,100, totaling **\$1,100**.

**10. Chapter 93A; Consumer Protection.** The landlord's failure to install screen doors as noted above also violates the tenants' consumer protection rights at 940 C.M.R. 3.17. The nature of that violation, that it is mandatory and never complied with are deemed knowing and willful. *Montanez v. Bagg*, 24 Mass.App.Ct. 954 (1987). Therefore, the warranty damages are subject to doubling or trebling and given the egregiousness of this violation—never installing screen doors when required to do so by law---the court shall treble the warranty of habitability award of \$1,100, totaling **\$3,300**.

**11. Security Deposit Law Violation:** At the commencement of the tenancy, the tenants gave the landlord a security deposit of \$1,100. Thereafter, the landlord failed to comply with many aspects of the security deposit laws including a failure to provide a receipt for the tenants, failure to provide information about the bank account, and failed to either credit their balance with the accrued annual interest or issue them such funds annually. Moreover, the landlord failed to deposit the funds in a proper account, though the landlord disputed this claim. More specifically, the landlord provided a "check register" with two receipts for \$2,200 that appear stamped "SAV DEP". The landlord also testified that he does not know exactly how the interest is somehow provided the tenants because "the bank takes care of that" but he also testified, candidly, that the bank stopped sending such notices after a number of years ago.

**12.** The court finds that the landlord failed to meet his burden of proof that the bank account in which the tenants' security deposit was deposited is proper under Massachusetts law; that it is under the tenants' social security numbers and held

beyond the landlord's creditors. The court, instead, finds that the funds were deposited in a regular savings account and not one that is required by the law.

13. Due to the many violations noted above, the landlord forfeited its right to retain the funds. Given the fact that the tenants asserted this claim in their Answer filed and served on December 2022, some six months prior to trial, and the fact that the landlord did not return said funds to the tenants, the answer will be treated as a demand for same and the failure to repay it violates G. L. c.186, §15B(6) and (7) and the tenants shall be awarded three times the deposit, totaling \$3,300. *Castenholz v. Caira*, 21 Mass.App.Ct. 758 (1986).


14. **The Tenants' Other Claims:** The court finds and so rules that the tenants failed to meet their burden of proof on their other asserted claims including Retaliation, Harassment, and Cross-metering for heat in the basement.

15. **Conclusion and Order:** Based on the foregoing, the landlord shall be awarded \$2,200 plus court costs. This sum is reached by an offset of the tenants' award of \$9,900 against the landlord's use and occupancy claim of \$12,100. In accordance with G.L. c.239, s.8A the tenants shall have until ten days after the date of this order noted below to deposit \$2,200 plus court costs of \$ 237.25 plus interest in the amount of \$ 216.42, totaling \$ 2,653.67. If the tenants make this deposit with the Clerks Office, judgment shall enter for them for possession and the funds deposited shall be disbursed to the landlord's counsel. If the tenants fail to make said payment to the court, judgment shall enter for the landlord for possession plus \$2,200 plus court costs and interest.



16. G.L. c. 239, s.9 & 10: Because this is a no-fault eviction and the tenants have asserted relief under G.L. c.239, s. 9 & 10, the court shall schedule a hearing in accordance with G.L. c.239, s.9 & 10 on **July 20, 2023, at 9:00 a.m.** This hearing will go forward whether or not the tenants make the deposit with the court described above.

So entered this 28<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_

Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-1643

DENNIS LANGRIN,  
  
Plaintiff,  
  
v.  
  
MARIA RIVERA LOPEZ,  
  
Defendant.

ORDER

After hearing on June 27, 2023, on the tenant's motion to stay use of the execution, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. A representative from Way Finders, Inc. joined the hearing by Zoom and reported that the tenant's earlier RAFT application "timed out" due to failure to provide hardship documentation. Because there is not subsidy involved, there should have not been any requirements for hardship documentation.

2. Accordingly, the tenant's motion for a stay on the use of the execution is allowed, contingent upon compliance with the terms of this order.
3. The tenant shall immediately re-apply for RAFT (by June 30, 2023, so that she may be eligible for the \$10,000 now available through RAFT). The landlord shall also cooperate with this re-application by June 30, 2023, if at all possible.
4. The tenant shall pay her July and August 2023, rent on time and in full.
5. The tenant shall also pay an additional \$75 towards the arrearage in July 2023 one week after paying the rent for that month and then an additional \$75 two weeks after that.
6. This matter shall be scheduled for further review on **August 10, 2023, at 9:00 a.m.**

So entered this 30<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-2881

68 JAMES STREET REALTY TRUST,  
  
Plaintiff,  
  
v.  
  
DALIA and MARQUIS SKINNER,  
  
Defendants.

CORRECTIVE ORDER

A correction is required to the order and decision dated June 28, 2023.

Paragraph #16 regarding G.L. c.239, s.9 & 10 should state as follows:

16. **G.L. c. 239, s.9 & 10:** Because this is a no-fault eviction and the tenants have asserted relief under G.L. c.239, s. 9 & 10, the court shall schedule a hearing in accordance with G.L. c.239, s.9 & 10 on **July 20, 2023, at 9:00 a.m.** This hearing will

not be required if the tenants make the deposit discussed above and judgment for possession is awarded to them.

So entered this 27th day of June, 2023.



\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter



On June 26, 2023, Superior was ordered to reserve and prepay for four nights (June 26, 2023 through and including June 29, 2023) for Ms. Rios at the Holiday Inn Express in Springfield, MA, and shall provide a credit card or other security for incidentals as required by the hotel. Superior did not make the required arrangements. To date, Ms. Rios has not been provided the alternative housing ordered by this Court on June 23, 2023.

In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re Birchall*, 454 Mass. 837, 852-53 (2009). A primary purpose of civil contempt is to induce compliance and “secur[e] for the aggrieved party the benefit of the court’s order.” *See Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). Compensatory orders, however, may be warranted. *See Labor Relations Comm. v. Fall River Educators’ Assn.*, 382 Mass. 465, 475-476 (1981) (both compensatory and coercive orders are appropriate remedies in civil contempt proceedings).

Here, the Court finds by clear and convincing evidence that Superior willfully disobeyed a clear and unequivocal command of this Court to provide alternative housing to Ms. Rios. Accordingly, the following order shall enter:

1. Superior must arrange and pay for alternative housing in the form of a hotel beginning today and continuing until the electrical work done at Ms. Rios’ unit passes inspection by the City of Springfield.
2. If for any reason Superior fails to provide a hotel room to Ms. Rios beginning today, it shall be assessed a fine of \$500.00 per night until a hotel room is

provided or until the electrical work has passed inspection, whichever first occurs.

3. Superior is hereby assessed a fine of \$1,000.00, representing daily fines of \$200.00 for each of the five days that it failed to provide Ms. Rios with the alternative housing ordered by this Court (June 23 to June 27).
4. Ms. Rios' counsel may file and serve a petition for reasonable attorneys' fees related to the June 26, 2023 and June 28, 2023 hearings. Upon receiving the petition, Superior shall have seven days to file any opposition, after which the Court will enter an order regarding attorneys' fees without further hearing.

SO ORDERED.

DATE: 29<sup>th</sup> June 2023

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Court Reporter





Premises today to make repairs.

4. Defendant shall repair any leaks that are causing damage in the Premises.
5. Defendant shall diligently work to end the infestation of roaches in the Plaintiffs. Defendant represents that extermination treatments are currently scheduled.
6. Defendant shall provide Plaintiff a key for the front door by the end of today.
7. Plaintiff will not unreasonably deny access for inspection or repair.
8. All repairs must be completed within thirty (30) days. With respect to exterminations, the infestation may not be eradicated within 30 days, but Defendant must demonstrate that it is regularly treating (and will continue to regularly treat) the Premises for roaches.

SO ORDERED.

DATE: 6/29/23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1566

JASNIA REALTY LLC,

PLAINTIFF

v.

GLADYS ORTIZ,

DEFENDANT

ORDER FOR ENTRY OF JUDGMENT

This nonpayment summary process case came before the Court for a bench trial on June 22, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 438 Springfield Street, Unit 5, Agawam, Massachusetts (the "Premises") from Defendant.

The parties stipulated to Plaintiff's prima facie case, including receipt of the notice to quit. Defendant's share of the monthly rent is \$200.00. She acknowledges that \$2,364.89 is owed in rental arrears. Defendant did not file an answer and asserts no legal defenses. She does not have a pending RAFT application, and even if she can demonstrate the hardship necessary for receiving rental assistance, she is only eligible for \$1,200.00 and Plaintiff would have to agree to accept a payment plan for the balance.

Based upon the foregoing, and in light of the governing law, the following order shall enter:

1. Judgment for possession and \$2,364.89 in damages plus court costs shall

- enter in favor of Plaintiff.
2. Execution (eviction order) shall not issue without further Court order.
  3. If Defendant pays \$200.00 no later than July 3, 2023 for her use and occupancy of the Premises for July, use of the execution will be stayed through July 31, 2023.
  4. The parties will return on **July 20, 2023 at 2:00 p.m.** for a hearing on issuance of the execution (without the need for further notice or pleading). The Court will either issue the execution at that time or, if Defendant has applied for RAFT or has another way to pay the balance within a reasonable time, the Court will consider terms of a further stay.

SO ORDERED.

DATE: 6-29-23

By: Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0506

\_\_\_\_\_  
DIOSA KING,

PLAINTIFF

v.

\_\_\_\_\_  
KEVIN DAMOURS,

DEFENDANT  
\_\_\_\_\_

ORDER

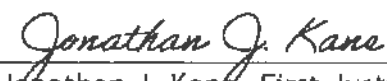
This case came before the Court on June 26, 2023. Both parties appeared self-represented. The premises in question are 11 Bayberry Drive, Holyoke, Massachusetts ("the Premises").

After hearing, the Court finds that Plaintiff rents a room at the Premises. Defendant obtained a restraining order against Plaintiff, so she is currently not residing there. He placed her belongings in the garage so she could retrieve them without interaction.

A restraining order does not determine rights to possession. To regain legal possession, Defendant must start an eviction case or have Plaintiff agree to return possession. Until a court order or Plaintiff's surrender, Plaintiff has legal possession of her bedroom at the Premises and Defendant must return her belongings to the room.

SO ORDERED.

DATE: 6.29.23

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice

cc: Court Reporter



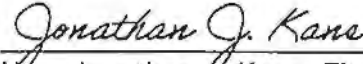
precluded from asking for unpaid rent or use and occupancy if he prevails on his case-in-chief based on cause.<sup>1</sup> With respect to the inclusion of property damage in the account annexed, the rules that such inclusion does not render the summons and complaint defective; however, the Court strikes the reference to the broken porch rail from the account annexed. Claims for recovery of damages other than unpaid rent or use and occupancy and court costs are typically not included in a summary process case.<sup>2</sup>

Accordingly, in light of the foregoing, the following order shall enter:

1. Defendant's motion to dismiss is DENIED.
2. Plaintiff's case-in-chief is limited to claims of refusal to allow access for inspections and property damage.
3. Plaintiff shall serve responses to discovery no later than July 21, 2023.
4. The Clerk's Office shall schedule a two-hour trial on or after August 7, 2023 before the undersigned.

SO ORDERED.

DATE: 6-29-23

  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>1</sup> The Court finds that the phrase "for violating lease" in the notice is too vague to allow Defendant to present a defense, and thus Plaintiff is limited to claims related to refusal of access and property damage.

<sup>2</sup> Nothing precludes either party from filing subsequent motions related to the inclusion or exclusion of property damage claims at trial.



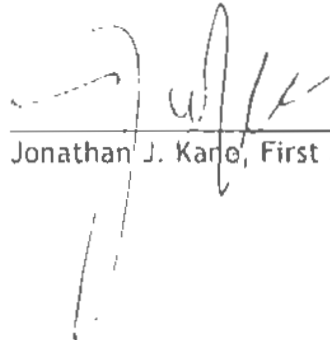


After hearing, the Court enters the following order:

1. A *capias* shall issue to bring Defendant to the next court event, which will take place on June 29, 2023 at 9:00 a.m. All parties
2. If Plaintiff intends to introduce Mr. Baenziger's report, he shall have Mr. Baenziger present in the courtroom to testify.
3. The legislative fee for injunctions (G.L. c. 262, § 4) is hereby waived.

SO ORDERED.

DATE: 6.29.23

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-CV-0852

---

TOWN OF CHESTER, )  
 )  
                  PLAINTIFF )  
 )  
v. )  
 )  
ALBERT G. HOLLAND AND )  
U.S. BANK TRUST NATIONAL ASSOCIATION, )  
NOT IN ITS INDIVIDUAL CAPACITY BUT )  
SOLELY AS OWNER TRUSTEE FOR RCF2 )  
ACQUISITION TRUST, )  
 )  
                  DEFENDANTS )  

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FURTHER ORDER

This code enforcement matter came before the Court on June 26, 2023 for further consideration of Plaintiff’s motion to appoint a receiver. The property in question is located at 1 Crane Road, Chester, Massachusetts (the “Property”). Defendant Holland appeared self-represented. Plaintiff and Defendant U.S. Bank Trust National Association (the “Bank”) appeared through counsel.

At the hearing, Mr. Holland presented a proposed plan to correct the violations at the Property without the need for the appointment of a receiver. Given that the appointment of a receiver is a remedy of last resort, the Court accepts Mr. Holland’s proposal and five-week timeline for completion. Should Mr. Holland not substantially correct the violations within the prescribed timeframe, the Court will again consider Plaintiff’s request for the appointment of Witman Properties, Inc. as receiver.

Plaintiff reports that Mr. Holland has been fined a total of \$60,600.00 to date as a result of this failure to correct the violations. Plaintiff volunteered to reduce the fines by 50% as a gesture of good faith. Plaintiff also reports that some amount of real estate or other municipal taxes remain unpaid, although it did not have the precise number. Counsel indicated that the unpaid taxes from 2022 were approximately \$2,000.00 and that a portion of 2023 taxes might be overdue. Plaintiff has been unwilling to issue Mr. Holland a demolition permit until the fines and taxes are paid.

After hearing, the following order shall enter:

1. Mr. Holland shall complete the cleanup of the Property, including without limitation demolishing the garage and removing all unregistered vehicles, tires and scrap material, no later than August 1, 2023.<sup>1</sup>
2. Plaintiff shall inspect the Property and document its condition on August 3, 2023 or August 4, 2023 after giving Mr. Holland at least 24 hours advance notice of the time and date of the inspection.
3. Plaintiff shall issue a demolition permit for the garage upon Mr. Holland becoming current with his property taxes. Mr. Holland shall not be required to pay the fines as a condition of receiving the demolition permit, although the fines are not waived and will be the subject of further hearing.
4. The proposed receiver may commission a title examination (anticipated to cost approximately \$300.00), which cost shall be reimbursed by Mr. Holland in the event a receiver is not appointed.

---

<sup>1</sup> For purposes of this order, Mr. Holland must raze the garage and remove all debris. If he is able to reuse some of the materials from the garage, he may neatly stack such reusable materials on the Property.

5. The parties shall return for further review and consideration of the appointment of a receiver on **August 8, 2023 at 9:00 a.m.**

SO ORDERED.

DATE: June 29, 2023

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-SP-2174

WESTFIELD HOUSING AUTHORITY, )

PLAINTIFF )

v. )

WILLIE YOUNG, )

DEFENDANT )

ORDER FOR ENTRY OF JUDGMENT

This summary process case came before the Court on June 26, 2023 on Plaintiff's motion for entry of judgment. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 16 Washington Street, #128, Westfield, Massachusetts (the "Premises") from Defendant.

Plaintiff seeks entry of judgment based on alleged violations of an Agreement of the Parties entered into on March 13, 2023 (the "Agreement"). Defendant had the assistance of counsel when he entered into the Agreement. Among other provisions, Defendant agreed to allow only his service providers, family members and Jenette Jendza to visit him in his unit, not to allow Ms. Jendza or anyone else to remain in his unit more than 21 days in a twelve-month period, to contact Plaintiff if he has an unwanted guest or a guest causing a disturbance, and that neither he nor his guests would disturb other tenants.

After an evidentiary hearing, based on the credible testimony of two Westfield Police Department officers, the property manager and a neighbor of Defendant, the

Court finds that Defendant substantially violated material terms of the Agreement. The evidence clearly shows other individual entering and exiting his unit, and he concedes that Ms. Jendza has stayed at his unit beyond the 21 day limit. The Court finds that the parts of the Agreement related to who can visit and remain in the Premises are material provisions.

Accordingly, in light of the foregoing, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession and court costs.
2. Execution may issue by application after the 10-day appeal period expires.
3. Plaintiff may serve the 48-hour notice but the levy cannot take place prior to July 31, 2023 to allow Defendant an opportunity to vacate voluntarily.

SO ORDERED.

DATE: 6-29-23

  
Jonathan J. Kane, First Justice

OK

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-1260**

**BEL AIR INN,**  
  
**Plaintiff,**  
  
**v.**  
  
**WENDY KELLHER and JOSHUA ADAMS,**  
  
**Defendants.**

**ORDER**

After hearing on June 29, 2023, on the defendants' motion to compel discovery at which all parties appeared through counsel, the following order shall enter:

1. The motion to compel is allowed as the plaintiff has failed to provide responses to outstanding interrogatories and request for production of documents.
2. More specifically, the defendants' request for attorney's fees incurred as a result of two motions to compel is allowed but suspended consistent with the terms of this order.

3. The plaintiff shall provide responses to the outstanding discovery by no later than July 20, 2023.
4. If the plaintiff complies with the above order, the attorney fee award shall be vacated, without prejudice.
5. If the plaintiff fails to comply with said order, the defendants shall file and serve a petition for reasonable attorney's fees and costs and the plaintiff shall have ten days thereafter to file any challenge thereto and the court shall make a ruling thereafter.

So entered this 30<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter



CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4642

RILEY HUYNH,  
  
Plaintiff,  
  
v.  
  
WOODROW HUBBARD,  
  
Defendant.

ORDER

After hearing on June 29, 2023, at which each party appeared without counsel the following order shall enter:

1. In accordance with G.L. c.239, s.9, the defendant who is confined to a wheelchair and has very limited income shall be granted more time to relocate the premises—in a manner consistent with the terms of this order.
2. The plaintiff purchased the subject premises in which the defendant was already a long-term tenant. The parties reported today that the plaintiff has now put the

utilities in his own name. As such, the defendant shall pay him \$400 for monthly use and occupancy going forward.

3. The plaintiff shall hire a licensed exterminator to inspect and properly treat the premises for rodents, forthwith.
4. The plaintiff shall also have the defendant's stove repaired by a licensed technician, forthwith.
5. The plaintiff shall repair all non-working light fixtures at the premises and if such work requires a licensed professional shall hire same accordingly, and forthwith.
6. The defendant has until December 1, 2023, to relocate from the premises.
7. The plaintiff may file a motion for entry of judgment if the defendant fails to vacate the premises after December 1, 2023, or if he fails to make use and occupancy payments in the meantime.

So entered this 30<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 19-SP-190

**BANK OF NEW YORK MELLON,**  
  
**Plaintiff,**  
  
**v.**  
  
**ALTON KING,**  
  
**Defendant.**

**ORDER**

After hearing on June 30, 2023, at which the plaintiff appeared through counsel, the defendant appeared *pro se* and David White owner of Race Street Properties, LLC appeared, the following order shall enter:

1. David White and Race Street Properties, LLC, shall be added as party defendants to this matter as indispensable parties. Both have a mailing address of 460 Race Street in Holyoke, Massachusetts and Race Street Properties, LLC, shall be represented by an attorney going forward.

2. Due to the failure of David White and Race Street Properties, LLC to comply with G.L. c.106, s.7-210 (2)(f) by scheduling a sale of the plaintiff's goods less than fifteen days after the first publication of same, the sale currently scheduled for July 1, 2023, is hereby cancelled.
3. David White and Race Street Properties, LLC shall not re-advertise a sale of Mr. King's goods until further order of the court.
4. This matter shall be scheduled for further hearing on **July 7, 2023, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 3<sup>rd</sup> day of July, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter



[REDACTED], except as expressly permitted by the terms of this order.

2. Upon successful completion of the treatment program, she may return to the Premises.
3. Plaintiff may change the locks to avoid any unauthorized entry into the Premises. Plaintiff shall provide one copy of the key to Defendant's CHD worker, Amanda Pitchford. Defendant may enter the unit from time to time with Ms. Pitchford or another treatment provider for the purpose of caring for her cat and to clean the Premises.<sup>1</sup> Defendant may not be in the Premises unaccompanied prior to her successful completion of the program.
4. Defendant shall seek the assistance of CHD and TPP to arrange a decluttering and cleaning of the Premises. Defendant shall follow the recommendations of these agencies.
5. Defendant shall not allow any unauthorized access to the Premises while she is in the treatment program, and, upon returning to the Premises, Defendant will not allow unauthorized occupants to live in the Premises.
6. Defendant shall maintain the Premises in a clean and uncluttered condition.
7. Defendant shall pay rent for May 2023 and June 2023, which she said she can pay immediately, and Defendant shall continue to pay her rent (use and occupancy) in full and on time going forward beginning in July 2023.

---

<sup>1</sup> Defendant has a voucher to spay the cat and a place to for the cat to live once it is spayed.

8. This case shall be kept open for six months from the date Defendant returns to the Premises after successfully completing the treatment program to monitor compliance.
9. The parties shall return for review on July 28, 2023 at 9:00 a.m.

SO ORDERED.

DATE: 7/3/23

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0489

MARSHA QIAN,

PLAINTIFF

v.

HENRY RECORD, WENDY RECORD,  
MIKE KING AND DOROTHY CHARVIS,

DEFENDANTS

)  
)  
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)  
)  
)

ORDER

This case came before the Court on June 22, 2023 on Plaintiff's application for injunctive relief. Plaintiff seeks an emergency order for possession based on allegations that Defendants are not tenants or otherwise authorized to reside at the property located at 46 Queen Street, Floor 2, Springfield, Massachusetts (the "Premises"). All parties appeared self-represented.

After hearing, based on the testimony of the parties, the Court finds that Defendants are not tenants. They sublet a part of the Premises from the tenant, Michael Harris, who is deceased. Mr. Harris' mother removed her son's belongings and returned the keys to Plaintiff. Defendants, who are relatives of Mr. Harris, did not vacate. The Court finds that, although Plaintiff was aware that Defendants were residing in the Premises, she rented the unit only to Mr. Harris and never authorized him to sublet or have other occupants in the Premises. Defendants have not paid any rent to Plaintiff or entered into any other terms for their continued occupation.



In light of the foregoing, the Court enters the following order:

1. Defendants may remain on the Premises through July 31, 2023 provided they pay \$1,100.00 (the rental amount set forth in the lease with Mr. Harris) for the use and occupancy no later than July 7, 2023. This payment may be accepted by Plaintiff without creating a landlord-tenant relationship.
2. If the required payment is made, Plaintiff may not recover possession before August 1, 2023.
3. Defendants may not permit any other individuals to occupy the Premises.
4. If Defendants fail to make the payment or fail to vacate by August 1, 2023, Plaintiff may seek an order that allows her to recover possession of the Premises.
5. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

DATE: 7/3/2023

Jonathan J. Kane  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-531

SERVICENET, INC.,

Plaintiff,

v.

WENDY PERRY,

Defendant.

ORDER

After hearing on June 30, 2023, at which the plaintiff appeared through counsel and the defendant appeared with Lawyer of the Day counsel Paul Schack of Community Legal Aid, the following order shall enter:

1. Attorney Schack's request for a continuance to allow for his agency to consider further representation and to file an Answer and any other appropriate pleadings is allowed.

2. The defendant shall have until July 7, 2023, to file and serve an Answer and any other pleadings.
3. Given the court's order to allowing a continuance of the hearing on the plaintiff's complaint for enforcement of an eviction pursuant to G.L. c.186, s.17A (the Community Residency Tenancy Act), the plaintiff requested to be heard on emergency injunctive relief for an order that the defendant be immediately (and perhaps temporarily) removed from the premises until a final hearing on the merits of the underlying complaint.
4. Said emergency hearing was begun but not concluded.
5. This matter shall be heard on **July 14, 2023, at 9:00 a.m.** in the Greenfield Session of the court on either the continuation of the emergency injunctive hearing or, if not further continued, the underlying complaint for enforcement of G.L. c.186, s.17A.

So entered this 3rd day of July, 2023.

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Robert Fields, Associate Justice

CC: Paul Schack, Esq. (Lawyer of the Day Counsel)  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-407

25 HIGHLAND APARTMENTS, LLC,

Plaintiff,

v.

JOHN R. WALTERMIRE and EVELISSE  
DELGADO,

Defendant.


ORDER

After hearing on June 14, 2023, at which the plaintiff landlord appeared and the defendants failed to appear after notice, the following order shall enter:

1. Though efforts were made to have defendant Waltermire's criminal defense attorney appear, and though Attorney Shaw appeared as Lawyer for the Day at the May 25, 2023, hearing, no one appeared on Mr. Waltermire's behalf at this hearing.

2. The court finds that the landlord met its burden of proof that the defendant, John R. Waltermire, violated G.L. c.139, s.19 but not as to his co-defendant, Evelisse Delgado<sup>1</sup>.
3. Accordingly, a judgment for possession and no costs shall enter for the landlord against the tenant John R. Waltermire. No judgment shall enter against Evelisse Delgado.

So entered this 5<sup>th</sup> day of July, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Michelle Dame, Esq. (Waltermire's criminal defense attorney) Goodhines Law Offices, 175 State Street, Suite 400, Springfield, MA 01103

Court Reporter

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<sup>1</sup> West Springfield Police Detective from the Narcotic Unit testified on behalf of the landlord.

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-3836

CARABETTA MANAGEMENT COMPANY,

Plaintiff,

v.

JACQUELINE DELGADO,

Defendant.

ORDER

After hearing on June 29, 2023, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se*, and a representative from the Tenancy Preservation Program (Alisha White) also appeared, the following order shall enter:

1. The tenant paid the \$205 for June 2023 use and occupancy required by the last order (albeit late on June 16, 2023).
2. The tenant was able to restore the electrical service in her unit since the last hearing.

3. A representative from Way Finders, Inc. joined the hearing and reported that the application, # [REDACTED], was "timed-out" in part because of the landlord's failure to submit paperwork. Counsel for the landlord provided Way Finders, Inc. a contact email for the landlord.
4. The tenant reported that her SSI recommenced at a monthly benefit level of \$914 so paying her rent on time each month should not pose a problem.
5. The court found the tenant credible when she reported to the court that she has been in the hospital seven times since the last hearing on May 25, 2023.
6. TPP reported that due to the frequent and repeated hospital visits it has been difficult to communicate and work with the tenant.
7. The tenant shall continue to work with TPP with follow up on her re-application for RAFT and shall do much better in staying in communication with TPP which will help her with RAFT and recertification.
8. The tenant shall pay her July and August 2023 rent on time and in full.
9. This matter shall be scheduled for further review and hearing on the landlord's motion for entry of judgment on **August 24, 2023, at 9:00 a.m.**

So entered this 5<sup>th</sup> day of July, 2023.

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Robert Fields, Associate Justice

CC: TPP

Court Reporter





2. Superior shall bring a check for \$500.00 to the next hearing on July 7, 2023 at 11:00 a.m.
3. Superior's motion for reconsideration shall be heard on July 7, 2023.
4. Nothing herein is intended to modify or supersede the Order by Assent from the hearing held on June 16, 2023 pursuant to which it is obligated to complete all Sanitary Code violations cited by Plaintiff by July 7, 2023. Ms. Rios shall not unreasonably deny access for repairs and shall permit Plaintiff to inspect on July 7, 2023 at 10:30 a.m.
5. The parties shall return for further review on **July 7, 2023 at 11:00 a.m.**

SO ORDERED.

DATE: 7-5-23

  
Jonathan J. Kane First Justice

cc: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-2057

OBELISK HOLDINGS, LLC,  
  
Plaintiff,  
  
v.  
  
CHRISTINA BEAUCHEMIN,  
  
Defendant.

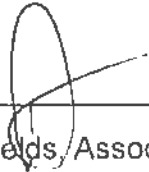
ORDER

This matter came before the court for trial on July 5, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se*. After hearing, the following order shall enter:

1. The parties were not able to stipulate to proper service of the notice to quit.
2. After hearing testimony from both the landlord's witness, Vladimir Tulchinsky, and the tenant, the court found and so ruled that the landlord did not meet its burden of proof on the tenant's receipt of the notice to quit.

3. Accordingly, and for the reasons stated in more detail on the record, the matter is dismissed.

So entered this 5<sup>th</sup> day of July, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0504

\_\_\_\_\_  
TKANISHALEE RIVERA-ALONZO,

PLAINTIFF

v.

EDGARDO COLON, ET AL.,

DEFENDANTS  
\_\_\_\_\_

ORDER

This case came before the Court on June 30, 2023 on Plaintiff's emergency motion for injunctive relief. The parties appeared self-represented. The premises in question are 36 Ringgold Street, Apt. 2, Springfield, Massachusetts ("the Premises").

Plaintiff contends that Defendants, who own the Premises, are using the 3<sup>rd</sup> floor as an illegal dwelling unit and are using her electricity without authorization. After hearing, and without making findings of fact at this time, the Court enters the following order:

1. Defendants shall cease and desist use of the third floor. No one may sleep there, even as temporary shelter, and no renovation work may be conducted there without further Court order. Defendants may not use extension cords to bring power to the third floor from the first-floor unit.
2. Defendants may not use the 3<sup>rd</sup> floor address as a mailing address for themselves or for any other person.
3. Defendants shall not engage in any acts of retaliation for Plaintiff's

complaint to this Court about their conduct.

4. If Plaintiff contends that Defendants have violated this order, the Court shall hold an evidentiary hearing at which time it will take evidence to determine whether the Defendants have engaged in the acts about which Plaintiff complains.

5. The legislative fee for injunctions (G.L. c. 262, § 4) is hereby waived.

SO ORDERED.

DATE: 7.5.23

Jonathan J. Kane  
Jonathan J. Kane, First Justice



Mr. Maisonette.<sup>1</sup>

3. The legislative fee for injunctions (G.L. c. 262, § 4) is hereby waived.

SO ORDERED.

DATE: 7.5.23

Jonathan J. Kane  
Jonathan J. Kane, First Justice

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<sup>1</sup> SHA counsel reports that Mr. Maisonette has been served with a notice to quit and that it intends to commence summary process case against him.