Western Division Housing Court
Unofficial Reporter of Decisions

Volume 29

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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:

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*
Hon. Robert Fields, Associate Justice, *Western Division Housing Court*
Hon. Benjamin Adeyinka, Associate Justice, *Western Division Housing Court*
Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*
Aaron Dulles, Assistant Attorney General, *Massachusetts Attorney General's Office*
Raquel Manzanares, Esq., *Community Legal Aid*
Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

Attorneys Dulles, Manzanares, and Vickery serve as co-editors for coordination and execution of this project.

OUR PROCESS
The Court sets aside copies of all its written decisions. Periodically, the editors collect and scan these decisions, employing commercial-grade "optical character recognition" software to create text-searchable PDF versions. On occasion, the editors also receive decisions directly from advocates to help ensure completeness. When sufficient material has been gathered to warrant publication, the editors compile the decisions, review the draft compilation with the Court for approval, and publish the new volume. Within each volume decisions are sorted chronologically. The primary index is chronological, and the secondary index is by judge. As of Volume 12, the stamped page numbers correspond to the PDF page numbers. The editors publish the volumes online and via an e-mail listserv. The Social Law Library receives a copy of each volume. Volumes are serially numbered and generally correspond to a stated time period. But, for several reasons, some volumes also include older decisions that had not been previously available.

EDITORIAL STANDARDS
In General. By default, decisions are *included* unless specific exclusion criteria are met. Exclusion criteria are intentionally limited, and the editors have designed them to minimize any suggestion of bias for or against any particular litigant, type of litigant, attorney, firm, type of case, judge, witness, *etc*. In certain circumstances, redactions may be used in lieu of exclusions.

Exclusion by the Court. The Court intends to provide the editors with all of its decisions except those from impounded cases and those involving highly sensitive issues relating to minors—the latter being a determination made by the Court in its sole discretion. The Court does not provide decisions issued by the Clerk Magistrate or any Assistant Clerk-Magistrate. Additionally, the

Court does not ordinarily provide decisions issued as endorsements onto the face of motion papers. The Court retains inherent authority to withhold other decisions without notice.

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment and taking the Court's views into consideration. Our current redaction and exclusion criteria are as follows: (1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) Decisions made as handwritten endorsements to a party's filing will generally be excluded. (4) Orders detailing or discussing highly sensitive issues relating to minors, disabilities, specific personal financial information, and/or certain criminal activity will be redacted if reasonably possible, or excluded if not. As applied to orders involving guardians ad litem or the Tenancy Preservation Program, redaction or exclusion is not triggered by virtue of such references alone but rather by language revealing or fairly implying specific facts about a disability. (5) Non-public contact information for parties, attorneys, and third-parties are generally redacted. (6) Criminal action docket numbers are redacted. (7) File numbers for non-governmental records associated with a particular individual and likely to contain personal information are redacted.

The exclusion criteria and the review criteria will undoubtedly grow, change, and evolve over time. The prefatory text of each volume will reflect the most recent version of the criteria.

Final Review. Prior to publication of any given volume, the editors will submit the draft volume to the Court for a final review to ensure that it meets the editorial standards.

PUBLICATION

Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for those who wish to receive new volumes by e-mail when they are released. Those wishing to join the listserv can do so at https://groups.google.com/g/masshousingcourtreports, or by emailing Aaron Dulles (dulles@jd11.law.harvard.edu).

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.

SECURITY

The editors use GPG technology to protect against altered copies of the PDF volumes. Alongside each volume is another file with Aaron Dulles's digital signature of authentication. Readers may authenticate each volume using freely available GPG software. In addition to the PDF volume and its accompanying signature file, the reader will need Aaron Dulles's "public key," which can be found by searching his name on keyserver.pgp.com. The key is associated with the e-mail address dulles@jd11.law.harvard.edu, and it has the following "fingerprint" identifier:

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CONTACT US

Comments, questions, and concerns may be raised to any person involved in this project. However, out of respect for the Court's time, please direct such communications at the first instance to either Aaron Dulles (dulles@jd11.law.harvard.edu), Raquel Manzanares (rmanzanares@cla-ma.org), or Peter Vickery (peter@petervickery.com).

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-SP-0867
BETHZAIDA DIAZ, PLAINTIFF v. STANDARD PROPERTIES, INC., DEFENDANT	)	RULING ON PETITION FOR ATTORNEYS' FEES AND ENTRY OF FINAL JUDGMENT

This matter is before the Court on Plaintiff's post-trial petition for an award of attorneys' fees and costs. After a hearing for assessment of damages following a default judgment, the Court entered an order on August 17, 2023 pursuant to which Plaintiff was allowed to recover reasonable attorneys' fees and costs. Defendant's counsel, Lindsey Shoenhard, submitted a petition for such fees and costs. Defendant did not file an opposition to Plaintiff's petition.

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. Ebtec 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. Archomboult*, 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 Shoenhard petitions for an hourly rate of $200.00. Attorney Shoenhard was admitted to the Massachusetts bar in November 2022, less than a year prior to the assessment of damages hearing. 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 that a reasonable rate for Attorney Shoenhard's services is $175.00.

The petition seeks compensation for 59.2 hours of work. In this matter, Defendant failed to appear at trial and judgment entered by default. Defendant did not appear at the damages hearing. Although Attorney Shoenhard had to prepare assuming that Defendant would appear, she spent more than 22 hours preparing for the hearing, which the Court finds excessive. She also spent 5.7 hours drafting an answer to the original complaint, which is also somewhat excessive. In other petitions for attorneys' fees submitted to this Court in similar cases, the hours expended have been far less. After taking into account all of the relevant circumstances, the Court rules that 35 hours is a reasonable number of hours to have expended in this matter.

In light of the foregoing, final judgment shall enter for Plaintiff in the amount of $15,210.00 in damages and $6,125.00 in attorneys' fees.[1] Plaintiff does not seek an award of costs.

SO ORDERED.
DATE: January 2, 2024

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

[1] The award of attorneys' fees is without interest. *See Patry v. Liberty Mobilehome Soles, Inc.* 394 Mass. 270, 272 (1985).

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 19-CV-0916
JOSE LABOY, PLAINTIFF v. FRANK SWART, DEFENDANT	)	RULING ON PETITION FOR ATTORNEYS' FEES AND ENTRY OF FINAL JUDGMENT

This matter is before the Court on Plaintiff's post-trial petition for an award of attorneys' fees and costs. After a hearing for assessment of damages following a default judgment, the Court entered an order on July 20, 2023 pursuant to which Plaintiff was allowed to recover reasonable attorneys' fees and costs. Defendant's counsel, James Taylor Brown, submitted a petition for such fees and costs. Defendant did not file an opposition to Plaintiff's petition.

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. Ebtec 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 Brown petitions for an hourly rate of $350.00. 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 that a reasonable hourly rate for Attorney Brown's services in this matter is $275.00. The attorneys' fees petition includes a number of hours expended by Attorney Parker. The Court deems a reasonable rate for her services to be $190.00 per hour.

The petition seeks compensation for 17.2 hours of work. Although Defendant failed to appear for the hearing, counsel had to prepare assuming that Defendant would appear. After taking into account all of the relevant circumstances, the Court rules that the 12.4 hours spent on this matter by Attorney Brown and the 4.8 hours spent by Attorney Parker are reasonable.

In light of the foregoing, final judgment shall enter for Plaintiff in the amount of $15,210.00 in damages and $4,332.00 in attorneys' fees.[1] Plaintiff does not seek costs.

SO ORDERED.

DATE: January 2, 2024

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2664

MCP UNLIMITED, LLC,

Plaintiff,

v.

TAYASHA WIMBERLY,

Defendant.

ORDER

After hearing on December 21, 2023, at which only the plaintiff landlord appeared, the following order shall enter:

1. Landlord counsel brought a motion for judgment that is solely based on the failure of a non-party, Chicopee Job Corp., to comply with the wage assignment that was agreed to, and paperwork sent, in March 2023. Moreover, counsel for the landlord informed the court on the record that he has called and spoken

directly with Nalma Pilledge at Westover Job Corps directly who always informs him that she will process the wage assignment.

2. This matter shall be scheduled for a hearing as noted below to afford the tenant further opportunity to meet with the payroll office at Westover Job Corps to finally institute the wage assignment and also to appear at the hearing.
3. This matter is scheduled for further hearing on **February 8, 2024, at 9:00 a.m.**

So entered this 2nd day of January, 2024

Robert Fields, Associate Justice

Cc: Nalma Pilledge, Westover Job Corps, 103 Johnson Road, Chicopee, MA 01022

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-312

TIFFANY NUGENT,

Plaintiff,

v.

GILBERT BAGUMA,

Defendant.

ORDER

After a Damages Hearing on December 26, 2023, at which only the plaintiff appeared, the following findings of fact and conclusions of law and order for judgment shall enter:

1. **Background:** This involves a former tenancy between the parties. Tiffany Nugent, plaintiff and former tenant (hereafter, "Nugent" or "plaintiff") rented a room at the premises located at 202 Tyler Street in Springfield (hereinafter,

"premises" or "property") which were owned by the defendant, Gilbert Baguma (hereinafter, "Baguma" or "defendant").

2. Nugent asserted claims against Baguma arising out of that tenancy which included Retaliation, Breach of Warranty of Habitability, Breach of the Covenant of Quiet Enjoyment, Violations of the Security Deposit and Last Month's Rent Laws, and Violations of the Consumer Protection Law. A default was entered against Baguma under Rule 55(a) on November 8, 2023, and a Damages Hearing was scheduled.
3. **Breach of the Covenant of Quiet Enjoyment:** Baguma rented Nugent a room in an illegal rooming house, as cited by the City in its November 17, 2022, citation (admitted into evidence). In addition, the landlord allowed a significant amount to debris to clutter the yard and allowed various other conditions of disrepair as listed by the City.
4. Landlords are liable for breach of covenant of quiet enjoyment if the natural and probable consequences of their actions 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 the landlord. "*Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). The court finds and so rules that Baguma's creation of an illegal rooming house is a *per se* violation of Nugent's covenant of quiet enjoyment and that the aggregate effect of the other various violations cited by the city also

violated Nugent's covenant of quiet enjoyment and hereby award Nugent damages equaling three months' rent, totaling ($600 X 3) **$1,800**.

5. **Breach of the Covenant of Quiet Enjoyment:** The landlord violated a separate prong of G.L. c.186, s.14 when he failed to furnish heat and hot water for 29 days due to a gas leak. This was particularly harmful to Nugent as she was recovering from medical procedures and was unable to keep her wounds sufficiently clean.
6. Landlords are liable for breach of covenant of quiet enjoyment if they fail to furnish a system to provide heat and to water. The court finds and so rules that the landlord's failure to provide a working heating and hot water system violated Nugent's covenant of quiet enjoyment and hereby award additional damages equaling three months' rent, totaling ($600 X 3) **$1,800**.
7. **Security Deposit Laws:** Prior to the commencement of the tenancy between the parties in November 2022, Baguma required and Nugent paid a security deposit of $600 (receipt admitted into evidence). Thereafter, Baguma failed to comply with any aspect of the security deposit laws at G.L. c.186, s.15B by failing to provide a receipt with the name and account number of the bank in which the deposit was being held. Baguma thereafter also failed to return the security deposit after Nugent moved out (owing no rent).
8. The court finds and so rules that Baguma's violations of the security deposit laws result in an award of damages equal to three times the deposit (3X $600), totaling **$1,800** pursuant to G.L. c.186, s.15B.
9. **Last Month's Rent Laws:** Prior to the commencement of the tenancy between the parties, Baguma required and Nugent paid an advance last months' rent of

$600 (receipt admitted into evidence). The tenant paid her first months' rent in advance (December 2022) and then paid the next month (January 2023) and then vacated the premises due to the lack of heat and hot water.

10. As such, Baguma violated the laws pertaining to the holding of last month's rent and pursuant to G.L. c.186, s.15B is liable for the return of same plus interest of 5% since the funds were paid to Baguma. Thus, Nugent is awarded ($600 plus $30 in interest) a total of **$630** on this claim.

11. **Nugent's Remaining Claims:** The court finds and so rules that Nugent did not provide evidence in support of her claim for Retaliation and Consumer Protection Act violations.

12. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the plaintiff Tiffany Nugent against the defendant Gilbert Baguma for damages in the amount of **$6,030.**

So entered this 2nd day of January, 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-1728

SPRINGFIELD CV1, LLC,

PLAINTIFF

v.

SHAWNA PEEBLES,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND 8A ORDER

This summary process case came before the Court on November 8, 2023 for a bench trial. Both parties appeared with counsel. Plaintiff seeks to recover possession of residential premises located at 58 Lawton Street, Apt. 2, Springfield, Massachusetts (the "Premises") from Defendant based on allegations that she violated her lease by continually paying her rent late.

Prior to trial, the parties stipulated to certain facts; namely, that Defendant moved into the Premises in 2011 pursuant to a written lease that has since expired, monthly rent at all relevant times was $1,090.00, Defendant received the notice to quit, and that the sum of $10,819.00 is unpaid through the month of trial.[1]

[1] Prior to the start of trial defense counsel renewed his motion to dismiss based on defective notice which the Court denied on June 22, 2023. Despite Defendant's representation that Plaintiff had served previous notices to quit for no cause prior to the for cause notice at issue in this case, the Court determined that the current notice was legally sufficient on its face. Defendant was not precluded from alleging defective notice as a defense at trial, and she in fact did so.

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:

All rent payments made by Defendant are recorded by Plaintiff's property manager at the time payment is made. The dates reflected on the rent ledger accurately show the dates that Defendant made payments. The Court finds that Defendant last had a zero balance in October 2021. She made a partial payment (late) in November 2021 of $400.00, and partial payments (all late) for December of 2021, and January and February of 2022. The RAFT program made a series of payments through July 2022, and Defendant next made a payment in August 2022, which was timely but for only $700.00. She made partial payments in September 2022, and no payment in October 2022. In November 2022, RAFT made a payment of $2,800.00, which brought her balance to $1,080.00. Defendant paid December rent in full, but the payment was not timely. She paid rent timely in January 2023, plus $634 toward the arrears, bringing the balance to $536.00. In February 2023, she made a partial payment of $317.00 on the 7th, the same day the relevant notice to quit was served. She subsequently made an additional payment of $317.00 on February 14, 2023, and has made no payments since.

Defendant argues that Plaintiff's failure to bring summary process proceedings in the past when she has consistently paid rent late operates as a waiver of its right to require timely rent payments. The Court disagrees in given the circumstances of this case. Plaintiff has served Defendant with 14-day notices to quit for nonpayment of rent in the past, which Defendant apparently cured. When she fell behind in 2022, she was able to receive RAFT funds, which forestalled legal action by Plaintiff. After RAFT

paid the balance down to $536.00 in January 2023, Plaintiff waited until February rent was overdue before serving the notice to quit that forms the basis of this case. In different circumstances, acceptance of rent on a certain day of the month might operate as a waiver to demand payment on the day set in the rental agreement, but in this case Defendant paid erratically in both amount and timeliness. Therefore, the Court rules that Plaintiff did not waive its right to demand timely payment in full.

The evidence shows that Plaintiff served Defendant with a "60 Day Notice to Vacate/Quit" (no fault) dated December 1, 2022, reciting a vacate date of January 31, 2023. Defendant notified management that by the time she was served with the notice, she had less than 60 days to vacate. Plaintiff than reissued the notice with a vacate date of February 28, 2023. Before the no fault notice to quit expired, Plaintiff served Defendant with the for cause notice that was used to commence the current summary process case, which notice included a vacate date of March 31, 2023. The new notice did not include language that specifically withdrew the previous notice or recited that it was no longer effective. Defendant contends that the multiple notices created an ambiguity that rendered the current notice ineffective, and that a landlord cannot "blow hot and cold" but must pick one basis for eviction and stick with it.

At trial, Defendant did not express any confusion about whether she had to vacate as of February 28, 2023 or March 31, 2023. In fact, she did not vacate at all prior to trial, so no ambiguity existed by the time of trial. Moreover, the 60 day notice expired on February 28, 2023, but before the vacate date, Plaintiff served the new notice to quit extending the move-out date to the end of March 2023. The Court

finds no impermissible ambiguity in the service of successive notices under these circumstances.

Nonetheless, a tenant's rights to defeat a landlord's claim to possession are different in a case brought for no fault and one brought for cause. Pursuant to G.L. c. 239, § 8A, a tenant may defeat the possession claim only in cases brought for nonpayment of rent or for no cause;[2] accordingly, a case brought for cause eliminates the tenant's right to bring most counterclaims. Moreover, the Court finds that, although Plaintiff brought this case as one for continuous late rent payments, it proceeded at trial as if it was a nonpayment of rent case. Plaintiff did not argue that the late payments of rent caused it any unusual administrative burden beyond the usual administrative process of collecting rents inherent in managing any multifamily property. It also allowed Defendant to pay late consistently for long periods of time without bringing a case for cause. Based on a review of the rent ledger, the Court is hard-pressed to find any month that Plaintiff paid in full on time since Plaintiff acquired the property in 2017.

The foregoing does not warrant dismissal of the case, as a proper notice is not jurisdictional. *See Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 127 (2018) (a legally adequate notice to quit is not jurisdictional but rather a condition precedent to a summary process action that is part of the landlord's prima facie

[2] Section 8A recites: "In any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant, the tenant or occupant shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff ... [and there] 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."

case).The Court can rectify any potential prejudice to Defendant by treating the notice as one for nonpayment of rent and providing Defendant with the opportunity to raise defenses and counterclaims pursuant to G.L. c. 239, § 8A.[3] Plaintiff suffers no prejudice because it had a right to terminate Defendant's tenancy for nonpayment of rent on February 6, 2023 when it served the notice in this case, because RAFT had paid the balance down to $536.00 in January 2023 and Defendant had not paid that amount nor February's rent as of that date.[4]

Turning to Defendant's defenses and counterclaims, the Court finds that Defendant (or, more accurately, a program providing funds for Defendant's move-in costs) paid a security deposit in the amount of $725.00 in 2011. In its pretrial memorandum, Plaintiff asserts that, at the time Plaintiff purchased the property, $700.00 of the security deposit had been applied by the prior owner to back rent, leaving only $5.00, which Plaintiff credited toward future rent. In answers to interrogatories, Plaintiff wrote that Plaintiff had paid a $400.00 security deposit, $395.00 of which had been applied to past due rent and $5.00 of which was credited toward future rent. At trial, Plaintiff's property manager had a difficult time determining what her records showed with respect to a security deposit, and admitted that her corporate office determined that the records were wrong and it sent a "corrected" version to her for use at trial. Given the lack of clarity, and given

[3] It also permits Defendant to avail herself of the protections set forth in G.L. c. 239, § 15 for tenants with a pending application for rental assistance, although as of the date of trial Defendant had no such application. It is of no import that Defendant missed out on an opportunity to cure the arrears had she been served with a 14-day notice because there is no evidence that Defendant attempted to or could have cured the arrears when she received the notice to quit.

[4] Defendant might argue that she is harmed by treating the notice as one for nonpayment because the case would be dismissed if Plaintiff cannot prove the lease violations that were alleged in the notice to quit; however, the evidence plainly shows that Defendant paid late nearly every month since Plaintiff purchased the property.

that it is Plaintiff's obligation to demonstrate compliance with G.L. c. 186, § 15B, the Court finds that Plaintiff failed to show that it propertly handled the security deposit and, therefore, Defendant is entitled to three times the amount of the deposit, namely $2,175.00, plus reasonable attorneys' fees and costs.[5]

Concerning conditions of disrepair in the Premises, the evidence shows that Defendant suffered problems with her heat in late 2021. Efforts were made to fix the baseboard, but due to the cold, Defendant purchased an electric fireplace heater. Defendant complained about heating issues again in December 2022, but the Court infers from the evidence that, at that time, the heat was working properly but, due to Defendant's use of the electric heater, the thermostat did not trigger a call for heat.

Defendant's testimony about the heat lacked credibility largely due to the lack of specifics and any supporting evidence. She failed to prove by a preponderance of the evidence that the heating issues caused the Premises not to meet the minimum standards for habitability or that they caused a serious interference with her tenancy and impaired the character and value of the leasehold. *See Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). Although the Court could infer that Defendant suffered from inadequate heat by virtue of the fact that she installed an electric fireplace heater, Defendant may have done so for economic reasons (Defendant paid for heat and electricity) or aesthetics.

Likewise, although Defendant testified about other conditions of disrepair, including problems with both the front and back doors to her apartment (which lead

[5] The evidence does not support Defendant's claim that she also paid a last month rent deposit.

to an interior hallway, not the exterior), and old windows that were drafty and glazed over with ice in the winter, as well as lifting kitchen tiles, her testimony was not sufficiently specific as to the dates of her communications to management about the conditions and she provided no evidence of any written notice to management. Defendant testified that Plaintiff's agents told her that they would not make repairs until she vacated, but the Court credits the testimony of Plaintiff's maintenance supervisor who testified that his staff continued to make necessary repairs in Defendant's unit except for the direction the doors opened, which would wait until the building was renovated. The Court has insufficient basis to make a finding that the issues described by Defendant were "substantial" sanitary code 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).

With respect to Defendant' allegation that Plaintiff's agent told her that the owner wanted to remove families so that the complex could rent to college students, the allegation is wholly unsupported by the evidence. Defendant offered no basis for the Court to find that families were, in fact, targeted for eviction or that her tenancy was terminated because of her protected class as a family. Defendant's claim that she suffered emotional distress as a result of Plaintiff's acts and omissions was not credible.

Lastly, although Defendant established that the original lease she signed with her landlord (not Plaintiff) included an illegal late fee provision, she conceded that she was never charged a late fee by Plaintiff. She never entered into a lease with

Plaintiff that included a late fee provision. Defendant failed to prove by a preponderance of the evidence that Plaintiff is liable for including a late fee provision in any rental agreement with her.

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

1. Plaintiff is entitled to unpaid rent in the amount of $10,819.00 through the month of trial.

2. Defendant is entitled to damages in the amount of $2,175.00 on account of her security deposit claim, plus reasonable attorneys' fees and costs.

3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of $8,644.00, plus court costs of $ 279.01 and interest in the amount of $ 816.19, for a total of $ 9,739.20. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

4. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.

5. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiff for possession and damages in the amount of $8,644.00 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

6. Within fifteen (15) days from entry of this order on the docket, Defendant may file a petition for reasonable attorneys' fees and costs, along with

supporting documentation. Plaintiff shall then have fifteen (15) days from receipt of the petition to file any opposition, after which time the Court will assess attorneys' fees and enter final judgment without need for further hearing.

SO ORDERED.

DATE: January 2, 2024

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-3548

ACLES, LLC,

Plaintiff,

v.

NATASHA RIVERA,

Defendant.

ORDER

After hearing on December 27, 2023, on the tenant's motion to postpone the physical eviction for which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. Though the court required that the landlord serve, as well as file, its Rule 13 application before an execution may issue it failed to do so---only filing it on December 11, 2023, but not serving it to the tenant.

2. More specifically, in the court's order entering judgment for the landlord on November 21, 2023, specifically required that "execution may issue upon the timely filing and service of a Rule 13 Application."
3. That order is based on the judge's belief that Rule 13 Applications, like all other filings should be served to the other parties. See Mass. R. Civ. P. 5(a).
4. Because the Rule 13 Application was not served upon the tenant, in violation of the express terms of the court's November 21, 2023, Order, the physical eviction is cancelled.[1]

So entered this 3rd day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] The judge ruled from the bench that the plaintiff would not be required to return the execution but would have to re-serve tenant with notice of the next physical eviction in accordance with G.L. c.239.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-4446

SPEAR MANAGEMENT GROUP, INC., Plaintiff, v. LISA BAILEY, Defendant.	ORDER

This for-cause eviction matter came before the court on December 11, 2023, for trial at which the plaintiff landlord appeared through counsel and the defendant tenant appeared through LAR counsel, Thomas Hully. After consideration of the evidence admitted at trial, the court issues the following findings of fact and rulings of law and order for entry of judgment.

1. **Background:** The plaintiff, Spear Management Group, Inc. (hereinafter, "plaintiff" or "landlord") owns and manages a housing complex known as Hathaway Farms in Northampton, MA. The defendant, Lisa Bailey (hereinafter, "defendant" or "tenant") resides in Unit #2061 at 73 Barrett Street (hereinafter, "premises" or "property") with a Section 8 Rental Voucher subsidy and has been a tenant there since 2015.

2. On or about August 7, 2023, the landlord had the tenant served with a for-cause Notice to Quit alleging the following:

> You and/or your guests have damaged and modified your unit and the common areas despite repeated warnings that you are not permitted to do so. You have also moved or removed items from the common areas for your own use. In addition, you have damaged appliances and common areas. More specifically, you removed pavers from in front of the living room window, spray painted the brick white by your back bedroom window, placed items on the back patio in violation of your lease, and dumped a grocery cart in the common area behind your apartment. This was all done recently. You were warned about such behavior last year when you damaged the common areas by removing your storm door and poured concrete on the grass to create a seating area for yourself. At that time, you had also moved a cabinet in the laundry facility, causing cold water to be turned off, and damaged one of the washing machines. Management decided to give you a second chance with just a warning, but specifically told you must cease such damaging behavior. Despite that warning, you have reported that behavior again recently.

3. After the expiration of the Notice to Quit, the landlord commenced this summary process action. The tenant filed an Answer asserting defenses that she has "cured" the problems cited by the landlord, that this action is in retaliation for the tenant's demand that her carpet be replaced, and for relief from forfeiture.

4. **The Landlord's Claim for Possession:** Though the landlord did not meet its burden of proof that the tenant damaged the washing machine in the laundry facility, it did meet its burden of proof that the tenant violated the lease terms in the manner described in the Notice to Quit regarding all other allegations. The tenant admitted to as much.

5. **The Tenant's Defenses:** The tenant presented herself as a very truthful and credible witness and agreed that she did each of the alleged actions noted in the Notice to Quit, other than the damage to the washing machine. Regarding her defense that the actions of the landlord in evicting her was retaliation, the court

finds that the tenant did not meet her burden of proof on that defense. The tenant's second defense is that all of the changes and modifications she engaged outside of her home were to make improvements and once notified she essentially "cured" by returning these modifications to their original condition. Thus, she removed the concrete slabs, removed the fencing, and removing items from her backyard[1].

6. The one exception is the tenant's spray painting of the outside of her window with some sort of sealant. Initially, the tenant was self-repairing the wood around the outside of her window which she credibly testified has always been drafty. Initially the tenant spray painted the frame with white paint. It created an eyesore and was very noticeable from outside of the building. On August 1, 2023, the tenant was cited by the landlord that her spray painting was considered damage that needed to be repaired. The notice also instructed her to

> [t]ake the action necessary to correct the forgoing problem immediately. If you fail to make the necessary corrections on a timely basis, it will require additional action as outlined in the Rental Agreement. Any further infraction will result in fines or eviction.

7. In response to this letter, the tenant spray painted the area red in an attempt to blend the color back towards the color of the surrounding red brick. That red paint did not help the appearance and perhaps worsened it. So, after consulting with her friend who she believes knows about paint, the tenant purchased a better more "brick colored" paint and had her friend repaint the area with the "better" paint. It appears from the testimony of the property manger that she

[1] The tenant credibly testified that some modifications were present for three years before the landlord informed her that she had to remove them, though the tenant did not argue that the landlord waived its right to require the tenant to require restoration to a pre-modified state.

believed that the August 1, 2023, letter instructed the tenant to take no further action such as repainting so the tenant's application of the red paint was viewed by the landlord as further violation of the August 1, 2023, letter. That letter, however, actually indicated the opposite.

8. It is a respected common law principle that equity abhors a forfeiture of a leasehold under circumstances, as here, where the tenant essentially cured the violations or did her best to do so. The tenant is a 64-year-old woman who is unable to read effectively and reports that she suffers from [redacted]. As noted above, the tenant did not intend to cause problems with her painting of the window nor by her other modifications. When it was made clear to her by the landlord that she had to remedy those modifications she made good faith efforts to do so.

9. **Conclusion and Order:** Based on the foregoing, the court shall enter judgment for the tenant for possession[2].

So entered this 3rd day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[2] Though the photograph put into evidence by the tenant shows improvement of the window area (Exh. 15) nothing in this Order prohibits the landlord from making further repairs to the window and perhaps charging the tenant for same nor does the Order effect the requirements of the landlord to remove the carpet from the tenant's unit due to her medical condition.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-4944

U.S. BANK, NA,

Plaintiff,

v.

DONALD GINGRAS,

Defendant.

ORDER FOR ENTRY OF JUDGMENT

This matter came before the court on January 2, 2024, for trail, at which the plaintiff appeared through counsel and the defendant Donald Gingras appeared *pro se*. After hearing, the following order shall enter:

1. The plaintiff has met its burden of proof on its *prima facie* claim for possession.
2. The defendant Donald Gingras did not assert any claims or defenses.
3. Mr. Gingras did explain that he has no income at this time but has applied for Social Security and is awaiting that process.

4. Mr. Gingras is urged to contact Community Legal Aid at 413-781-7814 and located at One Monarch Place in Springfield for legal assistance in this matter but also regarding his Social Security application and seeking other forms of emergency income and food stamps.
5. Mr. Gingras is also urged to reach out to Springfield No One Leaves located at 143 Main Street, Room 103 in Springfield. Its telephone number is 413-342-1804.
6. Judgment for possession only (no use and occupancy nor court costs were sought by the plaintiff) shall enter for the plaintiff against Donald Gingras.[1]
7. An execution may issue upon the timely filing and service of a Rule 13 Application.

So entered this 3rd day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] The other named defendants, Christopher Barrows and Krystle Barrows (Webster) did not appear and Mr. Gingras testified that they no longer live at the premises. Given that the plaintiff did not seek deafaults against them and given that they have been reported to no longer occupy the premises, judgment shall not enter at this time against them.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79CV001068

ILLUMINATI HOLDINGS, LLC
Plaintiff,

v.

HECTOR REYES,
JUSTINE S. MATOS, and
All Occupants of 258 Union Street,
Unit 1A, Springfield, Massachusetts,
Defendants,

ORDER

After a hearing on January 4, 2024, at which the Plaintiff appeared through counsel, Defendant Hector Reyes appeared self-represented and Defendant, Justine Matos did not appear after notice, the following order is to enter:

1. Defendant Justine Matos is ordered to cease any conduct that disturbs the quiet enjoyment of any other resident of the building.

2. Defendants Hector Reyes and Justine Matos shall not permit any other person to occupy the premises.

3. All animals must be removed immediately from the premises.

4. All parties are ordered to appear for further hearing on **January 11, 2024 at 9:00 A.M.** The terms of this order shall be in effect until further order of the Court.

5. A copy of this Order shall be served by the Plaintiff via constable or sheriff's service no less than forty-eight (48) hours prior to the next scheduled hearing.

So entered on this January 4, 2024:

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0630

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPT,

PLAINTIFF

v.

MONNAY MILLER AS TRUSTEE OF THE 343 HANCOCK REALTY TRUST AND 343 HANCOCK REALTY TRUST,

DEFENDANTS

RULING ON COMPLAINT FOR CONTEMPT

This code enforcement matter came before the Court for a hearing on Plaintiff's complaint for contempt. Both parties appeared through counsel. The property in question is located at 24-26 Kensington Avenue, Springfield, Massachusetts (the "Property").[1]

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). Compensatory orders may be warranted as a sanction for contempt. *See Labor Relations Comm. v. Fall River Educators' Assn.*, 382 Mass. 465, 475–476

[1] The Court heard this case at the same time as 20-CV-0604, as counsel, the witnesses and the basic facts were identical. Because the defendant parties are different, however, the Court enters separate orders for each case.

(1981) (both compensatory and coercive orders are appropriate remedies in civil contempt proceedings).

In this case, by Court order dated February 6, 2023, Defendants were ordered to open and close a building permit for the alteration and replacement of the second floor porch windows that were repaired and replaced without the required permit by March 6, 2023. Based on the testimony of the City of Springfield's Senior Building Inspector at the contempt trial held on September 18, 2023, the Court finds that no building permit was opened, a finding that Defendants do not contest. Plaintiff has therefore demonstrated, by clear and convincing evidence, a clear and undoubted disobedience of a clear and unequivocal command.

In determining an appropriate sanction for contempt, the Court considered Defendants' claims that the violation was de minimis given the modest and non-emergency nature of the work needed to be done at the Property. The fact that the work to be undertaken was not significant or urgent does not excuse non-compliance with a Court order, however. Further, regardless of the nature of the work to be done, Plaintiff has the right and obligation to inspect the finished product in order to protect current and future occupants as well as the general public.

In fashioning a remedy for contempt, the Court also considered Defendants' argument that the person apparently in control of the Property, David Sims, believed that it would be futile to apply for a permit because, based on past experience with the City and his discussions with City officials, he did not believe a permit would issue. If Mr. Sims believed that he could not comply with the Court order because of the City's lack of cooperation, he should have taken some action, whether in the

nature of an administrative appeal or by seeking relief from the order from this Court. He did not have the right to simply ignore the Court-ordered deadlines for compliance.

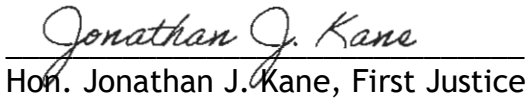
The Court notes that this contempt trial was postponed at Defendants' request in order to be able to engage in discovery. Defendants failed to provide discovery responses within the allotted time, and they again failed to comply after Plaintiff's motion to compel was allowed. Defendants still had not responded as of the date of this hearing, flaunting the Court's orders to do so.

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

1. Judgment for contempt shall enter against Defendants.
2. As a sanction for contempt, the Court enters a monetary sanction of $2,500.00, payable to Plaintiff within thirty days of the date this order is docketed.
3. If, within the same 30-day time frame, Defendants open and close the building permit at the Property, the sanction shall be reduced to $1,250.00.
4. If the building permit has not been open and closed within this thirty day period, Defendants will be assessed daily fines of $100.00 until such time as the permit has been opened and closed.
5. As a sanction for failing to respond to discovery despite two motions to compel, the Court enters an additional monetary sanction of $1,000.00, payable to Plaintiff within thirty days of the date this order is docketed. Defendants shall pay an additional fine of $50.00 per day after thirty days if the sanction has not been paid.

SO ORDERED.

DATE: January 7, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20CV-0604

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPT,	)	
PLAINTIFF	)	
v.	)	
NO LIMIT INVESTMENT, LLC AND DASHA MILLER,	)	RULING ON COMPLAINT FOR CONTEMPT
DEFENDANTS	)	

This code enforcement matter came before the Court for a hearing on Plaintiff's complaint for contempt. Both parties appeared through counsel. The property in question is located at 77 Cambridge Street, Springfield, Massachusetts (the "Property").[1]

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). Compensatory orders may be warranted as a sanction for contempt. *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).

[1] The Court heard this case at the same time as 20-CV-0630 because counsel, the witnesses and the basic facts were identical. Because the defendant parties are different, however, the Court enters separate orders for each case.

8

In this case, by Court order dated May 20, 2022, Defendants were ordered to open and close a building permit for the Property for the replacement of the second floor porch windows and the previously performed roof repairs that were repaired and replaced without the required permit by August 15, 2022. Based on the testimony of the City of Springfield's Senior Building Inspector at the contempt trial held on September 18, 2023, the Court finds that no building permit was opened, a finding that Defendants do not contest. Plaintiff has therefore demonstrated, by clear and convincing evidence, a clear and undoubted disobedience of a clear and unequivocal command.

In determining an appropriate sanction for contempt, the Court considered Defendants' claims that the violation was de minimis given the modest and non-emergency nature of the work needed to be done at the Property. The fact that the work to be undertaken was not significant or urgent does not excuse non-compliance with a Court order, however. Further, regardless of the nature of the work to be done, Plaintiff has the right and obligation to inspect the finished product in order to protect current and future occupants as well as the general public.

In fashioning a remedy for contempt, the Court also considered Defendants' argument that the person apparently in control of the Property, David Sims, believed that it would be futile to apply for a permit because, based on past experience with the City and his discussions with City officials, he did not believe a permit would issue. If Mr. Sims believed that he could not comply with the Court order because of the City's lack of cooperation, he should have taken some action, whether in the nature of an administrative appeal or by seeking relief from the order from this Court.

He did not have the right to simply ignore the Court-ordered deadlines for compliance.

The Court notes that this contempt trial was postponed at Defendants' request in order to be able to engage in discovery. Defendants failed to provide discovery responses within the allotted time, and they again failed to comply after Plaintiff's motion to compel was allowed. Defendants still had not responded as of the date of this hearing, flaunting the Court's orders to do so.

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

1. Judgment for contempt shall enter against Defendants.

2. As a sanction for contempt, the Court enters a monetary sanction of $5,000.00, payable to Plaintiff within thirty days of the date this order is docketed.

3. If, within the same 30-day time frame, Defendants open and close the building permit at the Property, the sanction shall be reduced to $2,500.00.

4. If the building permit has not been open and closed within this thirty day period, Defendants will be assessed daily fines of $100.00 until such time as the permit has been opened and closed.

5. As a sanction for failing to respond to discovery despite two motions to compel, the Court enters an additional monetary sanction of $1,000.00, payable to Plaintiff within thirty days of the date this order is docketed. Defendants shall pay an additional fine of $50.00 per day after thirty days if the sanction has not been paid.

SO ORDERED.

DATE: January 7, 2024

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-CV-0175

LINDA DUCHARME, Plaintiff v. CITY OF CHICOPEE MOBILE HOME RENT CONTROL BOARD, Defendant JEAN REAL ESTATE, INC. Intervenor	RULING ON CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS

This appeal from a decision of the City of Chicopee Mobile Home Rent Control Board (the "Board") to allow a rent increase for the Holiday Circle Mobile Home Park (the "Park"), brought under G.L. c. 30A, came before the Court on September 20, 2023 on cross motions for judgment on the pleadings.[1] Plaintiff moves for judgment on the pleadings, asking the Court to set aside the Board's decision approving the rent increase petition filed by the Park's owner, Jean Real Estate, Inc. (the "Owner"). The Board and the Owner seek judgment affirming the Board's decision authorizing a rent increase.

On January 25, 2023, the Board held a public hearing at which a number of

[1] Plaintiff has standing only to challenge the rent increase for the manufactured housing community in which she lives. However, the Board considered together the Intervenor's request for rent increases at three separate parks, Holiday Phase I, Holiday Phase II and Kon Tiki. Any procedural defects in the public hearing, therefore, relate to rent increases at each of the three parks.

tenants appeared by Zoom. Two members of the Board appeared in person at the hearing, and one appeared over Zoom, along with an indeterminate number of tenants. The hearing was recorded and a transcript was generated and filed as part of this case.

Pursuant to G.L. c. 30A, in conducting the proceedings, the Board is required to afford all parties an opportunity for a full and fair hearing. *See* G.L. c. 30A, § 10. The presiding officer has the duty to conduct a fair hearing to ensure that the rights of all parties are protected...". *See* 801 Code Mass. Regs. § 1.02(10)(f) (1998). When judicial review is requested, the review is confined to the record. *See* G.L. c. 30A, § 14.

In this case, the Court cannot review the record because the recording is repeatedly inaudible. The transcript of the hearing is replete with references to inaudible comments. The transcript includes references to Zoom participants being unable to hear the proceedings. At one point, the Board chairperson apologizes to Zoom participants ("I'm sorry if you're feeling like you're missing part of the meeting, but this is, uh, you know, it, Zoom is only capable of what it's capable of.") *See* Transcript at p. 41, lines 13-18. By way of just one example, during the part of the hearing during which tenants were permitted to ask questions of the Owner, the transcript recites:

> TENANT: [inaudible]
>
> MR. YEE: I would have to look at that.
>
> MR> CLARK Which document?
>
> TENANT [inaudible].

Transcript at p. 23, lines 4-7. Throughout its review of the record, the Court could neither understand the audio nor read the transcript of what was actually said, precluding meaningful review.

One of the three Board members present for the hearing, Vice Chair Les Gagne, participated over Zoom and presumably had the same challenges in understanding what participants were saying. During the discussion toward the end of the hearing, Mr. Clark asked if Mr. Gagne "was still with us" and Mr. Gagne responded, "I am. I'm here. Can you hear me?" *See* Transcript at p. 57, lines 18-20. Although Mr. Gagne was able to articulate his thoughts about the proposed rent increase based on copies of the written evidence presented to the Board, he did not have the benefit of hearing some if not most of the questions and answers posed during the public hearing, rendering the hearing relatively meaningless.

Based on the foregoing, the Court finds that substantial rights of the tenants may have been prejudiced because the Board did not afford them an opportunity for a full and fair hearing. The inability for the tenants to hear and understand significant portions of the hearing violated their due process rights. Accordingly, pursuant to G.L. c. 30A, § 14, the Court sets aside the decision of the Board because its decision is in violation of constitutional provisions and made upon unlawful procedure.[2]

Plaintiff's motion for judgment on the pleadings is ALLOWED.

SO ORDERED.
DATE: January 7, 2024

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

cc: Court Reporter

[2] Moreover, the Court cannot effectively review the decision of the Board for the same reasons that the participants in the hearing were unable to hear or understand much of what was said.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-0569
KIMBERLY HENDERSON, ET AL., PLAINTIFFS v. STEPHEN BOSCO, DEFENDANT	)	RULING ON MOTION FOR RECONSIDERATION OF ATTORNEYS' FEES AWARD

Defendant moves this Court to reconsider its award of $41,131.78 for attorneys' fees and costs entered on July 26, 2023 in favor of Plaintiff Kimberly Henderson. The thrust of Defendant's argument is that the Court should have further reduced counsel's fee request because "the tenant did not win a breach of quiet enjoyment claim, the only one in which she should receive attorney's fees." Defendant's Motion, p. 2. Defendant contends that, because the undersigned mentioned in his order that the successful and unsuccessful claims were significantly intertwined, the award credited Ms. Henderson with her success on her warranty of habitability claims, which are not fee-shifting claims.

The amount of an award of attorneys' fees lies firmly within the discretion of the judge. *See Linthicum v. Archambault*, 379 Mass 381, 388 (1979). Factors to be considered include 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.'" *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979).

The result obtained is a significant but not the exclusive factor to be considered. In this case, the Court took into consideration the nature of the case, the time and labor required to prepare for and conduct a multi-day jury trial, and the experience, reputation, and ability of Plaintiff's attorney. The Court is not required to explain its analysis factor by factor. *See Twin Fires Inv., LLC, supra*, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). After reviewing the record and the briefs of the parties, the Court does not find any particular and demonstrable error in its decision.

Accordingly, the motion to reconsider the award of attorneys' fees is DENIED.

SO ORDERED.

DATE: January 7, 2024

Jonathan J. Kane
Jonathan Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

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

HOME SAVERS COUNCIL OF GREENFIELD GARDENS, INC. PLAINTIFF v. JAYME JORDAN, DEFENDANT	)	ORDER ON DEFENDANT'S MOTION FOR RECONSIDERATION

This summary process case brought for nonpayment of rent comes before the Court on Defendant's motion for reconsideration pursuant to Mass. R. Civ. P. 59(e) and/or 60(b). Both parties were represented by counsel at the hearing on Defendant's motion.

The procedural history in this case is relevant. On December 20, 2022, judgment by default entered for Plaintiff for possession and damages in the amount of $8,378.37. An execution issued on April 29, 2023 and a 48-hour notice was served scheduling the levy for June 6, 2023. Defendant filed a motion to stop the levy, and after hearing on May 26, 2022, the Court allowed the motion and ordered that the execution be returned to the court. The order further required that Defendant to take certain actions, including paying of $178.00 toward her use and occupancy balance.

Defendant failed to comply with the Court's order and Plaintiff filed a motion for an amended monetary judgment on August 2, 2023. The Court allowed the motion and ordered that judgment enter for Plaintiff for possession and damages in the

amount of $18,624.29 plus court costs of $1,006.54 (inclusive of the fees incurred by Plaintiff after the first levy was cancelled).

Defendant filed the instant motion for reconsideration before an execution could issue. She contends that, pursuant to G.L. c. 235, § 23, because the execution did not issue within three months of the judgment entering on December 20, 2022, Plaintiff's claim or possession "effectively became moot." By Defendant's logic, a landlord would have to commence a new summary process action if an execution does not issue within three months of judgment without any court order or agreement staying the three month period. In this case, Defendant remained in possession of the premises and never satisfied the monetary part of the judgment. Plaintiff never reinstated her tenancy. Given that Defendant's rental arrears had increased after the original execution issued, Plaintiff was entitled to seek an amended judgment and to obtain an execution based on the amended judgment.

For the foregoing reasons, Defendant's motion for reconsideration is denied.

SO ORDERED.

DATE: January 7, 2024

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-CV-2014
AMOS FINANCIAL, LLC, PLAINTIFF v. ANTHONY QUINK, DEFENDANT	)	FURTHER ORDER FOR REPAIRS AND ORDER FOR SANCTIONS

This case came before the Court on January 4, 2024 for further hearing. The parties appeared with counsel. The property in question is a single family house located at 150 Ware Street, Palmer, Massachusetts (the "Property").

By order entered on November 21, 2023, Defendant was to complete repairs by November 30, 2023 and to service the heating system with a licensed HVAC technician. Plaintiff did complete some of the work, but as evidenced by the Palmer Board of Health report from December 4, 2023, certain items remain. The parties agree that the porch requires replacement, and although Plaintiff began the process of applying for a permit, no permit has been issued.

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

1. Each party shall correct the violations cited by the Board of Health within 30 days. To the extent that Plaintiff cannot complete certain exterior work due to winter weather, it shall be excused from the 30-day deadline.

2. Plaintiff shall provide an invoice from a licensed HVAC technician supporting its claim that the heating system was serviced after the last court order.
3. As a sanction for non-compliance with the previous Court order, Plaintiff shall pay $500.00, payable to Defendant and sent to Defendant's counsel, within 30 days.
4. The parties shall return for further in-person hearing on February 13, 2024 at 2:00 p.m.

SO ORDERED.

DATE: January 8, 2024

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-2233
PHANTOM HOLDINGS, LLC, PLAINTIFF v. DEREK WASHINGTON, DEFENDANT	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT

This no fault summary process case came before the Court for a bench trial on January 8, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 470 Maple Street IR, Holyoke, Massachusetts (the "Premises") from Defendant.

Defendant stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit which terminated his tenancy as of May 1, 2023. He also stipulated to unpaid rent in the amount of $3,000.00. Defendant did not file an answer and articulated no defenses at trial. The parties previously entered into court agreements allowing Defendant time to find replacement housing. At this time, nearly eight months after the tenancy was terminated and therefore beyond the statutory stay period set forth in G.L. c. 239, §§ 9, et seq.,[1] Plaintiff seeks to recover possession. In light of the foregoing, the following order shall enter:

[1] Defendant acknowledged that he is not entitled to the 12-month stay period. *See* G.L. c. 239, § 9.

1. Judgment for possession and $3,000.00 shall enter for Plaintiff.

2. Execution shall issue by application ten days after the date judgment enters.

3. Use of the execution shall be stayed through January 31, 2024.

SO ORDERED.

DATE: January 8, 2024

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-SP-3308

A & J REALTY ASSOCIATES LLC,

PLAINTIFF

v.

MARINGEL BENITEZ,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND 8A ORDER

This summary process case came before the Court on December 19, 2023 for a bench trial. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 179 Bloomfield Street, Apt. 2R, Springfield, Massachusetts (the "Premises") from Defendant based on nonpayment of rent.

At the outset of trial, the parties stipulated that Defendant took possession of the Premises in March 2019, is a tenant at will, received the notice to quit and failed to vacate after the notice period. The parties further agree that monthly rent is $1,050.00 per month. 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 established that $9,456.00 is due in unpaid rent, subject to Defendant's defenses and counterclaims. Defendant testified that she stopped paying

rent due to a serious infestation of roaches[1] and other conditions of disrepair. Without objection, Defendant introduced a report from the City of Springfield Code Enforcement Housing Division ("CE") dated October 6, 2022 citing an infestation roaches, a non-working stove, door jambs in disrepair and a rotting sink cabinet.

Other than with respect to the roaches, Defendant did not sustain her burden of proving by a preponderance of the evidence that the other Code violations cited by CE constituted a serious interference with her tenancy and impaired the character and value of the leasehold. *See Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The stove was her responsibility under the lease and she provided little or no testimony or credible evidence warranting a finding that the kitchen cabinets or door jambs were material defects warranting an abatement of rent.

With respect to the roaches, however, Defendant did prove by a preponderance of the evidence that Plaintiff violated the warranty of habitability. In late 2021, records of Aranea Pest Control Corp. ("Aranea"), the company then being used by Plaintiff, identified "heavy, heavy, heavy" roach infestation in the unit below the Premises, and in March 2022, the same unit had "extreme roach activity." In July 2022, Aranea did five treatments because the roach problem in the Premises was so persistent.

Plaintiff then ended its relationship with Aranea and hired Performance Pest Control ("PPC"). The Court infers that Plaintiff concluded that Aranea was not doing the job adequately and it was costing too much to continue to use the company if the

[1] Defendant also claimed that she had an infestation of bedbugs, but she offered no evidence to support her contention. The photographs Defendant showed at trial could be roach eggs or other pests.

problem was not resolved. PPC any came multiple times in August 2022 and its records indicate a "very very bad" roach infestation in the Premises. The problem seemed to improve thereafter until the summer of 2023. The health inspector from CE issued a certificate of compliance in July 2023. Nonetheless, in August 2023, PPC noted (by inserting 3 check marks in the "bad" column) that Defendant had a severe roach infestation in her unit. Defendant testified that the problem continues today.

As a result of Plaintiff's breach of the warranty of habitability, Defendant is entitled to an abatement of rent for the periods of time that she had to endure the roach infestation. Due to the severity of the infestation, the Court abates the rent by 30% for six months starting in July 2022, and for another five months from August 2023 to the date of trial. The total abatement amount is $3,465.00.

Although Plaintiff contracted for pest services on a quarterly basis, it should have known from the extermination reports that the roach problem was persistent and it should have done more to eradicate the issue. Its failure to adequately treat the problem constitutes a serious interference with her tenancy that impaired the character and value of the leasehold.[2] Defendant is entitled to statutory damages for breach of quiet enjoyment in the amount of three times the monthly rent, or $3,150.00. Defendant is not entitled to two separate awards of damages based on the same conditions, but is entitled to the award under the legal theory that results in the greatest recovery. In this case, she is entitled to damages in the amount of $3,465.00 for breach of warranty.

[2] Although Plaintiff introduced certificates from the Building Department in March and April 2023, these are not dispositive of the question of roaches, which would be cited by the Health Department. It is true that the Health Department issued a certificate of compliance in July 2023, that came in the lull between the severe infestation in 2022 and the one that occurred soon after July 2023.

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

1. Plaintiff is entitled to unpaid rent in the amount of $9,456.00.

2. Defendant is entitled to damages in the amount of $3,465.00 on account of her claims.

3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of $5,991.00, plus court costs of $ 216.54 and interest in the amount of $ 327.19, for a total of $ 6,534.73. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

4. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.

5. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiff for possession and damages in the amount of $5,991.00 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

6. Plaintiff shall increase the frequency of roach treatments as necessary to eradicate the infestation from the entire building.

SO ORDERED.
January 4, 2024

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4487

BRIDGE ST SHELBURNE REALTY TRUST,

PLAINTIFF

v.

COLLEEN VOUDREN,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND 8A ORDER

This summary process case came before the Court on December 15, 2023 for a bench trial. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 50 Bridge Street, Apt. 8, Shelburne Falls, Massachusetts (the "Premises") from Defendant based on nonpayment of rent.

At the outset of trial, the parties stipulated that Defendant received the notice to quit[1] and that rent is $650.00 per month. 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 established that $3,400.00 is due in unpaid rent.[2] Defendant does not

[1] Defendant acknowledges receipt of the notice but, at the outset of trial, she stated that the notice did not name all authorized occupants. She did not return to this point during the trial, so the Court has no basis to conclude that the notice is defective.

[2] The Court accepts Plaintiff's uncontroverted testimony that Defendant paid no rent in June 2023 and no rent for the months of September through December 2023, and paid only $500.00 in August 2023. July was paid in full. Based on the monthly rent, therefore, the Court finds $3,400.00 is owed despite Plaintiff erroneously stating that $3,100.00 is owed.

challenge this figure; however, she filed an answer with defenses and counterclaims that she believe should offset any rent due Plaintiff. Defendant testified largely about two issues: the behavior of another tenant in the building and conditions of disrepair in the Premises.

With respect to the other tenant, although the Court has no reason to disbelieve Defendant's testimony that she has been tormented by her neighbor, Defendant failed to sustain her burden of proving by a preponderance of the evidence that Plaintiff is responsible for the other tenant's actions or that Plaintiff was aware of the other tenant's conduct and had a duty to stop it. In order to create a cause of action for interference with quiet enjoyment, Defendant must make a showing that Plaintiff knew or should have known that a tenant was seriously interfering with her quiet enjoyment, and she provided no credible evidence at trial. Accordingly, the Court finds in favor of Plaintiff with respect to Defendant's claims relating to her neighbor.

Regarding Defendant's claim for conditions of disrepair, in order to be entitled to defeat Plaintiff's claim for possession pursuant to G.L. c. 239, § 8A, Defendant must prove that Plaintiff knew of material conditions of disrepair prior to being in arrears in her rent. The evidence shows that Defendant fell behind with her rent in December 2022 and that she contacted the Board of Health about issues with her bathroom in October 2022, prior to being in arrears.

Although Defendant failed to prove by a preponderance of the evidence that some of her conditions claims warrant the imposition of liability on Plaintiff, such as the lack of hot water and broken door locks, with respect to issues with the

bathroom, the Court finds sufficient credible evidence that Plaintiff violated the warranty of habitability that is implied in every tenancy. *See Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004). Plaintiff's manager, Mr. Patel, acknowledges that the Board of Health cited him for issues with the bathroom, including the absence of a vent. The Court finds that Mr. Patel took steps to address the issues in the bathroom, but there is no evidence that the Board of Health issued a letter of compliance nor is there any credible evidence that the conditions of disrepair were completely corrected.[3]

Despite Defendant's admission that she did not withhold rent in order to force Defendant to make repairs and that she stopped paying rent for reasons unrelated to the condition of the Premises, she is nonetheless entitled to reside in a habitable apartment. *See, e.g., Davis v. Comerford*, 483 Mass. 164, 173 (2019), *citing Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16 (the warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State Sanitary Code). On the other hand, even if bad conditions not caused by the tenants exist in the Premises, Defendant remains liable for the reasonable value of her use of the Premises for so long as she remains in possession. *See id., citing South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 462 (2017).

The Court finds that Plaintiff had had notice of code violations as of the Board of Health inspection done in October 2022. Damages for breach of warranty are imposed on a strict liability basis, so the fact that Plaintiff took steps to remedy the

[3] Plaintiff's agent admitted that the work was not entirely complete as of the trial date, as he still needed to sand and paint.

violations does not obviate the claim for warranty damages. The Court finds that the defects in the bathroom reduced the fair rental value of the Premises by 10% for 14 months form October 2022 through December 2023, the month of trial.

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

1. Plaintiff is entitled to unpaid rent in the amount of $3,400.00.

2. Defendant is entitled to damages in the amount of $910.00 on account of her claims and defenses.

3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of $2,490.00, plus court costs of $ 210.94 and interest in the amount of $ 79.46, for a total of $ 2780.40. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

4. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.

5. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiff for possession and damages in the amount of $2,490.00 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: January 09, 2024

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-SP-2079

DAVIGNON PROPERTIES, LLC, PLAINTIFF v. ANTONIA DIAZ, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT

This no fault summary process case came before the Court on October 25, 2023 for a bench trial. Both parties appeared with counsel. Plaintiff seeks to recover possession of residential premises located at 1372 Dwight Street, Holyoke, Massachusetts (the "Premises") from Defendant.

Prior to trial, the parties stipulated to facts that establish Plaintiff's prima facie case for possession. These agreed-upon facts will not be repeated here. Plaintiff did not make a claim for unpaid rent or use and occupancy in its summons and complaint, and did not make a motion to amend the complaint. The Court will address Defendant's defenses and counterclaims based on conditions, retaliation, breach of quiet enjoyment, discrimination, violations of G.L. c. 186, § 15B and c. 93A.

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 with respect to each of Defendant's respective defenses and counterclaims:

Conditions

In mid-December 2022, due to a leak in the roof above the Premises, a significant amount of water entered the Premises. The water came through the suspended ceiling and flooded the floor. Plaintiff's property manager, Charles Davignon ("Mr. Davignon") was aware of problems with the roof, which had previously leaked in 2021 and earlier in 2022.[1] He responded to the Premises and went onto the roof to shovel off the snow and water build-up. This stopped the leak. Mr. Davignon and Defendant's son mopped the floor, and Mr. Davignon left when Defendant's son said it was sufficiently cleaned up. Within one to two weeks, Plaintiff's contractor completed the roof repairs.

On December 20, 2022, a sanitarian from the City of Holyoke Board of Health came to the unit and issued a notice of violation, citing not only the leak in the ceiling but also other violations of the State Sanitary Code, including non-working ceiling and bathroom fans, broken heaters, pock-marked walls, missing sections of floors and ceilings, missing bathroom tiles. Plaintiff promptly repaired the kitchen ceiling leak, but the evidence shows that most of the repairs had not been repaired by the date of the reinspection on April 25, 2023. Mr. Davignon indicated that much of the work was cosmetic and the Court infers that he elected not to complete the repairs given the pending summary process action.

[1] Previously, Plaintiff patched the roof, but after the leak in early 2022, Plaintiff decided to replace the roof and gutter system. Work had not commenced, however, as of mid-December 2022.

The serious water intrusion from a known roof problem, and the resulting damage to the Premises, impaired the character and value of the Premises.[2] Although Plaintiff acted reasonably promptly in repairing the roof leak after the major leak in December 2022, its agent knew months earlier that it needed to replace the roof. The Court finds that the issues in the Premises constituted material interference with Defendant's quiet enjoyment.[3] As damages, the Court awards statutory damages in the amount of $2,580.00 (three months x $950.00/month).[4]

Retaliation

Because this is a no fault eviction case, pursuant to G.L. c. 186, § 18, Defendant's complaint to code enforcement in December 2022 creates a rebuttable presumption that the notice to quit served in early January 2023 is a reprisal against her for complaining to the authorities. Plaintiff can rebut the presumption only by clear and convincing evidence that his action was not a reprisal against the tenant and that he had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken had Defendant not contacted code enforcement. Defendant did not rebut the presumption. Accordingly, the Court finds in favor of Defendant on her claim for retaliation and awards her damages of $950.00 (one month's rent).

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[2] Defendant also was without a working stove for approximately one week in 2022 after it failed.
[3] Defendant did not seek damages for breach of warranty of habitability. In any event, quiet enjoyment damages would likely exceed the value of any abatement, and Defendant may recover only once for the roof defects.
[4] The Board of Health cited other conditions of disrepair, and the Court finds that these conditions have not been addressed as of the trial date. The individual items listed contribute to the Court's ruling regarding interference with quiet enjoyment, but, standing alone, they do not constitute breach of the covenant of quiet enjoyment.

Last Month's Rent

Plaintiff failed to pay interest on the last month's rent deposit of $220.00 that Defendant paid in October 2010. Defendant is entitled to $143.00 in damages ($11.00 year x 13 years). Because Plaintiff's conduct occurred in the course of trade or commerce, the Court trebles the damaged pursuant to G.L. c. 93A and awards damages in the amount of $429.00.

Harassment

Defendant contends that Mr. Davignon's behavior towards her constates harassment and therefore provides the basis for a separate finding of breach of quiet enjoyment. The Court finds that Mr. Davignon speaks loudly and he admits that he gets "worked up." For the Court to find harassment, however, the conduct must be directed at the tenant and be severe enough to constitute a "serious interference" with the tenancy." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). Although Mr. Davignon admits that he became frustrated with Defendant for making him wait for the rent, but Defendant did not convince the Court that Mr. Davignon harassed her or acted in a manner that rises to a level of a serious interference with the tenancy. The Court finds in favor of Plaintiff on the claim of harassment.

Discrimination

Defendant alleges that Mr. Davignon made disparaging comments regarding her inability to speak English fluently and that he asked her children why she had not learned the language given the length of time she lived in this country.[5] Although Mr.

[5] Defendant's testimony that Mr. Davignon said something to her about "going with the immigrants" does not form the basis of a discrimination claim. She was unable to clearly recall the context of the comment, and given that she communicates in Spanish, the Court infer that the comment was not made as Defendant recalled.

Davignon's comments were insensitive, the credible evidence does not support a claim for discrimination under Fair Housing laws or G.L. c. 151B. Plaintiff rented to Defendant for 13 years and testified credibly that his issues were with Defendant's adult children (he expressed concern about the number of family members regularly seen in the Premises and their behavior), not Defendant herself.

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

1. Defendant is entitled to a judgment for possession and $3,959.00 in damages on account of her claims.
2. Before a final judgment enters, Defendant's counsel shall have fifteen (15) days from the entry of this order on the docket to file a petition for reasonable attorneys' fees and costs, along with supporting documentation. Plaintiff 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: 1/9/24

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-SP-4389
ANDREA MILLER, PLAINTIFF v. HOLLY SULLIVAN, DEFENDANT	)))))))))	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT

This summary process case came before the Court for a bench trial on December 1, 2023. Both parties appeared self-represented. Plaintiff seeks to recover possession of a residential dwelling unit located at 164 Montague City Road, #1 Rear, Turners Falls, Massachusetts (the "Premises") from Defendant based on non-payment of rent. Defendant does not presently have a pending application for rental assistance; therefore, G.L. c. 239, § 15 does not apply.

The parties stipulated to Plaintiff's prima facie case for possession. Defendant acknowledges receipt of the notice to quit and has not moved out. Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that the monthly rent is $950.00 and that Defendant owes $2,035.00 through the date of trial. Defendant did not file an answer and asserts no claims against Plaintiff.

Accordingly, based on the foregoing and in light of the governing law, the

following order shall enter:

1. Plaintiff is entitled to judgment for possession and damages in the amount of $2,035.00, plus court costs.
2. Defendant shall be referred to the Tenancy Preservation Program to determine if she qualifies for assistance in filing an application for rental assistance.[1]
3. Execution may issue upon written application ten days after the date judgment enters; provided, however, that if Defendant demonstrates to Plaintiff or files with the Court evidence of a pending application for rental assistance, issuance of the execution shall be stayed until the application is approved or denied.

SO ORDERED.

DATE: January 9, 2024

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[1] Mr. Richtell was in the courtroom and agreed to meet with Defendant after the hearing.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-SP-4793
US BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR THE REO TRUST 2017-RPL1, PLAINTIFF v. KEREN BARRY AKA KAREN BARRY AND BRIAN BARRY, DEFENDANTS	FINDINGS OF FACT RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT

This post-foreclosure summary process matter came before the Court for a bench trial on January 9, 2023. Plaintiff appeared through counsel. Defendants appeared self-represented. The property in question is a duplex located at 29 King Street, Springfield, Massachusetts (the "Premises"). The former owner of the Premises is Defendant Keren Barry. Brian Barry, Keren Barry's son, resides in Unit 1 on the first floor.

In a summary process action for possession after foreclosure by sale, the foreclosing owner is required to make a prima facie showing that it obtained a deed to the property at issue and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded." *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). In this case, Plaintiff introduced into evidence, without objection, an attested copy of the recorded foreclosure deed and an

uncontroverted affidavit of sale under G.L. c. 244, § 15 showing compliance with the power of sale, thereby establishing its prima facie case as to ownership of the Premises. See *Federal Nat'l Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 642 (2012).

Defendants do not contest the foreclosure and stipulate that they received the 72-hour notice to quit served on May 31, 2023. Brian Barry continues to reside in the Premises. Defendants did not file an answer or offer any defenses at trial. They only seek additional time to relocate.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Defendants shall have until June 1, 2023 to vacate and remove all of personal possessions, provided that Defendants pay $200.00 by the 5th of each month beginning in February for use and occupancy.[1]
3. If Defendants fail to make the payments or fail to vacate by June 1, 2023, Plaintiff may file a motion for issuance of an execution.

SO ORDERED.

DATE: January 9, 2024

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

cc: Court Reporter

[1] Using the parameters set forth in G.L. c. 239, § 9 et seq. for reference, had Defendants been tenants they would be entitled to a stay of twelve months given Keren Barry's age (87). Therefore, even if Defendants had tenancy rights, the Court has provided Defendants with the maximum stay period.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SU-6

WILLIAM HOWELL,

Plaintiff,

v.

ROSA RODRIGUEZ,

Defendant.

ORDER

After hearing on January 9, 2024, at which each party appeared without counsel, the following order shall enter:

1. This is a supplemental proceeding to collect on the underlying judgment entered in *William Howell v. Rosa Rodriguez,* Western Div. Hsg. Ct. 22-SP-3705 I the amount of $2,400 in compensatory damages plus interest and court costs. The amount of the execution issued in that matter, 2,842.80 shall be increased by the $135 filing fee for this supplemental proceeding plus $42.76 in sheriffs' service fees, bringing the current total to: $3,020.56.

2. The defendant was informed that the underlying compensatory damages will increase at a rate of 12% per annum until fully paid.
3. The tenant shall pay the plaintiff at least **$160** per month by the last day of the month beginning January 2024 until the debt described herein is paid in full.

So entered this 10th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5058

DANIEL CRUZ,

Plaintiff

v.

MAYRA CRESPO,

Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT

This no fault summary process case came before the Court for a bench trial on January 11, 2024. Both parties appeared self-represented. Plaintiff seeks to recover possession of 210 White Street, Floor 2 & 3, Springfield, Massachusetts (the "Premises") from Defendant.

Defendant stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit which terminated her tenancy at the end of October, 2023. Monthly rent is $1,400.00. Defendant did not make a claim for money damages in the complaint. Defendant did not file an answer and asserted no legal defenses at trial.

Pursuant to G.L. c. 239, §§ 9, et seq., Defendant may be entitled to a stay on use of the execution. She did not assert that she suffers from a disability that impedes her ability

to search for replacement housing. Plaintiff demonstrated that he is in the process of selling the house and has a closing date of January 31, 2024.[1]

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

1. Judgment for possession and court costs only shall enter for Plaintiff.

2. Defendant may apply for the execution (eviction order) in writing ten days after the date that judgment enters; however, use of the execution shall be stayed through January 31, 2024.[2]

SO ORDERED.

DATE: January 11, 2024

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

cc: Court Reporter

[1] The Court reviewed the purchase and sale agreement, which indicated an original closing date of November 30, 2023. Plaintiff testified that the closing date has been extended to January 31, 2024.

[2] The Court does not further extend the stay because of the upcoming closing date. The Court balances the short stay against the fact that Defendant has paid no rent for three months and thus should have funds to move, especially if she seeks moving costs through the RAFT program.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5119

G & C REAL ESTATE,

Plaintiff

v.

OMAR ALATTAR,

Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT

This no fault summary process case came before the Court for a bench trial on January 11, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 30 Hanover Street, 2d Floor, West Springfield, Massachusetts (the "Premises") from Defendant.

Defendant stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit which terminated his tenancy at the end of October, 2023. Monthly rent is $1,225.00. Defendant is current with the rent and/or use and occupancy. Defendant did not file an answer. He does not read or write in English, but is aware of the terms of his tenancy and is aware that Plaintiff has asked him to move elsewhere. Defendant plans to move to a different state but said that he is waiting for a court date in his divorce case in March before leaving.

Pursuant to G.L. c. 239, §§ 9, et seq., Defendant may be entitled to a stay on use of the execution. Plaintiff volunteered to allow Defendant to remain through the end of March 2024, provided that he pays for his use and occupancy of the Premises.

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

1. Judgment for possession and court costs only shall enter for Plaintiff.

2. Defendant may apply for the execution (eviction order) in writing ten days after the date that judgment enters.

3. Plaintiff shall not use the execution prior to March 31, 2024 provided that Defendant pay $1,225.00 by February 5, 2024 and $1,225.00 by March 5, 2024.

SO ORDERED.

DATE: January 11, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-4480

JWK REAL ESTATE, LLC,

Plaintiff,

v.

LAURA and RAQUEL SEARS,

Defendants.

ORDER

This matter came before the court on January 3, 2024, for trial at which the plaintiff appeared through counsel and the defendants appeared *pro se*. After trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, JWK Real Estate, LLC (hereinafter, "landlord") owns a three-family dwelling at 25-27 Fairview Avenue in West Springfield (hereinafter, "premises" or "property"). The defendants, Laura and Raquel Sears (hereinafter, "tenants") reside in the first-floor unit and have lived there since September 2020.

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2. On or about June 21, 2023, the landlord served the tenants with a notice to quit for non-payment of rent and thereafter filed this instant summary process eviction action at the court. The tenants filed an Answer with several defenses and counterclaims including Retaliation, Breach of the Warranty of Habitability, Violations of the Security Deposit and Last Month's Laws, Breach of the Covenant of Quiet Enjoyment, and Violations of the Consumer Protection Laws.
3. **Preliminary Matter:** These same parties were involved in an earlier eviction matter in 22-SP-1465 heard in September 2023 by Judge Kane. The tenants' claims regarding conditions of disrepair (Breach of the Warranty of Habitability, Breach of the Covenant of Quiet Enjoyment) were adjudicated in that earlier eviction action and shall only be considered in this instant eviction action beginning with the date after that earlier trial on September 15, 2023.
4. **The landlord's Claim for Non-Payment of Rent:** The landlord met its burden of proof that **$12,041** is outstanding in use and occupancy through the month of the trial.
5. **The Tenants' Claims: Security Deposit and Last Month's Rent:** At the commencement of the tenancy, the landlord required, and the tenants paid, a Security Deposit and an advance payment of Last Month's Rent. Though the court is satisfied that the landlord placed both deposits in an interest-bearing bank account it admittedly failed to comply with that aspect of the law which requires it to pay out or credit interest to the tenant at the end of each year of the tenancy---or offer them in writing to deduct same from their rent payment. G.L. c.186, s.15B and 940 CMR 3.17.

6. Such failures violate the Consumer Protection laws at 940 CMR 3.17 (4)(c) and, thus, also violate G.L. c.93A for which the tenants will be awarded nominal damages of $25. As is stated with great clarity in the Security Deposit laws, security deposits "continue to be the property of the tenant" and a failure to inform the tenants of their right to either receive payment of the interest *on their monies* or be credited said interest triggers a trebling of the damages ($25 X 3 = $75) as the court finds these acts and omissions to be "willful or knowing" and at least with "reason to know that the act or practice" violates the law. See, G.L. c.93A, s.9(3). Accordingly, the tenants are awarded **$75** on this claim.
7. **The Tenants' Other Claims:** The tenants were not able to meet their burden of proof that conditions existed at the premises and/or that they notified the landlord of said conditions after the date of the last trial on September 15, 2023. To the extent that any conditions of disrepair may have existed, other than the kitchen cabinet falling onto the stove (for which both the stove was replaced and the cabinet re-installed promptly), the tenant were not persuasive that the landlord was aware or should have been aware of any conditions of disrepair or of any infestation. In fact, the tenants testified that they did not inform the landlord about conditions of disrepair, nor of the need for extermination, since the trial in the earlier matter in September 2023.
8. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A, the tenants have ten days from the date of this order (noted below) to deposit $ 12,616.26 with the court's clerk's office. This sum represents the compensatory damages awarded to the landlord of $12,041

MINUS the compensatory damages awarded the tenants of $75 (leaving $11,966 owed) plus court costs of $ 260.52 plus interest of $ 389.74 If the tenants make said deposit, judgment shall enter for them for possession and the funds will be disbursed by the court to the landlord's counsel. If the tenants do not make said deposit in full and timely, judgment shall enter for the landlord for possession plus $11,966 plus court costs and interest.

So entered this 11th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-3606

KING PINE RHF PARTNERS LP,

PLAINTIFF

v.

ROSA BUZZELL,

DEFENDANT

ORDER FOR COURT CLINIC EVALUATION

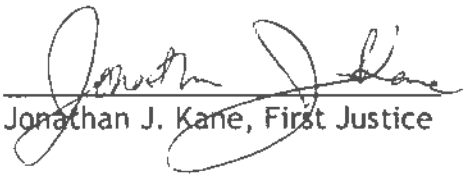
This matter came before the Court on January 5, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. Mr. Richtell from the Tenancy Preservation Program also participated.

The Court believes that Defendant may be an "incapacitated person" as that term is defined in G.L. c. 190B, § 5-101(9). Accordingly, the Court hereby orders that Defendant undergo a forensic psychological evaluation with the Court Clinic. The Court requests that the clinician evaluate Defendant with respect to (a) her ability to participate meaningfully in this legal matter, and (b) her decision-making capacity as it relates to her ability to understand and comply with the lease and Court orders regarding her housing. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the Court

should appoint a guardian ad litem for Defendant. The clinician is requested to provide a report in writing by January 26, 2024.

Upon this Court's review of the clinician's report, the Court will decide whether to appoint a guardian ad litem ("GAL") for Defendant. The parties shall return for status review **on February 23, 2024 at 9:00 a.m.**

SO ORDERED.
DATE: January 11, 2024



Jonathan J. Kane, First Justice

cc: Kara Cuhna, Assistant Clerk Magistrate
Michael Richtell, Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5066

KIM LITCHFIELD,

Plaintiff

v.

MELANIE MICHELI,

Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT

This no fault summary process case came before the Court for a bench trial on January 11, 2024. Both parties appeared self-represented. Plaintiff is a tenant residing at 82 Grove Street, Chicopee, Massachusetts (the "Premises"); Defendant is a sub-tenant who moved into the Premises several years ago. Plaintiff is in the process of being evicted by her landlord because she allowed Defendant to reside in the Premises without authorization. If Plaintiff is able to remove Defendant from the property, she may be able to preserve her tenancy.

Defendant stipulated to Plaintiff's prima facie case for possession and did not file an answer. She does not challenge Plaintiff's right to possession, but simply seeks additional time to move. She and her boyfriend are looking for replacement housing, and she has been approved for moving expenses through the RAFT program.

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

1. Judgment for possession and court costs only shall enter for Plaintiff.

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2. Defendant may apply for the execution (eviction order) in writing ten days after the date that judgment enters; however, use of the execution shall be stayed through January 31, 2024 to allow Defendant time to remove her personal possessions.[1]

SO ORDERED.

DATE: January 11, 2024

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

[1] Given the urgency facing Plaintiff to preserve her own tenancy, the Court declines to further extend the stay.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-0733

CHAPMAN STREET PROPERTIES, LLC,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER ON MOTION
	)	TO STAY EXECUTION
BLAIR THOMA,	)	
	)	
DEFENDANT	)	

This summary process case came before the Court on January 12, 2024 for a hearing on Defendant's motion to stay the levy scheduled for January 14, 2024.[1] Defendant was released from incarceration today and stated that she needs more time relocate. She agreed to withdraw the notice of appeal filed on January 11, 2024 in exchange for additional time to move.

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

1. Defendant's motion to stay use of the execution is ALLOWED on the condition that she shall past due rent through January 2024 ($189.00) and cancellation fees of $600.00 by January 19, 2024.
2. If the levy is cancelled, use of the execution shall be stayed through March 1, 2024 on the following conditions:

[1] Defendant also filed two separate motions seeking relief from judgment. She elected not to proceed with the motions, so both are denied.

a. Defendant pays use and occupancy for February 2024 in full by February 5, 2024;[2]

b. Except for service providers and during the actual move-out process, Defendant shall not have any visitors;

c. Defendant shall not invite Michael Carey to the subject premises and she shall not permit him to enter her unit, even as part of the move-out process; and

d. Neither Defendant nor anyone in her unit create any significant disturbances.

3. If Plaintiff believes unauthorized persons have keys to Defendant's unit, it may change the locks, in which case it shall immediately provide a key to Defendant.

4. Defendant hereby withdraws her notice of appeal filed on January 11, 2024, and such notice is of no further effect.

5. If Plaintiff contends that Defendant has substantially violated the terms of the stay, it may file a motion to lift the stay.

SO ORDERED.

DATE: January 12, 2024

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

cc: Court Reporter

[2] Her portion of rent is $27.00, but her subsidy may be terminated for February 2024. If so, Defendant will be responsible for the market rent.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-297

HOUSING MANAGEMENT RESOURCES, INC.,

Plaintiff,

v.

CRYSTAL VICENTE,

Defendant.

ORDER

After hearing on January 11, 2024, on the defendant tenant's motion to stop a physical eviction at which she appeared *pro se* and the plaintiff landlord appeared through counsel, the following order shall enter:

1. The tenant has presented a colorable claim that she may be eligible for protections under the Violence Against Women Act (VAWA), including relative to her subsidized housing, [redacted].

2. The landlord reported that the outstanding rent in this non-payment of rent matter is $99, that the court costs are $212 and that it anticipates the cost of canceling the levy of the execution will be approximately $300. Also, the current monthly rent is $0. The landlord shall provide an invoice to the tenant for the actual costs incurred by scheduling and cancelling the levy.
3. The tenant has a RAFT application pending. The landlord shall include costs, including those associated with the cancellation of the levy.
4. The levy scheduled for January 17, 2024, shall be cancelled by the landlord.
5. This matter shall be referred to the Tenancy Preservation Program[1].
6. This matter shall also be referred to the Domestic Violence Unit of Community Legal Aid. Chief Housing Specialist Pothier (copied here) shall assist the court with the referral to Community Legal Aid.
7. Currently the tenant's rent is $0 but if it were to be set at a different amount, the tenant shall pay such timely and in full.
8. This matter shall be scheduled for review on **February 29, 2024, at 9:00 a.m.**

So entered this 12th day of January, 2024.

Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist (for referral to Community Legal Aid)
Tenancy Preservation Program
Court Reporter

[1] [redacted].

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-1901

TED POPPER,

Plaintiff,

v.

AMBER BEATTIE,

Defendant.

ORDER

After hearing on January 10, 2024, on the tenant's emergency motion to stop a physical eviction, the following order shall enter:

1. For the reasons stated by the judge on the record---which included that the tenant was convincing in her report that she is relocating to a new home (an in-law space at her mom's home) and needs until February 1, 2024, to effectuate the move---the motion is allowed and the currently scheduled physical eviction is cancelled.

2. This ruling is based on several factors including that without such an order the tenant is likely to become homeless, with the hope of being placed in a shelter, which the court finds and so rules would constitute irreparable harm.
3. Accordingly, the landlord shall cancel the eviction currently scheduled for January 19, 2024.
4. The landlord may reschedule and have the tenant served in accordance with G.L. c.239, but may not schedule the levy to occur prior to February 2, 2024.

So entered this 12th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-SP-4823
REVERSE MORTGAGE FUNDING LLC, PLAINTIFF v. ROBERT HANDY AND KRYSTAL DEWBERRY, DEFENDANTS	FINDINGS OF FACT RULINGS OF LAW AND ORDER

This post-foreclosure summary process matter came before the Court for a bench trial on January 11, 2024. Plaintiff appeared through counsel. Defendant Robert Handy appeared self-represented.[1] The property in question is located at 46-48 Wait Street, Unit 1, Springfield, Massachusetts (the "Property"). The former owner of the Premises is Mr. Handy's great grandmother, Pauline Norwood.

In a summary process action for possession after foreclosure by sale, the foreclosing owner is required to make a prima facie showing that it obtained a deed to the property at issue and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded." *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). In this case, Plaintiff introduced into evidence, without objection, an attested copy of the recorded foreclosure deed and an uncontroverted affidavit of sale under G.L. c. 244, § 15 showing compliance with the

[1] Defendant Dewberry did not appear.

power of sale, thereby establishing its prima facie case as to ownership of the Premises. See *Federal Nat'l Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 642 (2012).

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that Plaintiff foreclosed on the Property on September 16, 2022. Plaintiff offered into evidence certified copies of the foreclosure deed and affidavit of sale showing that all pre-foreclosure and foreclosure statutory requirements were met, as well as the post-foreclosure affidavits with respect to *Pinti* and *Eaton*.

Plaintiff established that it had Constable Del Pozzo post the notice pursuant to G.L. c. 186A on January 23, 2023 identifying Gerry Roy as the owner's agent and the person to whom use and occupancy of $1,223.00 was to be paid.[2] Defendant acknowledges receipt of the 90-day notice to quit dated June 15, 2023.

Defendant did not file an answer.[3] Because he was not a party to the loan or mortgage, he conceded that he had no basis to challenge the foreclosure. He said that he would like to purchase the home and believes that Plaintiff did not act in good faith in giving him the opportunity to make an offer on the house. He did not provide any evidence, however, from which the Court could conclude that Plaintiff acted improperly in the way it engaged with him. At the conclusion of the hearing, he claimed that his great grandmother signed a deed giving the Property to him and his siblings. He did not provide any proof, but if such a deed exists, it would be important to know when and under what circumstances it was signed.

---

[2] Plaintiff established the amount of use and occupancy using the HUD standard for 2-bedroom, 1-bath apartments in Springfield, although each of the units has 3 bedrooms.
[3] Defendant made a comment that he was without water for three months, but he provided no evidence and no specifics from which the Court could assess liability.

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

1. The record shall remain open in order for Defendant to provide the deed he referenced at trial. He shall file it with the Court and serve Plaintiff's counsel with a copy no later than January 18, 2024.
2. Plaintiff shall have fourteen days from receipt of the deed to file and serve a response addressing the legal effect of the deed.
3. If the Court, after reviewing the deed, requires further proceedings, it will send the parties notice of another trial date. If not, the Court will enter a final order in this case without further hearing. In that order, the Court will address Defendant's request for a stay of six months to find replacement housing.

SO ORDERED.

DATE: January 12, 2024

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. 19-CV-1088

TOWN OF EAST LONGMEADOW HEALTH DEPARTMENT, PLAINTIFF v. WILLIAM ROGERS, ET AL., DEFENDANTS	ORDER FOR APPOINTMENT OF A RECEIVER

This code enforcement matter came before the Court on January 12, 2024 for hearing on Plaintiff's motion to appoint a receiver. Plaintiff and Metropolitan Life Insurance Company ("Met Life") appeared through counsel. Defendant William Rogers ("Mr. Rogers") failed to appear. Pursuant to the general equity powers of this Court and G.L. Chapter 111, Sections 127I, with respect to 37 Thompson Street, East Longmeadow, Massachusetts (the "Property"), the Court hereby finds:

1. Background: Plaintiff filed a petition seeking enforcement of the State Sanitary Code and State Building Code at the Property, including failure to maintain structural elements, failure to maintain the Property as water tight, and failure to maintain utilities, among other violations. Plaintiff entered an order of condemnation. The Court has provided Defendant with approximately seven opportunities to provide a comprehensive rehabilitation plan for the correction of the violations, and has failed

to do so. The violations remain outstanding.

G.L. c. 111, §127I authorizes appointment of a receiver where violations of the State Sanitary Code will not be promptly remedied unless a receiver is appointed, and where such appointment is in the best interest of future occupants and of public safety. Here, the Court finds that the defendant's failure to manage and maintain the Property and his failure to promptly bring the Property into compliance with state codes endangers or materially impairs the health and safety of the community, enforcement officials and first responders, and that the appointment of a receiver is in the best interest of public safety.

The Court shall appoint the next receiver on the list who is willing to accept the appointment. Within thirty (30) days of appointment, the receiver must file proof of insurance with this Court and shall maintain said insurance in full force and effect throughout the receivership. Within the same period of time, the receiver shall present to the Court a rehabilitation plan, setting forth in detail the receiver's proposal to insure, secure, board and clean the Property of overgrowth and trash. To the extent other actions are deemed necessary to bring the Property into compliance with the state codes, the receiver shall include such actions in the proposal. The receiver shall itemize the expenses and proposed completion date for every action.

The receiver shall obtain legal counsel and such legal counsel shall file an appearance with this Court forthwith. For the duration of the receivership, counsel for the receiver shall file periodic reports with the Court, setting forth all expenses and disbursements of the receivership, with attached receipts. The first report shall be provided approximately four (4) weeks after approval of the rehabilitation plan,

and thereafter such reports shall be provided every six (6) to eight (8) weeks.

The receiver shall not be required to file a bond, nor shall the receiver be required to file an inventory, list of encumbrances, list of creditors or any other report required to be filed by Rule 66 of the Massachusetts Rules of Civil Procedure, except as otherwise specifically provided herein.

The receiver shall forthwith complete and post a Notice of Receivership, attached hereto as Exhibit A, in an area visible to the public. The receiver shall have no responsibility whatsoever to make any advances on account of Property, except as approved by the Court. The Receiver's liability for injuries to persons and property shall be subject to the limitations set forth in G.L. c. 111, section 127I.

The receiver shall have a priority lien on the Property pursuant to the "super-priority" provision of G.L. c. 111 § 127I, as amended, third paragraph, upon the recording of this Order. The Property shall not be transferred, foreclosed upon, sold, encumbered or placed under contract for sale without prior leave of the Court. The receiver shall forthwith record a copy of this Order at the Registry of Deeds.

The foregoing Order shall remain in effect until the further order of the Court. The receiver and all other affected parties shall appear for review on **February 2, 2024 at 9:00 a.m.**

SO ENTERED.
January 12, 2024

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-1068

ILLUMINATI HOLDINGS, LLC,

Plaintiff

v.

ORDER TO VACATE UNIT

HECTOR REYES AND JUSTINE MATOS,

Defendants

This application for injunctive relief came before the Court on January 12, 2024. Plaintiff appeared through counsel. Defendants appeared self-represented.

After hearing, the Court finds that Defendant Reyes is incarcerated. He is the only permitted occupant of the subject premises at 258 Union Street, Apt. 1A, Springfield, Massachusetts (the "Premises"). He seeks to allow Defendant Matos to take over the Premises. Plaintiff seeks to ensure that the Premises remains vacant and secure until Defendant Reyes surrenders possession or until legal possession reverts to Plaintiff after a summary process case. Defendant Matos contends that she has lived with Defendant Reyes for years. The Court finds her testimony not credible and rules that she has no right to possession of the Premises. Moreover, the Court finds Plaintiff's property manager credible that there has been a high volume of traffic coming in and out of the Premises and that the unit has been the site of ongoing illegal activities.

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Accordingly, the following order shall enter:

1. Defendant Matos and all other occupants of 258 Union Street, Apt. 1A, shall vacate the Premises as of Monday, January 15, 2024 at 9:00 a.m.
2. Plaintiff may change the locks and take all necessary steps to secure the Premises against unauthorized access.
3. Plaintiff may not dispose of personal possessions in the Premises and may not take legal possession of the Premises without completing a summary process case (or until Defendant Reyes surrenders possession, if earlier). If Defendant Reyes is released from incarceration prior to legal possession returning to Plaintiff, he may file a motion with this Court seeking to reenter the Premises.

SO ORDERED.
DATE: January 14, 2024

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 24-CV-0024
SHINE SERVICES INC.,	)	
	)	
PLAINTIFF	)	
v.	)	
	)	ORDER MOTION FOR EX PARTE
SPRINGFIELD GARDENS LP, ET AL.	)	ESTATE ATTACHMENT
	)	
DEFENDANTS	)	

This matter came before the Court on January 12, 2024 on Plaintiff's motion for an ex parte order for real estate attachment. Plaintiff seeks damages related to a contractual agreement to provide cleaning services at 30 or more properties owned by Defendants in Springfield, Massachusetts.

As a preliminary matter, the Court considers its jurisdiction over the subject *See* G.L. c. 185C, § 3. Specifically, the court has:

> "jurisdiction under the provisions of common law and of equity and any other general or special law, ordinance, by-law, rule or regulation as is concerned directly or indirectly with the health, safety, or welfare, of any occupant of any place used, or intended for use, as a place of human habitation and the possession, condition, or use of any particular housing accommodations or household goods or services situated therein or furnished in connection there with or the use of any real property and activities conducted there on as such use affects the health, welfare and safety of any resident, occupant, user or member of the general public and which is subject to regulation by local cities and towns under the state building code, state specialized codes, state sanitary code, and other applicable statutes and ordinances."

G.L. c. 185C, § 3.

Here, in light of the fact that Defendants, collectively, own hundreds of rental units throughout Springfield, and in light of the fact that the sanitary condition of the buildings housing those rental units has an immediate and direct impact on the community, this case clearly affects the health, welfare and safety of members of the general public. In light of the foregoing, the Court rules that the issues alleged in the complaint are within the subject matter jurisdiction of the Housing Court.

Based on the affidavit of Clecia Marques, Defendants owe Plaintiff over $350,000.00 under the parties' contract for cleaning services; therefore, the Court finds that there is a reasonable likelihood that Plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than $400,000.00. *See* Mass. R. Civ. P. 4.1(c). The Court has no basis to conclude that Defendants have any liability insurance available to satisfy the judgment. Moreover, the Court finds that there is a clear danger that Defendants, if notified in advance of attachment of the properties, will convey them to third parties. *See* Mass. R. Civ. P. 4.1(f).

Accordingly, Plaintiffs' motion for an ex parte order for real estate attachment against all real property owned by Defendants in Hampden County, Massachusetts is allowed in the amount of $400,000.00.

SO ORDERED.

DATE: January 14, 2024

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-1313
CHC WINDFIELD, LLC PLAINTIFF v. GREGORY PAULEY,[1] DEFENDANT	ORDER ON MOTION FOR ENTRY OF JUDGMENT

This matter came before the Court on January 10, 2024 on Plaintiff's motion for entry of judgment. Both parties appeared with counsel. The Court conducted an evidentiary hearing, and based on all the credible testimony, the other evidence presented and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Pursuant to an Agreement of the Parties dated October 16, 2023 (the "Agreement"), Mr. Pauley agreed, in relevant part:

1. to complete his tax credit recertification with management by October 31, 2023;
2. to submit an application for Ms. D'Antonio-Monarca to add her to his lease, and, if her application is denied by management (or if his Section 8 subsidy administrator denied his request to add her

[1] Alicia D'Antonio-Monarca is also a named defendant, but has not been added to the lease at this time and did not appear at this hearing.

to his rental voucher), to provide written documentation demonstrating that he had a medical need for Ms. D'Antonio-Monarca to reside in the unit; and

3. to abide by the terms of his lease and be responsible for the conduct of his guests.

With respect to recertification, the Court finds that Mr. Pauley sent the only missing documentation, verification of his social security income, on October 31, 2023 to the email address associated with the assistant property manager, with whom he had previously communicated. The position of assistant property manager was vacant at that time, and no one at the property received the email (the position was not filled until November 30 and the email apparently does not forward to anyone else when the position is unfilled). Accordingly, the evidence shows that Mr. Pauley complied with the aspect of the agreement requiring him to provide missing income documentation. He should have been allowed the opportunity to sign the recertification paperwork after providing the missing documents.

The parties agree that Ms. D'Antonio-Monarca sought to be added to Mr. Pauley's rental voucher and was denied by the subsidy administrator, Franklin County Regional Housing and Redevelopment Authority. The denial is currently under appeal. Plaintiff will not add her to the lease as a household member if she cannot be added to Mr. Pauley's voucher. The Agreement contemplated that Ms. D'Antonio-Monarca would provide proof that she should be allowed to reside in the unit as a personal care attendant or other service provider, but

she did not do so. The Court is satisfied that, because Ms. D'Antonio-Monarca has appealed the decision, there has been no final determination denying her application to be added to the voucher. Therefore, Mr. Pauley has not substantially violated the Agreement by failing to provide written documentation demonstrating a medical need for Ms. D'Antonio-Monarca to be present in the unit.

The Agreement's catch-all provision, whereby Mr. Pauley "agrees to abide by the terms of the lease especially as it relates to the quiet enjoyment of the property and understands that he may be held accountable for the behaviors of him or any guests of his home," allows Plaintiff to move for entry of judgment for a wide range of offenses. For purposes of this motion, Plaintiff cites two incidents. First, when Plaintiff's property manager was delivering a lease violation notice to Mr. Pauley's unit, a butter knife hit her on the shoulder when Mr. Pauley opened his door. The evidence shows, and the Court finds, that the knife was not thrown at her, but instead fell from the frame above the door when the door opened. The property manager was startled but not injured; nonetheless, Plaintiff contends that the risk of a more serious injury warrants a finding that Mr. Pauley committed a substantial breach of the Agreement.

Although a close call, the Court finds that this isolated incident does not pose a risk to the safety of employees and other residents. Although Mr. Pauley exercised poor judgment setting a knife atop the door frame as a primitive entry warning, the Court finds that he did not have an intent to do harm and

there was little risk of actual injury to anyone. Subject to the Court's order that he immediately cease and desist from perching any item above the door to fall on an unsuspecting person entering, the incident does not warrant entry of judgment for possession.

The second issue involves Mr. Pauley's car. The car had been towed to the property parking lot after a minor accident and the property manager asked him to remove it from the premises. He agreed, but when it had not been removed after a weekend, she gave him a lease violation notice on Monday, November 6, 2023 demanding that he remove the vehicle "no later than Wednesday, November 8, 2023 or it will be towed at owners [sic] expense."[2] On November 8, 2023, despite the time period for removing the car having not expired, Plaintiff asked a tow company to remove Mr. Pauley's vehicle, along with a few other vehicles.[3] Mr. Pauley and Ms. D'Antonio-Monarca became upset and made inappropriate comments using crude language to or about the property manager. Although Mr. Pauley's and Ms. D'Antonio-Monarco's behavior was unacceptable and unjustified, it falls short of warranting eviction.

Plaintiff contends that, even if none of the isolated incidents in themselves warrant eviction, the cumulative nature of the offenses does because it interferes with Plaintiff's ability to manage the property. The Court

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[2] The lease provision Plaintiff apparently relies upon allows it to "regulate the manner, time and place of all parking ... and may regulate, limit or prohibit ... inoperable vehicles." *See* Apartment Lease Agreement, ¶ 16. The question of whether the vehicle was inoperable does not have to be decided at this time given that Mr. Pauley agreed to remove it from the property.

[3] Mr. Pauley was able to have his car towed by AAA before Plaintiff's towing contractor did so.

is sympathetic to this argument, as problem behavior by a tenant increases the burden on the individuals charged with managing the complex for all residents. However, under the circumstances presented here, the Court will allow Mr. Pauley the opportunity to demonstrate that, moving forward, he will be able to comply with his obligations under the Agreement and, more generally, as a tenant.

Accordingly, the following order shall enter:

1. Plaintiff's motion for entry of judgment is denied.
2. This case, which was scheduled to be dismissed on March 1, 2024 if Mr. Pauley complied with the Agreement, shall remain open under the terms of the Agreement until May 1, 2024.
3. Mr. Pauley may not perch any object, knife or otherwise, on the door frame or use any other entry detection procedure that could result in an object hitting someone in the hallway or entering the apartment.

SO ORDERED.

January 15, 2024

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-CV-0617
JENNIFER SMYTH, PLAINTIFF v. DOUBLE K LLC, DEFENDANT	ORDER FOR REPAIRS

This case came before the Court on January 16, 2024 for review after a repair order entered on December 19, 2023. The premises are located at 211 Walnut Street, Apt. 1L, Holyoke, Massachusetts (the "Premises"). The parties offered conflicting testimony as to the state of repairs. After hearing, the following order shall enter:

1. Plaintiff shall allow Defendant's agents access for further repairs on January 22, 2023 between the hours of 9:00 a.m. and 4:00 p.m. Plaintiff mentioned continuing issues with windows, a screen door and flooring.
2. Plaintiff shall arrange for its pest treatment company to treat for bed bugs, and the vendor shall provide instructions for preparation no less than 48 hours' in advance of the first treatment. The vendor shall use methods and products that are safe for Plaintiff's young children. If Plaintiff is required to vacate the Premises for more than four hours, Defendant shall provide hotel accommodations. Otherwise, Defendant offered to waive $725.00 it

claims is otherwise due so that Plaintiff has funds to make her own arrangements to be out of the Premises for the bed bug treatments.

3. The Court requests that Holyoke Board of Health have a Code Inspector inspect the Premises for compliance with the State Sanitary Code after January 22, 2024 and before the next court date of February 2, 2024. If a Code Inspector cannot inspect within that time frame, each party shall document the condition of the Premises with photographs and/or brief videos (no more than 20 seconds each) and bring them to the next court date.
4. The parties shall return for review on **February 6, 2024 at 9:00 a.m.**

SO ORDERED.

DATE: January 16, 2024

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

cc: City of Holyoke Board of Health
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3817

SPRINGFIELD HOUSING AUTHORITY,

PLAINTIFF

v.

CARMEN ALBERTORIO AND
OVIDIO BURGOS,

DEFENDANTS

ORDER GIVING ADDITIONAL AUTHORITY TO GAL

This for-cause summary process case came before the Court on January 16, 2024 for review. Defendants did not appear; however James Taylor Brown, their guardian ad litem ("GAL"), appeared and requested the authority to retain Community Legal Aid ("CLA") on behalf of Defendants. He represented that the purpose of retaining counsel is to protect Defendants' subsidized tenancy given that the lease violations underlying this case involve the conduct and unauthorized occupancy of their son. In light of the foregoing, the following order shall enter:

1. The GAL is authorized to retain CLA on behalf of Defendants. This limited authorization does not permit substituted judgment in any other context without further Court order.
2. The parties shall return for review on February 9, 2024 at 2:00 p.m.

SO ORDERED.

DATE: January 16, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-2915

3 CHESTNUT, LLC,

Plaintiff,

v.

CAMILA RODRIGUEZ,

Defendant.

ORDER

After hearing on January 11, 2024, on the plaintiff landlord's motion for issuance of a new execution at which the defendant tenant failed to appear, the following order shall enter:

1. The landlord's motion is allowed due to the tenant's failure to fully comply with the terms of the court's order dated August 17, 2023.
2. A new execution may issue for $2,472 plus court costs.
3. Based on the tenant having been able to significantly reduce the outstanding balance from as high at $7,569 to its current amount, there shall be a stay on the

29 W.Div.H.Ct. 110

execution so long as the tenant pays her monthly going forward plus $400 additional towards the arrearage by the third week of each month beginning in February 2024.

4. This matter shall be dismissed upon the balance reaching $0.

So entered this 17th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-543

HILLTOWN COMMUNITY DEVELOPMENT CORPORATION,

Plaintiff,

v.

THOMAS SOWERS and MARYANNA BROMAN,

Defendants.

ORDER

After hearing on January 8, 2024, on one of the defendant's, Thomas Sowers, motion to enforcement the agreement at which all parties appeared, the following order shall enter:

1. Mr. Sowers' complaints are that Ms. Broman is banging on the door to his unit, often in the early hours of the morning (between 5:00 and 8:00 a.m.).
2. The court is not persuaded, however, by his testimony that Ms. Broman is banging on his door.

3. Not only his there no independent evidence supporting Mr. Sowers' belief, the Court finds Ms. Broman credible that she is doing no such thing.

4. Accordingly, the motion is denied.

So entered this 17th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-3507

MARLENE A. CHRISTY REVOCABLE TRUST,

Plaintiff,

v.

SHAMAYYA WASHINGTON,

Defendant.

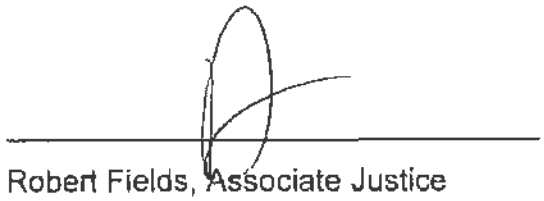
ORDER

After hearing on January 8, 2023, the following order shall enter:

1. The tenant has not completely complied with the terms of the August 2023 Agreement, but she has made some payments each month.
2. A representative from Way Finders, Inc. joined the hearing and confirmed that the tenant is eligible to apply for RAFT as of February 1, 2024.
3. The tenant shall apply for RAFT immediately after February 1, 2024.
4. The tenant shall pay her rent in full and timely, pending the RAFT application.
5. This matter shall be dismissed upon the rent balance reaching $0.

6. This matter shall be scheduled for review on **February 26, 2024, at 9:00 a.m.**

So entered this 17th day of January, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-1027

SUSAN TELUWO,

Plaintiff,

v.

HEIDI FLAHERTY,

Defendant.

ORDER

After hearing on January 8, 2024, on the defendant's motion to dismiss at which the plaintiff appeared *pro se* and the defendant appeared with counsel, the following order shall enter:

1. The defendant's motion is based on the argument that the plaintiff tenant's action filed pursuant to G.L. c.258E, which was heard and denied in the Eastern Hampshire District Court in November 2023 requires dismissal of this matter.
2. Though that case was between the same parties and likely arising out to the same facts, the burden of proof varies significantly from what is required in

obtaining a G.L. c.258E Harassment Prevention Order from what is required in obtaining injunctive relief in this Housing Court complaint. More specifically, the standard of proof for "harassment" in the G.L. c.258E proceedings requires "3 or more acts of willful and malicious conduct aimed a specific person committed with the intent to cause fear, intimidation, abuse or damage to property..." whereas injunctive relief in a civil action does not[1].

3. Accordingly, the motion to dismiss is denied and this matter shall be scheduled for an evidentiary hearing in the Hadley Session on **February 12, 2024, at 9:00 a.m.**
4. Additionally, by agreement of the parties pending further order of the court, there shall be no direct communication between the parties and the defendant agreed to have her assistant communicate---when necessary---with the plaintiff tenant.

So entered this 17th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] The court can appreciate the defendant landlord's position and, perhaps, frustration as they had motioned the District Court to remove the action to the Housing Court and then defended it and prevailed in those proceedings. That said, however, the processes and remedies differ so significantly between the two actions that the plaintiff should not be denied her right to be heard in seeking injunctive relief in the Housing Court.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 24-CV-0022
NATASHA MOYA, PLAINTIFF v. ANA REYES, DEFENDANT	))))))))) ORDER

This case came before the Court on January 18, 2024 on Plaintiff's emergency motion for injunctive relief. Only Plaintiff appeared. Defendant was served with notice of the hearing by deputy sheriff on January 16, 2024.

Based on Plaintiff's testimony, the Court finds that Plaintiff did not vacate or voluntarily surrender her apartment at 189 ½ Quincy Street, Springfield, Massachusetts (the "Premises"). The Court further finds that Plaintiff cannot return to the Premises because Defendant has allowed others to take possession. Plaintiff was able to retrieve some of her belongings from the new occupants but continues to have items stored in the basement.

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

1. Defendant must appear for further hearing on Plaintiff's claim of an illegal lockout on **January 30, 2024 at 2:00 p.m.**

2. Defendant may not dispose of Plaintiff's items stored in the basement and must reasonably permit Plaintiff access to the basement to retrieve her personal belongings.

SO ORDERED.

DATE: January 18, 2024

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4951

CARL WARNER,

Plaintiff,

v.

CHRISTOPHER and ERIN WOLCOTT,

Defendants.

ORDER

This matter came before the court for trial on January 8, 2024, at which the plaintiff landlord appeared with counsel and the defendant tenants appeared *pro se*. After trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Carl Warner (hereinafter, "landlord") owns a two-family dwelling at 54 N. Maple Street in Florence, Massachusetts. The defendants, Christopher and Erin Wolcott (hereinafter, "tenants") have resided in the second-floor unit (hereinafter, "premises" or "unit") since September 2015.

On or about August 21, 2023, the landlord served the tenants with a rental period no-fault termination notice and thereafter with a summary process summons and complaint. The tenants filed and served an Answer to the complaint, asserting defenses and counterclaims which include violations of the warranty of habitability, breaches of the covenant of quiet enjoyment, and violations of the security deposit law.

2. **The Landlord's Claim for Possession:** The parties stipulated to the landlord's *prima facie* case for possession, having stipulated to the receipt of the no-fault notice to quit and that there is no outstanding rent, use, or occupancy.
3. **The Tenants' Claims:** Having stipulated to the landlord's claim for a no-fault eviction, what remains for the court's adjudication are the tenants' counterclaims and inasmuch as they act as defenses to the award of possession.
4. **Breach of the Covenant of Quiet Enjoyment:** The tenants testified that there is insufficient heat throughout the premises and no heat at all in the bathroom. The heat in the unit (but not the bathroom) is on the same thermostat at the landlord's heating system. The tenants described that since the landlord had repairs made to the furnace approximately two years ago, they have had insufficient heat throughout the unit. The tenants believe that the landlord "turns the heat off at night" and generally does not keep the heat at the temperatures required by law. The landlord testified credibly that he keeps the heat, which is the same heating system for his unit, at the levels required by law. In regards to the bathroom heat, there appears to be a separate heating unit that is controlled

by a lever on the unit and it is unclear from the parties' testimony why the lever on the bathroom unit was left too low at various times.

5. Though the court finds the tenants credible in their testimony that they feel like the heat does not keep their unit sufficiently warm (they feel cold much of the time in the unit), they were not able to provide evidence for the court to find that--other than the one occasion when the city inspected the premises on December 6, 2022---the temperature in the unit was below what the law requires. As such, the court finds and so rules that the tenants failed to meet their burden of proof on their claim that the landlord breached their covenant of quiet enjoyment by failing to provide sufficient heat or that it was the fault of the landlord that the bathroom heat was off at any time.
6. The tenants also claim that the landlord has entered the premises without permission. The landlord denied ever entering the unit without permission. The court finds and so rules that the tenants failed to meet their burden of proof on this allegation, as well.
7. Based on the above, the tenants did not meet their burden of proof on their breach of the covenant of quiet enjoyment claim.
8. **Warranty of Habitability:** Though the city's Correction Order identified several items of disrepair, which were repaired immediately, the court finds and so rules that these conditions were *de minimus* and finds that the warranty of habitability was not beached by the landlord.
9. **Retaliation:** On December 6, 2022 (over one year ago) the tenants had the city inspectors inspect the premises and city issued an Correction Order regarding

the heat. Two weeks after the city sent the Correction Order, the landlord had the tenants served with a no-fault notice to quit.

10. Reprisal constitutes a defense, G.L. c.239, s.2A and counterclaim, G.L. c.186, s.18, to a landlord's eviction case. The sequence and timing of events which occurred between the parties gives rise to a presumption that the landlord's action was reprisal against the tenants for their protected activities of complaining to the city and having the city inspect the premises and issue a written citation regarding the lack of heat under G.L. c.239, s.2A.

11. The presumption of reprisal may be rebutted only by "clear and convincing" evidence that the landlord had "sufficient independent justification" for taking such action, and "would have in fact taken such action, in the same manner and at the same time," G.L. c.239, s.2A and G.L. c. 186, s. 18, irrespective of the tenant's protected activities. The landlord testified that the reason for the termination notice was because he had been thinking for a period of time to have the unit vacant so that he could relocate his aging mother into that unit. Though the landlord thereafter chose not to pursue an eviction based on that December 2022 Notice to Quit, he then had them served one year later for that very reason.

12. The landlord has not rebutted the presumption of reprisal. At a time when the tenants had been living at the premises for seven years and owed no rent, the landlord chose to terminate the tenancy within two weeks of the city's inspection to terminate their tenancy so that his mother could move in. Then, even though he is still interested in having his mother relocate to the premises, he did not terminate the tenancy for another year ostensibly for that same reason.

13. Having found that the December 2022 termination notice was a retaliatory act under the statute, he is liable for between one and three months' rent. The court shall use its discretion to award of one month's rent for a damage claim totaling **$940**.

14. **Security Deposit Laws:** In August 2023, just prior to the Notice to Quit upon which this eviction action is based, the landlord sent a check to the tenants in the amount of the security deposit plus the interest it accrued since it was deposited at the commencement of the tenancy. By returning the deposit plus interest prior this this litigation, there is no need for the court to further address this claim. Additionally, though the tenants asserted a claim of violation of the last month's rent laws in their Answer, they did not address said claim during this trial.

15. **Conclusion and Order:** Based on the foregoing, and in accordance with G.L. c.239, s.8A, judgment shall enter for the tenants for possession plus $940 on their claim of retaliation.

So entered this 18th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0317

CHRISTOPHER GUZ AND ANGELA GUZ,

PLAINTIFFS

v.

HAYASTAN INDUSTRIES,

DEFENDANT

This civil damages case came before the Court for a bench trial on October 11, 2023. Both parties appeared through counsel. Defendant ("Hayastan") owns and operates Bircham Bend Mobile Home Park located at 93 Grochmal Avenue, Indian Orchard, Massachusetts. Plaintiffs (the "Guzes") occupy a manufactured home on Lot 119 (the "home"). .

The Guzes are the former owners of the home. After foreclosure, Leominster Credit Union conveyed the home to Hayastan in March 2020. Once Hayastan became the owner of the home, it sought to evict the Guzes, initially on a no fault basis (Docket No. 20H79SP001266). The Court found in favor of the Guzes because Hayastan, in addition to owning the home, operated the manufactured housing community, and the Court reasoned that Hayastan, as a park operator, could only evict the Guzes for the statutory reasons set forth in G.L. c. 140, § 32J.

Hayastan commenced a second summary process case (22H79SP000673), this time for nonpayment of rent and/or use and occupancy. In ruling upon the Guzes' motion for summary judgment, the Court reflected on its earlier decision and concluded that Hayastan was acting in the role of homeowner, not park operator, and § 32J is inapplicable in this case because it protects homeowners facing foreclosure from manufactured housing communities, not occupants of a home owned by someone else. The Court dismissed Hayastan's claim for possession, however, on other grounds, namely that the monthly rent of $1,000.00 demanded by Hayastan had never been agreed to by the Guzes or specifically ordered by the Court, and therefore could not serve as the basis for an eviction action based on nonpayment. The Guzes' counterclaims were transferred to this civil case for adjudication.

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 the time Hayastan became the owner of the home, it had no landlord-tenant relationship with the Guzes. The evidence (namely, the rent ledger included with the entry package) shows that, beginning in October 2020 and continuing through December 2020, the Guzes paid and Hayastan accepted $217.00 per month. Throughout 2021, the Guzes paid $214.12, $214.02 or $214.78 for each month in 2021.[1] The amount paid by the Guzes was roughly equivalent to the amount of lot rent they paid each month when they owned their home. It is obvious that the rental

[1] Based on the number of months each of these amounts was paid, the Court will use the figure of $214.19 per month, which is the average of the rent paid each month in 2021.

value of the home exceeded this amount; nonetheless, the evidence shows that Hayastan accepted the initial payments without a reservation of rights.[2]

When tenants at sufferance (which was the Guzes' status immediately after Hayastan purchased the home) tender a monthly rental amount and the owner accepts the payment without reservation, a new agreement for continued occupancy is made and a tenancy at will is created. *See Bank of New York Mellon v. King*, 485 Mass. 37, 49 n.11 (2020) *citing Staples v Collins*, 321 Mass. 449, 451 (1947) ("tenancy at sufferance is readily changed into a tenancy at will," and "payment and acceptance of rent, standing alone, are prima facie proof of the creation of a tenancy at will"). Although there was not a meeting of the minds as to the formation of a tenancy at the same rate as the lot rent, the burden was on Hayastan to inform the Guzes that it was not intending to establish a new tenancy when the Guzes paid and it accepted the monthly payments. By accepting the payments, Hayastan established a tenancy at will at a monthly rent that was well below the $1,000.00 per month it demanded in its notice to quit.

Hayastan's conduct in demanding significantly more rent than was owed constitutes an unfair and deceptive trade or practice under G.L. c. 93A. The Guzes are therefore entitled to an award of actual damages or $25.00, whichever is greater. Angela Guz testified as to the emotional distress she suffered as a result of Hayastan's demand that she and Christopher pay over $18,000.00 or else face eviction. The Court finds that Ms. Guz was well aware that Hayastan was seeking to evict her family based

[2] Hayastan's first notice to quit in December 2020 included a statement that monies paid after the notice would not establish a new tenancy, but Hayastan accepted several payments prior to serving the first notice to quit.

on the two separate summary process cases that had been brought since Hayastan purchased the home. She defeated Hayastan's first case seeking possession in 2021 and has been able to reside in the home since then. Ms. Guz could not have thought that she was in imminent danger of losing her home after receipt of the second notice to quit. She had access to legal counsel (the same law firm that represented her when she prevailed in the first summary process case) and she knew that she could contest Hayastan's claim to recover possession of the home, and that she would be able to reside in the home for the duration of the litigation. Her testimony as to emotional distress is simply not credible. Accordingly, the Court awards the Guzes $25.00, plus reasonable attorneys' fees and costs.

The Court finds that Hayastan's conduct was a willful and knowing violation of the law, despite Mr. Shahabian, Hayastan's principal, testifying that he thought it was reasonable to charge fair rental value based on the Court's order in the prior summary process case. The Court therefore doubles the c. 93A damages.

The Court further finds that Hayastan's actions constitute a substantial interference with the Guzes' tenancy at will in violation of G.L. c. 186, § 14. Hayastan is thus liable for actual and consequential damages, or three month's rent, whichever is greater, as well as reasonable attorneys' fees and costs. *See* G. L. c. 186, § 14. Given that the Court finds that the Guzes suffered no actual damages, it awards statutory damages in the amount of $642.57, plus reasonable attorneys' fees and costs.[3]

[3] This amount is calculated using the figure of $214.19 per month (see footnote 1).

Because both claims arise from the identical set of facts, the Guzes are not entitled to duplicate damages, but instead are only entitled to damages for the claim that results in the greatest award. In this case, the statutory damages provided pursuant to G.L. c. 186, § 14 give the Guzes the largest recovery.

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

1. Plaintiffs are entitled to damages in the amount of $642.57, plus reasonable attorneys' fees and costs.
2. Before a final judgment enters, Plaintiffs' counsel shall have fifteen (15) days from receipt of this order to file a petition for reasonable attorneys' fees and costs, along with supporting documentation. Defendant 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 and enter final judgment.

SO ORDERED.

DATE: January 19, 2024

By: 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. 22-CV-0502
MICHAEL FILAMONTE AND DEBRA OLSEN, PLAINTIFFS	)))))	
v.	)	ORDER FOR ENTRY OF JUDGMENT
JAMES TURNBERG, DEFENDANT	))))	

This matter came before the Court on September 20, 2023 for a bench trial on damages. The parties appeared self-represented. Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court makes the following findings of fact:

1. On August 15, 2019, James Turnberg (the "landlord") entered into an agreement entitled Lease to Purchase Option Agreement (the "option agreement") with Michael Filamonte and Debra Olson (the "tenants") regarding residential property located at 48 Edmund Street, East Longmeadow, Massachusetts (the "premises").
2. Pursuant to the option agreement, the tenants had an exclusive option to purchase the premises commencing on September 1, 2019 and expiring on September 30, 2021 for a purchase price of $215,000.00. The tenants had to deliver written notice of their intent to purchase on or before July 1, 2021 and specify a closing date prior to September 30, 2021.

3. The tenants paid a non-refundable fee of $10,000.00 for the option, which fee was to be credited to the purchase price if they were not in default of the terms of the lease.[1]
4. The tenants agreed to pay $1,600.00 per month for rent, due on the first of the month beginning in October 2019, with a five-day grace period for payment. According to the terms of the option agreement, the tenants would not be entitled to the $10,000.00 credit at closing if a single monthly payment was late.
5. The tenants paid the $10,000.00 option fee on August 15, 2019.
6. The option agreement permitted the tenants to renovate the left side of the basement with certain rights of approval and supervision reserved to the landlord.
7. On June 1, 2021, the tenants provided written notice of their intent to purchase the premises. They did not specify a closing date.
8. The parties communicated in writing throughout the next few months about the tenants' ability to obtain financing, the landlord's willingness to hold a mortgage, and the landlord's idea of using a trust to effectuate the sale. These communications extended into December 2021.
9. On January 10, 2022, the landlord informed the tenants that he no longer wished to move forward with the formation of the trust, but that he would give them the "right of first refusal to purchase the home" and obtain a

[1] The option agreement is written as though the parties would enter into a separate "Lease Agreement" but no such document was offered into evidence; accordingly, the Court concludes that the terms of the lease are those contained within the option agreement.

mortgage through conventional banking.[2] The landlord required the tenants to declare their intentions by January 17, 2022.

10. On January 16, 2022, the tenants declared that they were exercising their right to purchase and asked that the transaction be completed within 30 days. They informed the landlord that they would not pay any rent until the terms of the purchase were agreed upon.

11. On January 18, 2022, the landlord contacted an attorney purporting to represent the tenants regarding the purchase of the premises. He asked the lawyer for a proposed resolution of the matter within 30 days.

12. On February 2, 2022, the landlord served a no fault notice to quit, notifying them that the lease term had expired on September 30, 2021 and that he required them to vacate by March 4, 2022. The notice to quit was deemed defective by this Court[3] and on July 20, 2022 and the summary process case was dismissed. The tenants civil claims were transferred to the civil docket and form the basis of this action.[4]

13. On September 9, 2022, the parties entered into a court agreement whereby the tenants agreed to vacate the premises on or before October 1, 2022 and surrender the keys to the landlord.

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[2] It is not clear what the landlord meant by a right to first refusal under these circumstances, but it is not important for purposes of this case.

[3] The Court determined that the tenants had become tenants at will after September 2021 because the landlord accepted monthly rent payments, and therefore the landlord was obligated to provide a rental period notice.

[4] The landlord served a non-payment notice to quit in July 2022, but by the time that case came to trial in December 2022, possession was no longer an issue and the case was dismissed, with the parties' damages claims reserved for the instant action.

14. The tenants had not completed their move as of October 2, 2022. When the tenants returned to the premises to retrieve the balance of their belongings, they found that the locks had been changed. The tenants had no surrendered keys and had not abandoned the remaining belongings.[5]
15. The tenants claim that the items remaining in the premises had an aggregate value of over $3,600.00. The tenants arrived at that figure by estimating the purchase price of the items and reducing the value by 50% to account for age and usage. They did not place a value on sentimental items.
16. The tenants paid rent late in December 2021 (on the 20th), and on January 4, 2022 notified the landlord that they would not pay further rent.

So-called rent-to-own agreements for residential property are complex because they incorporate contractual obligations in the nature of an option to purchase as well as rental terms which must comport with Massachusetts landlord-tenant law. With respect to the option agreement, conditions for the exercise of an option require a strict degree of adherence. *See Westinghouse Broadcasting Co., Inc. v. New England Patriots Football Club, Inc.*, 10 Mass. App. Ct. 70, 73 (1980). A tenant exercising an option must strictly comply with its terms. *See Stapleton v. Macchi*, 401 Mass. 725, 729 (1988).

Here, the tenants were required to provide written notice of their intent to purchase by July 1, 2021, which they did, and the notice had to specify a closing date prior to September 30, 2021, which it did not. Nonetheless, the landlord did not terminate the option based on this omission. In fact, the landlord continued to negotiate

[5] The landlord testified that he was informed by the East Longmeadow Police Department to change the locks. The police do not determine who has legal possession to residential property.

with the tenants regarding potential financing options well beyond September 2021. In fact, as late as January 10, 2022, he gave the tenants additional time to purchase the premises using a conventional mortgage and offered to honor the $10,000.00 credit if the tenants decided to move forward with the purchase. The landlord's actions constitute a waiver of his right to demand strict compliance with the term of the option agreement requiring a closing date prior to September 30, 2021.

On January 16, 2022, the tenants informed the landlord that they were exercising their right to purchase the premises within thirty days. Had the landlord permitted the process to continue, as he offered to do, and had the tenants obtained financing and closed on the transaction within 30 days, they would have been entitled to a $10,000.00 credit. The landlord should not be able to end the tenants' option rights prematurely and also keep the $10,000.00 fee. Therefore, because the landlord extended the option period and subsequently terminated it during the extension period, the Court rules that the tenants are entitled to recovery of the option fee.

Any monies owed the tenants has to be offset by monies they owe the landlord. By the terms of the option agreement, the tenants agreed to pay rent in the amount of $1,600.00 per month for the duration of time they resided in the premises, separate from their rights and obligations related to the option to purchase. They did not pay rent from January 2022 through September 2022, and therefore the landlord is entitled to $14,400.00 in unpaid rent.

Turning to the parties' respective claims under landlord-tenant law, the Court dismisses the tenants' claim of retaliation as there is insufficient evidence to find that the landlord terminated the tenancy due to complaints as to the condition of the premises or as a result of the tenants exercising or threatening to exercise their legal

rights as tenants. Their threat to sue the landlord arose solely within the context of their contractual rights under the option agreement, and therefore the tenant rights set forth in G.L. c. 186, § 18 or G.L. c. 239, § 2A do not apply.[6]

With respect to their claim under G.L. c. 93A, the Court finds that the landlord willfully and knowingly violated Massachusetts law by changing the locks before the tenants surrendered their keys and without court order. By law, when tenants fail to vacate by an agreed-upon date, the landlord must obtain an execution (eviction order) from the Court to be served by a sheriff or constable. As a result of the landlord's unfair and deceptive practices, the tenants are entitled to between two or three times the amount of their actual damages, or $25, whichever is greater.[7]

The tenants bear the burden of proof in establishing actual damages, and although they presented a list of items they claim were left behind and disposed of by the landlord, they failed to provide credible evidence from which the Court can determine the value of their losses. For each item, the tenants listed an estimate of its original purchase price and then discounted the purchase price by 50% to account for age and condition. Based on only this evidence, the Court would be guessing as to the age and condition of each item and its value as of October 2022. Accordingly, in lieu of actual damages, the Court awards nominal damages of $25.00 for the landlord's violation of c. 93A.

Regarding the landlord's claims for damages other than unpaid rent, he contends that the tenants left the premises in a state of disrepair that precluded him from renting

[6] The Court also dismisses the tenants' security deposit claim (included in their answer) for lack of evidence that the tenants paid a security deposit (the $10,000.00 option fee is not a security deposit) and because they waived the claim by not raising it at trial.
[7] The Court finds that Defendant is engaged in trade or commerce as a landlord.

or selling it for two months. He provided no evidence in support of the claim that the condition of the home caused the delay, nor did he demonstrate that he would have been able to rent or sell the premises sooner had the tenants left the house in pristine condition. His claim for two months of rent after September 2022 is therefore denied.[8]

With respect to damages caused by the tenants, the landlord testified that the tenants drilled holes drilled holes through the sill, tore metal trim, removed a window, broke the garage door, destroyed the swimming pool and did unauthorized work in the basement. The landlord offered no evidence of the condition of the premises prior to the tenants taking possession, so the Court has no basis to determine the extent of damage caused by the tenants without speculating as to what amount of damages can be attributed to the tenants.

Regarding the unauthorized work performed in the basement, the landlord is in a stronger position. The option agreement required the tenants to provide the landlord with a scope of work for approval before starting the alterations. There is no evidence they did so, but there is also no evidence (other than an unsupported estimate that the unpermitted plumbing, along with all of the damages, warrants an award of damages in the amount of $15,000.00) of the actual damages caused to the landlord by the installation of unpermitted plumbing. Accordingly, based on the evidence presented, the Court cannot award the landlord damages for the harm done by the tenants at the premises.

[8] To the extent the landlord seeks to recover damages incurred in removing the tenants' belongings, such as the truck and tires outside, he removed these items before the tenants surrendered possession. Had he not done so, it is likely the tenants would have removed these items at their own cost. The landlord is not entitled to reimbursement under these circumstances.

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

1. Defendant is entitled to unpaid rent in the amount of $14,400.00.
2. Plaintiffs are entitled to recover their $10,000.00 deposit, plus $25.00 in damages for Defendant's violation of G.L. c. 93A.
3. Judgment shall enter in favor of Defendant in the amount of $4,375.00.

SO ORDERED.

DATE: January 21, 2024

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-SP-3562
MARK GOLDMAN, PLAINTIFF v. OVADNEY THORINGTON, ET AL., DEFENDANTS	ORDER ON PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

This fault-based summary process case came before the Court on January 19, 2024 on Defendant's motion to stay use of the execution. The parties entered into an agreement whereby Defendant Thorington agreed to certain behavioral conditions, including cleaning her unit in order for it to pass a Board of Health inspection. Despite the Health Inspector's determination that the unit was not in a sanitary condition after visiting in early January 2024, Plaintiff has not yet had the execution served. Plaintiff owns the condominium unit where Ms. Thorington lives and has been getting fined for his failure to conduct roach exterminations. The exterminator will not treat the unit until it is in a safe and sanitary condition. Plaintiff now asserts that her unit has caused Defendant's unit and others to be infested with fruit flies.

Ms. Bryant from Tenancy Preservation Program ("TPP") reported that Ms. Thorington, who is elderly and disabled, cannot undertake the deep clean that is needed. She reported that Greater Springfield Senior Services, Inc. ("GSSSI") has agreed to do the deep clean and can provide weekly cleaning services. Ms. Thorington

cannot get the assistance she needs with cleaning until the roaches have been treated, and the roaches will not be treated until the unit is cleaned. After the hearing, the following order shall enter:

1. The motion to stay use of the eviction is ALLOWED.
2. The stay shall remain in place through January 30, 2024 to allow Ms. Thorington time to adequately prepare her unit for roach and fruit fly treatments. Ms. Thorington must remove all trash and food refuse that attracts roaches and fruit flies and must dispose of or appropriately store all other items that cause unsanitary conditions.
3. The Court requests that the Board of Health conduct an inspection at any time on January 29, 2024. Ms. Thorington must provide the inspector access to her apartment. Attorney Chavin shall give Ms. Bryant advance notice of the time of the inspection so that she can be present for the inspection.
4. The parties shall return for review on **January 30, 2024 at 9:00 a.m.**
5. If at the time of the next hearing, the Court is convinced that the unit is not in good enough condition for roach treatments, it will lift the stay on use of the execution.
6. If the unit is able to be treated for roaches, the Court will consider further extending the stay (although Ms. Thorington said she intends to move out by January 31, 2024).
7. Plaintiff may schedule the eviction prior to January 30, 2024 to occur after February 1, 2024; however, if the Court further extends the stay based on

Ms. Thorington's compliance with this order, it may not require her to reimburse Plaintiff for the cancellation fees.

SO ORDERED.

DATE: January 21, 2024

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

cc: West Springfield Board of Health
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 24-CV-0030
SHARON JACKSON, PLAINTIFF v. K.O.W., LLC, DEFENDANT	)	ORDER ON PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

After hearing on January 18, 2024 on Plaintiff's request for injunctive relief following a fire in her apartment, the following order shall enter:

1. Based on the condemnation of the apartment, 410 C.M.R. 900(E),[1] Defendant is ordered to provide Plaintiff with alternative housing through January 31, 2024.[2] Thereafter, given the Court's preliminary finding that the fire occurred due to the negligence of Plaintiff's adult daughter, Defendant shall have no further obligations to provide alternative housing.

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[1] 410 C.M.R. recites:

> When a residence or portion thereof has been condemned and placarded as unfit for human habitation and the occupant of a condemned dwelling unit or rooming unit is not the owner of the residence, the owner shall provide comparable, suitable housing for the occupant for the following time period, or whichever is shortest:
> (1) The remaining term of the lease or rental period;
> (2) Such time as the residence is deemed suitable for habitation by the board of health;
> (3) Such time as the occupant finds alternative, permanent housing and voluntarily terminates tenancy.

[2] The Court finds that The Heart of the Berkshires Motel to be an adequate location for the alternative housing.

2. Between today and January 31, 2024, Defendant shall provide reasonable access to Plaintiff to retrieve the balance of her belongings.[3]

SO ORDERED.

DATE: January 21, 2024

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

cc: Court Reporter

[3] Defendant previously rented a U-Haul and hired laborers to help Plaintiff pack much of her unit and moved the items to a storage unit.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0399

NADINE RODRIGUEZ,

PLAINTIFF

v.

NBM PROPERTIES,

DEFENDANT

ORDER ON PLAINTIFF'S MOTION TO COMPEL AND FOR SANCTIONS FOR FAILURE TO MAKE REPAIRS

This matter came before the Court on January 21, 2024 on Plaintiff's motion to compel and for sanctions for Defendant's failure to make repairs. Both parties appeared through counsel.

Despite previous orders to respond to discovery requests, Defendant has not provided responses to Plaintiff. Although ordered to do so by the Court's October 30, 2023 order, Defendant has not provided air quality test results provided to Plaintiff. With respect to repairs, some were completed by December 6, 2023, but the work was not entirely completed until December 14, 2023. After hearing, the following order shall enter:

1. Plaintiff's counsel may submit a petition for reasonable attorneys' fees for filing and arguing the motions to compel and the repeated motions for repairs.
2. With respect to fines, given that Defendant's recently retained counsel has not had an opportunity to understand all of the circumstances around the

repairs, the Court will schedule a separate evidentiary hearing for the determination of fines to be imposed between October 31, 2023 to December 14, 2023. The hearing shall be scheduled by the Clerk's Office after March 1, 2024.

3. Defendant shall produce the test results by January 26, 2024.

4. Defendant shall respond to discovery by February 15, 2024.

SO ORDERED.

DATE: January 21, 2024

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

cc: Clerk's Office (to schedule hearing on imposition of fines)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3618

CLIFF BILLET,

Plaintiff,

v.

MARC MANUEL,

Defendant.

ORDER

This matter came before the court for trial on January 8 and 17, 2024, at which the plaintiff landlord appeared with counsel and the defendant tenant appeared *pro se.* After hearing, the following findings of fact, rulings of law, and order of judgment shall enter:

1. **Background:** The plaintiff, Cliff Billet (hereinafter, "landlord") owns a single-family home located at 93 Nonotuck Street in Florence, Massachusetts (hereinafter, "premises" or "property"). The defendant, Marc Manuel (hereinafter, "tenant") has resided at the premises since approximately May 2020 with a

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monthly rent is $450. His bedroom is located in the basement at the premises and he also has access to the kitchen and bathroom and perhaps other rooms and spaces in the house. On or about May 25, 2023, the landlord had a rental period no-fault notice to quit delivered to the tenant and thereafter had the tenant served with a timely Summary Process summons and complaint. The tenant filed an Answer in which he asserts various claims arising out of the tenancy including breaches of the covenant of quiet enjoyment, breaches of the warranty of habitability, and challenges to the sufficiency of receipt of the notice to quit---all of which shall be addressed herein[1].

2. **The Landlord's Claim for Possession and for Unpaid Rent:** The initial part of the landlord's claim for possession is whether the tenant received the notice to quit (Notice) timely. The Notice's return of service indicates that it was left at the premises and mailed on May 25, 2023. The landlord testified credibly that the notice was posted on the door of the premises and the tenant ignored it for days after its delivery. The tenant testified that he did not receive it personally until June 4, 2023. Given the language contained in the Notice, that the tenant is to "quit and deliver up at the expiration of that month which beings next after your receipt of this notice the premises that you occupy..." Even if the tenant did not receive the Notice until June 4, 2023, the Notice terminated the tenancy as of August 1, 2023, and this Summary Process matter did not commence until after that time. Thus, the argument is not effective to find the Notice deficient.

[1] The tenant also asserted claims that the landlord charged him monies that were above and beyond the $450 rent when he first moved in, that he was denied reasonable accommodations, and that he provided driving services for the landlord that went uncompensated. The court finds and so rules that the tenant either did not prosecute these claims or did not meet his burden of proof on these claims.

3. The landlord asserts in their Pretrial Stipulation that $2,700 is outstanding in unpaid rent through January 2024. The tenant did not effectively dispute that this is the sum of unpaid rent, and the landlord shall be awarded **$2,700** in compensatory damages for unpaid rent through January 2024.
4. **Tenant's Claim of Breach of the Covenant of Quiet Enjoyment:** The tenant testified credibly that he is cold in his basement bedroom. He believes that the temperature in the basement is consistently below what is required by law. The landlord states that he believes the basement is consistently at the temperatures required by law, with two or three vents running off the furnace---one of which is directly above the tenant's bed. Though the court appreciates that the tenant is certain that the temperature is too cold, he did not meet his burden of persuasion on this issue (that the heat was not sufficient under the law).
5. The tenant also testified about a physical altercation between he and his landlord and claims that his landlord purposely banged the tenant's shoulder with his. The landlord recalls the event very differently and describes how it was the tenant that pushed his way past the landlord in a narrow hallway and their shoulders touched. The court appreciates that the tenant's shoulder and arm are very sensitive due to a bone density issue, but the court finds that the tenant did not meet his burden of persuasion on this issue (that the landlord purposely hit his shoulder against that of the tenant).
6. The tenant testified that the landlord is verbally abusive towards him and routinely blames the tenant for taking his personal belongings on many occasions when the landlord has misplaced his keys or cell phone. The landlord

admits that [redacted], he is often misplacing belongings and has often asked the tenant if he knows their whereabouts, as they share the same household, but denies ever blaming the tenant for taking these items. The court finds the tenant credible in describing these occurrences as threatening and hurtful but, again, the court finds that the tenant failed to meet his burden of persuasion that the landlord was verbally abusive towards him.

7. Lastly, regarding the tenant's claim for breach of quiet enjoyment, the tenant claims that the landlord has interfered with the tenant's receipt of mail. More specifically, the tenant alleges that due to the way the landlord has parked his vehicle it has prevented the mail delivery person to not deliver the mail. The landlord testified credibly that this may have happened two, three, or four times during the duration of this tenancy (but no more) and that it was inadvertent and corrected. Also, that any delay was only for a day, until the mail was delivered the next day. Again, the court finds and so rules that the tenant did not meet his burden of persuasion on this claim.
8. Accordingly, the tenant did not prevail on his claim for breach of the covenant of quiet enjoyment.
9. **The Tenant's Claim for Breach of the Warranty of Habitability:** There is no question that the sinks in the premises did not function properly. They were either clogged or leaking or both for the entirety of the tenancy. The tenant was instructed by the landlord that he could wash his dishes and his hands using the shower (which had a working drain). Also, in is undisputed that there is no

working oven. These conditions existed for the entirety of the tenancy and until the sink drains were repaired shortly prior to trial.

10. These conditions violate the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. There is no question that the landlord was fully aware of these conditions as he too described using tubs and basins to catch the water and then pour out the dirtied water into the toilet. It is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability. *Berman & Sons, Inc., v Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, 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, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991).
11. The court finds that the average rent abatement of 20% fairly and adequately compensates the tenant for the diminished rental value of the premises resulting from these conditions from the commencement of the tenancy throughout the tenancy. As such, the damages shall be for 44 months of 20% abatement, totaling **$3,960**.
12. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A, judgment shall enter for the tenant for possession plus **$1,260** in

compensatory damages after the award to the tenant is offset by the award for the landlord as detailed above.

So entered this 22rd day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-3050[1]

EDALE REALTY, LLC,

PLAINTIFF

v.

JOVANY GARCIA AND JARIELA CRUZ-CALIZ,

DEFENDANTS

This nonpayment of rent case came before the Court for a virtual trial (Zoom) on October 2, 2023.[2] Plaintiff appeared through counsel. Defendants appeared self-represented. Despite it being a summary process case, possession is no longer an issue as Defendants vacated the premises located at 213 Worthington Street, #3R, Springfield, Massachusetts (the "Premises") in early August 2023. Because all parties were present and ready for trial, rather than transfer the case to the civil docket and select a different trial date, without objection, the Court proceeded with trial on damages only.

[1] The case of 22SP3767, *Ed Kenney v. Jovany Garcia*, has been consolidated into this matter. In 22SP3767, the property manager commenced an eviction case against the tenants, who filed counterclaims. Given that the property manager was not the owner of the property, after being engaged, counsel filed a new action (23SP3050) to ensure the proper plaintiff was bringing the case, but rather than require the tenants to refile counterclaims, the cases were consolidated for trial.
[2] The Court granted the parties permission to appear by Zoom because Defendants moved to Florida after vacating the subject premises.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court makes the following findings of fact:

Monthly rent during all relevant times was $1,750.00. Defendants last paid rent in June 2022. The total amount unpaid through July 2023 (the last month of tenancy) is $22,750.00. In response to Plaintiff's claim for unpaid rent, Defendants filed a document entitled "Response to 14-day notice to quit" and a document called "Defendant's Request for Compensation." The Court considers these filings as Defendants' answer and counterclaims, and finds that Defendants claims relate to conditions in the Premises, including a lack of heat, leaks, drafty windows and gas and electrical issues.[3] In their filings, Defendants also referenced damages to their furniture and illegal bedrooms, but they did not testify at trial as to these issues. At trial, Defendants claimed that the unit had no gas service or other heating source, that the unit was cross-metered, and that there was a mold-like substance in the bathroom.

Defendants introduced two reports from the Springfield Code Enforcement Department ("Code Enforcement"). One, dated September 21, 2022, cites the living room ceiling, a kitchen cabinet door and broken garbage disposal, a missing stove door and the need to replace caulking around the bathtub. The other, dated May 11, 2023, also cited the living room ceiling, a mold-like substance in the bathtub, and the broken garbage disposal. Although much of Defendants' testimony at trial involved

[3] Defendant Cruz-Caliz also asserted claims related to lead paint poisoning. Her claims arise from her tenancy in a different unit in the same building (Unit 2R). She may bring claims against the landlord for the conditions in Unit 2R in a separate action. This action is limited to Defendants' tenancy in Unit 3R.

the absence of a heat source (gas) in the Premises and the need to use electrical space heaters, neither of the Code Enforcement reports mention issues with heat.

Although the evidence shows that Defendants used space heaters to heat the Premises and covered the windows with plastic, they failed to offer substantial testimony about cold temperatures in the Premises. They testified about a cold night or two, but did not convince the Court that they were often cold during the winter. Instead, they focused most of their testimony on claims that that the Premises had no heating source at all. There was conflicting testimony about whether the gas service was disconnected or not working, and whether there was a gas line running to the Premises. Almost all of the testimony provided by Defendants was based on inadmissible hearsay of individuals not called as witnesses. Given the lack of credible and admissible testimony by Defendants regarding the complete absence of a heating source in the unit, and the credible testimony of the individual who provided maintenance services at the Premises, and in light of the fact that Code Enforcement found no violations relating to heat, the Court finds that Defendants failed to prove by a preponderance of the evidence that there was no heating source (other than their own space heaters) in the Premises or that the allegedly drafty windows constitute a material violation of the State Sanitary Code.

Regarding Defendants claim of electrical cross-metering, all of the evidence presented at trial was based on hearsay (other tenants had little or no electricity bill as contrasted with their high bill). Defendants did not provide any credible admissible evidence to support their claim. Code Enforcement, despite inspecting the Premises five to seven times according to Defendants, made no mention of possible cross-

metering. Defendants did show a picture of a burned outlet that they claim occurred spontaneously, but they were unable to connect this incident to any other significant electrical problems in the Premises.

Regarding defective conditions in the bathroom, Code Enforcement did mention the need to replace caulking and a mold-like substance, which the Court infers are related (the caulking likely became dark-colored over time). However, Defendants did not show that the substance was in fact mold, that it affected them in any way, or that Plaintiff failed to promptly address the problem. In fact, the Court finds that Plaintiff renovated the entire bathroom after receiving complaints from Defendants.

Regarding leaks, Code Enforcement found water damaged ceilings and Defendants did demonstrate that there was at least one active leak in their unit or in the stairwell they use to enter and exit the unit. Based on the evidence, it is difficult to know whether the leaks were substantial violations of the State Sanitary Code 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). However, the fact that Code Enforcement cited Plaintiff in September 2022 and again in May 2023 for the same condition warrants a finding that Defendants are entitled to a rent abatement for at least that period of time. Given that the scope and severity of the leaks is less than clear, the Court will abate the

rent by 5% for the nine month period in question. The total amount of the rent abatement for this condition is $1,575.00.[4]

Defendants referenced "hundreds and hundreds" of text messages and photographs sent to Plaintiff, but few text messages and photographs were introduced into evidence, and those that were focus primarily on the issues relating to the heat. They called no witnesses with first-hand knowledge and relied extensively on hearsay statements. Given the lack of credible admissible evidence of complaints about conditions of disrepair, the Court declines to award damages other than for the leaks.

Based on all of the credible and admissible evidence, and in light of the governing law, the Court enters the following order:

1. Plaintiff is entitled to unpaid rent in the amount of $22,750.00.
2. Defendants are entitled to an offset of $1,575.00 on account of their claims.
3. Judgment shall enter for Plaintiff in the amount of $21,175.00, plus court costs.

SO ORDERED.

DATE: January 22, 2024

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

cc: Court Reporter

[4] Although Code Enforcement cited a broken garbage disposal over the same 9-month period, Defendants did not testify about this condition and the Court therefore infers that it did not rise to the level of a substantial violation of the Code or a significant defect in the Premises.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

HAMPSHIRE, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-481

WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE ON BEHALF OF SOUNDVIEW HOME LOAN TRUST 2007-OPT5, ASSET-BACKED CERTIFICATES, SERIES 2007-OPT5, **Plaintiff,** **v.** **RICHARD BARRY,** **Defendant,**	**ORDER**

This matter was before the Court on December 11, 2023, for Wells Fargo Bank, National Association as Trustee on Behalf of Soundview Home Loan Trust 2007-OPT5, Asset-Backed Certificates, Series 2007-OPT5's (Plaintiff) motion for summary judgment and Richard Barry's ("Defendant") cross motion. Both parties appeared represented by counsel. After hearing, the Court rules as follows:

1. **BACKGROUND AND PROCEDURAL HISTORY:** On January 28, 2019, Plaintiff filed this post-foreclosure summary process action seeking possession of 445 Michael Sears Road, Belchertown MA 01007 (the "Premises"). On February 22, 2019, acting self-

represented, Defendant moved to dismiss the case. Then on September 30, 2019, he filed a motion "to invalidate mortgage foreclosure sale." In his motion, relying on a decision of First Circuit Court of Appeals in *Thompson v. JPMorgan Chase Bank, N.A.*, 915 F.3d 801, 803-04 (1st Cir. Feb. 8, 2019), Defendant argued the 150-day notice of default was fatally deceptive for failure to accurately define the reinstatement date as 5 days before the foreclosure sale. On September 30, 2019, the Court heard and denied Defendant's motion.

2. On October 13, 2021, Plaintiff filed this motion for summary judgment.[1] In its motion, Plaintiff argued in part that it "did, in fact, send to Defendant all pre-foreclosure notices, including the notice of default pursuant to c. 244, § 35A ("Notice of Default"), prior to the commencement of foreclosure;" that "strict compliance was not required in this case based on the SJC's decision in *Pinti*;" and "Defendant's reliance on the First Circuit's decision in *Thompson* is no longer viable where the SJC recently decided that the default notices in the *Thompson* case were not inaccurate or deceptive." *See* Plaintiff's motion for summary judgment, pg. 2.
3. Plaintiff argues that it "has made its *prima facie* case showing its right to possession of the [Premises]," by the affidavit of Howard R. Handville ("Handville Affidavit") and attached exhibits. *See* Plaintiff's motion for summary judgment, pg. 5. Specifically, Plaintiff states that "[t]he summary judgment record establishes [Plaintiff] complied

[1] The parties filed a number of motions to continue in this case, starting from before the present motion was filed, before and after the Covid-19 eviction moratorium, and up to a rescheduled hearing in May 2022, until Plaintiff requested a hearing in this matter on November 10, 2023. The matter was heard on December 11, 2023.

with the publication and notice requirements of G.L. c. 244, § 14." *See* Handville Affidavit Ex. I.

4. Moreover, Plaintiff argues that Defendant's defenses fail as a matter of law. For example, Plaintiff states that "[t]he summary judgment record establishes that [Plaintiff] complied with Section 35A and paragraph 22 of the Mortgage by sending the requisite Notice of Default to the Defendant prior to commencing foreclosure." *See* Plaintiff's motion for summary judgment, pg. 9; Handville Affidavit Ex. D. Plaintiff continues, if somewhat contradictorily, that it substantially complied with paragraph 22 of the mortgage and that "strict compliance with paragraph 22 of a mortgage is only required *prospectively* for notices sent *after July 17, 2015*." *See* Plaintiff's motion for summary judgment, pg. 12. Finally, Plaintiff argues that *Thompson* invalidates Defendant's argument that the right to cure notice was deficient for failure to accurately reflect the reinstatement date (*i.e.* whether mortgagor must cure the default five days before the foreclosure sale or may do so up to the date of the foreclosure sale).

5. On November 19, 2021, Defendant, through counsel, filed his cross-motion for summary judgment. After the Supreme Judicial Court ("SJC") decision in *Thompson v. JP Morgan Chase Bank*, 486 Mass. 286 (2020), Defendant changed tack from his motion to dismiss, arguing that the notice of default *does* include the limiting language of the mortgage contract, and provides Defendant "the right to reinstate your account up to 5 days before the foreclosure sale of your home," as well as the more generous (and controlling) time period of G.L. c. 244, § 35A, and that internal contradiction is an

"irreversible and fatal defect." *See* Defendant's Memorandum of Law in Support of Cross Motion for Summary Judgment, pg. 2.

6. On November 8, 2023, Plaintiff filed its opposition to Defendant's cross-motion for summary judgment. In its opposition, Plaintiff argues that Defendant's defenses are barred by *res judicata*, at least in so far as they relate to alleged defects in the default notice. *See* Plaintiff's opposition to Defendant's cross motion for summary judgment, pgs. 1-6. Nevertheless, Plaintiff states that Defendant's challenges related to the default notice fail as a matter of law, despite *res judicata*. *See* Plaintiff's opposition to Defendant's cross motion for summary judgment, pg. 2. Specifically, Plaintiff argues, if contrarily to its prior motion for summary judgment, that the mortgage did not contain the typical paragraph 22 notice requirements, and so strict compliance was not the standard of that notice. *See* Plaintiff's opposition to Defendant's cross motion for summary judgment, pgs. 2, 6-8. Furthermore, Plaintiff states that even if the typical paragraph 22 was part of the mortgage contract, the default notice was sent prior the SJC decision in *Pinti*, and therefore substantial compliance was all that was required in any event. *See* Plaintiff's opposition to Defendant's cross motion for summary judgment, pgs. 2, 6-8. Plaintiff also maintains that the default notice in fact meets the requirements of G.L. c. 244, § 35A. *See* Plaintiff's opposition to Defendant's cross motion for summary judgment, pgs. 2, 8-10. Finally, Plaintiff completes the circle and argues that any surviving issue with the 2014 notice of default was mooted by a subsequent notice of default sent to Defendant on August 21, 2014. *See* Plaintiff's

opposition to Defendant's cross motion for summary judgment, pg. 10; Affidavit of PHH Mortgage Corporation ("Flanagan Affidavit"), Ex. 1.

7. At hearing, Defendant further argued that the September 20, 2018, "Notice of Intention to Foreclose and of Deficiency After Foreclosure of Mortgage," as addressed to "Richard G Barry as trustee of the Alliance Realty Trust," was fatally defective. Plaintiff objected to Defendant's ability to assert this argument more than two years after the original summary judgment motion was filed, where it had no opportunity to prepare counter-argument, and disputed the contention as a matter of law.

8. **STANDARD FOR SUMMARY JUDGMENT:** The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). *See* Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleadings, depositions, answers to interrogatories, admissions, documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976).

9. The party opposing summary judgment "cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." *LaLonde v. Eissner*, 405 Mass. 207, 209 (1976). To defeat summary judgment the non-moving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that

there is a genuine issue for trial." *Korouvacilis v. General Motors Corp.*, 410 Mass. 706, 714 (1991). "Conclusory statements, general denials, and factual allegations not based on personal knowledge [are] insufficient to avoid summary judgment." *Madsen v. Erwin*, 395 Mass. 715, 721 (1985), *quoting Olympic Junior, Inc. v. David Crystal, Inc.*, 463 F.2d 1141, 1146 (3d Cir. 1972).

10. "Summary process is a statutory cause of action that enables a person to recover possession of land that is acquired through a mortgage foreclosure sale." *U.S. Bank Nat. Ass'n v. Schumacher*, 467 Mass. 421, 428 (2014). *See* G.L. c. 185C, § 3. "In a summary process action for possession after foreclosure by sale, the plaintiff is required to make a *prima facie* showing that it obtained a deed to the property at issue and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded." *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). *See* G.L. c. 244, § 15. "Legal title is established in summary process by proof that the title was acquired strictly according to the power of sale provided in the mortgage; and that alone is subject to challenge." *Schumacher*, 467 Mass. at 428. *See Lewis v. Jackson*, 165 Mass. 481, 486–487 (1896) (to make prima facie showing of title, mortgagee only needs to prove that it obtained deed to property at issue, and that deed and affidavit of sale, showing compliance with power of sale, were duly recorded).

> If a plaintiff makes a prima facie case, it is then incumbent on a defendant to counter with his own affidavit or acceptable alternative demonstrating at least the existence of a genuine issue of material fact to avoid summary judgment against him. If a defendant fails to show the existence of a genuine issue of material fact in response to a motion for summary judgment by contesting factually a prima facie case of compliance with G.L. c. 244, § 14, such failure generally should result in judgment for the plaintiff.

Fed. Nat. Martg. Ass'n v. Hendricks, 463 Mass. 635, 642 (2012).

11. **UNDISPUTED FACTS:** On August 1, 2007, Defendant gave a mortgage on the Premises to Option One Mortgage Corporation for $250,000.00, recorded at the Hampshire County Registry of Deeds on August 8, 2007, Book 9227 pg. 307. *See* Handville Affidavit, Ex. A. The mortgage contract provides in part that;

> **18. Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17. . . .
>
> **21. Acceleration; Remedies. If any installment under the Note or notes secured hereby is not paid when due, or if Borrower should be in default under any provision of this Security Instrument, or if Borrower is in default under any other mortgage or other instrument secured by the Property, all sums secured by this Security Instrument and accrued interest thereon shall at once become due and payable at the option of Lender without prior notice, except as otherwise required by applicable law, and regardless of any prior forbearance. In such event, Lender, at its option, and subject to applicable law, may then or thereafter exercise the statutory power of sale and/or any other remedies or take any other actions permitted by applicable law. Lender will collect all expenses incurred in pursuing the remedies described in this Paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence.**
>
> **If Lender invokes the STATUTORY POWER OF SALE, Lender shall mail a copy of a notice of sale to Borrower, and to other persons prescribed by applicable**

> **law, in the manner provided by applicable law. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.**

12. *See* Handville Affidavit, Ex. A.

13. On April 15, 2008, Option One Mortgage Corporation assigned the mortgage to Plaintiff, recorded at the Hampshire County Registry of Deeds on April 28, 2008, book 9466, page 112. *See* Handville Affidavit, Ex. C. On March 27, 2014, Plaintiff, via Ocwen Loan Servicing, LLC., had sent to Defendant via first class mail to the Premises a notice titled "**150 DAY RIGHT TO CURE YOUR MORTGAGE DEFAULT.**" *See* Handville Affidavit, Ex. D. That notice states in part that Defendant missed certain mortgage payments; noted that amount past due, the time for repayment, method of repayment; highlighted the opportunity to contact foreclosure counselors and foreclosure prevention programs; listed other means to avoid foreclosure; and explained that failure to repay by date certain in the method described then "**you may be evicted from your home after a foreclosure sale.**" The letter further states that,

> Failure to cure the default on or before the date specified in this notice may result in acceleration of the sums secured by the Mortgage and sale of the Property. Even after the loan has been accelerated, you have the right to reinstate your account up to five days before the foreclosure sale of your home if you: 1) pay the total amount due plus any fees, costs and other amounts chargeable to your account under the terms of the loan documents including all expenses incurred in enforcing the terms of the loan documents such as reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purposes of protecting the mortgage holder's interest in the property and rights under the Mortgage.

See Handville Affidavit, Ex. D.

14. On August 21, 2014, Plaintiff sent Defendant another notice of default stating in part that "[y]our mortgage payments are past due, which puts you in default of your loan agreement," lists the amount owed as of August 2014, and contacts for housing counselors and legal assistance. *See* Flanagan Affidavit, Ex. 1. The letter further states the date by which payment must be made to prevent acceleration, the method of payment acceptable, and that "[y]ou have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure." *See* Flanagan Affidavit, Ex. 1. The letter continues, "[a]fter acceleration of the debt, but prior to foreclosure, you may have the right to reinstate the mortgage loan, depending on the terms of the note and mortgage. We encourage you to review the provisions of the note and mortgage."

15. On July 21, 2015, Shilundra Lidell, Contract Management Coordinator for Ocwen Loan Servicing, LLC as attorney in fact for Plaintiff, executed an "Affidavit Regarding Note Secured by Mortgage To Be Foreclosed MGL c. 244 sec. 35C," stating in part that Plaintiff is "the holder of the promissory note secured by the above mortgage." *See* Handville Affidavit, Ex. G. On July 22, 2015, Shulundra Lidell, further executed an "Affidavit Regarding Compliance with M.G.L. Ch. 244, sec. 35B," stating in part that "G.L. C244 Section 35B is not applicable to the above mortgage," recorded in the Hampshire County Registry of Deeds on August 27, 2015, at book 1204, pg. 307. *See* Handville Affidavit, Ex. F. On April 29, 2016, Plaintiff filed a complaint in the Land Court to determine military status, and it was ordered that Defendant is not entitled to the benefits of the

Servicemen's Civil Relief Act on July 19, 2016, recorded at the Hampshire County Registry of Deeds on December 6, 2018, book 13148, pg. 64. *See* Handville Affdiavt, Ex. E.

16. On July 19, 2016, Defendant filed a complaint and application for temporary restraining order, preliminary injunction, and declaratory relief, including 10 causes of action, challenging Plaintiff's ability to foreclose against Plaintiff and others, in the Land Court. *See* Declaration of Donald W. Seeley Jr. ("Seeley Declaration"), Ex. 1. On July 25, 2016, after hearing, the court denied the application for preliminary injunction, finding that, "because no notice of sale had been served or published, plaintiff did not have a risk of irreparable harm." *Barry v. Option One Mortgage Corporation*, Land Court No. 16-MISC-394 (February 2, 2017, Foster, J.). *See* Seeley Declaration, Ex. 1. In a thorough memorandum of decision and Order, the Land Court dismissed several *of* Defendant's claims against Plaintiff without prejudice, providing Defendant file an appropriately amended complaint within a prescribed time, and dismissed the remainder of the complaint with prejudice. *Id. See* Seeley Declaration, Ex. 1. Defendant did not file an amended complaint. *See* Seeley Declaration, Ex. 2. Specifically, when deciding the Defendant's request for declaratory relief, the Land Court considered the validity of the default notice under G.L. c. 244, §35A and stated that "[a]fter reviewing the Notice, it generally, if not strictly, complies with the requirements of § 35A." *Borry v. Option One Mortgage Corporotion*, Land Court No. 16-MISC-394 (February 2, 2017, Foster, J.). *See* Seeley Declaration, Ex. 1. Therefore, the Land Court concluded that, "[w]ithout [Defendant] pointing to any specific defect in the Notice which may prejudice his ability to remedy the default, there is no merit to Barry's contention that the § 35 notice was

defective." *Id.* The request for declaratory relief, of Count VII of the complaint before the Land Court, was ultimately dismissed with prejudice. *See* Seeley Declaration, Ex. 2.

17. On September 20, 2018, Plaintiff sent Defendant a "Notice of Intention to Foreclose and Of Deficiency After Foreclosure of Mortgage," stating in part that,

> [t]he Borrower is hereby notified, in accordance with the statute, of our intention, on or after October 23, 2018 to foreclose under power of sale for breach of condition, and by entry, that certain mortgage ("Mortgage") held by the undersigned covering the premises known and numbered as 445 Michael Sears Road, Belchertown MA dated August 1, 2007 and recorded with the Hampshire County Registry of Deeds at Book 9227, Page 307 to secure a note or other obligation signed by you, for the whole, or part of which you may be liable to the undersigned in the case of a deficiency in the proceeds of the foreclosure sale.

18. *See* Handville Affidavit, Ex. H. That notice was addressed to "Richard G. Barry as trustee of the Alliance Realty Trust" and sent to the Premises. An identical notice was sent to the Premises on the same day, addressed to Richard G Barry. *See* Affidavit of Orlans PC, executed by Lead Foreclosure attorney Jamie Welch, Esq. ("Welch Affidavit"), Ex. 1.

19. On October 5, 2018, Plaintiff executed a foreclosure deed, granting title to the Premises to Plaintiff for consideration of $294,000.00, recorded at the Hampshire County Registry of Deeds book 13148, pg. 68 on December 6, 2018. *See* Handville Affidavit, Ex. I. Also attached to the foreclosure deed is an Affidavit of Sale, executed on December 5, 2018, by Jamie Welch, Esq., Employee, Authorized Signatory, Real Property of Orlans PC, stating in pertinent part that "this office caused to be published on the 2nd day of October , 2018, on the 9th day of October 2018, and on the 16th day of October 2018, in the Daily Hampshire Gazette, a newspaper with general circulation in Belchertown," and "complied with Chapter 244, Section 14 of Massachusetts General Laws, as amended, by mailing the required notices by certified mail, return receipt requested and also gave the Internal

Revenue Service notice by mailing Notice of Sale pursuant to Section 7425(c) of the Internal Revenue Code." *See* Handville Affidavit, Ex. I.

20. On October 29, 2018, Anel Hernandez, Contract Management Coordinator for Ocwen Loan Servicing, LLC, as attorney in fact for Plaintiff, executed an "Affidavit Regarding Note Secured By Mortgage Being Foreclosed," stating in part that as of the dates when Notices of Sale relating to the mortgage at issue were mailed and published, pursuant to M.G.L. Chapter 244, Section 14, up to and including the Foreclosure Sale Date, Foreclosing Mortgagee was the holder of the promissory note secured by the above mortgage," recorded at the Hampshire County Registry of Deeds, Book 13148, page 72 on December 6, 2018. *See* Handville Affidavit, Ex. J. On October 29, 2018, Karen Peterkin, Contract Management Coordinator for Ocwen Loan Servicing LLC, as attorney in fact for Plaintiff, executed an "Affidavit of Compliance with Mortgage Notice Provisions and Conditions Precedent to Acceleration and Sale," or a "*Pinti* Affidavit," stating in pertinent part that "Notice(s) of Default to Mortgagor(s) was/were sent on or before July 17, 2015," recorded at the Hampshire County Registry of Deeds, book 13146, pg. 71 on December 6, 2018. *See* Handville Affidavit, Ex. K.

21. **DISCUSSION:** The Plaintiff has satisfied its *prima facie* case. *See* Handville Affidavit, Ex. I; *Bailey*, 460 Mass. at 334; *Schumacher*, 467 Mass. at 428; *Lewis*, 165 Mass. at 486–487 (1896). Plaintiff submitted affidavits with its motion for summary judgment including certified copies of the foreclosure deed from Plaintiff to Plaintiff and an affidavit of sale stating compliance with statutory requirements. *See* Handville Affidavit Exhibit I. The burden then shifts to Defendant to show by admissible evidence at least the existence of

a genuine issue of material fact to avoid summary judgment against him. *Hendricks*, 463 Mass. at 642.

22. Defendant's arguments are based on the undisputed summary judgment record and fail as a matter of law. Specifically, Defendant asserts two main arguments in his defense to possession. First, in a clever inverse of the *Thompson* argument, and cutting against the position first asserted in his initial motion to invalidate the foreclosure, Defendant asserts in his opposition and cross-motion that the inclusion of the 5 day pre-foreclosure deadline to cure the default and reinstate the mortgage rendered the notice fatally deceptive. Where the *Thompson* court makes clear that the more generous deadline applies in Massachusetts, Defendant contends that the SJC decision in *Thompson* invalidates the foreclosure. Second, Defendant asserted at hearing that inaccurately naming the mortgagor in the notice of sale was fatally defective. Both arguments fail as a matter of law, and without any allegation amounting to a genuine dispute of material fact, Plaintiff's motion for summary judgment must be allowed.

23. The Court finds that Defendant's challenges related to the March 2014 notice of default are barred by *res judicata*. The term "*res judicata*" includes both claim preclusion and issue preclusion. *See Heacock v. Heacock*, 402 Mass. 21, 23 n.2 (1988); *Duross v. Scudder Bay Capital, LLC*, 96 Mass. App. Ct. 833, 836–837 (2020). "Claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and prevents relitigation of all matters that were or could have been adjudicated in the action." *See O'Neill v. City Manager of Cambridge*, 428 Mass. 257, 259 (1988), *quoting Blanchette v. School Comm. of Westwood*, 427 Mass. 176, 179 n.3 (1998). *See also Kobrin v. Board of Registration in*

Medicine, 444 Mass. 837, 843 (2005). Claim preclusion aims to prevent piecemeal litigation and is based on the idea that the party to be precluded has had the incentive and opportunity to litigate the matter fully in the first lawsuit. *See Heacock*, 402 Mass at 24, *quoting Foster v. Evans*, 384 Mass. 687, 696 n. 10 (1981).

24. The invocation of claim preclusion requires three elements: (1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits. *See DaLuz v. Department of Correction*, 434 Mass. 40, 45 (2001), *quoting Franklin v. North Weymouth Coop. Bonk*, 283 Mass. 275, 280 (1933); *HSBC Bank USA, N.A. v. Palacio*, 98 Mass. App. Ct. 1118 (2020) (unpublished); *Kobrin*, 444 Mass. at 843. Similarly, issue preclusion "prevents relitigation of an issue determined in an earlier action where the same issue arises in a later action, based on a different claim, between the same parties or their privies." *Kobrin*, 444 Mass. at 843. Before precluding a party from relitigating an issue, "a court must determine that (1) there was a final judgment on the merits on a prior adjudication; (2) the party against whom the preclusion is asserted was a party (or in privity with a prior adjudication; and (3) the issue in the prior adjudication was identical to the issue in the current adjudication." *Id. quoting Tuper v. North Adams Ambulance Serv., Inc.*, 428 Mass. 132, 134 (1998). "Additionally, the issue decided in the prior adjudication must have been essential to the earlier judgment." *Tuper v. North Adoms Ambulance Serv., Inc.*, 428 Mass. 132, 134-35 (1998). "Issue preclusion can be used only to prevent relitigation of issues actually litigated in the prior action." *Id., citing Fidelity Mgt. & Research Co. v. Ostrander*, 40 Mass. App. Ct. 195, 199 (1996).

25. "Causes of action are the same for the purposes of res judicata when they grow[ ] out of the same transaction, act, or agreement, and seek[ ] redress for the same wrong. In other words, a party cannot avoid this rule by seeking an alternative remedy or by raising the claim from a different posture or in a different procedural form (citations and quotations omitted). *Palacio*, 98 Mass. App. Ct. at *3. Furthermore, "[r]es judicata principles prohibit parties from proceeding by way of 'piecemeal litigation, offering one legal theory to the court while holding others in reserve for future litigation should the first theory prove unsuccessful.'" *Palacio*, 98 Mass. App. Ct. at *4, *quoting Santos v. U.S. Bank Nat'l Ass'n*, 89 Mass. App. Ct. 687, 693 (2016).

26. The Court finds that the Land Court judgment in the prior action between the parties dismissing Defendant's request for declaratory judgment with prejudice is a final judgment based explicitly on the merits of the identical issue, growing out of the same transaction, of the validity of the notice of default and its impact on Plaintiff's ability to foreclose. Nevertheless, based on the SJC decision in *Thompson*, the Court concurs with the Land Court's decision, and further finds that the notice of default was not defective so as to invalidate the foreclosure sale as a matter of law.

27. In *Thompson*, the former mortgagors argued, essentially, that because the mortgage provided for reinstatement of the mortgage up to five days prior to foreclosure sale, and the 35A notice provided that reinstatement could be made up until the foreclosure sale, such conflicting information was misleading, potentially deceptive, and therefore rendered the foreclosure sale void. The U.S. Court of Appeals ("First Circuit") held that the notice "was potentially deceptive because it 'could mislead the [plaintiffs] into

thinking that they could wait until a few days before the sale to tender the required payment.'" *Thompson*, 486 Mass. at 290-91. Upon reconsideration, the First Circuit set aside its decision and certified the relevant question to the SJC. *Id.* at 291.

> Did the statement in the August 12, 2016, default and acceleration notice that 'you can still avoid foreclosure by paying the total past-due amount before a foreclosure sale takes place' render the notice inaccurate or deceptive in a manner that renders the subsequent foreclosure sale void under Massachusetts law?

28. *Thompson*, 486 Mass. at 287-88.

29. The SJC recognized the importance of strict compliance with the power of sale because of the substantial power to foreclose in Massachusetts without judicial oversight, as a non-judicial foreclosure state. *Thompson*, 486 Mass. at 291. However, it reemphasized that "[t]his regime of strict compliance does not require a mortgagee to 'demonstrate punctilious performance of every single mortgage term.'" *Id.* at 292, *quoting Pinti v. Emigrant Mtge. Co.*, 472 Mass. 226, 235 (2015). For example, failure strictly to comply with notice requirements of G. L. c. 244, § 35A, does not render foreclosure void because G. L. c. 244, § 35A, is not part of foreclosure process. *See U.S. Schumacher*, 467 Mass. at 422. Ultimately, the SJC held that the notice in *Thompson* "satisfied the requirements of both G. L. c. 244, § 35A, and, at least facially, those of paragraph 22 of the plaintiffs' GSE Uniform Mortgage." *Thompson*, 486 Mass. at 292. While such hybrid notice must be accurate and not deceptive, the SJC stated that the *Thompson* notice was not deceptive "because we determine that the more generous reinstatement period provided under G. L. c. 244, § 35A, governs over the contractually imposed time limits on reinstatement articulated in paragraph 19 of the GSE Uniform Mortgage." *Id.* at 293.

30. The matter is even simpler in this case. The mortgage contract at issue here did not require any pre-acceleration notice of default "except as otherwise required by applicable law." *See* Handville Affidavit, Ex. A. Despite Defendant's argument that a notice including both the 5-day pre-foreclosure sale deadline for reinstatment of the mortgage and the later time prescribed by § 35A is facially deceptive, the Court finds that, as a matter of law, the circumstances amount to a mere distinction without a difference and does not alter the *Thompson* reasoning. In either case, "the scenario . . . . in which the [Defendant] would arrive three days prior to the sale, cash-in-hand, only to be rebuffed by [Plaintiff] pointing to paragraph [21], could not happen. [Plaintiff] would be obligated to accept such a reinstatement payment under Massachusetts law." *Thompson*, 486 Mass. at 294.

31. As in *Thompson*, Defendant does not allege that he attempted to make any such curative payment or was otherwise harmed by the discrepancy in the notice.

32. Defendant's argument at hearing regarding the notice of sale fares no better.[2] G.L. c. 244, § 14 requires in pertinent part:

> that no sale under such power shall be effectual to foreclose a mortgage, unless, previous to such sale, notice of the sale has been published once in each of 3 successive weeks, the first publication of which shall be not less than 21 days before the day of sale, in a newspaper published in the city or town where the

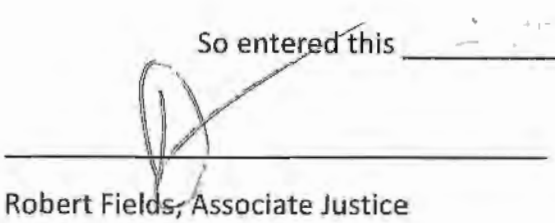
[2] Plaintiff objected to the Defendant's ability to assert its argument regarding the misnomer of former mortgagor on the notice of sale. The Court agrees and finds that where no Answer was ever filed in this matter, and the argument was raised for the first time more than two years after filing his initial cross-motion for summary judgment, Defendant is barred from relying on the notice of sale as a defense to possession by equitable estoppel. *See Renovator's Supply, Inc. v. Sovereign Bank*, 72 Mass. App. Ct. 419, 426–27 (2008) ("The essential elements of equitable estoppel are (1) [a] representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made; (2) [a]n act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made; and (3) [d]etriment to [the reliant] person as a consequence of the act or omission" (quotations omitted)). Nevertheless, the Court considers and rejects the argument on the merits.

land lies or in a newspaper with general circulation in the city or town where the land lies and notice of the sale has been sent by registered mail to the owner or owners of record of the equity of redemption as of 30 days prior to the date of sale.

33. G.L. c. 244, § 14. It is undisputed that Plaintiff published the requisite notice of sale in accordance with the statute, and that it sent Defendant notice of sale to the Premises for Richard G. Barry as trustee of the Alliance Realty Trust, and another to Richard G Barry. *See* Handville Affidavit, Ex. H; Welch Affidavit, Ex. 1. The Court finds as a matter of law that the notice to Richard G. Barry, individually, satisfies the former mortgagee's burden under G.L. c. 244, § 14. Moreover, the notice sent to the premises address to Richard G. Barry as trustee of the Alliance Realty Trust also complied with the statute and, even barring any other individualized notice, would not act to invalidate the foreclosure sale. *See Kiah v. Carpenter*, 89 Mass. App. Ct. 1113 (2016); *Hull v. Attleboro Sav. Bank*, 33 Mass.App.Ct. 18 (1992).

34. **CONCLUSION AND ORDER:** Based upon the foregoing, Plaintiff's motion for summary judgment is hereby **ALLOWED**. Accordingly, an order awarding possession to the Plaintiff shall enter. This is an order and not yet a judgment as there may remain other claims (for example: Plaintiff has a claim for use and occupancy in their complaint). This matter shall be scheduled for a Case Management Conference with the judge in the Hadley Session on **February 5, 2024, at 9:00 a.m.** to determine what claims remain, if any, in this matter.

So entered this _____ day of January 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate

Court Reporter