Western Division Housing Court
Unofficial Reporter of Decisions

Volume 3

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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. Presently, 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, and the local tenant bar:

Hon. Dina Fein, First Justice, *Western Division Housing Court*
Hon. Robert Fields, Associate Justice, *Western Division Housing Court*
Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*
Aaron Dulles, Esq., *Community Legal Aid*
Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

Messrs. Dulles and Vickery serve as co-editors for coordination and execution of this project.

OUR PROCESS
The Court has agreed to set 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 copies of decisions directly from advocates, which helps ensure completeness. When the editors have gathered a sufficient quantity of pages to warrant publication, they compile the decisions, review the draft compilation with the Court for approval, and publish the new volume. Within each volume, decisions are assembled in chronological order. The primary index is chronological, and the secondary index is per-judge (or clerk). The editors publish the volumes online and via an e-mail listserv. Additionally, the Social Law Library receives a copy of each volume. The volumes are serially numbered, and they generally correspond to an explicit time period. But, for several reasons, each volume may also include older decisions that had not been available when the prior volume was assembled.

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.

Exclusion by the Editors. The editors will exclude material if one or more of the following specific criteria are met:

1. Case management and scheduling orders.
2. Terse orders and rulings that, due to a lack of sufficient context or background information, are clearly unhelpful to a person who is not familiar with the specific case.
3. Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, and/or certain criminal activity. As applied to decisions involving guardians ad litem or the Tenancy Preservation Program, this means those decisions are not automatically excluded by virtue of such references alone, however they are excluded if they reveal or fairly imply specific facts about a party's mental health disability.

The editors make their decisions by consensus, applying their best good faith judgment. In certain circumstances, the editors will employ redactions during this process.

In certain circumstances, the editors may elect to confer further with the Court before deciding whether to exclude a decision based on references to confidential information (*e.g.*, information relating to minors, medical records, domestic-relations matters, substance use, and guardian ad litem reports) that might lead to the public disclosure of private facts. If the editors or the Court chose to exclude a decision after such a review, the editors will revise the exclusion criteria to reflect the principles that led to that determination.

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 anybody who wishes to receive new volumes by e-mail when they are released. Those wishing to sign up for the listserv should e-mail Aaron Dulles, adulles@cla-ma.org.

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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0C7A FBA2 099C 5300 3A25  9754 89A1 4D6A 4C45 AE3D
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CONTACT US

Comments, questions, and concerns may be raised to any person involved in this project. Out of respect for the Court's time, please direct such communications at the first instance to Aaron Dulles (adulles@cla-ma.org) and/or Peter Vickery (peter@petervickery.com).

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Hon. Dina Fein, First Justice

Hon. Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 18-CV-1273

JAMES M. PETTENGILL,

Plaintiff,

v.

CITY OF WESTFIELD PLANNING BOARD, et als.,

Defendants.

ORDER

After hearing on January 14, 2020, on the plaintiff's MOTION TO STAY TIME TO APPEAL, TO ALTER AND AMEND FINDINGS, TO RECONSIDER THE COURT'S RULING GRANTING SUMMARY JUDGMENT AND TO ENTER AN ORDER DENYING SUMMARY JUDGMENT AND SETTING PRETRIAL CONFERENCE, the following order shall enter:

1. Under Mass. R. Civ. P., Rule 52(b), the plaintiff's motion is late as it was filed beyond ten days after the entry of judgment and is denied. Additionally, that part of the plaintiff's motion for an extension of time to file an appeal is also denied.

2. To the extent that the plaintiff seeks relief under Mass. R. Civ. P., Rule 59, insufficient grounds are being asserted and such is also denied.

3. In addition to the denials noted above, the motion is baseless. The citation proffered by the plaintiff from the Westfield Zoning Ordinance Sec. 7-10.3 is inapplicable to the residential property that is the subject premises of this litigation. That ordinance pertains to parking lots and parking buildings and not residential parking spaces which is the subject of these proceedings and are addressed in Sec. 7-10.2.

4. Accordingly, the motion is denied and the judgment entered on December 23, 2019 shall remain in effect and final.

So entered this 27th of January, 2020.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
CIVIL ACTION NO. 20-CV-52

WITMAN PROPERTIES, INC.,
acting as a management agent for the
CITY OF SPRINGFIELD,
Plaintiff

v.

MONIQUE HORNSBY a/k/a MONIQUE BRUMFIELD
and MARIO HORNSBY SR.,
Defendants

ORDER

After hearing on January 24, 2020, at which the Plaintiff appeared by counsel and the defendants Monique Hornsby and Mario Hornsby Sr. appeared, the following agreed upon order shall issue:

a. The defendants shall allow the plaintiff or its agents and an inspector from the City of Springfield Code Enforcement Department access to the property to perform an initial inspection to determine if any emergency conditions exist at the property on Friday, January 31, 2020 at 12:00pm.

b. The defendants shall allow access to perform repairs if required after inspection, or for other purposes required by the plaintiff pursuant to its contract with the City of Springfield, upon reasonable advance notice, not less than 24 hours, to the defendants during the City of Springfield's ownership of the property.

c. The defendants shall allow the plaintiff or its agents access for monthly inspections with reasonable advance notice, not less than 24 hours, to the defendants during the City of Springfield's ownership of the property.

Date: January 24th, 2020

Dina E. Fein
First Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

TRIAL COURT OF MASSACHUSETTS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 18-SP-2340

THE COMMUNITY BUILDERS, INC.

Plaintiff,

vs.

ANAIS GARCIA,

Defendant.

ORDER

After hearing where both parties where present, over the Plaintiff's objection, the following is the order of the Court:

1. Plaintiff shall cancel the physical eviction scheduled for January 24, 2020.
2. The Defendant presently owes the Plaintiff a balance of $1,366.88 for unpaid use and occupancy through January 31, 2020 and cancellation charges of $580.00.
3. Use of the execution shall be further stayed upon the Defendant making the following payments to the Plaintiff's Management office by money order:

   $326.00 by January 24, 2020

   $500.00 by January 31, 2020

   $500.00 by February 14, 2020

   $946.88 by February 29, 2020

4. Use of the execution shall be further stayed upon Defendant paying use and occupancy starting in March 2020 in the amount $326.00, or any amount duly adjusted on or before

the 5th of each month until August 2020.

SO ORDERED:

Dated: January 30, 2020

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-4503

MILLIE O. DISLA,

Plaintiff,

v.

FRANK GOMEZ,

Defendant.

ORDER

This matter came before the court on January 14, 2020. The matter was marked for hearing on the plaintiff's motion for reconsideration at which both parties appeared. After hearing, the following order shall enter:

1. The plaintiff was accompanied by an out-of-state attorney, Alisha Mathers of Connecticut, who made a verbal request that the motion hearing be postponed for three weeks to afford her the opportunity to be able to enter an appearance *pro hac vici.*
2. The defendant appeared and opposed the request for a postponement, reporting that missing work for court events is causing a hardship.
3. The motion for a postponement is denied. The plaintiff did not seek, as an alternative, to have the motion for reconsidered heard *pro se.*
4. The Notice of Appeal filed with the court on December 17, 2019 shall be considered

timely filed.

5. The Clerks Office shall schedule this matter for a bond hearing.

6. The parties shall take notice of the Rules of Appellate Procedure and take the necessary steps to comply with the deadlines of same regarding the prosecution and defense of this appeal.

So entered this 30th of January 2020.

Robert Fields, Associate Justice

cc: Michael Doherty, Clerk Magistrate (for scheduling of a bond hearing)

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Franklin ss:

Housing Court Department
Western Division
No. 19-CV-1084

GREENFIELD BOARD OF HEALTH,

Plaintiff,

v.

DOUGLAS WHITE et al,
Defendant.

ORDER

After hearing on January 24, 2020, on review of this matter, for which the City appeared through counsel, the defendant owner appeared *pro se*, the defendant tenants Jackie Wilson (Wilson), Danny Ayala Cocano (Ayala) and Michael Laney appeared *pro se*, the following order shall enter:

1. The owner shall continue to provide a $75 per day food stipend, and alternative housing for Wilson and Ayala at the Red Roof Inn in South Deerfield pending further order of the court.
2. Ms. Wilson and Mr. Ayala shall contribute $450 towards the alternate housing at the Red Roof Inn (February 1, 2020 through February 3, 2020).
3. Ms. Wilson and Mr. Ayala shall continue to diligently search for alternate housing and keep a record of such efforts to report to the court at the next hearing noted below.
4. Ms. Wilson and Mr. Ayala shall provide Mr. White (owner) with updated information as

to their alternative housing search on a weekly basis.

5. Ms. Wilson and Mr. Ayala shall forthwith inform Mr. White upon securing alternate housing. Upon said information, Mr. White shall serve and file a motion to cease the obligation to provide them with alternative housing.

6. The previous court order dated January 17, 2020 shall remain in full force and effect.

7. This matter is scheduled for further review on **February 28, 2020 at 9:00 a.m. (Please note that this date is different from the discussed date on the record.)**

So entered this 30th of January, 2020.

Robert Fields, Associate Justice AM

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-4301

HOLYOKE FARMS REDEVELOPMENT, LLC,

Plaintiff,

v.

ORDER

LUZ TORRES,

Defendant.

After hearing on January 27, 2020 on the tenant's motion to stop a physical eviction, the following order shall enter:

1. The motion is allowed and the currently scheduled physical eviction shall be cancelled by the landlord.
2. The parties agree that $3,201 is outstanding in rent, use, and occupancy through January 2020, plus court costs of $188.71, plus $300 in sheriffs' fees associated with the now cancelled eviction.
3. The tenant shall pay the landlord $200 by January 31, 2020 and $200 each week thereafter.
4. The tenant shall pay her tax returns towards the outstanding debt within three (3) business days of receiving them or by March 15, 2020—whichever is first.
5. The tenant shall also pursue RAFT funds from Wayfinders for the arrearage.

6. The tenant reports that she was unemployed and that she will follow up with the landlord and the office that administers her subsidy to seek a lowering of her rent.

7. This case shall remain open for three (3) months after the balance is $0 to ensure timely and complete rent payments during that time.

8. At any time during the duration of this case, the landlord may obtain a renewed execution form the Clerks Office without further hearing, by returning the expiring one with a cover letter and affidavit—all to be copied to the tenant.

So entered this 30th of January, 2020.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 19-SP-1389

Summer Ave LLC,

Plaintiff

v.

Trevor Pitts and Diona Brodie,

Defendants

ORDER

After hearing on January 29, 2020 at which time both parties appeared, the following order is to enter:

1. The plaintiff (landlord) is ordered to provide the defendants (tenants) with alternative housing in the form of a motel/hotel room with a cooking facility until the heat is fully restored.

2. The landlord's obligation to provide alternative housing shall cease upon agreement of the parties, court order, or determination by the City of Springfield Code Enforcement Department that the heat is fully restored.

So entered this 30th day of January, 2020.

Dina E. Fein
First Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden ss:

Housing Court Department
Western Division
No. 19-SP-2906

BRVS LLC,

Plaintiff,

v.

SANDY GOODSPEED,
Defendant.

ORDER

After hearing on January 30, 2020, on the defendant's (tenant's) emergency motion to stop a physical eviction, for which both parties were present, the following order shall enter:

1. The defendant's (tenant's) emergency motion to stop a physical eviction is hereby allowed conditioned upon the tenant paying the landlord $1,600 by 9:00 a.m. on January 31, 2020.

2. The parties shall appear for further review on February 4, 2020 at 4:00 p.m. to discuss a payment arrangement regarding the rent arrears and outstanding costs.

So entered this 3rd of February, 2020.

Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, ss

Housing Court Department
Western Division
No. 19-SP-1928

WHALING PROPERTIES, LLC,
Plaintiff,

v.

AMANDA RATELLE,
Defendant

ORDER

After hearing on January 30, 2020 on the tenant's emergency motion to stay execution, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following agreed-upon Order shall enter:

1. The landlord shall stay the use of the execution contingent upon the tenant's compliance with the terms of this agreed-upon order. Should tenant fail to comply with the terms of this Order, the stay shall be vacated, and landlord shall be entitled to forthwith levy on the execution for possession without further order of this Court.

2. The debt owed to landlord through January 30, 2020 is $2,460.00 calculated as $1,460.00 past due lot rent through November 30, 2019, $350.00 December 2019 lot rent, + $350.00 January 2020 lot rent, + $300.00 sheriff fee.

3. The landlord shall have the right to maintain in its possession a valid execution for possession. As such, it can file with the Clerks Office a letter with an affidavit, along with the expiring execution (all copied to the tenant), and the Clerks Office will issue a new execution through June 30, 2020. by application every 90 days with copy to tenant

4. The tenant shall pay the landlord $300.00 no later than January 31, 2020. The $300.00 payment shall be made in hand to Mr. Josh Gendron, the property manager for Westover Mobile Home Community.

5. The tenant shall pay the landlord $350.00, representing the lot rental for the month of February 2020 (post-marked) no later than February 7, 2020.

6. The tenant shall remain current on her lot rent by making monthly payments (post-marked) on or before the first day of each month in the amount of $350.00.

7. Tenant shall pay the balance due landlord in the amount $1,760.00 within three (3) business days of tenant's receipt of her federal income tax return refund or by March 31, 2020, whichever is earlier. The tenant, in making the payment, shall provide proof of the date she received the tax refund and the amount of said refund.

9. The tenant has agreed that she will NOT seek further motions for a stay of execution if she fails to comply with the terms of this order.

10. Provided tenant has complied with the terms of this Order, the case shall be dismissed on July 1, 2020.

So entered this 4th day of ~~January~~ February, 2020.

Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-3840

L & D PROPERTIES and LEWIS GARREFFA,

Plaintiff,

v.

ORDER

CHRISTINE KANDROTAS and RYAN GONYEA,

Defendants.

After hearing on February 4, 2020, no the defendants' motion to enforce the January 9, 2020 Agreement, at which only the defendants appeared, the following order shall enter:

1. The plaintiff shall FORTHWITH and IMMEDIATELY pay the defendants the $800 it has agreed to pay them.

2. Per the Agreement, counsel for the plaintiffs shall call the defendant, Ms. Kandrotas and make arrangements to deliver said payment.

So entered this 5th of February, 2020.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 19-SP-5221

BC Palmer Green LLC,
Plaintiff
v.
Joseph Corriveau,
Defendant

ORDER

After a hearing on February 6, 2020 at which time the landlord and GAL appeared and the tenant did not appear, the following order is to enter:

1. By assent of the GAL, a default judgment shall enter in favor of the landlord. There shall be a stay on the use of the execution (eviction order) conditioned upon the GAL cooperating with the landlord to determine which if any belonging remaining in the unit should be transferred to the tenant.

So entered this 10th day of February, 2020.

Dina E. Fein
First Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 20-SP-393

CHARLES BRANTLEY,

Plaintiff,

v.

ORDER

MICHAEL GRIMES, ANGEL OYOLA, and TAISHA MONTANO,

Defendants.

After hearing on February 6, 2020, at which the plaintiff appeared through counsel and the defendants all appeared through the Lawyer for the Day, the following order entered on the record and is memorialized herein:

1. The defendants' motion for late filing of the Answer and for a Discovery Demand is allowed, and service of same was accomplished at the hearing.
2. The plaintiff shall provide his responses to said discovery by February 18, 2020.
3. The plaintiff has until February 12, 2020 to propound discovery upon the defendants and the defendants have until February 24, 2020 to respond.
4. A Case Management Conference with the Clerks Office shall be scheduled for February 25, 2020 at 3:30 p.m.
5. ADDITIONALLY, the defendants made an oral emergency motion for injunctive relief

regarding the provision of electrical and gas utilities. Based on the reasons stated on the record, the plaintiff shall forthwith IMMEDIATELY secure the electric and gas utilities in his name preventing the electric from being terminated and restoring the gas for the heat.

6. The related code enforcement matter, *City of Springfield Code Enforcement v. Charles E. Brantley, et al*, 18-CV-603 is currently scheduled for **February 14, 2020 at 9:30 a.m.** This instant Summary Process matter shall also be called at that time for a status review on compliance with the injunctive order contained herein.

So entered this 10th of February 2020.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 19-SP-4633

Richard Hill,
Plaintiff
v.
Steven Mondon,
Defendant

ORDER

After a hearing on February 6, 2020, at which time the plaintiff and defendant appeared, the following order is to enter:

1. The plaintiff is ordered to provide alternative housing for the defendant at the Clarion Hotel from February 6, 2020 through the night of February 14, 2020.

2. The plaintiff is ordered to pay opposing counsel attorney's fees in the amount of $250.00

So entered this 10th day of February, 2020.

Dina E. Fein
First Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, ss:

Western Division
Housing Court Department

No. 19-SP-1389

SUMMER AVE, LLC
Plaintiff,

v.

TREVOR PITTS and
DIONA BRODIE
Defendants.

ORDER

After a hearing on February 5, 2020, at which both the plaintiff and defendants appeared via counsel, the following order of the court does hereby issue:

1. The plaintiff/landlord is ordered to continue to provide the defendants/tenants with alternative housing in the form of a motel/hotel room with a cooking facility or in the alternative, housing in the form of a motel/hotel room with a $50.00 per day food stipend, until heat has been fully restored to the subject premises.
2. The landlord's obligation to provide alternative housing as outlined in paragraph two (2) of this order shall cease only upon the City of Springfield Code Enforcement Department's determination that the heat has been fully restored.

So entered this 10th day of February, 2020.

Dina E. Fein
First Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 18-SP-637

POAH COMMUNITIES, LLC,

Plaintiff,

v.

MARIA DEPRIEST,

Defendant.

ORDER

After hearing on February 10, 2020 on the defendant tenant's motion to stay the use of the execution, at which the plaintiff landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The motion is allowed in a manner consistent with the terms of this Order.
2. The tenant owes a total of $1,024.55 in use and occupancy and court costs through January 31, 2020.
3. The tenant shall pay that sum by no later than March 31, 2020.
4. The tenant shall pay her rent, use, and occupancy for February, 2020 by no later than February 18, 2020.
5. The tenant shall pay her rent, use, and occupancy for March, 2020 by no later March 16, 2020.

6. Upon a $0 balance, this matter shall be dismissed.

So entered this 12th of February 2020.

Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. ~~19-SP-2234~~
19CV1103

MARIA MALAGUTI,

Plaintiff,

v.

DAVID A. PREMO and CLAIR PREMO,

Defendants.

ORDER

After hearing and consideration of the arguments made therein at said hearing and through written briefs, the following order on the defendants' motion for judgment regarding the plaintiff's claims that were arguably asserted in her complaint at the Massachusetts Commission Against Discrimination (hereinafter, "MCAD") shall enter:

1. **Background:** The plaintiff, Maria Malaguti (hereinafter, "plaintiff" or "Malaguti") was the former tenant at 37 Butler Place in Northampton, Massachusetts (hereinafter, "premises"). The defendants, David A. Premo and Claire Premo (hereinafter, "defendants" or "the Premos"), were Malaguti's former landlords at the premises. The Summary Process eviction matter (19-SP-2234) involving these parties was dismissed when the tenancy concluded and Malaguti's claims were transferred to the Civil Docket.

2. **Discussion:** In September, 2018, Malaguti filed a complaint with the MCAD which

was subsequently dismissed for lack of probable cause by the MCAD. The Premos now seek dismissal of those claims being asserted herein by Malaguti that were the same claims asserted in her MCAD complaint due to the MCAD's ruling and dismissal for lack of probable cause, arguing *res judicata* and/or estoppel. The Premos' argument, however, fails as a matter of law. "An LOPC (Lack of Probable Cause) finding by the MCAD does not preclude the filing of a complaint in the Superior Court." *Pelletier v. Somerset*, 458 Mass. 504, 510 n. 13 (2010). "As [plaintiff]'s MCAD complaint was disposed of before it reached the formal adjudicatory hearing stage, his judicial remedy was not foreclosed." *Robinson v. Boston*, 71 Mass. App. Ct. 765, 769 (2008).

3. Though the Premos are correct that the required findings for a successful application of defensive collateral estoppel, namely final adjudication, identity of parties, identity of issues, and if the issue was essential to the prior decision. See *Martin v. Ring*, 401 Mass. 59 (1987). The Premos are also correct in their proposition that a final decision of the Massachusetts Commission Against Discrimination ("MCAD") will preclude a claimant from pursuing the alternative remedy of a civil complaint. G.L. c. 151B § 9.[1] "[Collateral estoppel] may be applied with respect to administrative agency determinations so long as the tribunal rendering judgment has the legal authority to adjudicate the dispute." *Alba v. Raytheon Co.*, 441 Mass. 836, 841 (2004).

4. The Premos' argument fails, however, when they assert "[t]here is a final judgment on the merits in the MCAD." The relevant facts in *Robinson* are substantially similar to those

[1] "[T]he final determination on the merits shall exclude any other civil action, based on the same grievance of the individual concerned. G.L. ch. 151B, § 9.

presented in this case. In *Robinson*, the MCAD claimant passed away before a decision was issued and his wife, and administrator of his estate, took over the claim. There, as here, the ultimate finding was dismissal for lack of probable cause. That decision was appealed and affirmed. The claimant sought no further review of that decision, but rather commenced a civil action in the Superior Court. The Superior Court judge hearing the case dismissed the discrimination claims finding the claimant's wife/estate administrator had not filed the MCAD complaint as required by G.L. c. 151B § 9, and she had not exhausted her administrative remedies. On appeal, the Appeals Court affirmed the lower courts findings under different authority and addressed the issue of the subsequent filing in Superior Court. That *Robinson* court reasoned that because the plaintiff's MCAD complaint never reached the public hearing stage, the finding of no probable cause was not subject to the provisions of G.L. c. 30A requiring exhaustion of administrative remedies. *Robinson v. Boston*, 71 Mass. App. Ct. 765, 768 (2008).

5. In *Pelletier*, after the initial investigatory phase, the MCAD made a finding of lack of probable cause, the plaintiff appealed to the commission and the finding of lack of probable cause was affirmed. Ten days later the plaintiff filed a Superior Court action. The case was appealed up to the Supreme Judicial Court where there was no further discussion about the appropriateness of the filing of a civil complaint except to note "[a] LOPC finding by the MCAD does not preclude the filing of a complaint in the Superior Court." *Pelletier v. Somerset*, 458 Mass. 504, 510 n. 13 (2010).

6. "[W]hen a MCAD complaint is disposed of before it reaches the formal adjudicatory hearing stage, judicial remedy is not foreclosed. ("G.L. c. 151B, § 9, permits a plaintiff to

bring a separate civil action ninety days after filing a complaint with the MCAD, as long as such complaint is timely vis-à-vis the alleged discriminatory act")."

Connor v. Massachusetts Comm'n Against Discrimination, 85 Mass. App. Ct. 1107 (2014) (internal cites omitted). G.L. c. 151B § 9 specifically provides for the alternative filing of a discrimination complaint in the Superior (or Housing) Court at least 90 days after first filing with the commission but no later than three years after the date of the incident complained of. In *Connor*, the Superior Court complaint was filed greater than three years after the alleged discriminatory act, and was therefore untimely. *Id.*

7. By rule, the definition of a final commission order, for the purposes of further judicial review, requires "the Decision of the Full Commission on appeal from the Decision of the Hearing Commissioner pursuant to 804 CMR 1.23(1)(h), or issued by the Commission pursuant to 804 CMR 1.23(2)." 804 Code Mass. Regs. § 1.24. Final judgment, for purposes of collateral estoppel or *res judicata*, requires "the parties were fully heard, the judge's decision is supported by a reasoned opinion, and *the earlier opinion was subject to review or was in fact reviewed.*" *Jarosz v. Palmer*, 436 Mass. 526, 533–34 (2002) (emphasis added). Although Malaguti did appeal the initial finding of lack of probable cause (just as was the case in *Robinson* and *Pelletier*), that "final action of the Commission [was] not subject to Judicial Review M.G.L. c. 30A." Without an opportunity for further review, the judgment could not be considered final for collateral estoppel purposes, and Malaguti's judicial remedy was not foreclosed.

8. **Conclusion and Order:** Based on the foregoing, the Premos' motion entitled,

"Motion for Judgement on the Pleadings, or, in the Alternative, as a Matter of Law on [Plaintiff's] Counterclaims Based on Collateral Estoppel", is DENIED.

So entered this 14th day of February, 2020.

Robert Fields, Associate Justice

cc: Kara Cunha, Esq., Assistant Clerk Magistrate

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-4005

MTGLQ INVESTORS, L.P.,

Plaintiff,

v.

ESTHER CRUZ, EDUARDO GARCIA, and KIARA ROLON,

Defendant.

ORDER

After hearing on February 13, 2020 on the plaintiff's motion to amend the complaint and judgment to include Kiara Rolon, at which only the moving party appeared after notice to the defendants, the following order shall enter:

1. The motion is treated as one to add Kiara Rolon as an indispensable party and is allowed. Ms. Rolon who appears to reside at the premises shall be added as a party-defendant in this matter.

2. That part of the motion seeking to add Ms. Rolon on the judgment for possession shall be continued to **February 27, 2020 at 9:00 a.m.** Ms. Rolon, and anyone who resides at the premises should appear at this hearing. If Ms. Rolon opposes being added to the judgment she should come before the court and be heard.

So entered this 18th of February 2020.

Robert Fields, Associate Justice

cc: Caitlin Castillo, Esq., Assistant Clerk Magistrate (for scheduling purposes)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 19-SP-5504

Maple Properties L.P.,
Plaintiff

v.

Julio A Rodriguez,
Defendant

ORDER

After hearing on February 19, 2020 at which time both parties appeared, the following order is to enter:

1. The defendant's (tenant's) emergency motion to stop a physical eviction is hereby allowed, conditioned upon the tenant complying with all of the terms set forth in this court order.

2. The tenant is ordered to pay the landlord $558 on February 19, 2020 (today), and $558 on February 20, 2020.

3. The tenant is ordered to pay the landlord his rent in full plus an additional $120 towards the rent arrears by the fifth of each month commencing in March 2020.

So entered this 20th day of February, 2020.

Dina E. Fein
First Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss:

Western Division
Housing Court Department

No. 19-SP-3934

Rhea Williams et al.,

Plaintiff,

v.

ORDER

Jennifer Wood et al.,

Defendant

At a hearing on February 12, 2020, the plaintiff and the defendant appeared self-represented. As a result of the hearing, the following order of the court does hereby issue:

1. The plaintiff's motion for entry of judgment is denied on the following conditions.
2. The defendant shall pay to the plaintiff $675 by certified funds no later than February 13, 2020.
3. The defendant shall comply with the parties' October 23, 2019 agreement by paying March, 2020 use and occupancy no later than March 5th and $100 towards arrears no later than March 20th, and then vacating on or before April 1, 2020.
4. The landlord shall investigate tenants' complaints of noise and other disturbances and take all appropriate steps to address same.

So entered this 24th day of February 2020

Robert G. Fields, Associate Justice

cc: Laura Fenn, Assistant Clerk Magistrate

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-CV-359

MARIA DELORES BETANCOURT,

Plaintiff,

v.

FELIX RIVERA, NELSON RIVERA, and SPRINGFIELD HOUSING AUTHORITY,

Defendants.

ORDER

After hearing on February 26, 2020 on the defendant Nelson Rivera's motion to enforce the terms of the agreement, at which the moving party and the plaintiff appeared *pro se*, and at which the housing authority appeared through counsel, the following order shall enter:

1. The motion is allowed. Ms. Betancourt shall not play her music loudly or stomp on her floor in a manner that would reasonably disturb her downstairs neighbors.
2. If the Riveras allege that Ms. Betancourt has violated the terms of this order, or of the April 30, 2019 Agreement, they shall so inform the Springfield Housing Authority.
3. The Springfield Housing Authority shall investigate any such complaints and take reasonable steps to address same.
4. [redacted]

5. The Springfield Housing Authority shall also consult with the parties regarding steps that might be taken to reduce the noise travel between the apartments (e.g., carpets/rugs, soundproofing materials, etc.).

So entered this 27th of February, 2020.

Robert Fields, Associate Justice

[redacted]

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-1674

JOANNE CONROY,

Plaintiff,

v.

WILLIAM and VIRGINIA BAKER,

Defendants.

ORDER

After hearing on February 26, 2020 on the plaintiff's motion to extend the execution for possession, at which only the moving party appeared, the following order entered on the record and is memorialized herein:

1. In accordance with G.L. c.235, §23, an execution for possession may not be issued at this time, given that it is more than "three months following the date of judgment" with no intervening staying by the court or by an agreement of the parties.
2. Accordingly, the motion is denied.

So entered this 27th of February 2020.

Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-3057

FRANCISCO TORRES,

Plaintiff,

v.

JENNIFER DIAZ, LUIS DIAZ,

Defendants.

ORDER

After hearing on February 26, 2020 on the defendant tenant Jennifer Diaz's motion for reconsideration, at which the tenant appeared with LAR counsel and the plaintiff landlord appeared pro se, the following order entered on the record and is memorialized herein:

1. For the reasons stated on the record, and with greater clarity provided from additional testimony of the events at the premises on January 28, 2020, the court's earlier decision dated February 5, 2020 is vacated.

2. Accordingly, the tenant shall pay the landlord $1,400 at the conclusion of the hearing. This represents the $400 outstanding from January, 2020 plus $1,000 for February, 2020 use and occupancy. Thereafter, the parties shall resume the terms of the August 15, 2020 19 Agreement.

So entered this 27th of February, 2020.

Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 20-SP-147

BAU A. DIEP,

Plaintiff,

v.

AIJAH SMITH,

Defendant.

ORDER

After hearing on February 26, 2020, on review established by the Agreement of the parties, at which each party appeared without counsel, the following order shall enter:

1. In accordance with the terms of the January 30, 2020 Agreement of the Parties (Agreement), the parties appeared for review and an update on the alleged cross-metering at the premises.
2. The parties reported to the court that the tenant paid January, 2020 rent but not February, 2020 rent.
3. The tenant reported that she has not paid February, 2020 rent due to the verification by the City's Department of Code Enforcement of cross-metering. In support the tenant had the City Code Report admitted into evidence and it does list under "Entire Dwelling" cross-metering of electrical service.

4. As such, an evidentiary hearing shall be scheduled for **March 12, 2020 at 2:30 p.m.** to determine whether there is cross-metering of any utilities and a determination on the merits of the claims asserted by the parties in this summary process action.

So entered this 3rd of March, 2020.

Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-2274

EMMA BURKE and JEAN TAILLEUR,

Plaintiff,

v.

ORDER

RHONDA HENDERSON,

Defendant.

This matter came before the court for trial on February 3, 2020. After consideration of the evidence admitted at trial, the following findings of fact, rulings of law, and order shall enter:

1. Background: The plaintiffs, Emma Burke and Jean Tailleur (hereinafter "landlords"), own a multi-family home located at 46 Baldwin Street, in Springfield, Massachusetts (hereinafter "premises"). The defendant, Rhonda Henderson (hereinafter, "tenant") has continuously resided at the premises since January 2013 and through the landlords obtaining ownership of the premises on December 29, 2016. The monthly rent is $923 per month, and through an MRVP voucher Ms. Henderson's portion of rent to be paid is $465 per month. The landlord terminated the tenancy and commenced this summary process action for fault on or about June 11, 2019. The tenant filed an answer and asserted counterclaims.

2. Landlords' Claim for Possession and for Rent: The landlords' claim for possession of the premises was moot at the time trial was held because the tenant returned possession of the premises on or about September 1, 2019. There is also no dispute that the tenant did not pay her

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rent for July and August, 2019 totaling $930 ($465 per month).

3. **The Tenant's Counterclaims:** As possession is moot, the remaining claims to be decided are the tenant's counterclaims against the landlords. They are (1) violation of the security deposit law under G.L. c. 186, § 15B; (2) the breach of quiet enjoyment/warranty of habitability; (3) retaliation in violation of G.L. c. 186, § 18; and (4) violation of G.L. c. 93A for unfair trade practices. Each of these claims shall be addressed below.

4. **Retaliation:** Throughout the duration of the tenancy, the tenant continually alerted the landlords of conditions within the premises and on the property. Specifically, and of particular import to this case, the tenant would complain of mice found within the premises and basement of the property. Mice were first noticed by the tenant and reported to the landlords in April 2018, whereas the landlords provided traps and sonic mouse repellant devices. However, when the mice issue did not subside, an exterminator was called upon to make treatments on the property in December 2018, plugging the existing holes found in the tenant's kitchen and in the property's basement. The tenant texted the landlords that she had seen mice present in the premises, and the exterminator came once again in February 2019 to do similar work.

5. The mice were never exterminated and by April 2019, the tenant informed the Springfield Code Enforcement Office of the issue. The tenant also continued texting the landlords about the mice problem, some two dozen times per year in 2018 and 2019 and at least up and through February, 2019. Ultimately, the code enforcement office found evidence of rodents in June 2019, and the landlords were cited for said deficiencies.

6. Reprisal constitutes a defense and counterclaim to a landlord's eviction case. G.L. c. 239, §2A; G.L. c. 186, §18. The sequence and timing of events which occurred between the parties gives rise to a presumption that the landlords action was in reprisal against the tenant for

her protected activities of complaining of improper conditions within the unit and shared spaces on the property up and through a period of time within six months of the termination notice. 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" irrespective of the tenant's protected activities. G.L. c. 239, §2A; G.L. c. 186, §18.

7. The April 5, 2019 termination notice stated non-compliance/violations of the tenant by (1) having family members live in the premises over 30 days; (2) having a dog live in the unit; (3) refusing to allow a repair worker or the landlord to work on the unit; (4) having clutter and debris throughout the unit by transforming a portion of the basement in to a living area for two family guests; and (5) both the tenant and guests being combative with the landlord and repair personnel.

8. The lease states that no guests shall stay within the unit for more than 3 weeks in any 12 month period unless approved in writing by the Landlord and the MRVP agency. The tenant did have her aunt and uncle stay with her for more than the allotted time and by agreement with the landlords she paid an additional $100 per month for those guests. As such, the landlords waived any such claim for violation. Additionally, the landlord alleges there have been other guests but did not persuade the court that the tenant has had guests (other than the aunt and uncle) for periods in violation of the lease terms.

9. The lease does not prohibit animals to be within the premises and after the tenant purchased her dog in February, 2018 and provide the landlord with a letter from Pediatric Care Associates on June 11, 2018. Thereafter, the landlords accepted rent month and after month acquiescing to the dog being present and, thus, waived their right to claim that this violated the

tenancy.

10. The lease states that no rubbish or garbage will accumulate in areas other than those designed for storage. Testimony was provided at trial that supports a finding that clutter had accumulated in the basement during the time when the tenant's aunt and uncle lived at the property for an extra $100 per month. The aunt and uncle vacated the property by the end of 2018. No credible evidence was provided at trial that the cluttered condition of the basement of the property was not resolved at the time when the notice to quit was issued in April 2019.

11. After weighing the credible testimony, there are no clear actions by the tenant disallowing repairs to be made to the premises warranting as a basis for a notice to quit. The lease discusses termination of the tenancy by the owner, but the record before the court does not show the tenant nor her guests to be "very combative" with the landlords to a point that is deemed good cause. Both parties testified to the extensive amount of work done to the tenant's apartment. During the course of the tenancy, the tenant made numerous complaints of conditions found within the house. Repairs and conditions were made within the premises, such as replacing the bathroom toilet and sink, the flooring in the living room, and sections of the fence on the property and the evidence does not support that the tenant or her guests were combative.

12. The court finds and so rules that the service of the notice to quit stemmed from the tenant's written notification of the mice infestation via text messaging—not for the causes stated in the notice to quit. The landlords have not rebutted the presumption of reprisal, and are therefore liable for between one and three months' rent. The court shall exercise its discretion to award one month's rent due to such retaliatory behavior engaged in by the landlords, but not rising to a level of egregiousness seen in other cases awarding three months' rent. Accordingly, the court shall award the tenant one months' rent totalling $923.00 plus reasonable attorneys fees

and costs.

13. Quiet Enjoyment. The tenant testified credibly that the presence of mice were persistent throughout the unit and in the common area of the basement from early 2018 through her leaving the premises in August 2019. This testimony was further corroborated when the City of Springfield's Code Enforcement office cited the landlords with rodent infestations in violation of 105 C.M.R. 410.550. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, § 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

14. In the present matter, the evidence supports a finding that the landlords failed to make sufficient attempts to exterminate the mice and repair the damaged holes in the tenant's apartment. The landlord's failure to do so, even though they were making some attempts to self-repair, interfered with the tenant's ability to enjoy the home for almost a year and a half of her tenancy. As such, the court finds and so rules that the landlord violated the tenant's covenant of quiet enjoyment and G.L. c.186, §14 and hereby awards the tenant damages equaling three months' rent for this claim of breach of quiet enjoyment, totalling ($923.00 x 3) $2,769 plus reasonable attorneys fees and costs.

15. Warranty of Habitability. The same facts drawn upon for an analysis in the quiet enjoyment section are the same facts relied on for the breach of warranty of habitability allegation. It is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability irrespective of the landlord's good faith efforts to repair the defective

condition. *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). Based upon evidence presented at trial, the Court finds that the value of the property was reduced 10% for the approximately 14 months that the mice were prevalent in the premises. The tenant's actual damages, therefore, for the landlord's breach of the warranty of habitability, are $1,292.20[1]

16. Tenant's Chapter 93A Counterclaim. The tenant articulates that the factual background giving rise to the breach of quiet enjoyment also violates Chapter 93A. The landlords failed to comply with 940 C.M.R. 3.17 by failing to remedy the mice infestation within a reasonable time after notice of same. Regulations of the Attorney General adopted under this statute make it a violation for the landlord and manager to fail to correct Code violation within a reasonable time after notice thereof. The nature of the violations, along with the landlord's own actions and inactions show that the violations are deemed knowing. *Montanez v. Bagg*, 24 Mass.App.Ct. 954, 510 N.E.2d 298 (1987). The court determines that minimum statutory damages (double rather than treble) are to be allowed on this claim. Therefore, the warranty damages are subject to doubling, for a recovery of $2,584.40 on this claim. The court, however, shall award only the $2,769 under the breach of the covenant of quiet enjoyment as it affords the

[1] This amount represents the time frame of April 2018 through August 2019 from when the mice were first spotted to when the tenant moved out, less the two months mice were not seen after the landlords unsuccessfully attempted to remedy the problem from late December 2018 through February 2019.

highest award. *See Wolfberg v. Hunter*, 385 Mass. 390, 400–01 (1982).

17. Security Deposit Violation. At the initiation of the tenancy between the tenant and the prior owner of the property, the tenant paid a security deposit of $923. Upon the landlords obtaining ownership of the property, Ms. Burke provided the proper account information pertaining to the security deposit to the tenant in early 2017. The landlords did not give any subsequent information to the tenant regarding the security deposit until after the notice to quit was served.

18. The security deposit law at G. L. c.186, §15B states in pertinent part:

> (3)(b) A lessor of residential real property who holds a security deposit pursuant to this section for a period of one year or longer from the commencement of the term of the tenancy shall, beginning with the first day of the tenancy, pay interest at the rate of five per cent per year, or other such lesser amount of interest as has been received from the bank where the deposit has been held payable to the tenant at the end of each year of the tenancy. . . . At the end of each year of a tenancy, such lessor shall give or send to the tenant from whom a security deposit has been received a statement which shall indicate the name and address of the bank in which the security deposit has been placed, the amount of the deposit, the account number, and the amount of interest payable by such lessor to the tenant. The lessor shall at the same time give or send to each such tenant the interest which is due or shall include with the statement required by this clause a notification that the tenant may deduct the interest from the tenant's next rental payment. If, after thirty days from the end of each year of the tenancy, the tenant has not received such notice or payment, the tenant may deduct from his next rent payment the interest due.

Id. From January 2017 through the termination of the tenancy in May 2019, the landlords did not provide any account statements relating to the security deposit nor give the accrued interest to the tenant. It was the landlords' practice to provide a notice/letter to the tenants at the end of the tenancy regarding the interest accrued in a security deposit account and is a contradiction to the security deposit law requirements. Further, at the conclusion of the tenancy, the landlords did not return the security deposit within thirty days and no evidence was put forth that they withheld the

security deposit from the tenant due to damage to the premises. Therefore, the tenant shall be awarded three times the accrued interest from 2017-2019 ($30.24)[2].

19. Conclusion and Order: Based on the foregoing, an order awarding damages shall enter for the defendant Rhonda Henderson for **$2,792.24**. This represents the award of damages to Henderson for $3,722.24 MINUS the award of outstanding rent of $930. This award is an order and not yet a judgment. As a prevailing party on her claims for Retaliation, Breach of the Covenant of Quiet Enjoyment, and Chapter 93A, the tenant may petition the court for reasonable attorneys fees and costs. Such petition shall be served and filed within 20 days of the date of this order noted below. The plaintiffs may serve and file an opposition to same by no later than 20 days after receiving said petition. The court shall rule on the petition and issue a final judgment at that time without further hearing.

So entered this 9th day of March, 2020.

Robert Fields, Associate Justice

[2] The tenant also asserted that she never received a letter required by the security deposit statute (at G.L. c.186, §15B) after she vacated the premises. The landlord testified that one was sent and the tenant did not challenge the matter any further.

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss:

Housing Court Department
Western Division
No. 19-SP-4877

LIVE PLEASANT LIMITED PARTNERSHIP c/o WAYFINDERS, INC.,

Plaintiff,

v.

LEO POROVO,

Defendant.

ORDER FOR USE AND OCCUPANCY PAYMENTS

This matter came before the court on January 13, 2020 on the plaintiff landlord's motion to require the tenant to pay rent. After hearing, at which landlord appeared but for which the tenant did not appear even though all logistics had been put into place for the tenant to appear by video conference[1]. After consideration of the arguments made by the landlord, the following order shall enter:

1. This is a *for cause* eviction action.

2. The tenant has not filed an Answer nor is asserting any claims against the landlord.

3. The tenant has been [redacted] Hospital since August, 2019 and has not paid his portion of the rent, $336, since May, 2019. Wayfinders, Inc. has been paying its

[1] [redacted]

subsidized portion of the rent, $508, throughout. At the time of this hearing, the tenant owed $3,024 in rent, use, and occupancy.

4. The landlord is a non-profit entity.

5. Under the circumstances of this case, in which the tenant is not challenging the he owes his rent, use, and occupancy and the landlord is a non-profit entity and given there may continue to be delays in reaching trial due to the tenant's circumstance, the motion is allowed.

6. The landlord is seeking an order that rent, use, and occupancy be paid beginning in January, 2020 (the month in which this hearing took place) and thereafter until the matter is heard on the merits.

7. That request is allowed in part. Given that the order is not being issued until March 6, 2020, the tenant shall pay his rent, use, and occupancy in a monthly amount of $336 beginning in March, 2020 and continuing until further order of the court[2].

8. Such payment shall be made directly to the landlord each month.

So entered this 9th of March, 2020.

Robert Fields, Associate Justice

[redacted]

[2]This order does not address the landlord's claim for use and occupancy through to February 29, 2020, which is reserved for trial.

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

Housing Court Department
Western Division
No. 19-SP-5000

SUELLEN THORNHILL,

Plaintiff,

v.

ARTHUR MADRID,

Defendant.

ORDER

After hearing on March 5, 2020, on the plaintiff's (landlord's) motion to enforce agreement and issue execution (eviction), for which both parties were present, the following order shall enter:

1. The plaintiff's (landlord's) motion for issuance of an execution (eviction order) is hereby allowed.
2. The execution shall issue in favor of the landlord for possession, $500 in rent, plus court costs.
3. A stay on the use of the execution is granted until March 8, 2020 conditioned upon the defendant removing all of his personal belongings by said date. All belongings left after March 9, 2020 shall be considered abandoned and may be discard by the landlord.

So entered this 9th of March, 2020.

Robert Fields, Associate Justice AM.

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-SP-4115

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

TATIANA SWINTON,

Defendant.

ORDER

After hearing on March 10, 2020 on the plaintiff's motion for entry of judgment, at which the plaintiff landlord appeared through counsel and the defendant appeared *pro se*, [redacted], the following order shall enter:

1. The landlord has met its burden that the tenant has failed to comply with the terms of the Agreement of the Parties filed on October 11, 2019. More specifically, the tenant has failed to maintain her unit in a sufficiently sanitary condition and has failed numerous inspections.
2. Said unsanitary condition has worsened and has brought about an infestation of cockroaches that has now reached the tenant's neighboring units.
3. Judgment shall enter for the landlord for possession and the execution for possession

shall issue in due course and upon a Rule 13 application filed with the court and copied to the tenant.

4. The landlord shall not levy on the execution and schedule a physical eviction until after April 30, 2020 as long as the tenant complies with the terms of this order.

5. The tenant shall have her apartment professionally cleaned within five business days of the date of this order noted below and immediately inform the landlord when that has bee accomplished for their inspection.

6. The landlord may inspect the tenant's unit at any time after March 24, 2020, with notice to the tenant. The tenant stated that she prefers not to be present for said inspection and the landlord has agreed to leave something in writing in the unit to indicate that they have inspected.

7. If the tenant fails to hire a professional cleaning company and the landlord inspects and fails the unit, the landlord may use the execution and schedule a physical eviction prior to April 30, 2020.

So entered this 13th of March, 2020.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS. **HOUSING COURT DEPARTMENT OF THE TRIAL COURT**
Docket No. 19SP5096

GMC Property Management, LLC
Landlord/Plaintiff

v.

Chantel Scott
Tenant/Defendant

ORDER

It is hereby, ORDERED that the following entries be made:

1. The Landlord/Plaintiff shall cancel the physical eviction scheduled for March 27, 2020.

2. The Tenant/Defendant shall contact the Landlord/Plaintiff or the Landlord/Plaintiff's attorney to arrange for a mutually agreeable plan for the payment of rent, rent arrears, physical eviction costs and court costs immediately upon Tenant/Defendant determining the status of her public benefit payments or her employment status changes, whichever occurs first.

3. If the Tenant/Defendant fails to make the payment arrangement called for in paragraph 2 above, the Landlord/Plaintiff may mark up a motion in this matter to be scheduled after April 22, 2020.

4. Upon return of the original Execution for Possession and Money Judgment issued on January 3, 2020, the court shall issue a new Execution for Possession and Money Judgment listing compensatory damages of $3,050.00 and court costs of $170.00.

So entered this 18th day of March, 2020.

Hon. Dina E. Fein, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
HOUSING COURT DEPARTMENT
WESTERN DIVISION
37 ELM STREET - P.O. BOX 559
SPRINGFIELD, MA 01102-0559
TELEPHONE (413) 748-7838
FAX (413) 732-4607

DINA E. FEIN
FIRST JUSTICE

ROBERT G. FIELDS
ASSOCIATE JUSTICE

MICHAEL J. DOHERTY
CLERK MAGISTRATE

JENNI POTHIER
CHIEF HOUSING SPECIALIST

Case No. 19SP5080 Date 03/19/2020

Valley Opportunity Cancil v. Vivian Medina
Plaintiff Defendant

ORDER

Eviction cancelled following hearing with both parties participating by phone, conditioned upon following:

- Balance through March 2020 plus $100 cancellation fee = $4889.69

- Tenant to pay monthly rent + $300 beginning on 4/3/2020 + month thereafter.
- Execution reissued upon affidavit copy to Defendant.

Justice

TRIAL COURT OF THE COMMONWEALTH

Hampden, ss.

Housing Court Department
Western Division
Docket No. 20-SP-570

VOLGA EMPIRE MA, LLC,
Plaintiff,

v.

HAYLEIGH MOYNAHAN,
Defendant

ORDER

After hearing on March 18, 2020, at which counsel for the Plaintiff appeared by telephone and the Defendant appeared by telephone, the following Order shall enter:

1. The Defendant's Motion to Stop the Eviction scheduled for March 20, 2020 is allowed and use of the Execution is stayed conditioned upon the following terms:

a. Tenant shall pay $200.00 by 12:00pm on March 19, 2020, to be delivered to the Management's rent drop box;
b. Tenant shall pay $250.00 by March 25, 2020;
c. Tenant shall pay April rent ($850.00) by April 17, 2020;
d. Commencing May 1, 2020 and continuing bi-weekly thereafter, Tenant shall pay $500.00 bi-weekly toward monthly rent and arrears and costs until zero balance is reached. Payments are due on Fridays.

2. If Tenant fails to make an ordered payment, Landlord may reschedule the physical eviction.

3. Landlord may continue to hold a current Execution in this matter by applying for reissuance of the Execution in writing to the Clerk's Office at the expiration of a current Execution, copy to the Tenant, and use shall be stayed upon the terms of this Order.

Dated: March 19th, 2020

Dina E. Fein
First Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden ss:

Housing Court Department
Western Division
No. 20-CV-98

SHEILA HORNER and ALETHA BLAKE,
Plaintiffs,

v.

LEON MOULTRIE,

ORDER

After hearing on March 24, 2020, on the plaintiffs' (tenants') motion for further injunctive relief to restore heat, for which all parties were present as well as counsel for the City Code Enforcement, the following order entered on the record and is memorialized herein:

1. The landlord shall take all appropriate and prompt steps to ensure that the heating system at the subject premises is properly functioning.
2. The landlord may have access to the tenants' unit, accompanied by a licensed heating professional, upon knocking on the tenants' door to inspect the heating apparatus therein.
3. The City Code Enforcement Department shall notify the parties if and when its inspectors can inspect the heating system at the premises on March 25, 2020.
4. If there is no heat at the premises as of 8:00 p.m. tonight (March 24, 2020), the landlord shall provide a hotel room for the tenants and shall do so until the heat is restored.
5. Any and all work required to repair the heating system shall be performed only by a licensed heating professional.

6. The tenants shall have unfettered access to the basement to allow them to do their laundry from 10:00 a.m. until 9:00 p.m. everyday.

7. This matter shall be scheduled for further hearing on **March 26, 2020 at 12:00 noon.** The parties and the City shall call into the conference line provided them by the clerk at that time.

So entered this 25th of March 2020.

Robert Fields, Associate Justice RGF/CAC, ACM

cc: Amber Gould, Esq., City Law Dept.

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 20-SP-480

MIKE LEMELIN,

Plaintiff,

v.

MILDRED WILLIAMS,

Defendant.

ORDER

After hearing on March 24, 2020 on the defendant tenant's emergency motion for alternative accommodations, at which the plaintiff landlord appeared through counsel, the tenant appeared *pro se*, and at which counsel for the City of Springfield and a representative from the Tenancy Preservation Program appeared, the following order shall enter:

1. For the reasons stated on the record, the landlord shall provide alternative accommodations at a hotel or motel with cooking facilities until the City lifts the condemnation order on the subject premises or until further order of the court.
2. If said accommodations do not have cooking facilities, the landlord shall also provide the tenant with a daily food stipend of $50. Arrangements shall be made for the landlord to provide said funds directly to the tenant in advance of each day (or in advance of a number of days).

3. The parties shall coordinate with the City and/or the City Fire Department to secure if and when the tenant may access her personal belongings at the premises. At all times that such belongings remain at the premises, the landlord shall ensure that the premises are secure so as to prevent theft or damage to the tenant's belongings.

4. In accordance with the underlying Agreement of the parties filed with this court on March 13, 2020, the tenant shall diligently search for new permanent housing. The Tenancy Preservation Program shall assist the tenant in this regard.

So entered this 25th of March, 2020.

Robert Fields

Robert Fields, Associate Justice ROF/CK, ACM

cc: Tenancy Preservation Program
Scott Brown, Esq, City of Springfield Law Department

COMMONWEALTHOF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS **HOUSING COURT DEPARTMENT**
WESTERN DIVISION

DOCKET NO. 18-SP-3972

PENNYMAC LOAN SERVICES, LLC,

Plaintiff

v.

ERIN-LYNN ROBINSON, et al,

Defendants

MEMORANDUM OF DECISION ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The above-captioned matter is before the court on the plaintiff's motion for summary judgment. For the reasons set forth herein, the motion is denied.

1. The plaintiff (PennyMac) has established the prima facie elements of its claim for possession, by producing a copy of the foreclosure deed pursuant to which it claims title, and an affidavit of sale under G. L. c. 244, § 15. *Federal National Mortgage Association v. Hendricks,* 463 Mass. 635, 643 (2012). In her opposition to PennyMac's motion, however, the defendant (Robinson) disputes receipt of the notice required under paragraph 22 of her mortgage. Specifically, Robison alleges that she "never received any information indicating a notice of acceleration." See Document filed in opposition to PennyMac's motion on October 9, 2020. She also alleges as follows: "One thing I was told was I should have been notified by certified mail. I never received any cards to pick anything up. I even went to the post office and waited 45 minutes while they searched everywhere and was told there was nothing." See Document filed in opposition to PennyMac's motion on August 28, 2019.

2. The court recognizes that Robinson's submissions are not by way of affidavit and do not include evidence as would be admissible at trial, contrary to Mass. R. Civ. P. 56. It is also the

case, however, that the affidavit on which PennyMac relies to show compliance with paragraph 22 is not based upon first hand knowledge that a notice went out, but rather on personal knowledge that the case management system "reveals" that PennyMac sent out such a letter by certified mail on June 23, 2016. Under these circumstances the court is satisfied that Robinson's direct statement that she did not receive a certified letter suffices to raise a genuine dispute concerning the narrow material question of whether PennyMac complied strictly with paragraph 22 of the mortgage, as required under *Pinti v. Emigrant Mortgage Company,* Inc, 472 Mass. 226 (2015).

3. Based upon the foregoing, PennyMac's motion for summary judgment is denied. Trial will be limited to the question of whether PennyMac complied strictly with paragraph 22 of the mortgage.

4. **ORDER:** The plaintiff's motion for summary judgment is denied. The Clerk's office is requested to schedule trial as indicated above.

So entered this 25th day of March, 2020.

Dina E. Fein

Dina E. Fein
First Justice

DEF/CAC, AICM

cc: CM Michael Doherty

COMMONWEALTH OF MASSACHSUETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 19-SP-2099

PENNYMAC LOAN SERVICES, LLC,

Plaintiff

v.

TATYANA STETSYUK,

Defendant

MEMORANDUM OF DECISION ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The above-captioned matter is before the court on the plaintiff's motion for summary judgment. For the reasons set forth herein, the motion is denied.

1. Three questions are framed by the summary judgment pleadings: has the plaintiff established its prima facie case; if so, may the defendant raise the plaintiff's failure to conduct a face-to-face meeting in defense to the plaintiff's prima facie case; if so, was the plaintiff required to conduct a face-to-face meeting or does an exception apply?

2. **PennyMac's Prima Facie Case:** The summary judgment record suffices to satisfy the plaintiff's prima facie case. While the original affidavit filed with the foreclosure deed (Exhibit H to Polansky affidavit) included a published notice of sale that scheduled the foreclosure auction for July 11, 2018, a confirmatory affidavit was filed thereafter (Exhibit J to Polansky's affidavit) that included a published notice of sale scheduled for February 21, 2019. The defendant fairly argues that the affidavit in question, as to which the affiant swore or affirmed that the contents were "truthful and accurate to the best of his/her knowledge and belief" does

not conform precisely to the statutory form as endorsed in *Federal National Mortgage Association v. Hendricks,* 463 Mass. 635 (2012). I nevertheless conclude that the summary judgment record as a whole suffices to establish the plaintiff's prima facie case, given the facial reliability of the confirmatory affidavit (the foreclosure deed was executed on March 7, 2019 and recorded on April 9, 2019, consistent with a sale on February 21, 2019, noticed by publication on January 4, 11, and 18, 2019); and the fact that the Probate and Family Court shifted the responsibility for mortgage payments to the defendant by order dated September 21, 2017 and then found her in contempt on July 19, 2018 for her failure to do so, a ruling which she is collaterally estopped to deny. These undisputed facts, in combination with the fact that the defendant does not deny the default, suffice to establish the plaintiff's prima facie case as a matter of law.

3. **Face-to-Face:** There is no dispute that the subject mortgage required compliance with the HUD face-to-face regulations. The parties do dispute whether the defendant has standing to raise a violation of the face-to-face regulations, and whether an exception to the face-to-face meeting requirements applies in this case.

4. It is well-established that the defendant in a post-foreclosure summary process action may challenge the plaintiff's title and superior right to possession. *Bank of New York v. Bailey*, 460 Mass. 327, 333 (2011). As a matter of law, a foreclosing mortgagee must comply strictly with the statutory power of sale and the terms of the mortgage. *U.S. Bank National Association v. Ibanez*, 458 Mass. 637, 646-647 (2011). Where, as here, the mortgage requires compliance with HUD face-to-face regulations, the failure of the mortgagee to comply strictly with that provision of the mortgage renders the foreclosure sale void. *Wells Fargo Bank, N.A. v.* Cook, 87 Mass. App. Ct. 382, 389 (2015). If the foreclosure sale is void (as opposed to voidable), a

summary process plaintiff such as PennyMac, who claims a superior right of possession based on title obtained pursuant to the foreclosure sale, cannot establish the prima facie elements of its case. The plaintiff's failure to establish its prima facie case is available as a defense in all post-foreclosure evictions, including but not limited to those involving former mortgagors. See *U.S. Bank National Association v. Johnson*, 96 Mass. App. Ct. 291, 297-298 (2019)("It is immaterial to Johnson's standing as a defendant in an action by a party claiming a superior title in the property that she was not a party to the note on which U.S. Bank's foreclosure (and hence its claim of title) rests.") Stetsyuk therefore has standing to raise PennyMac's alleged violation of the face-to-face regulations.

5. PennyMac argues that it was not required to conduct a face-to-face meeting, both because it has no office within 200 miles of the subject property, and because it knew the mortgagor was not residing in the mortgaged property. 24 C.F.R. §203.604(c) and (d). Upon review of the summary judgment record, I conclude that the court need not reach PennyMac's legal arguments, as they are not supported by the undisputed facts. Specifically, PennyMac alleges that the original mortgagor, Stetsyuk's ex-husband, stopped making monthly payments on June 1, 2017, before MERS, as nominee for the original mortgagee Academy Mortgage Corporation (Academy), assigned the mortgage to PennyMac on October 18, 2017. See PennyMac's Memorandum in Support of its Motion for Summary Judgment, p. 2. Pursuant to 24 C.F.R. § 203.604(b), a "mortgagee must have a face-to-face interview with the mortgagor…before three full monthly installments due on the mortgage are unpaid." As three monthly installments would have come due before the mortgage was transferred to PennyMac, the location of PennyMac's office is not materials. In addition, although PennyMac alleges that the Probate and Family Court issued a temporary order requiring Stetsyuk to assume the mortgage payments on

September 21, 2017, the summary judgment record does not establish when Stetsyuk's ex-husband stopped living at the property, nor when Academy or PennyMac became aware of his absence. These material facts not being established for purposes of the summary judgment record, the court need not reach arguments that are predicated on those facts being undisputed.

6. **ORDER:** Based upon the foregoing, the plaintiff's motion for summary judgment is denied. The Clerk's office is requested to convene a case management conference for the purpose of scheduling trial.

So entered this 25th day of March, 2020.

Dina E. Fein
First Justice

DEP/ CAC, ACM

cc: CM Michael Doherty

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division

FEDERAL MANAGEMENT CO., INC., D/B/A SCHOCHET COMPANIES, As Lessor for WELDON ASSOCIATES MASSACHUSETTS, LP, As Owner,

Plaintiff,

No. 20-SP-965

v.

JOHN GRIFFIN,

Defendant.

CHRISTOPHER BRADDY,

Plaintiff,

v.

WELDON APARTMENTS

No. 20-CV-200

Defendant.

After a consolidated hearing on these emergency matters on March 25, 2020, at which all parties appeared by telephone, the following order shall enter:

1. For the reasons stated on the record, the landlord's motion requesting relief to change the locks to Mr. Griffin's apartment was amended and treated as a motion to keep the already

changed locks in place and is ALLOWED. When Mr. Griffin is expectant to be discharged from the hospital to his apartment, he shall notify the landlord who will meet him at his unit to provide him with new keys.

2. Mr. Braddy's motion to the court to order the landlord to allow he and his brother to reside at the premises during Mr. Griffin's hospitalization is DENIED.

3. There is no Trespass Order presently issued against Mr. Braddy or his brother Tyler Braddy. That said, they are not permitted to reside at the premises without the landlord's express permission.

4 If Mr. Griffin applies to the landlord to have either or both Mr. Christopher Braddy and/or Tyler Braddy reside at the premises, the landlord shall process that request as quickly as is practicable.

So entered this 26th of March, 2020.

Robert Fields, Associate Justice

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division

SILAR DISTRESSED REAL ESTATE FUND, L.P.,

Plaintiff,

v.

CAMILLA MATTHIEU,

Defendant.

No. 15-SP-823

SILAR DISTRESSED REAL ESTATE FUND, L.P.,

Plaintiff,

v.

CAMILLA MATTHIEU,

Defendant.

No. 15-SP-845

These consolidated matters are before the court on cross-motions for summary judgment. After consideration of the respective arguments therein, the following order shall enter:

1. **Plaintiff's Motion for Summary Judgment:** The plaintiff's motion for summary judgment on its claim for possession is DENIED. A plaintiff may prove its *prima facie* case of

superior title by providing a foreclosure deed and affidavit of sale that meets the requirements of G.L. c. 244, § 15, showing that the power of sale was duly exercised. *Federal Nat'l Mtg. Ass'n v. Hendricks*, 463 Mass. 635, 641-642 (2012). As conceded by both sides, the affidavit of sale recorded on December 15, 2014 contains a defect, stating the foreclosure sale occurred on May 16, 2014 when it did not, in fact, occur until August 19, 2014.

2. After the initiation of the present matter, the plaintiff submitted an attempted corrective affidavit (the "Christofaro Affidavit"). The Christofaro Affidavit is not recorded, but simply filed with the court. It states how the auction was postponed on three separate occasions until its eventual sale on August 19, 2014.[1] Because Mr. Christofaro was not the individual who postponed the auction on May 16 nor July 18, 2014, nor has firsthand knowledge of the events, his affidavit cannot be considered to have corrected the deficient affidavit of sale due to it relying on hearsay evidence. The Christofaro Affidavit is a recitation of acts of the company's employees based upon information contained in the books and records, rather than just his own actions. Two of the key events—the postponement of the May 16 and July 18, 2014 auctions by proclamation—were completed by Mr. Resnick, and Mr. Christofaro was not physically present to attest to those acts. Additionally, the attempted corrective affidavit is not in the form prescribed by G.L. c. 183 nor appendix 12 and is not to be seen as correcting the deficiency of the affidavit of sale as it does not comport with statutory requirement to be considered a corrected affidavit of sale. *Hendricks*, supra at 642; *Federal Nat'l Mtg. Ass'n v. Gilbert*, 2014 Mass. App.

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[1] The affidavit states the auction was postponed by public proclamation on May 16, 2014 by Wilfred P. Resnick. Then it was postponed on June 18, 2014 by public proclamation by Alfred Christofaro. The sale was again postponed on July 18, by public proclamation by Mr. Resnick. The sale finally was conducted by Mr. Christofaro on August 19, 2014.

Div. 24, 2014 WL 861397, at *2–*4 (Mass. App. Div., Northern D., Feb 27, 2014). Therefore, the plaintiff cannot prove its *prima facie* case with the documents presented.

3. Additionally, there remain genuine issues of material fact regarding whether or not the defendants cured the default through the bankruptcy proceedings and various payments and whether their bankruptcy filing in June of 2014 caused a stay and whether such a stay was violated by the plaintiff's foreclosure auction that ultimately took place in August, 2014.

4. The Defendants' Motion for Summary Judgment: The defendants' motion for summary judgment on the claim of possession is also DENIED. Their argument that the inconsistencies in the plaintiff's affidavits, as described above, should result in a summary finding voiding the foreclosure is unpersuasive. The denial of summary judgment, however, does not bar the defendants from challenging at trial the proceedings surrounding the foreclosure auction and arguing that acts or omissions by the plaintiff resulted in an improper auction.

5. That portion of the defendants' summary judgment motion seeking a ruling that the 2014 mortgage debt acceleration notices failed to strictly comply with the plaintiff's power of sale is also unpersuasive. When a plaintiff has foreclosed on a mortgage for a subject property, the plaintiff must prove that it exercised strict compliance with the provisions in paragraph 22 pertaining to the power of sale. *Pinti v. Emigrant Mortg. Co., Inc.*, 472 Mass. 226, 235–36 (2012). The *Pinti* decision was initially only given prospective effect, but the Supreme Judicial Court (SJC) has since stated that it applies to trial-level cases and appeals that rightfully raised a "*Pinti* argument" while *Pinti* was pending in the SJC. *Federal Nat'l Mtg. Ass'n v. Marroquin*, 477 Mass. 82, 83 (2017). The defendants timely asserted a defense that the plaintiff's case should be dismissed because "the foreclosure is void due to failure to comply" with the power of

sale. Defendant's Answer, ¶ 45. *See also Marroquin, supra* at 84.

6. The defendants argue that the two notices of default they received are incomplete and deceptive due to failures to strictly comply with the mortgage. The language found within paragraph 22 states:

> The notice of default shall specify: (a) the default; (b) the action required to cure the default; (c) a date, no less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by [the mortgage]. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale.

Both notices of acceleration sent to the defendants on January 29 and February 24, 2014, however, do include the required elements in that they specify the default and how the entire balance of $27,536.43 was due and payable; they state that the defendants could cure the default by paying the full amount at a specified date at least 30 days out; and also state the right to reinstate and the right to bring a suit to assert the non-existence of default or any other defense. Lastly, the notices informed the defendants that failure to cure could result in the acceleration of the sums secured by the mortgage.

7. The defendants additionally argue that the title of the documents, "Notice of Acceleration," is misleading in and of itself. The court does not find that the title of the notices is *per se* misleading or deceptive, nor fail to strictly comply with the power of sale. Thus, it is not a basis for a summary ruling in their favor. The defendants are, however, free to prove at trial—if applicable—that they suffered "prejudice causally related to the alleged defects in the notice." *Meilleur, supra* at *3, citing *Coelho v. Asset Acquisition & Resolution Entity, LLC*, Civ. No. 13-10166-GAO, 2014 WL 1281513, at *3 (D. Mass., Mar. 31, 2014). The denial of their

motion for summary judgment on this claim does not foreclose them to prove at trial that they were in a position to cure the default and reinstate the mortgage when the notices were sent or any time since . *See id.*

8. Conclusion and Order: Based on the foregoing, the parties' cross-motions for summary judgment are DENIED. The Clerks Office shall schedule this matter for a Case Management Conference and so notify the parties.

So entered this 26th of March, 2020.

/s/ Robert Fields
Robert Fields, Associate Justice RF/CAC, ACM

cc: Caitlin Castillo, Esq, First Assistant Clerk Magistrate

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department
Western Division
No. 19-CV-61

ALAN and MICHAEL GUARCO,

Plaintiff,

v.

JONATHAN BRAY and TARA HICKEY,

Defendants.

ORDER

After hearing on December 20, 2019 on Plaintiff's partial motion for summary judgment at which the plaintiffs were represented by counsel and the defendants appeared *pro se*, the motion is allowed in part and denied in part and following order shall enter:

1. Standard of Review. Summary judgment is appropriate when there are no material facts in dispute, and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Highlands Ins. Co. v. Aerovox*, 424 Mass. 226, 232 (1997). When reviewing the record for summary judgment, the court will view the evidence in the light most favorable to the non-moving party. *Bisson v. Eck*, 430 Mass. 406, 407 (1999); *Gray v. Giroux*, 49 Mass. App. Ct. 436, 437 (2000). The moving party must demonstrate that the moving party is entitled to a judgment in her favor as a matter of law. *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). "If the moving party establishes the absence of a triable issue, the party opposing the

motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact . . . ." *Pederson v. Time Inc.*, 404 Mass. 14, 17 (1989).

2. Substantive law will identify which facts are material, and only disputed salient facts that might affect the outcome of the suit under the governing law will preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Carey v. New England Organ Bank*, 446 Mass. 270, 278 (2006); *Molly A. v. Commissioner Dep't of Mental Retardation*, 69 Mass. App. Ct. 267, 268 n.5 (2007). In determining if a dispute concerning a material fact is genuine, the court must decide whether "the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

3. Once the moving party establishes the absence of a triable issue and makes its prima facie case, the non-moving party must respond with facts supported by the record establishing the existence of a genuine issue of material fact. Mass. R. Civ. P. 56(e). The non-moving party may not rest on "mere assertions of disputed facts," but must show the existence of actual material facts. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989). 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).

4. Background. The plaintiffs, Alan and Michael Guarco (hereinafter "landlords" or "plaintiffs") filed a Summary Process action for the failure of the defendants, Jonathon Bray and Tara Hickey (hereinafter, "tenants" or "defendants"), to vacate premises located at 810 College Highway, Southwick, Massachusetts (hereinafter "premises") after termination of their tenancy by Notice to Quit for non-payment of rent. On or about January 17, 2019 the tenants surrendered

possession of the premises to the landlords and the case was converted to the present civil docket. The plaintiffs seek partial summary judgment for several of the defendants' counterclaims, to include (1) violations of the security deposit under G.L. c. 186, § 15B; (2) violations of the handling of last month's rent deposit under G.L. c. 186, § 15B; (3) damages for lost wages and mileage connected to the breach of the warranty of habitability or covenant of quiet enjoyment; and (4) damages for temporary housing.

5. The tenancy began in November 2017,[1] under a written agreement, through November 9, 2018. At the inception of the tenancy, the tenants paid first and last month's rent and a security deposit. On or about June 16, 2018 the tenants mailed a "rent withholding letter" to the landlords alleging certain conditions at the premises as well as security deposit violations. On or about August 1, 2018, the landlords returned the security deposit of $1401.20 to the tenants including accrued interest. On or about August 2, 2018, the Southwick Board of Health (hereinafter "B.O.H.") conducted an inspection of the premises. On or about August 21, 2018, the B.O.H. conducted a lead determination at the premises. Shortly thereafter, the B.O.H. issued a report that outlined violations of the state sanitary code requiring repairs, including a finding of lead paint in the premises.

6. The landlords contacted ATC Group Services, LLC (hereinafter "ATC") for a lead inspection report. The appointment was scheduled for November 2018 as it was purportedly the soonest available appointment. On or about November 28, 2018, the landlords and ATC arrived

[1] The exact date of the inception of the tenancy is in dispute. The landlords state the tenancy began when the written agreement was entered on November 9, 2017, whereas the tenants state the tenancy began on November 1, 2017 after meting with the landlords and paying first and last month's rent and a security deposit on October 31, 2017 with an agreed upon move-in date of November 1, 2017.

at the premises for the lead inspection and discovered that the tenants no longer lived at the premises and the premises was empty of tenants' personal possessions. A notice to quit was given to the tenants on or about December 7, 2019.

7. Discussion; Lost Wages and Mileage Damages: The covenant of quiet enjoyment has been part of Massachusetts common law for upward of a century, *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973), and is now codified as a covenant protecting tenants' rights to enjoy the possession of a premises without interference from their landlord. G.L. c. 186, § 14. A tenant may bring an action for damages and attorney's fees if there is a constructive eviction. *Shindler v. Grove Hall Kosher Delicatessen & Lunch*, 282 Mass. 32 (1933). A lessee may recover damages which are a proximate result of the breach and "expected to ensue as a result of the breach," but are not recoverable when they are "not within the contemplation of the parties and do not arise naturally from the violation of the covenant." E. George Daher et al., 33 MASS. PRAC., LANDLORD AND TENANT LAW § 10:22 (3d ed. 2019).

8. Typically, the measure of damages is lost rental value—that is, the difference between the value of what the lessee should have received and the value of what he did receive. *Clark v. Leisure Woods Estates, Inc.*, 89 Mass. App. Ct. 87, 90 (2016). However, the expansive interpretation of quiet enjoyment found within Chapter 186 allows for consequential damages in recovering all losses that are reasonably foreseeable to the actor, personal as well as economic, even if they did not inevitably result from the act complained of. *Id.* at 90–91. For example, where a lessee is evicted due to a landlord's wrongful act(s), moving expenses have been seen to be a direct consequence of the breach. *Winchester v. O'Brien*, 266 Mass. 33, 36 (1929).

9. It can analogously be stated that travel and lost wages may be awarded as damages to a

plaintiff so long as they "naturally arise" from the violation of the covenant. *Simon v. Solomon*, 385 Mass. 91, 112–13 (1982). The facts pertaining to a direct causal connection, if any, of the lead-paint violations to the lost wages and mileage shall be determined at trial. However, during discovery, the tenants categorized their apportionment of damages to arrive at their sought-after figure of $52,882.80. Included within are dates of lost wages in connection to dates where they were to appear at court. The tenants will not be able to put forward evidence relating to reimbursement for preparation of the court dates as they were not represented by counsel at any time.

10. Temporary Housing: The tenants claim damages to recover costs for temporary housing under a contract theory. More specifically, the parties dispute the exact beginning date of the tenancy. During the time of November 1, 2018 through November 9, 2018, the tenants purport to have been required to live in a hotel as they were not able to move into the premises because the landlords were not available to meet the tenants and give them keys. As the inception date of the tenancy is material and in dispute, the matter shall proceed to trial.[2]

11. Last Month's Rent. The landlords applied the last month's rent paid by the tenants at the inception of the tenancy towards unpaid rent accrued from June 2018 through January 2019. Massachusetts General Laws, Chapter 186, § 15B(2)(a) states that if a tenant pays amounts for last month's rent prior to commencement of the tenancy, a landlord is "to pay any interest to which the tenant is then entitled within thirty days after the termination of the

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[2] During the motion hearing on December 20, 2019, the tenants stated they are not seeking expenses for temporary housing acquired after the B.O.H. inspection, but merely for the time awaiting to gain access to the premises in November 2017. Plaintiff's argument focused on the time frame after the lead paint violations were found by the B.O.H., but as they are not being sought by the tenants, the argument is moot and the Court declines to weigh in on the matter.

tenancy." If a landlord fails to do so, a tenant "shall be awarded damages in an amount equal to three times the amount of interest to which the tenant is entitled, together with court costs and reasonable attorneys [*sic*] fees." *Id.* As it is uncontested that the landlords did not return any interest accrued from the account where the tenants' deposit was held, landlords shall be liable for three times the interest that the tenants are entitled to. Evidence, if any, may be admitted at trial regarding the interest of said accounts. If none is proffered, the Court will instruct the jury to award damages at five percent per annum in accordance with the applicable statute.

12. Security Deposit. The tenants allege that the landlords mishandled their security deposit in violation of G.L. c. 186, § 15B(3)(a), which states:

> Any security deposit received by such lessor shall be held in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for its transfer to a subsequent owner of said property. A receipt shall be given to the tenant within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit. Failure to comply with this paragraph shall entitle the tenant to immediate return of the security deposit.

The tenants claim the landlords did not provide the account information after repeated requests for said information beginning as early as November 2017 when the tenancy began. The landlords state the only instance a request for the account information was made contemporaneously with the rent withholding letter. Further, the landlords did not put the security deposit into a separate account in the name of the tenants, but in the name of the landlords themselves. The landlords violated subsection (3)(a), however, upon receipt of the request for the security deposit, it was promptly returned to the tenants and thus extinguished the trebling of the deposit. The tenants' claim that the landlords failed to provide them with the

proper interest on the deposit appears to survive summary judgment and the landlords will need to put into evidence proof of the amount of interest actually accrued upon the deposit to avoid any further damages on the tenants' security deposit claim.

13. ORDER. For the foregoing reasons, the plaintiff's motion for summary judgment is ALLOWED in part and DENIED in part as delineated above.

So entered this 31st day of March, 2020.

Robert Fields /mas
Robert G. Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20H79CV000198

Lisandra Rodriguez)
Plaintiff)
)
VS.)
)
Timothy Czerwieki)
Defendant)

ORDER

After a hearing on March 26, 2020, of which all parties appeared with counsel the following order is to enter by agreement:

1. **The Defendant, and his employees and agents, shall not enter the Plaintiff's apartment until she vacates the unit without further leave of court or agreement of the parties.**

2. **The Plaintiff shall coordinate with the bank appraiser, Jeff Leger, to schedule an appraisal within seven days of this order issuing.**

So entered this 31st **day of March, 2020.**

Robert G. Fields / kc

Hon. Robert G. Fields
Western Division Housing Court