

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

**Volume 5**

Sep. 17, 2020 — Dec. 18, 2020

## **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. Jonathan Kane, 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., *Massachusetts Attorney General’s Office*<sup>1</sup>

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

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<sup>1</sup> Formerly of Community Legal Aid, and historically associated with the local tenant bar.

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, specific personal financial information, 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](http://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, [aaron.dulles@mass.gov](mailto:aaron.dulles@mass.gov).

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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 ([aaron.dulles@mass.gov](mailto:aaron.dulles@mass.gov)) and/or Peter Vickery ([peter@petervickery.com](mailto:peter@petervickery.com)).



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COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 19H79CV000844

**WEST SPRINGFIELD HOUSING  
AUTHORITY,**

**PLAINTIFF**

**V.**

**HI T. WANG, SU CHEN AND SENH  
WANG,**

**DEFENDANTS**

**FINDINGS, RULINGS AND  
ORDER**

This summary process action was before the Court via Zoom for a bench trial on August 18, 2020. The parties, all of whom are represented by counsel, stipulate to the following facts:

1. Defendants occupied a subsidized unit owned and operated by the West Springfield Housing Authority ("Plaintiff") at 3 Birch Park Circle, West Springfield, Massachusetts (the "Premises") from July 13, 2018 to August 31, 2019.
2. Defendants have been tenants of Plaintiff (at one or more different apartments) since on or before 2001.
3. Defendant Senh Wang ("Senh") became employed prior to August 2018.
4. Defendant Hi T. Wang ("Hi") is the only signatory of a lease dated July 13, 2018.
5. Defendants collectively paid rent of \$948.00 per month from July 13, 2018 through June 30, 2019 and paid \$1,843.00 per month for July 2019 and August 2019.

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

A. Additional Factual Findings

Each year of Defendants' tenancy, Plaintiff, in accordance with Massachusetts law, re-determined Defendants' monthly rent. As part of that process, Defendants signed paperwork certifying their household composition and household income. With respect to their annual re-determination in June 2018, Defendants' reported that their household income was anticipated to be \$42,744 for the year. Plaintiff set their monthly rent at \$948.00 based on the reported income.

After graduating college in 2016 and working part-time for a period of time, Senh was hired into a full-time position in late 2017. Senh's wages as a full-time employee caused Defendants' household income to increase by approximately \$40,000 for the 2018 calendar year. Defendants did not disclose Senh's income to Plaintiff at any time prior to submitting the family's 2018 tax returns to Plaintiff, which occurred sometime between February 27, 2019 and May 2019 (the exact date is not relevant to this decision). At no time after submitting the 2018 tax returns did Defendants notify Plaintiff that the tax returns showed a significant increase in household income for 2018.

During the 2019 re-determination process due in June 2019, Sabrina Moran, a state program coordinator employed by Plaintiff, calculated that, after accounting for Senh's income, Defendants' new monthly rent would be \$1,843.00 effective July 1, 2019. This figure was derived by calculating 27% of the household net income (Plaintiff's Exhibit 17). Defendants, who had paid \$948.00 each month through June 2019, paid the higher rent amount of \$1,843.00

for the months of July 2019 and August 2019 before vacating the Premises and moving to private housing.

B. Rulings of Law

1. Reporting Income and Rent Increase

Pursuant to the Massachusetts Department of Housing and Community Development regulations applicable to local housing authorities (“Regulations”), a housing authority “shall re-determine each tenant’s monthly rent once annually to be effective on a specific re-determination date which shall be the first day of a month. This re-determination date should be the same each year.” 760 C.M.R. 6.04(4)(a). In this case, the re-determination occurred in June and changes to monthly rent went into effect as of July 1. The Regulations further provide:

If in any month the monthly gross household income of a tenant household increases by 10% or more from the amount contained in the most recent notice of rent as (re)determined by the [licensed housing authority], the tenant shall report any such increase, including any changes in income, exclusions and deductions. The tenant shall report the increase to the [licensed housing authority] by the seventh day of the month following the month in which the increase occurred. (emphasis added)

*Id.* at § 6.04(5)(a). Defendants’ lease mirrors the Regulations, mandating that when gross monthly household income increases by more than 10%, it “shall require a rent redetermination by [the Housing Authority], and [Defendants] shall report any such increase ... to [the Housing Authority] by the seventh (7<sup>th</sup>) day of the month following the increase together with authorization for verification.” Plaintiff’s Exhibit 14, Section IV.B.

Senh’s additional income was not included as part of the June 2018 rent re-determination because Defendants did not report an increase in income from the previous year. When Senh’s wages caused the household income to increase by more than 10%, Defendants had an obligation

to inform Plaintiff of the income increase by the seventh day of the month following when the increase occurred.<sup>1</sup> Pursuant to the Regulations, “in addition to its other remedies, the [Housing Authority], upon discovery that increased rent was due, shall make the effective date of the increase in rent retroactive to the first day of the second month following the increase in income.” 760 C.M.R. 6.04(5)(a) (third para.). Because Defendants’ did not report to Plaintiff the specific month of the increase in household income, Plaintiff was justified in this case in retroactively adjusting the effective date of the monthly rent increase to the beginning of the annual re-determination period, namely July 1, 2018.<sup>2</sup>

Pursuant to the Regulations, if a tenant fails to disclose in a timely manner pertinent information which would increase net household income, upon request, the tenant must pay the balance of rent which otherwise should have been paid, along with interest on such balance. *See* 760 C.M.R. 6.04(8). In this case, Defendants failed to disclose additional income that increased the household income by 10% or more in a timely manner. Therefore, Defendants are obligated to pay the balance of rent which they would have paid had they disclosed Senh’s income in a timely manner. The next question is: what is the amount of rent that Defendants would have paid had the income been timely disclosed.

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<sup>1</sup> Defendants claim that Hi’s lack of proficiency in the English language, combined with Ms. Moran not explaining provisions in the lease, is a valid defense to the requirement. However, Hi signed the lease, and “in the absence of deceit on the part of the defendant, even though not understanding their purport and ignorant of the English language,” he is bound by its terms. *Paulink v. American Exp. Co.*, 265 Mass. 182, 185 (1928) (citations omitted).

<sup>2</sup> The Court is not moved by Defendants’ argument that the effective date of the rent increase should be delayed because Plaintiff did not review their tax return for several months after it was dropped off. The Court does not hold Plaintiff to a standard of reviewing financial documentation outside of the annual re-determination timeline when it is not known that the documentation included a change in income that would require an interim re-determination.



## 2. Amount of Rent Increase

The Massachusetts legislature has determined that “the policy of this commonwealth [is] that each housing authority shall manage and operate decent, safe and sanitary dwelling accommodations at the lowest possible cost, and that no housing authority shall manage and operate any such project for profit.” G.L. c. 121B, § 32. In a similar fact pattern as exists here, the Massachusetts Appeals Court has held that this provision (and a separate provision in Section 32 indicating that cost is determined by evaluating the unit, not to the project as a whole) precludes a housing authority from charging an amount in excess of fair market rent unless specifically authorized. *Northampton Hous. Auth. v. Kahle*, 74 Mass. App. Ct. 559 (2009); *accord Ware Hous. Auth. v. O’Connell*, No. 03-SP-04455 (Mass. Housing Ct., W. Div., Feb. 10, 2005) (Fein, J.) (holding, generally, that if a state public housing tenancy has been terminated, and the housing authority subsequently discovers that the rent should have been higher based on unreported income, the back-charge amount may not exceed the fair rental value of the premises). There is no evidence here that Plaintiff was specifically authorized to charge rent in excess of fair market rent. Accordingly, the Court determines that, in applying the retroactive rent increase to July 1, 2018, Plaintiff should have charged Defendants the fair market rent for the Premises rather than the amount calculated as a percentage of the family income.<sup>3</sup>

At trial, neither party introduced expert testimony as to the fair rental value of the Premises. Defendants offered a stipulated exhibit of the HUD USER FY2019 Fair Market Rent

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<sup>3</sup> This conclusion is further bolstered by the language in the Regulations that requires tenants to pay the fair value of use and occupancy (but no less than the rent in effect at the time of termination) if they fail to vacate after termination of the lease. *See* 760 C.M.R. 6.04(2)(b).

Documentation for Springfield, MA Metro Area that shows fair rental value for a two-bedroom apartment in 2019 to be \$1,061.00.<sup>4</sup> Based on the evidence and testimony, the Court finds that for purposes of this case, the fair rental value for the Premises is \$1,061.00.

In light of this finding, the following chart shows the amount of rent that should have been charged for each of the relevant months based on fair rental value, along with the amount actually paid for each month.

<u>MONTH</u>	<u>RENT</u>	<u>PAYMENT</u>	<u>BALANCE</u>
July 2018	\$1,061.00	\$948.00	\$113.00
August 2018	\$1,061.00	\$948.00	\$226.00
September 2018	\$1,061.00	\$948.00	\$339.00
October 2018	\$1,061.00	\$948.00	\$452.00
November 2018	\$1,061.00	\$948.00	\$565.00
December 2018	\$1,061.00	\$948.00	\$678.00
January 2019	\$1,061.00	\$948.00	\$791.00
February 2019	\$1,061.00	\$948.00	\$904.00
March 2019	\$1,061.00	\$948.00	\$1,017.00
April 2019	\$1,061.00	\$948.00	\$1,130.00
May 2019	\$1,061.00	\$948.00	\$1,243.00
June 2019	\$1,061.00	\$948.00	\$1,356.00
July 2019	\$1,061.00	\$1,843.00	\$574.00
August 2019	\$1,061.00	\$1,843.00	-\$208.00


Based on the foregoing, the Court finds that, although Defendants failed to report timely the additional household income, and although their failure to report timely authorized Plaintiff to adjust the rent retroactively to July 1, 2018, Defendants do not owe any additional rent to Plaintiff.

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<sup>4</sup> Plaintiff contends that the HUD FY 2019 guidelines do not apply because the Premises are subject to state, not federal, subsidy guidelines. Nonetheless, the Court has no reason to believe that the HUD guidelines are not a reliable indicator of fair market rent. Moreover, even though the issue of fair rental value was well known at the time of trial, Plaintiff did not offer any evidence in its post-trial brief to suggest a different fair rental value.

Accordingly, it is hereby **ORDERED** that judgment shall enter for Defendant.

SO ORDERED. 9/17/2020



Jonathan J. Kane  
First Justice

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT  
DEPARTMENT OF  
THE TRIAL COURT  
CIVIL ACTION  
No. 18-CV- 1060

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CITY OF SPRINGFIELD  
CODE ENFORCEMENT DEPARTMENT  
HOUSING DIVISION,

Plaintiff

v.

COBB REALTY TRUST (owner)  
SISTERHOOD ON THE MOVE, INC. (indispensable party),  
TOORAK REPO SELLER I TRUST (mortgagee),  
TRIUMPH CAPITAL PARTNERS, LLC (mortgagee),  
VICTORIA CAPITAL TRUST (mortgagee), and  
CHERYL BONNER (tenant)

Defendants

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Re: Premises 63 Mulberry Street, Springfield, Massachusetts

After a hearing on September 28, 2020 for which a representative of the Plaintiff, CHERYL BONNER, and VICTORIA CAPITAL TRUST appeared, and for which COBB REALTY TRUST, SISTERHOOD ON THE MOVE, INC., TOORAK REPO SELLER I TRUST, and TRIUMPH CAPITAL PARTNERS, LLC did not appear, the following order is to enter without objection by the appearing Defendants:

1. Defendants COBB REALTY TRUST and CHERYL BONNER are hereby ordered to clean the exterior of the property at the above said premises of all trash, litter, debris, household items and overgrowth FORTHWITH, and in any event no later than October 2, 2020 at 9:00 a.m. and to maintain the property as clean of all litter, trash, debris, household items, and overgrowth until the condemnation is lifted or with leave of court.
2. Defendants COBB REALTY TRUST and CHERYL BONNER hereby ordered to board and secure the main building on the property in accordance the U.S. Fire Administration National Arson Prevention Initiative standards, FORTHWITH, and in any event no later than October 2, 2020 at 9:00 a.m. and to maintain the property as boarded and secured to those standards until the condemnation is lifted or with leave of court.
3. Defendants COBB REALTY TRUST and CHERYL BONNER hereby ordered to board and secure the carriage house on the property in accordance the U.S. Fire Administration National Arson Prevention Initiative standards, FORTHWITH, and in any event no later than October 2, 2020 at 9:00 a.m. and to maintain the property as boarded and secured to those standards until the condemnation is lifted or with leave of court.

4. If the Defendants fail to comply with any of Paragraphs one (1), two (2), or three (3) of this order the Plaintiff shall be allowed access to the above mentioned property, in its sole discretion and dependent upon funding, to clean the exterior of the property of all litter, trash, debris, household items, and overgrowth; to board and secure the carriage house to the U.S. Fire Administration National Arson Prevention Initiative standards; and/or board and secure the main building on the property to the U.S. Fire Administration National Arson Prevention Initiative standards. This order shall remain in effect for the next twelve (12) months. The City can enter to clean the exterior of property as often as necessary to maintain the property as clean of all litter, trash, debris, household items, and overgrowth, as well as to re-secure the carriage house and/or main building at the property to the standards of U.S. Fire Administration National Arson Prevention Initiative.
5. The Plaintiff shall be allowed to place a lien against such property, duly recorded in the Hampden County Registry of Deeds, to recover any and all reasonable costs associated with cleaning the exterior of the property, plus the costs of filing such lien.
6. A copy of this order shall be filed in the Hampden County Registry of Deeds, and shall constitute a lien against the property for payment of such costs incurred pursuant to paragraphs four (4) and five (5) of this order, together with the filing fee for filing such lien.
7. The Plaintiff shall inspect to verify compliance with this order on October 2, 2020 between 9:00 a.m. and 4:00 p.m.
8. Upon the Plaintiff's boarding and securing the main dwelling at the property, the Plaintiff shall coordinate with CHERYL BONNER, through counsel, for arrange access to the property during daylight hours for purposes of retrieving personal possessions. Said access shall be provided within two business days of the request.

SO entered this <sup>th</sup> 29 day of ~~September~~, 2020.

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice  
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 19H79SP005075

32 BYERS STREET, INC., )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 CYNTHIA JOHNSON, )  
 )  
 DEFENDANT )

**ORDER**

This matter came before the Court for a Zoom hearing on Plaintiff's motion to levy on the execution.<sup>1</sup> Both parties appeared, as did representatives of Greater Springfield Senior Services, Inc. ("GSSSI") and the Tenancy Preservation Program ("TPP").

Based on representations from [REDACTED]  
[REDACTED]

[REDACTED], the Court will not lift the stay on use of the execution at this time. Instead, after hearing, it is ORDERED that:

1. Plaintiff's motion to levy on the execution is DENIED without prejudice.
2. Defendant shall [REDACTED]  
[REDACTED]

[REDACTED]. To satisfy these requirements, she shall accept assistance from GSSSI and any other providers arranged by GSSSI and shall follow their recommendations. Because GSSSI has

<sup>1</sup> This matter has been deemed an "essential" eviction and is therefore issuance of an execution is not prohibited under Chapter 65 of the Acts of 2020.

determined that Defendant appears to have decisional capacity and understands the risk of non-compliance with Court orders,<sup>2</sup> if Defendant fails to cooperate with these services without good cause, and if the lack of cooperation has a material adverse effect on [REDACTED], the Court will entertain a renewed motion to levy on the execution.

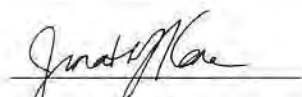
3. TPP agrees to communicate with [REDACTED] and, prior to the next hearing, report to the Court on the progress made by [REDACTED] and the extent to which Defendant cooperated with services offered to her.

4. [REDACTED]

[REDACTED]

5. The parties shall return for a status review on October <sup>28<sup>th</sup></sup>, 2020 at 11:00a.m.

SO ORDERED.

  
Jonathan J. Kane  
First Justice

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<sup>2</sup> Based on responses to questions posed by the Court during the hearing, it also appears to the Court that Defendant is aware of the nature of the proceedings against her and the consequences of continued non-compliance.



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79cv000340

MEGGAN MEREDITH, )  
)  
PLAINTIFF )  
)  
v. )  
)  
FRANK HOUSEY, )  
)  
DEFENDANT )

**ORDER**

This matter came before the Court for an in-person hearing on Plaintiff's request for an emergency order that Defendant reinstate her housing and reimburse her for expenses incurred as result of being displaced due to a bed bug infestation. Defendant contends that Plaintiff abandoned the premises and that he has no obligation to rehouse her. Both parties were self represented. The Court treats Plaintiff's motion as one for a preliminary injunction.

The standard for issuance of a preliminary injunction requires that Plaintiff show a likelihood of success on the merits and a substantial risk of irreparable harm in the absence of injunctive relief. The Court must then balance the risk of harm to the moving party against any similar risk of harm to the opposing party by the granting of the injunction. *See Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). For the reasons stated below, the Court finds that Plaintiff has failed to satisfy the standard for issuance of a preliminary injunction.

Based on the evidence and testimony of the parties at the hearing, the Court finds that Plaintiff rented one bedroom in a four-bedroom house located at 32 Green Street, Springfield, Massachusetts (the "Property"). In July 2020, the Property was condemned by the City of



Springfield as a result of a bed bug infestation. Plaintiff was ordered to vacate. Defendant paid for Plaintiff to stay in a hotel for a period of time and provided a daily stipend for food. The parties agree that Plaintiff returned to the Property when the condemnation order was lifted in mid-July 2020, but they disagree as to how long Plaintiff remained at the Property thereafter.

Plaintiff claims she returned on July 16, 2020 and lived at the Property continuously through the end of August 2020, but for a few days when she stayed with friends. She asserts that she then left for a few weeks to stay at an Airbnb (also in Springfield) to be nearer her son, and that when she returned to the Property on September 22, 2020, she found a man occupying her room and all of her belongings gone. Plaintiff submitted Airbnb receipts showing a rented room for two nights, along with some text messages indicating an extension of the rental outside of Airbnb. The Court finds the documentation provided by Plaintiff to be more consistent with a decision to relocate than a short-term vacation. Plaintiff had no admissible evidence to support her position that Defendant knew she was on vacation and intended to return to the Property.

Defendant asserts that Plaintiff stayed only a few days after the condemnation was lifted and that she packed up her belongings and placed them in a friend's car. He testified that she did not return to the Property again for approximately two months, when she demanded to have her room back. Defendant claims that he spoke to Plaintiff at one point to ask how she liked her new place, and that Plaintiff said that it was okay. Michael Provost and Robert Dixon, each of whom rented a different bedroom at the Property, gave testimony consistent with that of Defendant.<sup>1</sup> Mr. Provost further explained that Plaintiff rented the room furnished, so the only items she had to move were her clothes.

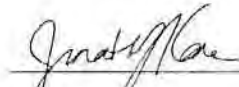
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<sup>1</sup> Gwendolyn Scruggs also testified, but she was lacking first-hand knowledge and the Court disregards her testimony altogether.

Based on the testimony, and considering the evidence presented, the Court finds that Plaintiff failed to demonstrate a likelihood of success on the merits of her claim that Defendant continues to have a duty to provide her with housing. To the contrary, the evidence shows that Defendant is likely to demonstrate at trial that he had a good faith basis to believe Plaintiff abandoned her room at the Property and moved to another location. Accordingly, Plaintiff's motion for an emergency order is DENIED.<sup>2</sup>

SO ORDERED.

10/5/20

  
Jonathan J. Kane

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<sup>2</sup> If Plaintiff seeks monetary damages related to the condemnation or otherwise, she must amend her pleading pursuant to the Massachusetts Rules of Civil Procedure and state a claim upon which relief can be granted.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV00519

DAVID G. MORIN, )  
 )  
 PLAINTIFF )  
 )  
 V. )  
 )  
 UNIVERSITY OF MASSACHUSETTS, )  
 AMHERST, )  
 )  
 DEFENDANT )

ORDER

This matter came before the Court for a video-conference hearing on September 17, 2020 on Plaintiff’s motion for a temporary restraining order.<sup>1</sup> Following the hearing, Plaintiff’s counsel, who had been retained just prior to the hearing, sought leave to submit a written post-trial brief, which leave was granted. Defendant was then allowed to file its post-trial brief, which was received on or about September 29, 2020.

Based on the affidavits filed with the Court and the reasonable inferences drawn therefrom, and in the light of the applicable law, the Court finds and rules as follows:

The Lincoln Apartments are located on the campus of the University of Massachusetts, Amherst (the “University”) and consist of 105 studio, one-bedroom and two-bedroom apartments furnished with one bed, bureau and desk per student, two living room chairs, a kitchen table and

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<sup>1</sup> Defendant also filed a motion to dismiss on jurisdictional grounds. The Court rejects Defendant’s argument that the Housing Court does not have jurisdiction to hear this matter, and therefore denies Defendant’s motion. Pursuant to G.L. c. 185C, § 3, the Housing Court has concurrent jurisdiction with the Superior Court with respect to any general or special law concerned directly or indirectly with the health, safety or welfare of any occupant of any place used or intended for use as a place of human habitation, including the power to grant injunctive relief as equity may require.

two chairs, a stove and refrigerator.<sup>2</sup> These units house individual graduate students (but not graduate student families).

Mr. Morin resided in Lincoln Apartments unit #414 from the Fall of 2016 through May 31, 2017 and in unit #1026 through May 31, 2018. He was then reassigned by the University to unit #322 and, after he requested reassignment to a different unit, he was assigned to unit #1121 (the “Premises”) where he remained until September 3, 2020. On September 3, 2020, representatives of the University changed the locks to the Premises and Mr. Morin has not resided there since that day.

The question presented to this Court is whether Mr. Morin has rights of a tenant, in which case the University deprived him of housing without judicial process, or whether Mr. Morin was a licensee by contract whose rights of occupancy could be terminated pursuant to the terms of the contract. Mr. Morin’s contends that G.L. c. 186, § 14 applies to any occupant of residential premises and does not require a finding of a landlord-tenant relationship. *See Serreze v. YWCA of Western Massachusetts, Inc.*, 30 Mass. App. Ct. 639, 643 (1991). He further argues that that G.L. c. 186, § 17, which expressly excludes residents of dormitories of educational institutions from certain rights afforded tenants, including the right to judicial process when evicted, is inapposite because the Lincoln Apartments are not “dormitories.” Mr. Morin posits that, whereas dormitories have “shared bedrooms and common bathrooms for large numbers of students,” the Premises is a separate one bedroom unit with a full bath and kitchen and a separate entrance from the outside. Mr. Morin suggests that the Lincoln Apartments are no different than other off-campus housing options that compete with private housing stock for student dollars.

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<sup>2</sup> Information found at [www.umass.edu/living/residence/lincoln](http://www.umass.edu/living/residence/lincoln), last accessed on October 6, 2020.

The University's position is that the Lincoln Apartments are similar to other on-campus residence halls. The University uses a Graduate Housing Agreement/Residence Hall Contract for occupancy in the Lincoln Apartments with terms similar to the contract it uses for undergraduate housing in more traditional dormitory-style living. The University contends that the Lincoln Apartments are different from the housing offered to graduate student families at North Village Apartments, an off-campus apartment complex where graduate student families sign traditional leases and are considered tenants. According to the University, the following factors weigh in favor of finding that the Lincoln Apartments are akin to dormitories and not private rental housing:

- Student occupants do not have an exclusive right to possession. The University retains the right to assign students to units<sup>3</sup> and reserves the right to enter if it has reason to believe an extreme health or safety emergency exists.
- The University reserves the right to refuse students admission or readmission to the Lincoln Apartments during the academic year if they fail to meet University requirements, policies or regulations.
- Students pay housing fees to the University's Office of the Bursar each semester, as opposed to paying monthly rent.<sup>4</sup>
- The term of occupancy is tied to students' enrollment status, so if they graduate, withdraw, lose student eligibility or fail to enroll for the subsequent semester, the license terminates.

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<sup>3</sup> In this case, Mr. Morin has resided in four different units at the Lincoln Apartments.

<sup>4</sup> The Court is aware that Mr. Morin paid a separate monthly fee to remain at the Lincoln Apartments for the summer months, but the option to stay in University housing for summer months is specifically referenced in the contract as a special circumstance that must be arranged through the Residential Life Student Services office. Accordingly, the Court does not find that Mr. Morin's continued occupancy through the summer creates tenancy rights.

- Residents must abide by a University code of conduct for residence halls.
- The University provides utilities and furnishings for students' use during occupancy.

The foregoing factors must be considered in light of Mr. Morin's request for injunctive relief. In considering a request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Here, although the Court does not consider Mr. Morin a licensee simply because the University deems him as such, based on the totality of the circumstances, the Court is not convinced that Mr. Morin has a strong likelihood of success on the merits of his claim that he is entitled to rights afforded to tenants under Massachusetts law. The Court finds it more likely that Mr. Morin would be deemed to be a licensee living in a dormitory at an educational institution.<sup>5</sup> Mr. Morin's claim of injury must be weighed in light of his limited chance of success on the merits. One significant equitable factor in the Court's evaluation of potential harm is the significant amount of advance notice Mr. Morin received prior to the termination of his license to

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<sup>5</sup> The term "dormitory" as used in G.L. c. 186, § 17 appears to be outdated. Students live in "residence halls" which can take many different forms, including modular apartment-style living. See, e.g., <https://www.bc.edu/bc-web/offices/student-affairs/sites/residential-life/living-in-bc-housing/bc-residence-halls/residence-hall-floor-plans.html#apartment>.



occupy the Premises. In early September 2019, Mr. Morin was made aware that the Lincoln Apartments would be demolished and that he had to vacate by May 31, 2020. He was offered financial assistance, housing search assistance and free furniture. The University provided additional reminders of the deadline for vacating (including notice in April 2020 of an extension of the move-out date to August 31, 2020 due to the COVID-19 pandemic). After Mr. Morin failed to respond to numerous emails from May 2020 to July 2020 regarding his future housing plans, he was visited personally by one of the affiants in this case, Dawn Bond, the University's Director of Residential Life Operations. Ms. Bond attests that, on July 22, 2020, Mr. Morin told her that he would move by August 1, 2020 if the University would reinstate his academic scholarship. On September 1, 2020, when he had not left the Premises, he was given a 48-hour notice to vacate. The harm that Mr. Morin complains of – being forced to move home and sleep on a couch – could have been avoided had Mr. Morin accepted the University's offers of moving assistance (offers that apparently still stand today).<sup>6</sup>

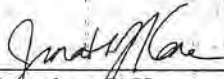
Had the University not provided Mr. Morin so much advance notice, or if he was denied due process before being forced to vacate the Premises on September 3, 2020, the Court may have balanced the harms differently. Even in that case, however, the Court would have considered the harm to the University if the injunction was granted. Because the University is currently using the Lincoln Apartments to house students who are in isolation or quarantine during the COVID-19 pandemic, the Court would not have been inclined to order the University to rehouse Mr. Morin in the Lincoln Apartments at this time.

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<sup>6</sup> The Court also takes into consideration the University's assertion that, according to its records, as of August 24, 2020, Mr. Morin was no longer enrolled at the University.

Accordingly, for all of the foregoing reasons, Plaintiff's motion for a temporary restraining order is DENIED.

SO ORDERED.

  
Jonathan J. Kane  
First Justice



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO.: 20SC004

**BUD SHATTUCK**  
Plaintiff

VS.

**SEAN P. DONOVAN**  
Defendant

**DECISION**

This is a small claims action filed by the plaintiff Bud Shattuck (“Plaintiff”) filed against defendant Sean Donovan (“Defendant”) . The virtual hearing was conducted via video conference in accordance with the applicable Housing Court Standing Orders and SJC Orders relative to the Covid-19 Pandemic on October 19, 2020.<sup>1</sup> Both parties appeared self-represented. Defendant in his motion was seeking to file an appeal late and to assert a counterclaim. Based upon the arguments set forth at the hearing, the Court finds as follows:

1. On January 6, 2020, Plaintiff filed this action seeking two thousand (\$2,000.00) dollars in damages against Defendant claiming he was owed monies for first and last month rent , security deposit and for utility bills arising out of his rental of a bedroom from Defendant at 27 Madison Avenue , Springfield, MA.
2. On January 20, 2020, Defendant filed an answer denying the allegations. No counterclaim was asserted.
3. A trial was conducted on February 12, 2020. Judgment was entered in favor of the Plaintiff for four hundred and fifty (\$450.00) dollars.
4. On February 12, 2020, Defendant filed a motion for reconsideration of the judgment. The hearing was scheduled for April 15, 2020.


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<sup>1</sup> At the outset, the Court finds that it is permitted to hear and make a ruling in this action pursuant to the CARES Act; the Moratorium Legislation; the applicable SJC Order; and Housing Court Standing Order because it is a civil action and not a summary process “non-essential” eviction action and the hearing was conducted virtually.

5. On March 13, 2020, due to the COVID-19 pandemic, the motion was rescheduled by the Court to June 24, 2020.
6. On May 13, 2020, notice was sent to the parties advising them that due to the pandemic the hearing would be rescheduled to a new date in the future and notice would be sent by the Court.
7. On August 27, 2020, notice was sent to the parties of a housing specialist mediation to be conducted via zoom on September 8, 2020.
8. On September 8, 2020, the Defendant filed a motion entitled "Motion to Vacate Judgment, Notice of Remand". In the motion the Defendant seeks to file a counterclaim. The hearing was scheduled for September 23, 2020.
9. On September 24, 2020, the Court issued an order denying the motion to reconsider. The order advised the Defendant his notice of appeal was not being processed, unless ordered by a judge of this Court.
10. On October 1, 2020, the Defendant filed a document entitled "Appeal to Higher Court For Trial by Single Justice". On that same day the Court scheduled a hearing before a judge on October 19, 2020, and treated the filing as a motion to file a late appeal.
11. The COVID-19 pandemic has presented the courts and litigants with unique and extraordinary circumstances. The Defendant, at all times, has filed pleadings and motions in a timely manner. Defendant argued that he was under the belief that when he filed his motion for reconsideration in February of 2020 and thereafter was advised by the Court that his motion was being rescheduled by the Court, he did not have to take any further measures until the motion was heard. Under these circumstances during the pandemic Defendant's belief is reasonable.
12. However, many of the allegations set forth in the proposed counterclaim were known and/or should have been known to the Defendant prior to the trial in February of 2020. The Court does not find it reasonable to allow the Defendant to assert a counterclaim in this matter, at this late juncture.
13. The Defendant's motion to file a counterclaim is **DENIED**. The motion to file an appeal late is **ALLOWED**. Within ten days of the date of this order the Defendant shall file with the clerk the entry fee of twenty five (\$25.00) dollars and the bond of one hundred (\$100.00) dollars. If the Defendant does not pay the entry fee and bond

within that time his appeal shall be dismissed. Upon entry of the appeal fee and bond, the Court shall schedule this matter for a bench trial.

SO ORDERED



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**JOSEPH E. KELLEHER**  
**ASSOCIATE JUSTICE**

**October 20, 2020**

cc: Bud Shattuck  
Sean Donovan

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

CASE NO. 20-CV-442

(CONSOLIDATED INTO: 20-SP-806)

MARJORIE SHELDON,

Plaintiff,

v.

LISA ACKERMAN,

Defendant.

ORDER

After hearing on August 31, 2020 on the plaintiff landlord's motion for use and occupancy payments and the defendant tenant's motion to dismiss or in the alternative for consolidation, at which both parties appeared through counsel, the following order shall enter:

1. The parties in this instant matter, plaintiff landlord Marjorie Sheldon (hereinafter, "Sheldon") and defendant tenant Lisa Ackerman (hereinafter, "Ackerman") are

the parties in a summary process matter in this court (20-SP-806), commenced in February, 2020.

2. Additionally, Ackerman is the plaintiff in a civil action against Sheldon originally filed in the Northern Berkshire District Court in July, 2020, but which was later transferred to this court.
3. Ackerman's motion to dismiss seeks as an alternative remedy that this instant matter, in which Sheldon alleges a breach of contract (failure to pay rent) and seeks an order for payments of use and occupancy, be consolidated with the summary process matter which is for non-payment of rent. That request is granted and the instant civil matter (20-CV-442) is hereby consolidated into the summary process matter, 20-SP-806.
4. Both counsel agree that the action from the Northern Berkshire District Court was transferred to this court and either consolidated into the summary process matter or opened as a civil action. They suggest that there was not action taken on the transfer due to the court's COVID-related standing orders. As such, that matter shall be consolidated with the summary process matter (20-SP-806) as well, if it has not already been consolidated.
5. This consolidated matter, which is now inclusive of the Northern Berkshire District Court matter, the Housing Court civil matter (20-CV-442) and the Housing Court summary process matter (20-SP-806), and all docketed as 20-SP-806, shall be scheduled for a Case Management Conference with the judge on November 12, 2020 at 3:00 p.m. In addition to scheduling discovery deadlines and a trial date, and to ensure that the matter originally filed in Northern

Berkshire District Court has successfully been consolidated into this matter, the parties shall discuss marking up of Sheldon's motion for use and occupancy if she still wishes to be heard on that matter.

So entered this 23<sup>rd</sup> day of October, 2020.

Robert Fields (CJH)

Robert Fields, Associate Justice

Cc: Laura Fenn, Esq., Assistant Clerk Magistrate

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV000596

MOOSE CREEK REALTY, LLC,            )  
  )  
                          PLAINTIFF        )  
  )  
V.    )  
  )  
GYPSY RIVERA,                         )  
  )  
                          DEFENDANT      )

**ORDER**

This case came before the Court on October 23, 2020 for hearing on Plaintiff's request for a temporary restraining order. Defendant was given notice and appeared at the hearing, so the Court treats this matter as a motion for preliminary injunction. Plaintiff seeks an order enjoining Defendant from (1) allowing Sasha Jimenez from being on the premises at 472 Front Street, Chicopee, Massachusetts, the six-family property where Defendant lives (the "Property"), and (2) causing disturbances at the Property, including but not limited to playing loud music and getting into verbal altercations with other residents of the Property. For the reasons stated in this Order, Plaintiff's motion is ALLOWED.

In considering a request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the



risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Based on the testimony of five witnesses called by Plaintiff (property manager St. Pierre, Officer Jusino of the Chicopee Police Department, and tenants Burton, Rodriguez and Moran), the Court finds that Plaintiff is likely to succeed on the merits of its case. Plaintiff demonstrated that Defendant has substantially interfered with the quiet enjoyment of other residents and that her guest, Sasha Jimenez created a significant disturbance at the Property on October 5, 2020 [REDACTED]. The Court is convinced that failure to issue the injunction would subject the residents of the Property to a substantial risk of irreparable harm.

Defendant is not at any similar risk of irreparable harm if the Court grants the injunction. She testified that Sasha Jimenez has not been to the Property since the events of October 4, 2020 and that she has no reason to invite Ms. Jimenez to the Property in the future. Although Defendant claims she is the victim of verbal attacks by other residents of the Property, she will not be at risk of irreparable harm if the Court enters the relief being requested by Plaintiff.<sup>1</sup>

Accordingly, for all of the foregoing reasons, the following ORDER shall enter:

1. Defendant is hereby ordered not to allow Sasha Jimenez to enter onto the Property; and
2. Defendant is hereby ordered not to cause any disturbances (including without limitation playing loud music, making threats or engaging in verbal altercations) at the Property

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<sup>1</sup> The Court explained to Defendant, who was representing herself, that the hearing today was not an eviction trial, but that Plaintiff had filed a separate eviction case against her and that if Defendant wanted to retain a lawyer (as she suggested at the outset of the hearing), that she had time to do so before the eviction case came before the Court.

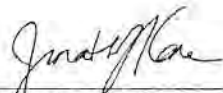


or otherwise disturbing (or allowing visitors to disturb) the quiet enjoyment of the other residents of the Property.

3. Plaintiff, for good cause shown, is not required to post bond or any other form of security pursuant to Mass. R. Civ. P. 65(c); however, the \$90.00 injunction fee described in G.L. c. 262, § 4 is applicable and shall be paid to the Clerk's Office within thirty (30) days.

SO ORDERED.

10/26/20

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

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79SP000631  
CV

**NORTH HOLLOW, LLC,**

**PLAINTIFF**

**V.**

**MICHELLE ABBOTT,**

**DEFENDANT**

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**ORDER**

This case came before the Court on October 26, 2020 for hearing on Plaintiff's request for a temporary restraining order. Defendant failed to appear after notice. After hearing, at which James LeGrand, Plaintiff's Manager, testified as to the facts supporting Plaintiff's motion, the Court shall enter the following ORDER:

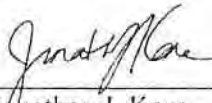
1. Defendant shall allow access to 50 Linden Street, Apt 3LR, Chicopee, Massachusetts (the "premises") immediately for Plaintiff to re-install smoke detectors. Defendant shall not tamper with the smoke detectors in the premises;
2. Defendant shall refrain from burning candles or otherwise having any open flames in the premises;
3. Defendant shall refrain from throwing any items from the building at 50 Linden Street (the "building") onto the yard or onto any adjoining property;
4. Defendant shall refrain from any activity that endangers the health or safety of other residents in the building;

5. Defendant shall refrain from any activity that disturbs the quiet enjoyment of other residents of the building.

6. At the next hearing, the Court will consider Plaintiff's oral request made in Court today that, due to the extreme danger caused by Defendant's use of open flames inside the premises, Defendant be barred from entering premises pending a summary process action to regain possession. A copy of this Order shall be served on Defendant forthwith.

7. Plaintiff, for good cause shown, is not required to post bond or any other form of security pursuant to Mass. R. Civ. P. 65(c); however, the \$90.00 injunction fee described in G.L. c. 262, § 4 is applicable and shall be paid to the Clerk's Office within thirty (30) days.

SO ORDERED. 10/27/20

  
Jonathan J. Kane  
First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV000631

NORTH HOLLOW, LLC,

PLAINTIFF

v.

MICHELLE ABBOTT,

DEFENDANT

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**ORDER**

This case came before the Court on October 30, 2020 for further hearing on Plaintiff's request for injunctive relief. Defendant, who failed to appear at the prior hearing, again failed to appear after notice. After hearing, at which James LeGrand, Plaintiff's Manager, testified as to the facts supporting Plaintiff's motion, the Court shall enter the following ORDER:

1. The Order entered on October 27, 2020 shall be converted to a preliminary injunction and shall remain in effect until further order of this Court
2. As of 9:00 a.m. on Tuesday, November 3, 2020, Defendant is barred from entering the premises at 50 Linden Street, 3LR, Chicopee, Massachusetts (the "premises") pending further order of this Court. The Court is entering this Order based on testimony and evidence submitted by Plaintiff showing that Defendant's intentional or recklessly negligent conduct (burning items, placing flammable articles on gas-fired heating sources and removing smoke detectors) creates an extreme danger of fire and places the other residents of the building, some of whom are elderly, at serious risk of injury.

3. If Defendant wishes the Court to reconsider this Order, she shall serve a motion on Plaintiff or its counsel and file it with the Court. If no such motion is received by Plaintiff or its counsel by 9:00 a.m. on November 3, 2020, Plaintiff may change the locks (and, if necessary, seek assistance from the Chicopee Police Department to remove Defendant from the premises). If Plaintiff changes the locks pursuant to this paragraph:

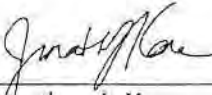
- a. Defendant may file a motion at any time to reconsider this Order;
- b. Defendant may have access to the premises upon reasonable notice to Plaintiff at reasonable times during business hours for the purpose of retrieving personal items.

4. The displacement of Defendant pursuant to this Order is a temporary measure to protect the health and safety of other residents during the pendency of a summary process action. This order does not transfer legal possession of the premises to Plaintiff and Plaintiff may not remove any of Defendant's belongings at this time. Plaintiff must file a summary process case to regain legal possession of the premises.

5. If, prior to 9:00 a.m. on November 3, 2020, Plaintiff or its counsel receives a motion pursuant to paragraph 3, it shall not change the locks or remove Defendant until the motion is heard by the Court.

6. No additional injunction fee shall be imposed pursuant to G.L. c. 262, § 4.

SO ORDERED this 3<sup>rd</sup> day of October, 2020.

  
Jonathan J. Kane  
First Justice

**COMMONWEALTH OF MASSACHUSETTS**

**HAMPDEN, ss**

**HOUSING COURT DEPT.  
WESTERN DIVISION  
DOCKET NO. 18-CV-289**

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**CITY OF HOLYOKE,  
Petitioner**

**v.**

**FRANKIE CARDONA (OWNER); AND  
MASSACHUSETTS DEPARTMENT OF REVENUE (LIENHOLDER)  
Respondents**

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**Re: 289-291 Main Street, Holyoke MA**

After a virtual (zoom) hearing on October 30, 2020, at which the following parties were present, Attorney for the City of Holyoke, Jenna Wellhoff, Esq., Attorney for Department of Revenue Maja Kazmierczak Esq., Resident Agent of Next Realty, Inc., Shakeel Ahmed Butt (without counsel), and no other parties appeared, the following order shall enter:

1. Plaintiff's Motion for Substitution of Parties is allowed.
2. The City shall perform a comprehensive inspection of the subject property on November 17, 2020 at 10:00 a.m.
3. Frankie Cardona shall be dismissed from this action as he is no longer the record owner of the property.
4. Lienholder, Massachusetts Department of Revenue, shall be dismissed from this action as their lien has been paid off.
5. Next Realty, Inc., as the new owner, shall be added as a party-defendant. For any subsequent hearings, Next Realty, Inc., shall appear with counsel to represent them in these proceedings.
6. Mr. Ahmed Butt has provided the court with a contact number to reach him at, which is [REDACTED].

7. The parties shall return for a review of this matter on **November 19, 2020 at 9:00**  
**a.m.**

So entered this 2<sup>nd</sup> day of <sup>November</sup>~~October~~, 2020.

*18/ Robert Fields*

Honorable Robert G. Fields  
Associate Justice

*by process  
CSC/ACM*

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79SP000400

**RICHARD LICCARDI,**  
**PLAINTIFF**

**V.**

**SHARON MARX,**  
**DEFENDANT**

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**ORDER**

This case came before the Court on November 2, 2020 for hearing on Defendant's motion to stop a physical eviction. Both parties appeared and represented themselves. After hearing, the following Order shall enter:


1. The eviction scheduled for November 4, 2020 at 10:00 a.m. shall be cancelled on the condition that Defendant pay \$250.00 to Plaintiff by 4:00 p.m. on November 5, 2020. If payment in full has not been made by this time, the eviction may go forward as scheduled. Plaintiff stated on the record that he will pick up the money from Defendant at the appointed time. It is the responsibility of Plaintiff to notify the Sheriff's office and/or movers of the cancellation.
2. If Defendant pays Plaintiff \$250.00 by 4:00 p.m. on November 5, 2020, the eviction may be rescheduled for 10:00 a.m. on November 16, 2020 without any further 48-hour Notice of Scheduled Eviction being served on Defendant by the Sheriff's office or constable. This Order shall suffice as notice of the rescheduled eviction. If the eviction cannot take place at 10:00 a.m. on November 16, 2020 as a result of schedule



conflicts with the Sheriff or moving company, it can be rescheduled at any time after 10:00 a.m. on November 16, 2020 so long as the Sheriff's office or constable serves a new 48-hour Notice of Scheduled Eviction.

3. Defendant will not be entitled to any further stays.

SO ORDERED, this 17<sup>th</sup> day of November, 2020.

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

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-CV-644

**JUANITA RAMIREZ PAGAN,**  
  
**Plaintiff,**  
  
**v.**  
  
**SPRINGFIELD HOUSING AUTHORITY,**  
  
**Defendant.**

**ORDER**

After hearing by Zoom on October 29, 2020, on the plaintiff tenant's request for injunctive relief, at which time she appeared without counsel and at the defendant landlord appeared through counsel, the following order shall enter:

1. For the reasons stated on the record, the tenant's request that the landlord be ordered to immediately provide alternate accommodations to her is denied, without prejudice.

2. At the tenant's request, the landlord shall secure a licensed professional wild animal control vendor to accompany the tenant or her designee for an comprehensive inspection of the subject premises to determine if wild animals are inside the unit or if there are signs that such animals can infiltrate the unit.
3. If the determination of said inspection is that animals are detected or appear to be able to infiltrate the unit, the landlord may be responsible to provide the tenant with alternate accommodations until the unit can be made secure from wild animals.
4. The tenant has filed a request with the landlord for a transfer [REDACTED].
5. A referral was made to the Tenancy Preservation Program (TPP), which had two representatives observing the hearing, for [REDACTED].
6. [REDACTED].

So entered this 3<sup>rd</sup> day of November, 2020.

Robert G. Fields / Associate Justice

Robert Fields, Associate Justice

Cc: [REDACTED]

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-CV-548

SPRING MEADOW ASSOCIATION OF  
RESPONSIBLE TENANTS, INC., c/o Mount  
Holyoke Management, LLC, Agent,

Plaintiff,

v.

GENNIDA SANTA,

Defendant.

ORDER

After hearing on October 22, 2020, on the defendant tenant's motion to continue these proceedings, at which both parties appeared through counsel, the following order shall enter:

1. The basis for this G.L. c.139, s.19 eviction action is the alleged behavior of the tenant, Gennida Santa, in July, 2020 regarding very serious allegations of conduct against a neighboring tenant (Emily Arriaga).



2. Ms. Santa is also facing criminal charges arising out of the same alleged incident.
3. It was reported to the court at the hearing that the District Court in which that criminal matter is pending has issued pretrial conditions of her release pending her criminal trial which require her to have no contact---direct or indirect---with the alleged victim and to remain away from her dwelling (Arriaga).
4. If this instant action were to proceed, including discovery and evidentiary hearings including trial, prior to the conclusion of Ms. Santa's criminal matter it would likely impact Ms. Santa's constitutional protections against self-incrimination in her criminal matter.
5. Given that there have not been any further incidents alleged against Ms. Santa since the mid-July, 2020 event that forms the basis for this action, and given that Ms. Santa is reported to be a disabled single mother of two minor children and is currently pregnant and has been a tenant of this subsidized unit for five years, the following order shall enter:
  - A. This matter, and all deadlines and hearing dates, shall be stayed pending the disposition of Ms. Santa's criminal proceedings;
  - B. The stay of these proceedings shall be contingent upon Ms. Santa not [REDACTED] and otherwise not violating the terms of her pretrial release in her criminal matter.
  - C. Either party may mark up a motion that is not inconsistent with the terms of this stay.

So entered this 30 day of October, 2020.

/s/ Robert Fields w/ permission  
Robert Fields, Associate Justice      CTCLM

Cc: Laura Fenn, Esq., Assistant Clerk Magistrate

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20-SP-419

COPENGER, LLC, )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 JAWANDO, )  
 )  
 DEFENDANT )

**FURTHER ORDER FOR PAYMENT UNDER G.L. c. 239, § 8A**

By decision dated April 28, 2020, this Court (Fein, J.) ordered that a judgment for possession would enter for Defendant if she paid the difference between the unpaid rent (\$4,400.00) and the amount awarded to her pursuant to G.L. c. 239, § 8A (\$4,050.00) plus interest and costs, and otherwise judgment for possession would enter for Plaintiff. Due to the Massachusetts eviction moratorium then in place (*see* Chapter 65 of the Acts of 2020), the Court tolled the deadline for Defendant to make the payment.

Now that the eviction moratorium has expired, the Court hereby issues a further order with respect to payment; namely:

1. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten days from the date this Order is entered on the docket to provide to the Court a bank check or money order made out to Plaintiff in the amount of \$350.00 plus 32.13 of interest and 154.51 of costs; if such payment is made, judgment for possession shall enter in favor of Defendant and the bank check or money order shall be released to Plaintiff once judgment becomes final.

2. If Defendant does not provide the bank check or money order to the Court within the permissible time frame, judgment for possession shall enter in favor of Plaintiff.

SO ORDERED.

November <sup>15th</sup> 2020

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



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 18H79SP04249

**ROSEMARY THOMAS,**

**PLAINTIFF**

**v.**

**AIESHA JAWANDO ET AL.,**

**DEFENDANTS**

**ORDER**

This matter came before the Court on November 4, 2020 for a Zoom show-cause hearing on Defendants' complaint for contempt. Both parties appeared through counsel. After reviewing the verified complaint and its exhibits, and following hearing, the Court finds clear and convincing evidence that Plaintiff disobeyed a clear and unequivocal order by this Court dated June 4, 2019 by selling the subject property without leave of Court or agreement of parties.

Civil contempt can be a means of securing for the aggrieved party the benefit of the Court's order. *See Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). In this matter, Defendants have already secured the benefit of the Court's order by virtue of a trustee process attachment issued by the Court on or about October 14, 2020. The Court determines that no further Court action is required at this time to secure for Defendants the benefit of the Court's order that Plaintiff not sell or encumber the subject property without leave of Court or agreement of the parties.

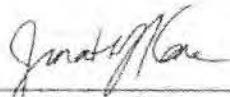
In order to compensate Defendants for legal expenses and costs incurred as a consequence of Plaintiff's violation of the Court order, the Court shall award reasonable

attorneys' fees and costs to Defendants relating directly to the contemptuous conduct.

Defendants' counsel shall serve upon Plaintiff's counsel an affidavit of attorneys' fees and costs, along with supporting documentation within fourteen days, and upon receipt Plaintiff's counsel shall have fourteen days to serve any opposition. Defendants' counsel shall then submit the affidavit and any opposition to the Court for consideration on the papers.

SO ORDERED.

11/6/20

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

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 19-SP-5301

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Morgan Kaylee Corp.,

Plaintiff,

v.

**ORDER**

Yaicha Ortiz,

Defendant.

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After hearing on November 10, 2020 at which the plaintiff (landlord) appeared through counsel, but at which the defendant (tenant) did not appear, the following order is to enter:

1. The landlord's motion for entry of judgment and issuance of an execution (eviction order) is hereby allowed.
2. A judgment nunc pro tunc (retroactive) to February 13, 2020 shall enter in favor of the landlord for possession and \$570 in rent/use and occupancy and \$177.76 in costs. The execution shall issue forthwith.
3. This order enters pursuant to the parties' February 13, 2020 Agreement for Judgment and is based on the court's finding that the defendant did not comply with its terms.
4. If the tenant applies for funding from a third party source such as RAFT that will pay the arrearage before the landlord serves a forty-eight hour notice, the tenant should contact her landlord's attorney immediately. If she does so, the landlord will not levy on the execution pending resolution of the RAFT application.

So entered this 13<sup>th</sup> day of November, 2020

Fairlie A. Dalton

Fairlie A. Dalton, J.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV00522

MARIA RODRIGUEZ,

PLAINTIFF

V.

CENTURY PACIFIC HOUSING  
PARTNERSHIP X, LP AND  
BERGIN CIRCLE REALTY, LLC,

DEFENDANTS

ORDER ON DEFENDANTS'  
MOTION TO STRIKE AFFIDAVIT

This matter came before the Court on November 6, 2020 for a Zoom videoconference hearing on Defendants' motion to strike Attorney Carissa Aranda's affidavit (hereinafter, the "Affidavit") or, in the alternative, to disqualify Attorney Aranda, who is counsel for Plaintiff (hereinafter, "Plaintiff's counsel"). The parties appeared for the hearing through counsel and submitted briefs in support of their respective positions.

The underlying facts are essentially undisputed. Plaintiff resides at 15 Girard Avenue, Unit 524, Springfield, Massachusetts (the "Premises") in a development owned and managed by Defendants known as Bergen Circle Apartments.<sup>1</sup> On September 11, 2020, Plaintiff filed a complaint asserting statutory causes of action under G.L. c. 186, § 14 and common law causes of action grounded in the implied warranty of habitability; in addition, Plaintiff applied for

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<sup>1</sup> Defendant Century Pacific Housing Partnership X, LP owns the property and Bergen Circle Realty, LLC manages it. Both are represented by the lawyer.

injunctive relief concerning allegedly defective conditions at the Premises. In support of Plaintiff's request for injunctive relief, Plaintiff's counsel filed the Affidavit, which purports to show that Plaintiff's counsel informed counsel for Defendants of certain continuing defective conditions in the Premises on August 3, 2020.

Defendants seek to strike the Affidavit on the basis that its contents are not relevant to the request for injunctive relief, citing Mass. R. Civ. P. 12(f) ("the court may after hearing order stricken from any pleading any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter"). Plaintiff, in contrast, contends that the Affidavit is relevant because Defendants' knowledge of defective conditions demonstrates a likelihood of success on the merits of Plaintiff's claims under G.L. c. 186, § 14. *See Al Zaib v. Mourgis*, 424 Mass. 827, 851 (1997) (to prevail on a claim under § 14, tenant has the burden of showing at least negligent conduct by landlord).

To succeed in an action for a preliminary injunction, a plaintiff must show (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction. *See Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). In this case, the injunctive relief sought in Plaintiff's application for injunctive relief requests an order "requiring the Defendants to take whatever steps are necessary to immediately repair any and all conditions in the premises which must be repaired that are in violation of the Sanitary Code." *See Maria Rodriguez's Application for a Temporary Restraining Order*, p. 2.

Plaintiff's argument that the Affidavit is relevant to the analysis of her claim for interference with quiet enjoyment claim is unpersuasive under the circumstances of this case,

because the order she seeks in her application for injunctive relief relies on a different legal theory. The Court interprets her application asking for repairs due to violations of the State sanitary code to be a claim under the warranty of habitability that is implied in every residential lease. *See Boston Hous. Auth. v. Hemingway*, 363 Mass. 184, 199 (1973). The warranty of habitability provides for strict liability and does not incorporate a fault element. *See Berman & Sons v. Jefferson*, 379 Mass. 196, 200 (1979). Therefore, at the preliminary injunction stage, it makes no difference if and how much notice was provided to Defendants, particularly when the Defendants are not contesting the applicability of the warranty. Plaintiff is entitled to an order for repairs if she demonstrates that she is likely to succeed on the merits of her warranty claim, that without such order she is likely to suffer irreparable harm, and, in light of the likelihood of success on the merits, the risk of irreparable harm to her outweighs the potential harm to the landlord in granting the injunction. She has met her burden, and in fact already obtained an order for Defendant to make repairs following the Court hearing on September 28, 2020.

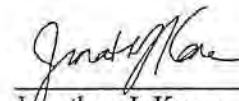
Given the Court's determination that the Affidavit is immaterial to the Court's consideration of Plaintiff's motion based on her warranty of habitability claim, the remaining question for determination is whether the Affidavit should be stricken from the record altogether pursuant to Mass. R. Civ. P. 12(f). In light of the Court's finding that the Affidavit is irrelevant at this stage of the proceedings, and in order to forestall the filing of similar affidavits describing the extent of communication between counsel unless those communications are central to the matter at issue before the Court,<sup>2</sup> the Court believes it is appropriate to strike the Affidavit from the record.

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<sup>2</sup> At this time, the Court takes no position on whether the communication between counsel constitutes effective notice of conditions.

Accordingly, for the foregoing reasons, the motion to strike the Affidavit is  
ALLOWED.

SO ORDERED, this <sup>th</sup>17 day of November, 2020.



Jonathan J. Kane  
First Justice



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 20-SP-377

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BG MASSACHUSETTS

Plaintiff,

v.

ORDER

REBECCA A. MCMAHON,

Defendant.

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After hearing on November 17, 2020 at which the plaintiff (landlord) appeared through counsel, but at which the defendant (tenant) did not appear, the following order is to enter:

1. The landlord's motion for issuance of an execution (eviction order) is hereby allowed.
2. An execution (eviction order) shall issue in favor of the landlord for possession, \$833.85 in use and occupancy, and for \$126.25 in court costs.
3. A stay on the use of the execution is granted conditioned upon the tenant paying her November, 2020 use and occupancy (rent) payment before the end of November, 2020, and thereafter continue to pay her monthly use and occupancy (rent) plus an additional \$20 per towards the court costs (126.25) each month until it is a zero balance.
4. This matter shall be dismissed upon the tenant reaching a zero balance.
5. The payment order above was generated without the benefit of the tenant who failed to appear at the hearing. If said payments are not possible, or if the tenant is going to apply to Wayfinders or another source of funding to pay the outstanding balances, she shall first discuss with the landlord and if that does not result in an agreed upon amendment to this order the tenant may file a motion to amend this order with the court and have it properly served and marked for hearing.

- Wayfinders can be reached by telephone at 413-233-1600 or on-line at [www.wayfindersma.org/hcec-assessment](http://www.wayfindersma.org/hcec-assessment).

So entered this 18<sup>th</sup> day of November, 2020

  
\_\_\_\_\_  
Robert G. Fields, Associate Justice  
Am.

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-SP-1103**

<p><b>LUMBER YARD NORTHAMPTON LIMITED PARTNERSHIP,</b></p> <p style="text-align:right"><b>Plaintiff,</b></p> <p>v.</p> <p><b>KELLI HUDSON,</b></p> <p style="text-align:right"><b>Defendant.</b></p>	<p><b>ORDER</b></p>
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This matter came before the court for trial on November 4, 2020 and a written decision was issued on November 5, 2020. In accordance with the court's order, the parties were provided an opportunity to discuss possible resolutions to their case and to report back to the court for further hearing on November 13, 2020. After said hearing, the following order shall enter:


1. Judgment shall enter for possession for the plaintiff landlord for the reasons stated in the November 4, 2020 order.

2. Issuance of the execution shall be stayed in accordance with the terms of this order.
3. The tenant shall under no circumstances allow her dog Roxy to be housed, visit, stay, or enter the premises including any and all common areas of the Lumber Yard apartments.
4. The defendant tenant shall **FORTHWITH** provide the landlord and the court with an affidavit from the tenant's family member(s) who are taking care of the tenant's dog Roxy. Said statement(s) shall verify that said caretaker(s) fully appreciate that so long as the tenant resides at the Lumber Yard apartments (premises), she is not allowed to have Roxy visit or stay at said premises. The statement shall also indicate clearly that the caretaker(s) are able to keep and take care of the dog during the entire duration that the tenant lives at the premises.
5. Given that the basis for this eviction stems from the tenant's dog attacking another dog at the premises (and thereafter, the tenant's housing of the dog after being ordered not to), and given that the dog is now not at the premises and is not even allowed to visit, and given the ongoing COVID pandemic, the court will stay the issuance of an execution to allow the tenant an opportunity to safely relocate.
6. During said stay, the tenant shall diligently search for alternate housing and shall maintain a log of such search efforts and provide same to the landlord and to the court bi-weekly with a report due on December 1, and December 14, 2020. This log shall indicate each place for which the tenant inquired and

the status of that inquiry. For any such places for which the tenant completed an intake or application, copies of same shall be provided with the log.

7. This matter shall be scheduled for review on **December 15, 2020 at 10:00 a.m.** The Clerks Office shall provide instructions on how to participate in said hearing by Zoom.

So entered this 19<sup>th</sup> day of November 2020.

  
\_\_\_\_\_  
Robert Fields, Associate Justice *AM*

Cc: Caitlin Castillo, First Assistant Clerk Magistrate

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-SP-1150

SERVICENET, INC.,

Plaintiff,

v.

ATILLA SALA,

Defendant.

ORDER

After hearing on November 24, 2020 on the plaintiff landlord's emergency motion for access for repairs to the defendant tenant's unit, at which the landlord appeared through counsel and for which the tenant did not appear, the following order shall enter:

1. After various attempts were made to reach the tenant to assist him in appearing for this hearing, by a Community Legal Aid attorney (who was present in a court breakout room as part of the court's Lawyer for the Day Program) and a court mediator from the court's Housing Specialist Program, the tenant did not appear.

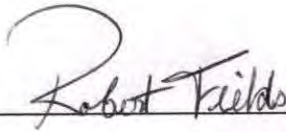
2. The landlord has persuaded the court that it needs access to the tenant's apartment to make changes to the electrical system or face a loss of insurance coverage for failure to properly upgrade the electrical system at the premises.
3. Accordingly, the landlord may have access to the tenant's unit on Tuesday, December 1, 2020 from 8:30 a.m. until 1:30 p.m to effectuate repairs/upgrades to the electrical service therein. Any and all such work shall be performed in accordance with COVID-19 safety protocols including the wearing of masks by the work persons at all time.
4. If the tenant does not allow the landlord and its agents inside the unit to perform such work at the designated time, the landlord and the police department are authorized to remove the tenant during the five hour period designated above.
5. If the tenant is not home at 8:30 a.m. on December 1, 2020, the landlord is authorized to use its key to gain access to the unit.
6. Servicenet, Inc. shall provide staff to be present at the unit on December 1, 2020 at 8:30 and shall communicate in advance with the police department and the crises teams in case they are required to get involved.
7. Servicenet, Inc. shall deliver a copy of this order before 5:00 p.m. today, November 24, 2020 to the tenant. If he is not present or refuses to take the Order in hand, Servicenet shall tape a copy to the tenant's front door or place it under the door so that it goes inside the unit.
8. This matter is referred to the Tenancy Preservation Program (TPP), whose representatives were present at the hearing. They can be reached at 413-233-5327. Community Legal Aid can be reached at 413-781-7814 and the Hampden



County Bar Association, for the court's Lawyer of the Day Program, can be reached at 413-732-4648.

9. This matter shall be scheduled for further hearing on **Monday, November 30, 2020 at 3:00 p.m.** If the tenant wishes to be heard regarding this Order, he is urged to appear at that time. The Clerks Office shall provide written instructions for participating in the Zoom hearing along with this Order and Servicenet, Inc. shall also serve said Zoom instructions along with this Order. The Clerks Office can be reached at 413-748-7838 with any questions about the court's Order.

So entered this 24<sup>th</sup> day of November, 2020.

  
\_\_\_\_\_

Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist (Re: TPP referral)



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV000428

TOWN OF WEST STOCKBRIDGE, )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 JAMES PHIBBS, ET AL., )  
 )  
 DEFENDANTS )

MEMORANDUM AND DECISION  
ON PLAINTIFF'S COMPLAINT FOR CONTEMPT

On November 23, 2020, this matter was before the Court for a virtual hearing on a complaint for civil contempt brought by the Town of West Stockbridge, by and through its Board of Health ("Plaintiff") against James Phibbs and Gennari's Mill Pond Trailer Park, Inc. ("Gennari's").<sup>1</sup> All parties appeared through counsel.

"Civil contempt is a means of securing for the aggrieved party the benefit of the court's order." *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). To find a violation of a Court order sufficient to justify an order of contempt, there must be a "clear and unequivocal command and an equally clear and undoubted disobedience." *Id.*, quoting *Niekerson v. Dowd*, 342 Mass. 462, 464 (1961). In this matter, the Court order in question is the Agreement for Judgment dated September 15, 2020 (the "Agreement for Judgment").

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<sup>1</sup> The corporation's registered agent and manager are also named as Defendants.

Based on the testimony of Plaintiff's health agent, Earl Moffitt, and Defendant Phibbs, and after reviewing the photographs submitted at trial, the Court finds clear and convincing evidence that Defendant Leonard has disobeyed the requirements set forth in paragraph number 3 of the Agreement for Judgment, but the Court does not find clear and convincing evidence that Defendant Leonard has disobeyed the requirements set forth in paragraphs 4 and 5 of the Agreement for Judgment.

With respect to paragraph 3, Defendant Phibbs does not dispute that he failed to provide proof to Plaintiff by October 15, 2020 that any and all vehicles at 5 Jennifer Lane, West Stockbridge, Massachusetts (the "Property") are lawfully registered. He claims he has the necessary registrations but sent them to his lawyer and overlooked the requirement that they be provided to Plaintiff. Through counsel, he represented to the Court that he would email copies of the registrations to the Town immediately. Rather than enter a finding of contempt and have Defendant Phibbs purge the contempt immediately, the Court will delay a finding of contempt and allow Defendant Phibbs until the end of business on November 24, 2020 to provide the registrations to the Town. His failure to do so, or his failure to remove any vehicles for which he cannot provide proof of registration, shall result in a finding of contempt.

With respect to paragraph 4, the Court heard testimony regarding delays in installing the shed and removing the then-existing shed/tent, but Mr. Moffatt acknowledges that the shed has now been erected, and he did not allege that the old shed was still present. Based on the testimony and evidence, the Court finds that Defendant Phibbs has substantially complied with the requirements set forth in paragraph 4. Given that the purpose of civil contempt is to induce compliance rather than impose punishment, the Court does not find Defendant Phibbs in contempt of paragraph 4 of the Agreement for Judgment.

Regarding paragraph 5, the Agreement for Judgment requires Defendant Phibbs to remove from the Property “any and all garbage, junk, debris and salvage materials, as depicted in the photographs attached hereto ... and/or ..., properly store the same in a secure, enclosed and weather tight structure.” At the hearing, no reference was made to the photographs attached to the Agreement for Judgment, but based on the photographs of the current conditions at the Property shown at the contempt hearing, the Court observed significant improvement. Mr. Moffatt testified that he was unable to see the entire Property from what he described as public areas, and some of what he photographed from those areas may not be “garbage, junk, debris and salvage materials” (such as neatly stacked lawn chairs). Based on the evidence, the Court is unable to determine at this time if Defendant Phibbs has substantially complied with the requirements set forth in paragraph 5 of the Agreement for Judgment.


In order to allow Plaintiff to better document the current condition of the Property, it shall do a further inspection and within the next two weeks, and Defendant Phibbs shall allow access to all exterior areas of the Property for Mr. Moffatt or his designee to document with photographs.<sup>2</sup> The parties shall return for review (by zoom) of Defendant Phibbs’ compliance with the Agreement for Judgment on **December 11, 2020 at 3:00 p.m.** If, as a result of the inspection, the Town is satisfied that Defendant Phibbs has substantially complied with the terms of the Agreement for Judgment, the parties are invited to enter into a new agreement or dismiss the contempt proceedings altogether, in which case they shall notify the Court to remove the review hearing from the docket. If the Town contends that Defendant Phibbs remains noncompliant with the terms of the Agreement for Judgment, it may remark the complaint for contempt for further hearing on the same date as the

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<sup>2</sup> Counsel for Gennari’s noted on the record that Plaintiff need not first seek approval from Gennari’s before entering the park for purposes of the inspection.

scheduled review with notice to Defendant Phibbs' counsel as to the basis for its contention.

SO ORDERED, this <sup>9<sup>th</sup></sup>21 day of November, 2020

  
Jonathan J. Kane w/permission  
First Justice meP

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV000429

TOWN OF WEST STOCKBRIDGE, )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 REGINALD LEONARD ET AL., )  
 )  
 DEFENDANTS )

MEMORANDUM AND DECISION  
ON PLAINTIFF'S COMPLAINT FOR CONTEMPT

On November 23, 2020, this matter was before the Court for hearing on a complaint for civil contempt brought by the Town of West Stockbridge, by and through its Board of Health ("Plaintiff") against Reginald Leonard and Gennari's Mill Pond Trailer Park, Inc. ("Gennari's").<sup>1</sup> Plaintiff and Defendant Gennari's appeared through counsel. Despite notice of the hearing, Defendant Leonard did not appear.

"Civil contempt is a means of securing for the aggrieved party the benefit of the court's order." *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). To find a violation of a Court order sufficient to justify an order of contempt, there must be a "clear and unequivocal command and an equally clear and undoubted disobedience." *Id.*, quoting *Nickerson v. Dowd*, 342 Mass. 462, 464 (1961). Based on the testimony of Plaintiff's health agent, Earl Moffitt, and the photographs submitted at trial, the Court finds clear and convincing evidence that Defendant


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<sup>1</sup> The corporation's registered agent and manager are also named as Defendants.

Leonard has disobeyed an unequivocal order of the Court, namely the Agreement for Judgment dated September 15, 2020 and endorsed by the Court (the "Agreement for Judgment"), by failing to take any meaningful steps to correct the violations cited by Plaintiff at the property located at 1 Gwenn Lane, West Stockbridge, Massachusetts. Defendant Leonard shall purge his contempt by substantially complying with the Agreement for Judgment within thirty (30) days. The parties shall return for a review on Defendant Leonard's compliance on December 28, 2020 at 9:00 a.m.

If at the time of the review Plaintiff demonstrates that Defendant Leonard remains in substantial noncompliance, the sanctions Leonard agreed to in the Agreement for Judgment shall be imposed; namely, daily fines of \$100.00 per day, retroactive to October 15, 2020, the date compliance was required under the Agreement for Judgment, until substantial compliance has been achieved. Counsel may also file a petition for attorneys' fees following the review hearing.

SO ORDERED, this 24<sup>th</sup> day of November, 2020

  
Jonathan J. Kane  
First Justice

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.  
FRANKLIN, SS  
HAMPSHIRE, SS  
HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20-SP-970

CHARLES BOGUES, )  
Plaintiff )  
 )  
v. )  
 )  
GEORGIA HENDRICKS, )  
Defendant )  
 )

FINDINGS OF FACT, RULINGS OF  
LAW AND ORDER FOR JUDGMENT

This is a summary process action in which Plaintiff seeks to recover possession of the subject premises from Defendant based on non-payment of rent. Both parties represented themselves at the Zoom trial held on November 24, 2020. Defendant did not file an answer. Plaintiff filed an Affidavit Concerning CDC Order attesting that it has not received a declaration from Defendant as provided in the CDC Order.

The Court finds that Plaintiff is the owner of the property located at 128 Kensington Avenue, Springfield Massachusetts. Defendant lives in the unit known as 1<sup>st</sup> Floor Left (the "Premises"). The parties do not have a rental agreement. Monthly rent is \$640.00 and Defendant claims rent from February 2020 through November 2020 in the total amount of \$6,400.00. Plaintiff served Defendant with a legally sufficient fourteen-day notice to quit which Defendant received, and he entered a summary process case in a timely manner. Accordingly, Plaintiff has satisfied his prima facie case for possession and unpaid rent.

Defendant did not file an answer. At trial she claimed she paid February rent to the previous owner.<sup>1</sup> Rather than contest Defendant's assertion, Plaintiff voluntarily waived his claim to February rent, leaving an unpaid balance of \$5,760.00. Defendant admits that she has not paid rent to Plaintiff, but asserts that Catholic Charities agreed to pay rent on her behalf for several months. She claims that Catholic Charities erroneously paid the money to the former

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<sup>1</sup> Plaintiff purchased the property on January 17, 2020 and asserts that he posted notice sometime thereafter, so it is plausible that Defendant paid February rent to the prior owner.

landlord instead of Plaintiff, which is why Plaintiff did not receive the funds. By Defendant's own reading of the letter purporting to be from Catholic Charities, however, the dates in question are from 2019, not 2020. Therefore, given Defendant's admission that she has not paid any rent since February, 2020, the Court finds that \$5,760.00 in unpaid rent is due Plaintiff.

Defendant represented to the Court that she has lived in her apartment for twenty years and has no place to go if she is evicted. Due to COVID, programs such as RAFT and ERMA provide money to tenants who are at risk of homelessness. Given the circumstances described by Defendant, the Court will provide a window of time for Defendant to apply for funds to either allow her to retain her tenancy or move to other housing. In order to assist Defendant in following the necessary steps to obtain funds, the Court refers her to the Tenancy Preservation Program.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law the Court, it is **ORDERED** that:

1. Judgment enter for Plaintiff for possession and damages in the amount of \$5,760.00, plus court costs.
2. Defendant is referred to the Tenancy Preservation Program for assistance in seeking rental assistance funds and shall follow its recommendations.
3. In order to allow Defendant the opportunity to apply for rental assistance, the execution (eviction order) shall issue only upon motion, and Plaintiff shall not file a motion to issue the execution prior to December 15, 2020.

**SO ORDERED**, this 27<sup>th</sup> day of November, 2020.

By:   
Jonathan Kane, First Justice



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-SP-1150

SERVICENET, INC.,  
Plaintiff,  
v.  
ATILLA SALA,  
Defendant.

ORDER

After hearing on November 30, 2020, at which the plaintiff appeared through counsel and for which the defendant did not appear, the following order shall enter:

1. The terms of the November 24, 2020 Order shall remain in full force and effect.
2. Additionally, the defendant tenant is required to exit the unit and not be present during the entirety of the time that the electrical work is being performed on December 1, 2020. To ensure same, the plaintiff, the landlord, and the police department are all authorized and obligated to remove the defendant tenant from

the premises during the entire time that the electrical work is being performed (8:30 a.m. to 1:30 p.m. on December 1, 2020).

3. It is also understood that after the electrical work is completed, the plaintiff shall need further access to the unit to allow Eversource to inspect the electrical service in the unit. The plaintiff shall provide as much notice as possible to the tenant when it needs access for Eversource, but no less than 24 hours advance notice, and the tenant shall be required to exit the unit for the time that it takes to complete said inspection.

So entered this 1<sup>st</sup> day of December, 2020.



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Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist (Re: TPP referral)

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV000656

ORANGE PARK MANAGEMENT, LLC, )  
 )  
 PLAINTIFF )  
 )  
 V. )  
 )  
 CHRISTOPHER ANDERSON, )  
 )  
 DEFENDANT )

**ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

This matter was before the Court on December 1, 2020, for hearing on the motion by the plaintiff, Orange Park Management, LLC (“Plaintiff”) for a preliminary injunction pursuant to Mass. R. Civ. P. 65 (b) against Defendant Christopher Anderson (“Defendant”).<sup>1</sup> Plaintiff seeks to remove Defendant from the Premises at 70 Sherman Street, 2<sup>nd</sup> Floor, Springfield, Massachusetts (the “Premises”) on the basis that Defendant was a stranger to Plaintiff until approximately October 13, 2020 and an unauthorized occupant of the Premises. Defendant appeared without counsel on the original hearing on November 18, 2020, claimed through a person with him who identified herself as his caregiver that he had tested positive for COVID-19 and was feeling ill, and asked for a continuance because he was on his way to the hospital at that moment. The Court

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<sup>1</sup> Although initially titled a request for temporary restraining order, Plaintiff’s request at the outset of the hearing that the request for temporary restraining order be considered a motion for preliminary injunction pursuant to Mass. R. Civ. P. 65 (b) was allowed.

granted a continuance and ordered Defendant to provide evidence of his illness on November 18, 2020 by way of a doctor's note or medical record. Defendant did not provide any such evidence.<sup>2</sup>

At the hearing on December 1, 2020, Defendant appeared with counsel. Plaintiff also appeared with counsel. The Court accepted testimony from both parties. Based on the credible testimony and evidence, the Court finds the following facts:

1. Plaintiff manages the property located at 70 Sherman Street, Springfield, Massachusetts (the "Property") of which the Premises are part.
2. Defendant occupies the Premises.
3. At some time in or after August, 2020, Defendant moved into the Premises with the consent of the tenant, Elizabeth Valentino ("Valentino"). Plaintiff was not notified that Defendant was residing at the Premises.
4. Valentino did not have permission to sublet any part of the Premises.<sup>3</sup>
5. Defendant has no rental agreement with Plaintiff and has never paid rent to Plaintiff.
6. Plaintiff entered into a purchase and sale agreement with respect to the Property that recites a closing date of September 28, 2020 and which requires that the Property be vacant as of the date of the conveyance.
7. On or about October 13, 2020, when contacting Valentino to discuss the details of her move-out, Plaintiff's manager, Patrick Gottschlicht ("Gottschlicht"), discovered that Defendant was residing in the Premises.

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<sup>2</sup> Defendant did provide what he asserts is evidence of a positive COVID-19 test result from November 4, 2020 but the Court asked for evidence of his medical condition on November 18, 2020 that warranted the continuance.

<sup>3</sup> Plaintiff did not produce a rental agreement with Valentino, but, based on the credible testimony Plaintiff's manager, the Court finds that Valentino (who had moved into the Premises from a different property managed by Plaintiff) was aware that Plaintiff was attempting to sell the Property and that she would likely occupy the Premises for a short period of time. The Court infers, therefore, that Plaintiff would not have given Valentino the right to enter into a sublease.

8. On October 15, 2020, Valentino returned keys and surrendered possession of the Premises to Plaintiff in exchange for consideration.
9. Defendant did not vacate the Premises when Valentino surrendered possession.
10. Subsequent to October 15, 2020 and prior to filing the verified complaint, Plaintiff offered to assist Defendant in finding and paying for replacement housing. Plaintiff made arrangements with a colleague in the property management business to offer Defendant an apartment, and when Defendant expressed concerns about the rental rate and the no pet policy, Gottschlicht negotiated on Defendant's behalf to reduce the rent and waive the no pet policy, but Defendant declined the apartment.
11. On November 6, 2020, Plaintiff filed a verified complaint and request for temporary restraining order enjoining Defendant from occupying the Premises.

In considering a request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Based on the foregoing findings, the Court concludes that Plaintiff is likely to succeed on its claim that Defendant is without any legal right to reside at the Premises, having entered the Premises without the knowledge of Plaintiff and having tendered no rent to Plaintiff. Defendant's failure to vacate the Premises is causing immediate and irreparable harm to Plaintiff as the date for closing on the sale of the Property has long passed and Mr. Gottschlicht testified credibly that the sale will be canceled if the transaction does not close by the end of the year.

Defendant contends that the risk of irreparable harm to him if he is forced to vacate the Premises is significant and outweighs the financial harm to Plaintiff if the sale falls through. This risk, however, must be considered in light of Plaintiff's likelihood of success on the merits of its claim. Given the Court's conclusion that Defendant is without any legal right to reside at the Premises, the balance of harm weighs in favor of Plaintiff.

With respect to Defendant's contention that his positive test for COVID-19 must be taken into account as an equitable consideration, the Court did not find Defendant credible regarding his current health condition. When he obtained a continuance of this hearing on November 18, 2020, Defendant was ordered to provide medical documentation regarding his health on the day of that hearing, and he failed to do so and offered no explanation as to why he did not produce it. Under these circumstances, the most the Court is willing to do is provide a small window of time to allow Defendant to relocate.<sup>4</sup>


Accordingly, the Court **ALLOWS** Plaintiff's request for an injunction enjoining Defendant from occupying the Premises and **ORDERS** that Defendant vacate the Premises. In light of the

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<sup>4</sup> Although the public interest weighs in favor of not ordering residents to vacate during the COVID-19 pandemic, Defendant had it within his own power to accept Plaintiff's repeated offers for financial assistance and its offer of an available apartment. At the hearing, Plaintiff expressed a willingness even now to provide some financial assistance to Defendant to relocate. Defendant cannot reject reasonable financial and housing options and then credibly argue that it would be contrary to the public interest to require him to move.

considerations referenced in this Order, Defendant shall not be required to vacate until the end of the day on December 13, 2020. If Defendant fails to vacate, Plaintiff shall be entitled to have a sheriff or constable remove Defendant and anyone holding possession under Defendant as trespassers.

SO ORDERED, this 14<sup>th</sup> day of December, 2020.

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



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79SP000879

VALLEY CASTLE HOLDINGS LLC, )  
 )  
 PLAINTIFF )  
 )  
 V. )  
 )  
 KATHLEEN ROGERS, )  
 )  
 DEFENDANT )

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This is a summary process action in which Plaintiff seeks to recover possession of certain residential premises from Defendant based on non-payment of rent. At trial on December 2, 2020 (which was conducted using Zoom video-conference technology), Plaintiff appeared through counsel and Defendant represented herself. Plaintiff filed an Affidavit Concerning CDC Order attesting that it has not received a declaration from Defendant as provided in the CDC Order, and Defendant confirmed that she had not provided a CDC declaration to Plaintiff.<sup>1</sup>

The parties stipulated to sufficient facts to establish Plaintiff's prima facie case for possession and damages for unpaid rent, namely:

1. Defendant resides at 143-145 Oak Grove Avenue, 2d Floor, Springfield, Massachusetts (the "Premises").
2. Plaintiff is the owner of the Premises.
3. Monthly rent is \$1,260.00.
4. The amount of unpaid rent through the date of trial is \$16,365.00.

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<sup>1</sup> The *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, issued by the Centers for Disease Control and Prevention on September 4, 2020 and found at 85 Fed. Reg. 55292 ("CDC Order") provides protection to tenants and residents of residential property who provide a declaration to their landlord as described in the CDC Order. Because Plaintiff did not provide a declaration, she is not entitled to the protections set forth in the CDC Order at this time.

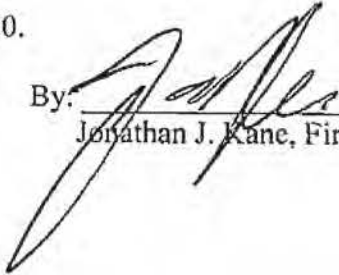


5. Plaintiff served Defendant with a legally sufficient notice to quit, which Defendant received.

Defendant filed an answer that did not assert any specific defenses or counterclaims. Defendant testified that she understood she owed the money and was simply seeking time to find a new place to live. A request for additional time to move does not constitute a legal defense to entry of judgment.

Based on the stipulations of the parties, the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, and in light of the governing law, it is ORDERED that judgment shall enter for the Plaintiff for possession and damages in the amount of \$16,365.00, plus court costs. In light of the continuing pandemic, the Court shall exercise its equitable powers and require Plaintiff to file a motion (rather than a written application) for issuance of the execution following expiration of the statutory appeal period, and the Court will thereafter schedule a hearing on Plaintiff's motion.<sup>2</sup>

SO ORDERED, this 4<sup>th</sup> day of December, 2020.

By:   
Jonathan J. Kane, First Justice

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<sup>2</sup> The purpose of scheduling a hearing rather than issuing the execution by written application is to allow Defendant an opportunity to present any relevant information regarding a possible stay of the levy.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 19-SP-3425

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City View Commons,

Plaintiff,

v.

ORDER

Jose Diaz,

Defendant.

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After hearing on December 7, 2020 at which the plaintiff (landlord) counsel appeared, but at which the defendant (tenant) did not appear, and based on the Plaintiff's Affidavit Concerning CDC Order (85 Fed. Reg. 55292) as filed on October 28, 2020, the following orders are to enter:

1. The landlord's motion for issuance of a new execution (eviction order) is allowed based on the court's finding that the defendant is not in compliance with paragraphs 6 and 10(B) of the February 25, 2020 Agreement for Judgment.
2. As provided in paragraph 4 of the February 25, 2020 Agreement for Judgment, a judgment nunc pro tunc (retroactive) to August 29, 2019 shall enter in favor of the landlord for possession and \$691.00 in rent/use and occupancy without costs. The execution shall issue forthwith.

So entered this 7<sup>th</sup> day of December, 2020

Fairlie A. Dalton

\_\_\_\_\_  
Fairlie A. Dalton, J.

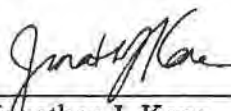


issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of award in similar cases. *Linthicum*, 379 Mass. at 388.

The Court finds that Attorney Natoli's hourly rate of \$300.00 for a case of this nature is a fair market rate, and Plaintiff's counsel does not contend otherwise. Plaintiff's counsel argues, however, that the time spent in relation to the contempt proceeding is excessive. After reviewing Attorney Natoli's time records submitted with his affidavit, and taking into account the assertions contained in Attorney Natoli's sworn affidavit concerning the complexity of title issues that had to be sorted out to ensure that the subject property had in fact been conveyed in contravention of the June 4, 2019 order, the Court finds that the 12.63 hours spent by Attorney Natoli working on this matter (as detailed in Exhibit B to his affidavit) is a reasonable amount of time.

Accordingly, after consideration of the various affidavits submitted in this matter in light of the applicable legal standard, a judgment for contempt shall enter in favor of Defendants with sanctions imposed in the form of an award of attorney's fees to Defendants in the amount of \$3,789.00, along with reasonable costs in the amount of \$45.76.

SO ORDERED, this 8<sup>th</sup> day of December, 2020.

  
Jonathan J. Kane  
First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 20-SP-32

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Mason Square Apartments,

Plaintiff,

v.

ORDERS

Jade L. Brown,

Defendant.

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This matter came before the court on December 7, 2020 on the plaintiff (landlord)'s motion for entry of judgment and issuance of execution for possession and money damages and the defendant (tenant)'s motion to extend the time to oppose the landlord's motion and reevaluate the amount owed. The plaintiff appeared at the hearing through counsel, but the defendant did not appear. The docket shows that the Plaintiff's Affidavit Concerning CDC Order (85 Fed. Reg. 55292) was filed on October 28, 2020. After hearing and without opposition, the following orders are to enter:

1. The defendant's motion to extend the time to oppose the motion is **DENIED**. She failed to appear to offer any reason why she needed an extension. Counsel for the plaintiff's attorney reported to the court that payments made by Ms. Brown since the plaintiff's motion was filed on October 28, 2020 have been credited to her rent ledger, leaving a zero balance owed for rent/use and occupancy but a remaining balance of \$177.76 owed for costs.
2. The plaintiff's motion for entry of judgment and issuance of execution is **ALLOWED** pursuant to the terms of the January 16, 2020 Agreement.
3. Judgment will enter for the landlord for possession and costs only of \$177.76 nunc pro tunc (retroactive) to January 16, 2020. Execution will issue at this time.

4. As agreed by the plaintiff, if the defendant resumes making the \$100 weekly payments toward the costs and she pays her current use and occupancy, the use of the execution will be stayed pending such payments.
5. The plaintiff will return the execution to the court when the defendant reaches a zero balance.

So entered this 9<sup>th</sup> day of December, 2020

Fairlie A. Dalton

Fairlie A. Dalton, J.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV00482

**BIANCA MARTINEZ,** )  
 )  
 **PLAINTIFF** )  
 )  
 **V.** )  
 )  
 **CHICOPEE VILLAGE TOWNHOMES,** )  
 **SHARON BYRD, ET AL.** )  
 )  
 **DEFENDANTS** )

**ORDER**

This matter came before the Court on December 10, 2020 on Plaintiff’s motion to enforce a Court agreement of the parties dated September 11, 2020 against Defendant Byrd (“Ms. Byrd”). Plaintiff and Ms. Byrd appeared and represented themselves; Defendant Chicopee Village Townhomes (“Landlord”) appeared through counsel.

Plaintiff has previously filed motions to enforce the Court agreement. She now contends that Ms. Byrd has continued to interfere with her peaceful enjoyment of her home, particularly by playing loud music. Ms. Byrd claims that she has to turn up her music because Plaintiff’s music is too loud. Both Plaintiff and Ms. Byrd have many numerous complaints to the Landlord and to the Chicopee Police Department. Landlord represents that Plaintiff has agreed to a transfer to a different unit and Landlord is prepared to permit the transfer as soon as December 15, 2020, but that the Holyoke Housing Authority cannot schedule an inspection of the new unit, which is required by the terms of Plaintiff’s subsidy, until the end of the month, thereby delaying the transfer until January 1, 2021.


Based on the foregoing, the Court orders as follows:

1. Given the volume of complaints to both Landlord and the Chicopee Police Department, which takes up valuable time and resources that could be put to better use, the Court encourages the Holyoke Housing Authority to prioritize this matter and expedite the inspection so that the transfer can occur as soon after December 15, 2020 as possible. Landlord, in its discretion, may implead Holyoke Housing Authority if it believes a Court order would facilitate an expedited inspection.

2. Until such time as Plaintiff has moved to a new unit, Plaintiff and Ms. Byrd are ordered as follows:

- a. Not to play music between the hours of 10 p.m. and 8 a.m.;
- b. At all other times, to maintain a low volume of music so that it cannot be heard outside of the walls of their respective units;
- c. Have no contact with one another, including in person communication, electronic communication or through social media platforms;

SO ORDERED, this \_\_\_ day of December, 2020.

  
Jonathan V. Kane  
First Justice



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-SP-591

CITY VIEW COMMONS I,  
  
Plaintiff,  
  
v.  
  
JUAN E. APONTE,  
  
Defendant.

ORDER

After hearing on December 9, 2020 on the landlord's motion for issuance of the execution, at which the landlord appeared through counsel and the tenant failed to appear, the following order shall enter:

1. The tenant owes \$425 in rent, use, and occupancy through December, 2020 plus \$184 in court costs.
2. The tenant's monthly rent is currently \$32.

3. The motion is allowed and judgment and execution shall issue for the above noted sums but there shall be a stay on its use until the next court hearing noted below.
4. In the meantime, the tenant shall pay his December, 2020 and January, 2021 use and occupancy (rent).
5. There are various financial assistance programs related to COVID-19 that may be helpful to the tenant to pay the monies she owes to the landlord and avoid an eviction. Such programs include (but are not limited to): RAFT funds which can be reached on line at [www.wayfindersma.org/hcec-assessment](http://www.wayfindersma.org/hcec-assessment) or by phone at 413-233-1600.
6. The federal government has also generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenant may wish to obtain a copy of a CDC declaration to determine if the Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to her. If so, she should provide a copy of the declaration with her signature to the landlord and to the court.
7. The tenant may wish to consult with a free attorney at Community Legal Aid at 413-781-7814 or the Hampden County Bar Association at 413-732-4648.
8. If the tenant or anyone in his household has a disability she may wish to contact the Tenancy Preservation Program at 413-233-5327.
9. The landlord shall communicate with the tenant to provide information about any and all public funds that may be available to the tenant to pay his back

rent and court costs. The tenant is also required to reach out to the landlord regarding same.

10. This matter shall be scheduled for January 14, 2021 at 12:00 p.m. The Clerks Office shall provide written instructions on how to participate in the hearing by Zoom. Any questions for the Clerks Office can be directed to it by calling 413-748-7838.

So entered this 14<sup>th</sup> day of December, 2020.



Robert Fields, Associate Justice *Am.*

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 16-SP-2488

CITY VIEW COMMONS,  
Plaintiff,  
v.  
SHANTI ABDUL-HAKIM,  
Defendant.


ORDER

After hearing on December 9, 2020 on the landlord's motion for re-issuance of an execution, at which the landlord appeared through counsel and the tenant failed to appear, the following order shall enter:

1. The landlord's motion is allowed and an execution shall issue for \$7,360 in rent, use, and occupancy plus \$166 in court costs.
2. Use of the execution is stayed, however, until leave of the court.

3. The stay is based on several factors including the age of this case, that the tenant has mostly been current on his rent but has failed to pay down the significant debt (noted above), that there is presently a global pandemic and there may be sufficient COVID-related state and local funding for which the tenant may be eligible to pay the back rent.
4. This matter shall be scheduled for further hearing on a date and time noted below. In the meantime, the tenant is directed to investigate his eligibility for RAFT funds through Wayfinders, Inc. which can be reached on-line at [www.wayfindersma.org/hcec-assessment](http://www.wayfindersma.org/hcec-assessment) or by phone at 413-233-1600.
5. Additionally, both the landlord and the tenant shall communicate and cooperate with one another regarding the possible availability of RAFT funds to pay the judgment in this matter.
6. The tenant may also wish to reach out to Community Legal Aid (CLA) for legal assistance and assistance with obtaining RAFT funds. CLA can be reached by phone at 413-781-7814.
7. This matter shall be schedule for further hearing on January 14, 2021 at 11:00 a.m. The Clerks Office shall provide written instructions on how to participate in the hearing by Zoom.

So entered this 14<sup>th</sup> day of December, 2020.

  
\_\_\_\_\_  
Robert Fields, Associate Justice *RM.*

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-CV-693**

**MILTON WOODIE,**

**Plaintiff,**

**v.**

**NIKITA PERKINS and MATTHEW DYER,**

**Defendants.**

**ORDER**

After hearing on December 10, 2020 on the plaintiff's complaint for injunctive relief, at which the plaintiff appeared with counsel and the defendant, Nikita Perkins, appeared *pro se*, the following order shall enter:

1. I find the testimony of the tenant credible that she and Mr. Dyer have resided at the premises, located on the first floor of 294 St. James Avenue in Springfield, Massachusetts, since August, 2019.

2. I find that they created a tenancy at the premises, paying rent to the plaintiff's brother Calvin and that the plaintiff either gave express authority to Calvin to enter into this tenancy from its commencement going forward or acquiesced to said tenancy at some point in time.
3. Accordingly, having found that the defendants are tenants, the plaintiff's remedy to dispossess them must be in a manner consistent with G.L. c.239 and the use of Summary Process.
4. As such, the plaintiff's motion for injunctive relief is DENIED.

So entered this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 20H79CV000656

ORANGE PARK MANAGEMENT, LLC, )  
 )  
 PLAINTIFF )  
 )  
 V. )  
 )  
 CHRISTOPHER ANDERSON, )  
 )  
 DEFENDANT )

**ORDER ON DEFENDANT’S EMERGENCY MOTION FOR INJUNCTION**


Following an order of this Court entered on December 4, 2020 pursuant to which the Court concluded that Defendant was not a tenant and that he and all other occupants claiming under him had no legal right to reside at 70 Sherman Street, 2<sup>nd</sup> Floor, Springfield, Massachusetts (the “Premises”) and could be removed as trespassers as of December 14, 2020, Defendant filed an emergency order for additional time to vacate. The basis for the request is the poor health of Defendant’s step-father, whom Defendant claims was recently discharged from the hospital and is now living at the Premises.

After a hearing on December 15, 2020, at which the parties appeared through counsel, the Court finds no legal basis to alter its findings set forth in the December 4, 2020 order. Likewise, the new information presented to the Court at the hearing today does not provide a compelling reason to rebalance the equities given that Defendant’s step-father was not previously disclosed as an occupant prior to today and given that he has no greater interest in the Premises than Defendant. Nonetheless, in light of the candid testimony of Plaintiff’s agent that an extension through this



week would not have a material adverse effect on the pending closing of the purchase and sale transaction, the Court hereby modifies the December 4, 2020 order by extending the vacate date to **9:00 a.m. on December 21, 2020**. At or after that time, Plaintiff shall be entitled to have a sheriff or constable remove Defendant and anyone holding possession under Defendant as trespassers. This Order constitutes sufficient notice to Defendant and the other occupants and Plaintiff is not obligated to provide any further notice of the time and date of the vacate order. Defendant will not be entitled to any further equitable relief.

SO ORDERED, this <sup>th</sup>16 day of December, 2020.

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

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 20-SP-1103

LUMBER YARD NORTHAMPTON LIMITED  
PARTNERSHIP,  
  
Plaintiff,  
  
v.  
  
KELLI HUDSON,  
  
Defendant.

ORDER


After hearing on December 15, 2020 on for review and for the landlord's motion to issue the execution, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The court finds that the tenant, Ms. Hudson, did not fully comprehend the thoroughness and/or diligence of a housing search that is required of her by order of this court.

2. Based on the tenant having successfully permanently removed her dog Roxy from the premises and her immediate payment of use and occupancy for December, 2020, and given that the tenant is pregnant and asserts that she was ill for the past two weeks, and given the context of the current uptick in COVID, the motion for execution is denied without prejudice.
3. The tenant was connected by the court to WayFinders to investigate the status of her RAFT application at the conclusion of the hearing (that program was available in a breakout room on the court's zoom site) and the parties shall cooperate and attend to that RAFT application process.
4. The tenant shall work with the landlord and specifically with Ms. Michelle Carr, the Resident Services Coordinator, who can assist the tenant with her housing search. The log required by the court in its previous order shall include the name of each of every housing unit or complex or agency that the tenant inquires about, the date of the inquiry, the status of the inquiry, and copies of each and every application submitted and shall be provided by the tenant to the landlord on December 28 2020 and January 5, 2021. The landlord has indicated that Ms. Carr can provide, among other resources such as lists of possible housing options, photocopying and mailing of applications.
5. This matter shall be scheduled for further hearing **on January 7, 2021 at 10:00 a.m.** The Clerks Office shall provide the parties with written instructions on how to participate in the hearing by Zoom. If the landlord anticipates challenging the diligence of the tenant's housing search process at the next hearing, it shall

provide copies of any and all of the tenant's log(s) to the court prior to the hearing (minus copies of accompanying applications).

So entered this 18<sup>th</sup> day of December, 2020.

  
\_\_\_\_\_  
Robert Fields, Associate Justice *Am*

Cc: Caitlin Castillo, First Assistant Clerk Magistrate