

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 7

Jan. 20, 2021 — Feb. 4, 2021

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*¹

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

¹ 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. 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.

SECURITY

The editors use GPG technology to protect against altered copies of the PDF volumes. Alongside each volume is another file with Aaron Dulles's digital signature of authentication. Readers may authenticate each volume using freely available GPG software. In addition to the PDF volume and its accompanying signature file, the reader will need Aaron Dulles's "public key," which can be found by searching his name on keyserver.pgp.com. The key is associated with the e-mail address dulles@jd11.law.harvard.edu, and it has the following "fingerprint" identifier:
0C7A FBA2 099C 5300 3A25 9754 89A1 4D6A 4C45 AE3D

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) and/or Peter Vickery (peter@petervickery.com).

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-CV-2

EDWARD DELACRUZ,

Plaintiff,

v.

JEFFREY MADEIRAS, SAMANTHA TENCZAR,
and JOHN TENCZAR,

Defendants.

ORDER

After hearing on January 11, 2021 on the plaintiff tenant's verified complaint and motion for injunctive relief at which the plaintiff appeared through counsel and the defendant landlord appeared *pro se*, and for which Samantha and John Tenczar were not served and did not appear, the following order shall enter:

1. There appears to be very little, if any, factual dispute between the parties which appeared at the hearing. The plaintiff Edward Delacruz (hereinafter, "tenant") entered into a lease with his co-tenant, Samantha Tenczar, and with the defendant Jeffrey Madeiras (hereinafter, "landlord") for rental of 222

Lyman Street in Holyoke. The tenancy began on or about October 22, 2020. On or about December 21, 2020 defendant Samantha Tenczar obtained a Chapter 209A restraining order against the tenant which required the tenant to stay away from the premises. Samantha Tenczar then, within a few days of obtaining the restraining order vacated the premises, removing her belongings and putting the tenant's belongings in the basement and so informed the landlord.

2. At this very time, the tenant reached out to the landlord about paying rent and the landlord informed the tenant on December 28, 2020 that he had heard from Samantha Tenczar's father who informed him that the tenants had moved out of the premises. The tenant immediately informed the landlord that he, the tenant, had not vacated the unit other than to comply with the restraining order and that he had not relinquished possession nor forfeited his tenancy and wanted to return to occupy the premises.
3. The landlord is refusing to allow the tenant to return to the premises and reports that he has secured new tenants who will be moving into the premises later this week. He also reports that another person is currently occupying the premise until the new tenants take occupancy.
4. **Order:** The tenant has not relinquished his tenancy and the landlord must honor that and not allow anyone else to occupy nor rent the premises other than the tenant until he has properly terminated the tenancy and utilized summary process.
5. Though the court is ordering the restoration of the tenancy relative to Mr. Delacruz, the court is not ordering that Delacruz be allowed to reoccupy the

premises given the existence of a Chapter 209A restraining order preventing him from being at the subject premises. The tenant's counsel informed the court that the tenant is currently seeking a modification in the terms of that restraining order. Once, and if, that restraining order is modified to allow the tenant to return to the premises the tenant may do so and the landlord shall not take any steps to interfere with that tenancy other than through due process.

6. This matter shall be scheduled for a Case Management Conference by the Clerks Office and notice shall be sent to the parties. Plaintiff shall comply with service of process obligations relative to the two yet-to-be served defendants Samantha and John Tenczar.

So entered this 20th day of Jan, 2021.

Robert Fields
Robert Fields, Associate Justice

W/peon
Soy...

Cc: Michael Doherty, Clerk Magistrate

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-441

APPLETON CORPORATION, Managing Agent
for MICHAEL'S HOUSE,

Plaintiff,

v.

ALICE VOTANO,

Defendant.

ORDER

After hearing on January 21, 2021, on the defendant tenant's motion to stay the issuance of an execution against her for possession, at which both parties appeared with representation by counsel, the following order shall enter:

1. **Background:** This eviction matter was commenced in January, 2019 for cause, based on allegations that the tenant was violating the landlord's no smoking policy. In February, 2019 and then again in December, 2019 the parties entered into Agreements. The pertinent terms of these Agreement

were that the tenant would vacate the premises by no later than September 30, 2020 but that she could request a further stay by filing a motion with the court:

which shall show (A) compliance with the February 25, 2019 Agreement [specifically, no violation of the no-smoking policy] and a good faith diligent housing search. The Court shall grant a stay in its discretion.

2. The tenant filed such a motion on December 1, 2020 and the landlord opposes the tenant's request for an extension of time arguing that the tenant has neither shown compliance with the no-smoking policy nor shown a diligent search for housing.
3. **Failure to comply with the No-Smoking Policy:** The landlord met its burden of proof that the tenant has fairly recently violated the no-smoking policy by smoking in her apartment on several occasions since Thanksgiving, 2020. The court bases this finding on the testimony of several neighboring tenants from the tenant's section of the building who complained of smelling smoke and the inspections by the property manager who witnessed the smell of smoke in the unit directly following those complaints, her observation on one occasion of cigarette ashes in the garbage bin and of the running of the oven vent when the tenant was not cooking.
4. **Lack of Diligence of the Tenant's Housing Search:** Though I credit the tenant's testimony that she is looking for other places to live and that her daughter who lives in the eastern part of the state is assisting her by looking for housing possibilities in the Peabody/Lynnfield area, the tenant's efforts can not be viewed as being particularly diligent. That said, there are

mitigating circumstances that include the advanced age of the tenant (79), her lack of internet capacity, her lack of a vehicle, and her ambulatory challenges.

5. **Discussion:** The Housing Court is a court of equitable jurisdiction. See, G.L. c.185C. "A court with equity jurisdiction has broad and flexible powers to fashion remedies." *Recinos v. Escobar*, 473 Mass. 734 (2016); *The Judge Rotenberg Education Center, Inc. v. Commissioner of the Department of Mental Retardation* (No. 1), 424 Mass. 430, [741] 463 (1997). "These powers are broad and flexible, and extend to actions necessary to afford any relief in the best interests of a person under their jurisdiction." *Matter of Moe*, 385 Mass. 555, 561 (1982). Given the tenant's age, the current state of the COVID-19 pandemic, and the fact that the tenant has no where else to live, the court shall fashion an order that allows for an extension of time to vacate with strict adherence to the landlord's no-smoking policy and to the necessary diligence of the tenant's housing search.
6. Thus, during this extension of time the tenant may not smoke inside her apartment nor allow any guest to do so.
7. Additionally, the tenant must diligently search of alternate housing and must keep a log of all efforts to secure alternate housing including the name and/or address of the premises being sought, a description of any and all attempts to inquire about and/or apply for such housing which includes dates and method of communications (phone, email, snail mail) and the results of such interactions, and copies of all correspondences and applications for each such location. The tenant shall update the landlord every two weeks of her

efforts with copies of said log beginning on February 15, 2021 (which shall show the efforts made since receipt of this order until the due date for sharing the log with the landlord. It is the court's sincere hope that the tenant's attorney, Amanda Winalski, will be able monitor the tenant's efforts for securing alternate housing and documenting same, or identify resources that may help in this regard.

8. In addition, the landlord shall provide the tenant assistance through its Resident Service Coordinator or otherwise, with her efforts to identify, inquire about, apply for, and communicate with potential alternate housing accommodations.
9. If the landlord ascertains that the tenant has violated the terms of this order, it may file and serve a motion seeking leave from the court's extension of time for the tenant to vacate. Said motion shall describe each and every violation it alleges with lists of dates and times and witnesses to said alleged violations.
10. This matter shall be scheduled for a status hearing on **February 25, 2021 at 9:00 a.m.** The Clerks Office shall provide written instructions on how to attend said status hearing by Zoom.

So entered this 26th day of January, 2021.

Robert Fields
Am.
Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION /
DOCKET NO. 20H79CV000701

SUSAN BATCHELDER MANAGING AGENT)
FOR PARK VILLA APARTMENTS,)

PLAINTIFF)

V.)

PATRICIA CHAREST,)

DEFENDANT)

ORDER

This matter came before the Court for a Zoom hearing on January 22, 2021 on Plaintiff's motion to enforce a Court Order. Plaintiff appeared with counsel; Defendant appeared self-represented.

The Order that Plaintiff seeks to enforce in this case was entered on December 23, 2020 by Judge Dalton following a virtual hearing for which Defendant failed to appear. Pursuant to the December 23, 2020 Order, Defendant is prohibited from smoking in her apartment or allowing anyone else to smoke in her apartment. If Defendant violates the prohibition, Plaintiff is authorized to seek an order that Defendant vacate the unit pending a summary process case. According to Plaintiff's counsel, the immediate vacate order upon non-compliance is necessary because Defendant uses oxygen and thus her continued smoking in the unit creates a serious fire risk to the other occupants of the 8-unit building in which Defendant resides.

At the hearing, Plaintiff's property manager testified that she has smelled cigarette smoke emanating from Defendant's unit and that Defendant's neighbors continue to complain about the

smell of smoke. Defendant denies that she smokes in her unit, yet when the Court expressed its grave concern about the risk of smoking near oxygen, Defendant responded by answering that she does not use the oxygen in the same room where she “has her cigarette.” The Court does not find Defendant’s denials to be credible.

Nonetheless, because she was not at the previous hearing at which the Order issued and asserts (through her son) that she was not fully aware of the significance of the Order, and further given her testimony that she has nowhere to go until April 1, 2021, the following Order shall issue:

1. The December 23, 2020 Order remains in effect and may be enforced in accordance with its terms.¹
2. Plaintiff may install a device that monitors cigarette smoke to detect if Defendant or others are smoking inside the apartment.

SO ORDERED this 26th day of January 2021.

Jonathan J. Kane
Jonathan J. Kane
First Justice

cc: Clerk’s Office

¹ The Court notes that pursuant to Section 3 of the December 23, 2020 Order, management has the right to enter Defendant’s unit between the hours of 8:00 A.M. and 8:00 P.M to inspect for evidence of smoking if management smells smoke coming from Defendant’s unit or receives a complaint about the same.

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 January 7, 2021 on review of this matter, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. **Background:** After hearings on November 5 and 19, 2020, judgment for possession was awarded to the landlord. The issuance of the execution, however, has been stayed to allow for the tenant search for alternate housing accommodations.

2. The basis for the eviction judgment was the existence of the tenant's dog, Roxy, which attacked another dog at the premises and then was kept on the premises by the tenant in violation of the court's orders. The dog has since been removed permanently.
3. **Discussion:** The Housing Court is a court of equitable jurisdiction. See, G.L. c.185C. "A court with equity jurisdiction has broad and flexible powers to fashion remedies." *Recinos v. Escobar*, 473 Mass. 734 (2016); See also, *The Judge Rotenberg Education Center, Inc. v. Commissioner of the Department of Mental Retardation* (No. 1), 424 Mass. 430, [741] 463 (1997). "These powers are broad and flexible and extend to actions necessary to afford any relief in the best interests of a person under their jurisdiction." *Matter of Moe*, 385 Mass. 555, 561 (1982). Given the current COVID pandemic and the fact that the tenant is pregnant and also has disabilities, the court has fashioned an order that stays the issuance of an execution for possession for a reasonable period of time as long as the tenant does not allow Roxy to be on the premises for any reason whatsoever and that she engage---and remain engaged---in a diligent housing search to effectuate a move out of the subject premises.
4. The court is satisfied that the tenant is currently engaged, with a great deal of help from Michelle Carr---the landlord's Resident Services Coordinator---in a diligent housing search. She presently has four applications for housing pending, one of which was for an entity with four separate housing facilities.

Additionally, the tenant has updated her application statewide for the Section 8 and subsidized housing programs.

5. Ms. Carr also explained that she is helping the tenant with searching the private market as well, through Craigslist and Zillow.
6. In addition to the tenant's work with Ms. Carr, the tenant must also diligently search for housing on her own, including for private housing (without a project based subsidy) and must keep a log of all efforts to secure alternate housing including the name and/or address of the premises being sought, a description of any and all attempts to inquire about and/or apply for such housing which includes dates and method of communications (phone, email, snail mail) and the results of such interactions, and copies of all correspondences and applications for each such location. The tenant shall update the landlord every two weeks of her efforts by providing a copy of her housing search log.
7. The tenant has also reestablished paying her rent/use/occupancy, paying December, 2020 and January, 2021, and has a RAFT application pending with Wayfinders.
8. If the landlord ascertains that the tenant has violated the terms of this order, either because the tenant has allowed Roxy on the premises or has failed to diligently search for housing, it may file and serve a motion seeking leave from the court's stay on the issuance of an execution. Said motion shall describe each and every violation it alleges, and where appropriate, include lists of dates and times and witnesses for each said violation alleged.

So entered this 26th day of January, 2020.

A handwritten signature in cursive script, appearing to read "Robert Fields", written over a horizontal line.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-CV-986

<p>SCOTT JESSUP,</p> <p>Plaintiff,</p> <p>v.</p> <p>LAURA FORTIN,</p> <p>Defendant.</p>

ORDER

After hearing on December 10, 2020 on the plaintiff's motion for injunctive relief to be allowed to take occupancy of the subject premises, at which each party appeared *pro se* and at which the Guardian Ad Litem Bernard Cohen, Esq. presented his report, the following order shall enter:

1. **Background:** The plaintiff, Scott Jessup (hereinafter, "Jessup") and the defendant, Laura Fortin (hereinafter, "Fortin") are not married but jointly own a house located at 4 Vernon Street in Holyoke, Massachusetts (hereinafter,

"subject premises" or "premises"). The parties have two minor children together. Several years ago, after their relationship ended, Jessup moved out of the premises and has resided elsewhere ever since and Fortin has remained residing at the premises with the parties' two minor children. Currently, Fortin's boyfriend Casey Attebery also resides at the premises and his minor child routinely resides therein, as well. The parties' children spend weekends with Jessup at the various homes he has lived in over the years. Presently, Jessup is seeking a court order to be allowed to return to the premises to reside therein.

2. Among the considerations required when deciding to issue or not issue an injunctive order, the court must analyze the harms on the respective parties that would be caused by the court's order. In opposition to Jessup's request, Fortin argues that allowing Jessup to return to residing at the premises would be detrimental to her and the parties' minor children. To further identify the effects, harmful or otherwise, of granting Jessup's request, the court appointed a Guardian Ad Litem to investigate and issue a report.
3. **Standard for Preliminary Injunction:** The well established standard for issuance of a preliminary injunction requires that the 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 associated with granting the injunction. "Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction

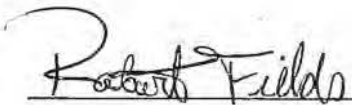
properly issue." *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

4. **Analysis:** It is clear to the court that it would be detrimental and perhaps irreparably harmful to Fortin and the parties' two minor children if the court were to grant Jessup's request and require that he be permitted to reside at the premises. This conclusion is based on the report of the Guardian Ad Litem (G.A.L.), who came to this same conclusion, as well as upon all of the testimony of the parties. This conclusion is not an edict on whether Jessup is a nice man or a good parent but an assessment of the effects on Fortin and the children if Jessup were to reside at the premises with Fortin, Attebery, and the children.
5. Additionally, though the court can understand and appreciate that Jessup's current living situation is not ideal now that he no longer lives with his girlfriend (not Fortin), the court finds that Jessup did not meet his burden of proof that he is being irreparably harmed by renting a room in a friend's house.
6. The court can also appreciate the seemingly odd and difficult aspect of this scenario with Jessup paying the mortgage for a house that Fortin and her boyfriend can reside in but wherein he is not allowed to reside. If Jessup views that arrangement as inequitable, he may seek remedy in the Probate and Family Court where pursuant to an agreed-upon court order in that court (P&F Ct. Dkt. Nos. 19W0576WD and 19W0577WD) Jessup pays the mortgage bill in lieu of child support. Additionally, the parties can choose to

sell the premises, buy one another out of joint ownership, or seek a partition of the jointly owned premises.

7. The Housing Court is a court of equitable jurisdiction. See, G.L. c.185C. "A court with equity jurisdiction has broad and flexible powers to fashion remedies." *Recinos v. Escobar*, 473 Mass. 734 (2016); See also, *Judge Rotenberg Education Center, Inc. v. Commissioner of the Department of Mental Retardation (No. 1)*, 424 Mass. 430, [741] 463 (1997). "These powers are broad and flexible and extend to actions necessary to afford any relief in the best interests of a person under their jurisdiction." *Matter of Moe*, 385 Mass. 555, 561 (1982).
8. **Conclusion and Order:** Based on the foregoing, given the court's conclusion that Jessup's residing at the premises would be detrimental to Fortin and the parties' children, and given the court's finding that Jessup failed to show that his currently living arrangement is irreparably harmful to him, Jessup's request for injunctive relief is denied.

So entered this 27th day of January, 2021.



Robert Fields, Associate Justice ^{A.M.}

Cc: Bernard Cohen, Esq., Guardian Ad Litem

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000582

DORIS BYNUM,

PLAINTIFF

V.

**CENTURY PACIFIC HOUSING
PARTNERSHIP X, LP**

DEFENDANT

**ORDER TO SUPPLEMENT
THE RECORD**


This matter came before the Court on January 22, 2021 for a video-conference hearing on Plaintiff's motion for a prejudgment real estate attachment. The parties both appeared through counsel.

The Massachusetts Rules of Civil Procedure provide that property may be attached "to satisfy the judgment for damages and costs which the plaintiff may recover ... upon a finding by the court that there is a reasonable likelihood that [the moving party] will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance known or reasonably believed to be available to satisfy the judgment." *See* Mass. R. Civ. P. 4.1. At least two courts, however, have concluded that a judge has discretion to limit or deny the attachment, particularly if the judge determines that there is no need for an attachment to satisfy the judgment for damages and costs which Plaintiff may recover. *See Rush v. Fastcap Sys. Corp.*, 2017 WL 5559394 (Mass. Super. Ct. Sept. 18, 2017) (Although there is no explicit requirement that the Court balance the relative harms to the parties, the Rules [of Civil Procedure] are based on the idea that there must be a need for the relief

requested; moreover, because it is equitable in nature, the Court can and should take into account the relative equities in denying or allowing the requested relief.). *See also Anderson Foreign Motors, Inc. v. New England Toyota Distrib., Inc.*, 492 F. Supp. 1383, 1390 (D. Mass. 1980) (“The propriety of attachments depends on the attendant circumstances, including the apparent strength of the plaintiff[s] case and the location, current use, valuation and current interests in property sought to be attached.”).

In this case, based on the arguments of counsel, the Court questions whether a prejudgment attachment is necessary; however, Defendant did not submit an affidavit in opposition to Plaintiff’s motion for a prejudgment attachment, which inhibits the Court’s ability to consider equitable factors. Although the Court could allow an attachment on this basis, the Court wishes to avoid having to address this issue again in short order if Defendant subsequently files a motion to dissolve the attachment with a supporting affidavit that allows the Court to balance the equities. For the sake of judicial economy, the Court instead prefers to leave the record open until February 19, 2021 to give Defendant an opportunity to file an affidavit supporting its opposition. Given that the record will remain open, the Court shall also permit (but not require) the parties to brief the legal issues highlighted by the Court herein. Upon the record closing, the Court will issue its decision on Plaintiff’s motion for a prejudgment attachment without further hearing.

SO ORDERED this 29th day of January 2021.


Jonathan V. Kane
First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-1954

PYNCHONI, L.P.,	Plaintiff,
v.	
VILMARYS OCASIO,	Defendant.

ORDER

After hearing on January 29, 2021 on the landlord's motion for a new execution, at which only the landlord appeared, the following order shall enter:

1. The landlord reported to the court the tenant has applied for RAFT funds.
2. In accordance with Chapter 257 of the Acts of 2020, the motion shall be continued the date noted below.
3. In the meantime, the tenant shall pursue her application(s) for rental assistance and notify the landlord as to the status of such application(s).
4. The tenant is also reminded that pending the determination of her application(s), she has an ongoing obligation to pay her rent.
5. Given the ongoing COVID emergency, there are additional resources to assist tenants in avoiding eviction, including free legal assistance, a federal

moratorium on evictions, and rental assistance. Below is more information about each of these resources.

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. Community Legal Assistance can be reached at 413-781-7814.
8. WayFinders can be reached online at: www.wayfindersma.org/hcec-assessment or by phone at 413-233-1600;
9. This matter shall be scheduled for hearing on March 4, 2021 at 11:00 a.m. The Clerks Office shall provide the parties with instructions on how to appear for said hearing by Zoom. If the tenant has no means of attending by Zoom, she may contact the Clerks Office to make arrangements to utilize the court's Zoom station for this hearing.

So entered this 1st day of February, 2021.

Robert Fields
Am.
Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79SP001134

WILLIAM TEJADA,)
)
 PLAINTIFF)
)
 V.)
)
 DAVID MOODY AND TONYA PERRY,)
)
 DEFENDANTS)

FINDINGS OF FACT,
RULINGS OF LAW AND
ORDER FOR JUDGMENT

This is a summary process action in which the Plaintiff (landlord) seeks to recover possession of certain residential premises from the Defendants (tenants) based on non-payment of rent. Both parties appeared for trial on January 27, 2021, which trial was conducted by Zoom, and represented themselves. The tenants acknowledge that they have not as of today provided the landlord with a declaration pursuant to 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 (“CDC Order”), and they further acknowledge that they do not have a pending application for short term emergency rental assistance which would allow them to take advantage of the protections set forth in Massachusetts’ *Act Providing for Eviction Protections During the COVID-19 Pandemic Emergency*, Chapter 257 of the Acts of 2020.¹

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

The tenants reside at 781 White Street, Springfield, Massachusetts (the “Premises”), a

¹ If the tenants meet the conditions necessary to seek protections of the CDC order, and if they provide a CDC declaration to the landlord, and/or if they file an application for short-term emergency rental assistance and are awaiting approval, they may file a motion to postpone the physical eviction at any time.

single-family house owned by the Plaintiff landlord. Monthly rent is \$1,500.00 due on the first of each month. The landlord claims \$19,500.00 in unpaid rent (13 months). The Court finds that the landlord served a legally adequate notice to quit and the tenants acknowledge receiving it.² The landlord testified credibly that he has fallen behind on his mortgage payments and cannot allow the tenants to remain without receiving any payment for their use and occupancy of the Premises. The Court finds that the landlord has satisfied all elements of his prima facie case for possession and damages.

The tenants do not assert any counterclaims against the landlord.³ They concede that they have not paid any money to the landlord since a partial payment in February 2020. Mr. Moody testified that he thinks that he and Ms. Perry owe less than the \$19,500.00 claimed by the landlord but did not present any evidence to support his position. When pressed, Mr. Moody could not say with any certainty how much he believes is owed. Accordingly, the Court will accept the landlord's claim that \$19,500.00 in unpaid rent is due.

Although Mr. Moody testified credibly about the loss of household income (his wife lost her job as a result of COVID-19 and he lost much of his work as an exterminator for the same reason), and although he testified that he has nowhere to move with Ms. Perry and the children, the tenants did not present any legal defenses to the landlord's claim for possession. Notwithstanding the very real hardships that the tenants are facing, the Court must enter judgment for possession in favor of the landlord.

² Although the notice to quit was addressed only to Ms. Perry (his wife), Mr. Moody testified that he understood that the notice intended to terminate his tenancy as well as that of Ms. Perry. The Court finds that the notice to quit is therefore not defective in any material fashion.

³ The tenants attempted to file a late answer just prior to trial but did not seek leave of Court. Accordingly, the Court rejected the answer; however, the tenants suffered no prejudice because the answer did not assert any counterclaims and they were permitted to testify as to any defenses to the landlord's case.

Based on the credible testimony, the evidence presented at trial and the reasonable inferences drawn therefrom, and in light of the governing law, the following is ORDERED:

1. Judgment shall enter for the Plaintiff landlord for possession and damages in the amount of \$19,500.00, plus court costs.
2. In order to allow the tenants a small window of time to apply for RAFT or other emergency rental assistance and thereby gain the benefit of Chapter 257 of the Acts of 2020, the execution (eviction order) shall not issue by application but instead by motion. The landlord can file his motion for issuance of the execution upon expiration of the 10-day appeal period which begins to run when this judgment is entered on the Court's docket.

SO ORDERED, this 9th day of February 2021.

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

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-4378

TODD BIELINSKI,
Plaintiff

v.

ORDER FOR ISSUANCE OF EXECUTION
(*EVICTION ORDER*)

KATHLEEN ROBINSON,
Defendant

1. This is a summary process action in which the Plaintiff seeks issuance of an execution to recover possession of the subject premises. Judgment entered as of December 6, 2019.
2. Both parties appeared with counsel at the hearing held on January 29, 2021.
3. This matter was not commenced for non-payment of rent, and therefore Stat. 2020, c. 257 does not apply. Plaintiff must file a First Amended Plaintiff's Affidavit Concerning CDC Order prior to issuance of the execution.
4. Execution (eviction order) shall issue forthwith for possession only.
5. Defendant satisfied the Court that she is party to a binding purchase and sale agreement with a closing date of March 31, 2021. Accordingly, use of the execution shall be stayed (not used) before April 5, 2021 on the following conditions:
 - a. Defendant shall pay for her use and occupancy of the premises for February and March in the same amount as last agreed-upon rent amount. Payment for February is due by February 12, 2021 and payment for March is due by March 12, 2021. If payments are not made as required, Plaintiff may file an emergency motion to lift the stay.
 - b. If Plaintiff wishes to take photographs of the interior and exterior of the premises for purposes of marketing it for sale, counsel shall confer to determine if arrangements can be made by agreement; otherwise, Plaintiff can seek further order from this Court regarding access to photograph the premises.

- c. Plaintiff may begin showings on April 3, 2021 with no less than 24 hours* advance notice to Defendant. All persons entering the premises pursuant to this Order shall observe standard COVID-19 protocols regarding wearing masks and maintaining a 6-foot distance.

SO ORDERED

DATE: 2/3/21

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-4881

DAVID TRAN,

Plaintiff,

v.

PATRICK and CLAUDINE VEISTROFFER,

Defendant.

ORDER

After hearing on January 28, 2021 on the plaintiff landlord's motion for reconsideration of the court's November 30, 2020 stay order and opposition thereto, at which all parties appeared through counsel, the following order shall enter:

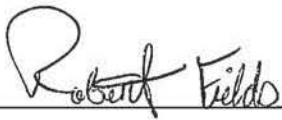
1. The tenant's failed to fulfil their obligation to maintain a diligent housing search and a log thereof as required by the court's November 30, 2020 order. They appear to have submitted perhaps as much as two such logs to the

landlord's counsel instead of the four required. Their housing search has also dwindled to a stand-still.

2. There are two mitigating circumstances that contributed to these failures. First, Mr. Veistroffer's mother passed away in France and he had to travel to Europe for much of December, 2020. Second, the tenants have located a property that they wish to purchase and be able to relocate there in the Spring. The tenants indicated that they should be able to close on that purchase within four weeks.
3. A relocation to a property purchased by the tenants and their ability to move all of their animals to the new location is an outcome that is most beneficial to all of the parties.
4. Additionally, the tenants are outstanding in their rent in the amount of \$1,500 through January 31, 2021. The tenants reported that they withheld monies due to damage to their vehicle by potholes in the driveway that they allege the landlord neglected to address.
5. Though there are certain circumstances in which tenants may withhold rent in Massachusetts, the parties here entered into an Agreement dated December 16, 2019 (Agreement) in which one of the obligations of the tenants in consideration for the landlord granting them time to relocate was the payment of \$1,000 per month. As such, the tenants are not allowed to withhold rent without first seeking and being granted leave of court for relief of said obligation spelled out in the Agreement.

6. Accordingly, the tenant shall *forthwith* make a payment to the landlord of \$1,500 for use and occupancy through January 31, 2021 and not withhold rent in the future without leave of court.
7. The tenants shall have until May 1, 2021 to relocate from the subject premises. This date has in mind sufficient time to purchase the new property mentioned above and effectuate a full relocation including the tenants' many animals. If there are legitimate and compelling reasons, the court may extend that deadline.
8. Additionally, unless the tenants seek and are granted authority to withhold rent by the court, their continued stay at the premises is contingent on their ongoing payment of rent, use, and occupancy.

So entered this 3rd day of February, 2021.



RM
Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-5411

ANDREW J. HRYNIEWICZ ET AL,
Plaintiffs

v.

ORDER FOR ENTRY OF
AMENDED JUDGMENT

MICHAEL WILLIAMS,
Defendant

1. This is a summary process action in which the Plaintiffs seek to recover possession of the subject premises from the Defendant.
 2. The Plaintiffs were represented by counsel at the hearing held on February 3, 2021.
 3. The Defendant appeared and was not represented by counsel.
 4. The Plaintiffs filed a First Amended Plaintiff's Affidavit Concerning CDC Order attesting that they have not received a declaration from the Defendant as provided in the CDC Order.
 5. The Court finds that Plaintiffs are entitled to an amended judgment for amounts accruing after the previous judgment entered.
 6. The Court hereby orders that amended judgment shall enter for the Plaintiffs for possession and damages in the amount of \$8,663.39, plus court costs of \$178.73
 6. Execution shall issue upon written application ten (10) days after the date that judgment enters.
 7. If Defendant provides the landlord with a CDC Declaration or if he applies for emergency short term rental assistance through Way Finders or another agency, and if he can demonstrate to the Court's satisfaction that such an application is pending, he may be entitled to protection from eviction pursuant to Chapter 257 of the Acts of 2020 or the CDC Order. To take advantage of such eviction protections, he must file with this Court (and serve on Plaintiffs' counsel) a motion to stop the physical eviction. He may contact the Clerk's Office for instructions on filing the motion.
- SO ORDERED this 4th day of February 2021.

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