

Western Division Housing Court
Unofficial Reporter of Decisions

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Nov. 15, 2022 — Dec. 23, 2022

ABOUT

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

WHO WE ARE

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

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OUR PROCESS

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

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Exclusion by the Court. The Court intends to provide the editors with all of its decisions except those from impounded cases and those involving highly sensitive issues relating to minors—the latter being a determination made by the Court in its sole discretion. The Court does not provide decisions issued by the Clerk Magistrate or any Assistant Clerk-Magistrate. Additionally, the Court does not ordinarily provide decisions issued as endorsements onto the face of motion papers. The Court retains inherent authority to withhold other decisions without notice.

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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.

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Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for those who wish to receive new volumes by e-mail when they are released. Those wishing to sign up for the listserv should e-mail Aaron Dulles (dulles@jd11.law.harvard.edu).

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-0690

CITY OF SPRINGFIELD, CODE ENFORCEMENT
DEPARTMENT,)

PLAINTIFF)

v.)

N.W.O. REALTY, INC., ET AL.,)

DEFENDANTS)

ORDER ON PLAINTIFF'S
COMPLAINT FOR CONTEMPT

This code enforcement case came before the Court on October 19, 2022 for trial on Plaintiff's complaint for contempt. Both parties appeared with counsel. Plaintiff contends that Defendants N.W.O. Realty, Inc. and Dasha Miller (the "owners") should be held in contempt for failing to comply with a Court order entered on June 6, 2022 (the "Order") with respect to a residential building at 310 Central Street, Springfield, Massachusetts (the "Premises").

In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re: Birchall*, 454 Mass. 837, 852-53 (2009). Here, Plaintiff has established both.

The Order is unambiguous. The owners were ordered to correct all violations listed at the Property no later than September 12, 2022. It is undisputed that the violations have not been corrected. At least one of the required permits, the plumbing permit, has not issued. Although it is not clear if an application for the

electrical permit has been pulled, if an application was filed, it was done within the past week or two and, in any event, the required electrical work has not been completed and inspected.

The owners did not present a credible reason for failing to complete the work as ordered. The Property is not occupied, so access to the individual units has not been an obstacle. The owners do not claim to have confronted unexpected obstacles, and at no time did they petition for an extension of time. The Court infers that the owners' noncompliance is due to their unwillingness or inability to invest the resources necessary to comply with the Order. The facts warrant a finding of contempt.

A primary purpose of civil contempt is to induce compliance and "secur[e] for the aggrieved party the benefit of the court's order." See *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). The Court is satisfied that the owners have now contracted with a capable and experienced general contractor to complete the work required in the Order. Therefore, the Court will defer entering a judgment of contempt for a period of six weeks. If the owners comply with the Order by the deadline, no judgment for contempt shall enter. Otherwise, judgment for contempt shall enter and Plaintiff may petition for sanctions.

Despite deferring entry of judgment for contempt, because the facts warrant a contempt finding, the Court hereby orders the owners to pay Plaintiff for the costs of the September 21, 2022 inspection at which time Plaintiff was unable to gain interior access. See *Labor Relations Comm. v. Fall River Educators' Assn.*, 382 Mass. 465, 475-476 (1981) (both compensatory and coercive orders are appropriate remedies in civil

contempt proceedings).

The parties shall return for an in-person review on compliance with the Order on April 21, 2023 at 11:00 a.m.

SO ORDERED.

DATE: 11.15.22.

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

AR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2487

JAMES PREITE and CLAUDINE PREITE,

Plaintiffs,

v.

ROBERT LEVESQUE and MICHELLE
LEVESQUE,

Defendants.

ORDER of DISMISSAL

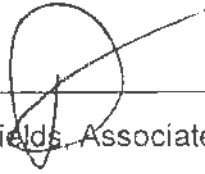
This matter came before the court for trial on October 26, 2022, at which the plaintiffs appeared *pro se* and at which the defendants appeared with LAR counsel, the following order shall enter:

1. As a preliminary matter the tenants moved the court for a dismissal due to the notice to quit terminating the tenancy on a non-rent day. More specifically, the tenants asserted that for the past couple of years the rent day became the 15th of each month by agreement of the parties, to allow for the tenants to make their

car payment at the beginning of each month and the rent in the middle of each month.

2. After an evidentiary hearing on that issue, it became clear that the rent day had changed to the 15th of the month in the exact manner asserted by the tenants.
3. Accordingly, and as ruled on the record by the undersigned judge, the notice to quit is insufficient to terminate the tenancy as it listed August 1, 2022, as the termination date which was not a rent day. This matter is dismissed, without prejudice.

So entered this 15th day of November, 2022.



Robert Fields, Associate Justice

CC: Paul Schack, Esq. and Angelina Morisi of Community Legal Aid as LAR Counsel
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-SC-113

STEVE CONLON,

Plaintiff,

v.

GAIL LABONTE,

Defendant.

ORDER

After hearing on October 26, 2022, on the plaintiff creditor's motion for show cause as to why the defendant debtor failed to make the court ordered payments, at which the plaintiff appeared *pro se* and the defendant appeared with Lawyer for the Day Counsel, the following order shall enter:

1. The court is satisfied for the purposes of this order that the defendant's sole income source is her monthly disability check from the Social Security Administration. Such funds are exempt from collection. See, 42 U.S.C. s.

1283. Accordingly, the court's order requiring \$35 per month payments by the defendant towards the judgment is suspended. See also, G.L. c.244, s.16.

2. The defendant's request that the case be dismissed is continued to the next status hearing noted below to afford the plaintiff an opportunity to engage in discovery into the defendant's income and financial wherewithal to pay the judgment.
3. The plaintiff has forty-five (45) days from the date of this order to propound written discovery and request for documents.
4. The defendant shall have forty-five (45) days from receipt of said discovery demand to respond.
5. The Clerk's Office shall schedule a hearing on whether the court will issue a payment order and/or dismiss these proceedings without prejudice at that time. Said hearing should be scheduled for no less than 100 days from the date of this order noted below.

So entered this 16th day of November, 2022.

Robert Fields, Associate Justice

CC: Paul Schack, Esq. (Lawyer for the Day Counsel)

Michael Doherty, Clerk Magistrate (for scheduling)

Court Reporter

PR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1070

LORD JEFFREY APARTMENTS,

Plaintiff,

v.

JOSEPH MARSHALL,

Defendant.

ORDER

After hearing on November 14, 2022, on the plaintiff landlord's motion to issue the execution at which the landlord appeared through counsel and the defendant appeared with LAR/LFD counsel, the following order shall enter:

1. The landlord's motion is continued to the next hearing date noted below.
2. The current use and occupancy is \$0 and the landlord asserts that \$828 is outstanding in use and occupancy.

3. The tenant is working with the Tenancy Preservation Program on updating/refiling his RAFT application for assistance in his completing the "hardship" paperwork.
4. LAR/LFD counsel has agreed to extend her appearance to represent the tenant in efforts to have September 2022 rent reduced by the entity that administers the subsidy due to the tenant's assertion that he had \$0 income at that time.
5. This matter shall be scheduled for further hearing on **December 19, 2022, at 9:00 a.m.** in the Hadley Session of the court.

So entered this 16th day of November, 2022.



Robert Fields, Associate Justice

CC: Jennifer Cunningham-Minnick, Esq. (LAR/LFD counsel)
Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-996

LORD JEFFREY APARTMENTS,

Plaintiff,

v.

KEISHALEE RODRIGUEZ,

Defendant.

ORDER

After hearing on November 14, 2022, on the plaintiff landlord's motion to issue the execution at which the landlord appeared through counsel and the defendant appeared with LAR/LFD counsel, the following order shall enter:

1. The landlord's motion is continued to the next hearing date noted below.
2. As a preliminary matter, the court inquired about the repeated returned mail that was directed to the tenant. The parties will investigate this problem and have it corrected.

3. The tenant has an application pending with Way Finders, Inc. for RAFT funds.
4. The tenant shall pay November 2022 use and occupancy by November 25, 2022.
5. LAR/LFD counsel has agreed to extend her appearance to assist the tenant in her RAFT application paperwork and to appear at the next hearing noted below.
6. This matter shall be scheduled for further hearing on **December 12, 2022, at 9:00 a.m.** in the Hadley Session of the court.

So entered this 16th day of November, 2022.



Robert Fields, Associate Justice

CC: Jennifer Cunningham-Minnick, Esq. (LAR/LFD counsel)
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-807

JOSE MAS and MARISOL VAZQUEZ,

Plaintiffs,

v.

JARMIN GARCIA COLON,

Defendant.

ORDER

After hearing on November 15, 2022, at which all the parties appeared without counsel, the following order shall enter:

1. The court's earlier order that the defendant landlord provide hotel accommodations and a daily food stipend shall continue until further order of the court.

2. The landlord did not have any additional information about costs or plans to make repairs to the subject premises to have the condemnation lifted other than he plans to do so when he has sufficient funds.
3. The tenants may continue to access the subject premises but may only be there during daylight hours. The tenants shall be respectful to the occupants of the first and second floor units at the premises.
4. The tenants shall continue their diligent housing search as it may become impossible to have the condemnation lifted in the near future and keep a log of such efforts. The tenants were given a "log" form from the court to assist in this regard. The tenants shall also investigate any and all locations that the landlord provides them and keep notes of what happened when they follow up.
5. Should the tenants locate alternate housing they shall so notify the landlord so he can cease paying for a hotel and food stipend.
6. This matter shall come before the court for further review on **November 22, 2022, at 9:00 a.m.** When the parties first arrive for said review hearing, they shall meet with a Housing Specialist to determine if there is a potential settlement regarding possession of the premises.

So entered this 16th day of November, 2022.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21Sp3516

Lisa Houghtling
Plaintiff,

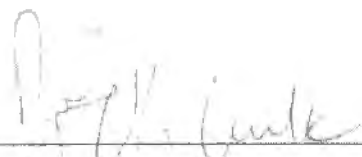
v.

Sean McKnight, Ashley McKnight
Defendants.

ORDER

After hearing on November 6, 2022, the defendant shall have until November 23, 2022, to make the correct request to FTR for transcripts of the file. If the clerk confirms that the request has been made, the plaintiff's motion to dismiss appeal will be denied and the defendants appeal shall go forward. If the request has not been made, the motion to dismiss appeal shall be allowed without further need for hearing.

So entered this 17th day of November, 2022



Jeffrey Winik, Associate Justice

The landlord objects to allowing the tenant's "unfettered access to [her] sensitive financial and net worth information." Memorandum in Opposition at p. 1. The tenant contends that, because she might be awarded punitive damages under the Act, she is entitled to the information. She also contends that she should not be required to wait to get this information until after a trial on the merits. Memorandum in Support at p. 4.

The instant case is, at its core, a landlord-tenant dispute. In her Second Amended Answer, the tenant claims breach of warranty, interference with quiet enjoyment, unfair and deceptive business practices, failure to furnish utilities and violation of the security deposit statute, all common claims in landlord-tenant cases. The tenant also alleges that the landlord has been videotaping her movements and secretly capturing audio along with the video and asserts claims for invasion of privacy and for violation of the Act.

There is sparse Massachusetts law regarding the award of punitive damages in civil cases under the Act. In a case brought under the Act arising out of the Housing Court, the Supreme Judicial Court noted that punitive damages are not favored in Massachusetts and limited the plaintiffs in that case to statutory damages where no harm was incurred. See *Pine v. Rust*, 404 Mass. 411, 415 (1989) ("We know of no instance where punitive damages have been awarded where it has been established that no actual harm occurred."). In this case, the tenant did not plead actual harm in her Second Amended Answer and Counterclaims.¹

Given the infrequency of punitive damages awards in wiretap cases in Massachusetts, and given that the landlord's financial condition is not a central issue in this case, the Court is unwilling to compel the landlord to provide a complete history of her financial condition back to 2019. Given the liberal scope of Mass. R. Civ. P. 26, however, the tenant is entitled to certain financial

¹ The Court recognizes that notice pleadings do not require the landlord to state the damages sustained; nevertheless, the pleading does not make any reference to actual harm and only mentions punitive damages in passing as an element of the damages she seeks for violation of the Act (¶ 39).

information about the landlord given the possibility of punitive damages. In order to balance the tenant's interest in preparing her case for damages and the landlord's interest in maintaining confidentiality with respect to her personal finances, the Court orders as follows:

1. In response to Interrogatory 16, no later than November 28, 2022, the landlord must disclose, under the pains and penalties of perjury, the current value of her assets and liabilities as of the date of disclosure.²
2. In response to Document Request 20, no later than November 28, 2022, the landlord shall produce a written statement, signed under the pains and penalties of perjury, reflecting the current value of her assets and liabilities as of the date of disclosure.
3. All personal financial information provided by the landlord in compliance with this order shall be treated by the tenant as confidential information and may not be reproduced, distributed or shared with anyone other than the tenant and her legal counsel (and others working in the law office who may be assisting in this case) and shall not be used for any purpose other than to prepare her case for damages in this lawsuit.

SO ORDERED.

DATE: _____

11/17/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

² If the tenant takes the deposition of the landlord, she may inquire as to the general categories of her current assets (e.g. cash, personal and investment properties, investment accounts, annuities, retirement accounts) and liabilities (e.g. mortgages, personal loans, consumer debt) but may not inquire as to details such as account information or identification of specific assets and liabilities.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1636

_____)	
DAVID KENT,)	
)	
PLAINTIFF)	
)	
v.)	FINDINGS OF FACT, RULINGS OF
)	LAW AND ENTRY OF JUDGMENT
DENNIS LONGTO, JR., ¹)	
)	
DEFENDANT)	
_____)	

This post-foreclosure summary process matter came before the Court for an in-person bench trial on November 3, 2022. Plaintiff was represented by counsel. Defendant appeared self-represented. The property in question is located at 81 Crooked Ledge Road, Southamptton, Massachusetts (the "Property").

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

Defendant is the former owner of the Property, which he built in the early 2000's. According to certified foreclosure documents admitted into evidence and as conceded by Defendant at trial, Defendant failed to make the principal and interest payments required by his mortgage. The original mortgage, held by Washington

¹ The case was filed against two other defendants, Dynelle Longto and Raya Longto. Defendant testified that these individuals are his sister and ex-wife, and that neither reside in the subject home nor have any right to possession. Based on these representations, Plaintiff is willing to dismiss both individuals from this case.

Mutual Bank, FA (“Washington Mutual”) was dated May 11, 2005. The note was assigned multiple times and the foreclosing mortgagee was Deutsche Bank National Trust Company, as trustee, on behalf of the holders of WaMu Mortgage Pass-Through Certificates, Series 2005-AR11 (“Deutsche Bank”). On February 19, 2021, Deutsche Bank recorded a confirmatory foreclosure deed at the Hampshire County Registry of Deeds (the “Registry”). On April 28, 2022, Deutsche Bank conveyed the Property to Kent Brothers, LLC, an entity of which Plaintiff is a member. On May 4, 2022, Kent Brothers, LLC conveyed the Property to Plaintiff. On May 19, 2022, Plaintiff gave Defendant a 72-hour notice to vacate. Defendant did not vacate. Plaintiff thereafter filed this summary process action.

Plaintiff provided the Court with certain documents relating to the foreclosure process, namely:

- A. a certified copy of the confirmatory foreclosure deed recorded at the Registry on February 19, 2021;
- B. a certified copy of the Affidavit Pursuant to M.G.L. c. 244 §§ 35B and 35C recorded at the Registry on July 26, 2018;
- C. an affidavit of sale attaching the newspaper advertisements published for three consecutive weeks beginning on September 26, 2018, recorded at the Registry on February 19, 2021; and
- D. a copy of the 90-day right to cure letter sent to Defendant dated September 30, 2016.

Defendant filed an answer asserting that the foreclosure was defective. He did not expressly challenge the deeds or affidavits, but instead focused his argument on

what he believes was a fundamentally unfair process that led to the foreclosure. He claims that his original lender, Washington Mutual, was disingenuous with respect to this efforts to modify the loan in 2010. He said that he was accepted into a loan modification program with a three-month trial period. He claims that after completing the trial period, he tried for months to get an answer from Washington Mutual as to whether it would enter into a loan modification with him. He claims the bank kept telling him his application was under review before informing, nine months after beginning the trial period, that his loan modification request was denied. He acknowledges that he stopped making the loan modification payments in December 2010 and has made no payment of any kind since then. Defendant claims that the loan modification process was fundamentally unfair and that Washington Mutual never should have sold the loan.

Defendant provided no evidence regarding the loan modification process that he claims was fundamentally unfair. Without more than his bare assertions about the process, the Court has no basis to find that the Washington Mutual's handling of the loan modification process in 2010 renders the foreclosure void. Because Plaintiff established its prima facie case and the Court finds no valid legal defenses, Plaintiff is entitled to judgment for possession.

With respect to any equitable basis for entering a stay on use of the execution, the Court notes that the Property does not appear to be occupied on a regular basis. Defendant testified that he "bounces around houses" and stays elsewhere "a lot." He testified that the Property has had no central heating source since 2018 and that he uses the fireplace or electric heaters to keep the pipes from freezing. The Court

concludes that based on the totality of the circumstances, Plaintiff is entitled to possession in short order so that he can protect his investment in the Property.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. After expiration of the 10-day appeal period, Plaintiff may request issuance of the execution (eviction order) by written application.

SO ORDERED.

DATE: 11/17/2022


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

AR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-31

ACG REAL ESTATE HOLDINGS, LLC,

Plaintiff,

v.

DESIREE STAPLES, et al.

Defendants.

ORDER

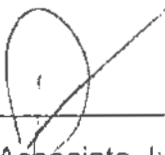
After hearing on November 16, 2022, on the landlord's motion for entry of judgment at which the plaintiff appeared through counsel and the tenants appeared with Lawyer for the Day, the following order shall enter:

1. The landlord is seeking judgment for possession only¹ as the tenants have not vacated the premises in accordance with the Agreement of the Parties dated June 6, 2022.

¹ The landlord was initially seeking use and occupancy but withdrew that claim after hearing the tenant's counsel point out that the Agreement of the Parties dated June 6, 2022.

2. The tenant is asserting the need for a reasonable accommodation due to Ms. Staples' disability.
3. The landlord's motion shall be continued to the date noted below to give the parties an opportunity to engage in a reasonable accommodations dialogue.
4. Attorney Douaihy has agreed to extend her limited appearance for the reasonable accommodation engagement.
5. This matter shall be scheduled for further hearing on **November 28, 2022, at 2:00 p.m.** at the Springfield Session of the court.

So entered this 28th day of November, 2022.



Robert Fields, Associate Justice

CC: Christa Douaihy, LAR Counsel
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 22H79SP001352

MOBY PROPERTIES, LLC,

Plaintiff

VS.

RENE LIBBY,

Defendant

Order For Entry of Judgment and Issuance of Execution

This matter came before the court on November 16, 2022 for hearing on the defendant's motion for a stay of execution.

The plaintiff commenced this action to recover possession of an apartment from the defendant. The defendant's tenancy has been subsidized under the terms of the Section 8 voucher-based rent subsidy program. The plaintiff alleged as "other good cause" for termination (one of the permissible reasons to terminate a Section 8 tenancy) that it intends to renovate the defendant's apartment as part of a major building renovation. The defendant asserted a conditions-based affirmative defense and counterclaims.

After conducting a bench trial, the judge (Kane, J.) issued written findings and rulings. The judge ruled that the plaintiff had established "other good cause" to terminate the defendants' tenancy. The judge found for the plaintiff on its claim for possession. The judge rejected the defendant's conditions-based affirmative defense and counterclaims. The judge ruled that the defendant was not entitled to a § 8A affirmative defense because the defendant was in arrears in his rent before the plaintiff knew or should have known of any defective conditions. The judge ruled that the alleged cockroach infestation condition was not serious and did not entitle the defendant to a rent abatement or damages on his counterclaims. On October 27, 2022 judgment entered for the plaintiff on its claim for possession (based upon "other good cause" and not based


upon fault of the defendant). Although the complaint included an account annexed, the judge did not rule on the plaintiff's claim for damages (and the plaintiff has not sought to amend the findings and judgment to include such damages).

The defendant is seeking a stay of execution pursuant to G.L. c. 239, §§ 9 and 10. It is undisputed that the reason asserted by the plaintiff for terminating the defendant's tenancy is not based on the tenant's breach of any term or condition of his subsidized tenancy. Nonetheless, the plaintiff argues that the defendant owes \$2,598.00 in unpaid rent through October 2022, and that any stay of levy should be conditioned upon the defendant posting this amount with the court. The plaintiff acknowledges that it never moved to amend the findings and judgment to include its claim for rent. The defendant does not contest the amount of the rent arrearage; however, it is clear that the defendant does not have sufficient funds to pay this rent arrearage. The defendant is 64 years old and has lived at his federally subsidized apartment for 13 years. The defendant paid his portion of the monthly rent (\$118.00) for November 2022. His portion of the rent is set to increase to \$588.00 commencing in December because his income has increased upon his recent return to work as a dishwasher. The defendant represented to the court that with his new job he will be able to pay his share of the rent going forward. The defendant testified that he has been searching diligently for an affordable apartment and has been placed on a number of waiting lists.

After considering the arguments presented by both parties, the defendant's motion for a stay of levy is **ALLOWED**. I shall grant the defendant a stay of execution through April 1, 2023. Given that the plaintiff terminated the defendant's tenancy for "other good cause" rather than based on the defendant's breach of lease (and given that the court did not award the plaintiff monetary damages for unpaid rent) I shall not require the defendant to pay the unpaid rent as a condition of this stay. However, as a condition of the stay the defendant shall be required to pay the plaintiff his share of the monthly rent (\$588.00, or such other amount should it be adjusted) by the fifth day of December 2022, and each month thereafter, while he remains in possession.

Execution for possession shall issue on April 1, 2023.

SO ORDERED this 18th Day of November, 2022.



Jeffrey M. Winik
Associate Justice (On Recall)

CP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2489

CLARA BUNN
Plaintiff,
v.
EMMA RODRIGUEZ,
Defendant.

ORDER

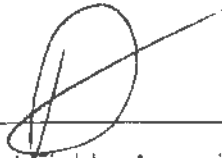
This matter came before the court for trial on November 9, 2022, at which the landlord appeared through counsel and the tenant appeared *pro se*. After hearing, the following order shall enter:

1. The parties stipulated to the landlord's claim for possession in this no-fault eviction.
2. The parties also stipulate that \$7,700 is outstanding in use and occupancy through November 2022.

3. The tenant reported that she is diligently searching for alternate housing but has not yet secured a new place to live. She also reported to the court that she has new employment and will be able to pay her use and occupancy going forward. She is also going to apply to Way Finders, Inc. for RAFT funds to pay the arrearage. The tenant also shared with the court that she now has custody of her 9-year-old niece who was the daughter of her sister who recently passed away.
4. The landlord reported to the court that the property is under a contract to sell to a buyer who is seeking the tenant's unit to be vacant, and that the landlord and the buyer are ready to close on the property once the first-floor unit (tenant's unit) is vacant. The landlord also reported to the court she has been making monthly payments to "lock in the interest rate" for the buyer's mortgage rate, totaling \$3,100 since July 2022.
5. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.9, the following order shall enter:
 - a. there shall be a stay on the entry of judgment until further order of the court;
 - b. the tenant shall continue to diligently search for alternate housing and maintain a log which documents each and every housing unit she learns of and follows up on and the details of that inquiry; the tenant shall also keep copies of each and every application she submits for housing
 - c. The tenant shall provide a copy of this documentation by December 26, 2022;

- d. The tenant shall apply to Way Finders, Inc. for RAFT funds for rental arrearage through November 2022 and shall pay her use and occupancy in full for December 2022 by December 7, 2022. She should also apply for RAFT to pay the court costs incurred by the landlord in bringing this court matter;
 - e. Landlord's counsel shall investigate with the purchaser of the property if there are any circumstances in which he would purchase the property with the tenant remaining in her unit for any length of time and be prepared to report on same at the next hearing noted below.
6. This matter shall be scheduled for review on **December 28, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 21st day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-2617

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

LISA M. BOYLE, et al.,

Defendants.

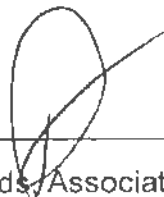
ORDER

This matter came before the court for trial on November 14, 2022, at which the plaintiff appeared through counsel and the defendants Lisa Boyle and her son Chance Boyle appeared without counsel, the following order shall enter:

1. The default against Chance Boyle (the 19-year-old son of Lisa Boyle) shall be vacated without opposition.
2. The plaintiff met its burden of proof on the prima facia elements of their claim for possession and the defendants are not asserting any defenses or counterclaims.

3. Accordingly, the court shall award the plaintiff possession. Because the plaintiff also has a claim for use and occupancy, however, judgment for possession shall not yet enter.
4. If the plaintiff wishes to seek a judgment for use and occupancy, it shall so notify the court and work with the Clerks Office to mark up an evidentiary hearing on setting use and occupancy. The plaintiff may also choose to dismiss its claim for use and occupancy. If the plaintiff dismisses its claim (without prejudice) for use and occupancy, the court shall enter judgment for possession to the plaintiff without need for hearing and there shall be a stay on issuance of the execution in accordance with the terms of this order.
5. The defendants are asking for time to relocated and offering to pay \$500 per month through the date they vacate or April 30, 2023, whichever comes first.
6. Accordingly, the defendants shall pay \$500 per month use and occupancy beginning December 1, 2022, as long as they occupy the premises.
7. If after May 1, 2023, the defendants are still in possession of the premises the plaintiff may file a motion for issuance of the execution (assuming judgment has already issued by that date in accordance with the terms of this order.

So entered this 21st day of November, 2022.



Robert Fields, Associate Justice

CC. Michael Doherty, Clerk Magistrate
Court Reporter



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-831

GARY GERMAIN,

Plaintiff,

v.

GENNARO J. SANTANIELLO,

Defendant.

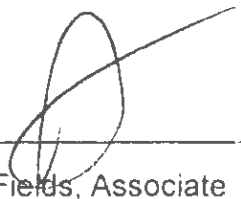
ORDER

After hearing on November 16, 2022, on the plaintiff landlord's request for injunctive relief, the following order shall enter:

1. The landlord met his burden of proof for an injunctive order requiring the defendant tenant, Gennaro J. Santaniello, to remove his cat from the premises by no later than November 18, 2022.

2. The lease does not allow for the tenant to have more than one dog but by agreement of the parties as long as he keeps his dogs leashed outside at all times and cleans up after the dogs immediately, he may keep the second dog.

So entered this 21st day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1304

LORD JEFFREY APARTMENTS,

Plaintiff,

v.

JANEIA PRICE,

Defendant.

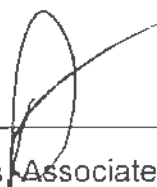
ORDER

After hearing on November 14, 2022, on the plaintiff landlord's motion for issuance of the execution, at which only the landlord appeared, the following order shall enter:

1. The court staff attempted to reach the tenant by telephone but the number available was not in working order.

2. The hearing was joined by a representative from Way Finders, Inc. who reported that the tenant's RAFT application was closed on October 28, 2022, on the tenant's request.
3. The tenant paid her use and occupancy of \$121 late on October 4, 2022, (it was due by agreement of the parties on September 16, 2022) and then did not pay use and occupancy in October or November 2022.
4. A representative from the Tenancy Preservation Program joined the hearing and reported that a referral was never made to its agency, even though one was to be made by agreement of the parties (see agreement dated 9/2/22).
5. The motion is allowed. Because the landlord is seeking a greater sum than the original judgment, the landlord shall file a non-military affidavit and return the expired execution and a new judgment shall enter for \$605 in outstanding use and occupancy and \$383.40 in costs. An execution shall issue in due course thereafter.

So entered this 21st day of November, 2022.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0504

AMELIA ORTIZ,

PLAINTIFF

V.

HANATI LUBEGA,

DEFENDANT

ORDER REGARDING REPAIRS

This matter came before the Court on November 16, 2022 for an in-person hearing on various motions related to Plaintiff's demand for repairs. Plaintiff appeared through limited assistance counsel, and Defendant appeared self-represented. The Court reviewed an extensive amount of evidence to determine what repairs remained to be done at Plaintiff's residence at 18 Lombard Street, Springfield, Massachusetts (the "Premises"). After hearing, the following order shall enter:

1. No later than December 9, 2022, Defendant shall take the following actions:
 - a. Replace the deadbolt on Plaintiff's door so that it does not require a key to unlock from the inside;
 - b. Replace any floor tiles that are lifting;¹
 - c. Seal any gaps around the toilet or plumbing in the bathroom that might allow intrusion by rodents.

¹ Both parties are encouraged to take photographs or videos of the tiles if there is a disagreement about whether there are any that are lifting. They should do the same for any other repairs listed in this order that are in dispute.

- d. Repair any bathroom fan that is not operable;
 - e. Sand down the exterior banister so that it is smooth;
 - f. Replace the foam wrap on the basement pipes; and
 - g. Replace the closet door that was removed.
2. Plaintiff shall minimize clutter in the closet so that the door can slide back and forth without obstruction.
3. Plaintiff shall remove any excessive bags, clothing or other clutter so that future pest treatments can be successful.
4. Defendant shall continue pest treatments by a licensed exterminator every other month (the most recent treatment was this month) until further court order or until the exterminator finds no evidence of rodents for two consecutive visits.
5. Defendant shall adjust the varying temperatures in the refrigerator so that the temperature is uniform and is neither too cold nor not cold enough. Plaintiff shall allow Defendant access for this purpose. If Defendant cannot regulate the temperature in the refrigerator within two weeks, she shall hire a professional to repair the refrigerator or she shall replace it.
6. Neither Plaintiff nor any member of her family or guests shall use the driveway to the Premises or park in the back yard. Defendant shall make the same rule for her other tenants at the property. All parking shall be street parking unless the Court issues further orders.
7. Plaintiff may not unreasonably deny access. Defendant must provide at least 24 hours' advance written notice. Text notifications for entry to the

Premises must include only the date, time and purpose in order for Plaintiff to understand when Defendant wants to enter. If Defendant is entering for inspections or repairs, she must show up within 15 minutes of the appointed time. If Defendant hires contractors to make repairs, Defendant may give Plaintiff 4-hour window for the contractors to come and Plaintiff must let them enter at any time within that window of time and remain until the work is finished.

8. Given the recent inspections completed by Way Finders and Code Enforcement, both of which passed the unit, any repair requests made by Plaintiff and not addressed by this order do not need further repair by Defendant.
9. The Court will not schedule a review date, but either party may ask for a further hearing if the other party is not complying with this order.

SO ORDERED.

DATE: _____

11/21/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-72

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

CONNIE BRAZIEL,

Defendant.

ORDER

After a review hearing on November 15, 2022, the following order shall enter:

1. The tenant shall re-apply to Way Finders, Inc. for RAFT funds seeking payment of the \$6,616 in outstanding use and occupancy through October 2022.
2. The tenant shall pay \$1,082 during the hearing for November 2022 use and occupancy.
3. Anticipating a RAFT award for the back rent noted above, the tenant shall continue to pay her use and occupancy in December 2022 (\$1,082) and shall

also pay her first of six installments towards the \$323.25 in use and occupancy arrearage (\$124) plus court costs (\$199.25); each installment shall be \$53.87 each month until the balance is \$0.

4. Once the balance is \$0, this case shall be dismissed.

So entered this 21st day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

2

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-820

MICHAEL WHALEN,

Plaintiff,

v.

KIM COURNOYER,

Defendant.

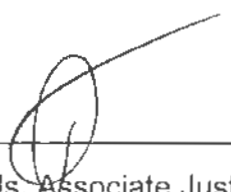
ORDER

After hearing on November 16, 2022, on the plaintiff tenant's complaint and request for injunctive relief, at which both parties appeared without counsel, the following order shall enter:

1. The tenant has had unfettered access to the basement as party of his tenancy for many years and the defendant landlord unilaterally changed the locks to the basement with any advance notice.

2. The landlord shall FORTHWITH provide the tenant with a key to the basement for his access and shall not deny him entrance to the basement until she has properly had the terms of the tenancy amended or by subsequent court order.

So entered this 21st day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

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

Here, the Court finds that Plaintiffs are entitled to injunctive relief with respect to getting access to the subject premises for showings. Plaintiffs did not meet the standard for injunctive relief regarding removal of the dog. Although dogs are not permitted under the lease, the parties gave conflicting testimony as to whether Plaintiffs (or some of them) were aware that the dog was living in the property and gave tacit approval of a lease modification. Moreover, although in text messages, Defendant concedes that her dog does not behave well with strangers, there is insufficient evidence to show that Plaintiffs would suffer irreparable harm if the dog was not removed prior to the conclusion of this summary process case.¹

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

1. Defendant shall permit the real estate agent to schedule open houses on Saturdays and Sundays between the hours of 11:00 a.m. and 5:00 p.m. with 72-hours advance notice. Defendant's dog shall be removed from the property during any open house.
2. Defendant shall permit the real estate agent to schedule appointments for prospective purchasers with 24 hours' advance written notice on Mondays and Tuesdays from 10:00 a.m. to 4:00 p.m. and on Wednesdays from 4:00 p.m. to 6:00 p.m. No showing shall occur on Thursdays and Fridays.²

Defendant shall either remove her dog from the property during these

¹ It is worth noting that Defendant's tenancy was not terminated due to lease violations or some misconduct by the dog, but instead was a no fault termination.

² The agent may not enter the home without Defendant's permission. If Defendant unreasonably denies access, Plaintiffs may seek further relief from the Court.

appointments or she shall crate the dog in a location that causes minimal disruption for the showing.

3. Plaintiff's motion for injunctive relief to remove the dog is denied without prejudice.

SO ORDERED.

DATE: 11/22/2022

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NOS. 22-CV-0371 AND
22-SP-2164

VA7 AMHERST GROVE, LLC,)
)
 PLAINTIFF)
)
v.)
)
TULSI VEMBU,)
)
 DEFENDANT)
_____)

ORDER

This matter came before the Court by Zoom on November 18, 2022 for a hearing on numerous motions. Both parties appeared through counsel.¹

After hearing, the following order shall enter:

1. The court's orders entered on August 25, 2022 and October 4, 2022 shall continue in effect with the following modifications:
 - a. The date for the moving vendor to remove the necessary items to allow for carpet replacement will be November 29, 2022.
 - b. The carpet replacement will take place on November 30, 2022 and, if necessary, December 1, 2022.
 - c. The moving vendor will return Defendant's possession as soon as possible after the carpet has been replaced, and will attempt to return the items to the same locations as before the move.

¹Counsel for the Town of Sunderland and Sunderland Health Inspector Gina McNeely were also present, as were representatives of the Tenancy Preservation Program ("TPP"), Jake Hogue and Michael Richtel. Counsel for certain abutters was also present to observe.

- d. Defendant shall not interfere with or obstruct the work of the vendors. To ensure the safety of the vendors, Defendant shall remain out of his apartment on when vendors are doing their work.
2. Attorney Daniels' motions to withdraw in 22-CV-0371 and 22-SP-2164 are allowed.
 3. Plaintiff's motion to strike portions of Defendant's opposition to request for expedited trial was not argued, and will be continued to the next court date of December 2, 2022 at 2:00 p.m.
 4. No summons shall issue at this time on Plaintiff's complaint for contempt, but the request may be brought forward if the process described in paragraph 1 fails due to Defendant's actions.
 5. Defendant's motion to stay eviction proceedings is denied without prejudice.
 6. Plaintiff's motion for expedited trial is denied, as a trial is already scheduled for December 19 and 20, 2022.
 7. Defendant's motion for relief from order and request for reasonable accommodation is denied. The Court finds that reasonable accommodations have already been made with respect to minimizing the impact on Defendant, as further described in the orders entered on August 25, 2022 and October 4, 2022.
 8. A case management conference will be held by Zoom on December 2, 2022 at 2:00 p.m. to determine whether the in-person jury trial scheduled for December 19, 2022 will go forward and, if so, what pretrial filings will be required by the Court.

SO ORDERED.

DATE: 11/22/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Jeffrey Blake, Esq.
Carla Halpern, Esq.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0661

SPRINGFIELD GARDENS 238-262 LP,

PLAINTIFF

v.

JOHN DOE/OCCUPANTS OF 248 UNION ST.,
APT. 2D, SPRINGFIELD, MASSACHUSETTS

DEFENDANT

ORDER TO APPEAR

This matter came before the Court on November 22, 2022 on Plaintiff's verified complaint for injunctive relief. Plaintiff appeared through counsel and no other person appeared. Plaintiff seeks an order that all occupants of 248 Union Street, Apartment 2D, Springfield, Massachusetts (the "Premises") vacate the premises. Based on the facts in the verified complaint, the Premises were vacant since July 2022, as evidenced by photographs taken in August 2022. In October 2022, Plaintiff discovered unknown persons residing in the unit, claiming "squatters' rights." Plaintiff is likely to succeed on the merits of its action and is likely to suffer irreparable harm if unknown individuals reside in the Premises. Accordingly, the following order shall enter:

1. Anyone occupying of 248 Union Street, Apartment 2D, Springfield, Massachusetts must appear on Tuesday, November 29, 2022 at 2:00 p.m. in the Springfield session of the Western Division Housing Court located at Apartment 2D, Springfield, Massachusetts premises.

SPRINGFIELD HOUSING COURT
July 2022 - August 2022
Plaintiff discovered unknown persons residing in the unit, claiming "squatters' rights."

Apart from the premises.
SPR...
July 2022,
Plaintiff 37 Elm Street, Springfield, Massachusetts to show cause why they should not

rights be treated as trespassers and summarily removed from the Premises.
irrespective of the fact that they have been occupying the Premises since
July 2022,
Plaintiff shall pay the \$90.00 legislative fee for injunctive relief within ten
days of this order.

2. If no occupant of the Premises appears, Plaintiff will be treated as the
trespassers and physically removed from the Premises.
3. Plaintiff shall pay the \$90.00 legislative fee for injunctive relief within ten
days of this order.

SO ORDERED.

DATE: 11/23/22

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

rights be treated as trespassers and summarily removed from the Premises.
irrespective of the fact that they have been occupying the Premises since
July 2022,
Plaintiff shall pay the \$90.00 legislative fee for injunctive relief within ten
days of this order.
SO ORDERED.
DATE: _____
_____ Justice

and although Defendant's deadline for requesting discovery had passed, the Court allowed her request.³

On May 23, 2022, Defendant filed an amended answer on a check-the-box-form, alleging that the foreclosure was void and that Plaintiff did not have proper title. On September 12, 2022, one week before trial and six weeks after the deadline imposed by the Court, Plaintiff filed a motion to amend her answer. The proposed amendment included only conclusory statements that she was misled by Plaintiff, that her loan was predatory and that her mortgage was illegitimate. The Court denied the motion because it was untimely and failed to raise new defenses not already set forth in the previously filed answer.

When the trial recommenced on September 19, 2022, Defendant presented no witnesses and offered no evidentiary support for her conclusory statements that the foreclosure was void. On October 4, 2022, the Court entered an order awarding Plaintiff a judgment for possession.

Defendant filed a notice of appeal on October 14, 2022. Plaintiff filed a motion to set the appeal bond. Pursuant to G.L. c. 239, § 6,⁴

If the action is for possession of land after purchase, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day that the purchaser obtained title to the premises until the delivery of possession thereof to him, together with all damage and loss which he may sustain by withholding of possession of the land or tenement demanded, and by any injury done thereto during such

³ Defendant appeared self-represented and the Court concluded that the prejudice to her if it did not allow her to assert defenses to the foreclosure outweighed the inconvenience to Plaintiff, who understandably preferred not to allow Defendant the opportunity to try the case on the merits. See *Morse v. Ortiz-Vazquez*, 99 Mass. App. Ct. 474, 485 (2021).

⁴ The bond provisions set forth in G.L. c. 239, § 5 apply in postforeclosure summary process actions. See *Bank of New York Mellon v. King*, 485 Mass. 37 (2020).

withholding with all costs. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond.”

In this case, Plaintiff seeks only a nominal bond in the amount of \$100.00. At the hearing, Defendant claimed that she is indigent and represented to the Court that she had filed an affidavit of indigency, although no such affidavit appeared on the docket. The Court need not reach the question of Defendant’s indigency as it relates to the bond, however, because the Court finds that, because she raised no legal defenses at trial, she cannot articulate a defense that is not frivolous. Therefore, the Court sets the appeal bond at \$100.00.

Turning to the issue of use and occupancy payments pending the appeal, in a postforeclosure case, courts may order postforeclosure mortgagors like Defendant to pay use and occupancy “as rent” to the purchaser of the premises during the pendency of their appeal. See *Bank of New York Mellon v. King*, 485 Mass. 37, 50 (2020).⁵ Defendant, who remains in possession after foreclosure, is not entitled to remain on the property for nothing, even if she is indigent. *Id.* at 52 (“Such a defendant is paying neither his or her mortgage and property taxes nor the fair rental value of the property but ... is continuing to receive the benefit of possession of the property.”).

Here, Plaintiff established through an affidavit that it has spent \$34,354.05 for real estate taxes and insurance in the three years between the foreclosure sale and

⁵ G.L. c. 239, § 5(c) recites: “The bond shall also be conditioned to pay to the plaintiff, if final judgment is in plaintiff’s favor, all rent accrued at the date of the bond, all intervening rent, and all damage and loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession thereof to the plaintiff.”

the bond hearing. Although the average monthly expense based on this figure is \$954.28 per month, Plaintiff seeks an order that Defendant pay the sum of \$500.00 per month for taxes and insurance. Plaintiff submitted a second affidavit that assess the fair rental value in its current condition as \$1,100.00 per month. The Property, however, is subject to a condemnation order by the Quabbin Health District and cannot be legally occupied. Accordingly, until the condemnation is lifted, the Property has no rental value whatsoever.⁶

In light of the foregoing, the Court hereby orders that Defendant, as a condition of maintaining her appeal, pay Plaintiff \$500.00 each month beginning on December 5, 2022⁷ and continuing on the 5th day of each month going forward for the duration of the appeal. Defendant Defendants shall make each monthly payment in the form of a certified or bank check or money order payable to Plaintiff and mailed by the due date to Plaintiff's attorney, Michael R. Hagopian, Esq., Brock & Scott PLLC, 1080 Main Street, Pawtucket, RI 02860. If Defendant fails to make the required monthly payments, then, upon motion, Plaintiff may request that the appeal be dismissed and that execution for possession issue.

SO ORDERED.

DATE: 11/28/2022


Hon. Jonathan J. Kane, First Justice

⁶ Plaintiff may seek an order to increase the use and occupancy rate if the condemnation is lifted.

⁷ The December payment will not be considered late if it is made within ten days of the date this order is entered on the Court's docket.

4. Plaintiff shall address all needed repairs in the premises, including problems with the furnace shutting off intermittently. The furnace shall be repaired by November 26, 2022 and all other repairs shall be made within a reasonable time period.
5. Plaintiff shall treat for bedbugs promptly. If the extermination for bedbugs includes the use of chemicals, Defendant Varrell and her family should be placed in a hotel overnight to ensure that the air quality in the premises is safe before she returns. The first extermination should occur during the week of November 28, 2022.

SO ORDERED.

DATE: 11/28/2022

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

Defendant shall pay for the transportation costs to bring her children to and from school. If the hotel does not have a kitchenette, Defendant shall provide a food stipend of \$75.00 per day.

4. The parties shall appear for an in-person review of this matter on **December 8, 2022 at 2:00 p.m.**
5. The \$90.00 legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: _____

11/28/2022

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-cv-692

KYSHA M. RIVERA,

Plaintiff,

v.

PIONEER LINDEN, LLC,

Defendant.

ORDER

After hearing on November 16, 2022, on the motion to dismiss on the pleadings which was treated by the court as a summary judgment motion, at which the plaintiff appeared *pro se* and at which the defendant appeared through counsel, the following order shall enter:

1. **Background:** The parties were involved in a former tenancy for premises located at 102 Linden Street, Apt. 5L in Holyoke, Massachusetts. The tenancy was subsidized and commenced in March 2022. In June 2022, the parties jointly rescinded the regulated tenancy and agreed to a June 30, 2022, date by which the tenant would vacate the premises. After the then-tenant (plaintiff) failed to vacate by that date, the then-landlord (defendant) commenced a summary

process action in the Housing Court (22-SP-2105). The then-tenant subsequently vacated the premises, and the summary process matter was transferred to this instant civil action. The plaintiff's counterclaims from her counterclaims, which include breach of the warranty of habitability, breach of the covenant of quiet enjoyment, retaliation, and violation of the consumer protection act, have become the claims in this action and the defendant has now asserted a claim of use and occupancy.

2. **The Defendant's Motion to Dismiss¹:** The defendant is seeking a dismissal of the plaintiff's claims based on an Agreement for Mutual Rescission of the Lease (Agreement) entered into by the parties on June 14, 2022.
3. The relevant portion of which states as follows:

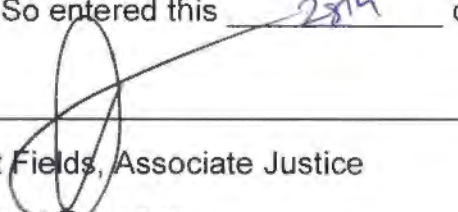
IT IS HEREBY AGREED that all claims or demands of whatever kind of nature arising under or as a result of said lease or the occupation or letting of said premises are hereby fully released by the parties.

4. The defendant argues that this term of the Agreement prohibits the plaintiff from seeking damages for her asserted claims. The court agrees, though not entirely. The plaintiff asserts that the underlying acts or failures to act by the defendant that are the basis of her claims continued after June 14, 2022. The Agreement cannot waive claims that arose after the date of the Agreement.

¹ During the hearing on this motion, each party articulated arguments regarding other possible rulings from the court on such things as denying the plaintiff's claims for 93A based on text communications with the plaintiff's mother or the plaintiff's argument that a tenancy was recreated by the payment and receipt of rent after the rescission. No other claim or argument or request for dismissal or other court order was considered *other than the motion to dismiss based on the Agreement of rescission* and, thus, the parties are free to bring subsequent motions based on such assertions—should they wish to do so.

5. As such, the motion to dismiss is allowed in part and denied in part. The plaintiff's claims inasmuch as they pertain to damages for claims from the beginning of time through the signing of the Agreement are deemed waived by the Agreement and are hereby dismissed. The plaintiff's claims that are based on conditions of disrepair and other acts and omissions by the defendant occurring after the signing of the Agreement shall be the claims upon which this litigation may continue.
6. **Scheduling Order:** The deadlines imposed by the court's earlier Pre-Trial Order (dated September 30, 2022) were suspended until the court issued a decision on the defendant's motion to dismiss. Having done so with this order, and with discovery deadlines having passed, the following scheduling order shall go into effect:
- a. The defendant has until January 13, 2023, to respond to the plaintiff's discovery demand.
 - b. The defendant has until December 12, 2022, to file and serve its discovery demand upon the plaintiff
 - c. The plaintiff has until February 6, 2023, to respond to said discovery.
7. A one-day bench trial shall be scheduled for **February 17, 2023, beginning at 9:00 a.m.** at the Springfield Session of the court.

So entered this 25th day of NOV, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1790

WESTWOOD COURT VENTURES, LLC,

Plaintiff,

v.

JEAN M. WILLIAMS and TODD A. HADLEY,

Defendants.

ORDER

After hearing on November 10, 2022, on the plaintiff landlord's motion for entry of judgment at which the landlord appeared through counsel and the defendant tenant Jean Williams appeared *pro se*, the following order shall enter:

1. This is a no-fault eviction matter in which the parties entered into a court-mediated Agreement on August 18, 2022. The terms of that Agreement, in addition to "anticipation of a move out date of January 1, 2023" required the tenants to pay their use and occupancy while remaining in occupancy.

2. After the tenants failed to make their use and occupancy payments in September and October 2022, the landlord filed this motion.
3. Prior the hearing, the parties worked with Way Finders, Inc. on an application for arrearage for those months as well as for November 2022.
4. The tenant reported to the landlord and the court that the tenants have a new apartment and anticipate being able to move out by January 1, 2023.
5. Even though this is a no-fault eviction, the landlord's motion is based on a failure to pay use and occupancy and the parties are now applying for RAFT for those same funds. As such, it appears to the court that judgment for possession not enter at this time. Instead, the parties shall benefit from RAFT funds (perhaps all the way through December 31, 2022) and given the bargained for move out date of January 1, 2023.
6. If RAFT denies payment for any of the months of September through December 2022, the tenants shall be responsible for same.
7. This matter shall be scheduled for a review hearing on **January 6, 2023, at 9:00 a.m.**

So entered this 28th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-728

CARITA GOOLSBY,

Plaintiff,

v.

WHITMAN PROPERTIES,

Defendant.


ORDER

After hearing on October 13, 2022, on the plaintiff tenant's petition for injunctive relief for repairs at which the tenant appeared *pro se* and the landlord appeared through counsel, the following order shall enter:

1. The landlord shall make all repairs listed by the Ludlow Board of Health in its October 11, 2022, citation of violations.
2. Any such repairs that require a licensed person or issuance of a permit shall be effectuated accordingly.

3. Given the Board of Health's citation for mold, the landlord shall have a licensed mold inspector inspect the premises and comply with that company/person's recommendations.
4. The landlord shall also hire a licensed exterminator to treat the premises and comply with that company's treatment recommendations.
5. The tenant's request that the landlord be ordered to place her and her family in a hotel based on the smell coming from the heating system is denied as there is not sufficient bases in the record currently before the court. That said, the landlord reports that Advance Co is scheduled for October 14, 2022, to inspect the heating system and for a coil cleaning.
6. Additionally, the landlord's counsel shall inquire with her client if it is willing to provide hotel accommodations for one night and, if so, so inform the tenant.

So entered this 29th day of Nov, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3017

PATRICIA KORMAN,

Plaintiff,

v.

ALEXIS STEARNS,

Defendant.

ORDER of DISMISSAL

This matter came before the court for trial on November 29, 2022, at which both parties appeared without counsel, and the following order of dismissal shall enter:

1. As a preliminary matter, the tenant sought the dismissal of this summary process action asserting that the basis for this non-payment of rent case was not rent, use, or occupancy.

2. The landlord confirmed that the eviction is based on the tenant not paying her "portion" of the increased electricity that were allegedly resulting from an increase in air-conditioning usage.
3. More specifically, the electrical service is included in the tenancy (as the subject premises and another tenant's unit are on the same electrical service) but the landlord explained that she will ask the tenants of both units to pay towards the bill if it is higher than normal due to air-conditioner usage.
4. Because the tenant owed no rent at the time of the notice to quit which was for alleged non-payment of rent but is actually based on non-rent monies, this action is dismissed. With this order, the court is not addressing the propriety of the landlord's methodology in which she seeks monies for "extra" electrical service usage.

So entered this _____ day of _____, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-SP-826

NATIONSTAR MORTGAGE,

Plaintiff,

v.

KENNETH and STEVEN ROBERTS,

Defendants.

ORDER

After hearing on November 16, 2022, on the plaintiff's motion for summary judgment, at which all parties appeared, the following order shall enter:

1. The plaintiff has met its burden of proof that it has superior right to possession as against the defendants, who were the former owners of the premises, and that there are no dispute of facts that require a trial on the issue of possession.
2. Accordingly, possession shall be awarded the plaintiff.

3. Any and all claims being asserted herein by the defendants, including their claim that the plaintiff violated laws pertaining to pre-foreclosure loan modifications and related violations of Chapter 93A, shall be dismissed without prejudice.
4. What remains for adjudication in this eviction matter is the plaintiff's claim for use and occupancy which will require an evidentiary hearing.
5. This matter shall be scheduled for a Case Management Conference with the Clerk's Office on **December 20, 2022, at 10:30** by Zoom. The court's Zoom platform can be reached at Meeting ID: 161 638 3742 and Password: 1234. If prior to that conference, the plaintiff notifies the court and the defendants in writing that it withdraws its claim in this matter for use and occupancy (with or without prejudice), judgment shall enter for possession for the plaintiff without further hearing.

So entered this 29th day of November, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

CVR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-CV-674

TOWN OF AGAWAM, HEALTH
DEPARTMENT,

Plaintiff,

v.

CATHERINE B. CARRIER,

Defendant.

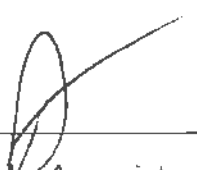
ORDER

After hearing on November 28, 2022, on the Receiver's motion for the removal/storage of the defendant's personal belongings that remain at the property, at which only the Receiver's counsel appeared after proper notice to the parties, the following order shall enter:

1. The Receiver shall sift through the items in the basement and discard trash, rubbish, and debris.

2. Any item remaining after that can be moved out of the way of the space needed to replace the oil tank forthwith.
3. The defendant, Catherine Carrier, can coordinate her removing any remaining items up until December 15, 2022.
4. After December 15, 2022, the Receiver is authorized to remove the remaining items to a storage facility and deduct the costs for same from the surplus that will otherwise be disbursed to Ms. Carrier and notify Ms. Carrier of the contact information and location of the storage facility.

So entered this 30th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

cl

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-272

TOWN OF ERVING,

Plaintiff,

v.

JAMES STANLEY, JULIE STANLEY, and
CINDY HOWARD,

Defendants.

ORDER


After hearing on October 21, 2022, on the defendant property owners' motion for possession, at which all parties appeared through counsel¹, the following order shall enter:

1. The property owners' motion for possession is denied.
2. This matter, being a civil action commenced by the Town of Erving relative to code enforcement, is not the type of case for which a landlord can seek possession of rental property for which there is a legal tenant.

¹ The defendant tenant of the premises was represented by LAR counsel, Raquel Manzanares.

3. Summary Process is the exclusive remedy available for landlord to dispossess tenants. See, *Attorney Gen., v. Dime Sav. Bank, of N.Y., FSB*, 413 Mass. 284, 288-291 (1992); also, *Sumner Slavin v. Nannette Lewis*, No. 21-P-1163 (Mass.App.Ct. June 16, 2022).
4. Regarding access and compliance with the town's citations, the parties agreed to work together to allow the defendant property owners to access the premises to remove "trash" and "debris" from the outside of the premises. Also, the tenant, Ms. Howard, agreed during the hearing to provide the property owner with a key so that he may enter the premises to assess its structural integrity.
5. The defendant property owners shall have an engineer inspect the premises and write a report as to whether the property can be made structurally and sufficiently sound as to have the condemnation lifted. A copy of said report shall be filed with the court and shared with the parties as soon as is practicable.
6. At the hearing, counsel for the tenant Ms. Howard highlighted the fact that the tenant filed a motion for injunctive relief on June 3, 2022, including that the property owner make the repairs necessary to lift the condemnation.
7. A hearing on that motion shall be scheduled for **December 23, 2022, at 10:00 a.m.** in the Greenfield Session of the court.

So entered this 29th day of November, 2022.



Robert Fields, Associate Justice

CC: Raquel Manzanares, LAR Counsel
Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-CV-566

TOWN OF LANESBOROUGH,

Plaintiff,

v.

PETER & MICHELLE BEAUDOIN,

Defendants.

ORDER ON PETITION FOR
REASONABLE ATTORNEYS
FEES

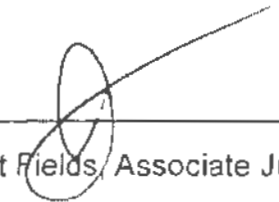
In accordance with the Agreed Upon Judgment filed by the parties on October 5, 2022, plaintiff filed its petition for reasonable attorneys fees and with the requisite time thereafter having expired, no opposition has been filed.

Although there is no one format for a fee petition, the court finds that this petition fails to provide the court with sufficient information regarding Attorney Connor A. Mullen and his expertise or years as an attorney. Whereas the court is very familiar with

Attorney Blake, who performed certain aspects of this litigation, the court is not familiar with Attorney Mullen.

Accordingly, the plaintiff shall be provided 20 additional days (from the date of this order noted below) to file and serve supplemental documents in support of its petition for reasonable attorneys fees. Upon receipt of same, the court shall issue an order regarding said petition without need for further hearing.

So entered this 20th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1838

ASSOCIATION PROPERTIES GROUP,

Plaintiff,

v.

THOMAS BRIDGES,

Defendant.

ORDER

After hearing on November 29, 2022, on the defendant tenant's motion to stop a physical move-out, at which the plaintiff landlord appeared through counsel and the tenant appeared *pro se*, and at which a representative from the Tenancy Preservation Program joined, the following order shall enter:

1. The motion is allowed. The landlord shall cancel the currently scheduled physical eviction, return the execution to the court, and the cost of \$350 incurred

by the landlord relative to that eviction shall be added to the arrearage and costs owed by the tenant.

2. TPP met with the parties and has agreed to assist the tenant with RAFT and with further assessment and connection to needed resources as necessary. Though the tenancy is part of a Mental Health Association subsidized housing program, the tenant may need other resources related to substance use and mental health that are not being sufficiently provided or utilized.
3. The tenant has paid \$400 to landlord's counsel towards the arrearage.
4. This matter shall be dismissed upon a \$0 balance for use and occupancy, court costs, and the \$350 costs incurred by scheduling and cancelling the eviction.

So entered this 30th day of November, 2022.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3100

PIERRE BAIYEE,

Plaintiff,

v.

JACKIE LOVING,

Defendant.

ORDER

This matter came before the court for trial on November 29, 2022, at which the landlord appeared with counsel and the tenant appeared *pro se*. After hearing, the following order shall enter:

1. The parties stipulated to the landlord's case for possession, with the tenant agreeing to receipt of the no-fault notice to quit and the summons.

2. The tenant is seeking time to relocate and testified credibly that she has already engaged in a serious housing search but has yet been able to secure alternate accommodations.
3. The tenant's request for additional time to relocate and to stay these proceedings is allowed in accordance with G.L. c.239, s.9.
4. The tenant shall pay her monthly use and occupancy of \$1,000 timely and in full beginning with December 2022.
5. The tenant shall continue her diligent housing search and keep documentation of those efforts, keeping a log of each and every inquiry and application and the status of same. The tenant shall be prepared to share said documentation with the landlord and the court at the next hearing noted below.
6. The tenant also testified that she has a pending RAFT application. The tenant shall continue to pursue rental arrearage funds and she and the landlord shall cooperate with the RAFT process including the provision of documents including a rent ledger that includes the costs being sought in addition to the outstanding use and occupancy.
7. This matter shall be scheduled for further review on **January 17, 2022, at 2:00 p.m.** at the Springfield Session of the court.

So entered this 30th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1906

BONNIE FRANK,

Plaintiff,

v.

SUSAN DENIS,

Defendant.

ORDER

This matter came before the court on September 23, 2022, for trial, at which the parties appeared with counsel.¹ After hearing, the following order shall enter:

1. **Background:** The plaintiff, Bonnie Frank (hereinafter, "landlord") owns a two-family house in Orange, Massachusetts in which the defendant, Susan Denis (hereinafter, "tenant") rents a unit. The tenant resides in Apt 2 at the premises,

¹ The tenant's counsel appeared through the Lawyer of the Day program and an LAR appearance.

located at 41 Putnam Street (hereinafter, "premises"). On or about April 27, 2022, the landlord had the tenant served with a no-fault eviction Notice to Terminate Tenancy to be effective on June 1, 2022, and thereafter with a summons and complaint for eviction. The tenant filed and served an Answer with defenses and counterclaims alleging violations of the security deposit laws, breach of the covenant of quiet enjoyment, and violation of the warranty of habitability.² Additionally, the tenant asserted a request for a stay in these proceedings in accordance with G.L. c.239, s.9, to allow her time to secure alternate housing and vacate the unit.

2. **The Landlord's Claim for Possession and for Use and Occupancy:** The parties stipulated to the landlord's *prima facie* case for possession and for \$13,000 in unpaid use and occupancy through September 2022. What remained for the court's adjudication were the tenant's defenses and counterclaims which will be considered in turn below.
3. **The Tenant's Claim for Violation of the Security Deposit Laws:** At the commencement of the tenancy in late 2014 or early 2015, the landlord required, and the tenant paid, a security deposit of \$500. Thereafter, the landlord did not comply with the law's requirements of notifying the tenant in which bank and which account the funds were deposited and never provided her with annual interest on the deposit.

² The Answer also asserted a claim of Retaliation which was withdrawn at the commencement of the trial.

4. Through the discovery process in an earlier eviction matter (21-SP-2872) which was ultimately dismissed, the landlord shared information with the tenant about the bank, bank account, and interest regarding the tenant's security deposit.
5. The landlord's failure to comply with the security deposit laws, which include failure to provide the account location and number for the deposit and failure to provide the tenant with annual interest on same are not a basis for the return of the deposit nor of trebling of the deposit under G.L. c.186, s.14.
6. Such failures, however, do violate the Consumer Protection Act at G.L. c.93A and the related state regulations at 940 CMR 3.17. More specifically, the landlord violated 940 CMR 3.17 (4)(b) and (c). In accordance with G.L. c.93A s.9(3) the tenant shall be awarded \$25 for each violation, totaling \$50. Additionally, and in accordance with G.L. c.93A s.9(4), the tenant shall also be awarded reasonable attorneys fees and costs.
7. **The Tenant's Claim for Breach of the Warranty of Habitability:** In late September 2021, repairs were made to the tenant's toilet and to the related plumbing. As a result of said repairs, the water was shut off for four days during which time the tenant stayed with friends on their couches which caused the tenant a great deal of stress. The failure to provide water during those four days, however much unavoidable, violated the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 2105 CMR 410.000 et seq. It is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability irrespective of the landlord good faith efforts to repair the defective condition. *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196

(1979). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual conditions. *Haddad v. Gonzalez*, 410 Mass. 855 (1991). Given that the lack of water to the premises prevented the tenant from residing or even cooking her meals therein, the court finds that a 100% abatement of rent for the four days fairly and adequately compensates the tenant for the diminished value of the premises. As such, the tenant shall be awarded \$133.33 for this claim.

8. **The Tenant's Claim for Loss of her Personal Property:** At the commencement of the tenancy, the landlord provided the tenant with storage space in the garage and the attic for the tenant's personal property. After a number of years, the landlord wanted to renovate the attic and required the tenant to move her personal belongings to a storage area on the first-floor unit. Then, in September 2021 the first-floor tenants were moving out and the landlord was preparing the premises for sale. At that time, the landlord moved the tenant's items stored on the first floor to the garage where the tenant's other belongings were stored. The landlord recalls moving the tenant's chandelier that was stored in a box from the first floor to the garage.
9. Now, for the first time in the history of the tenancy, the tenant is claiming that some of her personal items that had been stored at the premises were missing. More specifically, the tenant asserts that in September 2021, when the landlord rented a dumpster in which was utilized by the landlord to prepare for the sale of the premises and by the first-floor tenants who were vacating, she saw her box

with her chandelier in the dumpster from her second-floor window. She did not retrieve it nor inspect any closer to see if it was intact or broken and never mentioned it to the landlord prior to this litigation. The landlord testified that she arranged the items in the dumpster and that she never saw the box with the chandelier there. She believes that the chandelier continues to be stored in the garage.

10. Additionally, the tenant claims that three mountain bikes that she has stored in the garage are missing. The tenant has been storing these bicycles in the garage since she moved onto the premises approximately seven years ago and has not used them since. The landlord testified that she believes that the bicycles are still stored in the garage. Neither the tenant nor the landlord have been inside the garage in recent times to see what is, and is not, present therein.
11. Lastly, the tenant described how her "outdoor" Christmas decorations have been placed outside the garage since September 2021 (they were previously inside the garage prior to that date), claiming that this has violated her rights in some fashion.
12. The tenant has not brought any of these claims regarding her belongings to the landlord's attention prior to litigation. She did not even mention them in her Answer filed in the first summary process matter noted above. The court finds and so rules that the tenant has failed to meet her burden of proof that her belongings have been damaged or removed from the premises or that the landlord's actions regarding the storage of her belongings has violated the tenant's rights in any way.

13. **Conclusion and Order:** Based on the foregoing, if the tenant deposits with the court \$12,816.67 plus court costs of \$ 213.16 and interest in the amount of \$ 657.80 totaling \$ 13,687.63 within ten days of the date of this order noted below, the tenant shall be awarded possession. This represents the award of outstanding use and occupancy of \$13,000 MINUS the award of damages to the tenant totaling \$183.33. If said deposit is made to the court in full and timely, said funds shall be disbursed by the Clerk's Office to landlord's counsel thereafter.

14. **G.L. c.239, s.9:** Given that this matter is based on a termination of tenancy for no-fault and given that the tenant is seeking a stay in these proceedings in accordance with G.L. c.239, s.9, no judgment for possession shall enter for the landlord even if the tenant does not make the deposit described above---at this time. That issue will be addressed, if the tenant does not make the deposit to the court described above, when the court conducts a hearing in accordance with G.L. c.239, s.9. Said hearing shall be scheduled below. PLEASE NOTE: If the tenant makes the payment described above in paragraph 13, the hearing noted below regarding G.L. c.239, s.9 will not be held.

15. **Award of Attorneys Fees:** Due to the landlord violations of G.L. c.93A noted above, counsel for the tenant Raquel Manzanares shall have 20 days from the date of this order noted below to file and serve a Petition for Reasonable Attorneys Fees and Costs. The landlord shall have 20 days after receipt of said petition to file any opposition thereto. The court shall make a ruling on said petition for fees and costs without hearing, thereafter.

16. Next Hearing Date: As noted above, if the tenant does not make the deposit to the court as described above in paragraph 13, this matter shall be scheduled for further hearing on the tenant's request for a stay in these proceedings to allow her to secure, and relocate to, alternate accommodations. Said hearing shall be scheduled for **December 23, 2022, at 9:00 a.m.** at the Greenfield Session of the court.

So entered this 30th day of November, 2022.

Robert Fields, Associate Justice

CC: Raquel Manzanares, LAR Counsel
Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2718

PEABODY WESTFIELD, L.P.,

Plaintiff,

v.

YAMILETTE L. MENDEZ,

Defendant.

ORDER

After hearing on November 29, 2022, on the tenant's motion to vacate a default judgment at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. For the reasons stated on the record, some of which include the mental health of the tenant during the time of these proceedings, the motion is allowed and the default shall be vacated and the execution returned to the court.

2. A referral was made to the Tenancy Preservation Program (TPP) which shall in addition to their other assessments and efforts, shall also make a referral to Community Legal Aid and to Way Finders, Inc. regarding a RAFT application.
3. This is a for cause eviction matter in which the tenant disputes some of the allegations and/or asserts that they are not sufficiently substantial as to be a basis for an eviction from a subsidized and a trial shall be scheduled for **January 19, 2023, at 9:00 a.m.**

So entered this 30th day of November, 2022.

 Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

for information relevant to the subject matter involved in this case, including the existence, description and location of relevant documents and the identity and location of persons having knowledge of any discoverable matters.¹

3. Plaintiff shall produce the documents and Defendant shall propound revised interrogatories, if any, no later than December 15, 2022.

SO ORDERED.

DATE: 11-30-22

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

¹ Defendant may find information regarding the discovery process at the Court Service Centers located in the courthouses in Greenfield and Springfield.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0825

SPRINGFIELD GARDENS 238-262 LP,)
)
 PLAINTIFF)
)
 v.)
)
 JOHN DOE/OCCUPANTS OF 248 UNION ST.,)
 APT. 2D, SPRINGFIELD, MASSACHUSETTS)
)
 DEFENDANT)

ORDER TO APPEAR

This matter came before the Court on November 29, 2022 on Plaintiff's verified complaint for injunctive relief. Plaintiff appeared through counsel and no other person appeared. Plaintiff seeks an order that all occupants of 248 Union Street, Apartment 2D, Springfield, Massachusetts (the "Premises") vacate the premises.

Based on the facts in the verified complaint, the Premises were vacant since July 2022, as evidenced by photographs taken in August 2022. In October 2022, Plaintiff discovered unknown persons residing in the unit, claiming "squatters' rights." Plaintiff is likely to succeed on the merits of its action and is likely to suffer irreparable harm if unknown individuals reside in the Premises. Accordingly, the following order shall enter:

1. Anyone occupying of 248 Union Street, Apartment 2D, Springfield, Massachusetts must appear on **Thursday, December 8, 2022 at 2:00 p.m.** in the Springfield session of the Western Division Housing Court located at

37 Elm Street, Springfield, Massachusetts to show cause why they should not be treated as trespassers and summarily removed from the Premises.

2. If no occupant of the Premises appears, Plaintiff will be treated as trespassers and physically removed from the Premises.
3. Plaintiff shall pay the \$90.00 legislative fee for injunctive relief within ten days of this order.

SO ORDERED.

DATE: 11-30-22


Hon. Jonathan J. Kane, First Justice

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1059

ANA YNOA,

Plaintiff,

v.

IVONNE DIAZ,

Defendant.

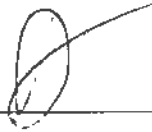
ORDER

After hearing on November 29, 2022, on the landlord's motion for entry of judgment at which only the landlord appeared, the following order shall enter:

1. Because the tenant has complied with making her monthly use and occupancy payments per the terms of the court agreement dated September 1, 2022, and the basis for the motion is the lack of a RAFT payment, and also because the motion was handed to the tenant minor child and not to the tenant, the landlord's motion shall be continued to the date noted below.

2. The tenant is instructed to meet with Way Finders, Inc. as soon as she can and follow up on her RAFT application or to re-apply for those funds, as well as investigate securing other sources of funds for the rental arrearage.
3. A hearing on the landlord's motion and for a review hearing shall be scheduled for **December 13, 2022, at 2:00 p.m.**

So entered this 30th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2332

DONNA CABOT,

Plaintiff,

v.

FRANK GAETANI,

Defendant.

ORDER


After hearing on November 28, 2022, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day counsel, the following order shall enter:

1. The court found the tenant credible in his testimony that his failure to appear at the Tier 1 event (upon which the default judgment entered) was due to his not receiving the court's notice of the Tier 1 event *and* that his failure to engage in

the court process thereafter was because he believed that he was waiting for notice of a trial or at least a next hearing opportunity.

2. The tenant's motion is allowed. The physical eviction currently scheduled shall be cancelled by the landlord. Additionally, the default judgment shall be vacated. The landlord shall return the execution to the court.
3. The tenant paid \$1,000 towards his outstanding balance, which was given to the landlord's counsel during the hearing.
4. There is a pending application with Way Finders, Inc. for RAFT funds and it is hopeful that RAFT will be able to pay \$10,000 towards rental arrearage. The tenant shall pay his rent in full and timely for December 2022.
5. The parties appreciate that there will still be a balance due even if RAFT funds are paid and the tenant shall pay \$500 in addition to his rent each month beginning in January 2023.
6. This matter shall be scheduled for a case management conference for **January 12, 2023, at 9:00 a.m.**

So entered this 1st day of December, 2022.



Robert Fields, Associate Justice

CC: Christa Douaihy, LAR Counsel
Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2916

JEAN R. METHE, et al.,

Plaintiffs,

v.

RAYMOND THOMPSON,

Defendant.

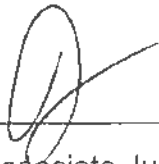
ORDER

This matter came before the trial on November 28, 2022, at which all parties appeared *pro se*, the following order shall enter:

1. The tenant's request for a stay of these *no-fault* eviction proceedings in accordance with G.L. c.239, s.9 is allowed, and the tenant shall be given time to diligently search for alternate housing as long as he diligently searches for housing and pays his current rent beginning December 1, 2022.

2. The parties agree that \$5,500 is outstanding in use and occupancy through November 30, 2022, and that the monthly rent is \$1,100.
3. The tenant's income appears to be insufficient to pay the current rent and he shall seek assistance from Way Finders, Inc. and any other agency for rental assistance to assist him in being able to pay his rent.
4. The parties were going to meet with Way Finders, Inc. in a court Zoom room directly after the hearing.
5. The tenant shall also diligently search for alternate housing and maintain documentation of same that he can share with the landlord and the court at the next hearing noted below.
6. This matter shall be scheduled for review on **December 20, 2022, at 9:00 a.m.**

So entered this 18th day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

Handwritten mark

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

FELIX NUNEZ,

Plaintiff,

v.

NIKITA PERKINS,

Defendant.

No. 22-SP-2353

NIKITA PERKINS,

Plaintiff,

v.

JAMES FERRIN and FELIX NUNEZ,

Defendant.

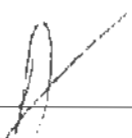
No. 22-CV-753

After hearing on November 28, 2022, in the above captioned cases, the following order shall enter:

1. Both the cases were scheduled for case management and status hearing.
2. Ms. Ortega from Way Finders, Inc. joined the hearing and reported that the tenant's RAFT application is scheduled to be closed out due to the landlord's failure to provide necessary documents.
3. The parties shall work with Way Finders, Inc. to pursue a RAFT application, and shall meet with her directly after the hearing in the court's Zoom room.
4. The landlord has failed to investigate and make necessary repairs to the premises since the November 3, 2022, hearing in 22-CV-753.
5. Jazmin Paulino, the owner of the subject premises (and Mr. Nunez' daughter) at 10 Thomas Road in Lawrence, MA is an indispensable party and shall be added as a party-defendant in 22-CV-753 and as a party-plaintiff in 22-SP-2353 and shall appear at all proceedings moving forward.
6. **Felix Nunez** shall be added as an indispensable party-defendant in 22-CV-753.
7. The landlord, Felix Nunez, shall bring a repairperson with him when he inspects the tenant's unit at 10:00 a.m. on November 30, 2022. Thereafter, Nunez and Paulino shall ensure that all repairs are effectuated with no less than 24 hours advance written notice.
8. Mr. Nunez and Ms. Paulino are responsible for repairs to the stove and the fridge in the tenant's unit and shall effectuate same forthwith by a person with proper licensing.

9. These matters shall be scheduled for further review, and for any properly marked motions, on **December 20, 2022, at 2:00 p.m.**

So entered this 1st day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2990

ANTHONY and MACKENZIE LAFEMINE,

Plaintiffs,

v.

SANDRA JONES and SHANNON COX,

Defendants.

ORDER

After hearing on November 28, 2022, on review after an agreement dated November 7, 2022, at which the plaintiff Mr. Lafemine and the defendant Ms. Jones appeared without counsel, the following order shall enter:

1. The parties shall continue to share documentation to substantiate that Ms. Cox is not a tenant at the premises.
2. The tenant's request for further stay of these no-fault eviction proceedings to allow her additional time to relocate is allowed in accordance with G.L. c.239, s.9.

3. The tenant shall continue to log her diligent efforts to relocate.
4. The tenant reports that RAFT has issued a payment to the landlord for rents, use, occupancy through November 2022, plus court costs and should have the effect of bringing her balance to \$0. The parties will meet with Way Finders, Inc. in a Zoom break-out room in the courthouse directly after the hearing to confirm.
5. The tenant shall continue to pay her portion of the rent, use, and occupancy as long as she occupies the premises.
6. A review hearing shall be scheduled for **January 3, 2023, at 2:00 p.m.** At that time, if the tenant has not already relocated, she shall share a copy of the documentation of her diligent housing search with the landlord and the court.

So entered this 2nd day of December, 2022



Robert Fields, Associate Justice

CC: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE No. 19-SP-190**

<p>BANK OF NEW YORK MELLON,</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">v.</p> <p>ALTON KING,</p> <p style="text-align:right">Defendant.</p>	
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ORDER

After hearing on December 6, 2022, on the plaintiff's motion for extension of or issuance of a new execution for possession at which both parties appeared on Zoom, the following order shall enter:

1. Due to the curtailment of a physical levy on the court's execution for possession conducted by the sheriffs and Race Street Properties on October 12, 2022, the execution has expired and the plaintiff now seeks a new execution for possession so it can complete the physical eviction.

2. Though there was no testimony given by the sheriff present at the hearing (Michael Goldberg), the defendant's own statements made both during the hearing and in his pleading support the court's finding that a physical eviction was interrupted by swarming bees brought to the premises by Ms. R. Susan Woods on October 12, 2022.
3. The defendant's arguments that the sheriffs' return on October 13, 2022, was illegal if they were there to complete the physical eviction, and that his belongings that were removed are not being stored at a proper facility and/or that they have not been inventoried as required by law, or that he was not served certain required papers on October 12, 2022, may be a basis for litigation or other remedy but they are not dispositive on the plaintiff's instant motion.
4. Additionally, as noted by the judge during the hearing, the court is satisfied that the plaintiff had authority under the terms of the execution and its 48-hour move-out notice to levy on the execution on October 12, 2022, that being the 90th day of the execution and its last valid day.
5. The court is also satisfied that through no fault of the plaintiff, their attempt to levy on the execution on October 12, 2022, was thwarted by an incident caused by bees being brought to and let loose at the premises, that the plaintiff has received a lifting of the automatic stay in the bankruptcy proceedings, and that there is no basis to deny the issuance of a new execution for possession to the plaintiff.

6. The plaintiff is also seeking clarity from the court that when it effectuates levy on the new execution for possession, that it be authorized to remove any and all persons therein.
7. That request is allowed. Though the court is keenly aware with great detail of these proceedings and is confident that no person has any right of possession at the premises as against the plaintiff, if anyone removed by the sheriffs at the next levying of the execution wishes to be heard that they have rights of possession as against the plaintiff they may file a motion to be heard in this case.
8. **Conclusion and Order:** Based on the foregoing, a new execution for possession for the plaintiff against the defendant shall issue forthwith and the plaintiff shall be authorized when it levies on the execution to remove all persons therein.

So entered this 5th day of February, 2021.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0271

_____)
CITY OF CHICOPEE,)
)
PLAINTIFF)
)
v.)
)
DALTON ALEXIS, ET AL.,)
)
DEFENDANTS)
_____)

ORDER

This matter came before the Court on December 2, 2022 on various motions relating to a receivership proceeding involving a multifamily residential building located 18 Bemis Street, Chicopee, Massachusetts (the "Property"). Counsel appeared for Plaintiff, the receiver, Alfred Shattelroe (the "Receiver"), the owner, Dalton Alexis (the "Owner"), and the mortgagee, City National Bank (the "Mortgagee"). A number of former occupants of the Property were in the courtroom, and Attorney Lance Chavin, who appeared by Zoom, informed the Court that he had been retained by a number of these former occupants.

Plaintiff, the Owner and the Mortgagee reported that they had tentatively reached agreement for the Owner to take control of the Property and maintain it as insured, vacant and secure until further court order. They have further agreed to extend the time the Owner has to submit a rehabilitation plan for approval.

Currently, the Receiver is providing alternative housing for all of the former occupants, who are not parties to this action. The former occupants reported to the

Court that they are not receiving mail at their current addresses. After hearing, the following order shall enter:

1. The Court finds it necessary to add as interested parties the former occupants of the Property given their right to alternative housing is an important issue to be addressed in this case. Because it is not clear to the Court which of the family members are minors, until further hearing, the former occupants will be identified as listed in the Appendix attached hereto.
2. As soon as practicable, Attorney Chavin shall file an appearance identifying the former occupants he represents.
3. Upon Plaintiff, the Owner and the Mortgagee executing and filing with the Court an agreement for the Owner to take control of the Property, the Receiver's motion to resign will be allowed; provided, however, that the Receiver shall, prior to being permitted to resign, do the following:
 - a. Ensure that the current alternative housing arrangements for the former occupants continue through the end of December 2022, and
 - b. Ensure that the former occupants have mailboxes with their names on them and keys to their mailboxes at their present addresses.
4. The Receiver shall prepare a final statement of his Receiver's lien no later than December 7, 2022 and shall serve it on Plaintiff, the Owner, the Mortgagee and Attorney Chavin. The final statement shall include copies of all documentary evidence the Receiver intends to rely upon at the hearing to establish the Receiver's lien.

5. If any of the former occupants intend to seek relief from the Court regarding their present living arrangements, they must serve and file any such motions by December 9, 2022.
6. To the extent that the parties have not already exchanged witness lists and designated exhibits relating to the establishment of the final Receiver's lien as earlier ordered by Judge Fields, this information shall be exchanged no later than December 9, 2022.
7. All parties shall return for an in-person evidentiary hearing on **December 13, 2022 at 11:00 a.m.** on (a) the Receiver's motion to establish the Receiver's lien and (b) the Owner's motion for tenants to pay rent.¹

SO ORDERED.

DATE: 12/5/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Lance Chavin, Esq.

Appendix attached

¹ The Court announced the date and time of the next hearing to the former occupants in the courtroom in the event they continue not to receive mail.

APPENDIX

INTERESTED PARTIES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

exterminations completed or attempted at the Property since November 10, 2022.

5. The Court will assess daily fines of \$100.00 after December 7, 2022 if the repairs in the Property have not been substantially completed. With respect to exterminations, the fines will be imposed if the Court finds that Defendant has not been making diligently efforts to eradicate the rodents.
6. The parties shall return for review on December 15, 2022 at 9:00 AM.

SO ORDERED.
DATE: 12/5/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 22H79SP002431

PITTSFIELD PROPERTIES GROUP, LLC,

Plaintiff

VS.

KAMARA FLASCHER,¹

Defendant

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

This is a summary process action in which the plaintiff is seeking to recover possession of the premises upon the termination of a tenancy at will. The complaint includes an account annexed for unpaid rent. The defendant filed a written answer that included affirmative defenses and counterclaims pertaining to purportedly defective conditions at the premises and retaliation. The court conducted a bench trial on November 30, 2022.

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

The plaintiff, Pittsfield Properties Group, LLC, has owned the two-family dwelling at 61 Orchard Street, in Pittsfield since August 18, 2021. Peter Glidden was employed as the plaintiff's property manager from August 2021 to January 2022. Jody Koczur has been employed by the plaintiff for approximately one and half years. She has served as the property manager since January 2022.

Kelvin Santos (Santos) owned the property until August 18, 2021 when he sold the property to the plaintiff.

¹ The clerk is requested to amend the docket to correct a scrivener's error. The defendant's last name is "Flascher" not "Flasher."

The defendant, Kamara Flascher, has resided (with her two teenage children) at 61 Orchard Street Monmouth Street, Apartment 2, since November 2019. Initially she occupied the apartment subject to the terms of a one-year written lease with Santos. The monthly rent as set forth in the lease was \$750.00 and was due by the first day of each month. The lease expired at the end October 2020. Her tenancy continued thereafter from month to month as a tenancy at will. The rent remained \$750.00 per month when the tenancy became a tenancy at will.

The defendant's tenancy at will continued after Santos sold the property to the plaintiff on August 18, 2021.

The defendant testified that during the period that Santos owned the property he gave her a \$100.00 monthly rent credit in exchange for her mowing the lawn and shoveling snow. This arrangement was never reduced to writing, and there is no evidence that the arrangement continued after Santos sold the property to the plaintiff. Accordingly, I find that the monthly rent that the defendant has been obligated to pay the plaintiff since September 2021 is \$750.00 due on the first day of each month.

In early 2021 Santos terminated the defendant's tenancy and commenced an eviction action claiming that the defendant engaged in poor housekeeping. The court takes judicial notice of the docket entries and the findings, rulings and judgment entered on July 12, 2021 (*Santos v Flascher*, 21H79SP000722). In his decision, the judge referred to two Pittsfield Health Department correction orders dated December 8, 2020 and January 29, 2021 (addressing the same conditions). The sanitary code conditions as listed in the notice that required repair included missing smoke detector, rodent extermination required, gaps in walls/floors, broken window, window screwed shut, tub does not drain, radiator not working properly, cabinet door needs to be replaced, and "occupant must make efforts to clean the apartment and maintain the premises as clean, healthy, safe and sanitary." However, because the eviction involved a claim of fault (poor housekeeping) the judge made findings pertaining only to the last condition listed. The judge ruled that while the evidence did show that the defendant engaged in poor housekeeping, the problem (as it existed in 2021) was relatively minor and could be corrected if the defendant made a better effort to clean her apartment. The judge ruled that the defendant's poor housekeeping did not constitute a material violation of the defendant's tenancy obligations. Accordingly, the judge entered judgment in favor of the defendant on the claim for possession.

After the plaintiff became the owner/landlord in August 2021, the defendant paid her monthly rent from September through November 2021. She did not make a rent payment in December 2021. She made her last rent payment in January 2022. The defendant did not make any rent payments to the plaintiff from February to November 2022. Based upon the plaintiff's rent ledger (and the property manager's testimony) the defendant currently owes a total of **\$7,840.00** in unpaid rent through November 2022 based upon the contract rent of \$750.00.²

Plaintiff's Claim for Possession. On March 11, 2022, the plaintiff served the defendant with a legally sufficient notice to quit that terminated the tenancy at the expiration of April 2022. The notice did not allege a cause for termination. It simply terminated the defendant's tenancy at will.

The plaintiff has established its prima facie case for possession subject the defendant's affirmative defenses.

Defendant's Breach of Implied Warranty of Habitability Counterclaim. The existence of the defective conditions in the defendant's apartment constitutes a material breach of the implied warranty of habitability. *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973). The measure of damages for breach of the implied warranty of habitability is the difference between the fair rental value of the premises free of defects and the fair rental value of the premises during the period that the defective conditions existed. *Boston Housing Authority v. Hemingway*, supra; *Haddad v Gonzalez*, 410 Mass. 855, 872 (1991).

I find that in August 2021 the defendant notified the plaintiff's property manager, Peter Glidden, of the conditions that required repair as set forth in the City of Pittsfield health department notices of December 8, 2020 and January 29, 2021. The conditions identified in the notices continued to exist in August 2021.

I find that the plaintiff promptly replaced the smoke detector and carbon monoxide alarms, exterminated the apartment and covered the gaps in the walls/floor that could have been entry points for the rodents. However, the plaintiff did not repair the broken window, the window screwed shut, the radiator that was not working properly or the kitchen cabinet door. The evidence

² Since the trial was conducted on November 30, 2022, I have not included rent due for December 2022.

presented at trial is not sufficient to show that the defendant's apartment had plumbing leaks, water penetration through windows, mold, or defects in the floors/walls/ceilings.³

I find that the plaintiff knew or should have known about the uncorrected sanitary code violations set forth in the December 8, 2020 and January 29, 2021 since late August 2022.

The continued existence of these defective conditions constitutes a material breach of the implied warranty of habitability.

The fair rental value of the defendant's apartment free of defects is the agreed upon contract rent of \$750.00 (\$12,000.00 from September 1, 2021 through November 2022). I find that during this sixteen (16) month period the fair rental value of the premises was diminished by 10% (\$75.00) per month (for a total of \$1,200.00) because of the uncorrected sanitary code violations, and the monthly fair rental value during this sixteen (16) month period was \$675.00. Based upon the diminished fair rental value, the amount due the plaintiff from September 1, 2021 through November 2022 was \$10,800.00 (\$675.00 x 16 months). During this same period the defendant paid the plaintiff a total of \$3,410.00.⁴

Since the amount of rent the defendant paid during this sixteen (16) month period (\$3,410.00) was less than the diminished fair rental value of Apartment 2 that was due the plaintiff (\$10,800.00), the defendant has not proved that she incurred any monetary damages for breach of the implied warranty of habitability. But the defendant is entitled to a G.L. c. 239, § 8A affirmative defense as is explained below.

Defendant's Interference with Quiet Enjoyment Counterclaim. The quiet enjoyment statute, G.L. c. 186, §14, provides that any landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises" shall be liable for "actual or consequential damages or three month's rent, whichever is greater . . ." While the statute does not require that the landlord's conduct be intentional, *Simon v. Solomon*, 385 Mass. 91 (1982), it does require proof that the landlord's conduct caused a serious interference with the tenant's quiet enjoyment of the

³ There is no evidence that the City of Pittsfield health inspector ever returned to the property after January 29, 2021 to inspect the apartment to determine whether the violations had been corrected. The defendant testified that she called the health department repeatedly but that the inspector never responded to her calls. I do not credit the defendant's testimony on this issue. The only evidence of a written notice issued by the Pittsfield Board of Health subsequent to January 29, 2021 is a nuisance abatement letter, dated November 14, 2022, pertaining to "bulky items and white goods" that must be removed from a common porch. The complaint, inspection and report all took place after the plaintiff had commenced this summary process action.

⁴ I have included in this calculation \$750.00 for the month of September 2021 since the rent ledger shows that the defendant had a zero (\$0.00) balance as of September 1, 2021.

premises. A serious interference is an act or omission that impairs the character and value of the leased premises. *Doe v. New Bedford Housing Authority*, 417 Mass. 273, 284-285 (1994); *Lowery v. Robinson*, 13 Mass. App. Ct. 982 (1982); see also *Al-Ziab v. Mourgis*, 424 Mass. 847, 850-851 (1997).⁵

The plaintiff's failure to promptly repair the uncorrected sanitary code violations listed in the Pittsfield Health Department correction notices (measured from the date the plaintiff first became aware of them, August 2021) constitutes a serious interference with the defendant's quiet enjoyment of her apartment.

The defendant has not proved that she incurred any actual damages that exceeds three months' rent. Accordingly, the defendant has established statutory damages of \$2,250.00 (three months' contract rent, \$750.00 x 3).

Defendant's G.L. c. 93A Counterclaim. G.L. c 93A makes it unlawful to engage in an unfair act or practice in the course of trade or commerce. "The existence of unfair acts and practices must be determined from the circumstances of each case." *Commonwealth v. DeCotis*, 366 Mass. 234, 242 (1974). Under G.L. c. 93A, §§ 2 and 9, the circumstances and facts of each case must be analyzed to determine whether the practice in question falls within any recognized conception of unfairness or is immoral, unethical, oppressive, or unscrupulous. *Mechanics National Bank of Worcester v. Killeen*, 377 Mass. 100 (1979); *PMP Associates v. Globe Newspaper Company*, 366 Mass. 593, 596 (1975); *Swanson v. Banker's Life Co.*, 389 Mass. 345, 349 (1983).

The Legislature delegated to the Attorney General the power to promulgate regulations that identify, with specificity, acts or practices that are to be considered unfair or deceptive under G.L. c. 93A. 940 CMR § 3.00, et seq. Such regulations have the force of law. *Purity Supreme, Inc. v. Attorney General*, 380 Mass 762 (1980).

With respect to residential rental housing 940 CMR, § 3.17 (1) (i) provides that "it shall be an unfair and deceptive practice for an owner to . . . fail to comply with the State Sanitary Code or any other law applicable to the conditions of a dwelling unit within a reasonable time after notice of a violation of such code or law from the tenant or agency."

⁵ Section 14 provides in relevant part that ". . . any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant . . ." shall be liable to the occupant for actual damages or three months' rent, whichever is greater.

A prevailing claimant shall be entitled to actual damages or twenty-five dollars, whichever is greater. Where the actual damages are based upon diminished value of the leasehold, damages are calculated as follows: diminished fair rental value (based on the breach of the implied warranty of habitability) less unpaid rent. If the conduct is willful or knowing, the actual damages shall be doubled or trebled.⁶

The plaintiff is engaged in trade or commerce within the meaning of G.L. c. 93A.

I find and rule that the plaintiff's failure to correct all of the defective conditions in the defendant's apartment within a reasonable time after the defendant provided the plaintiff's property manager with copies of the Board of Health correction notices constituted an unfair or deceptive practice in violation of G.L. c. 93A. The plaintiff's inaction over the sixteen (16) month period was knowing.

With respect to damages, the court makes the following calculation. Over the sixteen (16) month period from September 2021 through November 2022 the difference between the agreed upon rent (\$750.00) and the diminished rental value (\$675.00) totaled \$1,200.00. Because the plaintiff's conduct was "knowing" I shall treble that amount to \$3,600.00. From that amount I must deduct the unpaid rent totaling \$7,840.00. Since this is a negative number, the difference represents the amount due the plaintiff under G.L. c. 239, § 8A.

No Cumulative Damages. The defendant is not entitled to cumulative damages arising from the same operative facts. *Wolfberg v. Hunter*, 385 Mass. 390 (1982). Her implied warranty, G.L. c. 186, § 14 and G.L. c. 93A counterclaims arise from the same operative facts. For purposes of determining the amount due under G.L. c. 239, § 8A, the damages calculated under G.L. c. 93A, \$3,600.00 (prior to deducting the unpaid rent) is greater than the statutory damages under § 14 (\$2,250.00).

Defendant's 8A Affirmative Defense to Possession. The defendant is entitled to an affirmative defense to possession under G.L. c. 239, § 8A because the plaintiff knew or should

⁶ In *Wolfberg v. Hunter*, 385 Mass. 390, 399-400 (1982) the SJC instructs that ". . . under G.L. c. 93A, [the tenants'] damages under G.L. c. 93A shall be calculated by determining the rental value of the unit as warranted - the agreed rent - minus the value of the unit in a defective condition, plus any reasonable expenses incurred by the tenants as a result of the defective condition. The amount thus arrived at shall be doubled or trebled, in accordance with G.L. c. 93A, s 9(3), if the judge finds that the unfair or deceptive act or practice was willful or knowing, or that the landlord's refusal to grant relief in response to the tenants' demand letter was in bad faith. From this figure, the total amount of rent withheld shall be subtracted to prevent an excessive recovery."

have known of the uncorrected sanitary code violations set forth in the Pittsfield Board of Health correction notices prior to the date on which the defendant was first in arrears in his rent. The amount due the plaintiff for unpaid rent pursuant to G.L. c. 239, § 8A is **\$4,240.00** (\$7,840.00 in unpaid rent less \$3,600.00 damages calculated under G.L. c. 93A prior to deducting the unpaid rent).

Defendant's Retaliation Defense and Counterclaim. A tenant is entitled to a defense to possession under G.L. c. 239, §2A and may recover damages under G.L. c. 186, §18 if the landlord's act of commencing a summary process action or serving the tenant with a notice of termination upon which the action is based, was in retaliation for, among other things, the tenant's reporting to a health department or reporting in writing to the landlord a violation or suspected violation of law "which has as its objective the regulation of residential premises."

Under Section 2A (in all cases) and Section 18 (except in cases of non-payment of rent), the commencement of [a summary process action] against a tenant, or the sending of a notice to quit upon which the summary process action is based within six months after the tenant has engaged in such protected activity shall create a rebuttable presumption that the termination notice was served as an act of reprisal against the tenant for engaging in such protected activity. The burden then shifts to the landlord to rebut the presumption of retaliation by presenting clear and convincing evidence that such actions were not taken in reprisal for the tenant's protected activities, that the landlord had sufficient independent justification for taking such action, and that the landlord would have taken such action in any event, even if the tenant had not taken the actions protected by the statute.⁷

There is no credible or reliable evidence that subsequent to the date on which the plaintiff became the defendant's landlord (August 18, 2021) the tenant reported to the Pittsfield Board of Health or reported in writing to the plaintiff complaints regarding the condition of her apartment.⁸ There is no evidence that the Pittsfield Board of Health inspected the defendant's apartment (or

⁷"Clear and convincing" proof means evidence which "induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." *Callahan v. Westinghouse Broadcasting Co., Inc.*, 372 Mass. 582 (1977), quoting, *Dacey v. Connecticut Bar Assoc.*, 170 Conn. 520, 537, n. 5 (1976); *Stone v. Essex County Newspapers, Inc.*, 367 Mass. 849, 871 (1975).

⁸ I do not credit the defendant's testimony that after the plaintiff became her landlord in August 2021 the Pittsfield Board of Health ignored her "repeated" calls. I find that the defendant did not contact the Pittsfield Board of Health until after the plaintiff commenced this summary process action in 2022.

that the inspector contacted the plaintiff) between August 2021 and October 2022. The defendant provided the plaintiff's property manager with the December 8, 2020 and January 29, 2021 Pittsfield Board of Health correction notices in late August 2021. The plaintiff served the defendant with the notice to quit on March 11, 2021 and commenced this summary process action in May 2021. These actions taken by the plaintiff occurred more than six months after the defendant first notified the plaintiff about the Pittsfield Board of Health correction notices.

For this reason, the defendant is not entitled to a rebuttable presumption of retaliation with respect to her retaliation affirmative defense or counterclaim.

Without the benefit of the presumption of retaliation the plaintiff has failed to establish by a preponderance of the evidence that the plaintiff engaged in any acts of retaliation directed against the defendant.⁹

Accordingly, I rule that the defendant has not established an affirmative defense to possession pursuant to G.L. c. 239, § 2A and has not established a claim for damages pursuant to G.L. c. 186, § 18.

ORDER FOR JUDGMENT


Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that judgment shall enter **on December 23, 2022** as follows:

1. Judgment shall enter for the plaintiff on the defendant's G.L. c. 186, § 18 counterclaim.
2. Judgment shall enter for the defendant on her claims for breach of implied warranty of habitability, violation of G.L. c. 186, § 14 and G.L. c. 93A, with actual and punitive damages of **\$3,600.00** calculated pursuant to G.L. c. 93A, which amount shall be set off against the amount of unpaid rent due the plaintiff.

⁹ Even if the defendant had been entitled to the presumption, I find that the plaintiff proved with clear and convincing evidence that the sole reason the plaintiff terminated the defendant's tenancy in March 2022, and then commenced this summary process action, was because the defendant had been in arrears in her rent since December 2021.

3. Judgment shall enter for the plaintiff for unpaid rent in the amount of \$7,840.00, which amount shall be set off against the G.L. c. 93A counterclaim damages of \$3,600.00 pursuant to G.L. c. 239, § 8A, **leaving a net amount due the plaintiff of \$4,240.00.**
4. **If the defendant deposits with the Clerk's Office of the Western Housing Court the sum of \$4,240.00** in the form of a money order payable to "Commonwealth of Massachusetts" by **December 22, 2022** then pursuant to the fifth paragraph of G.L. c. 239, § 8A judgment shall enter for the defendant for possession. The Clerk is directed to release these funds to the plaintiff in accordance with the judgment for unpaid rent.
5. **If the defendant does not deposit \$4,240.00 with the Clerk's Office of the Western Housing Court by December 22, 2022, then on December 23, 2022** judgment shall enter in favor of the plaintiff for possession and \$4,240.00 damages, plus costs, with execution to issue in due course.

SO ORDERED this 5th day of December, 2022.



Jeffrey M. Winik
Associate Justice (recall appt)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NOS. 22-CV-0371 AND
22-SP-2164

_____ VA7 AMHERST GROVE, LLC,)	
)	
PLAINTIFF)	
)	
v.)	ORDER
)	
TULSI VEMBU,)	
)	
DEFENDANT)	
_____)	

This matter came before the Court by Zoom on December 2, 2022 for review of previous court orders and a case management conference. Plaintiff appeared through counsel. Mr. Vembu appeared self-represented. Counsel for the Town of Sunderland and Sunderland Health Inspector Gina McNeely were also present, as was Michael Richtell, a representative of the Tenancy Preservation Program (“TPP”).

Plaintiff’s counsel reported that the carpet replacement took place as scheduled. She informed the Court that live and dead mice, mouse droppings and mouse urine were found throughout the home and throughout Mr. Vembu’s furniture and personal belongings. Items believed to be salvageable were placed in a trailer, and items for disposal were placed on the lawn under a tarp. Because his bed was unsalvageable, Mr. Richtell is helping Mr. Vembu locate a new bed for his unit.

After hearing, the following order shall enter:

1. Neither Mr. Vembu nor any person acting on behalf of Mr. Vembu may return to the unit prior to December 5, 2022. Plaintiff may immediately

change the locks to Mr. Vembu's apartment to ensure the unit remains secure, although keys must be given to Mr. Vembu once he has a bed.

2. Ms. McNeely shall reinspect the unit on December 5, 2022 prior to any of Mr. Vembu's items being returned to the unit.
3. On the morning of December 5, 2022, Mr. Vembu may look at the items under the tarp to identify if there are items of personal sentimental value.
4. Items that can be returned to the unit from the trailer without seriously compromising the sanitary condition of the unit shall be moved at or after 10:00 a.m. on December 5, 2022.
5. Items that Mr. Vembu wishes to be returned to his unit that Plaintiff and Ms. McNeely believe would cause unsanitary conditions in the unit shall be retained until the next court hearing.
6. Plaintiff shall continue to house Mr. Vembu in a hotel until he has a bed.
7. The case management conference scheduled for today will be continued to **December 7, 2022 at 3:00 p.m.** and will be held by Zoom. At that time, the court will hold a hearing if necessary to determine whether disputed items may be returned to Mr. Vembu's unit.

SO ORDERED.

DATE: 12.5.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Jeffrey Blake, Esq.
Raquel Manzanares, Esq.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 18-SP-4324

BANK OF NEW YORK MELLON,

Plaintiff,

v.

GARY, INIRA, and INGRIM YARD,

Defendants.

ORDER

After hearing on September 14, 2022, on several motions, the following order shall enter:

1. The plaintiff's motion to add "all occupants" to the execution is denied, without prejudice. The current record before the court provides an insufficient basis upon which the court could allow the motion.

2. The judge was unable to process the defendant Gary Yard's request for waiver and/or substitution of costs without having the request and accompanying affidavit of indigency available to him.
3. A new execution for possession shall issue to the plaintiff.

So entered this 6th day of Dec, 2022

RC - [Signature]

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-52

CHARLES BOGUES,

Plaintiff,

v.

CAROLYN MADERA,

Defendant.

ORDER

After hearing on November 29, 2022, on the plaintiff landlord's motion for entry of judgment at which the landlord appeared with counsel and the defendant Carolyn Madera appeared without counsel, the following order shall enter.

- 1 As a preliminary matter, the court accepts that Attorney Rachel Rothman no longer represents the defendant tenants, and that motion hearing can take place with the tenants *pro se*.

- 2 The tenants shall vacate the premises by no later than Sunday December 4, 2022.
- 3 If the tenants have not vacated the premises by that date, landlord's counsel may file and serve an affidavit that the tenants have not vacated by December 4, 2022, and the clerks' office shall enter judgment for possession and issuance of the execution *nunc pro tunc* to June 8, 2022, without need for hearing

So entered this 6th day of December 2022



Robert Fields, Associate Justice

CC. Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-2669

OCEAN PROPERTY MANGEMENT,

Plaintiff,

v.

GREG MYERS,

Defendant.

ORDER

This matter came before the court for trial on April 19 and 27, 2022 and then resumed and was completed on October 26, 2022. After consideration of the evidence admitted and upon consultation with the Guardian Ad Litem, representatives from the Tenancy Preservation Program (TPP), and representatives from the Center for Human Development (CHD), the following order for judgment shall enter:

1. **Background:** The plaintiff, Ocean Property Management (hereinafter, "landlord"), manages a multi-unit property in which the tenant resides. The defendant, Greg Myers (hereinafter, "tenant"), resides in Unit #1 (hereinafter, "premises") and received a notice to quit for *cause* on or about July 26, 2021. The *cause* alleged stems from the tenant allowing non-tenants to use the

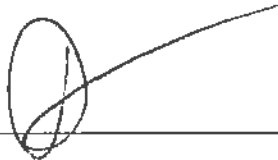
premises in a manner that not only violates the lease but that seriously impacts his neighboring tenants' use of their premises.

2. During the first part of the trial, after the landlord provided evidence which included first-hand observations by its property manager and several videos, it was very clear to the court that the landlord had met its burden of proof on its claim for possession---that the tenant was allowing guests to be at him apartment and sometime stay overnight who were extremely disruptive and violent---but it also became very clear [REDACTED] [REDACTED] which rendered him disabled for the purposes of fair housing laws and reasonable accommodations. The court suspended the trial in April, 2022, and referred the matter to the Tenancy Preservation Program (T.P.P.) and for the appointment of a Guardian Ad Litem (G.A.L.).
3. The G.A.L. and TPP worked with the tenant and with the Center for Human Development (CHD) and with the landlord to try to scaffold the tenant and efforts to keep non-residents from utilizing the premises in an inappropriate manner. The tenant was evaluated by the Court Clinic which supported the court's assessment and the need for a G.A.L. The court allowed the G.A.L.'s motion to provide funds from the state for a private investigator to ascertain the identities of those "guests" of the tenant who were causing disturbance and perhaps occupying the premises, with the notion that once identified same could be served with No Trespass orders.
4. During the period of time of suspension of the trial, while CHD, TPP, the G.A.L., and the private investigator were focused on helping the tenant cease allowing

his unit to be used inappropriately by non-residents, more disruptive events were taking place as a result of the tenant's actions and omissions. Such included fights, fire, public sexual encounters, and other disruptive behavior.

5. Because of this, the landlord's motion to resume the trial was allowed. The resumption of the trial, the landlord again met its burden of proof on the underlying eviction and also that despite the accommodations made in the hope that an eviction could be avoided, the tenant continued to act or omit action to prevent very serious disruptive behavior by people he was allowing into his apartment.
6. **Conclusion and Order:** As such, the court finds that at this juncture and based on the record currently before the court, it is unreasonable to accommodate the tenant any further and will enter judgment for the landlord for possession. The execution shall issue in due course.¹

So entered this 6 day of December, 2022.



Robert Fields, Associate Justice

CC: Edward Bryant, G.A.L.

Jake Hogue, TPP

Court Reporter

¹ Given the continued assistance being provided by TPP, CHD, and the G.A.L., if the tenant wishes to seek further accommodation relative to possession or a stay in the use of the execution while he secure alternate housing, he may file such a motion as reasonable accommodations law allows further requests for accommodations even if such a request is denied at an earlier time---as long as the accommodation is found to be reasonable.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2590

PRB, LLC,

Plaintiff,

v.

JENNIFER DOUGLAS,

Defendant.

ORDER

After hearing on December 2, 2022, on the plaintiff landlord's motion for injunctive relief at which only the landlord appeared (through counsel) after in-hand service to the defendant tenant, the following order shall enter:

1. The landlord owner, Petru Balan, credibly testified that the tenant's electric utility has been terminated by the utility company for non-payment and now the tenant is using extension cord(s) to supply electricity to her unit from common sources of electrical power---which has caused tripping hazards and power outages.

2. The electric utility is needed to run the thermostat for the otherwise gas heating system.
3. Due to the potential hazards from using extension cords to power the heating system and the hazards of having someone reside in the premises without electricity (candles, etc.), the tenant is ordered to cease from using extension cords to syphon off electricity from common areas of the premises, to restore the electrical service at her unit, and to cease from residing at the premises until the utility is restored.
4. If the tenant is found to be using the extension cord to syphon electrical power from the common areas, the landlord may have the sheriffs remove the tenant from the premises and change the locks to her unit. If this occurs, once the utility is restored (by tenant or landlord, see below) the landlord shall restore the tenant's occupancy
5. All this said, the landlord is required to take all necessary steps to have the electric service to the tenant's unit put in the owner's name so that the service is restored forthwith.

So entered this 6 day of December, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 17-SP-1345

BEACON RESIDENTIAL,

Plaintiff,

v.

JONATHAN CASTELLANO,

Defendant.

ORDER

After hearing on December 1, 2022, on the landlord's motion for appointment of a new Guardian Ad Litem, at which both parties appeared, the following order shall enter:

1. This non-payment of rent matter has a very long history and has involved two prior G.A.L. appointments.
2. Now the landlord comes before the court and alleges that there continues to be an outstanding balance of \$673 despite the tenant paying his currently monthly rent, that there continues to be problems with addressing repairs,

and that a long-coming temporary relocation is required in the near future. Additionally, the process for the next recertification is beginning and the tenant may require assistance in completing same timely.

3. The tenant, for his part, assents to the motion and commits working with a G.A.L. as long as the relationship can be maintained in a respectful manner.
4. Accordingly, the motion is allowed and the Clerks Office is requested to identify a G.A.L. from the court's list so that he or she may be appointed to assist the tenant with verifying and then, if due, making payment of the \$673 balance, and assisting the tenant with securing repairs and relocation.
5. Upon the appointment of a receiver, this matter shall be scheduled for further review.

So entered this 7th day of December, 2022.



Robert Fields, Associate Justice

CC: Kara Cunha, Assistant Clerk Magistrate
Court Reporter

d. Each side shall respect the rights of the other to peacefully enjoy the premises.

4. All issues regarding rent that might be owed and any claims or defenses that Defendants might have are reserved.

SO ORDERED.

DATE: 12.7.22

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2130

SUZANNE RATAJ,

Plaintiff,

v.

RAQUEL VELAZQUEZ,

Defendant.

ORDER

This matter came before the court for trial on December 1, 2022, at which the plaintiff landlord appeared with counsel and the defendant tenant appeared *pro se*. After consideration of the evidence admitted at trial, the following findings of fact and conclusions of law shall enter:

1. **Background:** The plaintiff, Suzanne Rataj (hereinafter, "landlord") owns a single-family home located at 185 Sargeant Street in Holyoke, MA (hereinafter, "premises"). The defendant, Raquel Velazquez (hereinafter, "tenant") has been renting and occupying the premises since August 2019. On or about May 6, 2022, the landlord had the tenant served with a no-fault eviction notice and then subsequently and timely filed this instant summary process matter. The tenant

filed an Answer with counterclaims and defenses alleging that there have been and/or are conditions of disrepair at the premises.

2. **Earlier Summary Process Action:** The same parties were previously involved in a summary process action (21-SP-3185) in which the parties entered into a Settlement Agreement on February 11, 2022. Claims by the tenant regarding conditions of disrepair were settled in that Agreement so the claims regarding conditions of disrepair in this instant action are limited to those that existed from February 12, 2022, forward.
3. **The Landlord's Claim for Possession and the Account Annexed:** The parties stipulated to the landlord's claim for possession and for the account annexed for outstanding use and occupancy monies through November 2022, totaling \$6,200. What remains for the court's adjudication are the tenant's claims regarding conditions of disrepair.
4. **Conditions of Disrepair:** The evidence supports a finding that as the tenant informed the landlord of needed repairs the landlord immediately dispatched a repairperson who addressed the issues. This included plumbers and electricians. Then, in early August 2022, the landlord was in receipt of a City of Holyoke Board of Health list of citations. Her response was to have those items listed repaired.
5. The basement was filled with items owned by the landlord. It is unclear from the testimony whether the tenant took the tenancy subject to the landlord being able to store items in the basement. Clearly, the parties agreed to the landlord removing certain items in the summer of 2022 evidenced by emails and the

landlord's removing some items in August 2022, but it remains unclear what portion of the basement was part of the tenancy.

6. **Conclusion and Order Regarding the Tenant's G.L. c.239, s.8A Defenses and Counterclaims:** Based on the above, the tenant shall not be awarded damages for her claims regarding conditions of disrepair at the premises and the landlord shall be awarded \$6,200 for use and occupancy through November 2022.
7. **G.L. c.239, s.9, Request for Time to Relocate:** The tenant also requests in additional time to relocate. The court credits the tenant's testimony that she is diligently searching for alternate accommodations but has not yet secure such housing. Additionally, the tenant claims that she and other family members are disabled.
8. In accordance with G.L. c.239, s.9, judgment shall be stayed in these proceedings to grant the tenant more time to secure housing. The tenant shall pay her use and occupancy of \$1,200 for each month going forward beginning with December 2022 and shall continue to diligently search for housing and maintain documentation of such efforts.
9. This matter shall be scheduled for review of that housing search and a status hearing on **December 28, 2022, at 10:00 a.m.**

So entered this 7th day of December, 2022.


Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 18-SP-3637

SPRINGFIELD HOUSING AUTHORITY,)
)
 PLAINTIFF)
)
 V.)
)
 HILDA CIRILO-FIGUEROA, ET AL,)
)
 DEFENDANTS)

ORDER

This matter came before the Court on November 15, 2022 for an in-person hearing following the Court's order to cancel a physical eviction that had been scheduled for August 19, 2022. Plaintiff and Defendant Cirilo-Figueroa appeared with counsel. Defendant Nieves was present. Carmen Morales from the Tenancy Preservation Program ("TPP") also participated in the hearing.

This case was transferred to this Court in August 2018, more than four years ago. Judgment entered on the docket on June 30, 2022 and the levy was scheduled for August 19, 2022. Based on these facts, the Court views today's hearing as one to determine only whether to further extend the stay on use of the execution.

After hearing, the following order shall enter:

1. Plaintiff returned its execution today, and will be entitled to a new execution upon application.

2. The parties shall return for the Court on **January 6, 2023 at 9:00 a.m.** for a hearing before the undersigned at which time the Court will consider whether to lift the stay on use of the execution.¹
3. Use of the execution is hereby stayed through the next Court date.

SO ORDERED.

DATE: 12-7-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ Given the very real possibility that the Court will lift the stay on use of the execution at or soon after the next court date, Ms. Cirilo-Figueroa is strongly encouraged to use the time prior to the next hearing to seek replacement housing.

4. Plaintiff agrees to pay Defendants \$800.00 every two weeks beginning on December 8, 2022 and for her use and occupation of the Premises. The payments will continue for so long as Plaintiff continues to occupy the Premises.
5. Defendant Galani shall coordinate with the window contractor to have the new window installed on December 3, 2022. To the extent Mr. Galani needs other access for repairs, he shall give at least 24 hours' advance notice and Plaintiff shall not unreasonably deny access. Plaintiff states that she works during the week and would like repairs to be done on weekends.
6. Defendants shall schedule an extermination to take place no later than December 16, 2022.
7. Defendants shall complete any other repairs required by the Springfield Code Enforcement Department within the time frame set forth in the Code report, and Plaintiff shall comply with any obligations placed on her by the Code Enforcement Department within the allotted time.
8. This order shall resolve 22-SP-3348, an eviction case pending against Ms. Atkins, which was scheduled for a Housing Specialist Conference today.
9. Plaintiff shall not cause any intentional damage to the Premises.
10. The \$90.00 legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: 12/8/22


Hon. Jonathan J. Kane, First Justice

did not restart the payments after being ordered to do so by the Court on August 26, 2022. The Court rules that the facts warrant a finding of contempt.


The purpose of civil contempt is to induce compliance and “secur[e] for the aggrieved party the benefit of the court’s order.” See *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). In addition to coercive orders, compensatory orders are appropriate remedies in civil contempt proceedings. See *Labor Relations Comm. v. Fall River Educators’ Assn.*, 382 Mass. 465, 475-476 (1981).

Accordingly, the court enters the following order:

1. The funds being held in escrow in the amount of \$7,245.00 shall be released from escrow and paid to Plaintiff. Payment should be made to Plaintiff’s counsel.
2. Defendant shall pay \$950.00 each month through the trial date no later than the 5th of each month. For the month of December 2022 only, the payment will not be considered late if paid within five (5) business days of receipt of this order.
3. The Clerk’s Office will schedule this case for trial.

SO ORDERED.

DATE: 12-9-22


Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0825

SPRINGFIELD GARDENS 238-262 LP,)
)
 PLAINTIFF)
)
 v.)
)
 JOHN DOE/OCCUPANTS OF 248 UNION ST.,)
 APT. 2D, SPRINGFIELD, MASSACHUSETTS)
)
 DEFENDANTS)

ORDER TO VACATE

This matter came before the Court on December 8, 2022 on Plaintiff's verified complaint for injunctive relief seeking an order that all occupants of 248 Union Street, Apartment 2D, Springfield, Massachusetts vacate the premises. The Court entered an order that anyone occupying the unit appear at the hearing today to show cause as to their legal right to possession.¹ No one appeared.

The Court finds that any person now occupying 248 Union Street, Apartment 2D, Springfield, Massachusetts is a trespasser without legal right to be in the unit. Accordingly, the following order shall enter:

1. All occupants of 248 Union Street, Apartment 2D, Springfield, Massachusetts must vacate immediately.
2. Upon 48 hours' advance written notice, Plaintiff may treat all persons occupying 248 Union Street, Apartment 2D, Springfield, Massachusetts as

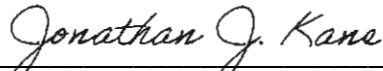
¹ Notice was served at the Premises by a deputy sheriff and given to an individual who identified himself as Gabriel Ortiz.

trespassers in accordance with G.L. c. 266, § 120 and have them removed by law enforcement personnel.

3. After the occupants have been removed, Plaintiff may change the locks and retake possession of the apartment.

SO ORDERED.

DATE: 12.9.22



Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 316

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS SPK OWNER LLC (owner) and
BIANCA RODRIGUEZ (tenant)
Defendants

Re: Premises: 683 State Street, Apt. 8, Springfield, Massachusetts

ORDER

(Hampden County Registry of Deeds Book/Page: #24122/163)

After a hearing on December 2, 2022 for which a representative of the Plaintiff appeared, and Defendant SPRINGFIELD GARDENS SPK OWNER LLC appeared by counsel Carolyn Pereira, and after having been given notice of said hearing a representative of Defendant BIANCA RODRIGUEZ did not appear, the following order is to enter:

1. Defendant SPRINGFIELD GARDENS SPK OWNER LLC shall repair, replace and/or restore working smoke and/or carbon monoxide detectors at the subject property, FORTHWITH, and in any event no later than December 7, 2022 at 1:00 p.m.
2. Defendant SPRINGFIELD GARDENS SPK OWNER LLC represents that new window units must be ordered to correct the window violations cited in Exhibit A of the Plaintiff's original petition. Defendant SPRINGFIELD GARDENS SPK OWNER LLC shall place an order for windows for the subject unit, FORTHWITH, and in any event no later than December 12, 2022.
3. If Defendant SPRINGFIELD GARDENS SPK OWNER LLC fails to order windows for the subject unit on or before December 12, 2022, SPRINGFIELD GARDENS SPK OWNER LLC shall pay a daily fine of \$50.00 (fifty dollars and 00/100) to the Plaintiff until the windows are ordered for the subject unit.
4. Defendant SPRINGFIELD GARDENS SPK OWNER LLC shall correct all window violations at the subject property as cited in Exhibit A of the Plaintiff's original petition, FORTHWITH, and in any event no later than January 13, 2023 at 9:30 a.m. All work is to

be done in a workmanlike manner and by licensed professionals with permits pulled as required by law.

5. If Defendant SPRINGFIELD GARDENS SPK OWNER LLC fails to correct all window violations as cited in Exhibit A of the Plaintiff's original petition by January 13, 2023 at 9:30 a.m., SPRINGFIELD GARDENS SPK OWNER LLC shall pay a daily fine of \$50.00 (fifty dollars and 00/100) to the Plaintiff until all window violations are corrected at the subject unit.
6. Defendants SPRINGFIELD GARDENS SPK OWNER LLC and BIANCA RODRIGUEZ shall allow the Plaintiff interior access to the subject property the purpose of re-inspection on December 7, 2022 at 1:00 p.m. and January 13, 2023 at 9:30 a.m. to verify compliance with this order.
7. Defendant SPRINGFIELD GARDENS SPK OWNER LLC shall inspect the subject unit to determine if the unit is vacant by Monday, December 5, 2022. If there is no response at the unit, Defendant SPRINGFIELD GARDENS SPK OWNER LLC shall be allowed to enter and leave notice of the Plaintiff's December 7, 2022 1:00 p.m. inspection at the unit or posted on the door. If the unit is found to be occupied, SPRINGFIELD GARDENS SPK OWNER LLC shall hand BIANCA RODRIGUEZ in-hand notice of Plaintiff's December 7, 2022 1:00 p.m. entry for purposes of reinspection.
8. If Defendant BIANCA RODRIGUEZ fails to allow the Plaintiff interior access on December 7, 2022 at 1:00 p.m., Defendant SPRINGFIELD GARDENS SPK OWNER LLC shall allow the Plaintiff access on said date and time with notice to Bianca Rodriguez.
9. Attorney Carolyne Pereira shall accept service of the contempt summons on behalf of SPRINGFIELD GARDENS SPK OWNER LLC. The obligation to serve the contempt summons in-hand is suspended and Plaintiff can serve Attorney Carolyne Pereira by email.
10. The Plaintiff shall inspect the property to verify compliance with this order on December 7, 2022 at 1:00 p.m. and January 13, 2023 at 9:30 a.m.
11. This matter shall be up for review with the Court on January 20, 2023 at 9:00 a.m. Failure of the Defendants to appear on said date may result in the issuance of a *capias* for their arrest or the filing of a complaint for contempt.

So entered this 15th day of December, 2022.

Jonathan J. Kane

Jonathan J. Kane, First Justice
Western Division Housing Court

or use and occupancy in her complaint. Based on the foregoing, the Court finds that Plaintiff has established her prima facie case for possession.

Defendant filed an answer, asserting defenses and counterclaims.¹ At trial, she claimed that she is being evicted in retaliation for making a report to the City of Springfield's Code Enforcement Department ("Code Enforcement") about a defective heating system and because she rejected sexual advances by Plaintiff's partner. She also alleged breaches of quiet enjoyment and defective conditions.

Before delving into Defendant's case, the Court must address the principle of res judicata and its application in this case. In March 2019, Plaintiff filed a summary process case against Defendant involving the same Premises, captioned *Banks v Smith*, docket number 19H79SP001403 ("2019 Action").² Defendant, by her own admission, brought counterclaims against Plaintiff in that case relating to an infestation of mice and a faulty heating system that did not get repaired until Defendant called Code Enforcement in February 2019. In the 2019 Action, the judge found in Defendant's favor and awarded her three months' rent for Plaintiff's breach of the covenant of quiet enjoyment. Based on this information, and to preclude Defendant from recovering twice for the same conditions of disrepair, the Court rules that Defendant may not seek damages for any conditions that existed as of April 18, 2019, the date of trial in the 2019 Action.

¹ Defendant actually filed numerous answers. Pursuant to an October 4, 2022 order, the Court allowed her motion to amend her answer to add a claim of retaliation, and indicated that her answers filed on February 24, 2021 and June 22, 2022 were considered to be part of her amended answer.

² The Court takes judicial notice of the 2019 Action as well as civil restraining order case between the parties with docket number 22H79CV000468.

In this case, Defendant argued at trial that she believes Plaintiff terminated her tenancy in retaliation for her reports to Code Enforcement about the heat and because she rebuffed sexual advances. Under Massachusetts law, a claim of retaliation can be both an affirmative defense in an eviction case (see G.L. c. 239, § 2A) and an affirmative claim (see G.L. c. 186, § 18). A landlord who terminates a tenancy within six months of a tenant exercising his or her legal rights regarding residential housing is entitled to a presumption of retaliation, which presumption may be rebutted by clear and convincing evidence that such action was not a reprisal against the tenant and that the landlord had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not commenced any legal action, made such report or engaged in such activity." G.L. c. 239, § 2A.

In this case, the Court finds that Defendant contacted Code Enforcement about the heat on two occasions: once in February 2019 and once in May 2021. The issue with the heating system that led Defendant to call Code Enforcement in February 2019 was adjudicated on the merits as part of the 2019 Action and, in any event, took place more than six months before her tenancy was terminated by letter in October 2020. The call to Code Enforcement in May 2021 came long after receipt of the notice to quit. Based on the timing of Defendant's calls to Code Enforcement, no presumption of retaliation arises as a defense of retaliation pursuant to G.L. c. 239, § 2A or as a counterclaim for reprisal under G.L. c. 186, § 18.³

³ Defendant made a third call to code enforcement, in September 2022, which was not about the heat and which occurred after the tenancy had been terminated.

Defendant's second argument that Plaintiff is pursuing a retaliatory eviction is based on her testimony that Plaintiff hugged her and that either Plaintiff or her partner tried to kiss her.⁴ She could not recall the date of the incidents at trial, but she brought this issue before the Court in a separate complaint for injunctive relief (docket number 22H79CV000468), pursuant to which she filed an affidavit under the pains and penalties of perjury attesting that the incidents happened in December 2019.⁵ Therefore, no presumption of retaliation arises and, furthermore, even if the claim was true, it would not support a defense or counterclaim for retaliation. Accordingly, the Court finds in favor of Plaintiff on Defendant's claims of retaliation.

The Court next addresses Defendant's claims relating to defective conditions in the Premises. Defendant testified about a mouse infestation, heating problems, a defective refrigerator and a problem with the kitchen sink. Defendant showed photographs of dead mice and mouse droppings, which she testified were taken in 2019 around the same time as the heating problem. As noted above, the 2019 heat and mice issues are excluded from this case pursuant to the doctrine of res judicata. Defendant acknowledges that Plaintiff treated for mice, but she testified that "once in a while I see droppings" but she testified that she has had little or no communication with Plaintiff since 2019, and the Court finds that Plaintiff was not given notice of an on-going mouse infestation, and thus cannot be liable for failing to correct a condition of which she was unaware.

⁴ It is not clear who allegedly tried to kiss Defendant. At trial, she testified that it was Plaintiff's partner and in her affidavit to the Court in 22H79CV000468 she stated it was Plaintiff.

⁵ Defendant's request for injunctive relief was denied.

Following the 2019 case in which Defendant was awarded damages for heating problems over the previous winter, the evidence shows only one additional issue with heat, which occurred in May 2021. Defendant testified that she told Plaintiff about it and when she did not get an immediate response, she called Code Enforcement. Plaintiff testified that the pilot light had gone out and it was quickly restarted. The housing inspector found the heat working by the next day, so the Court credits Plaintiff's testimony. The warranty of habitability applies only to "substantial" violations or "significant" defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State Sanitary Code supports a warranty of habitability claim). Here, the Court finds the 2021 heating issue does not entitle Defendant to any damages.

The evidence shows that Defendant complained to Plaintiff by text message on July 5, 2020 about the performance of her refrigerator. Defendant testified that the appliance cooled unevenly and that she lost food due to the failure of the refrigerator to maintain a consistent temperature. Upon notice, Plaintiff promptly inspected the refrigerator and found it in proper working order. When Defendant refused to defrost her refrigerator, Plaintiff swapped her refrigerator with Defendant's. After Defendant continued to complain about problems with the replacement refrigerator, Plaintiff ordered and installed a new one in Defendant's unit. Plaintiff testified credibly that she continues to this day to use the refrigerator she took from Defendant's unit and that it operates properly. Based on the foregoing, the Court finds that Defendant did not establish by a preponderance of the evidence that the trouble with the

refrigerator constitutes a breach of the warranty of habitability.⁶ Moreover, there is no evidence that Plaintiff was negligent in her efforts to ensure the refrigerator was working properly, and thus Defendant is not entitled to damages under G.L. c. 186, § 14. See *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997) (a tenant must show some negligence by the landlord in order to recover under the statute).

In the month prior to trial, Defendant complained to Plaintiff about a leaking kitchen sink pipe. Defendant admits that, promptly after giving Plaintiff notice of the leak, Plaintiff arranged to have a plumber contact her. The sink pipe was repaired in short order. Defendant provided no evidence of any notice of the problem with the sink prior to the call in October 2022. The evidence does not compel a finding that the problem was a substantial defect that diminished the value of the Premises, and thus Plaintiff is not liable for damages related to the leaking pipe.

Turning next to Defendant's allegations that Plaintiff interfered with her quiet enjoyment, Defendant testified that Plaintiff regularly entered her apartment without permission in 2018 and 2019. If Defendant was disturbed by Plaintiff's conduct, she would have raised this issue when seeking damages for breach of quiet enjoyment in the 2019 case or in her subsequent civil restraining order action.⁷ Based on the testimony of the parties, the Court infers that the parties initially had a friendly relationship and that Plaintiff may have entered and exited the Premises freely for a period of time, but after the relationship soured, Defendant no longer wanted

⁶ In any event, Defendant offered no credible evidence of the amount and nature of food that was lost, or any evidence of the value of the food, so actual damages would be speculative.

⁷ Defendant described elaborate procedures she took to prove Plaintiff's illegal entries, but she provided no evidence in support of her testimony. She said that the evidence was on a cell phone that she lost.

Plaintiff in her apartment. Once Defendant told Plaintiff not to enter the Premises, Plaintiff complied.⁸ Under these circumstances, the Court rules that Plaintiff is not liable for breach of the covenant of quiet enjoyment.

Defendant did not sustain her burden of proof on any of the other grounds upon which she rests her claim for damages. Even if, as Defendant claims, Plaintiff once complained loudly about Defendant's granddaughter making noise in the Premises and once accosted a friend of hers who had come to the Premises to ask why he was there, Plaintiff's actions do not constitute actionable interference with quiet enjoyment. See G.L. c. 186, § 14; see also *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994) (the statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy). Defendant's claim that Plaintiff has been videotaping her daily activities and violating her privacy rights is unsupported by the evidence, and her testimony that Plaintiff or her partner made a sexual advance toward her is not credible.⁹

Based on the foregoing findings of fact and rulings of law, the Court enters the following order:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue following the 10-day appeal period in accordance with Uniform Summary Process Rule 13.

⁸ Defendant had no evidence to support her claim that Plaintiff entered her apartment when Defendant was working in New York and turned off her heat, thereby killing her plants.

⁹ Defendant's claim that Plaintiff violated the security deposit law likewise fails for lack of evidence. The Court finds the terms of the rental agreement only required Defendant to pay first and last month's rent in advance.

3. Because this case was filed on a no fault bases, Defendant is entitled to file a motion under G.L. c. 239, § 9 seeking a stay of execution to allow additional time to find replacement housing.

SO ORDERED.

DATE: 12-14-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

of

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-3525

WESTFIELD OAKS, LLC,

Plaintiff,

v.

DEBRA JAY,

Defendant.

ORDER

After hearing on December 13, 2022, on the defendant tenant's emergency motion to stop a physical eviction at which the plaintiff landlord appeared through counsel by Zoom and the tenant appeared live in the courtroom at and which Jake Hogue from the Tenancy Preservation Program joined, the following order entered:

1. The tenant owns her mobile home and is being evicted for non-payment of "lot rent".

2. The tenant asserts that her lack of payment of her lot rent is connected to her [REDACTED], that she has an appointment to be treated for same by her psychiatrist in January 2023, and that she is willing to apply for RAFT and to work with the Tenancy Preservation Program (TPP) to fashion a long-term solution to her chronic non-payment history.
3. The tenant had \$300 with her in court and she will pay these funds to the landlord before 7:00 p.m. today (December 13, 2022) by bringing same to Dean Jones at his trailer located at the park. If Mr. Jones is not present when she arrives to make the payment, the tenant shall call the landlord and make other arrangements for the payment.
4. Based on these assertions and the distinct possibility that her eviction is due to symptoms of a disability, the court shall cancel the physical eviction currently scheduled for December 14, 2022. The costs of said cancellation shall be added to the debt owed by the tenant. One caveat, if the tenant fails to make the \$300 payment noted above, the landlord does not need to cancel the physical eviction.
5. The tenant shall cooperate with TPP's efforts, including their assistance with a RAFT application and with other assessments and referrals to resources.
6. TPP is also asked to refer the tenant to Community Legal Aid and Mass Fair Housing for legal representation, given the asserted connection between a disability and non-payment of rent.
7. This matter shall be scheduled for review on **January 18, 2023, at 2:00 p.m.** live and in-person at the Springfield Session of the court.

So entered this 14th day of December, 2022.



Robert Fields, Associate Justice

CC: Jake Hogue, Tenancy Preservation Program
Court Reporter

the RAFT program, she is entitled to a maximum rental assistance grant of \$1,955.00 through October 2023. Although she would like to be able to enter into a repayment agreement for the balance and keep her home, Plaintiff is unwilling to do so based on Defendant's history of non-payment of rent.

Plaintiff has already incurred several hundred dollars of fees in scheduling this eviction and will be charged additional fees for cancelling within 48 hours of the levy. Defendant has no funds available to pay these cancellation fees prior to the date the eviction is scheduled.

After weighing the equities, the Court concludes that Plaintiff will not suffer undue prejudice if Defendant is able to obtain the funds necessary to reimburse it for the charges incurred in scheduling and cancelling the levy through the RAFT program. By cancelling the eviction, Defendant will have additional time to search for replacement housing. The Court is not willing to require Plaintiff to reinstate the tenancy, however. See G.L. c. 239, § 3 (a plaintiff "shall not be required to accept full satisfaction of the money judgment ... and [a]ny refusal by the plaintiff to accept full satisfaction of the money judgment under this paragraph shall not be a bar to the enforcement of said judgment in any lawful manner"). In light of the foregoing, the following order shall enter:

1. If Defendant provides Plaintiff with an identification number of an application for rental assistance through the RAFT program by 2:00 p.m. on December 14, 2022, Plaintiff shall cancel the eviction. Both parties shall provide the RAFT program with all necessary documents in a timely manner.

2. Plaintiff may apply the funds received through the RAFT program first to the costs of scheduling and cancelling the levy, and shall apply any excess to the balance to the rent arrears.
3. Defendant shall pay \$500.00 on December 16, 2022 and \$500.00 on December 30, 2022, which payments will be applied to the balance owed. These payments, in conjunction with the \$600.00 payment made on December 6, 2022, will pay for Defendant's use and occupancy for December 2022.
4. Plaintiff may not use the execution to conduct a levy prior to March 1, 2023 so long as Defendant pays \$1,600.00 by January 28, 2023 for use and occupancy for January 2023 and \$1,600.00 by February 25, 2023 for use and occupancy for February 2023. Defendant must vacate as of March 1, 2023.
5. Upon return of the original execution, the Court shall issue Plaintiff a new one. Plaintiff shall file an affidavit at the time it applies for a new execution attesting to the amount of rent and use and occupancy then due.

SO ORDERED.

DATE: 12-14-22

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1046

BELCHERTOWN HEIGHTS ALF LTD)
D/B/A CHRISTOPHER HEIGHTS OF)
BELCHERTOWN,)
)
 PLAINTIFF)
v.)
)
KENNETH BRAICA,)
)
 DEFENDANT)

ORDER ON PLAINTIFF'S
MOTION FOR SANCTIONS

This summary process case came before the Court on December 5, 2022 for an evidentiary hearing on Plaintiff's motion for sanctions for non-compliance with a Court order. Plaintiff was represented by counsel. Defendant ("Mr. Braica") appeared self-represented.

Judgment for possession entered in this case on July 28, 2022 in favor of Plaintiff. At the trial, Mr. Braica did not dispute Plaintiff's case. He filed a notice of appeal on July 27, 2022.¹ Even though the notice of appeal was filed prior to the date the judgment entered on the docket, Plaintiff agreed to deem his notice of appeal timely.

¹ Mr. Braica filed a motion for a new trial at the same time, but the motion was withdrawn.

Following his filing of the notice of appeal, Mr. Braica failed to take any steps to perfect the appeal. Plaintiff filed a motion to dismiss the appeal, which this Court denied on November 28, 2022 on the condition that Mr. Braica identify and order transcripts of the relevant hearings within ten (10) days. Separately, Plaintiff filed the instant motion for sanctions consisting of an order to strike the notice of appeal and an order that Mr. Braica stay away from the assisted living facility in which he resides known as Christopher Heights of Belchertown (the “Facility”) until legal possession is returned to Plaintiff.

The Court views Plaintiff’s motion for sanctions as a request 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).

In this case, Plaintiff’s likelihood of success on the merits is very high. Mr. Braica admitted at trial to the conduct that constituted a substantial violation of his lease. After the trial concluded, in order to allow Mr. Braica a short amount of

time to move voluntarily, the Court stayed use of the execution through August 15, 2022 on the following conditions:

Defendant shall not have any contact with other residents, their visitors or staff at the Property except in the case of a bona fide emergency. He shall interact respectfully with others at the Property, including without limitation staff members, residents, visitors and anyone else lawfully on the Property. He shall refrain from making any disrespectful, derogatory or demeaning comments, shall not act in a manner which is aggressive, intimidating or threatening, and shall not leave any voicemails for staff members. He shall ask his social worker to communicate on his behalf with management to address routine matters relating to his residency at the Property and his impending move.²

The evidence offered at the hearing today establishes that Defendant violated the conditions imposed by the Court.³ The Executive Director witnessed Mr. Braica, in the midst of kitchen fire at the Facility, yelling expletives at an employee and threatening to fight him. During the incident, Mr. Braica refused to follow the Facility's rules requiring him to return to his apartment during a fire, and he interfered with staff scrambling to ensure the safety of the residents. Mr. Braica has demonstrated on multiple occasions that, despite explicit orders to curtail his disruptive behavior or face extreme consequences, he is unwilling to change his ways. The Court's failure to grant injunctive relief would subject Plaintiff's staff and the

² The Court reiterated its behavioral conditions as part of its September 2, 2022 order on the appeal bond, writing that, "for the duration of Mr. Braica's occupancy at the subject premises, he shall not make any disrespectful, derogatory or demeaning comments to employees of the facility, and he shall not act toward these employees in a manner which is aggressive, intimidating or threatening."

³ Plaintiff offered into evidence various incident reports under the business records exception and the "excited utterance" exception to the rule against hearsay. The Court concludes that these reports are reliable and Mr. Braica did not dispute the incidents described therein, but the incident reports are not necessary to the Court's decision given the first-hand witness testimony from Plaintiff's Executive Director.

vulnerable residents of this assisted living facility to the risk irreparable harm. In light of Plaintiff's likelihood of success on the merits of its claim for possession, this risk of irreparable harm clearly outweighs the risk of irreparable harm to Mr. Braica if the injunctive relief is granted.

Accordingly, the following order shall enter:

1. Mr. Braica is permanently enjoined from living at or entering upon the grounds of the Facility after January 15, 2023.
2. If Mr. Braica remains at the Facility after January 15, 2023, or if after leaving he returns to the Facility, Plaintiff is authorized to treat him as a trespasser in accordance with G.L. c. 266, § 120 and have him removed from the Facility by law enforcement.
3. Until Mr. Braica surrenders possession or is removed pursuant to a levy on execution following denial or dismissal of his appeal, Plaintiff shall not retake legal possession of Mr. Braica's unit or remove items from his unit without court order. If Mr. Braica wishes to return to the Facility for the purpose of moving out, he must make an appointment and Plaintiff may have law enforcement or security personnel escort Mr. Braica in and out of the Facility to keep the peace.

SO ORDERED.

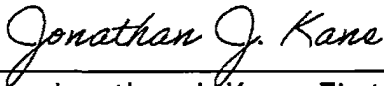
DATE: 12.15.22


Jonathan J. Kane, First Justice

3. If no rooms are available in the Howard Johnson's, Defendant shall provide a hotel in Springfield, Massachusetts and provide transportation, at no cost to Plaintiff, for her children to get to and return from school each of the two days. To be clear, the only reason not to place her in the Howard Johnson's is if there are no rooms available and Defendant may not select a different hotel based on finding a better price. This order is necessary given that Defendant did not place Plaintiff in a hotel pursuant to the prior order.
4. Plaintiff must allow access to the premises from 10:00 a.m. to 4:00 p.m. on December 11, 2022 and December 12, 2022.
5. Daily fines shall be imposed beginning on December 13, 2022 if the repairs have not been completed and/or the extermination has not occurred by 4:00 p.m. on December 12, 2022.
6. The parties shall appear for an in-person review of this matter on **December 15, 2022 at 10:00 a.m. Defendant must attend with a witness who can testify knowledgably about the subject matter of this order.**

SO ORDERED.

DATE: 12.15.22



Hon. Jonathan J. Kane, First Justice

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-898

32 BYERS STREET, INC.,

Plaintiff,

v.

MALVIN HERNANDEZ,

Defendant.

ORDER

After hearing on December 16, 2022, on the plaintiff-landlord's emergency motion for injunctive relief at which the defendant-tenant failed to appear after notice, and at which a representative from the Tenancy Preservation Program (Michael Richtell) joined by Zoom, the following order shall enter:

1. Due to the severe damage caused by the tenant at the premises, both inside his unit and in the common area, and given a real concern of further damage being

cause---which might include water pipes bursting due to the broken windows---
the tenant is prohibited from residing in his unit until further order of the court.

2. The landlord is authorized to immediately change the locks to the tenant's unit and to enter for purposes of repairs.
3. Should the tenant appear at the building and seek entry to retrieve any personal belongings (such as medication, clothes, etc.) he must communicate with the landlord's staff who will coordinate such limited entry.
4. [REDACTED]
[REDACTED]
[REDACTED]
5. The Tenancy Preservation Program (TPP) shall [REDACTED]
[REDACTED] make attempts to meet with or at least get information to the tenant of these proceedings and a copy of this order. TPP will inform [REDACTED] of this order, as well, so that they are aware that he is not permitted until further hearing to return home.
6. A copy of this order shall be emailed to both the landlord and to TPP and one mailed to the parties, as well. The landlord shall post a copy of this order on the tenant's door in a seal envelope. Also, if the tenant interacts with the landlord, the landlord shall inform him of these proceedings, the court's order, and give him a copy of same.
7. The tenant is requested to work cooperatively with TPP which can be reached at 413-329-8394.

8. This matter shall be scheduled for further hearing on **December 22, 2022**, at **2:00 p.m.** at the Springfield Session of the court located at 37 Elm Street to determine if this order should be extended or for other injunctive relief.

So entered this 16th day of December, 2022.

Robert Fields
Robert Fields, Associate Justice *RF*

CC: Tenancy Preservation Program
Court Reporter

CP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2575

THE COMMUNITY BUILDERS, INC.,

Plaintiff,

v.

EMILY RODRIGUEZ,

Defendant.

ORDER

After hearing on December 13, 2022, on the plaintiff landlord's motion for entry of judgment and issuance of the execution, at which the landlord appeared through counsel and the defendant tenant appeared by Zoom, and at which Attorney Bex Bernocco from Community Legal Aid and Betzaida Batista from the Tenancy Preservation Program joined, the following order shall enter:

1. On October 7, 2022, the parties entered into a court-mediated agreement which reflected a pending RAFT application for rental arrearage, and a

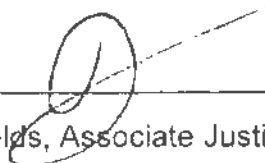
referral to the Tenancy Preservation Program and a review date to get an update on the RAFT application.

2. Thereafter, the tenant failed to appear at two follow-up court events.
3. Today, the tenant joined the hearing by Zoom after the court reached her by phone.
4. Additionally, the RAFT application was closed due to the tenant's failure to obtain and then share with Way Finders, Inc. her official ID. Also, the rental subsidy for the unit based subject premises was terminated due to the tenant's failure to recertify.
5. In addition to the tenant being involved in an automobile accident and her children having COVID since the October 2022 agreement, the tenant reluctantly informed the court that [REDACTED] that essentially disables her from engaging in very important aspects of her life such as getting her official ID, completing her RAFT application, taking steps to get her subsidy restored, and otherwise engaging in this court case.
6. The court finds that there is at least a colorable claim that the tenant's failures to comply with the terms of the October 7, 2022, agreement and with the requirements of her follow-through with RAFT and her subsidy may be symptoms of a disability; [REDACTED].
7. The court took a recess during the hearing to allow for the tenant to meet with Community Legal Aid and the Tenancy Preservation Program (TPP).
8. When the court re-called the matter, Attorney Bernocco reported that her agency will follow up with the tenant in the hope that they can represent her in

her efforts to have her subsidy restored and, hopefully, to represent her in these proceedings.

9. The TPP representative, Betzaida, reported that she has scheduled a follow up meeting with the tenant and will work with her to obtain an official ID and to pursue her RAFT application.
10. The tenant has agreed to allow the landlord to conduct an annual inspection at the premises on December 19, 2022, at 10:00 a.m.
11. The tenant shall also make a good faith rental payment of \$322 towards January 2023 use and occupancy (this was the amount of her portion when she the subsidy was in place).
12. This matter shall be scheduled for further hearing on **January 12, 2023, at 9:00 a.m. LIVE and IN-PERSON** at the Springfield Session of the court. Attorney Bernocco agreed that she or another attorney from Community Legal Aid will appear at the hearing to at least update the court.

So entered this 15th day of December, 2022.



Robert Fields, Associate Justice

CC: Bex Bernocco, Esq. (Community Legal Aid)
Betzaid Batista, Tenancy Preservation Program
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-657**

<p>ZBYLUT REALTY, LLC,</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">v.</p> <p>CHERYL COOPER,</p> <p style="text-align:right">Defendant.</p>	
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ORDER

After jury trial on December 7-12, 2022, and after the jury reached a verdict, the following order shall enter:

1. The jury found for the defendant tenant prevailed on one of her claims, Breach of Quiet Enjoyment based on the landlord's actions on September 28, 2022. The parties agreed that the award for damages for that claim is \$8,700 plus reasonable attorney's fees and costs.

2. In accordance with G.L. c.239, s.8A, the tenant shall be awarded possession in this matter. This is not yet a judgment as there are other claims regarding Chapter 93A and an attorney fee petition that remain to be adjudicated by this court.
3. Defendant tenant has until December 30, 2022, to file and serve any motions and her petition for attorney's fees and costs.
- 4 The plaintiff landlord has until January 9, 2023, to file opposition thereto as well as any other motions.
5. A hearing shall be scheduled for **January 24, 2022, at 9:00 a.m.** at the Springfield Session of the court.

So entered this 15th day of December, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 19-CV-1072
No. 19-CV-1060

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

BALTIMORE CITY PROPERTIES (owner),
FERDINAND FOUNTAIN (tenant),
DONNY MUELLER (tenant),
KEVIN TANNER (tenant),
JOSE FIGUEROA (tenant)
SARA CROCHETIERRE (tenant) and
ANY AND ALL OCCUPANTS (tenant),

Defendants

Re: Premises 66 Marble Street, Springfield, Massachusetts

ORDER

(Hampden County Registry of Deeds Book/Page: #22229/358)

After a hearing on December 9, 2022, for which a representative of the Plaintiff appeared, Attorney Maurice Powe appeared on behalf of BALTIMORE CITY PROPERTIES, Attorney Christopher Johnson appeared on behalf of receiver HUANG FAMILY PROPERTY, LLC, and after having been given notice of said hearing a representative of FERDINAND FOUNTAIN, DONNY MUELLER, KEVIN TANNER, JOSE FIGUEROA, SARA CROCHETIERRE and ANY AND ALL OCCUPANTS did not appear, the following order is to enter:

1. The receivership is DISSOLVED. A copy of this order can be filed in the Hampden County Registry of Deeds as evidence of the dissolution.

2. The receiver's lien is established, as of December 9, 2022, in the amount of \$10,265.22.
3. Defendant BALTIMORE CITY PROPERTIES shall pay the receiver the agreed amount of their lien which is \$10,265.22 no later than January 9, 2023 at 4:00 p.m. Payment to be made through counsel for the receiver, Attorney Christopher Johnson.
4. Defendants BALTIMORE CITY PROPERTIES, FERDINAND FOUNTAIN, DONNY MUELLER, KEVIN TANNER, JOSE FIGUEROA, SARA CROCHETIERRE and ANY AND ALL OCCUPANTS shall provide access to the Plaintiff on December 14, 2022 between 9:00 a.m. and 4:00 p.m. to verify that the porch window has been corrected.
5. Defendant BALTIMORE CITY PROPERTIES shall pay the reasonable costs of service in this matter, in the amount of \$500.00, no later than January 9, 2022 at 4:00 p.m. Said payment shall be made via check or money order and payable to "The City of Springfield" and mailed c/o Veronica Diaz at 1600 East Columbus Avenue, 2nd Floor, Springfield, MA 01103.
6. Defendants BALTIMORE CITY PROPERTIES, FERDINAND FOUNTAIN, DONNY MUELLER, KEVIN TANNER, JOSE FIGUEROA, SARA CROCHETIERRE and HUANG FAMILY PROPERTY, LLC shall appear for a review of this matter on January 23, 2023 at 9:00 a.m.
7. This matter shall be up for review with the Court on January 23, 2023 at 9:00 a.m. Failure of the Defendants to appear on said date may result in the issuance of a *caus* for their arrest or the filing of a complaint for contempt.

So entered this ^{19th} day of December, 2022.

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

Robert G. Fields, Associate Justice
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1660

SHAYNE FOLKES,

Plaintiff,

v.

ALYSA O'BRIEN,

Defendant.

ORDER of DISMISSAL

This matter came before the court for trial on December 14, 2022, at which the plaintiff landlord appeared without counsel and the defendant tenant appeared with counsel. As a preliminary matter, the tenant was heard on a motion to dismiss. After hearing on said motion, the following order shall enter:

1. The basis for the motion to dismiss is that the landlord terminated the tenancy using a *no-fault* termination notice. Thereafter, the landlord had the tenant served with a *fault* summons and complaint alleging several lease violations.
2. A landlord is assigned the grounds for termination stated in the notice to quit. *Tuttle v. Bean*, 13 Met. 275 (1847); *Strycharski v. Spillane*, 320 Mass. 382 (1946). The landlord stated fault reasons for the termination of the tenancy in the summons but gave the tenant a *no-fault* termination notice also violates Uniform Summary

Process Rule 2(d), which requires that the landlord state the reason(s) for the eviction "in concise, untechnical form and with sufficient particularity and completeness to enable a defendant to understand the reasons for the requested eviction and the fact underlying those reasons. Because the reasons stated on the summons do not comport with the notice to quit, and the law requires that it does, the landlord failed to comply with U.S.P.R. 2(d).

3. The requirement of clear and consistent notices to quit and summonses arises out of a tenant's legitimate interest in knowing the status of her tenancy and what actions she may take, if any, to preserve the tenancy. In sending a *no-fault* termination notice and then a *fault* summons, the landlord herein sent the tenant a mixed message about the status of her tenancy and whether there were steps she could take to reinstate the tenancy and what defenses she may have (which differ between a *no-fault* and a *fault* eviction). The tenant has a legitimate interest in receiving clear and unequivocal information from her landlord, that was not the case here; rather, under the reasonableness standard, there was ambiguity created by the duality of the termination notice and the summons.
4. Accordingly, the motion is allowed and matter is dismissed without prejudice.

So entered this 19th day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

PR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SU-4

LUKE LESZCZYNSKI,

Plaintiff,

v.

TINA JOHNSON,

Defendant.

SCHEDULING ORDER

The parties were last before the court on September 15, 2022, in these supplemental proceedings and the parties agreed that the defendant would pay down her debt of \$10,460.89 through a wage assignment and make payments until the wage assignment began. It is unclear from the court's docket if the wage assignment form was ever sent to the defendant's employer.

The plaintiff has now filed a Civil Contempt Complaint alleging that no funds have been paid either by the defendant or her employer. The plaintiff also asserts that the

defendant's employer (Commonwealth of Massachusetts) will not garnish wages in this type of matter. Instead of scheduling a contempt trial, this matter shall be scheduled for a payment review hearing on **January 24, 2023 at 9:00** at the Springfield Session of the court.

So entered this 14th day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0271

<hr/>)	
CITY OF CHICOPEE,)	
)	
PLAINTIFF)	
)	
v.)	ORDER
)	
DALTON ALEXIS, ET AL.,)	
)	
DEFENDANTS)	
<hr/>)	

This matter came before the Court on December 2, 2022 on various motions relating to a receivership proceeding involving a multifamily residential building located 18 Bemis Street, Chicopee, Massachusetts (the "Property"). Counsel appeared for Plaintiff, the receiver, Alfred Shattelroe (the "Receiver"), the owner, Dalton Alexis (the "Owner"), and the mortgagee, City National Bank (the "Mortgagee"). A number of former occupants of the Property were in the courtroom, and Attorney Lance Chavin, who appeared by Zoom, informed the Court that he had been retained by a number of these former occupants.

Plaintiff, the Owner and the Mortgagee reported that they had tentatively reached agreement for the Owner to take control of the Property and maintain it as insured, vacant and secure until further court order. They have further agreed to extend the time the Owner has to submit a rehabilitation plan for approval.

Currently, the Receiver is providing alternative housing for all of the former occupants, who are not parties to this action. The former occupants reported to the

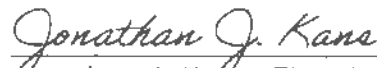
Court that they are not receiving mail at their current addresses. After hearing, the following order shall enter:

1. The Court finds it necessary to add as interested parties the former occupants of the Property given their right to alternative housing is an important issue to be addressed in this case. Because it is not clear to the Court which of the family members are minors, until further hearing, the former occupants will be identified as listed in the Appendix attached hereto.
2. As soon as practicable, Attorney Chavin shall file an appearance identifying the former occupants he represents.
3. Upon Plaintiff, the Owner and the Mortgagee executing and filing with the Court an agreement for the Owner to take control of the Property, the Receiver's motion to resign will be allowed; provided, however, that the Receiver shall, prior to being permitted to resign, do the following:
 - a. Ensure that the current alternative housing arrangements for the former occupants continue through the end of December 2022, and
 - b. Ensure that the former occupants have mailboxes with their names on them and keys to their mailboxes at their present addresses.
4. The Receiver shall prepare a final statement of his Receiver's lien no later than December 7, 2022 and shall serve it on Plaintiff, the Owner, the Mortgagee and Attorney Chavin. The final statement shall include copies of all documentary evidence the Receiver intends to rely upon at the hearing to establish the Receiver's lien.

5. If any of the former occupants intend to seek relief from the Court regarding their present living arrangements, they must serve and file any such motions by December 9, 2022.
6. To the extent that the parties have not already exchanged witness lists and designated exhibits relating to the establishment of the final Receiver's lien as earlier ordered by Judge Fields, this information shall be exchanged no later than December 9, 2022.
7. All parties shall return for an in-person evidentiary hearing on **December 13, 2022 at 11:00 a.m.** on (a) the Receiver's motion to establish the Receiver's lien and (b) the Owner's motion for tenants to pay rent.¹

SO ORDERED.

DATE: 12/20/2022


Jonathan J. Kane, First Justice

cc: Lance Chavin, Esq.

Appendix attached

¹ The Court announced the date and time of the next hearing to the former occupants in the courtroom in the event they continue not to receive mail.

APPENDIX

INTERESTED PARTIES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

may bring any counterclaims for money damages in a separate action given that counterclaims are not compulsory in summary process.

In light of the foregoing, it is hereby ordered that judgment for possession enter in favor of Plaintiff.

SO ORDERED.

DATE: 12/20/22

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1714

VOCES DE ESPERANZA, LP,

Plaintiff,

v.

NAYELI LOZADA,

Defendant.

ORDER

After hearing on December 14, 2022 on review of this matter at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se*, and also at which Ms. Cintron from the Tenancy Preservation Program (TPP) joined, the following order shall enter:

1. The landlord reported to the court that there have been no new allegations of disruptive behavior.

2. TPP reported that the referral to TPP discussed at the last hearing never materialized. TPP is just meeting the tenant today and will follow up with an intake to determine if it can open this case.
3. If TPP can open the case, it is hopeful that in addition to other steps and recommendations it may make it will assist the tenant in completing her recertification paperwork and with her RAFT application.
4. TPP should also work with the tenant to schedule an intake appointment with Community Legal Aid and/or the Mass Fair Housing Center, particularly because there may be a need for a reasonable accommodation demand and follow up regarding—among other things—the tenant's failure to complete her 2021 recertification.
5. The terms of the previous court order regarding behavioral protocols shall remain in full force and effect.
6. This matter shall be scheduled for review on **January 12, 2023, at 9:00 a.m.** live and in-person at the Springfield Session.

So entered this 20th day of September, 2022.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0903

D&A PROPERTY, LLC,)
)
 PLAINTIFF)
)
 v.)
)
 HEIRS OF ESTRADA,)
)
 DEFENDANT)

ORDER

This matter came before the Court on December 15, 2022 on Plaintiff's emergency motion for injunctive relief. Based on the facts set forth in Plaintiff's verified complaint, the lawful tenant died at the end of September 2022 and no one is authorized to occupy the premises located at 705 Union Street, 2d Floor, West Springfield, Massachusetts (the "Premises").

Any occupant of the Premises must immediately allow access to Plaintiff's agents to inspect for leaking water that is affecting the unit below. Moreover, anyone claiming a legal right to reside in the Premises shall appear at the Western Division Housing Court sitting in Springfield on the date and time below to show cause why they should not be immediately barred from entering the Premises. The hearing shall take place on **December 28, 2022 at 9:00 a.m.**

SO ORDERED.

DATE: 12-21-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3102

_____)	
CONSTANTIN GELLIS AND SOPHIA GELLIS,)	
)	
PLAINTIFFS,)	
)	
v.)	FINDINGS OF FACT, RULINGS
)	OF LAW AND ORDER
)	
RUTHDALLY RAMOS,)	
)	
DEFENDANT,)	
_____)	

This summary process action was before the Court for an in-person bench trial on December 1, 2022. Plaintiffs seek to recover possession of 63 East Bay Path Terrace, Springfield, Massachusetts (the “Premises”) from Defendant based on a no fault termination of a tenancy at will. The parties appeared at trial self-represented.

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 finds as follows:

Plaintiffs own the Premises, a side-by-side duplex that is not owner-occupied. Defendant is a tenant at will who has lived in the Premises since 2018. Monthly rent is \$1,000.00. Defendant acknowledges receipt of the notice to quit by mail, although she does not recall having it left at her home. Defendant continues to reside at the Premises. Plaintiffs have established their prima facie case for possession.

Turning to Defendant's case, Defendant did not file an answer but, without objection, argued at trial that Plaintiffs terminated her lease in retaliation for an altercation with her neighbor in the duplex over dog waste. Within a few days of Defendant obtaining a restraining order against her neighbor, Plaintiffs served the notice to quit. Pursuant to G.L. c. 186, § 18, a tenant may assert a counterclaim for reprisal or retaliation if the tenant exercises her legal rights under housing laws. Here, the Court finds that Defendant was not exercising her legal rights under housing laws by obtaining a restraining order against her neighbor. The neighbor's conduct cannot be imputed to Plaintiffs under the circumstances presented. Consequently, Defendant has no legal defenses to Plaintiffs' claim for possession.

However, the tenancy having been terminated without fault of Defendant, the Court accepted Defendants' testimony as an oral petition for a stay pursuant to G.L. c. 239, §§ 9-11. In a no fault eviction case, § 9 gives the Court discretion to stay entry of judgment and excretion on certain conditions. Defendant must pay the rent unpaid prior to the stay, she must pay for her use and occupation of the Premises for the duration of the stay and she must undertake a diligent housing search to locate replacement housing. Accordingly, the following order shall enter:

1. Plaintiffs are entitled to immediate entry of judgment for possession, but the entry of judgment shall be stayed through January 31, 2023 pursuant to the terms of this order.
2. Defendant shall reapply for RAFT funds within three business days. The application shall include the month of December 2022. Plaintiffs shall

provide the information requested of it by Way Finders, Inc., and shall include the court costs on the rent ledger they provide.

3. Beginning in January 2023 and each month thereafter for the duration of the stay, Defendant shall pay for her use and occupancy in the amount of \$1,000.00 by the 5th of the month.
4. Defendant shall make diligent efforts to locate and secure replacement housing and shall document her efforts by keeping a "housing search log" similar to the template form she was given in the courtroom.
5. Because Plaintiffs are entitled to judgment at this time, the 10-day appeal period shall begin to run when this order is entered on the docket.
6. The parties shall appear in person for a housing search review on **January 26, 2023 at 9:00 a.m.**

SO ORDERED.
DATE: 12-21-22

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

2. The parties shall appear on Plaintiff's motion for entry of judgment on **January 12, 2023 at 9:00 a.m.** If Defendant serves and files any motions prior to December 31, 2022, said motions will be heard at the same time.

SO ORDERED.

DATE: 12-21-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. *22-cv-89*

MARIA M. MUNOZ-MARTINEZ,)
)
 PLAINTIFF)
)
 V.)
)
 GLADYS MEDERO-MARTINEZ AND)
 ALLEN PARK APARTMENTS,)
)
 DEFENDANT)

ORDER

This matter came before the Court on December 15, 2022 on Plaintiff's request for an emergency order. Plaintiff and Defendant Medero appeared without counsel; Defendant Allen Park Apartments appeared through counsel.

Plaintiff did not sustain her burden of proving that Defendant Medero is harassing her. In order to keep the peace between these tenants, however, the following order shall enter:

1. Plaintiff and Defendant Medero shall have no contact with one another or their respective household members.
2. Neither party shall videotape the other.
3. Defendant Medero shall take steps to minimize noise in her apartment prior to 7:00 a.m., including her son who leaves early in the morning after caring for her overnight.

SO ORDERED.
DATE: 12-21-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

are used for dwelling purposes, (ii) Defendants have been unable to secure suitable housing elsewhere in a neighborhood similar to that in which the Premises are located, (iii) Defendants are using due and reasonable effort to secure other housing, and (iv) Defendant's application for stay is made in good faith and that they will abide by and comply with such terms and provisions as the Court may prescribe. See G.L. c. 239, § 10. The Court finds sufficient facts to warrant a stay, conditioned upon Defendants complying with the terms set forth herein.

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

1. Plaintiff is entitled to immediate entry of judgment for possession and may apply for issuance of the execution after expiration of the 10-day appeal period.
2. Use of the execution shall be stayed through February 1, 2023.¹
3. Defendants shall make diligent efforts to locate and secure replacement housing and shall maintain a log of all of their efforts.
4. Plaintiff shall not send its handyman, who is the former owner, to the Premises for any reason except to make repairs in the event of a bona fide emergency, and shall instruct him to stay away from the Premises when Defendants are in the process of moving.

SO ORDERED.
DATE: 12-21-22

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

¹ The one-year stay provided under G.L. c. 239, § 9 has passed, so the Court exercises its powers of equity to extend the stay given Ms. Fauntleroy's disabilities.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3429

WILMINGTON SAVINGS FUND SOCIETY,)
FSB D/B/A CHRISTIANA TRUST AS)
TRUSTEE FOR PNPMS TRUST II,)

PLAINTIFF)

V.)

MICHAEL E. MACHOS, ET AL.,)

DEFENDANTS)

INTERIM ORDER

This matter came before the Court on December 21, 2022 for an in-person bench trial. Plaintiff appeared through counsel. Defendants appeared self-represented.

After hearing, the Court rules as follows:

1. Defendants' oral motion for leave to file a late answer is allowed, provided that it is served and filed by January 6, 2023. As part of the balancing of equities in allowing this late motion, Defendants shall not claim a trial by jury.
2. The bench trial shall be continued to January 26, 2023 at 2:00 p.m. The trial shall be in person; provided, however, that Plaintiff's counsel has been granted a reasonable accommodation to appear by Zoom.
3. Plaintiff submitted exhibits which it contends establish its prima facie case for possession. If Defendants do not file an answer by January 6, 2023, the

Court shall rule on the papers and the January 26, 2023 hearing shall be taken off list.

SO ORDERED.
DATE: 12-21-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. ²¹19-SP-3190

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

BARBARA EBERHART, et al.,

Defendants.

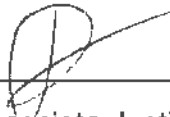
ORDER

After hearing on December 16, 2022, at which the plaintiff landlord, the G.A.L., and a representative from TPP appeared for this scheduled review, with none of the defendants appearing, the following order shall enter:

1. The landlord reported that Marcus Eberhart submitted his paperwork and was approved as a live-in Personal Care Attendant.
2. The landlord and the G.A.L. and TPP all agreed that the next event should be a mediation session with the Housing Specialist Department by Zoom.

3. A mediation session with the Housing Specialist Department by Zoom shall be scheduled for **January 20, 2023, at 9:00 a.m.**

So entered this 22nd day of December, 2022.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-757

CITY VIEW COMMONS,

Plaintiff,

v.

LUIS MARTINEZ, JR.,

Defendant.

ORDER

After hearing on December 15, 2022, on the defendant tenant's emergency motion to stop a physical eviction at which both parties appeared and a representative from the Tenancy Preservation Program (TPP) joined, the following order shall enter:

- 1 The physical eviction scheduled for December 28, 2022, is cancelled. The landlord shall so notify the sheriff and the moving company forthwith
- 2 The tenant agrees that he owes \$3,256.01 in use and occupancy through December 2022.

3. The landlord reports that \$205.56 in court costs and approximately \$600 shall be due in costs incurred by the cancellation of the move-out.
4. The tenant has agreed to pay \$800 towards the arrearage on December 29, 2022.
5. TPP reports that it will meet further with the tenant, open a case, and work with the parties to re-apply to Way Finders, Inc. for RAFT funds.
6. This matter shall be scheduled for a review hearing on **January 19, 2022, at 2:00 p.m.** at the Springfield Session of the court.

So entered this 27th day of December, 2022.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-889

HOUSING MANAGEMENT RESOURCES, INC.,

Plaintiff,

v.

BRIAN ALMEIDA,

Defendant.

ORDER

After further hearing on December 22, 2022, on the plaintiff landlord's motion for injunctive relief at which the landlord appeared but for which the defendant tenant did not appear and at which a representative from the Tenancy Preservation Program joined, the following order shall enter:

1. The court's December 15, 2022, order shall be extended consistent with the terms of this order.
2. The tenant shall not be intoxicated in the common areas of the subject premises.

3. The tenant shall not act in a belligerent or aggressive manner towards other residents at the premises.
4. The tenant shall stay away from and not communicate with the landlord's staff. The one exception is that if he requires to speak with the landlord staff, he is limited to communicating with Ms. Jacqueline Martinez with a telephone number of [REDACTED].
5. The parties shall cooperate with the efforts of the Tenancy Preservation Program who is being requested to reach out to the parties and to Marsha Wallace (who works closely with the tenant) and assess whether it can "open" a case for Mr. Almeida.
6. In addition to mailing this order to the parties, it shall be given FORTHWITH in hand to the landlord's attorney to have it served to the tenant and posted on his door if he is not served in hand
7. If the tenant wishes to have this order amended, he must file a motion to that effect.
8. This order shall be in effect for six months until June 22, 2023, unless further extended by the court after hearing.

So entered this 22nd day of December, 2022.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3496

MELRO ASSOCIATES, INC.,

Plaintiff,

v.

ALTAGRACIA RIVERA, et al.,

Defendants.

ORDER

This matter came before the court for trial on December 22, 2022, at which plaintiff appeared through counsel and the defendant appeared with her son, Jose Rivera. After hearing, the following order shall enter:

1. This is a post-foreclosure eviction matter. The plaintiff explained to the court that it purchased the property at a foreclosure auction and that the named defendants are the former mortgagors.
2. The defendant Altagracia Rivera explained that her co-defendant Pablo Rivera was her husband and that he passed away. She further explained that the only

person residing at the premises is her adult son, Jose Rivera, who appeared at the hearing.

3. Jose Rivera shall be added as a party defendant in this matter.
4. Judgment shall enter for possession for the plaintiff with execution issuing in due course upon the filing and service of a Rule 13 application.
5. The parties agree that the plaintiff can remove the items on the driveway, for which they are being cited by the city code office. They shall provide no less than 48 hours advance written notice delivered to the premises for when they are planning to remove said items. The defendants shall not unreasonably deny access for same.
6. The parties also agree that the plaintiff may inspect the inside of the premises with an insurance inspector on January 13, 2023, at 2:00 p.m. The defendants have agreed to allow the landlord and the inspector(s) into the premises at that time.
7. The defendant, Jose Rivera, was referred to the Tenancy Preservation Program, a representative for whom was in the courtroom and was set to consult with Mr. Rivera directly following the hearing.

So entered this 22nd day of December, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

PR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2335

JESSICA MIKAL-FOSS,

Plaintiff,

v.

COURTNEY TYLEK,

Defendant.

ORDER

After hearing on December 19, 2022, on the plaintiff landlord's motion for entry of judgment at which the landlord appeared with counsel and the defendant tenant appeared *pro se*, the following order shall enter:

1. The basis for the motion is that the tenant failed to vacate the subject premises by November 30, 2022.
2. The tenant reported that she has located alternate housing and will be able to fully vacate the premises by February 1, 2023.

3. The landlord reported that she is holding last month's rent.
4. The parties negotiated a term in their September 21, 2022, agreement that the tenant could file a motion seeking more time to move out. She explained that she failed to do so due to her being sick with COVID and her car broking down.
5. The tenant's request today to have until February 1, 2023, is granted contingent upon payment this day (December 15, 2022) of \$1,200 for use and occupancy for November and December 2022.
6. The landlord shall use the last month's rent she is holding for January 2023 use and occupancy. As such, the tenant does not need to make any additional payment for use and occupancy for January 2023.
7. Judgment for possession shall enter for the landlord and execution shall issue in due course upon the filing and service of a Rule 13 application, but there shall be a stay on its use until February 2, 2023 (contingent upon the tenant's payment of use and occupancy as described above).

So entered this 30th day of December, 2022

Robert Fields
Robert Fields, Associate Justice^{Mr.}
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2353

FELIX NUNEZ and JAZMIN PAULINO,

Plaintiffs,

v.

NIKITA PERKIINS,

Defendant.

ORDER


After hearing on December 20, 2022, at which the plaintiff property manager Felix Nunez and the defendant tenant appeared *pro se*, and at which the plaintiff landlord property owner Jazmin Paulino appeared *pro se* by Zoom, and at which a representative from Way Finders, Inc. joined, the following order shall enter:

1. The plaintiffs have effectuated some repairs but the person who addressed the stove issues was not a licensed technician as required by the court's earlier order. The plaintiff agreed to have the stove/oven inspected, and any necessary

repairs performed, by a licensed technician forthwith. As an alternative, the plaintiffs indicated that they may replace the stove/oven. If that occurs, the person who installs same shall be a licensed technician.

2. If mice reappear at the premises, the plaintiffs shall have a licensed exterminator inspect and appropriately treat the premises for rodents.
3. The representative from Way Finders, Inc. reported that there is a pending RAFT application, but the plaintiffs have not provided a ledger with includes court costs. That representative explained on the record how to update the application and he plaintiffs shall forthwith do so,
4. Given that there is a RAFT application pending, this matter shall be scheduled for further review on **January 6, 2023, at 9:00 a.m.** All parties must appear in-person at the Springfield Session of the court located at 37 Elm Street.

So entered this 22nd day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0504

AMELIA ORTIZ,

PLAINTIFF

V.

HANATI LUBEGA,

DEFENDANT

ORDER REGARDING COMPLAINT
FOR CONTEMPT

This matter came before the Court on December 19, 2022 for an in-person hearing on Defendant's complaint for contempt. Defendant appeared self-represented. Plaintiff did not appear.

After hearing, the Court rules as follows:

1. In lieu of entering a judgment for contempt, based on Defendant's testimony at the hearing today, the Court hereby deems all repairs that Defendant was required to make pursuant to the Court's November 21, 2022 order to be completed.
2. With specific reference to the refrigerator, the Court finds that that Plaintiff has failed to allow Defendant into her unit to check on the condition of the refrigerator; therefore, the Court deems that the refrigerator Defendant provided to Plaintiff is functional and Defendant is not obligated to further inspect or repair it.

SO ORDERED.

DATE: 2/22/22


Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19CV753

NIKITA PERKIINS

Plaintiff,

v.

FELIX NUNEZ, JAZMIN PAULINO, JAMES
PERRIN, JOSHUA PERRIN and STEPHANIE
PERRIN,

Defendants.

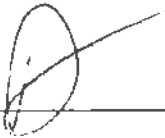
ORDER

After hearing on December 20, 2022, at which all parties appeared, the following order shall enter:

1. The plaintiff's motion to add Joshua Perrin and Stephanie Perrin as parties is allowed.
2. The plaintiff's motion to have the camera installed by the defendants to be removed is allowed

3. It is worth noting that after the plaintiff provided a prima facie case for said motion and then the defendants James and Joshua Perrin interrupting behavior at the hearing made it impossible for them to provide any testimony in opposition, even after warning.
4. The defendants shall have the camera removed forthwith.
5. Joshua and Stephanie Perrin shall not communicate with the plaintiff Nikita Perkins directly or indirectly other than in written.
6. This order shall be in effect for one year from the date of this order. If any party alleges during that time a breach of the order, they may bring this matter forward.

So entered this 5th day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-745

LAKOTA SANDOE,

Plaintiff,

v.

LEAH KING,

Defendant.

ORDER

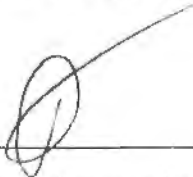
After hearing on December 19, 2022, on the plaintiff's motion for enforcement of the parties' Agreement filed with the court on October 26, 2022, the following order shall enter:

1. The defendant landlord has agreed to have a licensed mold inspector (Ed Wagner) re-inspect the basement and issue an air quality report which shall be shared with the plaintiff. Additionally, the landlord shall ask that said inspector to make a determination if he can of whether the sealing of the basement was done

properly and, if needed, what other steps may be required to complete the sealing of the basement.

2. If the inspector is not agreeable to reporting on the status of the sealing of the basement, the parties shall forthwith after being informed that Mr. Wagner will not report on the sealing of the basement identify an alternate agreed-upon inspector to do same.
3. The plaintiff indicated her interest in seeking money damages and was informed that she may choose to either file a motion to amend the complaint in this action or separately file such damage claims in the Small Claims or the Civil Docket.

So entered this 27th day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1878

DEVON SUTHERLAND,

Plaintiff,

v.

MARILYN KING, et al.,

Defendant.


ORDER

After hearing on December 15, 2022, on review at which both parties appeared, and at which a representative from Way Finders, Inc. joined, the following order shall enter:

1. The representative from Way Finders, Inc. reported that the tenant's RAFT application just closed (two days before the hearing) due to the landlord's failure to submit required documentation.

2. The tenant shall reapply for RAFT and the parties shall submit the necessary paperwork forthwith for same.
3. The parties agree that \$8500 is outstanding in use and occupancy through December 2022. The landlord shall include court costs with his ledger that he supplies for the RAFT application.
4. The parties shall meet with Way Finders, Inc. directly after the hearing in a Zoom room at the courthouse.
5. The hearing currently scheduled for December 22, 2022, shall be taken off the list.
6. A review hearing on the status of RAFT shall be scheduled for **January 26, 2023, at 2:00 p.m.**

So entered this 22nd day of December, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-997

WELLS FARGO BANK, NA,

Plaintiff,

v.

SAMUEL SAINT-DIC,

Defendant.

ORDER FOR ENTRY
OF JUDGMENT

This matter came before the court for trial on December 15, 2022, at which the plaintiff appeared through counsel and the defendant appeared *pro se*. After consideration of the evidence admitted at trial, the following order shall enter:

1. The plaintiff met its burden of proof on its claim for possession.
2. The defendant failed to meet his burden of proof on any challenge to the plaintiff's claim for possession.

3. The defendant reported that his sister, Yves Rose Saint-Dic, has not resided at the subject premises for 20 years. Accordingly, Yves Rose Saint-Dic shall be dismissed from this matter.
4. The defendant's motions are denied based on *res judicata*.
5. Judgment shall enter for possession for the plaintiff.¹

So entered this 27th day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

¹ The plaintiff stipulated that it is not seeking use and occupancy in this matter.

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-694

TALAJA SMITH,

Plaintiff,

v.

TROUNG NYGUYEN,

Defendant.

ORDER

After hearing on December 22, 2022, at which both parties appeared without counsel, the following order shall enter:

1. The parties were before the court on the tenant's motion that the court order the landlord to provide a lead paint certificate certifying that the dwelling is lead-free.
2. Though this civil action is based on a complaint about infestation, the court can appreciate why the tenant filed a motion regarding lead paint. As the

tenant explained, she has been granted an MRVP rental subsidy voucher and wishes to utilize her voucher in her current unit. She explained that the landlord's failure to provide the lead certificate is preventing her from using her MRVP voucher in her current unit.

3. The landlord explained that he can not provide such a lead certificate because he understands that there is lead in the common areas of the dwelling.
4. It may very well be that the landlord is required to de-lead and enter into an MRVP lease with the tenant in accordance with fair housing laws, but the record is insufficient for the court to issue such an order at this time.
5. The tenant was referred on the record to the **Massachusetts Fair Housing Center** at 57 Suffolk Street in Holyoke, Massachusetts, 413-539-9796 or 800-675-7309.
6. Accordingly, the court shall at this time not issue an injunctive order on the tenant's motion.

So entered this 23rd day of December, 2022.

Robert Fields, Associate Justice

CC: Maureen St. Cyr, Executive Director Mass Fair Housing Center
Court Reporter