Western Division Housing Court
Unofficial Reporter of Decisions

Volume 10

May 5, 2021 — Jul. 20, 2021

Released Aug. 4, 2021

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

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

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*
Hon. Robert Fields, Associate Justice, *Western Division Housing Court*
Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*
Aaron Dulles, Esq., *Massachusetts Attorney General's Office*[1]
Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

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

OUR PROCESS
The Court has agreed to set aside copies of all its written decisions. Periodically, the editors collect and scan these decisions, employing commercial-grade "optical character recognition" software to create text-searchable PDF versions. On occasion, the editors also receive copies of decisions directly from advocates, which helps ensure completeness. When the editors have gathered a sufficient quantity of pages to warrant publication, they compile the decisions, review the draft compilation with the Court for approval, and publish the new volume. Within each volume, decisions are assembled in chronological order. The primary index is chronological, and the secondary index is by judge. The editors publish the volumes online and via an e-mail listserv. Additionally, the Social Law Library receives a copy of each volume. The volumes are serially numbered, and they generally correspond to an explicit time period. But, for several reasons, each volume may also include older decisions that had not been available when the prior volume was assembled.

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

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

[1] Formerly of Community Legal Aid, and historically associated with the local tenant bar.

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

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment, and taking the Court's views into consideration.

(1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) Stipulated or agreed-upon orders will generally be excluded. (4) Decisions made as handwritten endorsements to a party's filing will generally be excluded. (5) Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, specific personal financial information, and/or certain criminal activity will be redacted if reasonably possible, or excluded if not.[2] (6) Contact information for parties, attorneys, and third-parties are generally redacted.

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

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

PUBLICATION

Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for anybody who wishes to receive new volumes by e-mail when they are released. Those wishing to sign up for the listserv should e-mail Aaron Dulles (aaron.dulles@mass.gov).

SECURITY

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

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

Comments, questions, and concerns may be raised to any person involved in this project. However, out of respect for the Court's time, please direct such communications at the first instance to Aaron Dulles (aaron.dulles@mass.gov) or Peter Vickery (peter@petervickery.com).

[2] As applied to orders involving guardians ad litem or the Tenancy Preservation Program, redaction or exclusion is not triggered by virtue of such references alone but rather by language revealing or fairly implying specific facts about a party's mental health disability.

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[3] The July date stated in this decision has been confirmed as a typo.

SECONDARY INDEX — BY JUDGE

Hon. Jonathan Kane, First Justice

Hon. Robert Fields, Associate Justice

[4] The July date stated in this decision has been confirmed as a typo.

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 20-CV-100

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

ROSE VONA (owner),
ANY AND ALL OCCUPANTS (tenant), and
MASSHEALTH (mortgagee)

Defendants

Re: Premises: 50 Winthrop Street, Springfield, Massachusetts

ORDER
(Hampden County Registry of Deeds Book/Page: #10089/563)

After a videoconference hearing on Tuesday, May 4, 2021, for which a representative of the Plaintiff and prospective receiver ALFRED SHATTELROE appeared, and after receiving notice no Defendants appeared, the following order is to enter:

1. ALFRED SHATTELROE is hereby appointed as Limited Receiver for the above premises, for the purposes of boarding and securing the above premises, and for maintaining the property as boarded, vacant, and secured. ALFRED SHATTELROE's last and usual address is 142 Chicopee Street, Granby, MA 01033, and he has identified Thomas Wilson, Esq. as his attorney.

2. The Limited Receiver shall have a priority lien on the Property pursuant to the "super-priority" provision of G.L. c. 111 § 127I, as amended, third paragraph, upon the recording of this Order.

3. As of 12:00 p.m. on May 4, 2021, the Limited Receiver is authorized and shall take control of the property in order to board and secure the property, and to maintain the property as vacant, boarded, and secured.

4. A Guardian Ad Litem ("GAL") shall be appointed for Defendant ROSE VONA for the purposes of investigating facts and making recommendations to the Court in this case. The investigation shall include, without limitation, contacting and meeting with Defendant ROSE VONA to (a) determine her wishes with respect to the Property, (b) assess her financial ability to maintain the property and bring it into code compliance, and (c) ascertain if her family and/or potential heirs have interests that should be protected in this case. The GAL shall recommend any further services or actions appropriate to protect Defendant ROSE VONA's best interests with respect to the Property.

5. The Guardian Ad Litem shall submit a written report to the Court prior to the review date and shall attend the review hearing.

6. A review of this matter shall be heard by videoconference on Tuesday, June 22, 2021 at 9:00 a.m., per the notice attached to this order. The Plaintiff may file a motion to appoint ALFRED SHATTELROE as full receiver for the property to be heard at that date and time.

SO entered this 5th day of May 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice
Western Division Housing Court

cc: Kara Cunha (for appointment of GAL)

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19SP1000

BEACON RESIDENTIAL MANAGEMENT, LP, ET AL.,

PLAINTIFFS

v.

ANTHONY MILAN,

DEFENDANT

ORDER TO STOP EVICTION

This case came before the Court at 11:00 a.m. on May 5, 2021 by Zoom for hearing on the tenant's motion to stop a physical eviction scheduled for 1:00 p.m. the same day. Plaintiff (the "landlord") appeared through counsel; Mr. Milan appeared without counsel. Mr. Milan represented that he has lived at the subject premises for nine years, has a Section 8 rental subsidy, that disability benefits are his sole source of income, and that he is physically disabled due to an accident. He has no place to go if he is evicted and could lose his Section 8 rental subsidy. The landlord asserts that Mr. Milan owes $1,236.00 in back rent, plus court costs, and would owe an additional $350.00 if the levy is canceled. Mr. Milan said he has a money order for $258.00 with him today. He also stated that he has no pending application for RAFT or ERAP funds.

Based on the foregoing, and after balancing the equities, the following Order shall enter:

1. The eviction scheduled for May 5, 2021 at 1:00 p.m. shall be cancelled.

2. Mr. Milan must pay the money order in his possession (which he states is in the amount of $258.00 but which the Court could not verify) to the management office by the end of business tomorrow, which will be applied to the cancelation fees of $350.00.

3. Mr. Milan is being referred to the Tenancy Preservation Program for assistance in applying to Way Finders for ERAP or other funds to pay his rent arrears, court costs and the

balance of the cancelation fees. TPP shall also assist Mr. Milan in arranging to have his monthly rent paid directly to the landlord, whether through a program like Friends Money Manager or by direct payment from his benefits check. Mr. Milan shall cooperate with TPP and take all necessary actions to apply for both rental assistance and third party rent payments.

4. The parties shall return for review by Zoom on **June 1, 2021 at 11:00 a.m.** TPP is requested to assist Mr. Milan in participating in the hearing, if necessary. At that time, the Court expects Mr. Milan to have a pending application for rental assistance. Mr. Milan should also be prepared to pay June 2021 rent by June 5, 2021 as he is not likely eligible for a rent stipend going forward.

5. The landlord shall be entitled to a new execution by written application (without need for a hearing) upon return of the original execution now in the hands of the constable.

SO ORDERED

DATE: 5/6/21

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV242

HIGHLAND VILLAGE APARTMENTS,

PLAINTIFF

v.

KATRINA DUFRESNE AND JOSHUA DILLEY,

DEFENDANTS

ORDER ON PRELIMINARY INJUNCTION

This matter came before the Court by Zoom on May 5, 2021 on Plaintiff's verified complaint and request for injunctive relief. Plaintiff appeared with counsel. Defendants did not appear despite being informed of the date and time of this hearing in person at the previous Court event ten days earlier.[1]

Based on the verified complaint and testimony of Plaintiff's property manager and a neighbor of Ms. Dufresne, and drawing reasonable inferences therefrom, the Court finds as follows:

Ms. Dufresne is a tenant at Highland Village Apartments (the "Property") pursuant to a written lease. She and her two young children are the only authorized occupants of unit 6B (the "Premises"). The Property consists of 110 residential units. On numerous occasions over the past few months, management has received complaints of loud and violent disturbances at the

[1] Although the Court's notice of this hearing was sent by mail and returned as undeliverable, the Court is satisfied that Defendants had adequate notice given their presence at the April 26, 2021 when this hearing was scheduled. Additionally, the Court notes that despite the previous Court order, Mr. Dilley's criminal defense counsel did not appear.

Premises, and reports of visitors coming and going from the Premises. Mr. Dilley has been a regular (and often daily) presence on the Property. Whether or not Mr. Dilley is actually living in the Premises, he is often there day and night. This conclusion is supported not only by the eyewitness testimony of Ms. Dufresne's neighbor, but also the volume of resident complaints about Mr. Dilley and the number of police calls to the Premises involving Mr. Dilley. Mr. Dilley has also acted aggressively toward lawful residents of the Property and has shown a lack of regard for their rights as tenants.

Ms. Dufresne's neighbor Ms. Quinn, who shares a wall with Ms. Dufresne, testified credibly that the visitors to 6B, and in particular Mr. Dilley, have interfered with her peaceful enjoyment of her home. She testified that she has been awoke many nights (until very recently, as many as five nights per week) by arguing and fighting in 6B. She has also been interrupted by excessive noise during daytime hours, noting that she hears Mr. Dilley yelling, Ms. Dufresene screaming, various pounding and thumping noises, loud running up and down the stairs, and shaking walls. In one instance, she witnessed an altercation between the Defendants spill into the parking lot, where she heard Mr. Dilley shouting at Ms. Dufresne and then saw him lunge through the passenger window into the car as Ms. Dufresne was backing out of her parking space.

Ms. Quinn expressed grave concern for Ms. Dufresne's well-being and has called the police on more than one occasion out of fear for her safety. She stated that although Ms. Dufresne has lived next door to her for a few years, her daily activities were not disrupted by the occupants of the Premises until the past six months or so when Mr. Dilley and others began to frequent the Premises. She described the excessive traffic of people coming and going from the Premises as a "revolving door."

Plaintiff seeks an order that Ms. Dufresne cease and desist from having visitors and that Mr. Dilley in particular be prohibited from entering onto or staying on the Property or the Premises. It also seeks an order that Ms. Dufresne observe the terms of her lease regarding offensive behavior.

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, the Court finds that Plaintiff has shown that irreparable harm may occur unless the Court grants the injunctive relief requested, that Plaintiff is likely to succeed on the merits of this case and that the balance of equities favors Plaintiff. It is important to the Court's findings that Plaintiff is not seeking to evict or even temporarily remove Ms. Dufresne from the Premises in this case; in fact, the only persons who are adversely affected by the relief sought herein are visitors to the Property, and the interests of lawful tenants must take priority. Accordingly, a preliminary injunction is warranted. Pursuant to Mass. R. Civ. P. 65(b) and G.L. c. 185C, § 3, the following order shall enter:

1. Defendant Dilley must permanently vacate the Premises and may not return to the Premises (Unit 6B) or the Property (Hillside Village Apartments) without further order of this

Court. If he is located on the Property, Plaintiff is authorized to treat him as a trespasser pursuant to G.L. c. 266, § 120.

2. To protect the rights of tenants to the peaceful enjoyment of their tenancies, Ms. Dufresne may not have visitors other than immediate family and caregivers until further order of this Court.

3. Ms. Dufresne must comply with the terms of her lease, including without limitation the behavior-related provisions set forth in Paragraph F.

4. Ms. Dufresne may file and serve upon Plaintiff's counsel a motion to modify or terminate the terms of this injunction, which motion may be heard on three (3) days' notice.

5. Plaintiff, for good cause shown, is not required to post bond or any other form of security pursuant to Mass. R. Civ. P. 65(c). Plaintiff shall be assessed the $90.00 injunction fee described in G.L. c. 262, § 4 which shall be paid into the clerk's office within fourteen (14) days.

6. This preliminary injunction shall take effect immediately and shall remain in effect until further order of this Court. Plaintiff shall arrange to have a copy of this Order hand-delivered to the Premises.

SO ORDERED.

DATE: 5/7/21

Jonathan J. Kane

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP842

CHRISTOPHER J. BELCH, PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLES J. BELCH.

PLAINTIFF

v.

ANNA LESCARBEAU.

DEFENDANT

ORDER FOR ACCESS

This case came before the Court by Zoom on May 7, 2021 on Plaintiff's motion for access to the residence located at 98 East Road, Adams, MA (the "Premises"). Both parties appeared through counsel. After hearing, the following order shall enter:

1. Attorney Brennan, who appeared on behalf of Defendant, shall file his appearance forthwith.
2. Defendant shall permit Plaintiff to access the Premises at a mutually agreeable time and date arranged between counsel. The terms of access are as follows:
    a. Plaintiff shall be accompanied by a police officer;
    b. The maximum allowable time for Plaintiff to be in the Premises is 1.5 hours;
    c. Plaintiff may not remove anything from the Premises;
    d. Plaintiff shall have no contact with Defendant other than the minimum necessary to enter and move through the home;
    e. Access may be used to inspect the physical condition of the Premises and to

document (by photographs, videos and/or note-taking) the personal property in the home and any appurtenant structure on the property.[1]

Dated: 5/10/21

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

cc: Attorneys Brennan and Pagnotta
Court Reporter

[1] The purpose of permitting Plaintiff to document the personal property is to avoid the need for an additional order access in order to prepare an inventory of possible Estate assets.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV260

CYNTHIA MALONI,

PLAINTIFF

v.

CATHERINE COLLINS,

DEFENDANT

ORDER

This matter came before the Court by Zoom on May 7, 2021 on Plaintiff's motion for a temporary restraining order seeking immediate possession of certain residential property. Plaintiff appeared and represented herself; Defendant appeared and had the assistance of counsel from the Lawyer for A Day program.

Plaintiff contends that she rented the subject premises to Defendant's mother, who vacated and returned the keys. Defendant failed to vacate when her mother left. Plaintiff seeks an order that Defendant vacate immediately because she was never a tenant and never paid rent. After hearing, the Court finds that Defendant is not a trespasser and that Plaintiff has an adequate remedy at law to regain possession, namely summary process. Accordingly, the request for a temporary restraining order is DENIED.

Given that Defendant remains in possession of the Premises, however, the Court orders that Defendant shall pay for her continued use and occupation of the subject premises at a rate of $950.00 per month, the amount of the rent paid under her mother's lease. Payment is due by the 5th of each month starting in June 2021. For the month of May 2021, payment shall be made no

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later than May 21, 2021 in consideration of the fact that Defendant may need time to be able to make the payment.

SO ORDERED.

DATE: 5/11/20

Jonathan J. Kane

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

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-273

JCV REALTY LLC,

PLAINTIFF

v.

TIMOTHY SARLAN,

DEFENDANT

TEMPORARY RESTRAINING ORDER

After hearing at which only Plaintiff appeared,[1] it clearly appears from the testimony of property manager Johanna Voisine and the photographs submitted through her that immediate and irreparable injury, loss or damage will result to the Plaintiff if a temporary restraining order is not granted. Accordingly, at 9:40 a.m. on this 12th day of May 2021, Defendant is ordered as follows:

1. Defendant may not tamper with or remove any smoke detectors in his apartment at 48 North Street, #8, Ware, MA (the "Premises"). *Given that the evidence shows that the smoke detectors have been removed, the Court considers it to be an emergency matter and Plaintiff is hereby authorized to have its agents enter the Premises immediately (upon no less than 30 minutes' advance notice) for the sole purpose of reinstalling the hardwired smoke detectors..*
2. Defendant shall maintain gas service (which supplies heat to the Premises) in working order.
3. Defendant shall maintain the Premises in a healthy and sanitary manner, removing all trash and storing all food so as not to attract vermin.
4. Defendant may not smoke in the Premises.

[1] A deputy sheriff served Defendant with notice of this hearing and instructions for connecting by Zoom on May 10, 2021 at 9:43 a.m. by leaving the notice at his last and usual place of abode.

5. Defendant shall not cause damage to the Premises.

6. Defendant shall not create any disturbances that interfere with the peaceful enjoyment of other residents of the property.

7. Defendant must comply with the lease terms regarding keeping of a dog at the Premises, unless the lease provisions regarding pets have been waived as a result of an approved reasonable accommodation request.

8. Defendant must allow access for further inspection of the Premises by management on May 20, 2021. Plaintiff must provide Defendant with 24 hours' notice of the time of the inspection.

9. Plaintiff shall arrange to have this order delivered to Defendant, either in hand or at the entry door of the Premises.

10. This temporary restraining order automatically expires ten days from the date and time granted unless renewed in the form of a preliminary injunction. The parties shall return by Zoom on **May 21, 2021 at 12:00 p.m.** for further proceedings on Plaintiff's motion for injunctive relief. Defendant may appear in person at the Western Division Housing Court at 37 Elm Street, Springfield, MA if he does not have access to Zoom. He may direct any questions regarding participation in the hearing by calling the Clerk's Office at (413) 748-7838.

11. Upon two days' notice to Plaintiff, Defendant may apply to the Court to dissolve or modify this temporary restraining order.

12. For good cause shown, Plaintiff is not required to give security for the issuance of this Order; however, the $90.00 fee set forth in G.L. c. 262, § 4 for the issuance of an injunction or restraining order must be paid by Plaintiff within ten (10) days of receipt of this order.

SO ORDERED this 14th day of May 2021.

Jonathan J. Kane

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-CV-250

TIESA GRAF,

Plaintiff,

v.

CHRYSTEL ROMERO,

Defendant.

ORDER

This matter came before the court for trial on April 21 and 29, and May 13, 2021 at which the plaintiff appeared *pro se* and the defendant appeared with counsel. After consideration of evidence, testimonial or otherwise, the following findings of fact and ruling of law and order for judgment shall enter:

1. **Background:** The plaintiff, Tiesa Graf (hereinafter, "landlord"), owns a home located at 161 Farmington Road in Amherst, MA (hereinafter, "premises" or "property"). The defendant, Chrystel Romero (hereinafter, "tenant") resided as a

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tenant of that property with her family from 2009 until 2019 pursuant to a Section 8 rental subsidy program. At the time of this trial, the tenant and her family had vacated, and the landlord had taken, possession of the premises.

2. **The Landlord's Claims:** Through this litigation, the landlord sought use and occupancy through March 11, 2019 and for property damages she alleges was caused by the tenant during her tenancy.
3. **Unpaid Use and Occupancy:** The landlord met her burden of proof that the tenant did not completely relinquish possession of the premises until March 11, 2019. Though tenant mostly vacated the premises by December 31, 2018 and moved to her new home on that date, she continued to hold possession over the premises until March 11, 2019 when she relinquished same during a court appearance in the summary process matter between the parties (19-SP-383). Between January 1 and March 11, 2019 the tenant or her agent(s) periodically present at the premises to remove items and perhaps clean up some. There is no question that the tenant had changed the locks at the premises and that the landlord did not have keys. I credit the testimony of the landlord and her witness Susan Tyler that the they periodically went to the premises and observed items moved and or removed and that various lights remained on during that time. Given the aggregate of facts found by the court, it is not unreasonable that the landlord did not recapture possession of the premises between January 1 and March 11, 2019 nor unreasonably foreseeable by the tenant that due to her behavior the landlord would not re-take possession during that time.

4. Accordingly, the landlord shall be awarded outstanding use and occupancy in the amount of **$3,983**. This represents the tenant's unpaid portion of rent of $8 for September through December, 2019 plus the entire contract rent for January through March 11, 2019 at a monthly rent of $1,678.
5. **Property Damage Claim:** For the reasons already stated on the record, the tenant's motion for directed verdict made at the conclusion of the landlord's case for property damage was allowed. The landlord failed to put into evidence a basis upon which the court could assess a value to the property damages being asserted by the landlord and judgment shall enter for the tenant on that claim.
6. **The Tenant's Claims:** The tenant sought damages for claims of Breach of the Covenant of Quiet Enjoyment, Breaches of the Warranty of Habitability, Retaliation, and violation of the Consumer Protection statute.
7. **Breach of the Covenant of Quiet Enjoyment; G.L. c.186, s.14:** In 2012 and then again in 2015 the basement was flooded. Though it is not clear from the record before the court exactly what caused these floods, it is clear that there was a significant moisture problem in the basement for approximately five years of the tenancy. During that time, the landlord provided the tenant with dehumidifiers that ran off of the tenant's electricity and required emptying of water several times per week. During this time, the tenant purchased waterproof containers for her belongings, removed items to an off-site storage facility, and moved items to portions of the basement that were not subject to flooding.
8. The landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of her acts causes a serious interference with the

tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102, (1982). I find and rule the value of the premises was substantially impaired by the conditions of flooding, excessive moisture, the obligation on the tenant to repeated empty the water from the dehumidifiers, and the additional electricity service costs for running the dehumidifiers and award the tenant a statutory claim equal to three months' rent totaling **$5,034** ($1,678 contract rent X 3) plus reasonable attorneys fees and costs.

9. **Warranty of Habitability:** The tenant's claim for breach of the warranty of habitability was mostly focused on the water and moisture in basement described above and awarded under the quiet enjoyment claim. To the extent that tenant is seeking warranty of habitability damages for other items such as those cited by the Amherst Board of Health (for which various reports were put into evidence), the tenant failed to establish a sufficient record upon which the court can award further damages. More specifically, the court put into evidence sufficient record of the tenant failed to provide evidence regarding the length of time and seriousness of conditions other than those related to the flooding and moisture in the basement.
10. **Security Deposit:** In accordance with the previous ruling of the court on the tenant's motion for partial summary judgment on her claim for breach of the security deposit laws, the court awards the tenant damages equal to three times the security deposit plus interest totaling **$2,587.50** ($750 security deposit X 3 plus 5% interest of $37.50 X 9 years) plus reasonable attorneys fees and costs.

11. **Retaliation:** The tenant asserts that when the landlord offered the tenant a new lease in August, 2017 in which the basement would for the first time during this multi-year tenancy not be included, it was retaliatory in violation of G.L. c.186, s.18. The basement was a significant part of this almost-decade-long tenancy. The tenant and her family used the basement for doing their laundry and for storing their personal belongings. For the landlord to provide a lease that would eliminate use of the basement is considered to be a reprisal under the statute cited above.

12. The only conceivable reason for the landlord to curtail the tenant's use of the basement was the intention of avoiding the problems of a basement that was subject to flooding, was chronically damp, and required the running and emptying of dehumidifiers at all times. Even though the landlord did not enforce that term of the lease and took no additional steps to curtail the tenant's use of the basement, the act of including the term in the lease is viewed by the court as an action of reprisal and/or a threat to take reprisal for her complaints regarding the problems with the basement. Pursuant to G.L. c.186, s.18, where a violation is found the court is to award damages to the tenant for an amount equal to no less than one month and no more than three months' rent. Based on the evidence in this matter, where the tenant's use of the basement was not actually curtailed, the court shall award the tenant damages equal to one month's rent totaling **$1,678** plus reasonable attorneys fees and costs.

13. **Consumer Protection Act; G.L. c.93A:** The court does not find any violations of G.L. c.93A that are not already reflected in the above statutory awards and

with no separate award being found for the breach of the Warranty of Habitability to multiply by this statute, no separate award shall be granted under this claim.

14. **Conclusion and Order:** An order for an award of damages for the tenant, Chrystel Romero, in the amount of **$5,316.50** shall enter. This represents damages of $9,299.50 to the tenant MINUS damages of $3,983 to the landlord. This is an order and not yet a judgment because as a prevailing party, the tenant shall also be awarded reasonable attorneys fees and costs and shall have until June 1, 2021 to file and serve a petition for said fees and costs. The landlord shall have until June 21, 2021 to file and serve her opposition, if any. Thereafter, the court shall issue a ruling on the attorneys fees award and enter final judgment.

So entered this 17th day of May, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1519

LING YI JU,

Plaintiff,

v.

MARK BROWN,

Defendant.

ORDER

After hearing on May 14, 2021 on review of this matter, at which the parties appeared *pro se* and at which a representative from WayFinders, Inc. appeared, the following order shall enter:

1. The tenant's application for funds (RAFT, ERMA) through WayFinders, Inc. has been hampered by the landlord seeking more than the $1,200 monthly rent agreed to in the April 30, 2021 Agreement.

2. Now that the $1,200 monthly rent amount has been reestablished at this hearing, WayFinders, Inc. shall process the tenant's application for funding and anticipates being able to award an amount for the entire outstanding balance plus a stipend for a period of time.
3. The landlord agrees that the tenant provided her a key as required by the terms of the April 30, 2021 Agreement.
4. This matter shall be dismissed upon a $0 balance.

So entered this 17th day of May, 2021.

Robert Fields, Associate Justice

Cc: Ms. Ortega, WayFinders, Inc.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-264

SOUTH MIDDLESEX NON-PROFIT HOUSING CORPORATION,

PLAINTIFF

v.

JACQUELINE SILVER,

DEFENDANT

ORDER

This matter came before the Court by Zoom on May 14, 2021 for a hearing on Plaintiff's complaint and application for preliminary injunction pursuant to G.L. c. 139, § 19. Both parties appeared through counsel (Defendant's counsel participating in the hearing pursuant to the Lawyer for the Day program). Prior to the commencement of the hearing, the parties negotiated mutually agreeable terms for a resolution of the case and reported them to the Court. After a colloquy with all parties present, and without Defendant admitting to any unlawful conduct, the following order shall enter:

1. Defendant shall vacate her dwelling unit at 305 Main Street, #1, Easthampton, Massachusetts (the "Premises") by 5 p.m. on Monday, May 17, 2021, or as soon thereafter as Plaintiff can locate a bed for Defendant in an appropriate facility. Upon vacating, Defendant shall have no further right to possession of the Premises.
2. Plaintiff agrees to store any remaining belongings in the Premises after Defendant vacates for a period of at least six months. Thereafter, if Defendant has not made

arrangements to pick up her belongings. Plaintiff may seek a Court order regarding disposition of the items.

3. The parties shall return for review on **May 21, 2021 at 3:00 p.m. by Zoom**.
4. The merits of Plaintiff's claim have not been adjudicated and Defendant filed a timely answer. Accordingly, all rights of the parties are reserved in the event Defendant does not vacate as set forth in this order.
5. This case shall be dismissed eight (8) months from the review date unless either party has brought it back to Court for further proceedings.
6. Because no preliminary injunction has issued at this time, the $90.00 fee for injunctions set forth in G.L. c. 262, § 4 is not applicable.

Dated: 5/17/21

Jonathan J. Kane

Hon. Jonathan Kane
First Justice, Western Division Housing Court

cc:
Clerk's Office (to enter review date)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-901

NARESH PATEL,

Plaintiff,

v.

ALAINA ROSA,

Defendant.

ORDER

After hearing on May 17, 2021, at which the landlord appeared through counsel and the tenant appeared through Lawyer for the Day (LFD) Counsel, the following order shall enter:

1. The tenant reported to the court that due to circumstances beyond her control she was unable to relocate as hoped in the previous agreement of the parties.
2. With the assistance of LFD Counsel, the tenant shall serve and file FORTHWITH a CDC Declaration. The tenant has an application with WayFinders, Inc. and LFD Counsel has made a referral to Community Legal Aid for a Case Manager to assist the tenant with the follow-up of said application.
3. LFD Counsel reported that he or another staff from Community Legal Aid will assist the tenant in filing and serving an Answer by no later than June 1, 2021.

4. A trial has been scheduled for **July 7, 2021 at 10:00 a.m.** A one-hour time slot has been provided for this trial. If after the filing of an Answer it appears to either party that the trial will need more time, they are to request a Case Management Conference with the court so that the appropriate time can be allotted.
5. The Trial noted above shall be conducted by Zoom. All proposed exhibits are to be e-filed with the court no later than July 2, 2021 via eFile at http://www.efilema.com. For more information on how to e-file documents, please visit www.mass.gov/guides/efiling-in-the-housing-court. Submissions are to be e-filed as one long document containing all of the proposed exhibits clearly and separately marked using numbers (i.e., Plaintiff's Exhibit 1).
6. The Clerk's Office shall provide the parties with written instructions on how to participate in the trial by Zoom. If either party is unable to access Zoom and its visual connectivity, they shall come to the courthouse at 37 Elm Street in Springfield to utilize the court's Zoom Room. The Clerk's Office can be reached at 413-748-7838 for Zoom assistance and for other questions.

So entered this 18th day of May, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1423

NICHOLAS GRAHAM,
Plaintiff

v.

CHARLIE BARNES, ET AL,
Defendants

ORDER TO STOP EVICTION

This case came before the Court on May 17, 2021 by Zoom for hearing on Defendants' motion to stop a physical eviction. Plaintiff appeared through counsel and Defendant Charlie Barnes appeared and represented himself. Mr. Barnes represented to the Court that Way Finders had conditionally approved his application for moving funds so long as he locates an apartment and supplies proof of income (which he claims to have submitted earlier today). Mr. Barnes also testified that he has two applications for housing pending and is just awaiting background checks to be completed. After hearing, the following Order shall enter:

1. Plaintiff shall cancel the eviction scheduled for today provided that Defendants pay $800.00 in immediately available funds to the deputy sheriff or constable conducting the levy by 12:15 p.m. today. This payment shall be applied to the cancellation fees.
2. If the levy is cancelled, it may be rescheduled on or after May 28, 2021 and Defendants shall not be entitled to any further stays even if they have yet to locate replacement housing.

SO ORDERED

DATE: May 19, 2021

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

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-760

SPRINGFIELD HOUSING AUTHORITY,)
)
PLAINTIFF)
v.)
)
IVANSKA ALMODOVAR,)
)
DEFENDANT)

ORDER TO CONTINUE

1. The parties in this action appeared before the Court on May 19, 2021 by Zoom on Plaintiff's motion to issue the execution. Arlene Pizarro from the Department of Mental Health also appeared, as did a representative of the Tenancy Preservation Program.

2. Ms. Almodovar's counsel seeks a continuance based on, among other reasons, his understanding that the Gandara Center has been approved as a representative payee and has submitted a request to the Social Security Administration to open an account for Ms. Almodovar so that it can pay the judgment amount. Plaintiff opposes the continuance due to the lack of evidence to support counsel's understanding.

3. In order to determine whether an execution should issue and, if so, whether the Court should place conditions on its use, the Court hereby requests that a representative of the Gandara Center appear at the next Court date to report on the status of the representative payee approval, the sufficiency of funds in Ms. Almodovar's Social Security account to pay the judgment, and the anticipated timing of payment to Plaintiff.

4. The Plaintiff's motion to issue the execution will be heard on **June 2, 2021 at 12:00 p.m.**

SO ORDERED

DATE: 5/24/21

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

cc:
The Gandara Center (with Zoom instructions)
[redacted]

Department of Mental Health
[redacted]

Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss	**HOUSING COURT DEPARTMENT** **WESTERN DIVISION** **DOCKET NO. 19-SP-1000**
BEACON RESIDENTIAL MANAGEMENT, LP, ET AL., **PLAINTIFFS** **v.** **ANTHONY MILAN,** **DEFENDANT**	**ORDER**

The parties in this action appeared before the Court on June 1, 2021 by Zoom for a review of the Court's May 6, 2021 order. Plaintiffs appeared through counsel and Defendant represented himself. Ms. Sanchez from the Tenancy Preservation Program ("TPP") also participated in the hearing. After hearing, the following order shall enter:

1. Defendant owes $92.00 balance for fees associated with cancellation of the physical eviction. He shall pay $50.00 by June 4, 2021 and $42.00 by July 5, 2021.
2. Defendant shall pay rent in full on time beginning this month (June 2021).
3. TPP will attempt to contact Defendant to assess his eligibility for assistance. If Defendant has not been contacted by TPP by June 4, 2021, he shall contact TPP.[1]
4. If Defendant is eligible for assistance from TPP, he shall accept services and cooperate with TPP's recommendations. Defendant shall work with TPP to (a) complete an application for emergency rental assistance with Way Finders and (b) engage the services of a representative payee to ensure rent payments are made on time going forward.

[1] Ms. Sanchez and Defendant exchanged contact information at the hearing today.

5. The parties shall return for a status hearing on **July 15, 2021 at 9:00 a.m.** The hearing shall be held over Zoom unless otherwise instructed by the Court.

SO ORDERED.

DATE: 6/2/21

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1888

YANIRA RENTAS-MALDONADO,

Plaintiff,

v.

JENNIFER SANCHEZ and ASHLEY L. RODRIGUEZ,

Defendants.

ORDER

After hearing on May 20, 2021, at which the plaintiff appeared with counsel and the defendants appeared *pro se,* the following order shall enter:

1. The parties stipulated that the issue of possession is moot, as the plaintiff no longer owns the premises.
2. This matter shall be transferred to the Civil Docket.
3. The defendants, Jennifer Sanchez and Ashley Rodriguez, have until June 14, 2021 to file and serve an Answer and Discovery Demand.

4. The defendants may wish to contact Community Legal Aid at 413-781-7814 and/or the Hampden County Bar Association at 413-732-4648 to seek legal representation for this matter.
5. The plaintiff, Yanira Rentas-Muldonado, has until ten days after receipt of the defendants' Answer to propound a Discovery Demand upon the defendants.
6. The Clerk's Office shall schedule a Case Management Conference after June 28, 2021.

So entered this 2nd day of June, 2021.

Robert Fields

Robert Fields, Associate (AJ) Justice

Cc: Michael Doherty, Clerk Magistrate

THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN. ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION NO.: 21-SP-146

Appleton Corporation,
Plaintiff

v.

Richard Langlois et al,
Defendants

ORDER OF THE COURT

After a bench trial on June 3, 2021. at which both parties were present, the following order of the Court shall enter:

1. For reasons set forth on the record, the plaintiff established the elements of its claims for possession and unpaid rent of $5,067.00. The defendants have not established any defenses. Accordingly, judgment for possession, damages in the amount of $5,067.00 and court costs shall enter in favor of the plaintiff.
2. The execution shall issue upon written application, copied to the defendants, upon expiration of the 10-day statutory appeal period.
3. At present, the defendants do not have a pending application for rental assistance and are therefore not entitled to any protection against eviction pursuant to Stat. 2020, c. 257. Moreover, they did not provide the plaintiff with a declaration under the CDC order. At any time prior to the physical eviction, if the defendants file an application for rental assistance and are waiting to learn if the application has been approved or denied, they may contact the Clerk's Office to file a motion to stop the physical eviction..

So entered this 7th day of June 2021

Jonathan J. Kane
Jonathan Kane,
First Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss	**HOUSING COURT DEPARTMENT** **WESTERN DIVISION** **DOCKET NO. 20-SP-1643**
ANTONIA GOMEZ,)) **PLAINTIFF**) **v.**)) **ANA HERNANDEZ,**)) **DEFENDANT**)	**ORDER**

This case came before the Court on June 3, 2021 by Zoom for a review of the Agreement of the Parties dated April 8, 2021 ("Agreement"). Plaintiff appeared with counsel; Defendant did not appear.

In the Agreement, Defendant agreed to vacate by May 31, 2021. Plaintiff contends that Defendant moved one day late and therefore Plaintiff is entitled to unpaid rent (*see* ¶ 4 of the Agreement). Because no judgment has yet entered, before damages may be assessed, Defendant must be put on notice that Plaintiff is seeking entry of judgment and in what amount. *See* Rule 55(b)(2) of the Massachusetts Rules of Civil Procedure. Accordingly, the following order shall enter:

1. This case shall be converted from a summary process case to a civil case for damages.
2. Plaintiff shall file and serve a motion to assess damages pursuant to Rule 55 of the Massachusetts Rules of Civil Procedure. The motion shall include a statement setting forth the nature and type of all damages requested and the amount of any damages that are a sum certain or a sum which can by computation be made certain. The motion shall request a hearing date, and the Court will schedule the hearing no less than fourteen days after the Court's notice is sent.

3. If after notice Defendant does not appear, Plaintiff will be entitled to a judgment by default upon filing of an affidavit referenced in Rule 55(b)(4).

4. If, in order for the Court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct a hearing at that time if the amount of damages sought by Plaintiff is not a sum certain.

SO ORDERED.

DATE: 6/8/21

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

cc:
Clerk's Office (to convert to civil case)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1411

NANCY WILLIAMS,

Plaintiff,

v.

JAN BOCHENKO,

Defendant.

ORDER

This mater came before the court for hearing on May 28, 2021 and then on June 7, 2021, on the landlord's motion entry of judgment, at which the plaintiff (landlord) appeared and defendant (tenant) appeared *pro se* at the first hearing and with LFD counsel for the second hearing, and the following order shall enter:

1. The tenant had agreed to pay $1,600 to the landlord, representing all outstanding rent, use, and occupancy through June 30, 2021 by June 4, 2021.

2. At the June 7, 2021 hearing, the tenant reported that he was only able to make $400 of that payment, leaving a balance of $1,200 through June, 2021.
3. A representative from Wayfinders, Inc. joined the hearing and will work with the parties on a re-application by the tenant for RAFT/ERMA funds. The tenant was denied for being over-income at an earlier time and he may now be eligible.
4. A representative from the Tenancy Preservation Program (TPP) also joined the hearing and explained that $2,000 of the earlier arrearage were supposed to be received by the landlord back in May, 2021. The landlord reports that she has yet to receive said funds. TPP agreed to meet with the landlord after the hearing to determine the status of that payment.
5. Between this date and the return hearing noted below, the tenant shall make his best efforts to pay the landlord the $1,200 outstanding through June, 2021.
6. This matter shall be scheduled for hearing on **July 7, 2021 at 9:00 a.m.** The Clerk's Office shall provide the parties with instructions on how to appear for said event by Zoom. If the tenant has no means of attending by Zoom, she may contact the Clerk's Office to make arrangements to utilize the court's Zoom station for this event.

So entered this 8th day of June, 2021.

Robert Fields

Robert Fields, Associate Justice

Cc: Attorney Stella Gnepp, CLA (LFD counsel)

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-690

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
PLAINTIFF

v.

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

ORDER

After a Zoom hearing on June 8, 2021 on Defendants' motion for order to issue work permits, the motion is denied for the following reasons.

Defendants seek an order that Plaintiff issue certain building permits to Defendants so they can rehabilitate the property at 310 Central Street, Springfield, Massachusetts. The Court considers the motion as one for injunctive relief. In considering a request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks' cuts in favor of the moving party may a preliminary injunction properly issue. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Here, Defendants have not demonstrated the need for injunctive relief. Their likelihood of success on the merits is slight given that, by statute (and adopted by municipal ordinance), Plaintiff has the discretionary authority to deny applications for permits for any "person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges." *See* G.L. c. 40, § 57. Defendants have available administrative remedies if they are aggrieved by such a denial, and, after exhausting their administrative remedies, Defendants can seek judicial review under G.L. c. 249, § 4.[1] Further, Defendants are not at substantial risk of irreparable harm if the injunction is not granted at this time given that Defendants' property interests are not presently in jeopardy.

Accordingly, as Defendants have not established the need for injunctive relief at this time, their motion is denied.

So entered this 10th day of June 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice
Western Division Housing Court

cc: Court Reporter

[1] Defendants are entitled to a timely decision on an application for a permit and may have a stronger argument for injunctive relief if Plaintiff fails to act on the application within a reasonable period of time.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1368

FEDERAL HOME LOAN
MORTGAGE CORPORATION,
PLAINTIFF

v.

TEMPORARY RESTRAINING ORDER

JOSEPH CRUZ, ET AL.,
DEFENDANTS

After hearing at which only Plaintiff appeared after notice, it clearly appears from the specific facts set out in the affidavits filed with the Clerk's Office that immediate and irreparable injury, loss or damage will result to the Plaintiff if a temporary restraining order is not granted. Accordingly, at 3:30 p.m., this 11th day of June 2021, Defendants and each and every one of them are order to desist and refrain from:

any conduct that causes health or building code violations at 401-403 Water Street, Springfield, MA, including without limitation storing unregistered motor vehicles, conducting an automotive repair operation and/or a junkyard, and failing to clear away the equipment, tools, scrap metal, car parts, trash, litter and other debris from the exterior.

This temporary restraining order shall remain in effect until the next Court hearing, which will take place on **July 12, 2021 at 12:00 p.m**. Upon two days' notice to Plaintiff, Defendants may apply to the Court to dissolve or modify the temporary restraining order. For good cause shown, Plaintiff shall not be required to give security for the issuance of this Order, and the $90.00 fee set forth in G.L. c. 262, § 4 for the issuance of an injunction or restraining order is waived.

Jonathan J. Kane

Jonathan J. Kane, First Justice
Western Division Housing Court

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

Housing Court Department
Western Division
No. 19-SP-3924

PHEASANT HILL VILLAGE ASSOCIATES LP,

Plaintiff,

v.

ORDER

MARIA LABASCO A/K/A MARIA LABOSCO AND THOMAS TROUGHTON,

Defendants.

After hearing on May 20, 2021 on the landlord plaintiff's motion for summary judgment, where landlord was represented by counsel, the defendant-tenant Maria Labasco appeared through LAR counsel, and co-defendant Thomas Troughton appeared *pro se*, the following order shall enter:

1. Pursuant to prior Orders of the Court dated February 25, 2021 and June 7, 2021, whereby some initial background has been discussed regarding summary judgment, and the parties will file joint pre-trial memorandum including agreed upon issues of fact the Court addresses the undisputed facts appropriately represented in the summary judgment record.

2. The plaintiff, Pheasant Hill Village Associates LP ("Pheasant Hill"), owns the property located at 64 Paul Revere Drive, Feeding Hills, MA 01030 ("Premises"). See Affidavit of Property Manager ("Grautier Affidavit").
3. The defendants, Maria Labosco ("Labosco") and Thomas Troughton ("Troughton") (and together, "Tenants"), reside at the Premises pursuant to a written occupancy agreement with a lease term commencing on March 22, 2019 and automatically renewing for successive one-year terms. See Grautier Affidavit, Exhibit A.[1]
4. In May 2019, federal agents executed a search warrant at the premises and arrested Labosco and Troughton. See Plaintiff's Motion for Summary Judgment Exhibit A.
5. Pheasant Hill filed this summary process case on September 16, 2019 following a rental period notice to quit, terminating the tenancy for lease violations related to the arrests. See Grautier Affidavit Exhibit B.
6. [redacted]. Pursuant to these conditions, she asserts that she is disabled and requests reasonable accommodation. See Labosco's Opposition to Plaintiff's Motion for Summary Judgment ("Labosco Opposition"), Exhibit A.
7. Pheasant Hill argues that Tenants violated their occupancy agreement and their "tenancy may be terminated where one member of the household or guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity." *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125 (2002).

[1] Schedule A, Subsidies Applicable to Unit and/or Resident of the occupancy agreement lists Section 8 project based assistance provided by HUD and administered by Mass Housing.

8. Labosco, through LAR-counsel, "agrees that her husband . . . . possessed and sold controlled prescription pills . . . . and that this constitutes a material breach of the lease." However, Labosco asserts that her accommodation request was reasonable "because Mr. Troughton's terms of supervision include substantial safeguards to prevent recidivism." See Labosco Opposition.

9. **Summary Judgment Standard:** The standard of review in determining whether to grant summary judgment is whether, viewing the evidence in light most favorable to the nonmoving party, all materials facts have been established and the moving party is entitled to judgment as a matter of law. See *Casseus v. E. Bus Co., Inc,*, 478 Mass. 786 (2018). At the summary judgment stage, the burden of proof is on the moving party to prove that there no material facts are in dispute. See, *Gurry v. Cumberland Farms, Inc.*, 406 Mass. 615 (1990).

10. **Discussion:** As this Court stated in its Order dated February 25, 2021, there is no question that the drug-related criminal activity being alleged in these eviction proceedings is extremely serious. "And, of course, there is an obvious reason why Congress would have permitted local public housing authorities to conduct no-fault evictions: Regardless of knowledge, a tenant who 'cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project.' 56 Fed.Reg., at 51567." *Rucker*, 535 U.S. at 134.

11. However, federal regulation applicable to "all programs or activities conducted by the [Department of Housing and Urban Development]," including Section 8 voucher program,[2] 24 C.F.R. § 9.131 states in part,

> In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

12. The Supreme Judicial Court ("SJC") has stated that "[t]he directive of 24 C.F.R. § 9.131 to consider objectively and specifically whether a reasonable accommodation will sufficiently mitigate the risk posed by the continued tenancy of a disabled person is not optional." *Bridgewaters*, 452 Mass. at 841. Once a reasonable accommodation request is raised, "the factors to be considered upon a tenant's request for reasonable accommodation include whether (1) the tenant is disabled; (2) there is a nexus between his disability and his conduct; and (3) the requested accommodation is reasonable." *Peterborough Hous. Associates, LP v. Garnier*, 99 Mass. App. Ct. 1114 (2021). "[T]he burden was on the landlord (and not [tenant]) to demonstrate that no

[2] See *Falmouth Hous. Corp. v. Flynn*, 2018 Mass. App. Div. 116 (Dist. Ct. 2018) (nonprofit corporation managing low to moderate income housing engaged in *Bridgewaters* assessment despite potential applicability of a "direct threat" exception.

reasonable accommodation was feasible." *Glendale Associates, LP v. Harris*, 97 Mass. App. Ct. 454, 464 (2020).

13. These questions raise issues of material fact not appropriate for summary judgment.[3] "[J]udges considering requests for reasonable accommodations should accompany their decisions with 'findings adequate to permit [appellate] review. Accordingly, . . . the judge should have addressed his request and made specific factual findings as to whether he established the requisite elements" (quotations and citations omitted). *Garnier*, 99 Mass. App. Ct. 1114 (2021).

14. This analysis is consistent with Federal Court reasoning. See *Sinisgallo v. Islip Hous. Auth.*, 865 F. Supp. 2d 307, 341 (E.D.N.Y. 2012) ("Whether a requested accommodation is required by law is highly fact-specific, requiring case-by-case determination" (quotations omitted)); *Brooker vs. Altoona Hous. Auth.*, W.D. Pa., No. 3:11-CV-95 (June 12, 2013) ("The reasonableness of a proposed accommodation is a question of fact"); *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814, 823 (D. Colo. 1995) ("if [tenant] is found to be disabled or handicapped, then there is at least a genuine dispute that his alleged disabilities or handicaps, ... are linked directly to the behavior which forms the basis for BHA's eviction action"); *Roe v. Sugar River Mills Associates*, 820 F. Supp. 636, 640 (D.N.H. 1993) ("the Act requires [landlords] to demonstrate that no 'reasonable accommodation' will eliminate or acceptably minimize the risk [tenant] poses to other residents . . . ., before they may lawfully evict him").

[3] "When considering a motion for summary judgment, the judge should not consider the credibility of the witnesses or the weight of the evidence, nor should the judge make findings of fact." *Riley v. Presnell*, 409 Mass. 239, 244, 565 N.E.2d 780 (1991).

15. **Conclusion:** All this is not to say that Pheasant Hill cannot carry this burden at trial. Only, based on the present record and for the reasons stated herein, Plaintiff's motion for summary judgment must be denied.

16. Trial is scheduled in this case for July 15 and 16, 2021. All pre-trial correspondence will be conducted according to this Court's Order of June 7, 2021.

So entered this _____ day of _____, 2021.

_____

Robert Fields, Associate Justice

Cc: Court Reporter

Uri Strauss, Esq., Community Legal Aid (LAR counsel for Labasco)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP964

ELIZABETH BENITEZ-GARCIA,

PLAINTIFF

v.

ORDER

VICTORIA REYES, ET AL.,

DEFENDANTS

This "no fault" summary process action was before the Court for trial on June 9, 2021. Plaintiff seeks to recover possession of 50 Vermont Street, Springfield, Massachusetts (the "Premises") from Defendants. Plaintiff appeared for trial with counsel. Defendant Victoria Reyes ("Ms. Reyes") appeared and represented herself. She informed the Court that the other defendants, her parents, recently passed away. The tenancy having been terminated without fault of Ms. Reyes, and Ms. Reyes having filed an answer that did not include defenses or counterclaims, the parties agreed that Plaintiff was entitled to a judgment for possession and that Ms. Reyes was only asking for additional time to move pursuant to G.L. c. 239, §§ 9 et seq.

After hearing, the following order shall enter:

1. Ms. Reyes will vacate, remove all belongings from the Premises and return the key to Plaintiff on or before August 31, 2021.

10 W.Div.H.Ct. 47

2. Ms. Reyes will be charged market rent ($1,000.00) for July and August but will not be charged for August if she vacates by August 1, 2021. Ms. Reyes does not need to make payments until she receives the notice of amounts due described in paragraph 3.
3. If Ms. Reyes vacates by August 31, 2021, no judgment for possession shall enter. Plaintiff will credit any deposits (including an agreed-upon $850.00 last month's rent deposit) and notify Ms. Reyes if she has any balance due. If there is a balance due, and if Ms. Reyes does not pay the balance within thirty (30) days, Plaintiff may mark up a hearing for entry of judgment for money damages only.
4. If Ms. Reyes fails to vacate by August 31, 2021, Plaintiff shall be entitled to judgment for possession and unpaid use and occupancy retroactive to today and immediate issuance of an execution (move-out order) by written application.

SO ORDERED this 15th day of June 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79SP000934

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

This case came before the Court on June 14, 2021 for a Zoom hearing on Plaintiff's motion for entry of judgment. Plaintiff appeared through counsel; Ms. Rivera appeared and represented herself. Plaintiff alleges that Ms. Rivera violated a material term of the Agreement of the Parties filed on March 11, 2021 (the "Agreement"), which incorporates the Court's preliminary injunction ordered in 20CV596 between the same parties.

After accepting the testimony of Ms. Moran (a resident of the property at 427 Front Street, Chicopee, Massachusetts) and Ms. Rivera and weighing the credibility of each, the Court finds sufficient evidence that the altercation that occurred on April 27, 2021 involving Ms. Rivera and her daughter on the one hand and Ms. Moran's family and their visitor on the other constitutes a substantial breach of a material term of the Agreement.[1] However, because the Agreement requires Ms. Rivera to move out on July 1, 2021, the Court will not enter judgment at

[1] The preliminary injunction ordered in 20CV596 and incorporated into the Agreement prohibited Ms. Rivera from "caus[ing] any disturbances (including without limitation playing loud music, making threats or engaging in verbal altercations) at the Property or otherwise disturbing (or allowing visitors to disturb) the quiet enjoyment of the other residents of the Property."

this time in order to allow Ms. Rivera time to vacate on her own. If she does not vacate and instead remains in possession of the unit after July 1, 2021, Plaintiff's counsel may file an affidavit attesting to this fact and Plaintiff will be entitled to entry of judgment for possession, retroactive to June 14, 2021, and immediate issuance of the execution.[2]

SO ORDERED.

DATE: 6/15/21

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

[2] Ms. Rivera is advised that, based on the Court's findings today, she should not expect this Court to grant any request for an extension of time to move.

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-CV-158

CITY OF HOLYOKE,

Plaintiff,

v.

REYSELY ADON RODRIGUEZ, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., MICHELLE MELENDEZ, MICHAEL DORAN, MAYGAN MELENDEZ, and JOCELYN BROCUGLIO,

Defendants.

ORDER

After hearing on June 16, 2021 on the plaintiff city's motion for the appointment of a receiver and for further hearing on whether the lender, Mortgage Electronic Registration Systems, Inc. (MERS) should be ordered to provide alternate accommodations to the second and third floor tenants, at which all parties appeared as well as the proposed receiver and its counsel, the following order shall enter:

1. **Background:** The first and second floor tenants support the motion for appointment of a receiver. MERS takes no position on said motion. The property owner opposes the motion and wishes to make the repairs himself but it is powerfully evident from the history of this case and form the past several hearings that he is unable to effectuate the repairs[1].
2. All parties other than MERS support an order that MERS provide alternate accommodations for the second and third floor tenants pending the repairs to the back porches.
3. Given that the city has cited the back porches as too dangerous to use, the tenants on the second and third floors are prohibited from residing in their units until the porches are made safe. The proposed receiver, Pioneer Valley Redevelopers, LLC, reported at the hearing that it will not accept the appointment if it is required to provide alternate accommodations for the second and third floor tenants pending repairs to the rear porches.
4. **Discussion:** The question before the court is whether MERS has acted in such a manner that it is considered an "owner" under the State Sanitary Code (105 C.M.R. 410.001). and, as such, provide alternate accommodations for the tenants until the porches are made safe.
5. The State Sanitary Code defines "owner" in relevant part as follows:

> Owner means every person who alone or severally with others:
>
> (1) has legal title to any dwelling...or

[1] For a detailed history of this code enforcement action see the Background portion of the Order on Petition to Enforce the State Sanitary Code and for Appointment of a Receiver at 40-42 James Street, Holyoke, MA that accompanies this Order.

(2) has care, charge or control of any dwelling...vacant or otherwise...or

(3) is a mortgagee in possession of any such property, or

(4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or

(5) is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner... (105 C.M.R. 410.020)

6. The State Sanitary Code thus defines owner disjunctively. For purposes of the pending motion for MERS to provide alternate housing pending repairs to the porches, this signifies that an owner is not limited to the title holder, nor only to a mortgagee in possession, but also extends to a "person," defined to include a "firm, association, or group, including a...governmental unit..." who or which has "care, charge, or control of any dwelling."
7. On March 12, 2021 at a hearing on the city's motion for the appointment of a receiver, MERS asked the court to hold off on considering a receivership to allow MERS to investigate and consider making the repairs itself to avoid the need for an appointment of a receiver. That request was granted and the city's motion was continued to allow MERS to develop a plan to address outstanding code violations.
8. On April 20, 2021, MERS provided a repair plan and also committed to repairing all outstanding violations whether listed in their plan or not. Based on the MERS' taking on the repairs, the motion by the city for appointment of receivership was put off further.

9. MERS may well be undertaking selective activity at the property strategically, understandably prioritizing its security interest in the property, but these decisions in and of themselves also represent control over the property. Exercising the authority and discretion to make any and all repairs necessarily signifies that MERS has sufficient control to make other repairs, consistent with its contractual rights pursuant to the mortgage.

10. Based on the foregoing, the court rules that MERS is an "owner" of the property within the meaning of the State Sanitary Code. As such, the court would have authority to order it to make all the repairs cited at the property (including the porches which were cited as far back as March, 2020), but the bank is no longer seeking to make repairs due to its assessment of their costs as related to the value of the property. That said, as "owner" under the State Sanitary Code MERS shall be held responsible for housing the second and third floor tenants in alternate accommodations pending the city's allowance for re-occupancy.

11. **Conclusion:** Therefore, the city's motion to appoint the receiver is allowed, the specifics of which are detailed in a separate appointment order issued simultaneously with this order and with a directive that the receiver prioritize repairs to the porches so as to shorten the time that the tenants will require alternate housing. Further, MERS shall FORTHWITH, and until the city approves the premises for re-occupancy, be responsible for provide alternate accommodations for the second and third floor tenants that have cooking facilities. If said alternate accommodations do not have cooking facilities, those

tenants and MERS shall discuss a daily food stipend and if they are not able to agree to same, any party may motion the court for an order on that issue.

So entered this 17th day of July, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-126

CARIE BAILLY,

PLAINTIFF

V.

EDWARD J. MORACE,

DEFENDANT

ORDER ON DEFENDANT'S MOTION TO DISMISS

This matter came before the Court on June 17, 2021 on Defendant's motion to dismiss based on lack of subject matter jurisdiction. The case involves injuries Plaintiff suffered in the yard of Defendant's home at 266 Powdermill Road, Westfield, MA (the "property"). Plaintiff was not an occupant of the property; she was present because she accompanied an acquaintance of Defendant who went to the property to assist Defendant with yard work.[1]

The Housing Court has jurisdiction over civil actions concerned with the health, safety or welfare of any occupant of residential housing. *See* G.L. c. 185C, § 3. The Court's jurisdiction expands to any user of real property and the general public if the property and activities conducted thereon are subject to regulation by cities and towns under state building code, state specialized codes, the state sanitary code and or other applicable statues and ordinances. *Id.*

Plaintiff was not an occupant of the property. Plaintiff made no showing that the yard work in question, namely cutting removing a tree limb, is subject to regulation by any state code or other

[1] In reviewing the sufficiency of a complaint for purposes of a motion to dismiss, "we accept as true the factual allegations of the complaint and the reasonable inferences that can be drawn from those facts in the plaintiff's favor." *Foster v Commissioner of Correction*, 484 Mass. 1059, 1059 (2020).

applicable statute or ordinance. Although the State Sanitary Code requires owner of any parcel of land to "correct any condition caused by or on such parcel or its appurtenance which affects the health or safety and well-being of the occupants of any dwelling or of the general public" 105 CMR § 410.602, the purposes of the State Sanitary Code "are to protect the health, safety and well-being of the occupants of housing and the general public, to facilitate the use of legal remedies available to occupants of substandard housing, to assist boards of health in their enforcement of this code and to provide a method of notifying interested parties of violations of conditions which require immediate attention." 105 CMR § 410.001. There is no evidence that the tree limb in question posed a risk to the general public.[2]

Based on the foregoing, the Court has serious questions about its subject matter jurisdiction in this matter. Further, the Court does not deem this to be an appropriate case to request interdepartmental transfer. Accordingly, Defendant's motion to dismiss is ALLOWED.

SO ORDERED this 18th day of June 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[2] The complaint avers only that tree limb obstructed Defendant's ability to freely travel throughout his yard on his scooter.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-298

BEACON RESIDENTIAL MANAGEMENT, L.P. and Managing Agent for BAYSTATE PLACE, L.P.,

Plaintiff,

v.

TIMOTHY SCOTT, et al.,

Defendants.

ORDER

After hearing on June 16, 2021 on various motions filed by the parties, at which the plaintiff appeared by counsel, the defendant Timothy Scott and Sylvia Scott appeared pro se, and for which the G.A.L. appointed to defendant Frederick Scott appeared, the following order shall enter:

1. The plaintiff's motions to challenge the applicability of the CDC order and/or declaration and the plaintiff's motion to quash the subpoena duces tecum are

continued to a date noted below. Until further order of the court the plaintiff shall not be required to respond to said subpoena.

2. The defendant Timothy Scott's motion for a continuance is withdrawn. Mr. Scott's motion to compel shall be re-filed in the format described by the judge at the hearing (with the request and the response written out in their entirety and followed with argument as to why the court should compel further responses. Said motion shall be filed and served by no later than 30 days from the date of this order. The plaintiff shall have 14 days thereafter to serve and file its response to said motion.
3. Mr. Scott's motion for leave to file an Amended Answer, which is based on his desire to have his claims arising out of his allegations that violations of the State Sanitary Code have continued and new ones have occurred since the filing of the original Answer, is allowed.
4. Mr. Scott's motion to void the lease and dismiss the case is moot due to the parties' stipulation on the record that at the time that the tenancy was terminated, it was a month to month tenancy.
5. Mr. Scott's motion for leave to take depositions is continued to allow resolution of his motion to compel.
6. The plaintiff's motion for an order that the defendant tenants pay their use and occupancy into the court pending trial was heard.
7. The plaintiff's motion was not accompanied by an affidavit nor did it aver as to the landlord's financial situation or how it would be effected if the tenants are not ordered to pay their use and occupancy into the court. The tenants are asserting

counterclaims which allege breach of the warranty of habitability, breach of the covenant of quiet enjoyment, retaliation, and consumer protection. In consideration of the standards when considering a request for injunctive relief including irreparability and upon reflection of the factors articulated in *Davis v. Comerford*, 483 Mass. 164 (2019), the motion would be denied. However, Mr. Scott has agreed to make monthly payments into court of $536 pending final adjudication of this case and to an order of the court to that effect.

8. Accordingly, Mr. Scott shall be required to make monthly use and occupancy payments to the court's Clerk's Office in the amount of $536 pending a final adjudication in this matter beginning in July, 2021. Mr. Scott is instructed to make such payments each month at the Clerk's Office in Springfield and the form of said funds shall be either certified funds (including money orders) or cash.
9. The Guardian Ad Litem for Frederick Scott shall file his next report by August 2, 2021.
10. A Case Management Conference and hearing on any and properly marked motions shall be scheduled for **August 5, 202 at 11:00 a.m. by Zoom**. The Clerk's Office shall provide written instructions on how to participate in said hearing by Zoom.

So entered this 21st day of June, 2021.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-3473

ELKAY MANAGEMENT, INC.,
PLAINTIFF

v.

STARR MORIN,
DEFENDANT

ORDER FOR ISSUANCE OF EXECUTION WITH STAY TERMS

1. In this summary process action, Defendant agreed to vacate by June 1, 2020 pursuant to an agreement dated November 20, 2019. Plaintiff now seeks issuance of the execution.
2. Defendant is not entitled to the protections afforded by Stat. 2020, c. 257 as amended by Stat. 2021, c. 20, because the obligation to vacate pre-dated the COVID-19 pandemic. Moreover, she has remained in possession for more than a year after the move-out date and thus has received the benefit of housing stability during the Massachusetts COVID-19 State of Emergency.
3. Plaintiff is entitled to issuance of an execution for possession only but shall not use it to schedule a levy prior to August 1, 2021.

SO ORDERED

Date: 6/21/21

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-356

PAUL TRZCINSKI,

PLAINTIFF

V.

LAYCE BATOR,

DEFENDANT

TEMPORARY RESTRAINING ORDER

This case came before the Court on June 18, 2021 for a Zoom hearing on Plaintiff's emergency motion for injunctive relief. After a hearing at which Defendant did not appear,[1] it clearly appears from the specific facts set out in the verified motion and the affidavits submitted with the motion that immediate and irreparable injury, loss or damage will result to the Plaintiff and to other residents if a temporary restraining order is not granted.

Accordingly, at 3:45 p.m., this 18th day of June 2021, the following temporary restraining order shall enter, which order shall remain in effect until further order of the Court:

1. Defendant shall not allow Samantha K. Clifford or Kevin J. Sadlow, Jr. into her rental unit at 25 Pleasant Street, Apt. D, Adams, Massachusetts (the "Premises");
2. Defendant shall not allow anyone to live in the Premises who is not listed on the lease;

[1] Defendant was served by deputy sheriff at her home on June 16, 2021; moreover, the Court attempted to reach Defendant prior to commencement of the hearing.

10 W.Div.H.Ct. 62

3. Defendant shall not threaten, harass, intimidate or cause physical harm to any other person at and immediately adjacent to the Premises, including any outdoor or indoor common areas;
4. Defendant shall not sleep or store any personal items in the hallways or any other common areas;
5. Defendant shall use the fire escape for emergency purposes only;
6. Defendant shall enter and exit only through the Premises' doors, and shall contact the property manager if locked out;
7. Defendant shall not cause disturbances or interfere with the quiet enjoyment of other residents, including maintaining quiet hours after dark;
8. Defendant shall be responsible for the conduct of her guests;
9. Defendant shall not dig into any dumpster on the Premises and shall bring any items from the dumpster into the Premises;
10. Defendant shall maintain sanitary conditions in the Premises;
11. Defendant shall not change the locks to the Premises, and to the extent she has already done so, she shall provide a key to management prior to the next Court date;
12. Defendant shall not engage in any illegal activities in the Premises or common areas;

This temporary restraining order shall remain in effect until the next Court hearing, which will take place on **June 28, 2021 at 10:00 a.m**. Defendant may appear at the Western Division Housing Court for the hearing, or she may contact the Clerk's Office for assistance in connecting to the hearing by telephone or video. At the next hearing, each party may present witnesses and testimony and request modification or extension of this temporary restraining order. Plaintiff's

motion for injunctive relief pursuant to G.L. c. 139, § 19 shall be continued to the same date and time. Because a motion for possession brought pursuant to G.L. c. 139, § 19 can involve allegations of criminal conduct, Defendant is strongly encouraged to seek advice from a lawyer to protect her Fifth Amendment privilege against self-incrimination.

For good cause shown, Plaintiff shall not be required to give security for the issuance of this Order, and the $90.00 fee set forth in G.L. c. 262, § 4 for the issuance of an injunction or restraining order is waived.

SO ORDERED.

DATE: 6-21-21

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-923

TONI RAPIER C/O CAVALIER, MANAGEMENT,	)	
PLAINTIFF	)	
V.	)	**ORDER ON DEFENDANT STEPHANIE RIVERA'S MOTION TO DISMISS**
MIGUEL VALENTIN AND STEPHANIE RIVERA,	)	
DEFENDANTS	)	

This matter came before the Court on June 21, 2021 on Defendant Stephanie Rivera's motion to dismiss based on lack of subject matter jurisdiction. Defendant Rivera and Plaintiff both appeared through counsel, and both submitted affidavits in support of their respective arguments.[1]

Pursuant to G.L. c. 239, § 1, summary process is a remedy available to one with a superior right to possession of real property ("the person entitled to the land or tenements may recover possess" using summary process). The plaintiff in a summary process action must be either the owner of the subject property or the lessor. *Rental Property Management Services v. Hatcher*, 479 Mass. 542, 546 (2018).

In this case, Plaintiff, in his individual capacity, is neither the owner nor the lessor. The record owner of the subject property is the Rapier Family Nominee Trust (the "Trust"). Plaintiff is a trustee of the Trust. Defendant Rivera argues that a trustee of a nominee trust is merely an agent for the beneficiaries of the trust and, as such, is neither the owner nor the lessor; consequently,

[1] The facts referenced in this order that are not part of the complaint are drawn from such affidavits.

Defendant Rivera contends that Plaintiff, even in a trustee capacity, is not authorized to bring this action.

The Court disagrees. The trustee of a nominee trust that owns residential property is a proper plaintiff in a summary process case. This is particularly true here, where Plaintiff (as trustee of a different trust) is the sole beneficiary of the Trust. Accordingly, the Court rules that Plaintiff, acting in a trustee capacity for the Trust, is the "owner" for purposes of this summary process matter.[2] The motion to dismiss is denied.

SO ORDERED this 23rd day of June 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[2] The fact that Plaintiff did not identify himself as the trustee of the Trust is not fatal and he may amend the complaint to reflect his capacity as trustee of the Trust. *See, e.g., Labor v. Sun Hill Industries*, 48 Mass. App. Ct. 369, 371 (1999) (plaintiffs permitted to substitute their individual names to describe more accurately who from the outset had been trying to enforce claim).

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1657

RONALD RUELL,

PLAINTIFF

v.

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

RAYNER ENYONG,

DEFENDANT

This no-fault summary process action was before the Court for an in-person trial on June 17, 2021. Plaintiff seeks to recover possession of 121 Albermarle Street, Springfield, Massachusetts (the "Premises") from Defendant. Plaintiff appeared for trial with counsel. Defendant appeared and represented himself. Plaintiff filed a First Amended Plaintiff's Affidavit Concerning CDC Order attesting that he has not received a declaration from Defendant as provided in the CDC Order.[1] Because this case was not commenced for non-payment of rent, the provisions of Stat. 2020, c. 257, as amended by Stat. 2021, c. 20, do not apply.

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

[1] The *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, issued by the Centers for Disease Control and Prevention on September 4, 2020 can be found at 85 Fed. Reg. 55292 ("CDC Order"). Because Plaintiff did not provide a declaration, he is not entitled to the protections set forth in the CDC Order at this time.

Defendant rents a bedroom at the Premises. He moved into the Premises in September 2019. Rent is $100.00 per week. He has made no payments since November of 2019. Plaintiff claims the amount of $7,200.00 in rent is unpaid through the trial date. The Court finds that Plaintiff served a legally adequate notice to quit, which Defendant acknowledges receiving. Accordingly, Plaintiff has satisfied all elements of his prima facie case for possession and damages.

Defendant did not file an answer but asserted at trial that rent should be abated due to substandard conditions. A tenant, particularly one who is self-represented, does not necessarily waive the right to assert affirmative defenses by failing to file a timely answer. *See Morse v. Ortiz-Vazquez*, ___ Mass. App. Ct ___ (Docket No. 20-P-342, April 13, 2021). Therefore, without objection by Plaintiff, the Court permitted Defendant to present testimony and evidence regarding the conditions of the Premises.

Defendant concentrated his defense on findings made by the City of Springfield's Department of Code Inspections in the Spring of 2020 regarding substandard conditions at the Premises. At Defendant's request, the Court took judicial notice of a City of Springfield code enforcement case, 20H79CV000187 (the "code case").[2] The code case was filed with this Court on March 11, 2020, based on the results of inspections of the Premises on February 28, 2020 and March 3, 2020. The City cited a number of material defects at the Premises, including an open gas line, a lack of heat or hot water, missing and/or defective smoke detectors, improperly vented space heaters, locking devices causing entrapment, cracked/rotted floors and water damaged walls and ceilings. As a result of the initial inspection, the Premises were condemned.

[2] Despite recently attempting to intervene, Defendant is not and never was a party to the code case.

At the initial Court hearing in the code case, some or all of the occupants (it is not clear from the file) were ordered to vacate the Premises. The City did not return to the Court seeking additional relief until late December 2020, nine months later. The next Court agreement, made on February 17, 2021, makes no reference to the condemnation but it does reference representations by Plaintiff that the code violations had been corrected.

Without more, the code case does not provide the Court with a sufficient basis to find that Defendant is entitled to an abatement of rent. The code case does not indicate how and to what extent the condition of the Premises affected Defendant. Defendant did not testify that he had to leave the Premises, even temporarily, due to their condition; in fact, the evidence shows that, despite the code violations, Defendant did not vacate.[3] He did not testify that he was ever without heat, hot water or cooking facilities. He provided no evidence (nor does the code case contain information) from which the Court could determine how much time passed before the condemnation was lifted or which violations related to the living area where Defendant resided.[4] On this record, the Court has no basis to determine that Defendant is entitled to any relief. Without any such evidence, the Court finds that Defendant has no legal defenses to Plaintiff's claims.

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

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[3] Defendant testified that he lived at the Premises continuously from September 2019 to the present, but for "a couple of weeks he stayed with friends eight or nine months ago."

[4] Defendant cites to two small claims cases, 19H79SC000222 and 20H79SC000022, as evidence that he brought the poor living conditions to the Court's attention. In both cases, however, final judgment entered against Defendant.

1. Judgment shall enter for the Plaintiff landlord for possession and damages in the amount of $7,200.00, plus court costs.
2. An execution (eviction order) shall issue by application upon expiration of the statutory appeal period.[5]

SO ORDERED this 23rd day of June 2021.

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

cc: Court Reporter

[5] Because this case was brought as a no fault eviction, Defendant has a right to seek a stay on use of the execution pursuant to G.L. c. 239, §§ 9 and 10. Any such request must be made by motion with a copy sent to Plaintiff's counsel.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-4588

DIOMEDES CHAVEZ,

PLAINTIFF

V.

MARIA RAMOS, ET AL.,

DEFENDANTS

ORDER

This summary process case came before the Court by Zoom on June 22, 2021. Plaintiff appeared through counsel; Defendant Ramos appeared and represented herself. The Court considered Plaintiff's motion for entry of judgment and issuance of the execution for possession as well as Ms. Ramos' request on behalf of all of the Defendants for the maximum allowable stay under G.L. c. 239, § 9.[1]

With respect to a further stay, the Court determines that the stay has been in place for no less than eleven months. An agreement was entered on November 15, 2019 pursuant to which Defendant Ramos agreed to vacate on June 1, 2020, a period of approximately six months from the trial date. After three months, the COVID-19 state of emergency caused deadlines in Court agreements to be tolled through October 2020. The balance of the original stay (three months) ended on February 1, 2021. Since that date, five additional months have passed (including the current month of June 2021), and therefore Defendants have had the benefit of a stay for eleven

[1] For purposes of this hearing, the Court accepts Defendant's representations that she qualifies as a "handicapped person" as that term is defined in G.L. c. 239, § 9.

months. The Court will extend the stay through August 1, 2021, at which point they will have had benefit of the maximum 12-month stay provided in G. L. c. 239, § 9.

The Court is unwilling to extend the stay beyond August 1, 2021, despite the disabilities described by Defendants. The Court must balance the equities and take Plaintiff's interests into account as well. [redacted], and Plaintiff purchased the subject premises in 2019 because of its proximity to Baystate Medical Center. He has been unable to take possession for more than 18 months.

Despite the Court's unwillingness to extend the vacate date beyond August 1, 2021, at Defendants' request, Plaintiff agreed not to use the execution before August 15, 2021. Accordingly, the Court orders that Defendants must vacate the premises no later than August 15, 2021. Defendants must continue to pay use and occupancy through the vacate date. If they fail to vacate on or before this date, Plaintiff may submit an affidavit to this effect along with an application for entry of judgment as of today and issuance of the execution. Defendants will not be entitled to any further stays.

SO ORDERED this 25th day of June 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, ss:

Housing Court Department
Western Division
No.: 21-SP-00951

RAINBOW PROPERTIES, LLC c/o DASTOLI PROPERTIES, LLC,

Plaintiff,

ORDER

v.

ANDREA K. SHADER,

Defendant.

After hearing on June 6, 2021 on the defendant tenant's motion to dismiss and the tenant's motion for late Filing of an answer and discovery demand, at which the plaintiff landlord appeared through counsel and the tenant appeared pro se, the following order shall enter:

1. **Motion to Dismiss: Standing:** G. L. c. 239, § 1 permits a plaintiff to bring a summary process action to evict a tenant and recover possession of his or her property only if the plaintiff is the owner or lessor of the property. *See Rental Property Management Services v. Hatcher*, 479 Mass. 542, 547 (2018). The tenant contends that the lease agreement between the parties lists "Joel Minnick" as the Lessor and that there is not a revised lease naming Rainbow Properties and/or Dastoli Properties, LLC as the Lessor, and consequently, Rainbow Properties does not have standing to bring this summary process action. However, it is well settled law that an owner is entitled to bring a summary process action. G. L. c. 239, § 1. Rainbow Properties is the owner of the premises, as evidenced by the deed recorded on or about April 28, 2017 at the Hampshire County Registry of Deeds

at Book 12608, Page 115. Accordingly, Rainbow Properties has standing to bring the summary process action at hand.

2. **Notice to Quit:** The tenant also questions whether the Notice to Quit provided sufficient notice to terminate the lease because the lease states that after the full lease period, the tenancy will be a month-to-month tenancy and 60 days' notice is required. A summary process action can be brought only if the tenancy has been properly terminated. G. L. c. 239, § 1. "To recover the possession of real estate under the provisions of [the summary process statute], it is essential ... the tenancy previously subsisting had been terminated." *Ratner v. Hogan*, 251 Mass. 163, 165 (1925). If a lease is involved, the owner must take the steps outlined in the lease for termination, as failure to adhere to the lease provisions is usually fatal. *See Shannon v. Jacobson*, 262 Mass. 463 (1928).

3. The parties' lease states: "beginning on March 2, 2020 to February 28, 2021, month to month after with 60 days' notice." Rainbow Properties' Notice to Quit is dated January 27, 2021, which is 32 days before the expiration of the lease. At that time, the lease had yet to turn into a month to month lease, and the 60 days' notice provision did not apply. Consequently, the Plaintiffs' notice to not renew the lease sufficiently terminated the tenancy.

4. Before filing a summary process eviction action in court, a landlord must serve his or her tenant with a notice to quit informing the tenant that after a specific period of time, the landlord intends to evict the tenant. G. L. c. 239, § 1; *Youghal, LLC v. Entwistle*, 484 Mass. 1019, 1022 (2020). The terms of the notice to quit must be "timely" in accordance with the requirements of the lease and of the law – the notice must give the tenant a full 14 days if for nonpayment, or else a full 30 days (and at least a full rental period) to vacate. *Connors*

v. Wick, 317 Mass. 628, 630-31 (1945). As aforementioned, Rainbow Properties' Notice to Quit dated January 27, 2021 is 32 days before the lease was set to expire, and therefore provided the tenant with adequate notice.

5. **Motion for Late Answer and Discovery:** The tenant's motion for late filing of an Answer and Discovery Demand is hereby allowed, including the jury demand therein.

6. **Order**: Based on the foregoing, I find that the landlord properly terminated the tenancy and provided the tenant with a Notice to Quit that complied with the required timelines and the tenant's motion to dismiss based on standing is hereby DENIED. Additionally, the tenant's motion for late filing of answer with jury demand and discovery demand is allowed and same have already been filed and served.

7. **Case Management Conference:** The Clerk's Office shall schedule this matter for a Case Management Conference to discuss scheduling and deadlines and shall send notice to the parties of same.

So entered this 28th day of June, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SPRINGFIELD, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0394

VINCENTO MARTINEZ RODRIGUEZ,

PLAINTIFF

V.

LUIS SOUSA AND MARIA SOUSA,

DEFENDANTS

ORDER REGARDING TEMPORARY HOUSING

This matter came before the Court by Zoom on June 28, 2021 for further proceedings following a June 25, 2021 hearing at which the Court ordered Defendants to provide temporary alternative housing for Plaintiff and his family following a fire that caused Plaintiff's dwelling at 315 Chicopee Street, Chicopee, MA (the "Premises"). The parties appeared without counsel. After hearing, the following order shall enter:

1. Defendants shall continue to provide hotel accommodations in the same manner as currently provided through and including tonight (June 28, 2021).
2. In place of a continuing obligation to provide alternative housing, Defendants have agreed to pay and Plaintiff has agreed to accept a lump sum payment of $2,500.00. Of this sum, $500.00 will be made available today and $2,000.00 tomorrow, June 21, 2021.
3. This payment does not include the Plaintiff's right to be reimbursed by Defendants' insurance carrier for up to $750.00 for his actual costs of hotel room rental and the other expenses related to displacement by fire as set forth in G.L. c. 175, § 99,

Fifteenth A. Defendants shall make best efforts to have their insurance company made this payment to Plaintiff forthwith.

4. By accepting this payment, Plaintiff surrenders legal and actual possession of the Premises and Defendants will have no further obligation to provide alternative housing. Plaintiff does not, however, give up any rights with respect to any other claims he may have against Defendants, including for damage to property. The payment described in this order only pertains to the issues of possession and alternative housing.

5. Defendants shall immediately provide Plaintiff with all information necessary for Plaintiff to be reimbursed by Defendants' insurance carrier for up to $750.00 for his actual costs of hotel room rental and the other expenses related to displacement by fire as set forth in G.L. c. 175, § 99, Fifteenth A.

SO ORDERED this 28th day of June 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Berskhire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1102

SHYAMJI, INC. d/b/a TRAVEL LODGE,

Plaintiff,

v.

MARY OSTRANDER, AMY PALMER, and DAVID ADAMSON,

Defendants.

ORDER

This matter came before the court for trial on June 23, 2021, at which the plaintiff landlord appeared through counsel and the defendant tenants appeared *pro se*. After consideration of the evidence admitted at trial, the following facts, rulings of law, and order shall enter.

1. **Background:** The plaintiff, Shyamji, Inc. d/b/a Travel Lodge (hereinafter, "landlord") owns and operates a Travelodge hotel in Great Barrington, Massachusetts. The defendants. Mary Ostrander. Amy Palmer, and David

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Adamson (hereinafter, "tenants") rent Room 302 (hereinafter, "premises") for $75 per day. This tenancy began June 15, 2020.

2. On or about December 23, 2020 the landlord terminated the tenancy for non-payment of rent and thereafter timely filed this instant summary process (eviction) action. The tenants filed an Answer with Counterclaims asserting claims arising from alleged bad conditions, retaliation, discrimination, breaches of the covenant of quiet enjoyment, and violations of the consumer protection statute.

3. **Landlord's Claim for Possession and for Use and Occupancy:** The parties stipulated to the Notice to Quit (hereinafter, "Notice") that has been entered into evidence and the amount of unpaid rent through the date of trial as **$19,275**. That said, the tenants asserted in their Answer that the Notice was defective. At trial, the tenants challenged the manner in which the Notice was served, stating that it was left at the last and usual (they found it on their porch) and not in hand. Given that the Notice is not required to be served in hand only that the landlord meet its burden of proof that it was received by the tenants---and the tenants agree that they received it---the court finds that the service of the notice was sufficient. The landlord having established its *prima facie* case, the court shall address the tenants' counterclaims and defenses in accordance with G.L. c.239, s.8A.

4. **Tenants' Claim of Breach of the Covenant of Quiet Enjoyment:** Contrary to the landlord's belief as indicated in the Notice, after three consecutive months of a tenancy in a hotel or rooming house, the tenancy becomes one at-will. As at-

will tenants, the Covenant of Quiet Enjoyment applies to this tenancy. G.L. c.186, s.14.

5. The terms of this tenancy, being located in a hotel, include weekly cleaning of the premises, new linens and towels each week, and supplying toilet paper. Understandably, said linens and towels should be intact ad not torn. Additionally, the tenants owned tires that were stored at the hotel without incident for their entire tenancy and, as such, became a part of the tenancy. Once the tenants stopped paying their rent, in approximately October 2020, the landlord ceased the weekly cleaning of the premises and supplying fresh linens and towels and toilet paper. Additionally, the linens and towels provided were damaged and/or torn. Lastly, the landlord demanded the removal of the tenants' stored tires without sufficient notice---making a unilateral change to the tenancy that had come to include said storage.

6. As a matter of law, a landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his act causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

7. The court does not credit the testimony of the landlord's witness, Krunal Madhuwala, who is the Hotel Manager, who said that he could not provide any services or repairs to the premises because the tenants refused him entry. Though the tenants indicated in a letter sent to the landlord's attorney in May 2021 that the landlord's intention to enter the unit at that time would not be permitted, the court does not credit Mr. Madhuwala's testimony that between October 2020 and May 2021 the tenants refused the landlord entry into the unit for weekly cleanings or for replenishment of towels, linens, and toilet paper.
8. The court finds and so rules that the above acts and omissions by the landlord seriously interfered with the tenancy. Not having proven damages, the court awards the tenants the statutory damages of three months' rent, totaling **$6,843.36** ($75 per day equals $2,281.12 per month). See, G.L. c.186, s.14.
9. **Warranty of Habitability:** From the commencement of the tenancy, significant portions of the walls at the premises have been peeling paint and there was a crack in the fiberglass bathtub that was painted over and were never remedied. Additionally, since the commencement of the tenancy the ceiling fan unit in the bathroom did not work. From early on in the tenancy, the premises have contained mold or some similar form of black organic substance growing in various rooms which went unabated and worsened. The unit was also infested with bugs and was not treated for same. The court credits the tenants' testimony that they repeatedly informed the landlord about these conditions from the beginning of the tenancy. Thereafter, on January 6, 2021 The Great Barrington

Health Department inspected and cited the premises for the bathroom fan, for leaks, for peeling paint, and for excessive moisture.

10. The court does not credit the landlord's witness, Mr. Madhuwala, that he did not fix the bathroom fan because the tenants had said that if he supplied the parts they would fix it nor that failures to address the conditions of disrepair at the premises was because the tenants refused entry, other than after the May, 2021 letter. The court also does not find Mr. Madhuwala credible that the first time he is hearing about the Board of Health citation was during the trial.

11. All of these conditions constitute violations of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code, 105 C.M.R. 410.00 et seq. These conditions at the premises constitute a defense based upon breach of the implied warranty of habitability, for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).

12. The court finds that the fair rental value of the premises was reduced by 30%, on average, as a result of these conditions of disrepair from June, 2020 through

April, 2021 (in May, 2021 the tenants informed the landlord that it could not enter their unit).

13. Thus, the court awards the tenants **$6,843.36** for the landlord's breach of the warranty of habitability (this represents 30% of the contract rent for ten months).

14. **Consumer Protection Statute, G.L. c.93A:** By failing to maintain the premises in accordance with the State Sanitary Code and by ignoring the tenants' complaints about the worsening conditions of disrepair, the landlord committed unfair and deceptive trade practices in violation of G.L. c. 93A, and the Attorney General's regulations thereunder, 940 CMR 3.17. Pursuant to c. 93A, s.9(3), the landlord is liable for multiple damages, not less than double nor more than treble the value of the warranty of habitability damages, if his violation was "willful or knowing." "The 'willful or knowing' requirement of s.9(3), goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the defendant knows it or not, amount to violations of the law. *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987).

15. Although the facts of this case would arguably justify an award of treble damages, I am exercising my discretion to award double damages under c. 93A, or **$13,686.72**.

16. Additionally, having focused on the Notice because of the tenants' motion to dismiss for a defective notice to quit, the court finds that the landlord violated the Consumer Protection Act by including certain language in said Notice. The Notice states in its first paragraph that the "...protections of G.L. c.186, s.14 do

not apply..." Tenancies, such as this instant one, though located in a hotel become at-will tenancies after three months. The Notice was given to the tenants after more than six months of the tenancy. Thus, the Notice misstates the law regarding the applicability of G.L c.186, s.14. Additionally, the Notice is misleading and equivocal regarding the tenants' cure rights. More specifically, the fourth paragraph of the Notice states in relevant part:

> ...all monies paid by you will be accepted solely for use and occupancy of the premises and we will accept payment with the reservation of rights under this Notice to Quit and any eviction proceedings based on this Notice. A new tenancy will note be created by such payment."

In the following paragraph, the Notice states:

> While you are Tenants at Sufferance, you have no right to reinstate your rights to use and occupancy. However, since you have not received a Notice to Quit prior to this Notice, we will allow you to prevent termination of your occupancy rights by paying or tendering to Travelodge...the full amount of monies due within ten (10) days of receipt of this Notice.

17. These paragraphs are contradictory and confusing and tend to deceive relative to the tenants' statutory cure rights pursuant to G.L. c.186, s.12. The court finds and so rules that they violate G.L. c.93A and with no actual damages asserted the court shall award a nominal fee of **$50.**

18. **The Tenants' Remaining Claims:** At the conclusion of the tenants' case, the landlord moved for directed verdict on two of the tenants' counterclaims: Retaliation and Discrimination. The court took said motion under advisement and hereby allows said motion and dismisses those two claims.

19. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A judgment shall enter for the tenants for possession and for **$1,305.08**. This represents an award of damages for the tenants totaling

$20,580.08 MINUS the award of damages for the landlord for use and occupancy of $19,275.

So entered this 28th day of June, 2021.

Robert Fields, Associate Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1606[1]

STACEY M. HEALEY,

Plaintiff,

v.

DANIEL CHAO,

Defendant.

ORDER

This matter came before the court for trial on March 12, 2021, at which both parties appeared with counsel. After consideration of the evidence admitted therein, the following findings of facts, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Stacey M. Healey (hereinafter, "landlord") owns a two-family house located at 40 Richmond Lane in Adams, Massachusetts. The defendant, Daniel Chao (hereinafter, "tenant") rents Unit 1 at said location

[1] The civil action of *Daniel Chao v. Stacey Healy*, 20 CV 324 is consolidated with this summary process matter for all purposes

(hereinafter, "premises") at a monthly rent of $800. The tenancy began on December 1, 2018. On or about October 22, 2020 the landlord served the tenant with *no fault* rental period notice terminating the tenancy as of December 1, 2020. Thereafter, the landlord filed this instant summary process (eviction) matter. The tenant filed an Answer, asserting claims of breach of the warranty of habitability, breach of the covenant of quiet enjoyment, retaliation, and consumer protection violations.

2. **The Landlord's Claim for Possession and Use and Occupancy:** The parties stipulated to the *prima facie* elements of the landlord's claim for possession. The parties agreed to the service of a notice to quit for no-fault and with the timeliness of the summary process filing. The parties also stipulated that through the month of trial (March 2021) the outstanding balance of unpaid rent, use, and occupancy totaled **$9,450**. What remains for adjudication by the court are the tenant's claims and the landlord's defenses to same. Each will be addressed in turn below.

3. **The Tenant's Claim of the Breach of the Covenant of Quiet Enjoyment; G.L.c. 186, s.14:** The premises were cross-metered since the commencement of the tenancy which resulted in the tenant paying for the electricity for items not exclusively used by him such as the washing machine and the furnace which provided heat to the landlord's unit

4. G.L. c.186, s.14 prohibits a landlord from transferring the costs of utilities to a tenant without his consent. Though the tenant eventually became aware of this cross-metering he never consented to it and, in fact, sought the landlord's repair

of this condition earlier in the tenancy, well before the Board of Health citation in April 2020.

5. Not having proven actual damages, the court awards the tenant the statutory damages of three months' rent, totaling **$2,400,** plus reasonable attorneys' fees and costs. G L. c.186, s.14.

6. **The Tenant's Second Prong of Breach of the Quiet Enjoyment:** On March 26. 2020 the landlord unilaterally curtailed the tenant's use of the outdoor playset and trampoline and stopped the sharing of the internet access, all which had become part of the tenancy. In August 2020 the landlord reduced the tenant's use of the driveway by eliminating a second parking spot that had always been part of the tenancy. In December 2020, the landlord stopped the trash pick-up for the tenant's trash---and even removed the trash receptacle---which had been included in the tenancy from its inception.

7. As a matter of law, a landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his act causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon* 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

8. Nothing the landlord, nor her husband, stated during the trial moved the court from a finding that the landlord was at least negligent in the above curtailments of aspects of the tenancy. As such, the court shall award the tenant the statutory

damages of three months' rent, totaling **$2,400** plus reasonable attorneys' fees and costs. G.L. c.186, s 14.

9. **The Tenant's Claim of Retaliation:** The tenant informed the landlord in March 2020 that he would be withholding his rent until the cross-metering was remedied. Shortly afterwards, on April 12, 2020, the landlord placed a sign on the hot water knob leading to the washing machine used by the tenant that no hot water was allowed to be used. This was unilaterally done by the landlord without any advance communication of such curtailment. The court does not credit the landlord in her testimony that she put the sign on the hot water valve because she had just learned that the tenant was using the hot water for his washing machine. Nor does the court credit her testimony that it was only curtailed for a couple of hours. Instead, the court finds that use of the hot water was not restored to the tenant until after he contacted the Board of Health and such curtailment was noticed by the Board of Health inspector's report several days later.
10. Additionally, as noted above, the landlord ceased providing trash removal in December 2020 after having provided same as part of the tenancy for the previous two years. The landlord admitted to this curtailment, explaining that it occurred at the time that she moved out of the adjacent unit and ceased the trash pick-up for the entire two-family house. Though this explains the timing of the sudden elimination of the trash pick it does not excuse it as a matter of law.
11. Additionally, as noted above, the landlord placed a vehicle that had been parked on the grass into one of the tenant's parking spaces in the driveway in June

2020 Though the landlords also proffered an explanation of how this came to occur, it is not a legal basis upon which the landlord can unilaterally and suddenly eliminate of one of the tenant's parking spaces as a matter of law.

12. On April 16, 2020, the landlord called the police to complain that the tenant was withholding his rent and threatening to contact the Board of Health. Later that month, the landlord called the police again, this time alleging that the tenant was using a chain saw in his unit. In May 2020, the landlord contacted the tenant's probation officer and informed her that she, the landlord, was concerned about her safety from the tenant. The court does not credit the landlord's testimony that she made these calls because she feared for her safety In part, the court reaches this conclusion because of the long-standing relationship (perhaps 20 years) the parties had which included the tenant being a best man at the landlord's wedding, that during the trial the landlord could not articulate on what specific bases she felt in fear of her safety, and also based on the two incidents described below of the landlord unnecessarily yelling and acting aggressively towards the tenant. As such, the court finds that the landlord made these calls in an effort to pressure the tenant to move out, or be removed, from the premises.

13. In May 2020 the landlord came to the basement when the tenant was using a workbench and yelled at him and told him that he could not use the bench, even though it had always been available to him during the tenancy

14. There was another incident when the tenant reported to the Board of Health that the landlord had allowed cat vomit to remain in the common hallway and the

landlord responded to this complaint by banging on the tenant's door and yelled very aggressively towards the tenant in front of his children.

15. Lastly, the landlord had the tenant served with a notice to quit within six months of his March 26, 2020 text informing the landlord of his rent-withholding due to cross-metering, complaints to the Board of Health, and the tenant's filing in June, 2020 of a civil complaint against the landlord.

16. Reprisal constitutes a defense, G.L. c. 239, s.2A, and counterclaim, G.L. c. 186, s.18, to the landlord's eviction case. The sequence and timing of events which occurred between the parties gives rise to a presumption that the landlord's action was in reprisal against the tenant for his protected activities of complaining to her in writing, under G.L. c. 239, s. 2A.

17 The presumption of reprisal may be rebutted only by "clear and convincing" evidence that the landlord had "sufficient independent justification" for taking such action, and "would have in fact taken such action, in the same manner and at the same time." G.L. c. 239, s.2A and G.L c 186, s.18 irrespective of the tenants' protected activities.

18. The court finds that all of the above acts and omissions by the landlord were in retaliation of the tenant's protected activities including withholding rent, complaining in writing, and for the Board of Health citations. Thus, the landlord has not rebutted the presumption of reprisal, and is therefore liable for between one and three months' rent The court shall exercise its discretion and award two months' rent, or **$1,600** plus reasonable attorneys' fees and costs.

19. **The Tenant's Claim of Breach of the Warranty of Habitability:** The Board of Health's April 16, 2020 reports cited the landlord for various conditions which violated the State Sanitary Code. The Board of Health issued a compliance letter on August 6, 2020 indicating that all citations had been corrected.

20. These conditions at the premises constitute a defense based upon breach of the implied warranty of habitability, for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).

21. The court finds that the fair rental value of the premises was reduced by 5%, on average, as a result of these conditions of disrepair from April 16, 2020 through August 6, 2020. (Though these conditions clearly pre-date the date of the initial Board of Health citation, there was insufficient evidence provided as to when each violation began, so the court shall use the date of the citation report and the date of the correction report as the period of time for said conditions). Accordingly, the court awards **$140** for said warranty of habitability damages, representing a 10% reduction in rent for a 3.5 month period.[2]

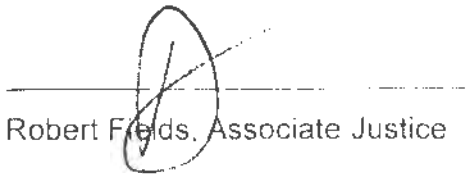
[2] Though the Board of Health cited the cross metering, the court did not include such in its warranty of habitability calculation so as to avoid duplicative damage awards.

22. **Chapter 93A; Consumer Protection Act:** The court finds and so rules that the landlord is not subject to Chapter 93A as the rental premises are situated in a two-family house in which the landlord resided. Though the landlord moved out of the house several months prior to the trial, her mother took occupancy of the unit. Lastly, the ownership by the landlord of a home in New York state does not substantiate a finding that the landlord is covered by the consumer protection statute.

23. **Conclusion and Order:** Based on the foregoing, and in accordance with G.L. c.239, s.8A, the tenant has ten days from the date of this order noted below to deposit with the court the following amount $ 3314.38. This represents the award of use and occupancy due the landlord of $9,450 MINUS the award of damages to the tenant totaling $6,540 plus court costs of $ 210.99 and interest of $ 193.39. If the tenant makes said deposit in full and timely, the tenant shall be awarded possession. If not, the landlord shall be awarded possession and damages as described above.

24. **Attorneys Fee and Costs:** As a prevailing party in his claims of Breach of the Covenant of Quiet Enjoyment and Retaliation, the tenant shall be awarded reasonable attorneys' fees and costs. Accordingly, tenant's counsel shall file and serve a petition for reasonable attorneys' fees and costs within 20 days of the date of this order noted below. The landlord shall have 20 days after receipt of same to file and serve her opposition thereto. The court shall make a ruling on said petition and shall enter a final judgment in this matter.

So entered this 29th day of June, 2021.



Robert Fields, Associate Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-CV-0695

TAMI MYERS, Plaintiff, v. DAVID KUMAR and MAUREEN KUMAR, Defendants.	ORDER

This matter came before the court for trial on June 28, 2021, at which all the parties appeared *pro se*. After consideration of the evidence admitted at trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Tami Myers (hereinafter, "landlord"), owns a single family house located at 36 Commercial Street in Thorndike, Massachusetts (hereinafter, "premises"). The defendants, David and Maureen Kumar (hereinafter, "tenants"), began their tenancy on March 5, 2019 and resided at the

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premises under a lease and at a monthly rent of $1,200. On or about January 10, 2020, the landlord had the tenants served with a notice to quit for non-payment of rent and thereafter filed an eviction action (20-SP-567). That action was transferred to the civil docket to this instant matter when the parties reported to the court that the tenants had vacated and possession was not at issue. The tenants' only counterclaim is that the landlord violated the Last Month's Rent laws at G.L. c.186, s.15B.

2. **The Landlord's Claim for Outstanding Use and Occupancy:** The landlord met her burden of proof for a claim for outstanding use and occupancy through April 1, 2020 which was the day that the tenants returned the keys to the premises to the landlord's agent. The total of that claim for use and occupancy is $5,950 after applying the tenant's advance payment of last months' rent.

3. **The Tenants' Claim for Violation of the Last Month's Rent Laws: G.L. c.186, s.15B**: The law states in pertinent part that the landlord is required:

> At the end of each year of tenancy, such lessor shall give or send to the tenant from whom rent in advance was collected a statement which shall indicate the amount payable by such lessor to the tenant. The lessor shall at the same time give or send to such tenant the interest which is due or shall notify the tenant that he may deduct the interest from the next rental payment of such tenant. If, after thirty days from the end of each year of the tenancy, the tenant has not received said interest due or said notice to deduct the interest from the next rental payment, the tenant may deduct from his next rent payment the interest due.

4. The landlord does not dispute that she failed to do what is required above at the anniversary of the tenancy or at any time thereafter. In accordance with that statute, the tenants are to be awarded three times the interest accrued on the last month's rent amount. The interest shall either be what the landlord is able to

prove actually accrued or 5% per annum under the statute. The landlord was unable to show at trial what interest accrued on the last month's rent and, as such, the interest shall be calculated at 5%.

5. Thus, the tenants shall be awarded $180 for the landlord's violation of G.L. c.186, s.15B. This represents 5% per annum on a deposit of $1,200, trebled. ($60 X 3).

6. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the plaintiff Tami Myers against the defendants David and Maureen Kumar for **$5,770** in use and occupancy, plus court cost and interest. This represents the total amount of outstanding use and occupancy through April 1, 2020 MINUS $180 for the tenants' claim of violation of G.L. c.186. s.15B.

So entered this 29th day of June, 2021.

Robert Fields, Associate Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-392

ELBROOK L.P.,

Plaintiff,

v.

MARK O'CONNOR,

Defendant.

ORDER

After hearing on June 28, 2021 on the plaintiff landlord's motion for emergency injunctive relief, at which only the landlord appeared after notice was served in hand to the defendant tenant, the following order shall enter:

1. The landlord's motion is allowed and until further order of the court, a temporary restraining order shall issue requiring the tenant to not speak or communicate in any manner with neighboring residents or their guests except in a bona fide emergency.

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2. Additionally, the tenant shall also not communicate with the landlord's management personnel nor interfere with management's business at the premises until further order of the court.
3. A referral was made to the Tenancy Preservation Program (TPP) which can be reached by email at: [redacted] and by telephone at [redacted].
4. The tenant may also wish to reach out for legal assistance with Community Legal Aid which can be reached by telephone at 413-781-7814.
5. This matter shall be scheduled for further hearing by **Zoom on July 7, 2021 at 12:00 p.m.** The Clerk's Office shall provide written instructions to the parties on how to participate in the Zoom hearing. If any party or witness can not participate by Zoom on their own, they may utilize the court's Zoom Room at the courthouse located at 37 Elm Street in Springfield. The Clerk's Office can be reached by phone at 313-748-7838.
6. The landlord shall have this Order served on the tenant FORTHWITH.

So entered this 30th day of June, 2021.

Robert Fields, Associate Justice

Cc: Mariann Gonzalez, Housing Specialist (for TPP referral)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1736

DEBORAH BANKS,

Plaintiff,

v.

ATALA BYNUM,

Defendant.

ORDER

This matter came before the court for trial on May 28, 2021, at which the plaintiff landlord appeared *pro se* and the defendant tenant appeared with counsel. After consideration of the evidence admitted at trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1 **Background:** The plaintiff Deborah Banks (hereinafter, "landlord"), owns a two-family house located at 180 Tremont Street in Springfield, Massachusetts (hereinafter, "premises"). The defendant, Atala Bynum (hereinafter, "tenant")

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resides at the premises with a rental subsidy. On or about October 19, 2020 the landlord had the tenant served with a Notice to Quit alleging that the tenant violated the terms of the tenancy. Specifically, the landlord alleged that the tenant caused the following: Alterations to the property, constant failure to keep noise to a minimum, habitually late with rent, smoking too close to the premises. Thereafter, the landlord commenced this instant summary process (eviction) case based on the claims in the Notice to Quit. The tenant filed an Answer, denying the landlord's allegations and asserts that the landlord does not have cause to evict her.

2. **Alterations to the Property:** In the summer of July 2020, the tenant erected a trampoline on the yard of the property and also put a tent on the yard. The landlord sent an email to the tenant on July 27, 2020 informing/reminding the tenant that she must first get the landlord's permission before "altering" the premises. The email informed the tenant that the trampoline would need to be removed but that the tenant could keep the tent in place. Without the need to make a determination of whether the tent or the trampoline are "alterations to the premises" under the lease, the court finds that the tenant removed the trampoline as quickly as was practicable because the tenant needed the father of her daughter to do the disassembly. The court also credits the tenant's testimony that the trampoline was permanently removed within 20 days of the landlord's request that it be removed Additionally, the tenant permanently removed the tent. There is no suggestion that either item cause any damage whatsoever to the property.

3. **Noise:** The landlord was not able to provide any first-hand testimony or other admissible evidence regarding her allegation that the tenant has caused any noise at the premises.
4. **Habitual Late Rent Payments:** The tenant has habitually paid her rent late for the entirety of her almost four year tenancy. Though the landlord provided numerous notices regarding this issue, spanning several years, the landlord never brought the tenant to court for non-payment of rent. Additionally, early in the tenancy the landlord wrote in one of her letters regarding late rent that she is "willing to work with tenants when their rent has be paid later in the month." The court credits the tenant's testimony that when she pays her rent late, she pays a late fee each time to the landlord. Additionally, the tenant explained that the method required by the landlord for rent payments---deposits into the landlord's bank account---contributes to its tardiness as bank hours conflict with her work hours. The court encourages an alternate method of rent payment going forward such as an on-line method or by old fashioned mail.
5. **Smoking Near the Property:** The sole evidence provided by the landlord in support of her claim that the tenant is smoking in the premises is that the landlord saw ashtrays (virtually empty) on the sink counter in the kitchen when the landlord was in the unit in December 2020 The court credits the testimony of the tenant that she does not smoke in the apartment but that she uses ashtrays when she smokes outside and she brings her ashtrays to and from when smoking outside. Furthermore, use of the ashtrays enable the tenant to comply

with the No Smoking term of the Lease which requires that "all cigarette butts are to be disposed of and put out from the leased premises."

6 **Conclusion and Order:** Based on the foregoing, the landlord did not meet her burden that the tenant materially and substantially breached the lease upon which an eviction order should enter. Accordingly, judgment shall enter for possession for the tenant.

So entered this 1st day of July, 2021.

Robert Fields, Associate Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-0565

JOEL PENTLARGE,

PLAINTIFF

V.

MICHAEL L. PETERSON,

DEFENDANT

ORDER ON COMPLAINT FOR CONTEMPT

This matter came before the Court on June 25, 2021 by Zoom on a complaint for civil contempt. The parties appeared without counsel.

In order to hold Defendant in contempt in a civil case, the Court must find clear and convincing evidence of disobedience of a clear and unequivocal demand. *See In re Birchall*, 454 Mass. 827, 838-39 (2009). The aim of civil contempt is to coerce performance of a required act for the benefit of the aggrieved complainant. *Id.* at 848. "Civil contempt is a means of securing for the aggrieved party the benefit of the court's order." *See Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997) (citation omitted).

After hearing, the Court finds the Agreement of the Parties entered on October 8, 2020 included a provision whereby Defendant agreed not to "harass any other tenants or cause any disturbances at 31-33 Pulaski Street, Ware, MA." The evidence presented to the Court today establishes that Defendant and the tenants living at 33A Pulaski Street, Liam Grant and Keith Carrigan, engaged in a physical altercation on June 10, 2021. Defendant and Mr. Grant each testified that the incident was started by the other. The Court concludes that both sides were at fault

and, given that this is a civil matter and not a summary process action, the Court's findings do not warrant the relief sought by Plaintiff.

The following order shall enter:

1. In addition to complying with the terms of the October 8, 2020 Agreement of the Parties, Defendant shall not communicate with or have any contact with Liam Grant or Keith Carrigan except in the case of a bona fide emergency. Although Mr. Grant and Mr. Carrigan are not parties to the case, the Court's expectation is that they will likewise have no contact with or communicate with Defendant.
2. If a subsequent complaint for contempt of this order is filed, and Plaintiff can demonstrate by clear and convincing evidence that Defendant materially violated the terms of this order, the Court may require that Defendant vacate the premises as a sanction for contempt if the Court determines that there is no other remedy that would prevent continued violations of the Court's orders.

SO ORDERED this 1st day of July 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1663

JOSEPH EVBOROKHAI,

Plaintiff,

v.

PAVEL and VALENTINA ROMANCHENKO,

Defendants.

ORDER

After hearing on June 29, 2021, at which the landlord appeared with counsel and the tenants appeared *pro se*, the following order shall enter:

1. This matter came before the court for review of compliance with the court's April 23, 2021 order issued pursuant to G.L. 239, ss. 9 and 10.
2. For the reasons stated on the record, which included the tenants' failure to comply with the order of the court to pay their full use and occupancy and to provide the landlord with a log of their housing search on three separate

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occasions, the landlord's request that he be able to obtain an execution for possession as of August 1, 2021 is allowed.

3. The tenants shall continue to pay their use and occupancy in the amount of $600 per month as long as they are occupying the premises.
4. The landlord may file and serve a Rule 13 Application for issuance of the execution as early as August 1, 2021.

So entered this 2nd day of July, 2021.

Robert Fields, Associate Justice

cc: Court Reporter

10 W.Div.H.Ct. 107

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

JOSEPHUS GRANT, JR.,

Plaintiff,

v.

No. 18-CV-1018

MID-ISLAND MORTGAGE CORP.,

Defendant.

VITALY GLADYSH,

Plaintiff,

v.

No. 18-SP-4521

TASIA GRANT, INZANA GRANT, and JOSEPHUS GRANT,

Defendants.

After hearing on June 18, 2021, on Josephus Grant, Jr.'s ("Grant" or "Mortgagor") Motion for Reconsideration of Order Denying Summary Judgment, where all parties were represented by counsel, the following Order shall enter:

1. **History:** On October 4, 2018, Grant brought this civil action against Mid-Island in Superior Court. On October 15, 2018, Plaintiff Vitaly Gladysh

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("Gladysh") entered this summary process action in the Western Division of the Housing Court against Grant stating "your tenancy has been terminated pursuant to the attached notice to quit." The cases were consolidated upon request and by Order dated December 21, 2018. After hearings on June 20, 2019 and July 23, 2019, this Court denied Grant's initial motion for summary judgment for apparent genuine issues of material fact.

2. In their joint pre-trial memorandum, the parties have essentially narrowed the issue before the Court to whether an exception to the face-to-face meeting requirement of 24 U.S.C. § 203.604 applies.

3. **Standard:** "[A] motion for reconsideration calls upon the discretion of the motion judge." *Audubon Hill S. Condo. Ass'n v. Cmty. Ass'n Underwriters of Am., Inc.*, 82 Mass. App. Ct. 461, 470 (2012). "Though there is no duty to reconsider a case, an issue, or a question of fact or law, once decided, the power to do so remains in the court until final judgment or decree." *Peterson v. Hopson*, 306 Mass. 597, 601 (1940).

4. **Undisputed Material Facts:** On September 27, 2012, Grant granted a mortgage of the property located at 182 Jasper Street, Springfield, MA 01109 (the "premises") to Mortgage Electronic Registration Systems, Inc., ("MERS") as nominee for Mid-Island Mortgage Corp. (Mid-Island). The mortgage was insured by the Department of Housing and Urban Development ("HUD"). See Affidavit of Lori Bolduc (Bolduc Affidavit), Exhibit 1. On December 14, 2015, the mortgage was assigned by MERS as nominee for Mid-Island to Mid-Island. See Affidavit of Lori Bolduc (Bolduc Affidavit), Exhibit 2.

5. On May 11, 2015, Mid-Island sent a letter to Grant, which was not certified by the Postal Service, regarding a face-to-face meeting with the mortgagor. See Affidavit of Jennifer Dobron (Dobron Affidavit), Exhibit B. On June 18, 2015, an agent of Mid-Island visited the premises and taped a further letter on the door. Dobron Affidavit, Exhibit C.[1]

6. On June 22, 2016, a public foreclosure auction took place on the premises and on August 15, 2016, a foreclosure deed with affidavit of sale was executed by Mid-Island as current holder of the mortgage to Mid-Island as highest bidder at foreclosure sale.

7. **Discussion**: 24 C.F.R. 203.604 states in part that "[t]he mortgagee must have a face-to-face interview with the mortgagor or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid." A face-to-face meeting is not required, however, if "[t]he mortgagor has clearly indicated that he will not cooperate in the interview" or if "[a reasonable effort to arrange a meeting is unsuccessful." *Id.* A reasonable effort to arrange a face-to-face meeting "shall consist at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched" as well "at least one trip to see the mortgagor at the mortgaged property." It is undisputed that no face-to-face meeting was held, and no certified letter was sent. In order to satisfy an exception to the face-to-face rule, Mid-Island therefore relies on the exception that "[t]he mortgagor has clearly indicated that he will not cooperate in the interview."

[1] Grant denies having received either letter.

8. Grant's proposition that a certified letter must be sent in order to invoke any exceptions to the face-to-face rule in unpersuasive. If that were the case, mortgagees without a branch office within 200 miles of the mortgaged property would still be required to send a face-to-face certified letter, only to claim its exception when the mortgagor attempts to schedule a meeting. Likewise, if a payment plan had already been entered making a meeting unnecessary, a certified letter requesting a face-to-face meeting would still be required. Instead, the "reasonable attempt" to conduct a face-to-face meeting, including at least a certified letter and visit to the property, is just one of several exceptions to the face-to-face meeting requirement.
9. However, cases finding a "clear indication" by the mortgagor that he would not cooperate with a face-to-face interview have included greater information (then exists in the record before the court) on which the mortgagee, and ultimately the court, could base such a conclusion. In an Illinois case, the mortgagee had initiated three foreclosure proceedings, the first two having been dismissed without prejudice for failure to conduct a face-to-face interview. *JP Morgan Chase Bank, N.A. v. Moore*, 2015 IL App (1st) 142971-U (August 4, 2015). Before the third foreclosure complaint, the mortgagee sent a letter regarding a face-to-face meeting and the mortgagors responded in writing but did not schedule a meeting. *Id.* The mortgagor sent another letter attempting to arrange a face-to-face meeting. *Id.* Instead of engaging in that process, the mortgagees filed a complaint with HUD. *Id.* After a further invitation from the mortgagee to engage in a face-to-face meeting, the

mortgagors filed a federal lawsuit against the mortgagee. *Id.* Under those facts, the Illinois Appeals Court held that "[the mortgagee] was not required to hold a face-to-face meeting, or make a reasonable effort to hold such a meeting, when the mortgagors had so clearly indicated that they had no intention of cooperating. *Id.* See also *Bank of Am., N.A. v. Jones*, 294 So. 3d 341, 342 (Fla. Dist. Ct. App. 2020), review denied, No. SC20-910, 2020 WL 4384091 (Fla. July 31, 2020) ("the Bank's evidence established that after default but before the Bank filed its foreclosure action, the Borrowers sent a cease and desist letter to the Bank, demanding that the Bank cease all communication with the Borrowers"). Compare *Derouin v. Universal Am. Mortg. Co., LLC*, 254 So. 3d 595, 602 (Fla. Dist. Ct. App. 2018) (borrower did not show clear indication that she would not cooperate with face-to-face interview when she directed all future communication be directed through her attorney).

10. As a matter of law, the Court finds that a lack of response to a letter not certified by the post office and another left on the door cannot satisfy the proposition that "the mortgagor has clearly indicated that he will not cooperate in the interview." However, with trial so close and where there are issues of fact that may yet be proven as to Grant's potential cooperation and other communication between Grant and Mid-Island;[2] and where a decision on a motion for reconsideration is a matter of judicial discretion, based upon the

[2] For example, HUD Handbook 7-7 (B) telephone calls ("[m]ortgagees must commence telephone contacts by the 17th days of the delinquency and complete them by the end of the month").

foregoing and the summary judgment record before me, the trial scheduled for July 8, 2021 is hereby continued and the summary judgment record shall be held open for further submission by any party specifically regarding communications between Grant and Mid-Island regarding a face-to-face interview.

11. The parties have until July 30, 2021 to file and serve supplements to the Summary Judgment record which may include affidavits and other relevant documents as well as any supplemental legal memoranda. The court thereafter shall issue a ruling on the summary judgment motion and schedule any necessary further hearings and/or trial.

So Ordered this 2nd day of July, 2021.

Robert Fields, Associate Justice

Cc: Edward P. O'Leary, Esq.
Staphanie Sprague, Esq.
Priscilla Fifield Chesky, Esq.
Christa Douaihy, Esq.
Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-356

PAUL TRZCINSKI,

PLAINTIFF

V.

LAYCE BATOR,

DEFENDANT

ORDER ON MODIFICATION OF PRELIMINARY INJUNCTION

Upon motion of Defendant and over the objection of Plaintiff, the preliminary injunction entered on June 28, 2021 is hereby modified as follows:

1. The provision prohibiting Defendant from residing at 25 Pleasant Street, Apartment D, Adams, Massachusetts (the "Premises") and entering upon the property located at 25 Pleasant Street, Adams, Massachusetts (the "Property") is rescinded.
2. Plaintiff may change the locks at the Premises forthwith but must provide Defendant with a key immediately upon changing the locks.
3. All terms set forth in the preliminary injunction ad the terms of the June 18, 2021 temporary restraining order incorporated into the preliminary injunction remain in effect.
4. The parties shall return by Zoom for further evidentiary hearing on Plaintiff's request for any further injunctive relief on July 7, 2021 at 12:00 p.m. In advance of the

hearing, Plaintiff shall notify Defendant's counsel of the identity of any witnesses he intends to call and the nature of the allegation he seeks to prove.

SO ORDERED this 2nd day of July 2021.

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

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0239

DONNALEE STEWART,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**ORDER TO VACATE**
	)	
TASHIAN FRANCIS,	)	
	)	
DEFENDANT	)	

This matter came before the Court by Zoom on July 6, 2021 on Plaintiff's motion for entry of judgment based on Defendant's alleged failure to comply with a Court agreement made on June 10, 2021 pursuant to which Defendant agreed to vacate the premises located at 106 Dunmoreland Street, Springfield, MA (the "Premises") by the end of the same day. Both parties appeared.

Defendant testified that she complied with the agreement. She testified that, when she left the Premises, other than some possessions belonging to a friend, the unit was vacant. She testified that she did not give permission for anyone to reside in the Premises upon her departure. Plaintiff, who lives in the same building, believes the Premises are occupied by someone, despite the fact that she never gave permission for anyone other than Defendant to occupy the Premises. According to Plaintiff's counsel, because neither the former legal resident (Defendant) nor the landlord (Plaintiff) authorized anyone to occupy the Premises, the persons now living in the Premises are squatters.

Accordingly, the following order shall enter:

1. Plaintiff may treat any individuals occupying the Premises as trespassers in accordance with G.L. c. 266, § 120 and have them removed from the Premises by the Springfield Police Department.
2. Plaintiff shall serve a copy of this notice at the Premises at least 24 hours in advance of returning with the police.
3. After the individuals occupying the Premises have been removed, Plaintiff may change the locks and retake possession of the Premises.

SO ORDERED this 6th day of July 2021.

Jonathan J. Kane

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1118

QUANG T. HUYNH,

Plaintiff,

v.

STEPHANIE DUPUIS LEE,

Defendant.

CORRECTED ORDER[1]

This matter came before the court for trial on March 15, 2021, at which the parties both appeared *pro se*. After consideration of the evidence admitted at trial, the following finding of facts, rulings of law, and order for judgment shall be entered:

1. **Background:** The plaintiff, Quang T. Huynh (hereinafter, "landlord"), owns a four-family building in Three Rivers, Massachusetts. The defendant, Stephanie Dupuis Lee (hereinafter, "tenant"), rents a unit on the first floor of said building at

[1] Due to a mathematical error in the June 29, 2021 order of the court, this "Corrected Order" shall issue with the correct amount of total damages.

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2030 Palmer Road (subject premises) at a monthly rent of $715. The tenancy began on September 15, 2006. On January 8, 2020 the landlord had the tenant served with a no-fault rental period notice to quit, terminating the tenancy as of February 29, 2020. Thereafter, the landlord commenced this instant summary process (eviction) matter. The tenant filed an Answer in which she asserted claims alleging breach of the warranty of habitability, retaliation, breach of the covenant of quiet enjoyment, violations of the security deposit and last month's rent laws, and violation of the consumer protection laws.

2. **The Landlord's Claim for Possession and for Outstanding Use and Occupancy:** The parties stipulated to the receipt of the termination notice and the timeliness of the summons and complaint for no fault. Regarding the amount of outstanding rent, the court finds and so rules that the monthly rent is $715.[2]

3. **The Tenant's Claim of Breach of the Covenant of Quiet Enjoyment:** In December 2019 the landlord sought an increase in the tenant's rent. The tenant informed the landlord that because of problems with the premises, the tenant would not pay the increased rent. The very next day the landlord purposely failed to plow the snow in the parking lot in the section of the lot that only effected the tenant's car and in the walkway leading to the tenant's entryway that was always taken care of properly by the landlord for the previous 14 years. This failure of removing snow occurred several more times over the past two winters and included not only the landlord's failure to plow but also one occasion of plowing the tenant's car into place with snow.

[2] Though the landlord attempted to raise the rent to $765 in December 2019 the tenant never paid the increase.

4. Additionally, the landlord has threatened to tow the tenant's car from the space she has been using for more than 14 years since the tenancy commenced. When the tenant did not move her car from that space, the landlord generated a map of the parking lot and installed a sign consistent with that map that required the tenant to move her car from her normal space.
5. In addition, the upstairs tenants, Glenn Labier and his family, consistently cause a great deal of noise that permeates the tenant's unit at all hours of the day and night since they first took occupancy in April 2018. The court credits the tenant--- who never made a noise complaint about an upstairs neighbor for the first twelve-and-a half years of her tenancy--- her son, and her former boyfriend (who all testified), that the noise is excessive. The noise includes banging and screaming and yelling. The court also credits the tenant that she has brought this to the landlord's attention many times including in writing and asked that he address it in various ways including the installation of carpets. The tenant has tried noise canceling head phones but nothing has helped and the noise "completely dominates the apartment". On one occasion, when the tenant banged on the ceiling to quiet the upstairs tenants, the tenant Glenn Labbier yelled down "knock that shit off and don't make me come down there." On another occasion, the tenant's stepfather, Carl Sylvester, spoke with the landlord about the noise problem the landlord told Mr. Sylvester that it was "not his (the landlord's) problem." The tenant also explained to the landlord that the noise was severely effecting the tenant's health and well-being [redacted]

and that the noise generated by the tenants upstairs causes him great stress and anxiety. The tenant also provided the landlord with a letter from her treating physician about the effects of the noise problems was having on her health.

6. As a matter of law, a landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his act causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

7. The landlord failed to address the severe noise problem and indicated to the tenant, and her stepfather, that he would do nothing about it. Even during the trial the landlord indicated that he has nothing to do with the noise coming from the upstairs apartment. The court, also, does not credit the landlord's testimony in his denial of wrongdoing relative to the tenant's car noted above (including snow removal and parking). As such, the court shall award the tenant the statutory damages of three months' rent, totaling **$2,145**.

8. **The Tenant's Claim of Security Deposit Violations:** At the commencement of the tenancy, the landlord paid the landlord a security deposit of $725. The receipt indicates that such payment was for "security" and is dated September 1, 2006. Thereafter, the landlord failed to comply with any of the laws required by the Security Deposit statute at G.L. c.186, s.15B. First, he charged the tenant in excess of a month's rent. Also, he failed to deposit the monies into a bank

account proscribed by the law and, as such, also failed to provide the tenant with any of the proper and required receipts.

9. In accordance with G.L. c.186, s.15B the tenant shall be awarded three times the security deposit plus interest. Accordingly, the tenant is hereby awarded **$2,175** plus **$337.12**, representing 5% since its tender in September 2006.

10. **The Tenant's Claim of Last Month's Rent Violations:** At the commencement of the tenancy, the tenant also paid last month's rent. This is documented by a copy of the receipt dated September 8, 2006 showing "first and last" payment totaling $1,370 (consistent with the monthly rental amount of $685). Thereafter the landlord failed to comply with the law and credit or offer to credit the interest on same each year.

11. In accordance with G.L. c.186, s.15B the tenant shall be awarded **$318.52**, representing three times the interest due on said payment since September 2006.

12. **The Tenant's Remaining Claims:** The court finds and so rules that the tenant failed to meet her burden of proof on any other claims.

13. **Conclusion and Order:** Based on foregoing, and in accordance with G.L. c.239, s.8A, judgment shall enter for the tenant for possession and for **$4,975.64**.[3]

[3] Though the landlord indicated that he believed that $800 was outstanding at the time of trial, there is no basis to support this position. Among other things, the tenant put into evidence money orders for March 2021 rent (and for all of the months of 2021).

So entered this 7th day of July, 2021.

Robert Fields, Associate Justice

cc: Court Reporter

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hamdpen. ss:

Housing Court Department
Western Division
No. 20-CV-333

SAMANTHA JEFFERSON,

Plaintiff,

v.

KEVIN KENNEDY and K&S HOLDINGS, INC.,

Defendants.

ORDER

After hearing on July 7. 2020. on plaintiff tenant's emergency request for injunctive relief. at which the tenant and the defendant landlord appeared without counsel. the following order entered on the record and is memorialized herein:

1. For the reasons stated on the record. the defendants Kevin Kennedy and K&S Holdings. Inc. shall provide alternate housing for the tenant in The Red Roof Inn hotel in West Springfield. MA. and a daily food stipend of $50. beginning on July 7. 2020 and continuing until July 16. 2020.
2. The defendant owner of the property. K&S Holdings. Inc. shall be represented by an attorney henceforth in these proceedings.
3. Given that the subject premises. which suffered a fire in late June. 2020. may take substantial time to be rehabilitated before the condemnation order may be lifted. the

tenant is obligated to diligently search for alternate, permanent, housing.

4. This matter shall be heard further for a telephonic review hearing on **July 15, 2020 at 12:00 p.m.** The parties are instructed to dial: 866-722-0690, and then press the I.D. number: 216 9871.

So entered this 7th of July, 2020.

Robert Fields, Associate Justice AM.

cc: Kara Cunha, Esq., Assistant Clerk Magistrate

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-386

TAMMY S. BARRON,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER ON REQUEST FOR INJUNCTIVE RELIEF**
	)	
DANNA DELTREDE COLON,	)	
	)	
DEFENDANT	)	

After hearing by Zoom on July 1, 2021 on Plaintiff's motion to restore access to 252 Oak Street, Holyoke, MA (the "Premises"), the following order shall enter:

1. Plaintiff has rights of a tenant based on Defendant's acceptance of rent from Plaintiff and Defendant's acknowledgement of Plaintiff's occupancy of the room initially rented to Hector Colon.
2. In order to remove Plaintiff from the Premises, Defendant must first properly terminate the tenancy and obtain a Court order granting her legal possession.
3. Until such time as she obtains a Court order for Plaintiff to vacate the Premises, Defendant must allow Plaintiff full access to the Premises.
4. The $90.00 fee for injunctions (G.L. c. 262, § 4) is waived.

SO ORDERED this 8th day of July 2021.

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0935

NORRIS RABB,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER FOR ENTRY OF**
	)	**JUDGMENT**
GREGORY RABB AND	)	
ANTHONY RAWLINS,	)	
	)	
DEFENDANTS	)	

This no-fault summary process action was before the Court for trial by Zoom on July 1, 2021. Plaintiff seeks to recover possession of 26 Crawford Circle, Springfield, Massachusetts (the "Property") from Defendants. All parties appeared with counsel. Because this case was not commenced for non-payment of rent, the provisions of Stat. 2020, c. 257, as amended by Stat. 2021, c. 20, do not apply, nor does the order issued by Centers for Disease Control and Prevention found at 85 Fed. Reg. 55292 (the "CDC Order").

The parties stipulated to Plaintiff's prima facie case. Defendants were served with and received legally adequate notices to quit and a summary process summons and complaint was timely filed. Defendants failed to vacate after expiration of the notice period. Trial proceeded on Defendants' defenses and counterclaims.

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

Defendants reside at the Property. The house was owned by Defendants' mother (who was also Plaintiff's aunt) prior to a foreclosure sale, at which time it was purchased by a third party. Plaintiff acquired the Property from purchaser after foreclosure. He testified that he bought the Property in order to allow Defendants an opportunity to purchase the home themselves, but the parties never reduced an agreement to writing. Because the agreement involves the sale of real property and was not in writing, enforcement of any promise Plaintiff may have made is barred by the Statute of Frauds. *See* G.L. c. 259, § 1. Defendants concede that the Statue of Frauds precludes enforcement of an agreement pursuant to the law, but they argue that the equitable doctrine of promissory estoppel should be applied to avoid the injustice that would be created if Defendants were not permitted the opportunity to purchase the Property.

In order to apply promissory estoppel, the Court must find that Plaintiff's purported promise to give Defendants an opportunity to purchase the Property induced detrimental reliance on the part of Defendants. *See, e.g. Barrie-Chivian v. Lepler*, 87 Mass. App. Ct. 683, 685 (2015). The evidence does not support such a finding. Although Defendants did make sporadic payments to Plaintiff, the payments were intended to offset Plaintiff's carrying costs and were not intended to be partial payments toward the purchase of the Property. Reasonable payments for use and occupation, without more, do not constitute evidence of detrimental reliance. Moreover, Defendants did not secure a commitment from a lender to purchase the Property, nor did they even take significant steps toward obtaining financing, such as completing a loan application or obtaining pre-approval for a mortgage.[1] In order to demonstrate detrimental reliance, Defendants have to show more than good intentions.

[1] Defendant Rabb said that his boss was going to finance the purchase, but he produced no evidence to support his testimony. In fact, he concedes that his boss changed his mind because "there were too many people in the house, and he didn't want to deal with it."

Accordingly, the Court allows Plaintiff's oral motion to dismiss Defendants' affirmative defenses and counterclaims based on the lack of evidence of detrimental reliance. Judgment for possession shall enter in favor of Plaintiff. If Plaintiff wishes to recover for Defendants' use and occupancy of the Property, he shall serve and file a motion. If Defendants wish to seek a stay of judgment and execution pursuant to G.L. c. 239, § 9 et seq., they shall serve and file a motion.

SO ORDERED this 7th day of July 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21CV92

LEISURE WOODS ESTATES,

Plaintiff,

v.

THE ESTATE OF PHILLIP NORTON,

Defendant.

ORDER

After hearing on June 14, 2021 at which only the plaintiff appeared, the following order shall enter:

1. Though the court can appreciate the intention and basis for this civil action which seeks the court's ruling that the manufactured home in question is abandoned and for an order for its removal, the court is not moved from its position---in accordance with G.L. c.239 and consistent with the ruling in *Attorney General v. Dime Savings Bank*, 413 Mass. 284 (1992)---that Summary Process is the

exclusive means of dispossession of residential property. Further, equitable relief is only appropriate when the remedy at law (in this case the statutory summary process procedure) is inadequate.

2. Accordingly, the motion is denied.

So entered this 9th day of July, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0722

KELVIN SANTOS,	)	
	)	
PLAINTIFF	)	
	)	FINDINGS OF FACT, RULINGS OF LAW
v.	)	AND ORDER
	)	
KAMARA FLASCHER,	)	
	)	
DEFENDANT	)	

This summary process action was before the Court for an in-person trial on June 25, 2021. Plaintiff seeks to recover possession of 61 Orchard Street, 2d Floor, Pittsfield, MA (the "Premises") from Defendant due to alleged violations of her lease. Defendant did not file an answer. Both parties appeared for trial in person and represented themselves.

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

Plaintiff served a notice to quit on Defendant, terminating her tenancy based on lease violations, namely, failing to keep the unit clean. The notice to quit was legally adequate and received by Defendant, and Plaintiff timely filed this summary process case. The lease between the parties was admitted into evidence. The only provision of the form lease relevant to this case requires the tenant to "maintain [the] premises in a clean and sanitary manner." A hand-written provision requires the tenant to "keep [the] apartment sanitary indoors and outdoors."

In support of his case, Plaintiff relies on an inspection conducted by the Pittsfield Board of Health on December 8, 2020 and January 29, 2021. A copy of the inspector's report was admitted

into evidence without objection. The report cites numerous violations of the State Sanitary Code, but the report does not assess fault or assign responsibility for correction of the violations except in the one instance in which the report requires the occupants "to make efforts to clean the apartment and maintain the premises as clean, healthy, safe and sanitary." The inspection report does not include photographs of the condition of the Premises.

The flash drive offered as an exhibit by Plaintiff to illustrate the unsanitary conditions contains one brief video of the kitchen area. Although it is troubling that there is a mattress on the floor of the kitchen and a missing cabinet door, the video does not show unpackaged food or extreme clutter. It does show soil from a potted plant being strewn over the counter and dishes left out by the sink, but the video does not show the condition of the rest of the Premises and, without more, does not constitute sufficient evidence for the Court to conclude that the unsanitary conditions were so severe that they could not be addressed with some modest house cleaning.

To be clear, Defendant does have an obligation to maintain safe, healthy and sanitary conditions in the Premises. Plaintiff can seek an order from this Court that Defendant correct any unsanitary conditions, and such an order would provide Plaintiff with an enforcement mechanism to ensure that Plaintiff is not endangering the health and safety of other residents. Plaintiff has not, however, established by adequate proof of a material violation of the lease that justifies eviction.[1]

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

SO ORDERED, this 12th day of July 2021

Jonathan J. Kane

Jonathan J. Kane, First Justice

[1] The Court notes that the lease appears to expire on November 1, 2021 by its own terms and, if the lease is not renewed, Plaintiff would be able to recover possession without the requirement of proving a lease violation.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000333

SAMANTHA JEFFERSON,

PLAINTIFF

v.

KEVIN KENNEDY AND K&S HOLDINGS, INC.

DEFENDANTS

MEMORANDUM OF DECISION AND ORDER

This case came before the Court for telephonic review of the Order issued by this Court (Fields, J.) on July 7, 2020 ("July 7 Order"). Plaintiff (the "tenant") appeared and Defendants (referred to collectively, for purposes of this Order, as the "owner" or "landlord")[1] appeared through counsel. The July 7 Order required the owner to provide alternate housing and a daily food stipend of $50.00 until July 16, 2020. The owner now asks the Court to terminate its obligations under the July 7 Order and the tenant seeks to extend it.

The basic facts are as follows: the tenant moved into 104 Pasadena Street, 3d Floor, Springfield, Massachusetts (the "Premises"), which is part of a multi-unit building (the "property"). She has a rental voucher administered by the Springfield Housing Authority and signed a HAP contract for an initial lease term of July 1, 2019 to June 30, 2020. The owner also signed the HAP

[1] The tenant named K & S Holdings, Inc. as a defendant, but it appears that the actual name of the owner of the property is K & S Holdings LLC. In reviewing the record, the Court notes that defendant Kevin Kennedy does not signify his corporate position when signing paperwork and in various places lists himself as "owner," "landlord" or neither. For purposes of this Order, the issue is not critical and the Court will simply consider both of the defendants to be the owner and landlord of the property.

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contract. Neither party introduced a separate written rental agreement between the owner and the tenant.

On May 28, 2020, the owner informed the tenant by letter that her lease would not be renewed upon its expiration on June 30, 2020.[2] The owner's letter included a sentence reading "As we discussed, I am willing to offer you another property if you so choose."[3] On June 27, 2020, the Premises were rendered unfit for human habitation due to a fire on the property. On June 30, 2020, the code enforcement department of the City of Springfield issued a condemnation order for the Premises. As of the date of the fire, the owner had not been able to offer the tenant another apartment and has not offered the tenant another apartment to date. Immediately after the fire, the tenant attests that the Red Cross placed her and her 14-year old son in a hotel, and since the July 7 Order, the owner has been paying for the room. On or about June 30, 2020, the owner presented the tenant with an agreement to terminate the tenancy, which the tenant refused to sign, and tendered a check for $95.00, representing the per diem rent for the three days of June between the date of the fire and the expiration of the lease. At this time, the owner gave the tenant the name and contact information of the insurance adjuster.

At the hearing, the tenant testified that she did not sign the agreement because she had nowhere to go and did not want to agree to terminate her tenancy. She stated that she has undertaken a diligent housing search but has not yet found permanent replacement housing. She testified that she is meeting with a housing search coach from the Open Door social services agency today. Counsel for the owner argued that the owner's obligation to house the tenant should end

[2] The HAP contract permits the owner to terminate the tenancy after the initial lease term for good cause, which includes sale of the property. The owner testified that he intended to sell the property and produced a signed purchase and sale contract dated June 16, 2020.

[3] The offer of another unit supports the owner's testimony that he genuinely intended to sell the property and was not creating an excuse to terminate the tenancy

because the tenancy expired on June 30, 2020 and was not renewed and because the doctrines of impossibility and frustration of purpose excuse the owner from further obligations to provide housing to the tenant.

With respect to the non-renewal of the lease, the May 28, 2020 letter from the owner unequivocally notified the tenant that the lease would not be renewed when it expired on June 30, 2020. The sentence in the letter stating that the owner was "willing to offer [her] another property" is insufficient to form an enforceable promise of replacement housing. There was no consideration exchanged and implied in the statement is a qualification that the owner would offer her another property if one was available; otherwise, the owner would have identified a particular property. The Court finds that the owner acted in good faith and with reasonable effort in trying to find a different apartment for the tenant but was unable to do so.

The mere fact that the lease was not renewed, however, does not entirely excuse the owner from the obligation to provide housing. The end of a tenancy is not the same as surrendering possession, and if the tenant failed to vacate at the lease expiration, the owner would have needed a court order to regain possession, and an argument could be made that the owner would remain obligated to provide housing to the tenant in the meantime. The Court does not have to resolve this issue here, however, because of the application of the doctrine of frustration of purpose.

The doctrine of frustration of purpose is recognized in Massachusetts as a defense to actions for breach of contract. *See* Chase Precast Corp. v. John J. Paonessa Co., Inc., 409 Mass. 371, 371-72 (1991) (affirming Appeals Court ruling that doctrine of frustration of purpose may be a defense in breach of contract action in Massachusetts).[4] Subject to those statutes and regulations governing

[4] The definition of frustration of purpose as cited by the SJC is as follows: "Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary." Chase Precast Corp., 409 Mass. at 375.

residential tenancies, a written lease for private housing is a contract and contract principles apply.[5] Under the doctrine, the principal question is "whether an unanticipated circumstance, the risk of which should not fairly be thrown on the promisor, has made performance vitally different from what was reasonably to be expected." *See* id. at 374.

The Court answers this question in the affirmative. The fire was an unanticipated circumstance that has made performance of the contract (namely, giving the tenant possession of the Premises in exchange for rental payments) vitally different from what was reasonably to be expected. The fire was significant and, according to the finding in the July 7 Order, it will take substantial time for the property to be rehabilitated. There is no allegation or evidence before the Court that the fire damage occurred because of any act or omission of the owner. Under the specific circumstances presented in this case, the doctrine of frustration of purpose applies and excuses the owner from an obligation to continue to provide housing to the tenant. To the extent that there is an inherent risk of fire in all tenancies, both parties have the ability to guard against the risk with insurance.[6]

Moreover, the Court notes that the Massachusetts legislature has provided a statutory remedy for tenants and other lawful occupants displaced by fire in G.L. c. 175, § 99. This law requires insurers of multi-unit residential property to provide a benefit of up to $750.00 directly to tenants displaced by fire for expenses such as "hotel room rental, a security deposit and first month's rent for a new rental unit if the security deposit or last month's rent is not already due and

[5] Although the tenant had a Section 8 housing voucher, she was a tenant in privately-owned housing.

[6] Not every casualty that occurs during a residential tenancy allows an owner or landlord to escape its obligations to provide housing to a tenant. If the language of the rental contract or the circumstances of the casualty indicate to the contrary, the doctrine of frustration of purpose may not be applicable. *See* Chase Precast Corp., 409 Mass. at 375 (citing the Restatement (Second) of Contracts § 265 (1981)). For example, in the private housing context, the purposes of the rental contract may not be frustrated if the unit has only minor damage that could be repaired in a relatively short time period with the exercise of reasonable diligence, or if an act or omission by the landlord or owner caused or contributed to the damage.

owing from the owner to the tenant." *See* G.L. c. 175, § 99, clause fifteen. The costs cited in the statute would be incurred by tenants if property owners were in most cases responsible for paying for alternate housing for tenants after a fire.

Notwithstanding the applicability of the doctrine of frustration of purpose in this case, it is incumbent on the Court to consider the equities. The tenant testified that she has nowhere to go and little money. It is also true, however, that she knew since the end of May that her tenancy at the Premises was ending on June 30, 2020. She testified that she expected the owner to offer her a different place to live, but with three days left in her tenancy and no replacement apartment having been arranged with the owner, she should have been making some effort to find her own replacement housing.[7] The Court is keenly aware that the COVID-19 pandemic has made safe and secure housing more important than ever, but the burden placed on the landlord cannot be ignored altogether. The owner is not a large institutional landlord and will lose rental income from the fire-damaged property for a significant period. To date, he has paid for ten nights at a hotel and an additional $50.00 per day for food.

After balancing the equities and in consideration the governing law, and taking into account the special circumstances presented by the COVID-19 pandemic, the Court enters the following ORDER:

1. The July 7 Order requiring the owner to provide alternate housing and a $50.00 daily stipend shall be extended to July 20, 2020 (meaning that the owner pays through the night of July 19, 2020 with checkout the next day);
2. The owner shall abate rent for the last three days of June and issue payment to the tenant

[7] If it was her intent to remain in possession after the lease expired, given the pending sale of the property, she likely would have been served with a summary process summons and complaint would likely have been faced with an eviction on her record.

of the prorated amount forthwith;

3. The owner shall provide the necessary contact information for tenant to collect the $750.00 relocation benefit, even if he did so before, and he shall reasonably cooperate with the tenant so that she can promptly collect the money;
4. Upon compliance with the terms of this Order, the owner is relieved of any further obligation to provide housing to the tenant.

SO ORDERED.
July 16, 2020

Jonathan J. Kane
Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-364

MASON SQUARE APARTMENTS,

Plaintiff,

v.

ANGELA GARCIA PIZARRO,

Defendant.

ORDER

After hearing on July 6, 2021 on the defendant tenant's motion to dismiss, at which each party was represented by counsel, and representatives from BCRHA's Tenancy Preservation Program appeared, the following order shall enter:

1. **Standard of Review and Statutory Authority:** It has been held that a motion to dismiss for failure to state a claim should only be allowed where it is certain that the plaintiff is not entitled to relief under any combination of facts that could be drawn or reasonably inferred from the allegations set forth in the complaint.

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Eigerman v. Putnam Investments, Inc., 450 Mass. 281, 286 (2007). Accordingly, what is required for a complaint to survive motion to dismiss for failure to state a claim at the pleading stage are "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief, in order to reflect[] the threshold requirement of [Fed. R. Civ. P.] 8(a)(2) that the plain statement possess enough heft to sho[w] that the pleader is entitled to relief (quotations omitted)." *Innacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

2. The statute at issue, G.L. c. 139, § 19, states in pertinent part:

> If a tenant or occupant of a building or tenement, under a lawful title, uses such premises or any part thereof for the purposes of . . . . possession or use of an explosive or incendiary device or other violations of section one hundred and one, one hundred and two, one hundred and two A or one hundred and two B of chapter two hundred and sixty-six . . . . such use or conduct shall, at the election of the lessor or owner, annul and make void the lease or other title under which such tenant or occupant holds possession and, without any act of the lessor or owner shall cause the right of possession to revert and vest in him, and the lessor or owner may seek an order requiring the tenant to vacate the premises or may avail himself of the remedy provided in chapter two hundred and thirty-nine.

3. **Incendiary Device:** A "destructive or incendiary device" under M.G.L. c. 266, §101 is defined as "an explosive, article or device designed or adapted to cause physical harm to persons or property by means of fire, explosion, deflagration or detonation and consisting of substance capable of being ignited, whether or not contrived to ignite or explode automatically." Some examples of objects found to be incendiary devices under the section 101 in a criminal context include "consumer fireworks," *Commonwealth v. Regan*, Essex Superior Court No. 1877CR00682, (Dec. 16, 2020, Karp, J.); "a device that consisted of multiple

components, contained an increased volume of the potassium nitrate-sugar mixture as compared to previous devices he had built, and could be activated remotely," *Com. v. Griege*, 86 Mass. App. Ct. 1125 (2014); and a "Molotov cocktail." *Com. v. DeCicco*, 44 Mass. App. Ct. 111, 112 (1998). *Contrast Com. v. Carter*, 442 Mass. 822, 824, 817 N.E.2d 768, 770 (2004) ("defendant possessed both C–4 and blasting caps; however, the evidence shows that there was no assembly of the materials, but rather that they were stored separately"); *Commonwealth v. Aldana*, 477 Mass. 790, 791–92, 81 N.E.3d 763, 765 (2017) ("evidence introduced at trial was not sufficient to establish that the defendant was without lawful authority to possess the powders themselves or the incendiary substance, thermite, that the Commonwealth asserted he intended to make").

4. In the Housing Court, incendiary devices for the purposes of an action pursuant to G.L. c. 139, § 19, have included "six rounds of live .357-caliber ammunition," *Boston Housing Authority v. Sanders*, Boston Housing Court No. 99-CV-00710 (September 3, 1999, Daher, C.J.); "four rounds of .22-caliber ammunition," *Boston Housing Authority v. Mongo*, Boston Housing Court No. 99-CV-01258 (November 29, 1999, Daher, C.J.); and a "shirt which the defendant . . . . lit on fire and threw onto the suitcases on the porch of the premises is an infernal device within the meaning of G.L. c. 266, s.102A." *Santos v. Riveira*, Southeastern Housing Court No. 12-SP-05208 (January 14, 2013, Chaplin, F.J.). The Plaintiff highlights *Santos* as an example of how the Court may find that the burning of a pile of clothes and mattress satisfies the statute. That example appears to be an outlier among the other situations discussed above and

perhaps is further distinguishable because it does not apply the current definitions in the pertinent section of G.L. c.266.

5. While the court certainly does not condone the tenant's alleged act of setting fires in her apartment, the court finds and so rules that the assertions underlying the landlord's complaint herein, that the tenant used a lighter to light clothing and a mattress aflame, do not entitle the landlord to the relief of G.L. c.139, §19 as the lighter nor the lit items---separately or combined---are "incendiary devices" under the applicable statute.

6. **Crime Involving the Use of Force or Violence Against the Person Legally Present:** G.L. c. 139, § 19 also provides for remedy "if a tenant or household member of . . . . federal or state assisted housing commits an act or acts which would constitute a crime involving the use or threatened use of force or violence against the person of . . . . any person while such person is legally present on the premises. . . ." A copy of the occupancy agreement attached to the complaint shows the tenant receives a rental subsidy in the amount of $955.00 from "MOD Rehab." If the use of force provision is applicable to the tenant as a tenant of federal or state assisted housing, this provision may also apply to the G.L. c. 139, §19 complaint which states that "PIZARRO's actions greatly put in danger the lives of all other residents in the building."

7. The tenant argues in her motion to dismiss that "[i]n this context, the word "against" must involve an intended target," and that "[a]lthough this court may infer from the complaint that the fires were set intentionally, it may not speculate that there was intentional directing of the fire, or that the fire was intended to

harm a particular target." Citing *Borden v. United States*, No. 19-5410, 2021 WL 2367312 (June 10, 2021).

8. In *Borden*, the Supreme Court of the United States ("SCOTUS") considered "whether a criminal offense can count as a 'violent felony' if it requires only a *mens rea* of recklessness—a less culpable mental state than purpose or knowledge" and held "that a reckless offense cannot so qualify." *Borden v. United States*, No. 19-5410, 2021 WL 2367312 (U.S. June 10, 2021). SCOTUS described the harsher penalties under 18 U.S.C. § 922(g) as "closely confined" to the statute. Id. Therefore, SCOTUS held that "[t]he treatment of reckless offenses as 'violent felonies' would impose large sentencing enhancements on individuals (for example, reckless drivers) far afield from the 'armed career criminals' ACCA addresses—the kind of offenders who, when armed, could well 'use [the] gun deliberately to harm a victim.'" Id.
9. Again, though the court does not condone the tenant's alleged act of setting fires, the court is persuaded by this argument and finds and so rules that G.L. c. 139, §19 is inapplicable in the instant matter where there is no averment that the defendant intended to harm a particular target.
10. **Injunctive Relief:** Based on the foregoing, G.L. c.139, §19 is inapplicable based on the landlord's complaint and, as such, the court finds and so rules that the remedies under that statute, to "annul and make void the lease" not available in these proceedings. The court does, however, find and so rule that the plaintiff has met its burden in its complaint for injunctive relief under the standards articulated in *Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 622 (1980).

11. Accordingly, the current order that the landlord change the locks on the tenant's unit and that the tenant be prohibited from being present at the premises without the landlord's express permission, shall remain in full force and effect until further order of the court.

12. Additionally, the tenant has agreed that the landlord may access her unit through July 9, 2021 to make repairs of damage caused by the fire(s) without further notice. If access is required thereafter, the landlord shall send notice to both the tenant's counsel, Uri Strauss, Esq., and Glorimar Colon of the Tenancy Preservation Program. Access upon such request shall not be unreasonably denied.

13. Further hearing in this matter shall be scheduled for **July 26 , 2021 at 12:00 p.m. by Zoom.** The Clerk's Office shall provide written instruction on how to participate by Zoom. If any party or witness is unable to appear visually by Zoom on their own, they may come to the courthouse at 37 Elm Street in Springfield and use the court's Zoom Room. The Clerk's Office can be reached by phone at 413-748-7838. A Spanish language interpreter shall be available for said hearing.

So entered this 20th day of July, 2021.

Robert Fields, Associate Justice

Cc: Jake Hougue, Tenancy Preservation Program
Court Reporter