Western Division Housing Court
Unofficial Reporter of Decisions

Volume 14

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

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

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

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

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

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

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. Our current redaction and exclusion criteria are as follows: (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. 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 disability. (6) Non-public contact information for parties, attorneys, and third-parties are generally redacted. (7) Criminal action docket numbers are 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).

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

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).

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[2] The 2021 date stated in this decision has been confirmed as a typo.

[3] The CV docket number stated in this decision has been confirmed as a typo.

SECONDARY INDEX — BY JUDGE

Hon. Jonathan Kane, First Justice

[4] The 2021 date stated in this decision has been confirmed as a typo.
[5] The CV docket number stated in this decision has been confirmed as a typo.

Hon. Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1668

ISRAEL PAGAN,

Plaintiff,

v.

DANNY RODRIGUEZ and KELLY MOYNIHAN,

Defendants.

ORDER

This matter came before the court for trial on February 1, 2022. All parties appeared with counsel. After trial, and upon consideration of the evidence admitted, the following findings of fact and conclusions of law and order for judgment shall enter:

1. **Background:** The plaintiff, Israel Pagan (hereinafter, "landlord"), owns what he describes as a single-family home located at 1077 Liberty Street in Springfield, Massachusetts. The defendants, Danny Rodriguez and Kelly Moynihan (hereinafter, "tenants") reside in the basement of said property (hereinafter,

"premises" or "property"). The tenants are the former owners of the premises who sold same to the landlord in 2011 and have consistently resided therein since said sale.

2. The landlord had the tenants served with a no-fault termination notice on or about October 27, 2020, and thereafter commenced this summary process action. The tenants filed an Answer with Counterclaims which included claims for Breach of the Covenant of Quiet Enjoyment, Breach of the Warranty of Habitability, and Retaliation.
3. **The Landlord's Claim for Possession:** The parties stipulated to the receipt of the rental period termination notice and the summons. The parties also stipulated that with payments by Way Finders, Inc., the rental balance is $0 through the date of the trial. What remains for adjudication are the tenants' counterclaims and the extent to which they serve as defenses to the landlord's claim for possession.
4. **Breach of the Covenant of Quiet Enjoyment (G.L. c.186, s.14):** From the beginning of the tenancy in 2011 through approximately June 2020, internet (Wi-Fi) and cable television were provided by the landlord, as was the tenants" storage of personal items in the garage and shed and keys to same. On or about that time, June 2020, the landlord curtailed the tenants' access to the internet (Wi-Fi) and cable television and changed the locks to the garage and the shed and did not provide keys to the new locks to the tenants. Additionally, the tenants parked their car(s) on the paved portion of the driveway since the

commencement of the tenancy until about June 2020 when the landlord prohibited them from doing so.

5. The landlord explained that the tenancy was never intended to go beyond a few months after the 2011 sale of the property. He explained that this is a single-family house and not meant to have another family (the tenants and their children) living in the basement. He described how the internet and cable service was in place when he bought the property and he kept it going at his expanse for many years until June 2020. The landlord explained that the cable/internet package from Verizon was expensive, and he changed it for a basic-level package but then did not provide the password to the tenants because he did not believe that it should be free to the tenants. At around that same time, he claims that there were items missing from the shed and the garage and that he changed the locks but did not give the new keys to the tenants. Lastly, the landlord around this same time unilaterally altered the parking arrangements requiring the tenants to park off of the concrete portion of the driveway for the first time since 2011 to enable the landlord to park closer to his door as he has a disability that makes it difficult to walk.
6. In March 2020 the tenants filed a case against the landlord for emergency relief in Case No. 20-CV-171. The tenants had to file a subsequent motion in that matter in June 2020 seeking among other things the restoration of the cable and internet access, access to parking on the concrete driveway, and keys to the shed and garage. After hearing on August 5, 2020, the court found that the

landlord unilaterally altered the terms of the tenancy and ordered that he restore the items being sought for restoration.[1]

7. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of its act (or failure to 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, 431 N.E.2d 556, 565 (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, 679 N.E.2d 528, 530 (1997).
8. The court finds and so rules that the landlord's failure to provide the tenants with keys to the changed locks on the shed and the garage, his failure to provide a password for the internet wifi and cable after changing the service for same, and his preventing the tenants from parking on the paved portion of the driveway were all unilateral changes—without proper process---to what had become parts of the tenancy and seriously interfered with the tenancy. As such, the court awards the tenants three months' rent for breach of the covenant of quiet enjoyment in violation of G. L. c.186, s.14 totaling **$1,800** plus reasonable attorney's fees and costs.
9. **The Tenants' Other Claims:** The court finds and so rules that the tenants failed to meet their burden of proof on their claims for breach of the warranty of habitability and retaliation. As to the sole condition of disrepair alleged regarding an alleged infestation of rodents and/or cockroaches, the record was deficient

[1] The court took judicial notice of the August 5, 2020 hearing in Case No. 20-CV-171.

upon which the court could find that such existed. As to the tenants' claim for retaliation, the court finds that although the landlord terminated the tenancy within six months of the tenants' seeking remedy from the court in the accompanying civil action (Case No. 20-CV171), the court is convinced that the landlord would have terminated the tenancy and sought the eviction regardless of the tenants' complaint to court.

10. **Conclusion and Order:** In accordance with G.L. c.239, s.8A, the tenants shall be awarded possession and $1,800. Given that the tenants are a prevailing party in their breach of quiet enjoyment claim which awards them reasonable attorney's fees and costs, they have 20 days from the date of this order noted below to file and serve a petition for attorney's fees and costs. The landlord shall have 20 days after receipt of said petition to file his opposition to same. The court shall make a ruling on said petition without need for further hearing and shall at that time also enter a final ruling with judgment.

So entered this 10th day of February, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-2858

JOEL PENTLARGE,

Plaintiff,

v.

MICHAEL L. PETERSON,

Defendant.

ORDER

This matter came before the court for trial on December 28, 2021, at which both parties appeared without counsel. After consideration of the evidence admitted at trail, the following order shall enter:

1. The plaintiff, Joel Pentlarge (hereinafter, "landlord") owns a multi-family house located at 31 Pulaski Street in Ware, Massachusetts. The defendant, Michael L. Peterson (hereinafter, "tenant") is a tenant in Unit 31B at that house (hereinafter, "premises").

2. The landlord served the tenant with two notices to quit on October 1, 2021. One notice was a "7-Day Notice" and the other was a "30-Day Notice". As detailed below, the court finds and so rules that neither notice was proper nor resulted in the termination of this tenancy under the law.
3. **7-Day Notice:** The landlord argued that he provided a 7-Day Notice based on his assertion that the he did not have a tenancy with the tenant, though commented on the record that it was not a particularly strong argument. It appears that the tenant resides with a roommate, David A. Tucker, who initially had a lease (dated November 1, 2014) with the landlord and another roommate (Megan Sullivant), who has since vacated. The tenant ostensibly took Ms. Sullivan's place as a roommate and though he and the landlord do not have a written lease, through the parties' actions a tenancy between the landlord and the tenant was created.
4. More specifically, the tenant credibly testified that he moved in about two years ago with the landlord's advance permission and thereafter the tenant has resided therein in open fashion, has communicated directly with the landlord, and has occasionally paid his rent directly to the landlord. The landlord did not dispute these facts.
5. As a tenant, and with no lease in effect that might allow for a 7-day termination notice, the landlord must utilize either a 14-day non-payment of rent notice or a 30-day rental period notice for fault or no fault. G.L. c.186, s.12.
6. **Thirty-Day Notice:** The other notice served on the tenant was also dated October 1, 2021, and purported to terminate the tenancy on October 31, 2021.

This notice was insufficient to terminate the tenancy as it did not provide a full rental period notice (served on October 1, 2021 for termination on October 31, 2022), nor did the date of termination fall on a "rent day". *See, Lavalley v. Medeiros*, Western Div. Hsg. Ct. No. 21-SP-2843 (Fields, J. 2022) for a more extensive ruling on this issue.

7. **Dual Notices:** Lastly, the service by the landlord of two termination notices with varied termination dates would have a "tendency to mislead" irrespective of its actual impact on the tenant in question. See, e.g. *Walnut Apartment Associates v. Perez*, Western Div. Hsg. Ct. No. 14-SP-4924 (Fields, J. 2015); and *Leclerc v. Rivera*, 19-SP-1378 (Fein, J. 2019). As such, the notices make each other equivocal and insufficient to terminate the tenancy.
8. **Conclusion and Order:** Based on the foregoing, the landlord's claim for possession is dismissed and given that the tenant did not file an Answer or assert claims, the summary process action is also DISMISSED.

So entered this 11th day of February, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

CASE NO. 20-SP-1103

LUMBER YARD NORTHAMPTON LIMITED PARTNERSHIP,

Plaintiff,

v.

KELLI HUDSON,

Defendant.

ORDER

This matter came before the court on the defendant's Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Costs. After consideration of the request, the following order shall enter:

1. The defendant, Kelli Hudson (hereinafter, "Hudson"), is seeking waiver of fees/costs for digital recordings of the hearings in her eviction case and for substitution of costs for the transcription of same.
2. The docket indicates that there were 14 hearings.

3. Because these are Extra Fees and Costs, the Clerk Magistrate passed Hudson's request to the Judge. Because the request simply stated, "(transcripts) oral + written" the judge scheduled a hearing to ascertain greater clarity on the request.
4. Hudson was evicted from her former tenancy by the plaintiff and at the hearing on February 14, 2022, Hudson was not clear if she has any appeals pending and it appears that she has not currently pursuing any appeal.
5. Hudson explained that she wishes to pursue her former landlord (plaintiff) for allegedly acting in bad faith regarding her eligibility for rental arrearage funds (RAFT/ERMA) during her tenancy and that it is causing problems for her to secure alternate subsidized housing.
6. She explained that she is contemplating commencing a Small Claims matter against her former landlord regarding such alleged behaviors but has yet to file same.
7. Applying the standard of whether or not written transcripts are "reasonably necessary to assure the applicant as effective a prosecution, defense, or appeal as she may have if she were financially able to pay", the court concludes that Hudson has not met her burden and denies said request, without prejudice. *Adjartey v. Central Div. Hsg. Ct. Dept.*, 481 Mass. 830 (2019). This is especially true given the costs of written transcripts and the lack of clarity for its use in future litigation. *See, Commonwealth v. Lockley*, 381 Mass. 156.
8. That said, given the much lower costs of providing digital recordings and that Hudson is *pro se*, that her appeals are technically still pending, and given her

intention to file a subsequent court action arising out of this litigation, Hudson's request for waiver of costs for digital recording in this matter is allowed[1].

9. **Conclusion and Order:** Based on the foregoing, Hudson's request for written transcripts of the hearings in this matter is denied, without prejudice to her being able to make the same request under different circumstances should she pursue her litigation. Hudson's request for digital recordings of the hearings in this matter is allowed.

So entered this 17th day of Feb, 2022.

Robert Fields, Associate Justice

Cc: Laura Fenn, Assistant Clerk Magistrate (Appeals Clerk)
Kelli Hudson by email: [redacted]
Court Reporter

[1] Hudson's indigency appears clear given the nature of her income stated on the Affidavit of indigency form under penalties of perjury.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-0189
TEHRAN JOHNSON AND MANDY LANZA, PLAINTIFFS v. JU LING-YI, DEFENDANT	RULING ON PETITION FOR ATTORNEYS' FEES AND ORDER FOR ENTRY OF FINAL JUDGMENT

This matter is before the Court on Plaintiff's post-trial petition for an award of attorneys' fees and costs. Following a bench trial the Court found that Plaintiffs were entitled to judgment for damages in the amount of $13,859.20, plus an award of $1,200.00 as a sanction for contempt, plus costs and reasonable attorneys' fees. Plaintiffs submitted a petition for such fees and costs, and Defendant filed an opposition.

In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorneys' fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience,

reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389. The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. *See Heller*, 376 Mass. at 629.

In this matter, Plaintiffs prevailed on their claims for breach of the implied warranty of habitability and breach of the covenant of quiet enjoyment under G.L. c. 186, § 14 (which incorporates their negligence claim) and G.L. c. 93A. Plaintiffs did not prevail on their claim for retaliation. Plaintiff also demonstrated their right to have the utilities transferred back to Defendant and their entitlement to sanctions for Defendant's contempt of court. Although counsel's time spent litigating an unsuccessful claim should be excluded from the calculation of an attorneys' fees award, after carefully reviewing the billing history submitted by Plaintiff's counsel, it appears that Plaintiffs' counsel did not submit time entries for the retaliation claim. The Court further determines that any time spent preparing for and prosecuting a claim for retaliation was de minimis. The Court finds that the 33.5 hours counsel spent working on this matter is not unreasonable under all of the circumstances.

With respect to the hourly rate, the standard of reasonableness depends on the fair market value of his services. A judge may discern, from his own experience as a judge and expertise as a lawyer, the rate for which an attorney should be paid. *Heller*, 376 Mass. at 629. Plaintiffs' counsel petitions for an hourly rate of $200.00 per hour, which, based on the undersigned's extensive experience litigating matters in this Court, the Court deems to be reasonable given the market value for legal services in Housing Court matters in Western Massachusetts. Likewise, the Court deems the costs sought in Plaintiffs' petition to be reasonable.

Accordingly, Plaintiffs' petition for $6,700.00 in attorneys' fees and $445.00 in costs is allowed. The award of attorneys' fees is without interest. *See Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985). In light of the foregoing, and the Court's rulings and order entered on December 7, 2021, the Court hereby orders that final judgment shall enter for Plaintiffs in the amount of $15,059.50 and $7,145.40 in attorneys' fees and costs.

SO ORDERED this 22nd day of February 2022.

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-2794
CYNTHIA MCCALLISTER, PLAINTIFF v. KATHLEEN JACKSON, DEFENDANT	ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This case came before the Court by Zoom on February 16, 2022 for hearing on Plaintiff's motion to summary judgment. Both parties appeared through counsel.

The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleadings, depositions, answers to interrogatories, admissions, documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976).

The material facts are not in dispute. Defendant resides at 54 River Street, Great Barrington, Massachusetts (the "Property"). On August 31, 2021, she was served with a rental period notice to quit dated August 27, 2021 signed by her then-landlord, Melissa Raulston (the

"Seller"), terminating the tenancy as of October 1, 2021. The Property was conveyed to Plaintiff by a deed recorded on September 3, 2021. Plaintiff filed this eviction case on October 14, 2021 based on the notice to quit served by the Seller.

Defendant asserts that, because G.L. c. 186, § 12 requires a landlord to terminate a tenancy at will by providing the tenant with notice equal to the interval between the days of payment or thirty days, whichever is longer, and G.L. c. 186, § 13 recites that a tenancy at will is not terminated upon the conveyance of the rental premises, it "seems obvious" that the buyer of property with a tenant at will must herself terminate the tenancy after purchase. The Court respectfully disagrees that there is an obvious conclusion to be drawn in this matter.[1]

The determination of whether a successor owner can rely on a notice to quit served by the prior owner depends on at least two related factors: first, whether the notice to quit served prior to the conveyance had expired by the date of the conveyance, and second, the type of termination notice that was served. With respect to the first consideration, in this case the Seller's notice to quit had not expired prior to the conveyance of the Property to Plaintiff. Had the tenancy been terminated prior to the conveyance, Defendant would have been a tenant at sufferance, obviating the need for Plaintiff to serve a statutory notice to quit.[2] Instead, at the time Plaintiff acquired the Property, she entered into a landlord-tenant relationship with Defendant who, at that time, was a tenant at will. To terminate the landlord-tenant relationship, Plaintiff must serve her own notice to quit and cannot not rely on the one served by Seller that, by its own terms, had not expired when Plaintiff became the owner of the Property.[3]

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[1] Neither party could find a decision by an appellate court addressing the issues before the Court.

[2] It appears that Plaintiff was aware of the benefit of having the Seller terminate the tenancy prior to the purchase, because the addendum to the purchase and sale agreement includes a provision requiring the Seller to deliver written notice of termination effective as of August 31, 2021, prior to the closing date.

[3] The Court would reach the same conclusion whether the unexpired notice to quit was based on lease violations or non-payment of rent.

The basis for the notice of termination of the tenancy – whether it be for lease violations, failure to pay rent or for no fault of the tenant – is important only when the termination notice expires prior to the conveyance of the subject property. A successor owner usually may not rely on an expired notice to quit served by the prior landlord based on lease violations or non-payment of rent.[4] In the case of a no-fault rental period notice that expires prior to conveyance, however, the tenant has become a tenant at sufferance by the time of the conveyance and so the new owner can commence a summary process case without serving its own notice to quit (except, perhaps, for the 72-hour notice customarily provided to tenants at sufferance).

In the instant action, Plaintiff did not serve her own notice to quit and instead relied on a notice to quit served by the Seller that had not expired as of the date of conveyance of the Property. Accordingly, for the reasons set forth herein, Defendant's motion for summary judgment on Plaintiff's complaint is ALLOWED. Plaintiff's claim for possession is dismissed and Defendant's counterclaims shall be transferred to the civil docket in which Defendant Jackson shall be captioned as the plaintiff and Plaintiff McCallister shall be captioned as the defendant.

SO ORDERED this 1st day of March, 2022.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

[4] Because there is no evidence that Plaintiff and the Seller entered into an assignment of rights, the Court does not reach the question of whether a selling party can assign its rights in the tenancy to the purchaser after expiration of a notice to quit but prior to filing a summary process case.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-CV-0087
EAD PROPERTIES, LLC, PLAINTIFF v. KHALIL MELENDEZ, ET AL.,[1] DEFENDANT	ORDER RESTORING POSSESSION

This case came before the Court for an in-person hearing on March 4, 2022 on Plaintiff's motion for injunctive relief. Plaintiff appeared through counsel; Defendant appeared self-represented.

Pursuant to an earlier Court order, Defendant was prohibited from residing at the premises located at 17 Asinof Avenue, Apt. 2L, Chicopee, Massachusetts (the "Premises") until further order of the Court. Plaintiff seeks an order extended the prohibition through the conclusion of a summary process case against Defendant. Defendant seeks to lift the prohibition so that he can return to the Premises immediately.

Based on the testimony and other evidence presented, the Court concludes that the likelihood of irreparable harm to Defendant if the order is extended outweighs the risk of irreparable harm to Plaintiff and the other residents of the six-unit building housing the Premises if the order is modified with conditions placed on Defendant's conduct. In light of the foregoing, the following order shall enter:

[1] The other two named defendants have been or are now being dismissed by agreement.

1. Defendant must comply with the following conditions:

    a. Maintain the heat in the Premises above 55° at all times and keep windows closed during cold weather.

    b. Not cause any material damage to the Premises.

    c. Observe quiet hours between 9:00 p.m. and 7:00 a.m.

    d. Make no excessive noise, including without limitation running, slamming doors and banging, that disturbs the quiet enjoyment of other residents.

    e. Text all requests for repairs or maintenance to the landlord promptly.

    f. Provide reasonable access for repairs on 24 hours' advance written notice (a text message is sufficient) and allow emergency responders to enter the Premises if requested.

    g. Inform the landlord if he is not going to be residing in the unit for more than three consecutive days.

    h. Not copy the keys for any other person without first information the landlord.

2. Given that Defendant testified that at least one other person may have keys to his unit, Plaintiff may change the locks and provide Defendant with a new key.

3. If Plaintiff alleges a material violation of this order, it may file for a hearing over Zoom on <u>two days'</u> advance notice.

SO ORDERED this 7th day of March 2022.

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-3498

MIROSLAV TKACH AND OKSANA TKACH,	)	
PLAINTIFFS	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER
THERESA A. BURDICK,	)	
DEFENDANT	)	

This no fault summary process action was before the Court for a Zoom bench trial on March 3, 2022. Plaintiff seeks to recover possession of 44 Fernwood Road, Southwick, Massachusetts (the "Premises") from Defendant. Plaintiffs appeared at trial with counsel. Defendant appeared at trial and represented herself.

Plaintiffs are third party purchasers of the Premises following a bank foreclosure. Defendant is the former homeowner. Defendant did not file an answer. She stipulated to Plaintiffs' prima facie case and elected not to assert any defenses at trial. She only asked for additional time to move. She testified that she live with her children but that her foster child will not have a place to go until the end of the school year.

The Court has discretion in a no fault eviction case to grant a stay on entry of judgment and use of the execution provided that certain conditions are satisfied. *See* G.L. c. 239, § 9. This case does not fit squarely within the statutory stay framework, however. First, this is a post-foreclosure eviction case and Defendant does not have the same rights as a bona fide tenant.

Second, because she plans to move in with family, she does not intend to conduct a diligent housing search. Third, Plaintiffs acquired the Premises in December 2020, so any statutory stay period may have already expired.

Nonetheless, principles of equity compel the Court to grant a stay of execution on the condition that Defendant pay a reasonable sum for her use and occupancy of the Premises during the period of the stay. Plaintiffs called a witness, Amy Marie Dusso, a licensed real estate agent, who testified that a comparable single family house in the greater Hampden County area would rent for approximately $2,500.00 per month and that the least expensive comparable property she found rented for $1,600.00 per month. She had no personal knowledge of the condition of the Premises, which Defendant categorized as "tired" given that she purchased it in 1979 and has not done much to maintain it in recent years.[1]

Defendant testified that her only source of income is SSDI in the amount of approximately $1,300.00 per month. She also gets food stamps and fuel assistance. She collects $900.00 per month on her foster child's behalf which must be used "to keep a roof over his head" and otherwise provide for him.

After taking the foregoing factors into account, and in light of governing law, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiffs.

2. Defendant shall pay Plaintiffs $100.00 for her use and occupancy for the month of March 2022 by March 21, 2022. Beginning in April 2022, she shall pay Plaintiffs $500.00 for

[1] Plaintiffs intend to use the Premises as an investment property, not a personal home, and could not estimate their monthly carrying costs.

use and occupancy by the 5th of the month.[2]

3. The parties shall return for review on May 26, 2022 at 9:00 a.m. by Zoom. The Zoom login information is: Meeting ID: 161 638 3742 Password: 1234. Defendant is free to appear at the Western Division Housing Court in person if she prefers.

SO ORDERED this 7th day of March 2022.

Jonathan J. Kane, First Justice

cc: Court Reporter

[2] The reason for the reduced payment for March is that Defendant is on a fixed income and likely did not budget for a significant use and occupancy payment for this month.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 19-CV-0937
JEREMY WOO, ET AL., PLAINTIFFS v. DESIRAE VALENTIN, ET AL., DEFENDANTS	ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This case came before the Court by Zoom on February 16, 2022 for hearing on Plaintiffs' motion to summary judgment. Both parties appeared through counsel. For the following reasons, Defendants' motion is ALLOWED IN PART and DENIED IN PART.

The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleadings, depositions, answers to interrogatories, admissions, documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976).

The material facts are not in dispute. On or about January 18, 2018, Defendants executed a lease for 26 Salem Place, Amherst, Massachusetts (the "Property") for tenancy commencing on

June 1, 2018. Plaintiffs are the landlord. The lease required Defendants to pay up front, in addition to first month's rent, last month's rent and a security deposit, payment of $850.00 as a "rental agency fee." Plaintiffs initially suggested that a genuine dispute exists as to who received the rental agency fee (the landlord or the real estate broker), but the Court deems that fact to be immaterial. The question is not whether the fee was ultimately paid to the broker; the question is whether Plaintiffs violated G.L. c. 186, § 15B(1)(b) by including in the lease a mandatory rental agency fee.

Plaintiffs contend that Massachusetts law permits real estate brokers to charge fees to tenants searching for housing and, in fact, points to a regulatory scheme that governs the practice. *See* 254 CMR 7.00. *See also* G.L. c. 112, § 87PP. Plaintiffs are correct that G.L. c. 186, § 15B does not prohibit a real estate broker from charging tenants a fee for services rendered; however, the regulations clearly imply that the prospective tenants will work directly with the broker and be presented with certain disclosures to sign. Here, there is no evidence of any such relationship or paperwork. Instead, the lease executed by the parties explicitly requires Defendants to pay a broker's fee as part of the consideration for rental of the Property. Based on these facts, the Court concludes that the mandatory broker's fee charged by the landlord is a violation of G.L. c. 186, § 15B(1)(b).

Defendants also seek summary judgment on the question of whether Plaintiffs acted reasonably in mitigating their damages after Defendants vacated the Property. In support of their motion, Defendants assert that, by listing the apartment for rent with the mandatory broker's fee included in the advertisement, Plaintiffs' actions cannot be considered to be a reasonable effort to mitigate damages. The Court cannot determine from the record the totality of efforts Plaintiffs made to find replacement tenants, nor can the Court definitely determine that the rental listing is

per se unreasonable without more context.

Accordingly, for the reasons set forth herein, Defendants' motion for summary judgment is ALLOWED with respect to the violation of G.L. c. 186, § 15B(1)(b). Defendants' motion for summary judgment is DENIED with respect to the issue of whether Plaintiffs took reasonable steps to mitigate their damages.

SO ORDERED this 7th day of March 2022.

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-CV-0107
PYNCHON TOWNHOMES, LLC, PLAINTIFF v. KWANZA ROBERTS, DEFENDANT	ORDER FOR PRELIMINARY INJUNCTION GRANTING POSSESSION

This case came before the Court by Zoom on March 9, 2022 for hearing on Plaintiff's motion a preliminary injunction in the form of a declaratory judgment voiding Defendants' lease pursuant to G.L. c. 139, § 19. Plaintiff appeared through counsel with witnesses. Defendant appeared self-represented.

Pursuant to G.L. c. 139, § 19,

> ... if a tenant or household member of a housing authority or 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 .. any person while such person is legally present on the premises of a housing authority or on the premises of federal or state assisted housing, such ... 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. If the lessor or owner is entitled to relief pursuant to this section, such lessor or owner may seek declaratory judgment of his rights hereunder in the district, superior or housing court, which may grant appropriate equitable relief, including both preliminary and permanent injunctions, including a preliminary injunction granting the lessor or owner possession of the premises, and in connection therewith may order issuance of an execution for possession of any such premises to be levied upon forthwith.

Based on the verified complaint and the credible testimony and evidence presented at the hearing and the reasonable inferences drawn therefrom, the Court finds the following facts:

1. Plaintiff is the owner of a residential housing development known as Pynchon Townhomes located at Lowell Street and Plainfield Street in Springfield, Massachusetts (the "Property").
2. The Property participates in HUD's project based Section 8 program and the federal low income housing tax credits program, and thus qualifies as state or federally assisted housing as that term is used in G.L. c. 139, § 19.
3. The Property is comprised of approximately 250 apartment homes.
4. Defendant resides at 57 Orchard Street, Springfield, Massachusetts (the "Premises") which are part of the Property.
5. On February 4, 2022, at approximately 4:30 p.m., Defendant engaged in a verbal altercation with another resident of the Property, Jennifer Torres Garcia, in the parking lot in front of the Premises. Shortly after this confrontation, while Ms. Garcia was in her vehicle waiting at a traffic light on the Property, Defendant approached her vehicle and again engaged in a verbal exchange with Ms. Garcia. Ms. Garcia exited her vehicle and was assaulted by Defendant. As a result of being stabbed with some object Defendant had in her hand,[1] Ms. Garcia suffered a significant gash that required stitches. The incident was witnessed by Ms. Garcia's children in the car.
6. When Officer Martinez from the Springfield Police Department arrived at the Premises, Defendant denied him access to the unit. In lieu of forcing his way into the Premises, the

[1] The Court's finding is based on the civil preponderance of the evidence standard. Defendant was repeatedly advised of her constitutional right not to incriminate herself. She did not admit that she stabbed her neighbor.

officer filed a criminal complaint charging Defendant with assault and battery with a dangerous weapon.

7. Defendant has three children and is several months pregnant. [redacted]. On that day, apparently angry over [redacted], Defendant used a hammer and smashed the glass of her next-door neighbor's storm door.
8. Defendant received a racially-charged note wrapped around a bar of soap. She claims to be the victim of repeated harassment at the Property for the past two years.
9. Defendant was served with a Notice Voiding Tenancy on February 9, 2022 requiring her to vacate the Premises no later than 5:00 p.m. on February 12, 2022.
10. Defendant failed to vacate the Premises.
11. This case initially came before the Court by Zoom on March 3, 2022 for hearing. Defendant appeared but said that she could not appear on video with her phone. Because of the serious nature of the allegations in the case and unique nature of the relief sought under G.L. c. 139, § 19, the Court continued the hearing to allow the parties to appear for an in-person evidentiary hearing. The Court urged Defendant to consult counsel prior to the in-person hearing, particularly as to her Fifth Amendment rights.[2]

Based on the foregoing facts, the Court rules that Defendant's conduct constitutes criminal activity involving the use of force or violence against a person legally present on the property of federal or state assisted housing. Consequently, Plaintiff has the right to annul and make void the lease pursuant to G.L. c. 139, § 19. Defendant's continued occupation of the Premises creates an immediate threat to the safety and well-being of the other residents of the

[2] At the outset of the hearing, Defendant reported that she spoke with Community Legal Aid but was denied representation.

Property and any other person legally present there. The Court determines that the risk of irreparable harm to Plaintiff and those for whom Plaintiff is responsible if injunctive relief is not granted outweighs the harm that will be caused to Defendant if the relief is granted. The Court recognizes that awarding possession to Plaintiff by preliminary injunction as permitted under G.L. c. 139, § 19 will have a drastic impact on Defendant. She may lose her subsidized housing and may not be able to regain custody of her children without a stable home. The Court also acknowledges that Defendant appears to be the victim of racially-motivated harassment by others who may or may not live at the Property, and that she believes she has been mistreated by the police and management. None of these issues, however, change the fact that she violently attacked another resident on the Property in front of that resident's children, causing physical harm to Ms. Garcia and emotional harm to her children. Moreover, based on her conduct in the courtroom during and immediately following the hearing, the Court has no reason to believe that Defendant can control of her emotions and avoid another incident of violence if she is permitted to remain on the Property.

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

1. Plaintiff lawfully annulled and made void Defendant's lease.
2. Pursuant to G.L. c. 139, § 19, the Court hereby enters a preliminary injunction granting Plaintiff judgment for possession of the Premises.
3. An execution for possession shall issue in favor of Plaintiff forthwith.
4. The execution shall be served and levied upon pursuant to G.L. c. 239, §§ 3 and 4.

SO ORDERED this 15th day of March 2022.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3241

ROUND TWO LLC,

PLAINTIFF

v.

CARY MALONE, JR.,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no fault summary process action was before the Court for a Zoom bench trial on February 24, 2022. Plaintiff seeks to recover possession of 153 Princeton Street, Springfield, Massachusetts (the "Property") from Defendant. Plaintiff appeared at trial with counsel. Defendant appeared at trial and represented himself.

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

Plaintiff is the record owner of the Property, which continues to be occupied by Defendant. Plaintiff acquired the Property by virtue of a Fiduciary Deed granted by Angela Mitchell, Personal Representative of the Estate of Synthia Marie Mitchell A/K/A Synthia Scott-Mitchell (the "Personal Representative") recorded in the Hampden County Registry of Deeds at book 24124 page 219 on September 16, 2021. The sale of the Property by the Personal Representative to Plaintiff was specifically authorized by a Decree of Sale from the Probate and Family Court dated August 11, 2021.

Defendant does not contest receipt of notice to vacate served upon him by deputy sheriff on September 17, 2021 terminating his right to occupy the Property as of November 1, 2021. Plaintiff timely served and filed a summary process summons and complaint. Accordingly, Plaintiff has established its prima facie case for possession.

Defendant raises two primary defenses to Plaintiff's claim for possession: first, that the Personal Representative did not have the right to sell the Property to Plaintiff and (b) that he has an ownership interest in the Property. With respect to the former, the Court finds that the sale was duly authorized by an order from the Probate and Family Court. If Defendant believes the Personal Representative caused him injury in the manner in which she sold the Property, he may have a claim against her, but such a claim would not set aside the Fiduciary Deed by which Plaintiff became the owner of the Property.[1] The Court finds that Plaintiff is a third party purchaser of the Property with the right to rely on the Decree of Sale from the Probate and Family Court authorizing the transaction.

Regarding his claim of ownership of the Property, Defendant did not demonstrate that the Warranty Deed recorded at the Hampden County Registry of Deeds at book 23949, page 257 has any legal import. Defendant does not appear in the chain of title to the Property prior to the recording of the Warranty Deed and cannot simply declare himself to be the owner of the Property because he wants it to be so. Accordingly, the Court finds that the Warranty Deed has no effect on Plaintiff's claim to possession in this case.

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[1] Defendant has filed a petition in the Probate and Family Court to appoint him as the successor Personal Representative. Defendant seeks a stay in this Court pending the determination of the petition; however, no stay is warranted. Even if Defendant's petition to replace the Personal Representative granted, Defendant has not convinced this it would void the Fiduciary Deed by which the Property was conveyed to Plaintiff.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue upon application in accordance with Uniform Summary Process Rule 13.

SO ORDERED this 15th day of March 2022.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

GREGORY RICE,

Plaintiff,

v.

TERESA OWENS-BOUTHILIER (21-SP-3330) and DAVID OWENS (21-SP-3331),

Defendant.

ORDER OF DISMISSAL

After hearing on March 8, 2022, on the defendants' motion to dismiss these matters, at which the plaintiff landlord appeared *pro se* and the defendant tenants appeared with counsel, the following order of dismissal shall enter:

1. For the reasons stated on the record, the matters are dismissed. The notice to quit in question dated July 9, 2021 purporting to terminate the tenancy as of July 31, 2021 to Ms. Owens-Bouthilier is invalid as it did not provide a rental period notice.

2. Additionally, the summons and complaint relative to Ms. Owens-Bouthilier is defective as it fails to state any reason for the eviction in violation of Uniform Summary Process Rule 2(d).
3. The landlord stated that the only notice to Mr. Owens was a "BC" copy to him of this very same email. Thus, that notice is deficient for the reasons stated above but also because it is addressed to Ms. Owens-Bouthilier and not to Mr. Owens, purporting to terminate his tenancy.
4. Given the above holding, the court need not address the defendants' argument that the notices are also defective due to their being sent by email.
5. Accordingly, the plaintiff landlord's claim for possession are dismissed. The tenants' counterclaims in each of these two summary process matters shall be severed and transferred to the civil docket, creating two new matters; one *Teresa Owens-Bouthilier v. Gregory Rice* and *David Owens v. Gregory Rice*.

So entered this 17th day of March, 2022.

Robert Fields, Associate Justice

Cc: Uri Strauss, Community Legal Aid (LAR Counsel)
Michael Doherty, Clerk Magistrate (for transfer to CV docket)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2722

KEITH E. FREEMAN,

PLAINTIFF

v.

ROCKY JACKSON,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no-fault summary process action came before the Court for an in-person bench trial on March 8, 2022. Plaintiff seeks to recover possession of 84 Meadowbrook Road, Holyoke, Massachusetts (the "Premises") from Defendant. The parties appeared for trial and represented themselves. Defendant filed an answer asserting affirmative defenses and counterclaims.

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

Plaintiff owns the Premises, a single family home. Defendant moved into the Premises approximately three years ago and did not have a written rental agreement. In his answer, Defendant claims that monthly rent is $420.00, but Plaintiff did not make any claim for money damages in this no-fault eviction case despite testifying that Defendant had not paid rent for many months. Over the past two years, Plaintiff has moved various family members into the house and now wants Defendant's bedroom vacant so that he can move another family member

into the Premises. Plaintiff terminated Defendant's tenancy at the end of September 2021 with a rental period notice to quit, which Defendant acknowledges receiving. He then timely filed this summary process action. Based on the foregoing, Plaintiff satisfied his prima facie case for possession.

In his answer, Defendant asserts numerous defenses and counterclaims. At trial, however, he only testified about being locked out of the home and suffering from harassment.[1] With respect to the lockout, the Court heard conflicting testimony as to the circumstances. The Court finds that Plaintiff had the locks changed when his daughter and her family moved in and that he instructed his daughter to give Defendant a key. Defendant did not get the key right away and claims that he had to stay a few nights at his sister's house in Wilbraham. On the issue of the purported lockout, the Court finds Plaintiff and his daughter more credible that Defendant and concludes that Plaintiff acted in good faith in changing the locks to protect his daughter and her family. Therefore, the Court finds in favor of Plaintiff on Defendant's counterclaims based on the lock change.

Regarding his claim of harassment, Defendant cites an instance where Plaintiff had his unregistered car towed from the yard. Plaintiff admits that he had the car towed after Defendant refused to remove it himself. Plaintiff's decision to have Defendant's car towed plays a central role in this matter because Defendant admits that he would have left the Premises long ago but

[1] In his answer, Defendant asserts that Plaintiff retaliated against him for reporting bad conditions (apparently a lack of hot water) but he did not raise this issue as a defense or counterclaim at trial. He also checked a box on the answer claiming to be subjected to unwanted/unsolicited harassment of a sexual nature, but he did not raise this issue at trial either. His defense that Plaintiff did not properly terminating the tenancy is rejected. He references the need for a reasonable accommodation in his answer, and he did testify to [redacted], but federal and state fair housing laws do not apply in the circumstances present in this case with an owner-occupied single family residences in which one bedroom is rented to a non-family member. Even if they did, Defendant did not request an accommodation no did he provide any evidence that he met the definition of a disabled person.

for his anger about the car. Despite Defendant's frustration, the Court finds that Plaintiff's conduct is not actionable under a theory of breach of warranty (as it has nothing to do with defective conditions) nor does the conduct rise to the level of being a substantial interference with Defendant's quiet enjoyment of the Premises.

With respect to other allegations of harassment, Defendant testified that Plaintiff's family locked the bathroom door nearest to his bedroom as an act of harassment, forcing him to use a downstairs bathroom. The Court finds that Plaintiff's daughter testified credibly with regard to the good-faith reasons that the bathroom door was locked, particularly the unsanitary condition in which Defendant regularly left the bathroom (which was used by her five-year old daughter). In any event, the lock was subsequently removed and Defendant was permitted to use the upstairs bathroom thereafter. The Court finds insufficient evidence to conclude that locking the bathroom nearest to Defendant's bedroom was an act of harassment.

Defendant further testified that Plaintiff's family members would enter his bedroom without permission and that they left obstacles on the stairwell and hallways to make it more difficult for him to pass. The Court finds insufficient evidence to conclude that these actions were acts of harassment. Plaintiff's daughter testified credibly that her 5-year old sometimes opened Defendant's bedroom door and left items on the floor. The acts complained of by Defendant are no more than the unfortunate by-product of housemates forced to share common living space.[2] The Court finds in favor of Plaintiff on Defendant's counterclaims based on allegations of harassment.

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[2] Both sides of the case made vague accusations about theft and invasion of privacy, but these issues were not plead nor were they sufficiently developed at trial, and the Court makes not findings regarding these issues.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. The execution (eviction order) may issue upon application by Plaintiff ten days after the date that judgment enters.
3. Judgment shall enter in favor of Plaintiff on Defendant's counterclaims.

SO ORDERED this 15th day of March 2022.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-SP-3386
PINE STREET REALTY TRUST, PLAINTIFF v. DALIA SANTIAGO AKA DALILA SKINNER AND MARQUES SKINNER,[1] DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action came before the Court for an in-person bench trial on March 11, 2022. Plaintiff seeks to recover possession of 38 Alden Street, Springfield, MA (the "Premises") from Defendants. Plaintiff appeared for trial with counsel; Defendants appeared self-represented.

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

Plaintiff owns the Premises, a three-family home in which Defendants live in a two-floor unit on the right side. Defendants moved into the Premises approximately five or six years ago. They had a written lease at the outset of their tenancy but have been month-to-month tenants since the lease expired. Their monthly rent is $1,100.00. By letter dated October 27, 2021,

[1] The summary process summons and complaint spelled Defendant Santiago's first name incorrectly, and at trial she corrected the spelling and indicated that she goes by her married name, Skinner.

Plaintiff caused Defendants to be served with a notice to quit alleging, simply, "damaging property/premises." Defendants acknowledge receipt of the notice to quit. Plaintiff timely served and filed a summary process summons and complaint.

As a preliminary matter, the complaint fails to provide the reason for this eviction "with sufficient particularity and completeness to enable a defendant to understand the reasons for the requested eviction and the facts underlying those reasons." *See* Unif. Summ. Proc. R. 2(d) (emphasis added). Even assuming that the complaint incorporates the notice to quit (because the complaint itself offers no reason for the eviction whatsoever), the phrase "damaging property/premises at 38 Alden Street, Springfield, MA" is inadequate. It does not provide any facts underlying the reason for eviction and fails to meet the requirements of Rule 2(d). Accordingly, this matter can be dismissed on this basis.

Even if the case had been adequately plead, however, the Court finds that Plaintiff did not establish its prima facie case for possession. At trial, Plaintiff testified that Defendants damaged the wall in an upstairs bedroom closet, damaged a bedroom door, and marked up a bedroom wall.[2] Although Defendants did not file an answer, they asserted at trial that the damages claimed by Plaintiff do not warrant eviction. The Court agrees. Defendants testified credibly that the closet wall was accidently damaged by their child while playing. They deny that they are damages any other walls or doors. The damages are relatively minor and unintentional, and do not meet any standard of materiality to warrant eviction of a family. Rather than seek to evict Defendants, Plaintiff could have simply asked them to pay for any damages they caused.

[2] Plaintiff also testified that Defendants left items strewn over the lawn and allowed items to clutter the patio behind the house. This conduct is not referenced in the notice to quit (the Court does not deem such conduct to constitute "damage" to the property/premises) and therefore will not be considered here.

Based on all of the testimony and evidence presented at trial, the Court concludes that Plaintiff was likely motivated to file this case by the past history between the parties. The Court takes judicial notice of a non-payment case in this Court, Docket No. 19-SP-0160 in which Way Finders paid over $8,000.00 to cure Defendants' rental arrears. Way Finders also paid a rent stipend to Plaintiff through the month of October 2021. The earlier case was dismissed in September 2021 and the notice to quit in this case was dated October 27, 2021, less than a less than a week before the rent stipend would end and Defendants would become responsible again for payment of rent. Plaintiff's termination of the tenancy under these circumstances appears to be an attempt to justify terminating the tenancy in anticipation of Defendants once again falling behind in their rent. Regardless of his motivation, Plaintiff did not provide proper notice pursuant to Rule 2(d) of the Uniform Summary Process Rules nor did he establish his prima facie case for possession of the Premises. Accordingly, judgment for possession shall enter in favor of Defendants.

SO ORDERED this 18th day of March 2022.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SPRINGFIELD, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-SP-3552
BRENDAN SIMMS, PLAINTIFF v. BRITNEE SMITH. DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no fault summary process action was before the Court for a Zoom bench trial on March 17, 2022.[1] Plaintiff seeks to recover possession of 294 Gifford Street, Springfield, Massachusetts (the "Premises") from Defendant. Plaintiff appeared at trial with counsel. Defendant appeared at trial and represented herself.

Defendant did not file an answer. She stipulated to Plaintiff's prima facie case[2] and elected not to assert any defenses at trial. She only asked for additional time to move. Without objection, the Court accepted Defendant's testimony as an oral petition for a stay pursuant to G.L. c. 239, § 9.

The Court has discretion in a no fault eviction case to grant a stay on entry of judgment and use of the execution provided that certain conditions are satisfied. *See* G.L. c. 239, § 9. The Court finds that (i) the Property is used for dwelling purposes, (ii) Defendant has been unable to

[1] The case was scheduled for an in-person trial but Plaintiff requested and Defendant assented to a Zoom trial.
[2] The Court finds the notice to quit terminating Defendant's tenancy as of November 30, 2021 to be legally sufficient and, further, that Defendant timely served and filed the summary process summons and complaint.

secure suitable housing elsewhere, (iii) Defendant is using due and reasonable effort to secure other housing, and (iv) Defendant's application for stay is made in good faith and that she will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, § 10.

Defendant testified that she has been diligently searching for replacement housing. She said that she recently became eligible for a mobile Section 8 voucher but could not find suitable housing, despite extending her voucher three times.[3] She has four children and is searching in Springfield and Chicopee for replacement housing. Although the Premises is a single family house, she is willing to move into an apartment. She owes rent only for the months of February 2022 and March 2022. Her monthly rent is $1,350.00.

In light of the foregoing and the governing law, the following order shall enter:

1. Plaintiff is entitled to entry of judgment for possession and $2,700.00 in rental arrears, but entry of judgment shall be stayed pursuant to G.L. c. 239, § 9.

2. Defendant shall conduct a diligent housing search and document her efforts in a written log listing her efforts, including the address of all locations she makes inquiry, visits or to which she applies, including the date and time of contact, method of contact, name of contact person and result of contact. She shall email the log to Plaintiff's counsel and submit it to the Court at least three days before the next hearing.

3. Defendant shall pay $1,350.00 each month for her use and occupation of the Premises during the stay period. Payments shall be made on the following dates:

[3] Defendant stated that she is no longer eligible for the subsidy. She is encouraged to reach out to Community Legal Aid or other legal counsel to determine if she can reinstate the voucher.

a. March 18, 2022 (for use and occupancy for February 2022);

b. March 31, 2022 (for use and occupancy for March 2022);

c. April 20, 2022 (for use and occupancy for April 2022);

d. May 20, 2022 (for use and occupancy for May 2022).

4. The parties shall return for review of Defendant's housing search and compliance with this order on **May 25, 2022 at 2:00 p.m.** The parties shall appear by Zoom using the same log-in information as used for the hearing today. Meeting ID 161 638 3742 Password 1234.

SO ORDERED this 18th day of March 2022.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3526

CASSANDRA FERREIRA,

Plaintiff,

v.

LAURAL CHARLAND, JASON CHARLAND, and JAMES VASQUEZ,

Defendants,

ORDER

After hearing on March 17, 2022 on defendant Laural Charland's motion for stay of proceedings pending appeal of prior summary process action, where plaintiff and defendant Laural Charland appeared represented by counsel, the following order shall enter:

1. This matter is substantially related to the first summary process action 20-SP-1676 between these same parties. In that case, on June 25, 2021, a written decision finding for possession in favor of Cassandra Ferreira ("Plaintiff"), with judgment to enter on September 1, 2021. Judgment entered in that case on

August 30, 2021. On September 9, 2021, Defendant filed a notice of appeal, affidavit of indigency, and motion to set or waive appeal bond. A hearing on that motion was scheduled for October 7, 2021, and the parties appeared before Judge Winik on that date. There was some confusion as to the procedural posture of the case, and the matter was continued to October 13, 2021. At hearing on October 13, 2021, the Court ruled from the bench that Laural Charland ("Defendant") had a non-frivolous defense on appeal, there was no challenge as to the Defendant's indigency, and the motion to waive appeal bond was allowed. On October 19, 2021, a written Order entered allowing the motion and setting monthly use and occupancy payments of $1,205 pending appeal pursuant to G.L. c. 239, § 5. Due to some unfortunate error by the court, assembly of the record for appeal did not occur until March 17, 2022.

2. In the meantime, the Plaintiff had served a new rental period notice to quit upon Laural Charland, Jason Charland, and James Vasquez (together "Defendants"). On December 20, 2021, this action was entered and a status hearing was held on March 1, 2022. Trial was subsequently scheduled for March 17, 2022. After motion hearing on March 15, 2022, trial was continued until April 1, 2022.
3. In her motion to stay pending appeal, Defendant argues that "[i]t would be inconsistent with the intent of G.L. c. 239, § 8A and with general principles of justice and equity to allow the Plaintiff to subvert the Defendant's appeal and to evict her on a no-fault basis simply by commencing a second summary process action." To support her position, Defendant cites several Housing Court decisions to stay a summary process case pending the appeal of a prior

judgment awarding money damages to the defendant that may be used to set off arrears claimed in a follow-up action. *See Cardaropoli v.Quinones*, Western Housing Court No. 88-SP-6663 (November 15, 1988, Abrashkin, J.); *Riverdale Trust v. Komando*, Western Housing Court No. 89-SP-8854 (March 7, 1989, Abrashkin, J.).

4. Housing Courts have also issued stays in other cases where related actions were pending on appeal. *See Jayne v. Brown*, Northeastern Housing Court No. 93-SP-00316 (April 9, 1993, Kerman, J.) ("The plaintiff's application for judgment of summary process for possession of the subject premises shall be stayed pending the outcome of Middlesex Superior Court NO. 92-462, defendant's appeal noticed on September 9, 1992, as it appears that the same factual issues that are involved here were tried to verdict in NO. 92-462"); *Roche v. Lizio*, Eastern Housing Court No. 86-CV-21604 (July 24, 1997, Kerman, J.) ("By order entered November 15, 1994, proceedings in this case were stayed pending the outcome of the landlords' related action in the Appeals Court"); *Foundation for Humanity, Inc. and Roctronics Park Professional Corporation v. Gildea*, Southeastern Housing Court NO. 04-SP-5503 (January 24, 2008, Edwards, J.); *City of Boston Inspectional Services Department v. Fromm*, Eastern Housing Court No. 08-SP-0054 (June 5, 2013, Winik, F.J.) ("The proceedings shall be stayed pending a decision from the Appeals Court and/or the Supreme Judicial Court on the appeal filed by Safe Haven Sober Houses, LLC, David W. Perry and David Fromm from the judgment entered by the Suffolk Superior Court in the related case of Safe Haven Sober Homes, Inc. v. Turner & others (Civil Action No.

02247, Brassard, J.)"); *Nationstar Mortgage LLC v. Harvey*, Northeast Housing Court No. 14-SP-1741 (October 6, 2015, Kerman, J.) ("In this post-foreclosure summary process case, I allowed on November 3, 2014, over the defendants' objections, the plaintiff's motion to stay proceedings in this case [Doc.#22, 23A, 24], pending the outcome of the appeal in a similar case, *Pinti v. Emigrant Mortgage Co., Inc.*, no. SJC11742."). *Cf. Federal Home Loan Mortgage Corp. v. Wagner*, Southeastern Housing Court No. 16-SP-0739PL (December 30, 2020, Salvidio, F.J.) (after 4 years of nonpayment and multiple stays allowed further stay pending federal appeal was denied); *America v. Holmes*, Southeastern Housing Court No. 18-SP-0108 (February 15, 2018, Edwards, J.) (second summary process action brought during pending appeal was dismissed pursuant to Mass. R. Civ. P. 12 (b) (9)).

5. In her opposition, Plaintiff states that "this is a second summary process action wholly distinct and independent from the first summary process action" and that "there are no grounds to stay this proceeding." Plaintiff argues that all of the cases cited by Defendant concern the issue of set-off of prior judgment for tenant pending appeal and are inapplicable to this matter. Then she asserts a position that was repeated multiple times at hearing on the motion, that Defendant's position "[t]aken to its logical conclusion, an innocent landlord who won a prior action can never receive possession no matter how long an appeal takes." Further, Plaintiff's memorandum "indicate[s] that she does not wish to proceed on the defense of the prior action as she does not have the funds to spend on such a defense which will not get her possession for likely more than a year." Plaintiff

also asks for sanctions against Defendant and argues that "[t]hese facts fit squarely in the framework of what the court specifically warned tenant's counsel against in *Hodge v. King*, 33 Mass. App. Ct. 746 (1992).

6. The Court has stated on multiple occasions that it is sympathetic to the Plaintiff's position in this matter. Nevertheless, Defendant's arguments are convincing that a stay is warranted pending the appeal of the August 30 judgment entered in 20-SP-1676. Plaintiff already has a judgment for possession in that matter, and despite her contention to the contrary, she has alternatives in that action to alleviate her current position. As the Court stated at hearing on Defendant's motion to waive appeal bond on October 13, 2021, she may move to increase the amount of use and occupancy ordered pursuant to G.L. c. 239, § 5 ("section 5"). Where the appeal was not timely processed, she could have moved the Court to dismiss the appeal or otherwise alerted the court to its error. Plaintiff could also concede possession and move to dismiss appeal as moot.[1] As it stands, the question of superior right to possession is pending on appeal and is the only question presented in this rental period notice, no-cause summary process action. The cases concerning stays granted pending appeal cited supra are not limited to the issue of set-off, and if none are directly related to the issue raised in this matter, they at least show that a stay of summary process proceedings pending an appeal in a closely related matter is not an extraordinary measure.

[1] The Court takes no position as to the efficacy of any of these potential alternatives. Plaintiff is represented by competent and experienced counsel.

7. Indeed, "[u]nless specifically authorized, [the Court] ha[s] "an obligation to refrain from issuing an order that would 'render the appeal moot or otherwise affect the issues before the appellate court.'" *Cambridge St. Realty, LLC v. Stewart*, 481 Mass. 121, 136 (2018), *quoting Springfield Redev. Auth. v. Garcia*, 44 Mass. App. Ct. 432, 435 (1998). *See* Rule 11(b) of the Uniform Summary Process Rules (applying Mass. R. Civ. P. 62, requiring automatic stay of execution of judgment pending appeal, to summary process actions). In *Cambridge St. Realty*, judgment was initially stayed after defendant appealed adverse judgment for possession and posted an appeal bond. However, the Housing Court eventually issued execution after finding that the defendant had violated a nonfinancial condition of the bond and the Appeals Court stated "the judge did not have the authority to order execution of judgment." *Cambridge St. Realty*, 44 Mass. App. Ct. at 136.
8. Similarly, here, the Plaintiff hopes to expedite the issuance of execution which would render the issue on appeal moot. Therefore, pursuant to the Court's obligation under *Cambridge St. Realty*, and in the interests of judicial economy, this matter is hereby stayed pending appeal in 20-SP-1676. *See City of Boston Inspectional Services Department v. Fromm*, Eastern Housing Court No. 08-SP-0054 (June 5, 2013, Winik, F.J.) ("In the interest of fairness and judicial economy the cross motions for a stay of proceedings in the above referenced consolidated actions are ALLOWED").
9. This result does not preclude the landlord from ever receiving possession no matter how long the appeal takes. Should Plaintiff prevail on appeal, she will be

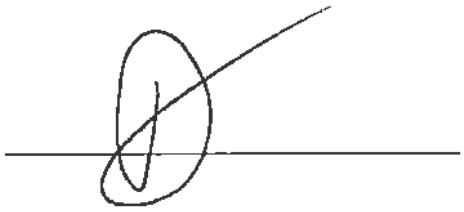
within her rights to request execution to issue following the statutory appeal period, just as Defendant was within her rights to seek appeal of an adverse judgment. Section 5 provides protection for Plaintiff as it requires "any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver." "The purpose of all these bond provisions is twofold: to deter frivolous appeals and to provide compensation for plaintiffs for the loss of the property during the appeal." *Bank of New York Mellon v. King*, 485 Mass. 37, 42–43 (2020). The Court has explicitly ruled that Defendant's appeal is not frivolous.

10. Plaintiff's request for sanctions against Defendant is likewise denied without prejudice at this time. As the Court cautioned Plaintiff on October 7, 2021, the facts in this case do not yet approach those considered in *Hodge v. Klug*, 33 Mass. App. Ct. 746 (1992). In that case, the Appeals Court stated that "Klug has attempted to manipulate the summary process procedure and has misused statutory and regulatory protections for tenants in rental housing." *Hodge v. Klug*, 33 Mass. App. Ct. 746, 757 (1992). As discussed previously, the Defendants in these related matters have simply raised a statutory defense to summary process (*i.e.* G.L. c. 239, § 8A), and appealed an adverse judgment. After hearing, the section 5 appeal bond was waived following a finding that Defendant's appeal was not frivolous and monthly use and occupancy payments were set.

11. Plaintiff's unfortunate circumstances do not place her in a different position than any other landlord pursuing summary process. Just as section 8A "would be defanged if a tenant at sufferance could not employ its machinery," *Hodge*, 33 Mass. App. Ct. at 754, section 5 would be similarly undermined if a tenant's meritorious appeal could be subverted by a subsequent summary process action and judgment for possession were to enter pending the prosecution of appeal.

12. Defendant's motion to stay is ALLOWED. Plaintiff's motion for sanctions is DENIED.

So entered this 29th day of March, 2022.



Robert Fields, Associate Judge

Cc: Court Reporter
Charles Sweeney, Housing Court Dept. Administration Office

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3161

EAVON VAUGHAN,	)	
	)	
PLAINTIFF	)	
v.	)	ORDER ON PLAINTIFF'S
	)	MOTION TO DISMISS APPEAL
RA DAIS DEAPOCALYPSE BEY,	)	
	)	
DEFENDANT	)	

This case came before the Court on March 31, 2022 on Plaintiff's motion to dismiss appeal. Plaintiff appeared with counsel. Defendant appeared self-represented.

Defendant filed a notice of appeal on February 3, 2022. Following a hearing on February 17, 2022, the Court waived the requirement of an appeal bond and required Defendant to pay for his use and occupation of the rental premises during the pendency of the appeal. The Court set the rate of use and occupancy at $1,050.00 (the amount of monthly rent as of the trial date) and ordered that Defendant pay use and occupancy for February 2022 within five days of the order and thereafter by the 5th of each month. Defendant has not made any payment of use and occupancy. In light of the foregoing, the following order shall enter:

1. Defendant may cure the default by paying Plaintiff the sum of $3,150.00, representing use and occupancy for February 2022, March 2022 and April 2022, by 4:00 p.m. on April 5, 2022.

2. If the payment described in the previous section is not made, Defendant's counsel may file an affidavit with the Court to that effect. Upon receipt of such affidavit, the clerk shall enter the dismissal of Defendant's appeal on the docket and issue the execution for possession forthwith.
3. If his appeal is dismissed, Defendant has the right to appeal the dismissal to the Appeals Court

SO ORDERED this 1st day of April 2022.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1103

LUMBER YARD NORTHAMPTON LIMITED PARTNERSHIP,

Plaintiff,

v.

KELLI HUDSON,

Defendant.

ORDER

After hearing on March 17, 2022, on the defendant's motion to re-open and the plaintiff's motion to dismiss the defendant's appeal, the following order shall enter:

1. As noted on the record during the hearing, the defendant's motion to re-open this case is denied. It is quite clear that the defendant is seeking to initiate a new claim against the plaintiff arising out of allegations that the plaintiff has interfered and otherwise violated her rights regarding her access to RAFT and/or ERMA funds through Way Finders, Inc. The defendant was instructed to file a separate

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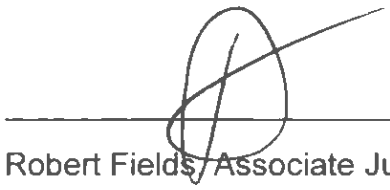
legal action regarding such claims and the motion was denied as such claims are outside of this litigation.

2. The plaintiff's motion to dismiss the defendant's appeal is allowed. After careful review of any and all appeals filed by the defendant in this matter, it appears that almost all are closed as being denied by the Appeals Court and/or Supreme Judicial Court. To the extent that any appeals remain open with those courts, they appear to be moot as the defendant was evicted from the premises months ago and possession of that unit was long reverted to the plaintiff.

So entered this 5th day of April, 2022.



Robert Fields, Associate Justice

Cc: Laura Fenn, Esq., Assistant Clerk Magistrate

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1608

STOCKBRIDGE COURT, LLC,

Plaintiff,

v.

LAURA McMORDIE,

Defendant.

ORDER

After hearing on April 5, 2022, at which only the plaintiff appeared, the following order shall enter:

1. The plaintiff's motion to reconsider is denied. The court is not moved from its position that the Tenant Form date-stamped February 8, 2022, is a timely appeal of the court's January 27, 2022, judgment and order.
2. As stated in the court's earlier order and on the record at the March 18, 2022, hearing, the court credits the defendant's testimony that she was present in the clerk's office on February 7, 2022 (the tenth day after the judgment) to file the

Tenant Form---which states "appeal" in several places and is considered by the undersigned judge as an appeal---but was instructed to leave and serve a copy and then return the next day to the clerk's office for filing *after service* of said motion form.

3. In addition to the plaintiff's motion to reconsider, the court conducted an appeal bond hearing. Given that the defendant was not present to be heard on her motion to waive the appeal bond, said motion is denied.
4. The judgment and execution in this matter is for possession and no monies, not even for court costs.
5. Accordingly, the bond shall be payment by the defendant of use and occupancy beginning on May 1, 2022, pending appeal.
6. The court is satisfied by the plaintiff's presentation at the hearing that the monthly use and occupancy is $1,920.
7. Accordingly, the appeal bond shall be the monthly payments on the first of each month during her occupancy beginning May 2022, of $1,920 payable to the plaintiff in accordance with G.L. c.239, s.5.
8. The parties are reminded to also review the Rules of Appellate Procedure to ensure compliance with actions and deadlines therein.

So entered this 6th day of April, 2022.

Robert Fields, Associate Justice

Cc: Laura Fenn, Assistant Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0214

JOSE COLON,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER
	)	
FANAYA ESTATES, LLC,	)	
	)	
DEFENDANT	)	

This matter came before the Court on April 8, 2022 for further proceedings following a hearing on April 5, 2022 at which time Plaintiff, appearing without counsel, claimed to have been locked out of 343 Hight Street, Apt. R, 2d Floor, Holyoke, Massachusetts (the "Premises"). At the initial hearing, Defendant, who appeared with counsel, testified that he did not change the locks and that he did know who might be living in the Premises.

When the case returned to Court on April 8, 2022, Plaintiff did not appear. Defendant's agent, Yasser Hussein, testified that, as requested by the Court on April 5, 2022, he entered the unit with the police and found that squatters had broken into the Premises. Given that Plaintiff did not appear today, the following order shall enter:

1. Defendant may change the locks and secure Premises from unauthorized entry.
2. If Plaintiff believes he has the legal right to possess the Premises, he may schedule a hearing in this matter for purposes of obtaining keys. If such a motion is filed, the

Court will determine whether Plaintiff has a right to reoccupy the Premises pending the outcome of a summary process case.

3. Legal possession of the Premises will not vest in Defendant until further order of this Court.

SO ORDERED this 14th day of April 2022.

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3263

ERIC GORDON,

Plaintiff,

v.

LOUISE BRAICA and DOUG PRUNEAU,

Defendant.

ORDER

This matter came before the court for an in-person trial in the Pittsfield Session on March 23, 2022, at which all the parties appeared *pro se*. After hearing and consideration of the evidence admitted at trial, the following findings of fact and rulings of law shall enter:

1. **Background:** The plaintiff, Eric Gordon (hereinafter, "landlord") owns a multi-family building in which the defendants, Louise Braica and Doug Pruneau (hereinafter, "tenants"), rent the bottom left unit (hereinafter, "premises"). This

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tenancy began in November 2018 when the landlord purchased the building---and the tenant having already resided therein.

2. The landlord had the tenants served with a Notice to Vacate for Possession on August 31, 2021, terminating the tenancy for no-fault. Thereafter, the landlord commenced the eviction in the court. The tenants filed an Answer with defenses and counterclaims including breach of warranty of habitability, retaliation, breach of the covenant of quiet enjoyment, and illegal late fees.
3. **The Landlord's Claim for Possession and for Rent:** The landlord is seeking $6,000 in outstanding use and occupancy through March 2022. This calculation is based on a monthly rent for September 2021, of $750 and rent for October 2021 through March 2022, in the amount of $875 per month. The court finds and so rules that though the landlord wanted to raise the rent as of October 1 2021, to $875, the tenants never agreed to the higher rent and never paid it and the rent remains at $750.
4. The tenants claim that they paid rent in August 2021 for that month and then separately paid the landlord in August 2021 for five months. They submitted rent receipts that are confusing and appear altered and the court does not find that any monies were paid by the tenants during that time.
5. The court finds and so rules that the landlord has met his burden of proof on his claim for use and occupancy in the amount of **$5,250**. This represents September 2021 through March 2022 each at $750.
6. **Breach of the Covenant of Quiet Enjoyment:** The landlord is responsible for heat at the premises and routinely failed to provide sufficient heat throughout the

tenancy. He was aware of this problem and attempted to address it by providing the tenants with a space heater or space heaters which drove the tenants' electric bills up significantly. The tenants were also forced to use their stove to provide additional heat to the premises. The North Adams Department of Inspectional Services noted the lack of sufficient heat in their January 2022 report.

7. The landlord is liable for breach of the covenant of enjoyment if the natural and probable consequence of its act (or failure to 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, 431 N.E.2d 556, 565 (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, 679 N.E.2d 528, 530 (1997). The court finds the landlord "at least negligent" for his failure to provide sufficient heat at the premises and hereby awards the tenants three months rent in accordance with G.L. c.184, s.14 on their claim of breach of the covenant of Previous quiet enjoyment totaling **$2,250.**

8. **Breach of the Warranty of Habitability:** There were conditions of disrepair at the premises from the first moment the landlord purchased the property in November 2018---as they existed from prior to the landlord's ownership. More specifically, the premises had windows that either did not open at all or opened only slightly until the landlord repaired same in 2020. Additionally, there were large openings around the front and back exterior doors that allowed cold air and

snow to penetrate the subject unit and were not repairs until December, 2021. The bathroom sink was pulling away from the wall and leaking and the tub was in need of repair and caulking at least from the February 19, 2021 city inspection report until same were found in compliance by the city inspectors on January 20, 2022.

9. 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, 396 N.E.2d 981 (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, 506 N.E.2d 1164 (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, 576 N.E.2d 658 (1991).

10. The court finds and so rules that the conditions of disrepair regarding the windows were present for 13 months (November 2018 through January 1, 2020) and the conditions regarding the external doors and bathroom were present for 11 months (February 19, 2021 through January 20, 2022) and finds that a 20%

reduction overall during that period is a fair diminution in the value of the premises. Accordingly, the tenants shall be awarded **$3,600** for their claim of breach of warranty of habitability.

11. **Tenants' Remaining Claims:** The tenants failed to meet their burden of proof on their remaining claims of Retaliation and Late Fees.
12. **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 plus **$600**. This represents an award to the tenants for $5,850 ($2,250 for breach of the covenant of quiet enjoyment plus $3,600 for the breach of warranty of habitability) MINUS the award to the landlord for $5,250 in outstanding use and occupancy.

So entered this 13th day of April, 2022.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-SP-4880

XIUYU MA,

Plaintiff,

v.

ANGEL BERNARD,

Defendant.

ORDER of DISMISSAL

After hearing on April 11, 2022, on the landlord's motion for entry of judgment at which each party appeared *pro se*, the following order shall enter:

1. This court case is 3.5 years old.
2. There were many agreements entered into by the parties over those years, some of which were agreed-upon orders of the court. The most recent agreed-upon order is dated October 29, 2021. In that order, the parties reported that $14,400

was paid to the landlord on the tenant's behalf and that a rent stipend on top of that sum was paid for September and October, 2021 and that the tenant was paid through November, 2021.

3. The parties further agreed that if the tenant paid his rent from December 2021, through April, 2022 by the 5th of each month the landlord would waive $10,235 in outstanding rent and the matter would be dismissed.
4. The landlord brought this instant motion for judgment for possession and for the $10,235 noted above due to the tenant's alleged late payment each month of his rent. More specifically, the tenant paid December 2021 rent in full on December 7, 2021, January 2022 rent in full on January 13, 2022, February 2022 rent in full on February 18, 2022, March 2022 rent in full on March 16, 2022, and was prepared to pay April 2022 rent in full at the time off the hearing.
5. The tenant explained that his income from home care work during the past several months only comes once per month in the middle of the month and this was the reason his rent was paid mid-month.
6. After hearing from both parties as to whether there was a waiver of the 5th of the month due date, as contemplated in the agreed upon order of October 29, 2021, and an amendment to same effectuated by the parties' behavior, the court finds that there was such an amendment which allowed the tenant to pay his rent in the middle of the month.
7. As such, the landlord's motion is denied and with the tenant having fulfilled his obligations under the October 29, 2021 agreed upon order (upon payment of

April 2022 rent), the $10,235 noted above and in said Order is waived by the landlord, and this case is dismissed.

So entered this 13th day of April, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-58

GARY MAYNARD,

Plaintiff,

v.

FRANK HULSE, ADAM HULSE, and HELEN LaPLANTE,

Defendants.

ORDER

After hearing on April 13, 2022, at which the plaintiff landlord appeared *pro se*, and the defendant tenant Helen LaPlante appeared with Lawyer for the Day (LFD) Counsel, the following order shall enter:

1. The tenant, though LFD counsel, moved the court to dismiss this matter due to a faulty notice to quit.
2. More specifically, the tenancy is a month-to-month tenancy with the rent due date being the first of each month.

3. The notice to quit utilized in this matter was dated November 26, 2021 and purported to terminate the tenancy as of December 28, 2021.
4. In a month-to-month tenancy the termination notice must end on a rent day. December 28, 2021, though more than 30 days after service of the notice does not end on a rent day and, thus, does not provide the tenants with rental period notice.
5. This notice does not conform to the statute, which requires the notice period to be the equivalent of a full rental period. Numerous Supreme Judicial Court decisions make it clear that the termination statutes are to be strictly construed. See generally Hall, Massachusetts Law of Landlord and Tenant, (4th ed. 1949) section 173. See also, *Connors v. Wick*, 317 Mass. 628 (1945), at 630-31.
6. As such, the motion to dismiss is allowed and this matter shall be dismissed, without prejudice.

So entered this 13th day of April, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter
David DeBartolo, Esq. (Lawyer for the Day)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21SP1189
CHICOPEE HOUSING AUTHORITY, PLAINTIFF v. MICHAEL S. BOUTIN, DEFENDANT	ORDER ON MOTION TO RECONSIDER ORDER APPEAL BOND

The procedural history of this summary process action is complicated and therefore worth elucidation. A bench trial was conducted on August 6 and 12, 2021. As has been the case throughout this litigation, Defendant (the tenant) appeared self-represented. Plaintiff (the landlord) appeared through counsel. The rental unit in which Defendant resides is located at 100 Debra Drive, Apt. 4-F, Chicopee, MA (the "Premises")

Plaintiff filed this matter as a for-cause summary process action. In his answer, Defendant asserted certain counterclaims based on allegedly defective conditions. Pursuant to G.L. c. 239, § 8A, counterclaims and defenses based on allegations of conditions of disrepair can defeat a claim for possession only in cases brought for non-payment of rent or in no-fault eviction cases. Accordingly, Defendant's conditions-based counterclaims were severed from the summary process case for possession and transferred to a separate civil action (docket no. 21CV0571).

After the bench trial in the instant case, the Court found that Plaintiff satisfied its burden of demonstrating that Defendant had committed a substantial breach of his lease by interfering

with a neighbor's right to the peaceful enjoyment of his home, but the Court, having heard Defendant testify as to certain disabilities that might have contributed to the lease violation, deferred entry of judgment to allow Defendant an opportunity to transfer to a different unit away from the neighbor.

Defendant declined a transfer and Plaintiff moved for entry of judgment. The motion was granted and judgment for possession entered in favor of Plaintiff on December 6, 2021. Defendant filed a timely notice of appeal on December 13, 2021, along with an affidavit of indigency. Notice of a hearing to waive the appeal bond was sent to the parties on December 15, 2021. The Court entered an order on January 20, 2022 finding Defendant to be indigent as that term is defined in G.L. c. 261, § 27A. The Court further found that Defendant had a non-frivolous defense. Accordingly, the Court waived the requirement of an appeal bond and ordered Defendant to pay $312.00 per month for his use and occupancy of the subject premises during the pendency of the appeal.[1]

On January 25, 2022, Defendant filed a motion to reconsider the use and occupancy order. A virtual hearing was held on February 15, 2022, at which time Defendant sought to demonstrate through testimony, videos and photos that the rate of use and occupancy should be reduced due to defective conditions in his unit. As an accommodation to Defendant, who repeatedly (but baselessly) accused the Court of losing evidence[2] and refusing to allow him to tell the Court everything he wanted to say, the Court agreed to reconsider its use and occupancy order and to allow Defendant to present evidence in person.

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[1] The unit is in a public housing development and his rent is based on his income. Most recently, his rent was adjusted to $312.00 effective as of June 1, 2021. Defendant's apparent refusal to sign the paperwork certifying that the information he provided to Plaintiff was true and accurate does not invalidate the rent change.

[2] To be clear, the Court never lost any evidence. Defendant submitted multiple flash drives with proposed evidence and was under the mistaken impression that the Court would review anything he submitted; however, the Court explained that the only evidence it can consider is the evidence submitted as part of an evidentiary hearing.

When the in-person hearing commenced on March 7, 2022, the Court was informed that the trial in the related case regarding allegedly defective conditions in the Premises (docket no. 21CV0571), was scheduled to take place on March 24, 2022. Given that evidence as to conditions would be taken at trial, the Court deferred ruling on Defendant's motion to reconsider its use and occupancy order until after the civil trial in docket number 21CV0571. Having now heard evidence in the civil action, the Court is prepared to rule on Defendant's motion to reconsider its use and occupancy order.[3]

In the civil trial, Defendant testified about the following alleged conditions of disrepair in the Premises:

1. Plumbing, including slow drains, drain blockages, and gas emissions from drains;
2. Hot water temperature, including both excessive and insufficient hot water;
3. Air temperature and drafts in his unit from windows, walls and doors; and
4. Malfunctioning smoke detector.

With respect to the plumbing issues, Defendant showed videos of (a) water draining from his bathroom sink and slightly percolating up through his bathtub drain, (b) malodorous emissions from the drains that made the bathroom smell of excrement, and (c) water not draining from his bathroom sink as quickly as water was coming out of the faucet, causing the sink to partially fill with water. He claims, despite no training or experience as a plumber, that these conditions evidence a plugged vent pipe and improperly connected plumbing inside the walls of the building (Defendant lives on the fourth floor). He played a video of what he claims is an electronic gas detector that he purchased at Home Depot sounding an alarm when he held it up

[3] The trial in 21CV0571 did not conclude, but Plaintiff's case in chief regarding damages has concluded.

against the bathtub drain. He contends that the alarm indicates the emission of dangerous methane gasses causing the bad odors.

On two separate occasions, Plaintiff sent a licensed plumber to inspect Defendant's plumbing and neither detected any significant problems. The City of Chicopee's code enforcement also found no significant problems. Only one week before the hearing, Plaintiff hired an experienced Section 8 housing inspector to conduct a thorough inspection of the unit, and again he found no serious plumbing problems.[4] Defendant disputed the findings of the various inspectors and contractors, claiming that they did not bring the right tools, did not inspect other units to compare and did not understand how the building's internal plumbing systems worked. The Court credits the evidence presented by Plaintiff regarding the plumbing issues and does not credit Defendant's lay testimony about the operation of the plumbing system in the building. With respect to the foul odors, the Court has no evidence beyond Defendant's testimony (and a purported gas detector that is not scientifically reliable) that the odors are caused by defects in the plumbing or sewer systems. Although Defendant did demonstrate that water drains somewhat slowly, the Court does not find this to be a material defect that warrants a reduction in use and occupancy.

Turning next to the hot water temperature, Defendant demonstrated that when he held a temperature gun purchased from Home Depot to the metal ring around the drain in the bathroom sink, the water temperature measured above the maximum temperature of 130° F. He also testified that at times his shower would lose all hot water and cover him with extremely cold water. The Court has little trouble believing that he has suffered from fluctuation water temperature, but the question for the Court is whether the fluctuation warrants a finding that

[4] The inspector noted a drain stopper not working properly and a restricted tub drain. Defendant shall make the necessary repairs forthwith.

Defendant's unit is not worth the $312.00 per month that he pays for it. Given that his rent is based on his income and is thus significantly below the market rent and, given his tendency to hyperbole throughout his testimony and written motions, the Court is not willing to find that the intermittent fluctuation of water temperature justifies a reduction in the below market rent that he pays.

With regarding to the air temperature in Defendant's unit, including the cold drafts that he testified about coming through windows, the walls (particularly behind his entry buzzer system) and the doors, the Court finds his testimony credible. He showed videos of his temperature gun showing temperatures approximately 10° lower in places around his windows, and one or two degrees lower around the doors and along the floor/wall joints. The air drafts can be caused by many issues, however, including windows that are slightly open or unlocked. The drafts along the floor were insignificant and seem to be reasonable given that heat rises. The videos show some gaps around the door frames, and the recent inspection notes that the door casing is separating, but Plaintiff testified that it is in the process of making repairs that should reduce if not eliminate the problem with the door casing. Even with the slight gap in the door frame, and even crediting Defendant's unsupported accusation that the "sweep" attached to the underside of the door was improperly installed, the question for the Court is not whether the unit is airtight but whether the drafts are material conditions of disrepair that were not caused by Defendant. Given the lack of credible evidence as to the source and severity of the drafts, the Court finds that the conditions complained of do not warrant a reduction in the rental value of the Premises.

Lastly, Defendant's claim regarding the smoke detector does not rise to the level of a material condition of disrepair. Defendant contends (based on his reading of a user's manual)

that it is overly sensitive or is otherwise "polling" too frequently. He also complained that its small flashing green light bothers him. The Court finds these matters to be trivial and do not indicate a malfunction.[5]

Upon reconsidering its previous order entered on January 20, 2022 waiving the requirement of an appeal bond and setting the amount of the monthly installment payments for use and occupancy pending appeal at $314.00, the Court declines to alter its decision. Accordingly, Defendant's motion to reconsider is denied. Given that Defendant has already filed a notice of appeal, the Court instructs the Clerk's Office to assemble the record for appeal.

SO ORDERED. Dated 4/14/22.

Jonathan J. Kane

Hon. Jonathan Kane, First Justice

[5] The Court notes that the inspection from March 16, 2022 did not indicate any serious defects in the unit.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1656

WESTFIELD HOUSING AUTHORITY,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER FOR CONTINUANCE
	)	
CATHY NOYES,	)	
	)	
DEFENDANT	)	

This matter came before the Court on April 11, 2022 on Defendant's motion for a continuance of the trial scheduled for tomorrow. Both parties appeared through counsel.

Defendant claims to be a qualified individual with a disability as defined by the Fair Housing Act and submitted a reasonable accommodation request to Plaintiff. She now seeks a continuance to permit the parties to engage in a meaningful interactive process. The motion shall be granted on the condition that Defendant comply with the following conditions pending trial:

1. Defendant shall not knowingly allow anyone to enter her apartment who does not have permission to be there, and she shall contact the police promptly if anyone enters her apartment without her permission.
2. Defendant shall cooperate with Plaintiff's efforts to trespass certain individuals from the property and will not invite any person to the property that has been served a "no trespass" notice.

3. Defendant shall keep her apartment door locked at all times. Plaintiff shall provide keys to Defendant's unit to those individuals who need access to provide care, such as her personal care attendants and authorized family members.

4. The parties shall appear for a bench trial in-person on **May 18, 2022 at 12:00 p.m.**

SO ORDERED this 14th day of April 2022.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1420

DIPLOMAT PROPERTY MANAGER, LLC,)
)
PLAINTIFF)
)
v.)
)
CARMEN DEJESUS,)
)
DEFENDANT)

RULING ON PLAINTIFF'S MOTION TO AMEND FINDINGS OF FACT AND TO VACATE/AMEND JUDGMENT

Following entry of judgment in favor of Defendant on November 30, 2021, Plaintiff filed a motion to amend the findings of fact and vacate the judgment. The motion was argued on February 22, 2022. For the following reasons, the motion is DENIED.

The basic premise of Plaintiff's argument is that the subject property (the "Property") could not have been in disrepair when it purchased the property because a Court-appointed receiver had fully rehabilitated the Property and been granted authorization by the Court to sell it at auction. As stated by Plaintiff, "Clearly, the Property could not have been code complaint at the conclusion of the receivership and suddenly rife with code violations upon [Plaintiff's] purchase of the same." Motion at p. 8. The premise is flawed, however.

The Court found that the receiver was entitled to enforce its lien and sell the property at a hearing held on September 15, 2020. Plaintiff did not take ownership of the Property until the deed was recorded on January 21, 2021, more than three months later. In an occupied property, three months is plenty of time for conditions of disrepair to develop. A responsible purchaser at a

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foreclosure auction would have inspected the property at the time of acquisition to ensure that no conditions of disrepair existed and to document the condition of the Property.

Here, however, Plaintiff's representatives did not enter the Property or talk to Defendant until July 2021, seven months after acquiring the Property. The only evidence presented to the Court regarding the conditions of the Property as of January 21, 2021 was the testimony of Defendant and her sister. Plaintiff could not produce any witness or other evidence of the condition of the Property as of the date of purchase. Accordingly, the Court was justified in finding that the conditions of disrepair, which were documented and cited by the City of Springfield's code enforcement department in April 2021, existed at the time Plaintiff took title to the Property.

Regarding Plaintiff's contention that an award of possession was improper, the Court directs Plaintiff to G.L. c. 239, § 8A. Pursuant to Section 8A, where a tenancy has been terminated without fault of the tenant or occupant, "there shall be no recovery of possession … if the amount found by the court to be due the landlord equals or is less than the amount found to be due the tenant or occupant by reason of any counterclaim or defense under this section." Here, the Court found the amount due Plaintiff was less than the amount due Defendant and thus Plaintiff is not entitled to regain possession in this action.[1]

With respect to Plaintiff's assertion that the Court failed to justify an award of treble damages under G.L. c. 93A, a violation of law is willful or knowing where it is a "callous and intentional violation of the law." See *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 627 (1978). Reckless conduct can be considered willful and knowing. See *Kattar v. Demoulas*, 433 Mass. 1, 15 (2000). Here, the Court concluded that Plaintiff demonstrated a willful disregard of

[1] Of course, nothing precludes Plaintiff from seeking possession in a separate action.

the condition of the Property and the well-being of the occupants. Plaintiff did not inspect the Property or provide Defendant with the name and contact information of the new property manager; instead, upon acquisition, it had its lawyer send a form letter to Defendant asking her to contact the law firm "to discuss this property and any concerns." Moreover, Plaintiff entrusted a third-party real estate broker assigned by a computer to manage the repairs after it was notified of code violations. The broker testified that his job was to facilitate repairs and market the Property for sale, not to manage the landlord-tenant relationship between Plaintiff and Defendant. The Court decided that Plaintiff made a conscious decision to take minimal responsibility as a landlord and that its conduct was sufficiently egregious to justify treble damages. See *Whelihan v. Markowski*, 37 Mass. App. Ct. 209, 213 (1994).

Accordingly, the Court declines to amend its findings or to vacate the judgment in favor of Defendant. Plaintiff's motion is therefore denied.

SO ORDERED this 21 day of April 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. 21-SP-3509

RICHARD KOWALSKI,

Plaintiff,

v.

PATRICK and NICOLE BUCIER,

Defendants.

ORDER

This matter came before the court for trial on April 1, 2022, at which the plaintiff appeared through counsel and the defendant, Nicole Bucier, appeared *pro se*. After consideration of the evidence admitted at trial the following findings of fact and rulings of law and judgment shall enter:

1. **Background:** The plaintiff, Richard Kowalski (hereinafter, "landlord") owns a four-unit building at 119 Main Street in Charlemont, Massachusetts. The

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defendants, Patrick and Nicole Bucier (hereinafter, "tenants") began a tenancy in Apt. 3 (hereinafter, "premises") in June, 2020.

2. On or about October 14, 2021, the landlord served the tenants with a no-fault notice to quit seeking to terminate the tenancy as of December 1, 2021. Thereafter the landlord filed this instant summary process eviction action and the tenants filed an Answer, asserting defenses and counterclaims. Such claims and defenses include an alleged breach of the covenant of quiet enjoyment, a breach of the warranty of habitability, a claim of retaliation, a claim of discrimination, and alleged violations of Chapter 93A consumer protection act.
3. **The Landlord's Claim for Possession and for Rent:** The parties stipulated to the tenants' receipt of the no-fault notice to quit and to the amount of outstanding rent, use, and occupancy totaling $4,000 through the month of April 2022. As such, what remains for the court's adjudication are the tenants' defenses and counterclaims.
4. **Breach of the Warranty of Habitability:** Immediately upon moving into the premises, the tenant noticed and reported to the landlord a sewer odor coming from the toilet. The tenants reached out to the property manager who provided the tenants with "solutions" to pour down the drain. The tenants reported to the property manager that the solutions were not working and eventually in July 2020 the tenants informed the property manager that they had no choice but to call the Board of Health.
5. On or about July 21, 2020 the Town of Charlemont Board of Health conducted an inspection of the premises and issued an Order to Correct which listed violations

of the State Sanitary Code relating to the following: Back stairwell debris, unlevel back stairwell, retaining wall failures, failure to post property with contact information for the property owner/manager, non or ill-functioning windows throughout the premises, bathroom sink and ventilation issues, sewage odor in bathroom, and improperly installed smoke detectors.

6. By the time of the August 13, 2020, reinspection by the Board of Health, much of the cited violations were remedied other than the problems with the windows throughout the premises.

7 On November 16, 2020, the landlord sought, and was granted, an extension by the Board of Health regarding work on the windows until June 1, 2021.

8. Such conditions cited by the Board of Health 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. and also 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, 396 N.E.2d 981 (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, 506 N.E.2d 1164 (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, 576 N.E.2d 658

(1991). The court finds the fair rental value of the premises was reduced by 30% for the period of time from the first day of moving into the premises (June 1, 2020) until the August 13, 2020, Board of Health inspection. This sum is $937.50 (representing 30% of the monthly rent of $1,250 X 2.5 months).

9. Additionally, the violations cited by the Board of Health regarding windows not being able to either open at all or in a manner not consistent with their design have lasted through the date of the trial. The court understands that the Board of Health extended a required repair date to June 1, 2021, but that does not affect their existence and the strict nature of the State Sanitary Code. Though the extension of time might shield the landlord from a violation of G.L. c.186, s.14 (or of G.L. c.93A) as it might be considered when analyzing the landlord's willfulness, it does not eclipse or undue the diminution of value of the premises to its occupants who have lived in a home with most of the window non-functioning for the entirety of their two year-long tenancy[1].

10. A such, the court finds the fair rental value of the premises was reduced by 20% for the period starting in mid-August 2020 (as June 1 to August 13, 2020, was already covered above) until the date of the trial on April 1, 2022. Accordingly, the sum of $5,625 shall be added to the $937 above, totaling **$6,562.50** awarded the tenants for their claim of breach of the warranty of habitability (representing 20.5 months @$1,250 X 20%).

[1] Additionally, the date of the trial was some eleven months after the extension granted by the Board of Health expired and the windows have not been repaired or replaced and the court does not credit the property manager's scant testimony that she has diligently attempted to schedule a time for said repairs or that access was denied by the tenants.

11. **Consumer Protection Act (G.L. c.93A):** The above breaches of the implied warranty of habitability are by definition violations of the consumer protection act, G.L. c.93A, relating to the conditions of disrepair that were cited by the town and that were present on the day that the tenants first occupied the premises (thus imputing the landlord's knowledge of their existence), in addition to the condition of the windows from June 2, 2021, (so not during the extension period granted by the town) through the date of the trial. This requires the court to double or triple the actual damages and the court in its discretion shall double rather than triple the actual damages ($937 for the conditions listed by the town as having been present since the first day of the tenancy and reportedly repaired by the time of their August 13, 2020 inspection) plus the actual damages relating to the windows from June 2, 2021 through the date of the trial for ten months ($2,500), totaling **$6,874** subject to one recovery with damages for breach of the implied warranty of habitability.

12. The **Tenants' Other Claims:** The tenants' claim of breach of the covenant of quiet enjoyment, even if found by the court, would be duplicative of the above claims and of less value so no award for said claim shall be awarded. As to the tenants' claims of retaliation and discrimination, the court finds that the tenants did not meet their burden of proof and, as such, no judgment shall enter for the tenants on said claims.

13. **Conclusion and Order:** In accordance with G.L. c.239, s.8A, judgment shall enter for the tenants for possession plus **$2,874**. This sum represents an award of damages to the tenants for the breach of the warranty of habitability with some

potions doubled by the finding of violation of G.L. c.93A totaling $6,874 MINUS the award of damages to the landlord for outstanding rent totaling $4,000.

So entered this 21st day of April, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0413

THE COMMUNITY BUILDERS, INC.,
PLAINTIFF
v.
EVELYN GORE,
DEFENDANT

ORDER

This matter came before the Court by Zoom on March 14, 2022 on Plaintiff's motion for entry of judgment and issuance of execution. Both parties appeared through counsel. Plaintiff resides at 51C Moser Street, Northampton, Massachusetts (the "Premises").

The parties entered into an agreement on July 28, 2021, which became a Court order when the judge signed it on August 6, 2021. In relevant part, the agreement required Defendant not to cause disturbances or nuisances, not to do laundry after 10:00 p.m. or allow non-household members to use her laundry machines, and not to allow unauthorized occupants to reside in the Premises. The resident who lives below the Premises, Ms. Sanchez, has complained repeatedly about Ms. Gore's conduct which, if true, would constitute violations of the agreement. Plaintiff provided no evidence of complaints from other residents about Defendant.

The Court finds insufficient evidence that Defendant substantially violated a material term of the Court agreement. The receipt of a few packages for a person not named on the lease does not establish residence by an unauthorized occupant. Likewise, there is little evidence that Defendant is allowing non-household members to use her laundry machines. The Court finds Ms. Sanchez' testimony on this topic, and with regard to the alleged confrontation on November 9, 2021, to be hyperbolic. Her lack of credibility regarding these issues calls into question her

testimony that Defendant operates her laundry machines at all hours of the night. Defendant testified credibly that her family members live out of town and that she stops doing laundry at 10:00 p.m. as required by the Court agreement.

Based on the foregoing, Plaintiff's motion for entry of judgment and issuance of the execution is DENIED.

SO ORDERED this 21 day of April 2022.

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-1293

32 BYERS STREET, INC.,

PLAINTIFF

v.

RAYSHAWN DUKES,

DEFENDANT

ORDER FOR ISSUANCE OF EXECUTION

This summary process action came before the Court on March 14, 2022 for an in-person evidentiary hearing on Plaintiff's Supplemented and Amended Motion to Execution and Enforcement of Court Order. Both parties appeared with counsel. Based on all the credible testimony and evidence presented at the hearing, and the reasonable inferences drawn therefrom, and in light of the governing law, the Court finds and rules as follows:

Plaintiff filed this for-cause eviction action in May 2021. The parties agreed to resolve the case on October 13, 2021, executing a document entitled "Order for Judgment by Agreement of the Parties" (the "Agreement"). Pursuant to the Agreement, judgment for possession was to enter as of October 13, 2021. It has not been entered on the docket, however. In addition, Defendant agreed, among other things, to comply with the terms of his lease, not to create any disturbances on the property, and "not to yell, swear at, harass, name call, or be verbally abusive with other tenants, staff, or anyone else on the property." Defendant agreed to [redacted] and not to terminate or reduce any services offered.

Plaintiff filed a motion to issue the execution on February 10, 2022, updating a previous

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motion for issuance of execution filed in December 2021. The February motion alleged that Defendant had caused noise disturbances and that strong marijuana odors were emanating from his unit. When confronted by management on December 20, 2021, Defendant because aggressive and verbally abusive. On January 19, 2022, he had a confrontation with another resident regarding leaving windows open in the hallway outside their apartments. After being served with the February motion, Defendant purportedly confronted another resident regarding his possible testimony at the hearing.

The Court finds sufficient evidence that Defendant has violated the Agreement by creating disturbances and being verbally abusive with others on the property. After one neighbor closed the common area window that Defendant wanted open and then exited the floor by entering the stairwell, Defendant aggressively opened the stairwell door and shouted at her. This led to a confrontation that Defendant clearly instigated.

Likewise, when another neighbor complained to him about having his door open while playing music and smoking marijuana, Defendant reacted aggressively. The neighbor, a 63-year old who has resided at the property for 22 years, testified that Defendant shouted at him and threatened to fight him, at least in party because he blamed the neighbor for taking him to court. In fact, at the hearing, Defendant admitted that he would have indeed fought with the neighbor had he not been a witness in this court case.[1]

With respect to the part of the Agreement whereby Defendant agreed to [redacted] and not to terminate or reduce services, Defendant admits that [redacted]

[1] A third neighbor, an individual who lives directly below Defendant, testified about excessive banging and dragging noises coming from Defendant's unit. He said that he could not remember what Defendant said when he asked him about the noises, but he said that Defendant "did a stare-down kind of thing." The noises went on for about two weeks. The testimony offered by this tenant standing alone would not lead to a finding of a substantial breach of the Agreement.

was terminated. [redacted]

Based on this testimony, the written complaints offered at trial and the surveillance videos, the evidence warrants entry of judgment. Defendant's denials ("everything that happened was not my doing") are not credible. Moreover, he violated a material term of the agreement by [redacted]. In light of the foregoing, the following order shall enter:

1. Judgment for possession will enter retroactively to October 13, 2021 (the date of the Agreement pursuant to which judgment was supposed to issue).
2. Execution shall issue but shall be stayed for 30 days (from the date this order is entered on the Court's docket) to allow time for Defendant to relocate voluntarily. He may seek a further stay if he can demonstrate that [redacted] and that has not created any material disturbances at the property since the trial date.

SO ORDERED this 15th day of April 2022.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-126

KELLY KEEGAN, A/K/A TK ESTATES, LLC,

Plaintiff,

v.

LAUREN HOFFMAN,

Defendant.

ORDER OF DISMISSAL

After hearing on April 27, 2022, on the defendant tenant's motion to dismiss, at which both parties appeared through counsel, the following order shall enter:

1. The motion is based on three separate grounds. The first basis is that the termination notice was ineffective to terminate the tenancy because it does not end on a rent day.
2. The notice, entitled Notice to Vacate for Possession (Month to Month), was served on or about November 17, 2021 and states that the tenant has "...until

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December 31, 2021 to leave or I will go to court and seek permission to evict to [sic] you."

3. In order to terminate a tenancy at will for reasons other than nonpayment of rent, G.L. c. 186, § 12 states in part that "if the rent reserved is payable at periods of less than three months, the time of such notice [of termination of tenancy] shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer." See *Adjartey v. Cent. Div. of Hous. Ct. Dep't*, 481 Mass. 830, 851 (2019). "This statute has been construed as requiring that the notice must be given at least a rent period prior to the time stated therein for the termination of the tenancy and that the time specified in the notice for the termination must be a rent day." *Connors v. Wick*, 317 Mass. 628, 630–31 (1945).
4. It is by no means necessary to name the precise day and date on which a tenancy is to expire, in a notice to quit, but it may be designated in general terms, if stated correctly. . . . If, for instance, in the present case, the notice to the landlord had been that the tenant would quit the premises and terminate his tenancy in one month from the day when the rent should next become due and payable, that would have been a good notice to terminate the tenancy, because it designated a day with sufficient certainty equally within the knowledge of the tenant and landlord.
5. *Sanford v. Harvey*, 65 Mass. 93, 96 (1853). However, this Court finds that the plaintiffs did not correctly state the general term of the notice, as described in *Stanford*. Rather, they provided an exact date which was not a rent day and

does not provide explicitly that the tenancy would terminate at the expiration of that date. *See U-Dryvit Auto Rental Co. v. Shaw*, 319 Mass. 684, 685–86 (1946) ("A notice given on September 26, 1945, calling for the termination of the tenancy at the end of October, fixed November 1, 1945, a rent day, as the date for termination and, ... was sufficient to terminate the tenancy").

6. Accordingly, the time of termination of a tenancy as stated in a notice to quit must fall on "the day upon which rent is payable (or the expiration of that month immediately preceding the rent day)." *Dudley v. Grushkin*, Boston Housing Court No. 02-SP-03695 (September 10, 2002, Kyriakakis, C.J.). This is well settled law in the Massachusetts Housing Court. See *Marak v. Richardson*, Boston Housing Court, (September 17, 1998, Daher, CJ.); *Graham v. Staszewski*, Boston Housing Court NO 01-SP-00643 (March 26, 2001, Daher, C.J.*); Nieves v. Aldrich*, Southeastern Division No. 08-SP-02108 (July 8, 2008, Chaplin, F.J.); *Njoku v. McCra*, Southeast Housing Court No 19_sp-2903TA; *Dowell v. Boseman*, Boston Housing Court No. 00-SP-03971 (September 9, 2009, Daher, C.J.); *Mayflower Village Associates v. Smith*, Southeastern Housing Court No. 09SP03797 (December 16, 2009, Chaplin, F.J.); (October 9, 2019, Michaud, J.); *Simmons v. Fisher*, Southeastern Housing Court No. 19SP4284TA (January 14, 2020, Salvidio, F.J.).
7. In *Marak*, the Housing Court judge found that the notice to quit in question was invalid. "Though it gave thirty (30) days, if the rent day was on the first, then termination on the 31st was premature." *Marak v. Richardson*, Boston Housing Court, (September 17, 1998, Daher, CJ.). In *Mayflower Village Associates*, a

notice served on August 27, terminating a tenancy effective September 30, was invalid because it failed to terminate the tenancy on a rent day. *Mayflower Village Associates v. Smith*, Southeastern Housing Court No. 09SP03797 (December 16, 2009, Chaplin, F.J.). Under similar circumstances, where rent was due on the first of the month, a notice to quit terminating the tenancy on the last of the month was found invalid because May 31 was "not a rent day." *Nieves v. Aldrich*, Southeastern Division No. 08-SP-02108 (July 8, 2008, Chaplin, F.J.).

8. Contrast instances where the notice to quit allows for the expiration of the next month of the tenancy beginning after the receipt of notice. In *Graham*, a notice to quit was found valid, if superfluous, that terminated the tenancy at the "expiration of that month of your tenancy which shall begin next after your receipt of this Notice . . . . which expiration it states as January 31,2001." *Graham v. Staszewski*, Boston Housing Court NO 01-SP-00643 (March 26, 2001, Daher, C.J.). The Housing Court stated "[t]he tenancy has been terminated at the expiration of January 2001; as the Kehoe court held, such a notice 'to take effect, implicitly, at the end of [the month]' is effective notice under s. 12." Id., quoting *Kehoe v. Schneider*, 6 Mass. App. Ct. 909, 909 (1978) ("The record indicates that the rent day was the first day of the month . . . . and that the notice of termination was received on August 1, 1975, to take effect, implicitly, at the end of August").
9. Likewise, a notice which terminated a tenancy "at the expiration of October 31, 2019," was valid and enforceable because "[t]he word 'expiration' means upon the end or cessation of October 31, which necessarily is November 1, the rent day." *Simmons v. Fisher*, Southeastern Housing Court No. 19SP4284TA

(January 14, 2020, Salvidio, F.J.). However, in that case, the Housing Court judge noted "[h]ad the [notice] stated that the tenancy terminated on or before October 31, 2019, that would have created a factual inconsistency as to the termination date." Id.

10. This may seem a trivial distinction upon which to determine the dismissal of a summary process action, however, it is equally well settled that, in order to be effective, a notice to quit must be timely, definite, and unequivocal. See *Maguire v. Haddad*, 325 Mass. 590, 594 (1950).

> Technical accuracy in the wording of such a notice is not required, but it must be so certain that it cannot reasonably be misunderstood, and if a particular day is named therein for the termination of the tenancy, that day must be the one corresponding to the conclusion of the tenancy, or the notice will be treated as a nullity.

11. *Torrey v. Adams*, 254 Mass. 22, 25–26 (1925). Where the plaintiffs gave a particular date for termination of the defendant's tenancy, they were required to provide the day of termination or make clear the termination was to be effective as of the expiration of the preceding month. Neither was the case here and the Court has no alternative but to dismiss the case without prejudice[1].

So entered this 25th day of April, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] Having decided the matter on this argument, the court need not address the other two arguments asserted by the defendant.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 16-SP-3828

AULA FRANKS AND A TO Z PROPERTY MANAGEMENT, LLC,

PLAINTIFFS

v.

JELYTZA RAMOS,

DEFENDANT

RULING ON DEFENDANT'S MOTION TO AMEND

This summary process action came before the Court on March 29, 2022 on Defendant's motion for leave to file an amended answer and counterclaims pursuant to Mass. R. Civ. P. 15(a). Defendant contends that Plaintiffs failed to comply with the terms of an Agreement of the Parties dated December 12, 2016 (the "Agreement") and that on-going conditions of disrepair at the premises warrant amendment of her claims. Plaintiffs note that the policy of permitting liberal amendment of pleadings is not unfettered and that amendment of the answer and counterclaims more than five years after the parties entered into an agreement to resolve the case would be unduly prejudicial.

Allowing Defendant to amend her answer and counterclaims would be futile because this matter was resolved (with the assistance of a Housing Specialist) by a negotiated agreement in December of 2016. The standard Court form used by the parties explicitly recites that the parties are foregoing a trial when entering into the agreement. The form also explains the process to follow if either party alleges that the other party has failed to comply with the terms and conditions of the

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agreement; namely, to schedule a court hearing. This Court routinely hears motions based on a party's contention that the other party failed to comply with the terms of a Court agreement.

The parties made a free, calculated and deliberate choice to settle the case by agreement rather than seek a litigated judgment. If the Court allows the amendment, the case would be placed back on trial list, thereby negating the choice both parties made in 2016 to resolve the case by agreement. Such an outcome would unduly prejudice Plaintiffs.

Accordingly, Defendant's motion for leave to file an amended answer and counterclaims is DENIED.[1]

SO ORDERED.

DATE: 4.29.20

Jonathan J. Kane, First Justice

cc: Court Reporter

[1] The Court declines to dismiss this matter sua sponte, as requested by Plaintiffs.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-3376
POAH COMMUNITIES, LLC, ET AL., PLAINTIFFS v. DIANA M. ST. JOHN, DEFENDANT	FINDINGS OF FACT AND RULINGS OF LAW

This summary process action came before the Court for an in-person bench trial on March 29, 2022. Plaintiff seeks to recover possession of 1314D Bay Street, Springfield, Massachusetts (the "Premises") from Defendant. Both parties appeared for trial with counsel. Based on all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

The property at which Defendant resides has 148 units, all of which have project-based Section 8 rental subsidies attached. Defendant moved into the Premises in 2009. Citing an authorized pet, excessive noise and a guest smoking marijuana in her apartment, Plaintiff served Defendant with a notice to quit dated October 27, 2021, which Defendant acknowledges receiving.

Plaintiff presented evidence supporting the allegations set forth in the notice to quit. The Court finds that Defendant caused a significant disturbance on or about October 24, 2021 by playing loud music and verbally abusing a staff member when asked to turn the music down. With respect to the unauthorized pet, Defendant removed it from the Premises and Plaintiff's

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witnesses conceded that there is no evidence that the dog remains on the property. Despite a member of management witnessing a man smoking in her unit, Defendant adamantly denies it; she claims that the odor of marijuana smoke is pervasive throughout the development and that the smoke is not from her unit..

In addition to the conduct cited in the notice to quit, at trial Plaintiff focused on Defendant's conduct after receiving the notice to quit.[1] The day after she received the notice to quit, Defendant called the management office repeatedly and verbally abused different staff members. She called employees offensive names and allegedly said something to the senior property manager to the effect of "you are going to see some [expletive] happen to you." The senior property manager contacted the police because she believed Defendant was threatening her, and subsequently obtained a harassment prevention order against Defendant. Plaintiff's Community Impact Coordinator testified that Defendant also made threats against her, stating something to the effect of "I have sons and I've got something for you."

A neighbor of Defendant testified that on November 18, 2021, Defendant banged on her apartment door and yelled at by Defendant from the hallway. When the neighbor opened her door, she claims that Defendant grabbed her arm and pulled her out of the apartment, screaming that it was the neighbor's fault that she was being evicted. The neighbor was fearful and testified that, ever since, her "life has been hell" as Defendant has been playing loud music, stomping on the floor and speaking loudly with others about her. She said her six year old, who visits on weekends, is scared to come to her unit. Defendant denies any physical altercation with her neighbor.

On January 22, 2022, the same neighbor who claims to have been attacked by Defendant

[1] Plaintiff filed a motion to amend the complaint to add events that occurred after Defendant received the notice to quit, which motion was allowed.

said that she heard Defendant and a male (George) talking loudly outside of her apartment door. She claims that George said he would like to place a bomb in the management office to blow up the whole place and that Defendant agreed with the sentiment. The neighbor believed that Defendant and George might actually cause harm to the property. The neighbor also claims that Defendant screamed at her through her door on another occasion in December 2021.

Defendant admits that she has a poor relationship with management. She believes that she has been treated badly ever since 2019 when she claims she was assaulted twice on the property. After the assaults, Defendant began making demands of management to take action and only then began to get notifications of lease violations. Regarding the allegation that she and her friend George were overheard talking about pipe bombs, Defendant testified that George was drunk and that she heard him make the comment but considered it to be no more than griping about management. She denies that she responded to his comment favorably, instead asserting that she was talking about other things.

The totality of the evidence convinces the Court that, at least since the Fall of 2021, Defendant has engaged in verbally abusive behavior toward management and has disturbed the quiet enjoyment of other residents. Defendants blanket denials and claims that everyone is lying about her conduct are not credible.

Given the Court's findings, in light of the governing law, Plaintiff is entitled to entry of judgment. Because Defendant has resided at the Premises for nearly 12 years, however, most of which have been without incident, and because she has a project-based Section 8 rental subsidy, the Court will give her the opportunity to move without judgment entering. The following order shall enter:

1. Entry of judgment in favor of Plaintiff shall be deferred until further Court order.

2. Plaintiff may move for entry of judgment nunc pro tunc to the date of this order and immediate issuance of the execution if Defendant substantially violates any of the following prohibitions:
    a. Defendant shall not directly or indirectly harass, intimidate, threaten or engage in any act of violence toward any other resident or toward any employee at the property, including without limitation Illiana Arias Fuentes and Jeannette Wilson;
    b. Defendant shall not communicate with Illiana Arias in any manner which could be reasonably interpreted as harassing, intimidating or threatening;
    c. Defendant shall not have any contact with any member of management except as relates to bona fide landlord-tenant matters such as requesting repairs and completing paperwork;
    d. Defendant shall not permit her friend George to cause any disturbance at the property.
3. Defendant must immediately begin a diligent housing search to find replacement housing and she must keep a log of her efforts to show to the Court and Plaintiff's counsel at the next Court date.
4. If Plaintiff has not filed a motion to issue the execution pursuant to this order in the interim, the parties shall appear in this Court before the undersigned judge on June 22, 2022 at 2:00 p.m. for an in-person review of Defendant's housing search.

SO ORDERED this 29th day of April 2022.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21SP1189
CHICOPEE HOUSING AUTHORITY, PLAINTIFF v. MICHAEL S. BOUTIN, DEFENDANT	<u>AMENDED</u> ORDER ON MOTION TO RECONSIDER ORDER APPEAL BOND

On May 2, 2022, the Court heard Plaintiff's motion to dismiss the appeal based on Defendant's failure to make the use and occupancy payments required by the Court's order entered on April 14, 2022. At that time, the parties brought to the Court's attention that the current amount of monthly rent is $312.00, not $314.00. Accordingly, the April 14, 2022 order is amended to reflect that Defendant's monthly use and occupancy payment obligation pending appeal is $312.00.

With respect to Plaintiff's motion to dismiss the appeal, the Court accepts Defendant's contention that he was confused about when his obligation to pay use and occupancy was supposed to begin. Accordingly, the Court DENIES Plaintiff's motion to dismiss the appeal and enters the following order:

1. By May 4, 2022, Defendant shall pay $936.00 representing use and occupancy for March, April and May 2022.
2. Beginning in June 2022 and continuing so long as the appeal is pending, Defendant shall make installment payments of $312.00 by the 7th of each month.

SO ORDERED.

DATE: 5-3-22

Jonathan J. Kane

Hon. Jonathan Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-CV-0287
SPRINGFIELD HOUSING AUTHORITY, PLAINTIFF v. ASHLEY RODRIGUEZ, DEFENDANT	PRELIMINARY INJUNCTION

This emergency application for a civil restraining order came before the Court on May 2, 2022. Plaintiff appeared with witnesses by Zoom. Defendant appeared in person, having been transported to the Court from the correctional facility where she is currently incarcerated. Plaintiff seeks an order requiring Defendant and any occupants of the residential unit located at 63 Layzon Bros. Road, Springfield, Massachusetts (the "Premises"), to immediately vacate pending the conclusion of a summary process action.

Based on the facts set forth in the verified complaint and the witness testimony of Yaneth Rivera, another Housing Authority resident that lives in a neighboring unit on the property, the Court finds that Defendant physically assaulted Ms. Rivera on the grounds, causing severe physical injuries to her head and face.[1] The witness faces further medical treatment for her injuries and testified that she lives in fear of Defendant returning to the Premises. The Court further finds that Defendant's continued presence at the Premises will place other residents,

[1] The Court warned Defendant of her right against self-incrimination given that there are criminal charges pending. Defendant elected not to testify but instead wanted to consult with a lawyer. After consulting with counsel, Defendant may file and serve a motion to modify this order if she wishes.

employees and others lawfully on the property at substantial risk of harm to their health and safety.

Plaintiff seeks a preliminary injunction. 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 is convinced that failure to issue the injunction would subject Plaintiff to a substantial risk of irreparable harm. Although Defendant is also at substantial risk of irreparable harm if the injunction is granted, Plaintiff has demonstrated a strong likelihood of success on the merits of their claim and the risk of irreparable harm to Plaintiff outweighs the risk to Defendant in light of this consideration..[2]

Accordingly, the following order shall enter in the nature of a preliminary injunction:

1. Defendant is prohibited from residing at the Premises or entering the common areas of the development where the Premises are located until further Court order.
2. Because Defendant is the only authorized adult occupant of the Premises, no person

[2] The Court is concerned about the risk of irreparable harm to Defendant's two minor children who live with her in the Premises. At the hearing, however, Defendant testified that the children's father has his own residence and the children are presently living with him. Therefore, the Court finds a minimal risk of irreparable harm to the children if the injunction is granted.

shall occupy the Premises until further Court order.

3. Plaintiff may change the locks to secure the Premises, but because possession will not revert to Plaintiff except through summary process or by surrender by Defendant, Plaintiff shall allow an authorized agent of Defendant (such as the children's father) to enter the Premises by appointment during regular business hours and with an escort to remove food, medications and personal belonging and items.
4. For good cause shown, Plaintiff shall not have to post security nor pay the $90.00 fee for injunctive relief set forth in G.L. c. 262, § 4.

SO ORDERED.

DATE: 5.3.22

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. 20-SP-298

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

Plaintiff,

v.

TIMOTHY SCOTT, et al.,

Defendants.

ORDER FOR ENTRY OF JUDGMENT

After hearing on December 3, 2021, on the tenants' claims against the landlord, at which all parties appeared, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Beacon Residential Management (hereinafter, "landlord") owns a multi-unit apartment complex with approximately 350 units in Springfield, Massachusetts known as Baystate Place. The defendants, Timothy

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Scott, Sylvia Scott, and their son Frederick Scott[1] (hereinafter, "tenants") reside in Unit 301 in the building located at 414 Chestnut Street (hereinafter, "premises") at a monthly rental amount of $1,104.

2. The landlord commenced this non-payment of rent eviction matter but has since dismissed its claim for possession. What remains for the court's adjudication are the tenants' counterclaims for breach of the warranty of habitability and breach of the covenant of quiet enjoyment.

3. **Breach of the Covenant of Quiet Enjoyment:** There have been problems with the water at the premises since the beginning of the tenancy. The problem is that it takes an inordinate amount of time for the water temperature to get hot and at times may not reach sufficient temperature. This problem, which Ms. Scott described as happening "now and then" in 2018 became a daily problem beginning in 2019 and continued for most of the tenancy through the date of trial. This caused major problems with showering and washing dishes and particularly so when the COVID-19 pandemic arrived as it resulted in the shutting down of Frederick Scott's day program---forcing him to be home all day and every day from March 2020 to October 2020. Frederick Scott, the adult son of the Mr. and Mrs. Scott, suffers from various disabilities [redacted]. Frederick Scott also suffers from [redacted]. The lack of hot water in which to properly wash Frederick Scott caused a very serious problem for him and his mother, Sylvia,

[1]Guardian Ad Litem, Attorney Patrick Toney, has been appointed on behalf of Frederick Scott and appeared and participated in the hearing.

[redacted]. Additionally, the tenants were forced to boil water in order to properly wash their dishes in hot enough water to be effective. In addition to the effects on Frederick Scott, Timothy Scott testified about the impact on him when he was unable to shower for days at a time and how it was particularly impactful when Sylvia Scott had knee surgery and he took care of her.

4. Timothy Scott complained in writing to the landlord several times in 2019. In February 2019 the landlord's maintenance person came to the unit and informed the tenants that the problem stemmed from the boiler room and would be addressed. One of the landlord's work orders, Work Order #1315737, indicates that "the mixing valve at Baystate Place has expired a new mixing valve will be installed soon." Shortly thereafter, another work order, Work Order #13157539, states that the landlord's maintenance person "talked to residents explained the mixing valve for the hot water has expired and a new one has been ordered just waiting for parts and contractor to install." The tenants also put into evidence, without objection, work orders relating to the premises during a tenancy of prior tenants (of the same unit (Unit 301). The work orders, Work Order Nos. 1114609 and 1147387, dated in October and December 2017, indicate complaints about periods of time of little or no hot water.
5. A member of the landlord's maintenance staff, Paul Wilson, explained during his testimony that the landlord was aware of hot water issues throughout various places in the apartment complex leading up to its replacement of the mixing valve.

6. In mid-March 2019 the new mixing valve was installed, and this seemed to have remedied the problem. A few days later, Timothy Scott wrote a letter to the landlord indicating that the hot water was now working well. Several months later on June 14, 2019, however, Timothy Scott sent another letter to the landlord complaining that the hot water problem had returned. His letter, which came into evidence, explained to the landlord the return of the problem and also requests that it be investigated in the evening or nighttime when the problem is particularly existent. Timothy Scott also testified that the times that the water would not get sufficiently hot were often at night or early morning, but it changed often from one day to the next.
7. The tenants submitted into evidence eight video recordings of Timothy Scott measuring the temperature of the water coming from the sinks at the premises, dating from November 2019 to November 2021. It shows, with varying time frames, that the water is very slow to get hot---sometimes taking as much as eight minutes to reach 100 degrees. Though the landlord argues that Timothy Scott's methodology is deficient with the thermometer often sitting in the sink water and not the stream directly from the faucet, the court finds the videos do in fact evidence that the water at the premises take way too long to get to 100 degrees.
8. On or about May 7, 2021, the landlord's maintenance worker was at the unit and found the water to be "just over 100 degrees". Though the work order (#1670468) notes that such a temperature is "acceptable" the worker changed "the cartridge" and after that the water temperature "easily reached 120 degrees."

As explained by the landlord's maintenance staff, Paul Wilson, a bad cartridge can allow cold water to mix in with hot water when the water is flowing in a sink faucet.

9. The tenants pointed out that the landlord was also made aware of the on-going nature of the water problem throughout 2020 when the landlord made regular phone calls to the tenants during "COVID" as "wellness" checks. At those time, the tenants informed the landlord that the lack of hot water was still a problem. Additionally, the tenants asserted the continued problem in their court pleadings including their Answer filed in February 2020.

10. The landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of its act (or failure to 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, 431 N.E.2d 556, 565 (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, 679 N.E.2d 528, 530 (1997).

11. The court finds the landlord "at least negligent" for its failure to sufficiently address the lack of hot water in the tenants' apartment over a protracted period time for which the landlord was, or should have been, aware of the ongoing nature of the problem. The court finds that the tenants are credible reporters when they say that the hot water takes an inordinate amount of time to get hot in their unit and that this has been the situation other than for a short time after the March 2019 replacement of a system-wide mixing valve. Given the language

used by the maintenance person on the May 7, 2021, work order that a reading of just over 100 degrees is "acceptable", the court has further concern that when the water achieve its hottest point in the tenants' unit it is still on various occasions insufficient under the State Sanitary Code---which requires a minimum water temperature of 110 degrees.

12. Additionally, Mr. Wilson explained that landlord plans to upgrade the water heating system by purchasing and installing additional return pumps to increase the availability of hot water throughout the building. The inference from this fact is that the system that provides hot water to the apartments needs improvement.

13. Based on the foregoing, the court finds and so rules that the landlord has breached the tenants' covenant of quiet enjoyment regarding the lack of access to sufficiently hot water in violation of G.L. c.186, s.14 and awards the tenants three months' rent (3 X $1,104) totaling **$3,312**.

14. **Breach of the Warranty of Habitability:** The windows in the living room of the premises were not weathertight and they allowed cold air to enter the apartment. This condition existed at least from the time of the landlord's work order dated February 28, 2020 (Work Order #1490862) in which the landlord noted that cold air was coming through the gaps in the medal frames in the windows. Mr. Wilson, though not the maintenance worker who inspected the tenants' windows for said work order, explained that the windows are "pretty old" and have "settled over the years" and that "gaps let cold air through." Due to the COVID pandemic, work on making the windows weather tight was put on hold and more recently all

of the windows are slated for replacement with new windows throughout the building.

15. The court finds and so rules that the lack of weathertight windows in the tenants' living room violated the State Sanitary Code and, as such, breached the warranty of habitability for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196, 396 N.E.2d 981 (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, 506 N.E.2d 1164 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855, 576 N.E.2d 658 (1991).

16. The court finds and so rules that the value of the premises was reduced by 10% for a portion of the 2020 hearing season from February 28, 2020, through June 15, 2020, and then the 2020-2021 heating season from September 15, 2020, to June 15, 2022, and for the 2021-2022 season from September 15, 2021, through the date of trial on December 3, 2021. Thus, 15.5 months @1,104 X 10% equals $1,711.20 and a damage award under the warranty of habitability shall be awarded the tenants in the amount of **$1,711.20**.

17. **Conclusion and Order:** Based on the foregoing, and with the landlord's claim for possession having been dismissed, judgment for **$5,023.20** shall enter for the

defendants. This represents the award of $3,312 for the breach of the covenant of quiet enjoyment plus the award for the violation of the warranty of habitability of $1,711.20.

18. The G.A.L.'s services were greatly appreciated by the court, and he is asked to submit a final report and bill to the court.

So entered this 4th day of May, 2022.

Robert Fields, Associate Justice

Cc: Patrick Toney, GAL
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3058

RELATED MANAGEMENT COMPANY, L.P.,

Plaintiff,

v.

LITISA M. GASQUZ,

Defendant.

ORDER

After hearing on May 2, 2022, at which the plaintiff landlord appeared through counsel and the defendant tenant Litisa Gasquz appeared with LAR counsel, the following order shall enter:

1. **Background:** This is a cause eviction matter in which the landlord seeks to terminate the tenancy based on a Notice to Quit that alleges the tenant was involved in "domestic disturbances" in May and September 2021.

2. The tenant is facing criminal proceedings in Springfield District Court (Docket Number [redacted]) arising out the event referenced in the Notice to Quit from September 2021.
3. The tenant is seeking a continuance in these eviction proceedings pending resolution of her criminal matter noted above, arguing that she has the right to testify at her eviction proceedings but that to do so she would be forced to waive her Fifth Amendment rights and the Article XII protections of the Massachusetts Declaration of Rights against self-incrimination to testify about the September 2021 incident which forms the basis for both the criminal and eviction cases.
4. **Constitutional Right Against Self-Incrimination**: In deciding whether to grant a continuance, "the judge's task is to balance any prejudice to the other civil litigants which might result from granting a stay, against the potential harm to the party claiming the privilege if [s]he is compelled to choose between defendant the civil action and protecting [her]self from criminal prosecution." *United States Tr. Co. v. Herriot*, 10 Mass. App. Ct. 313 (1980).
5. The landlord alleges in its Notice to Quit that on September 8, 2021,

> officers from the Springfield Police Department responded to your apartment for a reported domestic disturbance call. Officers spoke with a male victim who suffered puncture wounds to his left ear, left upper shoulder, and lacerations on his back, arms, and left cheek. Officers determined you were the main aggressor and you were arrested for assault and battery with a dangerous weapon.

6. There is no question that these allegations are very serious, and the landlord has a significant interest in having them addressed by the court as expeditiously as is practicable. That said, it was stipulated at the hearing that there have been no

new complaints regarding the tenant since the September 8, 2021, event alleged in the Notice to Quit—some eight months ago.

7. The harm to Gasquz, if these proceedings are not continued is grave and would force her to choose between her constitutional privilege against self-incrimination and defending her subsidized housing. More specifically, if she chooses to not testify in the summary process matter so as to not waive her constitutional rights relative to her criminal matter, her ability to defend against this eviction matter would be seriously if not fatally foreclosed.
8. In its ruling, the court considers the competing and legitimate interests of both parties, *Herriot,* 10 Mass. App. Ct. at 316, the landlord's obligation to ensure the quiet enjoyment and safety of the other residents of the premises and the position, accepted by the court, that the tenant could be gravely prejudiced by not being able to testify at her own eviction in order to protect her constitutional rights against self-incrimination.
9. Given that there have been no further complaints about the tenant's behavior over the past eight months as noted above, and given that the conditions of her release on personal recognizance in the criminal proceedings require her to have no contact with the alleged victim in that matter, the tenant's motion for a continuance pending the resolution of the related criminal matter in the Springfield District Court Docket No. [redacted] is allowed contingent upon the defendant tenant not engaging in violent behavior at the premises or common areas.

10. **Conclusion:** Based on the foregoing, this summary process matter shall be stayed pending resolution of the tenant's criminal matter in the Springfield District Court Docket No. [redacted] as long as there are no new allegations that the tenant has been violent or threatening to others at the premises or common areas.
11. If the landlord alleges a new incident of violent or threatening behavior by the tenant, it may file a motion to lift the stay on these proceedings.
12. The Clerks Office shall schedule this matter for a status hearing in early July 2022. If the criminal matter is resolved prior to that time, either party may mark this matter for a status hearing.

So entered this 5th day of May, 2022.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate (for scheduling the Status Hearing)
Joshua Gutierrez, Community Legal Aid LAR Counsel
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1002

SPRINGFIELD GARDENS, L.P.,

Plaintiff,

v.

MALLORY HILL,

Defendant.

ORDER

After hearing on May 9, 2022, on the assented to motion to bring the case forward, at which the landlord appeared through counsel and the tenant appeared *pro se,* the following order shall enter:

1. This motion was filed prior to the court's scheduling this matter for a Tier 1 event and essentially seeks to have judgment enter, by agreement, against the tenant for possession.

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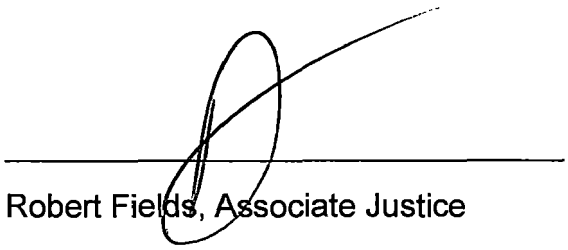
2. Tier 1 events are scheduled in docket-number order and after said event, if the matter is to be scheduled for a Tier 2 event if follows that said hearings are generally in docket-number order as well.
3. Given the current Standing Order 6-20 and Administrative Regulation 1-20 from the Administrative Office of the Housing Court, to allow a motion to bring the case forward for final adjudication and step out of the general scheduling cycle would not be proper and might open the floodgates to such motions in all Summary Process cases.
4. Accordingly, the motion is denied, and this matter shall be scheduled for a Tier 1 event by the Clerks' Office.

So entered this 11 day of May, 2022.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1542

PATRICK TEMPLE,

Plaintiff,

v.

JUSTIN CHEVEREZ and SHANTEL HAYESs,

Defendants.

ORDER

After hearing on May 10, 2022, on the plaintiff's motion to amend the execution to include "All other occupants", at which only the plaintiff appeared, the following order shall enter:

1. The motion is denied.
2. Summary process actions are personal in nature and cannot be brought against unnamed persons.

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3. For a more extensive explication on the court's reluctance to proceed against unnamed "all other occupants" see, *Bank of New York v. Mr. and Ms. Vac Defendant*, Northeast Housing Court No. 08-SP-453 (March 2008, Kerman, J.)

So entered this 15th day of May, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2618

CV WESTFIELD III, LLC,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER
	)	
JUDITH SCHWARZKOPF,	)	
	)	
DEFENDANT	)	

This case came before the Court on May 6, 2022 on Defendant's motion to remove default. Plaintiff appeared with counsel. Defendant appeared self-represented.

The chronology of this case follows:

1. A no-fault eviction case was filed on September 27, 2021.
2. The first court event, a Housing Specialist Status Conference, was scheduled for November 15, 2021
3. On November 15, 2021, the parties entered into an interim agreement which included the date next of the next court event, December 16, 2021.
4. At the December 16, 2022 hearing, the Court allowed Defendant's motion for late answer and discovery and set deadlines for filing and responding to the answer and discovery. The Court also allowed Plaintiff an opportunity to file a motion to propound discovery upon reviewing the defenses and counterclaims raised in the answer, which Plaintiff did.
5. Plaintiff's motion to propound discovery was allowed on January 31, 2022 and the Court issued a case management conference order requiring Defendant to respond to

the discovery by February 16, 2022. The case management conference order also included notice of the trial date of March 17, 2022 at 9:00 a.m.

6. Defendant did not respond to the discovery requests by the deadline of February 16, 2022, and on March 2, 2022, the Court heard Plaintiff's motion for entry of judgment for failure to respond to discovery. The Court denied the motion for entry of judgment and ordered that, should Defendant not respond to the discovery requests by March 11, 2022, any counterclaims for which the discovery was requested would be stricken at trial.
7. Defendant did not answer the discovery by March 11, 2022 and she did not appear for trial on March 17, 2022.
8. Defendant filed a motion to remove default on March 22, 2022, indicating in her motion that she had called the Clerk's Office and was told that the trial was scheduled for 10:00 a.m. The motion was scheduled for April 12, 2022.
9. The execution issued upon application of Plaintiff on April 5, 2022.
10. Defendant failed to appear for her motion remove default on April 12, 2022.
11. Defendant filed a second motion to remove default on April 12, 2022, which was scheduled for hearing today, May 6, 2022. Defendant claims she emailed a copy of the motion to Plaintiff's counsel, but Plaintiff's counsel denies receiving it.
12. A levy on the execution took place yesterday, May 5, 2022.

Defendant seeks to remove the default despite having been evicted already. She testified that she is not asking to be returned to possession but instead she is contesting the manner in which Plaintiff acted in this case. She believes Plaintiff and its agents acted wrongfully and she seeks recourse.

The Court finds that Defendant did not meet the standard for removal of the default judgment set forth in Rules 55(c) and 60(b) of the Massachusetts Rules of Civil Procedure. The reason she gave for failing to appear for trial on March 17, 2022, namely that she called the Clerk's Office and was told a different time, is not credible. The Court's case management conference order specifically noticed the trial for 9:00 a.m. and the Court's docket reflects the same time. When she failed to appear on April 12, 2022 for her motion to remove default, she cited illness as the cause, yet she filed another motion to remove default the same day. If she was well enough to file a motion that day, she could have contacted the Court that day to ask for a continuance.

Defendant's pattern of failing to participate in this proceeding predates her failure to appear for trial and the motion to remove default. She ignored two deadlines to respond to discovery and did not file a motion when she was served with a 48-hour eviction notice. When she appeared today, she said that she did not contest Plaintiff's right to possession, which is the essence of any summary process case. Based on the totality of these circumstances, the Court finds no good cause to remove the default.

SO ORDERED.

DATE: 5·13·22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-SP-3384
HILDA MARINA REAL ESTATE, LLC, PLAINTIFF v. KATHRYN CASLEY, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This non-payment of rent case came before the Court on April 1, 2022 for an in-person bench trial. Plaintiff (the landlord) seeks to recover possession of 123 Cabot Street, 2d Floor, Holyoke, Massachusetts (the "Premises") from Defendant (tenant). Plaintiff appeared for trial with counsel; Defendant appeared for trial self-represented. Based on all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

The property is a two-family house. Ms. Casley resides at the Premises with another adult, Thomas Cole, and a child.[1] She has resided at the Premises since 2009 and Mr. Cole began living there in approximately 2020. Plaintiff purchased the Premises in May 2017. Monthly rent is $700.00. A total of $15,400.00 in rent is unpaid through trial. On November 12, 2021, Plaintiff

[1] Mr. Cole is not named in the notice to quit or in the summons and complaint. Plaintiff contends that he did not sign a lease and they did not know he resided there; however, the Court finds that Plaintiff had reason to know he was residing in the Premises. For example, Mr. Chamorro, the principal of Plaintiff, sent a text to Mr. Cole dated October 10, 2021 asking if the plumbing issue had been resolved. It is unlikely a landlord would send such a text to a visitor. Accordingly, Plaintiff's oral motion (made at the outset of trial) to amend the complaint to add Mr. Cole as a party defendant is denied. Mr. Cole's tenancy will not be affected by the decision in this case.

had Ms. Casley served with a legally sufficient notice to quit terminating her tenancy fourteen days from receipt. It timely served and filed a summary process summons and complaint.

Ms. Casley filed an check-the-box answer with affirmative defenses and counterclaims. She claims to have withheld rent due to bad conditions. Based on these conditions, she also claims that Plaintiff breached the implied warranty of habitability and interfered with her quiet enjoyment.[2] She also alleges acts of retaliation based on reporting bad conditions to a code enforcement agency. In addition to the foregoing, she assert a counterclaim for violation of the security deposit law,[3] requests a reasonable accommodation based on a disability[4] and a continuance for determination of available rental assistance pursuant to St. 2020, c. 257, as amended by Stat. 2021, c. 20 and Stat. 2022, c. 42.[5] Each meritorious defense and claim will be analyzed separately.

Breach of Warranty

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); *see Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). Substantial violations of the State Sanitary Code generally make a dwelling uninhabitable or reduce the dwelling's rental value. The typical measure of damages in a warranty of habitability case is the difference between the rental value of the premises as warranted less the fair value of the premises in their defective condition. *See Hemingway*, 363 Mass. at 203.

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[2] The breach of quiet enjoyment claim also includes other claims such as the landlord entering without proper notice and shutting off her water without notice.

[3] This claim of a security deposit violation is dismissed for lack of any evidence presented at trial to support this claim.

[4] Defendant presented no evidence or testimony regarding a disability and did not request a reasonable accommodation at trial The Court has no basis to consider a reasonable accommodation request, although such a request can be made to the landlord or the Court at any time.

[5] Although she checked this box in her answer, at trial she testified that she had no pending application for rental assistance.

Ms. Casley testified about several defective conditions; namely, broken kitchen cabinets, insufficient heat, water damage in the bathroom, a structurally unsafe porch, an unlit rear staircase and an infestation of mice. These conditions, if proven, entitle her to an abatement of rent. Moreover, they might entitle her to retain possession if she is able to establish that Plaintiff knew or should have known of the defective conditions before she was first in arrears in her rent. See G.L. c. 239, § 8A; *Boston Housing Authority v. Hemingway*, 363 Mass. 184 (1973). She may not recover possession under § 8A if Plaintiff establishes that Defendant or her household members caused the conditions. See G.L. c. 239, § 8A.

The Court takes judicial notice of a previous case between these parties in this Court, Docket No. 18H79SP005081 ("2018 case"). In the 2018 case, the parties entered into an agreement dated November 29, 2018 pursuant to which Plaintiff had notice that the cabinets in the kitchen needed to be repaired. Ms. Casley's testimony that the cabinets were never fully repaired is credible. Although Plaintiff's principal, Mr. Chomorro, testified that he sent his maintenance person, Lino, to repair the cabinets after the agreement in the 2018 case, he did not inspect the work or have any first-hand knowledge of whether Lino did an adequate job. When Mr. Chomorro did examine the cabinets, he admitted that the work was "less than stellar" and that Lino installed white doors on brown cabinets.[6] Ms. Casley was not in arrears until June 2020 according to Mr. Chomorro's testimony and the Court finds that Ms. Casley justifiably withheld rent. Accordingly, § 8A applies with respect to the kitchen cabinets.[7]

Likewise, the evidence shows that Ms. Casley informed Plaintiff that the porch was defective at least as early as June 2020, prior to being in arrears with rent. She testified that

[6] Installing mismatched doors does not necessarily create a defective condition, but it is indicative of the lack of care or effort that went into the repair work.

[7] Although Mr. Chomorro implied that the cabinet disrepair was caused by Defendants, Plaintiff did not demonstrate to the Court's satisfaction that the tenants caused the cabinet damage.

Plaintiff took no meaningful corrective action to address the problem until the Board of Health became involved in the Fall of 2021.[8] She justifiably withheld rent, and thus § 8A also applies with respect to the condition of the porch.

The other defect known to Plaintiff prior to June 2020 is the intermittent heating system failure. Ms. Casley testified that the heat would "go out" every winter since the beginning of Plaintiff's ownership of the Premises, but that Mr. Chomorro would deduct rent each time until recently. Neither party presented any evidence as to the amount of any such rent abatement. Mr. Chomorro admitted that he had problems with the heating system, calling the boiler "fragile," and that it required frequent repair. The Board of Health cited Plaintiff for having a defective boiler in December 2021. Mr. Chomorro testified that the heating system has now been repaired.

In addition to intermittent heat loss, Ms. Casley testified that her child's bedroom is regularly 58 to 62 degrees during heating season, below the standards set in the State Sanitary Code. Ms. Casley has no proof of the actual temperature in the bedroom and the Court cannot make a finding as to the actual temperatures, but the circumstances regarding ongoing heating issues bolster her credibility. For example, Plaintiff locks the thermostat in a box so that Ms. Casley cannot control the temperature in the Premises; also, Mr. Chomorro sent her a text on October 18, 2021 stating that he would be turning on the heat, despite the State Sanitary Code's mandate that heat must be turned on by September 16 each year. See 410 C.M.R. 201.

Regarding water damage to the bathroom ceiling and walls, the evidence clearly supports Ms. Casley's allegations. Plaintiff was given notice by text on September 30, 2021 that water was entering her bathroom from the ceiling. On October 10, 2021, a portion of the bathroom ceiling fell onto Mr. Cole, and on January 1, 2022, a piece of paneling fell off wall due to the

[8] She testified that, instead of making repairs, the maintenance worker Lino simply laid new boards on top of the rotted ones.

water damage behind it. In response to the water entering the bathroom, Plaintiff's maintenance worker, Lino, apparently patched damage with duct tape and installed a dropped ceiling that hid the damage to the ceiling. Ms. Casley testified that he did not remove and replace wet wallboard or ceiling board. The evidence points to the cause being the upstairs neighbor allowing water to escape the tub or shower, which is not the fault of Plaintiff, but once the damage occurs, Plaintiff is obligated to address the problem in a reasonable manner. Ms. Casley and Mr. Cole testified credibly that the bathroom remained in a damaged state for over a month and that the ceiling continues to drip water infrequently.

Ms. Casley and Mr. Cole both testified about insufficient lighting in the rear of the house. They said they installed their own light, thereby remedying the concern about safety, but it is the landlord who should have ensured adequate lighting for entering and exiting the unit.[9]

Lastly, Ms. Casley and Mr. Cole testified that the Premises were without running water on July 7, 2021. Whether or not Plaintiff intentionally deprived them of water (which will be addressed in the retaliation claim), it is undisputed that water was turned off for most of the day. If the water was off for longer, Ms. Casley did not produce sufficient evidence beyond the one day in question. Even though Mr. Chomorro testified credibly that the water shut off was beyond his control and affected the whole building, it does not alter the simple fact that the absence of running water for a day is a material defect in the condition of the Premises.

Applying the typical measure of damages in a warranty of habitability case, the Court calculates the difference between the rental value of the Premises as warranted less the fair value

[9] Ms. Casley mentioned that there were mice in the Premises, but most of her testimony on this issue focused on an attempt by the extermination company to enter for treatment without advance notice. This concern will be addressed in a separate section of this decision. She did not testify as to how the presence of mice affected her use of the Premises nor does the Court have sufficient evidence as to the extent of the problem to determine if the mice created a substantial condition of disrepair.

of the Premises in their defective condition as follows: (a) the defective cabinets reduce the value of the Premises by 5% for a period of approximately three years, for a total abatement of $1,260.00; (b) the intermittent heat loss and insufficient heat in one room warrants an abatement of 10%, but because Ms. Casley testified that Plaintiff periodically abated rent until this past year, the Court applies the abatement only for the approximately six months from September 15, 2021 (the beginning of the heating season) until the boiler was repaired, for an abatement of $420.00; (c) the water entering the bathroom entitles Ms. Casley to a 20% abatement for the one month that the ceiling and walls were left in a state of disrepair, and a 5% abatement for the approximately seven month period thereafter (up to trial) that she claims to suffer intermittent water intrusion, for a total of $385.00; (d) the defective porch and rear lighting warrant a 5% abatement for the approximately 3-year period from the text in June 2020 giving Plaintiff notice of the problem, for an sum of $1,260.00. The absence of water for one day reduces the value of the Premises by 100%, for an abatement of $22.58, which is the per diem rate for July 2021. In sum, Ms. Casley is entitled to an abatement under the breach of warranty theory in the amount of $3,347.58.

Interference with Quiet Enjoyment

Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ... " G. L. c. 186, § 14. This statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The statute does not require that the landlord act intentionally

to interfere with a tenant's right to quiet enjoyment. *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997). In analyzing whether there is a breach of the covenant, the Court examines the landlord's "conduct and not [its] intentions." *Doe*, 417 Mass. at 285. A tenant must show some negligence by the landlord in order to recover under the statute. *Al-Ziab*, 424 Mass. at 805.

In this case, the evidence plainly demonstrates that Plaintiff violated G.L c. 186, § 14 in two distinct ways. First, it failed to furnish heat throughout the tenancy and thus prevented Ms. Casley from fully using the Premises for their intended purpose. Plaintiff's failure to provide utilities entitles Ms. Casley to statutory damages equal to three months' rent, or $2,100.00.[10] See G.L. c. 186, § 14. Because this breach of the covenant of quiet enjoyment stems from the same factual wrongs that led to the award of damages for breach of warranty, Ms. Casley is entitled to the greater of the warranty damages or the quiet enjoyment damages, but not both. Because the warranty damages are greater, the Court declines to award damages for this violation of G.L. c. 186, § 14.

Plaintiff violated G.L. c. 184, § 14 in a separate manner; namely by making unreasonable demands for payment of rent before it would address conditions of disrepair. For example, in responding to a text informing her that the landlord still had not repaired the cabinets as required in the earlier court case, Mr. Chomorro's wife, Julia Larrea, whom Mr. Chomorro introduced by text in June 2020 as the contact for maintenance issues, wrote "when are you going to pay the rent," implying that repairs would only be done if money was paid. On April 22, 2021, in a text exchange about pest treatments, Ms. Larrea wrote, "OK. You pay me one year rent this week," implying that the pest control was contingent upon payment. When Ms. Casley complained about the lack of running water on July 7, 2021, Ms. Larrea wrote "Hey you didn't pay rent for

[10] Because Ms. Casley did not provide evidence of actual damages, the Court finds that Ms. Casley's statutory damages are the appropriate measure of damages.

more than two years, you say [you are] getting the lawyer. I want to see [your lawyer]," and "Pay me the rent," implying that Plaintiff would restore water when Ms. Casley paid rent. Ms. Larrea also sent a text several times saying "I want you out of my building as a cheater," and "you need to pay 2 years rent ... if you don't have the money go out of my building immediately." The Court finds this conduct to be actionable as a breach of quiet enjoyment, entitled Ms. Casley to a separate statutory award of $2,100.00 under G.L. c. 186, which damages are not duplicative of warranty damages.

Retaliation

A tenant is entitled to a defense to possession under G.L. c. 239, § 2A and may recover damages under G.L. c. 186, § 18 if the landlord's act of commencing a summary process action or serving the tenant with a notice of termination was in retaliation for, among other things, the tenant's reporting to a municipal health department a violation or suspected violation of law "which has as its objective the regulation of residential premises." Under § 2A, the sending of a notice to quit within six months after the tenant has engaged in such protected activity shall create a rebuttable presumption that the termination notice was served as an act of reprisal against the tenant for engaging in such protected activity. The burden then shifts to the landlord to rebut the presumption of retaliation by presenting clear and convincing evidence that such actions were not taken in reprisal for the tenant's protected activities, that the landlord had sufficient independent justification for taking such action, and that the landlord would have taken such action in any event, even if the tenant had not taken the actions protected by the statute.[11]

Here, Ms. Casley contacted the City of Holyoke Board of Health in July 2021. On November 7, 2021, Mr. Chamorro notified Ms. Casley that he was increasing the rent to $1,000

[11]"Clear and convincing" proof means evidence which "induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the

(approximately 43% increase) and on November 12, 2021 caused her to be served with a notice to quit. The Court infers that Plaintiff terminated Ms. Casley's tenancy because she contacted the Board of Health within the previous six months. She had not paid rent since July 2020 and yet Plaintiff did not seek to evict her until she contacted the Board of Health. Plaintiff produced no evidence from which the Court could find that it elected to terminate the tenancy when it did for reasons other than the involvement of the Board of Health.[12] Even without the presumption of retaliation (which is inapplicable in non-payment of rent cases), the evidence is sufficient to establish that Plaintiff engaged in an act of retaliation directed against Ms. Casley. Accordingly, pursuant to G.L. c. 186, § 18, Plaintiff is liable for damages of not less than one month's rent and not more than three month's rent. The Court awards three months' rent, or $2,100.00.[13]

Accordingly, in light of the governing law, the following order shall enter:

1. On Ms. Casley's claims, she is entitled to damages in the amount of $7,547.58, comprised of the following amounts: for the breach of warranty of habitability, $3,347.58; for violation of G.L. c. 186, § 14, $2,100.00; and for retaliation, $2,100.00.[14]
2. As of the trial date, Plaintiff is entitled to damages in the amount of $15,400.00 representing unpaid rent, plus court costs and prejudgment interest.

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probability that they are false or do not exist." *Callahan v. Westinghouse Broadcasting Co., Inc.*, 372 Mass. 582 (1977).

[12] This finding is bolstered by the attempt to raise the rent by 43% only days before serving a notice to quit. In his text increasing rent, Mr. Chomorro cited "mounting bills, regulatory requirements and market pressure" and yet did not testify as to any of these factors motivating him to send the notice to quit when he did.

[13] The evidence does not warrant a finding in favor of Ms. Casley on any other claim and defenses raised in the answer or at trial.

[14] The Court declines to award damages under G.L. c. 93A. Defendant did not argue that Plaintiff engaged in unfair and deceptive practices or ask for damages under this statute, and to the extent that certain violations of landlord-tenant laws can also be considered violations of G.L. c. 93A, any recovery under the statute would be duplicative.

3. The amount due Plaintiff ($15,400.00) exceeds the amount due Ms. Casley ($7,547.58); therefore, pursuant to G.L c. 239, § 8A, there shall be no recovery of possession if Ms. Casley, within ten days of the date of this order, deposits with the difference, namely $7,852.42, plus court costs in the amount of $ 187.25 and interest in the amount of $ 397.85, for a total of $ 8,437.52.

4. If Ms. Casley makes the deposit on time and in full, judgment for possession shall enter in favor of Defendant and the funds will be released to Plaintiff's counsel. If Ms. Casley does not make this deposit with the Court, judgment for possession and damages in the amount of $7,852.42 plus court costs and interest, shall enter in favor of Plaintiff.

5. If Ms. Casley has a pending application for rental assistance at the time payment would otherwise be due pursuant to item 3 herein, pursuant to St. 2020, c. 257, as amended by Stat. 2021, c. 20 and Stat. 2022, c. 42, Plaintiff shall not be entitled to entry of judgment until the application is approved or denied.

SO ORDERED.

DATE: 5.13.22

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0279

ISABELLE TOWER LLC,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER FOR PRELIMINARY
	)	INJUNCTION AND FOR
ADAM TILLISON,	)	APPOINTMENT OF GAL
	)	
DEFENDANT	)	

This matter came before the Court on May 9, 2022 for further hearing on Plaintiff's motion for injunctive relief. Plaintiff appeared through counsel but, despite a Court order datd April 8, 2022 ordering him to attend the hearing today, Mr. Tillison failed to appear.

Plaintiff seeks an order precluding Mr. Tillison from residing in his rental unit located at 787 Dwight Street, Apt. 3C, Holyoke, Massachusetts (the "Premises"). Based on the credible testimony of witnesses provided at the hearing today, the Court finds that Mr. Tillison's erratic and dangerous behavior, including damaging the fire prevention system, repeatedly smashing the windows of a neighbor, intentionally pouring candle wax on the floor, covering heating units with tin foil and directing vulgar and threatening words towards other residents, the Court finds that the risk of irreparable harm to Plaintiff and other residents at the property if the injunctive relief is denied outweighs the risk of irreparable harm to Mr. Tillison if the injunctive relief is granted, especially because Plaintiff's counsel represents that Mr. Tillison is not currently living in the unit but is instead residing [redacted].

Moreover, in order to secure the full and effective administration of justice, the Court will exercise its powers of equity to order the appointment of a guardian ad litem ("GAL") for Mr. Tillison. The GAL is authorized to investigate the facts of the proceeding and gather information relevant to the serving the best interests of Mr. Tillison, The GAL should review the docket and pleadings already filed in the case and confer with Plaintiff's counsel to understand Plaintiff's objectives and concerns. The GAL is hereby authorized to speak to Mr. Tillison's health care providers to determine [redacted]. If the GAL needs a specific order authorizing Mr. Tillison's health care providers to speak to him or her, the GAL may make such a request to the Court which will be allowed administratively without need for further hearing. The Court is ultimately seeking input from the GAL as to whether Mr. Tillison is able to continue to reside in the Premises [redacted].

The following order shall enter:

1. Defendant is hereby prohibited from returning to and residing at the Premises until further Court order. This is a temporary order and does not return legal possession of the Premises to Plaintiff. Legal possession of the Premises shall revert to Plaintiff only upon further Court. Plaintiff is authorized to change the locks to prevent unlawful entry.
2. Plaintiff shall permit Mr. Tillison or his representatives reasonable access to the Premises by appointment during business hours for the limited purpose of retrieving personal items.

3. Mr. Tillison may seek a further Court order, on three business days' advance notice, to modify this order to be allowed to return to the Premises.
4. The case shall be scheduled for review by Zoom on the following date: **June 9, 2022 at 9:00 a.m.** Instructions for Zoom are Meeting ID: 161 638 3742 Password: 1234.
5. The GAL shall provide the court with a written report and initial recommendations at least 48-hours in advance of the next Court event.
6. For good cause shown, Plaintiff shall not have to post security nor pay the $90.00 fee for injunctive relief set forth in G.L. c. 262, § 4.

SO ORDERED.

DATE: 5.13.22

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1039

ROBIN LAVALLEY AND AVREY LAVALLEY,

PLAINTIFFS

v.

ANTHONY MEDEIROS,

DEFENDANT

ORDER

Plaintiffs' motion for access came before the Court by Zoom on May 6, 2022. Both parties appeared through counsel. Plaintiffs (the "owner") own the residential premises located at 4 Wilton Road, Easthampton, Massachusetts (the "premises") occupied by Defendant (the "tenant"). The tenant changed the locks to the premises without the owner's permission and refuses to give a copy of the key to the owner.[1]

Massachusetts law is silent on the right of an owner to possess a keys to an occupied dwelling; laws and regulations do, however, specify the right of an owner to enter the dwelling. See G.L. c. 186, § 15B(1)(a); 940 CMR § 3.17(6)(e); 105 CMR §410.810.[2] Although not codified in law, it has long been the practice of this Court to permit an owner to enter a dwelling unit without advance notice in the case of a bona fide emergency.

[1] In their motion, Plaintiffs also request access to the premises for inspection. The parties indicated that they are negotiating a resolution to that aspect of the motion, so this order addresses only the part of Plaintiffs' motion seeking an order for Defendant to provide Plaintiffs with a key to the premises.

[2] In support of its contention that the owner is not entitled to a key, the tenant cites to *Strycharski v Spillane*, 320 Mass. 382 (1946), but that case references a right of the landlord to enter for the purposes of inspection

Although not styled as such, Plaintiffs' motion is akin to a motion for injunctive relief. The Court, then, evaluates the risk of irreparable harm to the owner if not permitted to have a key to the premises against any similar risk of irreparable harm which granting the request would create for the tenant. See *Packaging Industry Group, Inc. v. Cheney*, 380 Mass. 609 (1980). Here, the owner has a legitimate and substantial interest in protecting and preserving its property rights. If a genuine emergency arises when the tenant is not home, such as a fire or burst pipe, the owner needs to be able to enter without having to break down the door to prevent the destruction of its property.[3] Likewise, if the tenant abandons the premises, the owner has the right to enter pursuant to G.L. c. 186, § 15B(1)(a)(ii) and it should not have to hire a locksmith to gain entry.

Although the tenant has a legitimate interest in maintaining his privacy and quiet enjoyment of the premises, this interest is adequately protected by the statute and regulations cited herein regarding an owner's right to enter the premises. If the owner interferes with the tenant's rights by entering the premises unlawfully, the tenant has a cause of action against the owner. In such a circumstance, the tenant also could seek an order that the owner be precluded from having a key to the premises based on a demonstrated history of unlawful entry.

Accordingly, after balancing the interests of the respective parties in this case, the Court rules that the owner has a right to have a key to the locks installed by the tenant and hereby orders the tenant to provide the key to the owner within seven (7) days of receipt of this order.

DATE: 5·13·22

Jonathan J. Kane, First Justice

cc: Court Reporter

[3] Notably, Massachusetts law permits a clause in a rental agreement obligating a tenant to provide keys to the owner. In fact, the tenant acknowledges that he would have to provide the owner with a key if a written rental agreement so required. The absence of a written rental agreement should not deprive a property owner of its rights to access its property in the case of abandonment or bona fide emergency.