

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 31

Feb. 21, 2024 — Apr. 3, 2024

ABOUT

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

WHO WE ARE

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

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

Hon. Robert Fields, Associate Justice, *Western Division Housing Court*

Hon. Benjamin Adeyinka, Associate Justice, *Western Division Housing Court*

Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*

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Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

Attorney Dulles serves as Editor-in-Chief, with Attorneys Manzanares and Vickery 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.

Redaction and Exclusion. The editors redact or exclude certain material. 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 orders, scheduling orders, orders prepared by counsel, handwritten decisions including endorsements to a party's filing, and form 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) Orders detailing or discussing highly sensitive issues relating to minors, disabilities, highly 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. (4) Non-public contact information for parties, attorneys, and third-parties are generally redacted. (5) Criminal action docket numbers are redacted. (6) File numbers for non-governmental records associated with a particular individual and likely to contain personal information 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 those who wish to receive new volumes by e-mail when they are released. Those wishing to join the listserv can do so at <https://groups.google.com/g/masshousingcourtreports>, or by emailing Aaron Dulles (dulles@jd11.law.harvard.edu).

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

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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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 either Aaron Dulles (dulles@jd11.law.harvard.edu), Raquel Manzanares (rmanzanares@cla-ma.org), or Peter Vickery (peter@petervickery.com).

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⁵ Defendant’s name confirmed to be misspelled.

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⁶ Plaintiff's name confirmed to be misspelled.

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SP-2956

B.G. MASSACHUSETTS I, LLC,

Plaintiff,

v.

IVELISSE HARRIS,

Defendant.

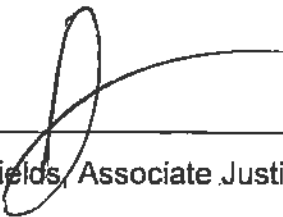
ORDER

After hearing on February 20, 2024, on the tenant's motion to amend the Agreement of the Parties at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. Due to a reduction in the tenant's income, she is seeking an amendment to the term of the September 19, 2023, Agreement of the Parties (Agreement) which was set at monthly arrearage payments of \$200 to be reduced to \$100 per month.
2. Said motion is allowed.

3. Additionally, the tenant shall re-apply for RAFT and is referred to meet with Springfield Partners for Community Action at 721 State Street in Springfield for assistance with her RAFT application.

So entered this 21st day of February, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-86

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

RONALD BERKELEY,

Defendant.

ORDER

After hearing on February 21, 2024, on the plaintiff's motion for injunctive relief at which the plaintiff appeared through counsel and the defendant failed to appear, the following order shall enter:

1. The plaintiff has met its burden of proof for purposes of issuing an injunctive order requiring the defendant (hereinafter, "Berkeley") to vacate the premises immediately.
2. The plaintiff is also authorized to change the locks to the subject premises and provide a key to the tenant of the subject unit, Patrica Hill.

3. Until the next hearing scheduled below, if Berkeley is present at the premises he may be treated by the police as a trespasser pursuant to G.L. c.266, s.120.
4. The plaintiff shall have Berkeley and Ms. Hill served with a copy of this Order.
5. This matter shall be scheduled for further hearing on **February 28, 2024, at 9:00 a.m.** at the Housing Court Pittsfield Session. If either Berkeley or Ms. Hill wish to be heard relative to this matter and are seeking that this order not be continued, should appear at this hearing and be heard.

So entered this 21st day of February, 2024.



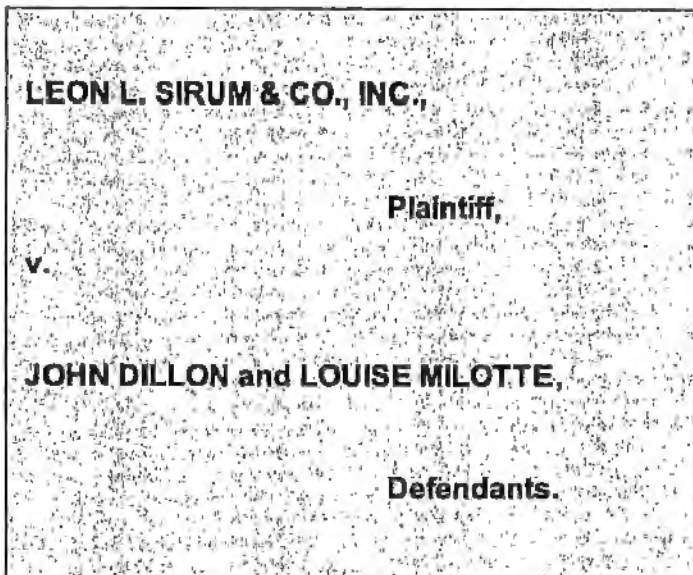
Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5847**



ORDER

This matter came before the court on February 2, 2024, for a First-Tier Court Event at which the plaintiff appeared through counsel and Lawyer for Day Raquel Manzanarez joined the hearing. Both counsel made a joint oral motion for the defendant, John Dillon, to undergo a Court Clinic evaluation. After hearing, the following order shall enter:

1. The oral motion is allowed and was reviewed on the record with Mr. Dillon who agreed to cooperate with such efforts.
2. In order to determine if Mr. Dillon is an "incapacitated person" as that term is defined in G.L. c.c. 190B, ss.510 (9), the court hereby orders that she undergo a

forensic psychological evaluation with the Court Clinic. The court requests that the clinician evaluate Mr. Dillon with respect to his decision-making capacity, his ability to comply with court orders regarding his housing, and his ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a *Guardian ad Litem* for Mr. Dillon and additionally to assist Community Legal Aid in determining the extent of its representation.

3. Housing Specialist Department Chief Pothier was also present for the hearing and agreed to work with Mr. Dillon and Ms. Milotte to schedule Mr. Dillon's evaluation with the Court Clinic.
4. When the Court Clinic Evaluation is completed and shared with the court, the Clerk's Office is requested to have same brought to the attention of the undersigned judge for my consideration in appointment, or not, a *Guardian ad Litem*.
5. In the meantime, all deadlines are suspended until further court order.

So entered this 21st day of February, 2024.

Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist
Kara Cunha, Esq., Assistant Clerk Magistrate

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

HAMPDEN ss

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP004889**

Springfield Housing Authority,)
)
)
)
)
PLAINTIFF)
)
v.)
)
Miguelina Sanchez Estrella,)
)
)
)
DEFENDANT)
)
)
)

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

This summary process action was before the Court (Adeyinka, J.) for a bench trial¹ on February 20, 2024. Plaintiff Springfield Housing Authority (“Plaintiff”) seeks to recover possession of 38 Edmund Wynne Circle, Apt. B, Massachusetts (the “Premises/Apartment”) from Miguelina Sanchez Estrella (“Defendant”) based on a claim for non-payment of rent. Plaintiff was represented by counsel and the Defendant was self-represented.

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

The Defendant has rented the Apartment from the Plaintiff since December 2020. The Apartment is subsidized. The Defendant’s monthly rent is \$487.00². On June 8, 2023, a legally sufficient notice to quit was served on Defendant. *See Plaintiff’s Exhibit 1.* Defendant

¹ A Default Judgment enter against the Defendant on December 15, 2023. On January 12, 2024, the Default Judgment was vacated by agreement of the Parties.
² Prior to September 2022, the Defendant's month rent was \$666.00. *See Plaintiff’s Exhibit 2.*

acknowledged receipt of the notice to quit. The Defendant continues to reside at the Premise. Accordingly, the Court finds that Plaintiff introduced sufficient evidence to satisfy their prima facie case for possession.

The Defendant did not file an answer or assert defenses or counterclaims but stipulated to owing \$9,810.25 to the Plaintiff in unpaid rent. Because the Defendant failed to present any legally cognizable defenses, the Plaintiff must prevail on its case to recover possession and unpaid rent.

The Defendant asserted that she applied for RAFT, but at the date of trial, the Defendant was unable to prove to the satisfaction of this Court that there is a pending RAFT application. Moreover, because this is a subsidized tenancy, if RAFT is approved, it would not cover the balance owed to the Plaintiff. Therefore, the Court rules that G. L. c. 239, § 15 does not apply.

Based on the foregoing, and the failure of the Defendant to file an answer or raise any legal defense at trial, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession and \$9,810.25 in unpaid rent, plus court costs.
2. Execution shall issue by written application ten (10) days after the date judgment enters.

SO ORDERED.

By: *Benjamin O. Adeyinka*
Benjamin O. Adeyinka
Associate Justice

February 21, 2024

cc: Priscilla Fifield Chesky, Esq.
Miguelina Sanchez Estrella

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-1076**

<p>HOLOYKE HOUSING AUTHORITY,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>CARMEN VAZQUEZ,</p> <p style="text-align: center;">Defendant.</p>	
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ORDER

After hearing on February 15, 2024, on the landlord's motion for entry of judgment at which the tenant failed to appear, the following order shall enter:

1. Judgment shall enter for the landlord for possession, \$635 in rent arrearage, plus court costs.
2. The landlord agrees to stay issuance of an execution as long as the tenant resumes compliance with the terms of the Agreement of the Parties entered into on August 29, 2023.

3. Additionally, by agreement of the landlord this matter shall be scheduled for a review hearing on **March 13, 2024, at 2:00 p.m.**

So entered this 22nd day of February, 2024.



Robert Field, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5330

XIOMARA LANGIGUA,

Plaintiff,

v.

BLANCA MIRAND (a.k.a. Blanca Figueroa),
MORGAN MIRANDA, and THIENA MORALES,

Defendants.

ORDER

ESTE ES UN DOCUMENTO MUY IMPORTANTE
POR FAVOR HAGALO TRADUCIR PARA QUE PUEDA COMPLIRLO

After hearing on February 16, 2024, on the landlord's motion to strike and/or dismiss the tenants' counterclaims at which the tenants failed to appear, the following order shall enter:

1. In accordance with a January 2, 2024, Agreement of the Parties, the landlord sent the tenants Discovery materials for them to respond to by January 30, 2024. The tenants failed to respond.

2. The landlord's motion is treated as one to compel the tenants to respond to the outstanding discovery and the tenants shall do so by February 26, 2024.
3. The Court appreciates that the discovery process (as well as the entirety of the eviction process) is complicated and can be overwhelming. The tenants are urged to seek assistance from the Court Service Center located in the Ireland Courthouse located at 50 Main Street in Springfield, Massachusetts and/or Community Legal Aid located at One Monarch Place in Springfield, Massachusetts with a telephone number of 413-781-7814.
4. The trial date shall remain on the schedule for February 27, 2024, at 2:00 p.m. If the tenants, however, comply with providing the landlord with discovery responses, the trial date will be moved to March 13, 2024, at 2:00 p.m.

So entered this 22nd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO: 24-CV-0058

LAURA RIOS,

PLAINTIFF

v.

ORDER

ALLEN RODRIGUEZ,

DEFENDANT

These family members appeared before the court on January 30, 2024 on Plaintiff's motion for injunctive relief. All parties appeared self-represented. Plaintiff was accompanied by her daughter, Cynthia Salort, her attorney-in-fact. Defendant is Plaintiff's grandson. The property in question is a two-family home owned by Plaintiff. Defendant resides on the first floor and Plaintiff resided on the second floor until she was hospitalized. Since being released from the hospital, Plaintiff has been residing with Ms. Salort, leaving the second floor vacant. Plaintiff's will leaves the home to Defendant and his siblings.

After Plaintiff moved in with Ms. Salort, Defendant changed the locks to the second floor unit to ensure that he was part of the decision as to who would live on the second floor. Ms. Salort has the impression that she has the right to substitute or her judgment for that of her mother; however, she does not have the authority of a guardian appointed by the Probate Court. Plaintiff stated in Court that she hopes to return to her unit in the future, and in the meantime she wishes it to remain vacant.

The power of attorney allows her to manage real property as Plaintiff's agent, but not to make decisions for her mother.

After hearing, the Court is convinced that failure to issue the injunction would subject Plaintiff to a substantial risk of irreparable harm and outweighs the risk of irreparable harm to Defendant. Accordingly, the following order shall enter:

1. Defendant shall immediately provide the keys to the second floor to Ms. Salort, as Plaintiff's power-in-fact.
2. Neither party has the authority to lease the second floor without Plaintiff's explicit permission unless such person has petitioned and been appointed as the legal guardian or conservator by the Probate and Family Court.

SO ORDERED.

February 22, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

HAMPDEN ss

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP005518**

South Middlesex Non-Profit Housing Corporation,)
)
)
 PLAINTIFF)
)
 v.)
)
 Larry Williams,)
)
 DEFENDANT)

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

This summary process action was before the Court (Adeyinka, J.) for trial on February 22, 2024. Plaintiff South Middlesex Non-Profit Housing Corporation (“Plaintiff”) seeks to recover possession of 1509 Main Street, Unit #13, Palmer, MA (the “Premises”) from Larry Williams (“Defendant”) based on a cause termination of a tenancy at will. Defendant appeared at trial and represented themselves. Plaintiff was represented by counsel.

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

The Premise is a sober home designed to assist homeless individuals to “become self-sufficient by providing affordable housing, supportive case management services and connection to mainstream community resources, employment and housing search services to qualified residents.” *See Occupancy Agreement at Plaintiff’s Exhibit #1.* The Premises has sixteen (16) residents who live at the sober home.

The Defendant is in his seventies (70s) and suffers from a myriad of medical conditions [REDACTED]. Both parties agree that the Defendant has resided at the Premises since August 2020. *See Pretrial Stipulation*. Plaintiff is the owner of the Premise. The current Program Fee for this sober home (use and occupancy/rent) is \$320.00 per month. *See Occupancy Agreement at Plaintiff's Exhibit #1*. On October 27, 2023, Christina Aliengena ("Property Manager") served a legally sufficient notice to quit on Defendant, terminating the tenancy as of December 1, 2023. The notice to quit alleged that the Defendant breached the Occupancy agreement by: 1) failing to pay the monthly Program fee of \$320 per month; 2) failing to cooperate with his case manager in violation of the Program rules; 3) smoking in the Premise in violation of the House Rules; and 4) failing to contribute to house chores. *See Occupancy Agreement Paragraphs, A and D, at Plaintiff's Exhibit #1*. Defendant acknowledged receipt of the notice to quit.

At trial, the Property Manager testified that she has been a property manager at the Premises since December 2019. The Property Manager testified that the Defendant has not paid his Program fee since at least July 2022, and has a balance owed of approximately \$6,839. At the trial, the Defendant alleged that his Program fee is \$365, and he believes his balance is \$8,030. The Court accepts the Plaintiff's representation that the Program fee is \$320 and the balance currently owed is \$6,839. The Property Manager also testified and introduced evidence that the Defendant received several notices regarding the smoking violations. As a result of the smoking violations, the fire alarms were activated and on occasion, the Palmer Fire Department was dispatched to the Premise. *See Lease Violations at Plaintiff's Exhibit #2*. The Defendant admitted to smoking cigarettes in the unit previously but denied that he continues to smoke in his unit.

At trial, Catherine Caney ("Case Manager") testified that she has training in addiction treatment, and she has been a full-time employee at the Premise since April 2022. She testified to the lack of cooperation by the Defendant, as it relates to treatment and services. *See Case*

Management Progress Report at Plaintiff's Exhibit #3. However, the Defendant testified to his distrust in the Case Manager's abilities, and her willingness to assist him in obtaining suitable housing. Lastly, the Case Manager testified that the Defendant does not assist with house chores or cooperate with other residents.

Defendant testified that he was previously homeless, before he began living at the Premises. The Defendant stated he would like to find alternative housing but needs supportive services to assist him wherever he finds housing (i.e. a nursing home, elder care facility, etc.). Defendant alleged that he has no family in the area and has limited access to transportation. The Defendant is also on a fixed income and receives approximately \$1,400 in social security payments.

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Premises is a sober home and occupants are subject to certain requirements; (ii) the Defendant violated the terms of the occupancy agreement by smoking within the Premise; (iii) the Defendant has not paid the monthly program fee of \$320, since July 2022 and owes approximately \$6,839; and (iv) the Defendant has failed to assist in reasonable house chores.

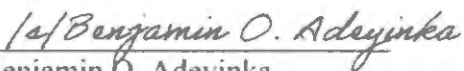
Based upon foregoing, and in light of the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession and damages in the amount of \$6,839, plus court costs.
2. Issuance of the execution shall be stayed until April 1, 2024¹, on the conditions that:
 - a. The Defendant pay use and occupancy in the amount of \$320.00; per month before the fifth of each month for March 2024 and abide by the terms within the Program Agreement;

¹ Pursuant to G.L. c. 239, §§ 9-10, the Court lacks any statutory authority to grant a stay. However, the Plaintiff appeared to express a willingness to ensure the Defendant finds suitable housing.

- b. The Defendant shall continue to make reasonable efforts to locate and secure replacement housing² and shall document those efforts by keeping a log of all locations as to which they have visited or made inquiry, including the address of the unit, date and time of contact, method of contact, name of contact person and result of contact.
3. If the Defendant fails to make the required payments or comply with terms of the Program Agreement, Plaintiff may file a motion to issue the execution. If the Defendant makes the required payments, they shall vacate the Premises on or before March 31, 2024, leaving the Premises in broom clean condition and returning all keys. If the Defendant has not vacated voluntarily as of April 1, 2024, Plaintiff may apply in writing for issuance of the execution.
4. If Defendants seek a further stay of issuance of the execution, their motion must include the information required in section 2(b) herein.

SO ORDERED.


Benjamin O. Adeyinka
Associate Justice

February 22, 2024

cc: Colleen Hodge, Esq.
Larry Williams
Court Reporter

² To the extent practical, the Case Manager shall continue to assist the Defendant in his search for suitable housing.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4321**

<p>SUSAN WALKER,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>NANCY KENT and MARY AUBREY,</p> <p style="text-align:center">Defendants.</p>

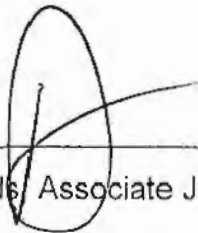
ORDER

After hearing on February 16, 2024, on review of the Court's trial order from November 10, 2023, the following order shall enter:

1. The defendant-tenants have identified a new dwelling and are in the process of applying for same. If they are accepted for the unit, it will be available for September 1, 2024.
2. The plaintiff-landlord has agreed to diligently provide the most positive reference letter as possible for the tenants for them to provide to the prospective landlord.

3. If the defendant-tenants obtain said unit and sign a lease, they shall provide same to the plaintiff-landlord forthwith.
4. If they are unable to secure said unit, they shall so notify the plaintiff-landlord forthwith and shall continue to diligently search for housing.
5. The defendant-tenants shall continue to pay their rent so long as they are occupying the premises.
6. The stay on the entry of judgment shall remain in place until further court order.
7. Either party may bring this matter forward by filing and serving a motion.

So entered this 20th day of February, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-1241

BC PALMER GREEN, LLC,

Plaintiff,

v.

ANGELA CRAPPS,

Defendant.

ORDER

After hearing on February 12, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The landlord's motion is denied without prejudice to afford the tenant another chance to maintain her rent and pay back the arrearage to the landlord.
2. The tenant credibly testified that she has experienced several deaths in recent months of close family and though the tenant did not make all the payments

agreed to in the November 29, 2023, Agreement of the Parties, she has lowered her arrearage since that Agreement.

3. The tenant shall be obligated to pay her rent plus \$200 each month starting in March 2024. This shall also act as a repayment plan for RAFT purposes.
4. The tenant is encouraged to meet with Springfield Partners (again) to assist her with a RAFT application and to reapply for RAFT.

So entered this 23rd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SP-4606**

<p>BEACON RESIDENTIAL MANAGEMENT, LP,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>JANET GONZALEZ-ORTIZ,</p> <p style="text-align:center">Defendant.</p>

ORDER

After hearing on February 22, 2024, the following order shall enter:

1. It appears that TPP failed to continue to work with the tenant since the last hearing but other TPP staff (Ms. Bryant and Ms. White) joined the hearing today and reported that they will complete the application today for the tenant to participate in the Friends Money Management program as well as assist in completing the RAFT application by tomorrow.
2. A representative from Way Finders, Inc. appeared by Zoom and reported that there is a RAFT application pending and that the tenant's hardship

documentation is still outstanding (TPP will assist with this) and that the tenant has not used RAFT in the past 12 months.

3. TPP shall also make a referral to Community Legal Aid due to concerns about Domestic Violence.
4. TPP shall also assist the tenant to investigate other funds beyond RAFT as possible sources of rental arrearage payments.
5. The landlord reported that the tenant paid January 2024 rent and \$130 towards February 2024 rent.
6. The tenant shall pay her March 2024 rent in full.
7. This matter shall be scheduled for further hearing on **March 29, 2024, at 9:00 a.m.**

So entered this 23rd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

□ Investigate the facts of the proceeding and gather information relevant to the summary process action, including communicating with counsel for Plaintiff and TPP; and

□ Make recommendations to the Court for appropriate next steps regarding Defendant's participation in this proceeding and needs for other supports, particularly as to the appropriate living environment for Defendant.

2. The parties shall return for further review on April 26, 2024 at 9:00 a.m. in the Greenfield session.

SO ORDERED.
February 23, 2024


Hon. Jonathan J. Kane, First Justice

cc: Assistant Clerk Magistrate Cunha (for GAL appointment)
Michael Richtell, Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3568

MAS PROPERTIES,

Plaintiff,

v.

DEE GARDINER,

Defendant.

ORDER

After hearing on February 14, 2024, on the plaintiff-landlord's motion for entry of judgment at which the landlord appeared through counsel and the defendant-tenant appeared self-represented and also at which Jeff Peck from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. The landlord brought this motion forward because the tenant has once again denied the landlord, and its agents, access to the premises for purposes of listing the property for sale and for an inspection for any needed repairs.

2. As a result of a trial in this matter, which was based on a notice to quit for precisely this same behavior, the Court issued an order staying entry of judgment as a reasonable accommodation to the tenant's mental health disabilities.
3. More specifically, the Court order made a referral to TPP to assist the parties in scheduling and effectuating a successful entry into the premises for the purposes described above. It appears from the testimony at this hearing that TPP was engaged.
4. The tenant explained that 30 minutes into the access by the realtor on January 24, 2024, she had an "emergency" and she ended the realtor's access. At hearing, the tenant further explained that the realtor's photographing was capturing personal items hanging on her walls that if released to the public might put her in harm's way due to previous domestic violence.
5. The tenant did not expound on the "emergency". Additionally, the removal of items hanging on the wall to allow for the realtor taking photographs for the property's listing would have likely proven to allay the tenant's safety concerns.
6. It appears that the tenant was either acting in bad faith when she prevented the completion of the realtor's access (and the subsequent entry of the landlord for repair purposes) or was overwhelmed by her mental health disabilities.
7. In furtherance of protecting a disabled person from being evicted due the symptoms/behaviors caused by that disability, the following order shall enter:
 - i. The tenant shall promptly take photographs of the subject premises that she is comfortable sharing with the landlord for his realtor. TPP is requested to assist in this regard. If the realtor is satisfied

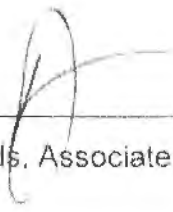
that these photographs are sufficient for her to list the property, this will alleviate the need for the realtor to enter the premises. If the realtor is not satisfied with the photographs but can make specific requests for the tenant to take additional photographs to satisfy the realtor and that works, again the need for the realtor to enter the premises shall be alleviated.

- ii. If after attempts to have the tenant's photographs suffice for the realtor's purposes are exhausted and the realtor still needs access, the parties shall coordinate efforts to schedule a time for the realtor to enter to take photographs and the tenant shall remove all items so that there are no items in any given photograph that gives her concern. Additionally, if possible, the realtor shall allow the tenant to look at the image being captured by the camera as they are being taken to provide her greater security.
- iii. The parties, with the assistance of TPP, shall coordinate a new date and time for the landlord (or his agent) to access the premises for an inspection to determine if any repairs are necessary.
- iv. The Court is looking to TPP to work creatively with the parties---and with any other identified resources that may be available---to enhance the chances of success of these efforts.

8. Similar to the last Court order, the parties shall continue to engage in reasonable accommodations dialogue with the assistance of TPP. If the parties require further Court orders, either may mark up a motion. If neither party brings

this matter before the Court prior to December 19, 2024, the case shall be dismissed.

So entered this 23rd day of February, 2024.



Robert Fields, Associate Justice

Cc: Jeff Peck, TPP
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-2839**

MIDFIRST BANK,

Plaintiff,

v.

MARILYN FENTON and STEVEN GARDINER,

Defendants.

ORDER

After hearing by Zoom on February 21, 2024, on the defendants' motion to have a physical eviction cancelled and for additional time to relocate, the following order shall enter:

1. This is a post-foreclosure eviction matter involving the foreclosing bank and the tenants of the former mortgagor.
2. Despite their best efforts, the defendants have not been able to secure alternate housing. Given their senior age and fixed income and being caretakers for their disabled grandson and their ability to pay for the costs associated with the

scheduling and cancellation of the physical eviction, the defendants' motion is allowed contingent upon the defendants paying \$500 towards the cancellation costs by 5:00 p.m. today (February 21, 2024).

3. If said amount is paid in full and timely and eviction is cancelled, the parties shall return at the time and the defendants shall do the following:
 - a. Maintain a housing search log;
 - b. Pay the use and occupancy of \$1,500 in full and timely in March 2024;
 - c. Update all waiting lists for housing;
4. If there are costs associated with the cancelled eviction beyond \$500, the plaintiff shall share the invoice(s) for same with the defendants' counsel.
5. This matter shall be heard further on the defendants' request for additional time to relocate on **March 28, 2024, at 2:00 p.m. by Zoom**. Counsel for the defendants shall file and serve a copy of the housing search log in advance of this next hearing.

So entered this 23rd day of February, 2024.

Robert Fields, Associate Justice
Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3911**

<p>ELIZABETH ROCCAMO,</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">v.</p> <p>UNIQUE CAMPBELL,</p> <p style="text-align:right">Defendant.</p>	
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ORDER

After hearing on February 22, 2024, at which both parties appeared without counsel, the following order shall enter:

1. The parties reported that the tenant paid the landlord \$700 on February 13, 2024, and that the physical eviction scheduled for that date was cancelled by the landlord---all pursuant to the Court's February 16, 2024 Order.
2. A representative from Way Finders, Inc. joined the hearing and reported to the Court that the tenant's RAFT application pending at the last hearing "timed out" but that the tenant reapplied today.

3. Given that RAFT will likely only pay six months of the tenant's portion under her rental subsidy program there will remain a balance owed and the tenant has no income with which to pay anything.
4. The tenant remains convinced that Way Finders, Inc. has continued to fail to properly recalculate her rent due to having lost her employment and having no income. This has been the tenant's status since November 2022.
5. Based on the foregoing, and despite there being a new RAFT application pending, the stay on the landlord's use of the Execution is hereby lifted and she may schedule and serve new notice for a physical eviction in accordance with G.L. c.239.
6. If the tenant is able to convince Way Finders, Inc. to recalculate her rent and is able to have her rent reduced to \$0 and have a method of paying back the landlord the outstanding balance, she may file a motion with the court for injunctive relief.

So entered this 23rd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3979**

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

**KASSANDRA PIZZARO-ESCALERA and
PABLO MONGE,**

Defendants.


ORDER

After hearing on February 22, 2024, on Review, at which the landlord appeared through counsel and the defendant Pablo Monge appeared self-represented, the following order shall enter:

1. Though not always on time, the tenants have complied with the payments due in the last court order (dated December 28, 2023) and has a credit towards March 2024.
2. The tenants' RAFT application was "timed out", missing a legible ID and subsidy hardship documents.

3. The tenants currently have a rental balance through February 2024 totaling \$7027.88 plus court costs.
4. The tenants shall reapply for RAFT and are referred to Springfield Partners for Community Action located at 721 State Street in Springfield with a telephone number of (413) 263-6500 to assist with their RAFT application.
5. The tenant is also referred to Community Legal Aid to consult to see if they may help regarding retrieval (if possible) of the Section 8 subsidy. The tenant was going to meet with CLA in the court's resource room directly after the hearing.
6. The tenants shall continue pay their rent plus \$400 per month. The arrearage payment should be considered as a repayment plan for RAFT purposes.
7. This matter shall be scheduled for further review hearing on **March 29, 2024, at 9:00 a.m.**

So entered this 26th day of February, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SP-4486**

<p>BEACON RESIDENTIAL MANAGEMENT, LP,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>TARA RIEL,</p> <p style="text-align:center">Defendant.</p>
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ORDER

After hearing on February 23, 2024, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. By agreement of the parties the physical eviction scheduled for February 26, 2024, shall be cancelled by the landlord.
2. The tenant shall immediately apply for RAFT and the landlord shall provide an invoice for the costs incurred by scheduling and cancelling the physical eviction.

3. The tenant is referred to Springfield Partners for Community Action located at 721 State Street in Springfield with a telephone number of (413) 263-6500 to assist with her RAFT application.
4. The tenant shall pay her monthly rent in full and timely in March and April 2024, and shall also pay an additional \$50 each month and shall vacate the premises by April 15, 2024. The \$50 payment noted above shall be considered as a repayment plan for RAFT purposes.
5. If the tenant fails to make the payments or vacate by April 15, 2024, as described above the landlord may see reissuance of an Execution by motion.

So entered this 26th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-218

GORDON LEETE,

Plaintiff,

v.

ALEXIS WALSH and CHRIS GARDNER,

Defendants.

ORDER

After hearing on February 21, 2024, at which the landlord appeared without counsel and the tenants appeared with LAR counsel, Kathleen Jackson, the following order shall enter:

1. This matter was scheduled for a Tier 1 event, and several emergency motions were heard.
2. The tenants' motion for late filing of Answer and Discovery is allowed. The Answer and Discovery Demand have been filed and served.

3. All deadlines for discovery shall be suspended until the Case Management Conference is scheduled by the Clerks Office (see below).
4. The landlord shall immediately have a licensed technician inspect and make all necessary repairs to the heating and hot water system at the premises.
5. If same are not immediately remedied, the landlord shall provide alternate housing (hotel) for the tenants and their children until heat and hot are restored.
6. Said hotel accommodations, if needed, shall have cooking facilities. If they do not have cooking facilities, the landlord shall also provide the tenants with a daily food stipend of \$125.
7. Because the parties have a lease in effect at the time of the termination notice, the notice to quit for "no fault" is insufficient to terminate the tenancy. As such, the landlord's claim for possession (the Summary Process action) is dismissed.
8. The tenants' counterclaims shall be severed and transferred to a Civil Action. The Clerks Office shall send notice of the new civil case and will schedule a Case Management Conference in that new matter.
9. This matter shall be scheduled for review on the injunctive order above regarding heat and hot water on **February 28, 2024, at 9:00 a.m.** at the Pittsfield Session of the court. Attorney Jackson agreed to extend her LAR appearance at least through this next hearing.

So entered this 26th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-1328**

<p>PYNCHON TOWNHOMES, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>KAREN GARCIA MALDONADO,</p> <p style="text-align: center;">Defendant.</p>	
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ORDER

After hearing on February 22, 2024, on a review scheduled by the Court at which the landlord appeared through counsel and with a property manager and the tenant appeared self-represented, the following order shall enter:

1. Since the last hearing on November 14, 2024, the tenant has paid her monthly rent each month plus \$700 for the costs of cancelling the physical eviction.

2. The outstanding balance of unpaid rent through February 2024 totals \$2,562.36 plus court costs.¹
3. A representative from Way Finders, Inc. joined the hearing and reported that the RAFT application "time out" due to a failure of response of the landlord. It was discovered during the hearing that due to a change in management on December 1, 2023, there email provided to Way Finders, Inc. was incorrect. A corrected email was provided to the tenant during the hearing.
4. The tenant shall reapply to RAFT. The tenant is referred to Springfield Partners for Community Action located at 721 State Street in Springfield and a telephone number of (413) 263-6500 for assistance in completing her RAFT application.
5. The tenant shall pay her rent in March 2024 plus \$50. This shall also represent a "repayment" plan for the RAFT application.
6. The tenant shall also pay \$1,000 from her tax returns within 10 days of her receipt of her tax returns.
7. This matter shall be scheduled for further hearing on **March 28, 2024, at 9:00 a.m.**

So entered this 26th day of February, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

¹ However, the tenant continues to question whether the landlord has properly calculated the tenant portion of the rent. The tenant and the property manager agreed to meet in the landlord's office forthwith and clarify that issue.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4261

VELOZ & ASSOCIATES, LLC,

Plaintiff,

v.

JADELIZ MONSERRATE,


Defendant.

ORDER

After hearing on February 22, 2024, on a review scheduled by the undersigned judge at which the landlord appeared through counsel and the tenant failed to appear, the following order shall enter:

1. With rent still outstanding, even after receipt of a RAFT payment, the landlord's request to schedule this matter for trial is allowed.
2. This matter shall be scheduled for trial on **March 19, 2024, at 2:00 p.m.**

So entered this 26th day of February, 2024.



Robert Fields, Associate Justice
Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3546**

<p>BALTIMORE CITY PROPERTIES,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DONALD MULLER,</p> <p style="text-align: center;">Defendant.</p>	
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ORDER

After hearing on February 23, 2024, in accordance with G.L. c.239, s.9, at which both parties appeared through counsel, the following order shall enter:

1. The tenant is seeking additional time to relocate. He is disabled and elderly and continues to search for housing and is currently on several waiting lists.
2. He is now actively working with Greater Springfield Senior Services to assist him in his housing search.
3. The landlord appeared through counsel without any witness to testify about the landlord's situation.

4. The court finds the request for further time to secure housing under these circumstances as "just and reasonable" and shall continue this matter for further review at the date and time noted below. In the interim, the tenant shall continue to diligently search for housing and shall provide documentation of his search including copies of any all application for which he is on a waiting list. PLEASE NOTE: This documentation was required in the court's last order and ignored. The tenant shall not ignore it this time.
5. Additionally, just prior to the next hearing scheduled below, the tenant shall communicate with any landlord and housing authorities or state-wide housing entities for which he is on a waiting list and be prepared to update to the court on his status on those waiting lists at the next hearing.
6. Conditions of disrepair/extermination: The tenant reported that there is no hot water in the kitchen and that a rodent infestation has reoccurred. The landlord shall address these issues forthwith.
7. Next hearing: This matter shall be scheduled for review on **April 25, 2024, at 2:00 p.m.**

So entered this ²⁷ 27 day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SU-1

CHARLENE FERNANDES,
Plaintiff,
v.
RALPH DOWERS,
Defendant.

ORDER

This matter came before the court on February 26, 2024, for a Supplementary Process collection case for which the defendant did not appear. After hearing, the following order shall enter:

1. The court was not satisfied that service was proper on the defendant.
2. To ensure that the defendant is aware of these proceedings, the court is continuing the matter to **March 25, 2024, at 9:00 a.m.** If the defendant, Ralph Dowers, wishes to be heard in defense of this collection action, he must appear at this time.

So entered this 27th day of February, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SP-4867**

<p>MASS WESTFIELD,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>TRACY ALBANO,</p> <p style="text-align:center">Defendant.</p>	
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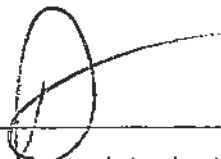
ORDER

After hearing on February 21, 2024, at which the plaintiff appeared through counsel and the tenant appeared self-represented from a nursing facility (accompanied by a nurse and a social worker) and a representative from the Tenancy Preservation Program (TPP) joined the hearing, the following order shall enter:


1. Ms. Albano is currently residing in a nursing facility after recently sustaining injuries.
2. An execution based on the December 27, 2023, judgment shall issue. There shall be a stay on its use until the next hearing noted below.

3. TPP shall work with the tenant and with the nursing facility (and shall also reach out to Highland Valley Elder Protective Service) to design a discharge plan to safe housing.
4. The tenant shall pay \$300 to the landlord for March 2024.
5. This matter shall be scheduled for further review **BY ZOOM on March 29, 2024, at 2:00 p.m.**

So entered this 27th day of February, 2024.



Robert Fields, Associate Justice

Cc: Kathleen Arment, Social Worker: 
TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV000080

BELMONT PARK APARTMENTS LLC)
Plaintiff,)
)
v.)
)
MILTON RIVERA)
Defendant.)

FURTHER ORDERS ON PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF

On February 29, 2024, the Plaintiff appeared for hearing on the Plaintiff's ("Landlord") request for injunctive relief. The Landlord appeared through counsel and the Defendant, Milton Rivera ("Tenant") who is disabled and utilizes a wheelchair to get around, appeared self-represented via Zoom.

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

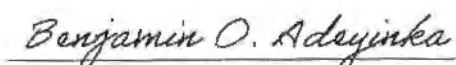
This action concerns the premises located at 76 Belmont Avenue, Apartment 2L, Springfield, Massachusetts ("Premises"). At the hearing Jeanelle Reyes ("Property Manager"), testified that she has managed the property since January 2024. The property has 48 units and the Tenant, who is disabled, lives in a one bedroom 450 sqft unit on the second floor. He pays market rent. The Property Manager also testified to the unsanitary conditions within the apartment (i.e. urine in bottles in the Premise, pets within the property, and unauthorized occupants). At the hearing, the Property Manager, through counsel, presented video evidence of the conditions of the unit. The Court credits the testimony of the Property Manager as it relates to the unsanitary conditions and the unauthorized occupancy of pets.

The Tenant testified that he has lived at the Premises for approximately six years. He also testified that he has a personal care attend ("PCA") that comes to the Premise to assist with cleaning, and other duties because of his medical condition. The Tenant testified that he has been asking for a first-floor unit and was promised the same by previous management. The Tenant also testified to conditions of disrepair that exist at the unit. The Tenant stated that he does not have a working phone, but his sister, Marsha Rivera, will assist in working with the Plaintiff to communicate issues to the Tenant.

Based upon all the credible testimony and evidence presented at hearing considering the governing law, it is ORDERED that:

1. The Housing Specialist Department shall make a referral to the Tenancy Preservation Program (TPP) for service to assist the tenant in housing and remediation efforts.
2. The Tenant shall provide Marsha Rivera's contact information to TPP.
3. The Tenant shall not keep pets in his Unit.
4. The Plaintiff shall inspect and repair any issues within the Tenant's unit by March 30th and the Tenant shall permit access to make repairs, upon 48 hour written notice.
5. A further hearing shall be scheduled for April 25, 2024, at 9:00AM. Both parties have the option of appearing via Zoom. The Housing Court Zoom Meeting ID is 161 638 3742 and the password is 1234.
6. A copy of this Order shall be served forthwith by the Plaintiff via constable or sheriff's service along with (a) a copy of the contact information for the Plaintiff's attorney, and (b) the contact information of this Court.

So ORDERED on this February 29, 2024:


Hon. Benjamin O. Adeyinka
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0315

CITY OF SPRINGFIELD CODE
ENFORCEMENT DEPT,
Plaintiff

v.

SPRINGFIELD GARDENS LP
AND STEVEN MONDON,
Defendants

ORDER FOR PAYMENT
OF FINES

This code enforcement matter came before the Court on January 12, 2024 for an evidentiary hearing regarding the assessment of fines for the failure of defendant Springfield Gardens LP (“Springfield Gardens”) to make repairs to 653 State Street, Unit 4A, Springfield, Massachusetts (the “Premises”), the dwelling where Defendant Steven Mondon (“Mr. Mondon”) resides. The Premises are part of a complex of buildings owned by Springfield Gardens.

Plaintiff commenced an action in May 2022 to enforce state housing codes at 657-659 State Street in Springfield. At that time, the case did not include the Premises. On or about May 17, 2023, Plaintiff filed a Second Amended Complaint to add the Premises to this case.¹ Following a hearing on June 5, 2023, Springfield Gardens was ordered to make certain repairs to the building and to correct numerous violations in the Premises by June 23, 2023. The work was not completed as required,

¹ It does not appear that the motion was acted upon, but Springfield Gardens did not object and all future hearings in the case proceeded with the understanding that the Second Amended Complaint had been allowed. To the extent necessary to clarify the record, the Court hereby deems the Second Amended Complaint allowed.

and on June 30, 2023, the Court ordered that the code violations be corrected by July 14, 2023.

On July 21, 2023, the Court found that the violations had not yet been corrected. As a financial penalty intended to coerce compliance with the State Sanitary Code, the Court ordered Springfield Gardens to pay Mr. Mondon \$50.00 per day if the work was not done by July 28, 2023, with fines continuing until the completion date. The Court subsequently held hearings on August 11, 2023, September 25, 2023, November 1, 2203 and November 14, 2023. The work was completed on December 1, 2023.²

Calculating fines from July 28, 2023 to December 1, 2023 (126 days) at a rate of \$50.00 per day, the resulting sum \$6,300.00. Springfield Gardens claims, however, that its ability to complete the repairs in a timely manner was inhibited by Mr. Mondon's failure to allow access on different occasions and as a result of circumstances beyond its control, such as weather and availability of materials. The Court conducted the evidentiary hearing that is the subject of this order to determine the appropriate amount of fines to impose.

Based on all the credible testimony, the other evidence presented and the reasonable inferences drawn therefrom, the Court finds that Mr. Mondon did in fact deny access for repairs at various times. He did not, however, do so in bad faith or to interfere with the work, but instead because Springfield Gardens and its agents repeatedly failed to appear at scheduled times and they then appeared at

² Plaintiff was unable to inspect on December 1, 2023 to confirm compliance, but the Court finds that the necessary work was completed on that day.

unscheduled times. He refused access when contractors attempted to gain access other than at the scheduled times.

Moreover, Mr. Mondon refused access for an extermination for roaches because he did not have roaches, but did have an infestation of rodents.³ As evidenced by the voluminous written communications between the parties, Mr. Mondon became extremely frustrated by the failure of Springfield Gardens to comply with its repair and extermination obligations and ultimately stopped agreeing to reschedule missed appointments until the next scheduled Court review hearing, at which time the Court selected the dates and times for access.

In addition to periodically denying access, the Court finds that some of the delay was a result of weather (on at least one occasion, the contractor appeared on time but could not complete the installation of windows due to rain) and that the window contractor did incur some delays in obtaining new windows. However, acts of nature and supply chain issues do not justify a substantial reduction in the penalties; first, such factors cannot explain why Springfield Gardens could not comply with an order to correct issued on June 23, 2023 until December 1, 2023, and second, Springfield Gardens could have sought Court permission to extend the deadlines if circumstances warranted.

A precise calculation of the number of days out of the 126 it took to complete the work after July 28, 2023 is not possible based on the evidence. After reviewing the written communications regarding access to the Premises, and weighing the

³ Springfield Gardens asserted that the pest control company treated for both roaches and rodents, but the Court is satisfied by the evidence presented that Mr. Mondon reasonably believed otherwise based on the documentation provided to him in advance of the treatments.

credibility of the witnesses, the Court draws what it believes to be a fair inference that, with more cooperation from Mr. Mondon, the work could have been completed in 100 days instead of 126 days. Accordingly, the Court determines the total amount of fines payable by Springfield Gardens to Mr. Mondon is \$5,000.00. Payment shall be made to Mr. Mondon within thirty (30) days of the date this order is entered, and Springfield Gardens shall file a certification of payment to this Court indicating the date and manner in which payment was made. Upon receipt of this certification, this case will be dismissed.⁴

SO ORDERED.

DATE: February 29, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

⁴ If Mr. Mondon seeks to recover damages for Springfield Gardens' acts or omissions during his tenancy, he must do so in a separate proceeding. The fines ordered herein shall not be considered, and Springfield Gardens is not entitled to any credit for the payment of fines in any separate action for damages.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SP-4833**

<p>CONCORD HEIGHTS,</p> <p style="text-align:right">Plaintiff,</p> <p>v.</p> <p>YESENIA MITCHELL,</p> <p style="text-align:right">Defendant.</p>	<p>ORDER</p>
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After hearing on February 26, 2024, on the landlord's motion for entry of judgment at which the plaintiff appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The tenant was compliant with the March 21, 2023, agreement (Agreement), until November 2023 when she paid some monies but not what was required under the Agreement.
2. The tenant has an outstanding balance of \$1,096 in rental arrearage through February 2024, plus \$205 in court costs.

3. The tenant has a pending RAFT application, and she is eligible for more than the amount that is outstanding.
4. The additional problem is that this is a *for cause* for chronic late payment of rent. It may be that the solution may be to automate the rent payments from the tenant's bank account to the landlord's account each month.
5. The landlord's motion is continued to the date noted below, contingent upon the tenant paying \$772 to the landlord by the end of the day today and shall pay her March 2024 rent on time and in full.
6. The tenant shall also follow through diligently on her RAFT application. The tenant is urged to work with Springfield Partners for Community Action located at 721 State Street in Springfield, with a telephone number of 413-263-6500. They can hopefully help with the RAFT application, as there are additional requirements for subsidized tenants.
7. The tenant shall also investigate with her bank and her landlord, and perhaps seek assistance in this regard from Community Action, the possible use of automated rent payments from her bank account to the landlord.
8. This matter shall be scheduled for further hearing and review on **March 28, 2024, at 9:00 a.m.**

So entered this 29th day of February, 2024.

Robert Fields, Associate Justice
Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-113

TUNCAY DURMUS,

Plaintiff,

v.

**JAMES M. WILKINS and HEATHER L.
LLINDHART,**

Defendants.


**ORDER FOR EX PARTE WRIT
OF ATTACHMENT**

After and *ex parte* hearing on February 27, 2024, on the plaintiff's motion for a real estate attachment, the following order shall enter:

1. The plaintiff met its burden for an *ex parte* real estate attachment in the amount of \$500,000 against all real estate owned or partly owned by the defendants--- severally and/or jointly---in any of the four western Massachusetts counties.
2. A writ of attachment may issue and may be recorded in any or all of the four western Massachusetts counties; Berkshire, Hampden, Hampshire, Franklin.
3. Because this order was issued *ex parte*, a hearing shall be scheduled for further hearing on the writ of execution, at which the defendants may be heard regarding

vacating or amending this order, live and in-person on **March 20, 2024, at 9:00 a.m.** in the Pittsfield Session of the Housing Court.

So entered this 21st day of February, 2024.



Robert Fields, Associate Justice
Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5330

XIOMARA LANTIGUA,

Plaintiff,

v.

BLANCA MIRANA, et al.,

Defendants.

ORDER FOR ENTRY
OF JUDGMENT

After hearing on February 27, 2024, the following order shall enter:

1. For the reasons stated on the record, judgment shall enter for the landlord for possession plus \$11,900 in use and occupancy plus court costs.
2. An execution may issue upon the timely filing and service of a Rule 13 Application.

So entered this ^{LM} 29 day of February, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5654

EDWIN MENDEZ,

Plaintiff

v.

JOSHUA HICKS AND HEATHER STANLEY HICKS,

Defendants

FINDINGS OF FACT, RULINGS OF
LAW AND ORDER FOR ENTRY
OF JUDGMENT

This no fault summary process case came before the Court for a bench trial on February 16, 2024. Both parties appeared with counsel. The residential dwelling in question is located at 30-32 Woodside Terrace, Unit 1, Springfield, Massachusetts (the “Premises”).

The parties stipulated to Plaintiff’s prima facie case for possession, including receipt of the notice to quit. Although the case was brought for no cause, Plaintiff claims rent is unpaid, although the parties disagree on the amount. Defendants did not file an answer but seek a stay through July 1, 2024 pursuant to G.L. c. 239, §§ 9 et seq.

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:

Defendants owe \$16,000.00 in unpaid rent. To be eligible for a statutory stay, Defendants are required to pay in installments for the period of the stay and “all rent unpaid prior to the period of the stay.” See G.L. . 239, § 11. Defendants can pay no more than \$400.00 each month in addition to the use and occupancy payment, which is in adequate to meet the statutory requirement to pay all unpaid rent.

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

1. Judgment for possession and \$16,000.00 in damages, plus court costs, shall enter for Plaintiff.
2. Defendant may apply for the execution (eviction order) in writing ten days after the date that judgment enters.

SO ORDERED.

DATE: February 29, 2024

By: 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. 24-CV-109

MEGGAN MEREDITH,

Plaintiff,

v.

ZAHOR RIAZ,

Defendant.

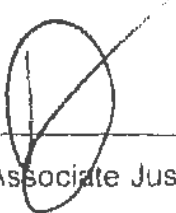
ORDER

After hearing on February 27, 2024, on the plaintiff tenant's motion for a repair order at which the tenant appeared self-represented and the defendant appeared through counsel, the following order shall enter:

1. The record will reflect that the actual name of the defendant property manager is Zahor Riaz and the record will reflect the correct name in the caption.
2. The landlord assents to the tenant's motion for a repair order.
3. The landlord shall have access to investigate the unit and any and all repairs required on February 28, 2024, at 12:00 p.m.

4. The landlord shall make all repairs at the premises after proper notice for access. It will forthwith address the collapsed bathroom ceiling and address any and all mold in the ceiling by hiring a mold remediation expert. If mold is present in the ceiling, the ceiling shall not be installed until a mold remediation expert signs off on the ceiling being reinstalled.
5. Other than the access date agreed upon above, the landlord shall provide the tenant with at least 24-hours advance notice to the tenant for access. The tenant shall respond immediately if the requested time is not convenient and immediately provide an alternate time and date for said access.
6. All repairs that require licensure or permitting will be effectuated in that manner.

So entered this 24th day of February, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-854**

<p>BEACON RESIDENTIAL MANAGEMENT, LP,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>CARMEN ALEJANDRO and KRISTHIA LLANOS,</p> <p style="text-align: center;">Defendants.</p>
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ORDER

After hearing on February 27, 2024, at which all parties and a representative from the Tenancy Preservation Program (TPP) also appeared, the following order shall enter:

1. Unfortunately, the coordination between TPP and the tenant and the Court Clinic were not successful, and the Court Clinic evaluation has not yet occurred.
2. Mr. Richtell, from TPP will work with the tenant to coordinate Ms. Alejandro's participation with the Court Clinic evaluation.

3. The landlord reported that the tenant paid \$1,000 since the last hearing and shall pay her use and occupancy of \$834 for March 2024 use and occupancy in full and on time.
4. The landlord shall provide the tenant with at least 48-hour notice in writing in advance of a professional extermination of her unit. The landlord shall provide simultaneous notice to Mr. Richtell at TPP. The tenant shall remain away from her unit for at least 4 hours after said extermination.
5. Among the work for TPP in this matter, it shall ascertain the status of the tenant's subsidy and assist her in keeping same.
6. This matter shall be scheduled for further hearing on **March 29, 2024, at 9:00 a.m.**

So entered this 1st day of March, 2024.

Robert Fields, Associate Justice

Cc: Michael Richtell, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Franklin, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-3381

THEODORE BURRELL

PLAINTIFF(S)

v.
JOHN TERAULT

DEFENDANT(S)

ORDER

After hearing at which both parties plaintiff only defendant only appeared, the Court orders the following:

1. Defendant stipulates to facts sufficient for the Court to find a substantial violation of the Sept. 8, 2023 agreement of the parties.
2. The reasonable accommodation request of Defendant, made through the LFD program, to defer entry of judgment on the condition that Defendant complies with the terms and conditions herein is ALLOWED.
3. The motion for entry of judgment is continued to April 18, 2024 at 9:00 a.m.
4. In order to be entitled to a further stay on entry of judgment, Defendant must:
 - a. comply with paragraph 2(a) of the 9.8.23 agreement of the parties;
 - b. cooperate with TPP and follow any recommendations given to him, and
 - c. follow instructions of health care professionals as it relates to his ability to prohibit unwanted individuals from entering his apartment;
5. Any request for a PCA or a replacement PCA must be coordinated through TPP, and if Plaintiff denies such a request, Defendant must obtain Court order before allowing such individual(s) to enter his apartment (unless such person is already permitted by the terms of the 9.8.23 agreement.
6. Plaintiff may reasonably inspect Defendant's unit without advance notice, up to four times in a calendar month, for the presence of unauthorized individuals. Plaintiff must first knock on the door and announce his name. If no one answers the door, Plaintiff may enter briefly for the sole purpose of determining who is in the unit.
7. If Defendant is in compliance with the terms of this order, he may request a further stay on entry of judgment at the next court date of April 18, 2024 at 9:00 a.m.

SO ORDERED:

Jonathan J. Kane

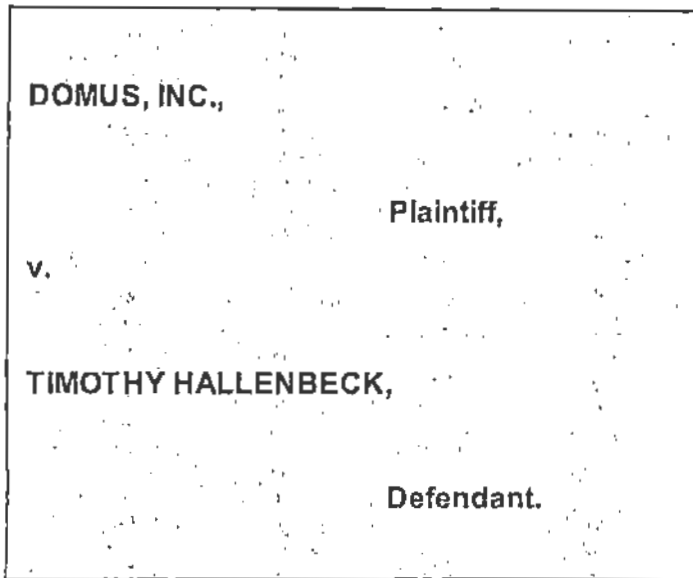
Jonathan J. Kane, First Justice

DATE: 3/1/24

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3476



ORDER

After hearing on February 29, 2024, at which the plaintiff landlord appeared through counsel and the Guardian Ad Litem (G.A.L.) Ed Bryant appeared, the following order shall enter:

1. The court is seeking the G.A.L. to satisfy the court that Mr. Hallenbeck is competent to make decisions regarding his housing; be it to (1) relinquish same or (2) show capacity to return to it and live safely and pay the landlord the outstanding rent OR satisfy the court that Mr. Hallenbeck is not competent to

make such decision and put into a place a person who either by appointment by the Probate Court or through substituted judgment.

2. If the G.A.L. is needed to assist Mr. Hallenbeck's son to obtain appointment by the Probate Court as Guardian, his time spent in that regard shall be deemed appropriate for payment in these proceedings.
3. The G.A.L. may have access to the subject premises with Mr. Hallenbeck's son and at the discretion of the G.A.L. may allow him to remove his father's items. Should items be removed in this fashion, the landlord shall be held harmless.
4. The G.A.L. shall file a next report by March 29, 2024.
5. This matter shall be scheduled for further hearing on **April 2, 2024, at 9:00 a.m. by Zoom**. The G.A.L. committed to appearing from Mr. Hallenbeck's room at the health care center so that he may join the hearing.

So entered this 1st day of March, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 19-CV-212**

TIMOTHY SCOTT, et al.,

Plaintiffs,

v.

**RACE STREET PROPERTIES, LLC and DAVID
P. WHITE,**

Defendants.

**ORDER FOR ENTRY OF
JUDGMENT FOR PLAINTIFFS**

After a Damages Hearing held on November 15-16, 2023, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Liability of the Defendants:** The issue of liability was already adjudicated by this court in its Order for Summary Judgment on Liability issued on October

26, 2023, making the defendants liable for damages proven at hearing by the plaintiffs. Thereafter, the court scheduled this instant Hearing on Damages.

2. **Preliminary Issue: Plaintiff Timothy Scott's Capacity to Testify as to the Value of His Own Property:** For the plaintiff, Timothy Scott (hereinafter, "plaintiff"), to testify to the value of his own personal property, the proper foundation must be laid. According to the Massachusetts Rules of Evidence, a non-expert lay witness can use opinion testimony when they comply with Rule 701, which states:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is (a) rationally based on the witness's perception, (b) helpful to a clear understanding of the witness's testimony or in determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Section 702.

A lay witness is not precluded from testifying on their opinion as long as the proper foundation is laid.

3. As the owner of the property, the plaintiff is in the best position to testify to the items of his property. Without an expert on either side, the plaintiff is also in the best position to testify to the value of those items. There must be evidence that "the owner is actually familiar with the property, its characteristics, its uses, and his experience in buying or selling or actually dealing with the property. Its familiarity, knowledge and experience which qualify an owner to give an opinion of value." *Menici v. Orton Crane and Shovel Co.*, 285 Mass. 499 (1934). The mere fact of ownership alone is insufficient to allow evidence of value. Furthermore, the owner "must have such knowledge of the property as to enable him to give an intelligent

estimate of the fair market value." Additionally, the "admission of such opinion evidence by nonexperts is a matter with the discretion of the trial judge if a proper foundation is laid." *Kenny v. Rust*, 17 Mass. App. Ct. 699, 704 (1984). Furthermore, it established that the owner of the personal property "must act reasonable and fairly in giving an estimate of the diminution in the market value." *Willey v. Cafrella*, 336 Mass. 623, 624 (1958)

4. The court finds and so rules that the plaintiff satisfies all of the above-stated requirements. Furthermore, the plaintiff appeared credible and honest and humble in his value estimates, even when it was against his own interest. Below, the court will address the damages by category of each type of belonging that were removed by the defendants from the plaintiffs' (then) residence and thereafter either lost, stolen, or sold by the defendants.
5. **Vinyl Records:** The Court finds the plaintiff's testimony and evidence regarding his extensive vinyl record collection and his lifelong background in collecting and selling such records as very credible and extremely knowledgeable and conveyed an accrual of knowledge over a lifetime of collecting and selling records. The plaintiff's testimony established his knowledge of the collection and sales of vinyl records, and his "acquaintance with its uses and his experience in dealing with it." *Blais-Porter, Inc. v. Simboli*, 402 Mass. 269, 272 (1988). Based on said testimony and documentary evidence admitted at trial, the Court awards the plaintiffs **\$83,390** in damages for his lost record collection.

6. **Sports Memorabilia:** The Court finds the testimony given by the plaintiff about the sports memorabilia and the evidence submitted as credible and accurate and, similarly to the extensive knowledge conveyed by the plaintiff relative to his record collection, the plaintiff also possessed a deep understanding of sports memorabilia. The evidence admitted included letters of authentication for the signatures of the players. Furthermore, there was no objection raised by defense counsel regarding sports memorabilia. The Court awards the plaintiffs **\$1,150** in damages for the lost sports memorabilia.
7. **Tools:** The Court finds both the testimony given by the plaintiff and the certified document from the Probate Court submitted into evidence as credible to establish the value of plaintiff's father's lost tools. The Court awards the plaintiffs **\$6,000** in damages for tools.
8. **Appliances:** The plaintiff testified to the appliances he lost and provided receipts admitted into evidence of these purchases. Moreover, the plaintiff used photos taken by Whitman Properties (which conducted the eviction) to show that these appliances were in the house at the time of eviction. The Court finds the pictures taken by Whitman Properties on the day of the accurate and sufficient to establish what was in the property at the time that the defendants removed them. These photos are admitted against the objection of defense counsel because they are stamped with the date and show that Whitman Properties took them on those dates. The Court finds the receipts and other evidence, along with the plaintiff's testimony sufficient to establish the value of the lost property as \$7,866.93. This Court shall exercise

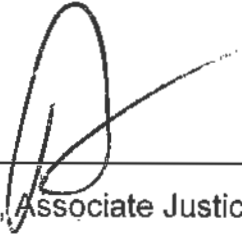
its discretion in attributing a 30% diminution in value to the items based on the years purchased and their used nature. Therefore, the Court awards the plaintiff **\$5,506.85** in damages for the appliances.

9. **Furniture:** The plaintiff presented testimony regarding lost furniture. Furthermore, the plaintiff used the Whitman Properties' photos to convey what was in the house at the time of the eviction. Defense counsel did not object to the testimony regarding the furniture. Furthermore, this Court finds the testimony from plaintiff credible to establish a value for the furniture of **\$2,100**, including a bedroom set, a grandfather clock and a safe. The Court exercises its discretion in attributing a 30% diminution of value to the lost furniture. Therefore, the Court awards the plaintiffs **\$1,470** for the furniture.
10. **Pots and Pans:** Co-plaintiff, Sylvia Scott, testified credibly as to the value of the pots and pans that were removed from the premises at the time of the eviction by the defendants as **\$399.99**. Sylvia Scott testified she bought these pots in 2017 for \$399.99 and they were of the Paula Deen collection. The defendants did not cross-examine nor object to this evidence. The Court finds this testimony credible and therefore awards the plaintiffs **\$399.99** for the pots and pans.
11. **Miscellaneous:** The plaintiff provided receipts for miscellaneous other items that had been purchased and in the home on the day of eviction and removed by the defendants. The Court finds these receipts and the testimony given by the plaintiff as credible and sufficient to establish the value of these

miscellaneous items at **\$1,305.96** and the Court therefore awards the plaintiffs this amount in damages for these lost items.

12. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the plaintiffs against the defendants for **\$99,222.80** plus court costs.

So entered this 1st day of March, 2024.



Robert Fields, Associate Justice

CC: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3444**

JONATHAN and NICHOLAS COUPER,

Plaintiffs,

v.

KARL RAINER and MICHAEL CRIPPA,

Defendants.

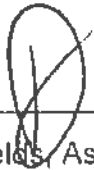
ORDER

After hearing on February 21, 2024, the following order shall enter:

1. The landlord shall have access on February 23, 2024, beginning at 8:30 a.m. to replace and hook up a new bathtub. The removal of the tub and the installation of the new tub shall be overseen by the landlord's plumber, Bill Jones (who was present and testified at the hearing). Any and all other repairs in the bathroom may also be performed under Mr. Jones' supervision at that time.
2. If there is mold behind the walls, new walls will not be installed without the proper remediation of the mold.

3. The tenants shall not communicate directly with the plumber, Mr. Jones. If the tenants have a question or wish to provide information to the plumber, they shall do so through the landlord's attorney.
4. The landlord nor his agents shall digitally record or film without the tenants' permission. Also, any and all photographs taken by the landlord or his agents shall be focused solely on conditions of disrepair.
5. If due to the work being performed, the bathroom is not usable for 24 hours or longer, the landlord shall provide hotel accommodations for the tenants until the bathroom is usable.
6. All repairs that require permits or licensure shall be effectuated in that manner.

So entered this 5th day of March, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-CV-970

GARY GERMAIN,

Plaintiff,

v.

PHILIP JOREL and BONNIE MILLET,

Defendants.

ORDER

After hearing on February 26, 2024, on the plaintiff landlord's motion to enforce a court agreement, at which all the parties appeared self-represented, the following order shall enter:

1. **Procedural Background:** On November 16, 2023, the plaintiff (hereinafter, "landlord") filed this complaint seeking injunctive relief—specifically, a court order that the defendant tenants (hereinafter, "tenants") remove their dog from the premises. On November 21, 2023, the parties appeared for hearing and instead entered into a mediated agreement that they would remove the dog from the

premises by February 18, 2024, and agreed to update the court on the dog's placement in mid-January 2024.

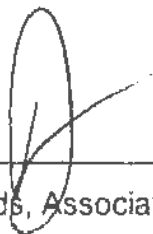
2. After the tenants failed to update the landlord regarding the placement of the dog when reached by the landlord informed him that they were planning to keep the dog, the landlord filed this instant motion to enforce the agreement and is seeking a further order from the court to have the dog removed.
3. **Discussion:** The tenants do not deny that they continue to have the dog. Their position is that they have always had the dog since they took occupancy in May 2023, that the lease does not have a no-pet term, that the dog is an emotional support animal¹, and that the landlord was aware of the dog and allowed the tenants to have it when they first took occupancy.
4. The landlord disputes these allegations and, also, argues that the tenants entered into a binding agreement at court that requires them to remove the dog.
5. This matter requires an evidentiary hearing on the merits of each party's claims regarding keeping or not keeping the dog at the premises. In addition to hearing more about what transpired between the parties prior to the court action relative to the dog, the tenants now assert a claim for Reasonable Accommodation—which may include as a remedy an amendment to the terms of the court agreement.²
6. This matter shall be scheduled for a Case Management Conference with the Clerks Office to schedule discovery, other pretrial matters, and trial.

¹ The tenants submitted a letter from a doctor supporting the need for the tenants' dog as an emotional support animal. Exhibit 1, November 20, 2023 letter from Dr. Frank J. Welch, MD.

² See, Federal Fair Housing Act, 42 U.S.C., s.3602 et seq; and G.L. c.151B.

7. **Reasonable Accommodation:** Pending a trial in this matter, the tenants may keep their dog as a reasonable accommodation under the law.

So entered this 5th day of March, 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate for scheduling of CMC with the Clerks Office
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3562

MARK GOLDMAN,

Plaintiff,

v.

OVADNEY THORINGTON, et al.,

Defendants.

ORDER

After hearing on February 27, 2024, on review and several of the plaintiff landlord's motions, at which the landlord appeared with counsel and the tenants Ms. Thorington and Mr. Chesterfield Mayers appeared (by Zoom) and also at which a representative from the Tenancy Preservation Program also appeared, the following order shall enter:

1. **Motion for Lifting of Stay:** For the reasons stated on the record, the landlord's motion for a lifting of the court's stay on the use of the execution is continued to the date noted below.

2. The landlord shall have a licensed exterminator treat the premises forthwith with proper advance notice to the tenants and to Donna Bryant of TPP.
3. Once the extermination treatment is accomplished, it is Donna Bryant's understanding that Greater Springfield Senior Services (GSSS) shall resume its cleaning services of the tenant's unit. Ms. Bryant shall work with GSSS in this regard.
4. The tenant shall pay the landlord \$1,125 (representing \$225 outstanding from the court's earlier order plus March 2024, use and occupancy) by no later than March 8, 2024.
5. **Motion for Extension of the Execution:** The landlord is seeking to be able to hold on to a valid execution should the stay on its use be lifted and the current execution expires on March 13, 2024. That request is allowed, and a new execution shall issue but there shall be a stay on use of same until further court order.
6. **Motion for Appointment of an Alternate Process Server for Physical Levy:** The motion, to appoint Constable Alan Jeskey to levy on the physical eviction if and when the stay is lifted is denied without prejudice. There are many factors involved in the court's consideration of such a motion---sufficient reason to not use the county sheriff or a constable that is appointed by the town within which the levy is to take place---and the court finds that at this juncture the landlord has not met his burden of proof that there are circumstances upon which the court should allow the order. Please see, among other cases, decision of the

underling judge on this issue: *Franklin Pleasant, LLC v. Katherine Kieras*,
Western Div. Hsg. Ct. No. 23-SP-2189 (Fields, 2023).

7. Next Hearing: This matter shall be scheduled for further review and for properly scheduled motions on **March 21, 2024, at 9:00 a.m.** The tenants are permitted to again attend by Zoom.

So entered this 5th day of March, 2024.

Robert Fields, Associate Justice

Cc: Donna Byrant of TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4632

M & S BLUEBIRD, INC.,

Plaintiff,

v.

CHRISTOPHER PATTEN,

Defendant.

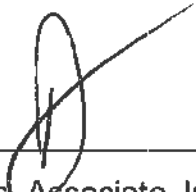
ORDER

After hearing on February 20, 2024, on the plaintiff's motion for summary judgment and on the defendant's motion for late filing of Answer and discovery, the following order shall enter:

- 1. Motion for Summary Judgment:** The plaintiff's motion for summary judgment is denied, without prejudice, as there are material facts in dispute. Moreover, there are significant facts that are unknown at the time of this motion such as who owns the manufactured home in which the defendant resides and whether or not there is privity between the parties.

2. There are also significant question of law that must await further discovery such has whether or not the plaintiff can sustain a summary process action against the defendant directly or must it first establish who owns the unit (if anyone) or whether it is abandoned, and whether it can seek rent or use and occupancy from the defendant.
3. **Motion for Late Answer and Discovery:** The defendant's motion for late Answer and Discovery is allowed.
4. The Clerk's Office is requested to conduct a Case Management Conference to establish a discovery schedule (as both parties have leave to conduct discovery), all pretrial requirements and dispositive hearings, and a three-day jury trial.
5. **Currently Scheduled Pretrial and Trial Dates:** The currently scheduled judicial pretrial conference on March 20, 2024, and the jury trial scheduled for April 8-10, 2024, are to be taken off the list.

So entered this 6th day of March, 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate for scheduling a Case Management Conference

COMMONWEALTH OF MASSACHUSETTS

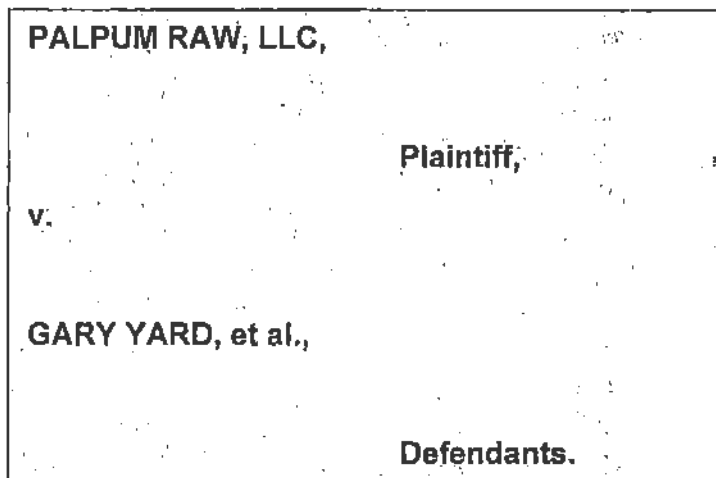
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3642



ORDER

This matter was before the Court on January 25, 2024, for Palpum Raw, LLC's ("Plaintiff") motion for summary judgment, Indira Yard, Ingrim Yard, and Inglyana Yard's cross-motion for summary judgment, and Gary Yard's motion to dismiss ("Defendants") and collectively ("Parties"). The plaintiff and the defendants who filed the cross-motion for summary judgment were represented by counsel and defendant Gary Yard appeared self-represented. After hearing, the Court rules as follows:

1. **BACKGROUND AND PROCEDURAL HISTORY:** This is a post-foreclosure summary process action in which the plaintiff, who is a third-party purchaser of the foreclosed property, is seeking possession of 54-56 Norman Street, West Springfield Massachusetts ("Premises"). There is extensive history in this court between Bank of New York as Trustee who purchased the property at a foreclosure auction and the Defendants in this matter. See docket 18-SP-4324. The plaintiff filed the Summons and

Complaint and notice to quit on August 14, 2023. On or about September 20, 2023, the defendants filed: an answer asserting affirmative defenses, demand for a jury trial, motion to consolidate for judicial economy, and discovery requests.

2. On October 10, 2023, the parties appeared for hearing on the defendants' motion to consolidate for judicial economy. The Court issued findings and an order on October 25, 2023. The Court allowed the defendants' motion to consolidate the cases under this docket number (23-SP-3642) and set deadlines for discovery compliance, dispositive motions, opposition thereto, and set a hearing date for January 3, 2024.

3. The plaintiff filed a motion for summary judgment with a memorandum of support on December 6, 2023, claiming it is entitled to possession of the Premises because it has established a *prima facie* case in support thereof. On December 8, 2023, the defendants' counsel filed a motion to extend the due dates for the filing of dispositive motions, oppositions thereto, and discovery compliance. On December 18, 2023, the plaintiff withdrew its motion for final judgment based on the defendants' failure to comply with discovery and requested that the hearing on December 19, 2023, be taken off the list but to keep the hearing on its motion for summary judgment on the docket for January 3, 2024. On December 25, 2023, defendant Gary Yard filed a motion to dismiss the plaintiff's complaint. The defendant has made several claims that the plaintiff does not have the right to possession based upon issues with the chain of title and the foreclosure process as outlined below.

4. The January 3, 2024, hearing date was continued per the defendants' counsel's request and was scheduled for January 25, 2024. The defendant Gary Yard filed a

memorandum and affidavit on the day of the hearing and the court took this matter under advisement.

5. **STANDARD FOR MOTION TO DISMISS:** To survive a motion to dismiss pursuant to Mass. R. Civ. P. Previous 12 (b)(6), a complaint requires factual allegations that "plausibly suggest" an entitlement to relief. See *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). All allegations by a plaintiff are taken as true, and all reasonable inferences are drawn in the plaintiff's favor. See *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995). The factual allegations, "stripped of labels and conclusions" are assumed to be true "even if doubtful in fact." See *Iannacchino*, 451 Mass at 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (1977).

6. A complaint is sufficient, however, only if those factual allegations plausibly suggest an entitlement to relief, in order to reflect the threshold requirement of Mass. R. Civ. P. 8(a)(1) that the 'plain statement' possesses enough heft to show that the pleader is entitled to relief. *Id.*; see *Flomenbaum v. Commonwealth*, 451 Mass. 740, 751, n. 12 (2008) ("to survive a motion to dismiss, complaint must contain factual allegations 'enough to raise a right to relief above the speculative level...' on the assumption that all the allegations in the complaint are true.").

7. In evaluating a motion brought pursuant to Mass. R. Civ. P. 12 (b)(6), in addition to considering the allegations in the complaint the Court may also consider certain other documents. "Matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint also may be taken into account." See *Schaer v. Brandeis University*, 432 Mass. 474, 477 (2000).

8. In the defendant Yard's motion to dismiss it is alleged that the plaintiff does not have standing to bring its claim for possession, that the Court lacks jurisdiction to hear this matter, and for failure to state a claim upon which relief may be granted.

9. The defendant Yard makes the following claims in support thereof: terminations by operation of law in all public record, utmost diligence when claimant mortgagee claims to buy back at auction, factual challenge to standing then requires factual evidence not averments, actions as to mortgage with power of sale must be free of doubt, previous act void by operation of law cannot be rendered not void, regardless of status of purchaser, where title is void the law holds no interest could be conveyed, plaintiff cannot claim that he is purposefully ignorant so he can claim no knowledge that the title is void and therefore his money bought something, that plaintiff cannot qualify as a third-party purchaser for value, the uniformed securitized trust could not be a grantor as it could not own an interest in property not be a part of a legal proceeding, relevant documentary evidence already sworn to, history of summary process statute clearly precludes its use where the plaintiff's title is 'in question,' and that a title controversy outside of jurisdiction of the Housing Court.

10. The defendant Yard requests the Court dismiss the complaint because the title remains with him or because the issues raised in this case are beyond its jurisdiction, such as the plaintiff's claim to title. Further, defendant Yard states where challenge to the plaintiff's title is apparent and title not already established, dismissal with prejudice should enter given the challenge to plaintiff's title and lack of power to transfer title and his title should be recognized and title given to him.

11. The plaintiff has filed a deed in which it took ownership of the Premises. Said foreclosure deed and affidavit meet the requirements of MG.L. c. 244, §15 and evidence that the power of sale was duly executed and same constitutes *prima facie* evidence of the plaintiff's case in chief. See *Federal National Mortgage Association v. Hendricks*, 463 Mass. 635, 641-642 (2012). Clearly the plaintiff has provided evidence which could lead the factfinder to determine he has standing to bring a claim for possession of the Premises and has also put forth a claim upon which relief may be granted.

12. Based upon the foregoing, the Defendant Yard's motion to dismiss is hereby DENIED without prejudice.

13. **STANDARD FOR SUMMARY JUDGMENT:** 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).

14. The party opposing summary judgment "cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." *LaLonde v. Eissner*, 405 Mass. 207, 209 (1976). To defeat summary judgment the non-moving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts

showing that there is a genuine issue for trial." *Korouvacilis v. General Motors Corp.*, 410 Mass. 706, 714 (1991). "Conclusory statements, general denials, and factual allegations not based on personal knowledge [are] insufficient to avoid summary judgment." *Madsen v. Erwin*, 395 Mass. 715, 721 (1985), quoting *Olympic Junior, Inc. v. David Crystal, Inc.*, 463 F.2d 1141, 1146 (3d Cir. 1972).

15. "Summary process is a statutory cause of action that enables a person to recover possession of land that is acquired through a mortgage foreclosure sale." *U.S. Bank Nat. Ass'n v. Schumacher*, 467 Mass. 421, 428 (2014). See G.L. c. 185C, § 3. "In a summary process action for possession after foreclosure by sale, the plaintiff is required to make a *prima facie* showing that it obtained a deed to the property at issue and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded." *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). See G.L. c. 244, § 15. "Legal title is established in summary process by proof that the title was acquired strictly according to the power of sale provided in the mortgage; and that alone is subject to challenge." *Schumacher*, 467 Mass. at 428. See *Lewis v. Jackson*, 165 Mass. 481, 486–487 (1896) (to make *prima facie* showing of title, mortgagee only needs to prove that it obtained deed to property at issue, and that deed and affidavit of sale, showing compliance with power of sale, were duly recorded).

If a plaintiff makes a *prima facie* case, it is then incumbent on a defendant to counter with his own affidavit or acceptable alternative demonstrating at least the existence of a genuine issue of material fact to avoid summary judgment against him. If a defendant fails to show the existence of a genuine issue of material fact in response to a motion for summary judgment by contesting factually a *prima facie* case of compliance with

G.L. c. 244, § 14, such failure generally should result in judgment for the plaintiff. *Fed. Nat. Mortg. Ass'n v. Hendricks*, 463 Mass. 635, 642 (2012).

16. **DISCUSSION:** There was prior litigation between the previous owner/foreclosing bank and the defendants in this case, see docket 18-SP-4324. Summary Judgement had entered for the previous owner/foreclosing bank but ultimately the judgment was vacated, and the complaint dismissed and the parties in the present and prior actions are different, therefore *res judicata* does not apply in the current case herewith.

17. The term "*res judicata*" includes both claim preclusion, also known as true *res judicata*, and issue preclusion, traditionally known as collateral estoppel. The invocation of claim preclusion requires three elements: (1) the identity or privity of the parties to the present and prior actions; (2) identity of the cause of action; and (3) prior final judgment on the merits. *Howard v. Boston Water and Sewer Commission*, 96 Mass. App. Ct. 119, 120.

18. It appears in the current case the defendants have additional claims and facts in their cross-motion for Summary Judgment that were not a part of the same motion in the prior litigation. Specifically: "The Defendants are challenging the Plaintiff's third party purchaser claimed "derivative foreclosure title," that Plaintiff has no standing by virtue of its immediate predecessor's foreclosure because the title is void because of a defective mortgage at origination, only the present holder of a mortgage is authorized to foreclose on the mortgage property, Bank of New York Mellon misrepresented who Defendant Gary Yard gave the mortgage too, based upon case law said Bank cannot disavow America's Wholesale Lender's Corporate Existence by legally claiming that the mortgage naming it as a corporation does not mean what it says, the Bank and plaintiff

cannot cure the defect in the mortgage by claiming that the blank endorsement on the note naming the Endorser as Countrywide Home Loan d/b/a America's Wholesale Lender."

19. Here, the defendants have also filed various exhibits to support their claims and facts which do "go beyond the pleadings ... [which] designate specific facts showing that there is a genuine issue for trial." See *Korouvacilis*.

20. **Conclusion and Order:** Seeing as discovery has not even started in this case coupled with the dispute of material facts, it is premature for the court to allow summary judgment for either party at this juncture.

21. Upon completion of discovery, either party may re-file a motion for summary judgment and with any other relief they may seek.

22. Based upon the foregoing, both the plaintiff's and the defendant's motions for summary judgment are hereby DENIED without prejudice, and the Clerk's Office is requested to schedule a Case Management Conference and establish a pretrial and trial schedule.

So entered this 7th day of March, 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate for scheduling the CMC with the parties
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0185

CITY OF SPRINGFIELD CODE ENFORCEMENT)
DEPARTMENT, HOUSING DIVISION,)
)
PLAINTIFF)
)
v.)
)
SPRINGFIELD GARDENS LP, ET AL.,)
)
DEFENDANTS)
_____)

ORDER REGARDING
IMPOSITION OF FINES

This code enforcement matter came before the Court on March 8, 2024 on Plaintiff's motion for issuance of an order relating to Defendants' failure to comply with previous court orders. The parties appeared with counsel.

After hearing, the following order shall enter:

1. Defendants are ordered to pay Plaintiff \$1,340.00 within fourteen (14) days, which sanction is comprised of (a) fines in the amount of \$700.00 for Defendants' failure to obtain Certificates of Inspection for two properties by the January 30, 2024 deadline set by previous court order from January 19, 2024, and (b) attorneys' fees of \$640.00 pursuant to the same order.
2. With respect to Plaintiff's motion to assess fines retroactively in the amount of \$6,100.00 for Defendants' non-compliance, the Court requires additional information from Plaintiff. The motion cites to an October 3, 2023 order; however, no order entered on this date. If Plaintiff intended to cite to the

order dated October 13, 2023 (following a hearing on September 25, 2023), that order required Plaintiff to provide an updated report by September 29, 2023 but did not include a date by which the Certificates of Inspection had to be obtained. To better explain its request for retroactive fines, within fifteen (15) days, Plaintiff shall file a supplemental memorandum that sets forth the specific basis for its request, including the relevant court order(s) and its calculation of damages.¹ Defendants shall have fifteen (15) days to oppose the request in writing.

3. The Court will enter an order regarding additional fines without further hearing, unless it so requests.

SO ORDERED.

DATE: March 8, 2024

/s/ Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

¹ The Court notes that the supplemental memorandum should include alleged non-compliance after the June 9, 2023 contempt proceeding.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-127

MARIA COLLADO SANTOS,

Plaintiff,

v.

DORIS MARTINEZ,

Defendant.

ORDER

After hearing on February 27, 2024, on the plaintiff tenant's motion for injunctive relief at which both parties appeared self-represented, the following order shall enter:

1. The plaintiff tenant lives upstairs at 125 Middlesex Street in Springfield and the defendant landlord resides downstairs on the first floor.
2. The parties have a written lease that was admitted into evidence and the arrangement is that the landlord's son, Jordani Nasario (also present at the hearing), lives in a room inside the tenant's unit but it has access in a fashion that

allows him to use his room and the bathroom and the kitchen without entering into the space that is exclusively that of the plaintiff tenant.

3. The lease also makes clear that electricity and the laundry room are included in the rent and the behaviors of the parties created a lease term that the landlord provide internet access as well at no extra charge.
4. The tenant's motion is allowed, and the landlord shall be required to comply with the lease terms described above---provide unfettered access to the laundry facilities, provide all utilities and internet connection---and instruct her son to not enter the tenant's exclusive portion of the second-floor unit.

So entered this 8th day of March, 2024.

Robert Fields, Associate Justice
Cc: Court Reporter

communicating with counsel for Plaintiff; (b) coordinate with TPP to enroll Defendant in a rep payee program, and (c) coordinate with TPP for a RAFT application if appropriate.

3. The GAL shall file a report (which will be impounded) in advance of the next Court date describing the efforts made and results achieved to date.
4. The parties shall appear for review on May 10, 2024 at 9:00 a.m.

SO ORDERED.

March 8, 2024



Hon. Jonathan J. Kane, First Justice

cc: Assistant Clerk Magistrate Cunha (for GAL appointment)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5646

TOM TZIKAS,

Plaintiff

v.

FINDINGS OF FACT, RULINGS OF
LAW AND ORDER FOR ENTRY
OF JUDGMENT

STEPHEN TURCOTTE,

Defendant

This no fault summary process case came before the Court for a bench trial on March 1, 2024. Plaintiff appeared with counsel. Defendant appeared self-represented. The residential dwelling in question is located at 11 Crawford Street, Palmer, Massachusetts (the "Premises").

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit that terminated the tenancy at the end of November 2023. Defendant did not vacate and remains in possession. Plaintiff does not seek unpaid use and occupancy in this case, but the parties agree that only use and occupancy for February remains outstanding.

Defendant did not file an answer and raised no defenses at trial. Accordingly, the following order shall enter:

1. Judgment for possession, plus court costs, shall enter in favor of Plaintiff.
2. Execution shall issue upon written application ten days after the date judgment enters.

3. Given that this case was brought for no fault, Defendant may file a motion for a stay pursuant to G.L. c. 239, § 9.

SO ORDERED.

March 9, 2024

By: *1st Jonathan J. Kane*
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24CV0155

SONIA VILLA FANE

PLAINTIFF(S)

v.
JOSEPH RUSSO

DEFENDANT(S)

ORDER

After hearing at which both parties plaintiff only defendant only appeared, the Court orders the following:

Defendant owner shall provide alternative housing in Candlewood Suites or Homewood Suites (both have kitchen facilities) until March 14, 2024, at which time the parties shall return for review as to the origins of the fire.

If Plaintiff elects to remain in the Red Roof Inn, Defendant shall pay for the accommodations but shall not be obligated to pay a food stipend given that it is offering an accommodation with kitchen facilities.

SO ORDERED: 1st Jonathan J. Kane DATE: 3/11/24
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23SP1640

Maple Properties, LP,
Plaintiff

v.

Jessenia Lozada, et al.,
Defendant

ORDER ON MOTION TO STOP EVICTION

At a hearing held on 3/11/2024, Defendant's motion to stop the levy (eviction) is:

ALLOWED

DENIED¹

After hearing in which Plaintiff appeared through counsel and the Defendant appeared self represented, the Court will ALLOW the Defendant's Motion to Stop the Eviction contingent on the following:

1. The HSD/Clerk's Office shall make a referral for Ms. Lozada to the TPP.
2. TPP shall assist Ms. Lozada to the extent practical with her recertification for 2023 and 2024.
3. Ms. Lozada shall meet with TPP on or before March 31, 2024.
3. It was reported that to complete 2023 recertification, Ms. Lozada must have her daughter (Haley) sign the documentation, as well as her husband, Mr. Lozada, must provide certain to documents.
4. Ms. Lozada shall enroll in text reminder on or before March 15th, and she can get assistance from the Clerk/HSD to do this.
5. This matter shall be scheduled for review by the Clerk's office on April 18th at 2pm.

SO ORDERED.

By: Benjamin O. Adeyinka

Benjamin O. Adeyinka, Associate Justice

DATE: 3/11/2024

¹ G.L. c. 239, § 15 does not apply because:

- the tenancy was not terminated solely for non-payment of rent;
- the non-payment of rent was not due to a financial hardship
- Defendant did not demonstrate to the satisfaction of the Court a pending application for rental assistance
- Defendant was not present and thus could not establish a right to a stay.

2. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$3,396.00, plus court costs of \$ ~~182.76~~ and interest in the amount of \$ ~~230.16~~, for a total of \$ 3,808.92. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."
3. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
4. If the deposit is not received by the Clerk within the ten day period, final judgment shall enter for Plaintiff for possession and damages in the amount of \$3,396.00, plus costs and interest, and Plaintiff may apply for issuance of the execution ten days after the date judgment enters.

SO ORDERED.

DATE: March ~~15~~ 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23SP0005

SHP Management Corp.

PLAINTIFF(S)

v.
Danielle Florio

DEFENDANT(S)

ORDER

After hearing at which both parties plaintiff only defendant only appeared, the Court orders the following:

Judgment shall enter in favor of Plaintiff for possession and damages in the amount of \$5,663.99, which represents the amount Plaintiff claims is owed (\$6,653.99) less \$990.00 paid by Defendant today.

Due to unreported income, Defendant owes \$2,755.00 through October 2023. For the months of November 2023 through January 2024, the amount Defendant owes is \$2,966.99.

Defendant's subsidy was terminated as of February 1, 2024 due to a failure to recertify. Because she missed the deadline for her annual recertification, her rent went to the market rate as of February 2024. The parties agree to work cooperatively to seek reinstatement of Defendant's subsidy as of February 1, 2024. If this is successful, the tenancy may be preservable.

Within seven days, Defendant shall pay \$2,966.99 to be held in escrow by Attorney Oakes' law firm. If Defendant is able to reinstate her rental subsidy retroactively to February 1, 2024, the amount held in escrow shall be released to Plaintiff and Defendant will pay the remaining balance due in a lump sum, at which point her tenancy shall be reinstated.

Because the tenancy is unsustainable at market rent, if Defendant's subsidy is not reinstated, the amount held in escrow shall be returned to Defendant and an execution may issue.

The three month period set forth in G.L. c. 235, s. 23 shall be tolled until the next court hearing.

The parties shall return for review on March 28, 2024 at 2:00 p.m.

SO ORDERED: 1st Jonathan J. Kane DATE: 3/18/24
Jonathan J. Kane, First Justice

3. Defendant shall cooperate with TPP and the GAL with respect to getting services (such as a PCA) in place to assist Defendant in his home.
4. By the next hearing date, Defendant must have selected a primary care physician. His continued failure to select a PCP has hindered resolution of this matter.
5. In advance of the hearing on April 9, 2024, management may conduct a housekeeping inspection upon 48-hours' notice. Mr. Williams shall not deny access for the inspection. Management shall inform Ms. White at TPP and Attorney Brown in advance of the date and time of the inspection.

SO ORDERED.

DATE: March 18, 2024


Jonathan J. Kane, First Justice

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24CV0020

WORTHY REALTY CO.

PLAINTIFF(S)

v.
DABRIEL APONTE

DEFENDANT(S)

ORDER

After hearing at which both parties plaintiff only defendant only appeared, the Court orders the following:

In considering Plaintiff's further request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. The Court is convinced that failure to issue the injunction would subject Plaintiff to a substantial risk of irreparable harm given Defendant's continued threatening and aggressive behavior.

The Court finds that, after the Court allowed Defendant the opportunity to restart his medications to control his behavior, Defendant has continued to act inappropriately. The evidence shows that, after the last court date, he menaced Plaintiff's security officer by following him and threatening him with a knife, and that acted in a manner intended to intimidate employees working at the property. Given this evidence, Plaintiff is likely to succeed on the merits of its claims.

The court acknowledges that issuing this execution will may cause significant harm to Defendant and, further, that his behavior is at least in part related to mental health issues, but issuance of the injunction is necessary to protect the physical safety of employees and other residents.

Accordingly, Defendant is hereby ordered to vacate and stay away from the property located at 193 Worthington Street in Springfield, Massachusetts until further court order. Defendant may file a motion at any time to dissolve this injunction if he can demonstrate that he is able to return to the property without engaging in the threatening and aggressive behavior toward employees working at the property and other residents. Possession shall not revert to Plaintiff until judgment enters in the summary process case or Defendant's voluntary surrender.

SO ORDERED: /s/ Jonathan J. Kane DATE: 3/18/24
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4261

Veloz Associates

PLAINTIFF(S)

v.

ORDER

Jadeliz Monserrate

DEFENDANT(S)

After hearing at which [] both parties [] plaintiff only [] defendant only appeared, the Court orders the following:

The parties appeared for trial today in this non-payment of rent case. Plaintiff was represented by counsel; Defendant was self-represented. The parties executed a pretrial stipulation pursuant to which Plaintiff established its prima facie case for possession and \$940.00 in unpaid rent. Defendant did not file an answer and acknowledges the amount owed. She claims that she can pay the balance, including the fees to cancel the eviction scheduled for January 18, 2023 (\$640.00) and court costs (\$281.54). Accordingly, the following order shall enter:

1. Judgment for possession and \$940.00 in damages, plus \$921.54 in costs, will enter for Plaintiff.
2. No execution shall issue, and the 3 month period in G.L. c. 235, s. 23 shall be tolled, so long as Defendant makes the following payments:
 - a. \$940.00 on March 29, 2024;
 - b. \$1207.18 on April 12, 2024;
 - c. \$1207.18 on May 10, 2024;
 - d. \$1207.18 on June 7, 2024.

All payments shall be by immediately available funds (such as money orders) and shall not be considered late if received by Defendant by the next business day after the due date.

3. If any payment is not made, Plaintiff's counsel may file a request for issuance of the execution (with a copy sent to Defendant), along with an affidavit attesting to the missed payment, and the execution shall issue without further notice or hearing.

4. Given that the January move-out was cancelled, Defendant shall not be entitled to another cancellation.

5. If all payments are made, Plaintiff shall be responsible for cancellation of eviction and stipulation of possession.

SO ORDERED: _____

DATE: 3/19/24

Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 19-SP-190

BANK OF NEW YORK MELLON,

Plaintiff,

v.

ALTON KING,

Defendant.

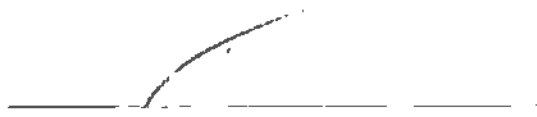
ORDER FOR
ADDITIONAL EVIDENCE

After hearing on January 3, 2024, on the defendant Race Street Properties, LLC's motion for injunctive relief, the following order shall enter:

1. The defendant, Alton King, asserts that the defendant Race Street Properties, LLC was not a licensed moving company regulated by the Commonwealth's Department of Public Utilities (DPU) at the times that it moved Mr. King's belongings.
2. The court has taken judicial notice of the DPU's Transportation Oversight Division's listed of regulated household goods moving companies and Race Street Properties, LLC is not on that list.

3. The Court has determined that whether or not the company that moved Mr. King's belongings was licensed to do so may be an important factor in its analysis regarding Race Street Property, LLC's motion for injunctive relief.
4. Accordingly, the Court shall keep the record open on this pending motion for 30 days to allow for Race Street Property, LLC's filing (and service to all parties) proof of its licensure as a mover of household goods within Massachusetts at the time of each move of Mr. King's belongings.
5. Such documentation shall be due to the court within 30 days of the date of this order noted below. The underlying motion for injunctive relief shall remain under advisement until after that 30-day period.

So entered this 20th day of March, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

order allowing Defendant's motion. The judge wrote: "There shall be a stay on the use of the execution as long as the tenant makes ... payments." The payments in question were defined as \$264.00 each month starting with the December payment which, at the time of the hearing, had not been made. The Court further gave Defendant sixty (60) days to present documentation to establish the tenant's income to calculate his appropriate monthly rent.² The Court further wrote: "If after this process the landlord wishes to pursue this eviction, it shall file a motion to lift the stay on the execution."

Upon Defendant failing to make the \$264.00 payment for February 2024 and failing to present the necessary documentation for recertification within 60 days (February 12, 2024), Plaintiff returned the original execution, moved to lift the stay and asked for issuance of a new execution. Defendant contends that the case must be dismissed because Plaintiff did not use the execution to recover possession prior to its expiration on February 13, 2024.

G.L. c. 235, § 23 only addresses stays on issuance of the execution and explicitly recites that "[n]o sheriff, constable, officer, or other person shall serve or levy upon any such execution for possession later than three months following the date of the issuance of the execution." The Appeals Court in *Fort Point Investments* did not address whether § 23 also allows use of the execution to be stayed by a court order or agreement of the parties. ("Apart from the issuance period, whether § 23 may also be read to allow the running of the three-month levy period to be tolled by a

² Sixty days from the entry of the court order is February 12, 2024. The execution was valid through February 13, 2024.

court-filed agreement or a judge's order is a question not presented by this case and on which we express no view.").

It would be unjust to dismiss Plaintiff's claim for possession under these circumstances. Plaintiff acted without delay in requesting execution soon after judgment entered. But for Defendant's motion to stop the levy, the eviction would have been conducted well within the three month period provided in § 23. The only reason the levy did not occur was the court order imposing a stay on its use. The court order explicitly permitted Plaintiff to file a motion to lift the stay on the execution if Defendant did not comply with the terms of the order, which motion was filed only days after Defendant's noncompliance. It was clearly intended by the judge that the stay period would toll the three month period for use of the execution and that Plaintiff would be able to get a new execution if Defendant did not comply with the court order.

Accordingly, Plaintiff's motion to issue a new execution is ALLOWED and Defendant's motion to dismiss is DENIED.

SO ORDERED.

March 20, 2024


Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2345

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff

v.

FINDINGS OF FACT, RULINGS OF
LAW AND ORDER FOR ENTRY
OF JUDGMENT

IGNACIO COLON SANTIAGO,

Defendant

This summary process case brought for nonpayment of rent came before the Court for a bench trial on February 22, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented.¹ Defendants reside at 603 Berkshire Avenue, Apt. C29, Springfield, Massachusetts (the “Premises”).

Defendant stipulated to receipt of the notice to quit. He continues to reside in the Premises. 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: Monthly rent is currently \$292.00 per month. The balance of unpaid rent through the date of trial is \$1,552.00. Due to unreported income, his rent should have been significantly higher in 2022 and 2023. Based on the recalculation of rent based on his actual household income, the balance of unpaid rent is \$12,401.00.

¹ During the course of this proceeding, the Court ordered an psychological evaluation of Defendant by the Court Clinic to determine whether he might benefit from the appointment of a guardian ad litem. The clinician found no indications of impairment and did not present as an incapacitated person. Therefore, the Court declined to appoint a guardian ad litem.

Defendant filed an answer seeking an opportunity to cure the balance and asserting a counterclaim for breach of warranty. At trial, Defendant conceded that he is not asserting any claims against Plaintiff. Accordingly, the counterclaim is dismissed.²

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

1. Judgment for possession and damages in the amount of \$12,401.00, plus \$199.95 in court costs, shall enter for Plaintiff.³
2. Issuance of the execution shall be stayed through the end of April 2024 provided that Defendant makes the following payments:
 - a. \$492.00 (rent plus \$200.00 toward the arrears) for February use and occupancy by February 23, 2024;
 - b. \$492.00 by March 5, 2024 for use and occupancy for March 2024;
 - c. \$492.00 by April 5, 2024 for use and occupancy for April 2024.
3. The period of stay pending payments described herein shall toll the three month period for issuance of the execution set forth in G.L. c. 235, § 23.
4. If Defendant fails to make a payment required hereunder, Plaintiff may request the execution by written application.

SO ORDERED.

DATE: March 20, 2024

By: *1st Jonathan J. Kane*
Jonathan J. Kane, First Justice

cc: Court Reporter

² At the very end of the trial, Defendant mentioned to minor issues that need repair: a window that does not stay open and a missing strainer in the kitchen sink. These conditions of disrepair are minor and do not warrant any abatement of rent.

³ Defendant does not have a pending application for rental assistance and therefore G.L. c. 239, § 15 does not apply.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0560

CITY OF SPRINGFIELD CODE
ENFORCEMENT DEPT,

PLAINTIFF

v.

RULING ON COMPLAINT
FOR CONTEMPT

MONNAY MILLER, ET AL.,

DEFENDANTS

This code enforcement matter came before the Court for a hearing on February 16, 2024 on Plaintiff's complaint for contempt. Plaintiff, Defendant Monnay Miller ("Miller") and Defendant Commercial Capital Investor Group, LLC appeared through counsel. The property in question is located at 29 George Street, Springfield, Massachusetts (the "Property").


In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re Birchall*, 454 Mass. 837, 852-53 (2009). Compensatory orders may be warranted as a sanction for contempt. *See Labor Relations Comm. v. Fall River Educators' Assn.*, 382 Mass. 465, 475-476 (1981) (both compensatory and coercive orders are appropriate remedies in civil contempt proceedings).

This court entered orders dated July 26, 2023, August 31, 2023, October 30, 2023 and December 21, 2023 enjoining Miller from performing any work at the Property without first obtaining proper permits and ordering Miller to provide a written rehabilitation plan to Plaintiff and maintain the Property clean of litter, trash and debris. Miller acknowledges that work was done on the Property (the porch) without proper permits and that, prior to the instant hearing, she had not provided a rehabilitation plan to Plaintiff. The Court finds that Plaintiff has demonstrated, by clear and convincing evidence, Miller's clear and undoubted disobedience of a clear and unequivocal command.

In fashioning a remedy for contempt, the Court considers both compensatory and coercive sanctions. In this case, the following order shall enter:

1. As a compensatory sanction for contempt, the Court orders Miller to pay Plaintiff \$1,875.00, representing a fine of \$1,000.00 and \$875.00 to reimburse Plaintiff for attorneys' fees and inspection fees. Payment shall be made to Plaintiff within sixty (60) days of the date of this order.
2. In order to coerce compliance with court orders, the Court shall impose daily fines of \$100.00 if all code violations at the Property have not been corrected (including closing all relevant permits) by May 20, 2024. Such daily fines will be imposed beginning on May 21, 2024 and shall continue to accrue through the date upon which all code violations are corrected.
3. The parties shall return for review on May 20, 2024 at 9:00 a.m.

SO ORDERED.
DATE: March 21, 2024


Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

Defendant's position is that Mr. Bialas was justified in going to the property on July 15, 2023 and calling the police about a possible break-in, and that it was the police, not him, that prevented Plaintiff from returning to the property that night. Although Plaintiff may demonstrate at trial that Defendant improperly changed the locks without first obtaining a court order, it is likely that a factfinder would conclude that a significant portion of the harm she suffered was caused by her own actions and that, as of the time Defendant changed the locks July 19, 2023, she had shut off the utilities and moved most of her belongings out of the home.

Accordingly, Plaintiffs' motion for prejudgment real estate attachment on the subject property is ALLOWED in the amount of \$10,000.00.¹

SO ORDERED.
DATE: March 21, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant does not contend that it has insurance coverage for Plaintiff's claims.

November 9, 2023 that the Court should have been considered when the Court issued its ruling on December 15, 2023. Accordingly, Plaintiff's motion for reconsideration is ALLOWED.

With respect to the real estate attachment, Plaintiff states under oath that she notified Defendant of severe problems in her apartment that endangered her safety and well-being. The City of Springfield Code Enforcement Department cited Defendant for numerous State Sanitary Code violations which Defendant did not promptly correct. Further, Plaintiff sets forth other facts supporting claims for breach of warranty, interference with quiet enjoyment and violations of G.L. c. 93A, among other claims.

Upon due consideration of the matter, including review of the affidavit of Defendant's property manager and the briefs and exhibits submitted by the parties, the Court finds that there is a reasonable likelihood that the Defendant will recover judgment, including interest, costs and attorneys' fees, in an amount equal or greater than \$35,000.00. Defendant did not demonstrate that it has any liability insurance reasonably believed to be available to satisfy a potential judgment.

Accordingly, the Court hereby ALLOWS Plaintiff's motion for a real estate attachment in the amount of \$35,000.00.

SO ORDERED.

DATE: March 21, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION
NO. 23H79SP004721

CHARLES GIAN,

Plaintiff

VS.

ERIC DANIELS,

Defendant

ORDER FOR ENTRY OF JUDGMENT

After conducting a hearing on March 20, 2024, at which the plaintiff's attorney appeared but the defendant did not appear, the plaintiff's *Motion for Entry of Judgment and Execution* against defendant Eric Daniels is **ALLOWED**.

This is a summary process action based upon nonpayment of rent. On December 13, 2023 the parties entered into a written *Agreement of the Parties*. The defendant agreed to apply for RAFT funding to pay the rent arrearage of \$3,000.00 by December 28, 2023. The defendant further agreed to pay his monthly rent for use and occupancy (\$1,500.00 per month) commencing January 2024. The agreement provides that if the defendant failed to comply with one or more terms of the agreement the plaintiff could file a motion for entry of judgment.

The defendant has not complied with the December 28, 2023 agreement. First, he failed to file a RAFT application. There was no active RAFT application pending as of the hearing date. Second, the defendant failed to make the rent payments due for February and March 2024. (an amount totaling \$3,000.00). The total amount of unpaid rent through March 2024 is \$6,000.00.

The defendant's conduct constitutes a material violation of the January 10, 2024 agreement.

Accordingly, it is **ORDERED** that judgment enter for the plaintiff for possession and damages in the amount of **\$6,000.00** (rent due through March 2024).

So **ORDERED** this 21stth day of March 2024.

Jeffrey M. Winik
Jeffrey M. Winik
Associate Justice (Recall Appt)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION
NO. 23H79SP005621

ERIC GORDON,

Plaintiff

VS.

KAYCEE MARABLE,

Defendant

ORDER FOR ENTRY OF JUDGMENT

After conducting a hearing on March 20, 2024, at which both parties appeared, plaintiff Eric Gordon's *Motion for Entry of Judgment* against defendant Kaycee Marable is **ALLOWED**.

This a summary process action based upon nonpayment of rent. On January 10, 2024 the parties entered into a written *Agreement of the Parties*. The parties agreed that the defendant owed \$6,410.00 in unpaid rent through January 2024 (base upon a monthly rent of \$800.00). The plaintiff agreed to waive \$2,000.00 in satisfaction of all claims asserted by the defendant. This left a balance owed of \$4,410.00. The defendant agreed to apply for RAFT funding to pay the rent arrearage and to submit all necessary documentation required to process the RAFT application. The defendant further agreed to pay her monthly rent (in \$200.00 weekly increments) commencing February 2024. Paragraph 6 of the agreement provides that if the defendant failed to comply with one or more terms of the agreement the plaintiff could file a motion for entry of judgment.

The defendant has not complied with the January 10, 2024 agreement. First, she failed to provide RAFT was the documentation necessary to process her application. For this reason, the RAFT administrator closed her application. There was no active RAFT application pending as of the hearing date. Second, the defendant failed to make any of the rent payments due for February or through the second week of March 2024 (an amount totaling \$1,200.00). The total amount of unpaid rent through March 20, 2024 is \$6,010.00.

The defendant's conduct constitutes a material violation of the January 10, 2024 agreement.

Accordingly, it is **ORDERED** that judgment enter for the plaintiff for possession and damages in the amount of **\$6,010.00** (rent due through March 20, 2024).

So **ORDERED** this 21st day of March 2024.

Jeffrey M. Winik
Jeffrey M. Winik
Associate Justice (Recall Appt)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4953

JUAN MERCADO,

Plaintiff

v.

ALICE MARTINEZ-BALSECA AND
SHIRLEY HAYES,

Defendants

FINDINGS OF FACT, RULINGS OF
LAW AND ORDER FOR ENTRY
OF JUDGMENT

This no fault summary process case came before the Court for a bench trial on January 11, 2024. Plaintiff appeared through counsel. Defendant Martinez-Balseca ("Defendant") appeared self-represented.¹ Defendant resides at 163 Maynard Street, First Floor, Springfield, Massachusetts (the "Premises"), a two-family owner occupied home.

The parties stipulated to Plaintiff's prima facie case for possession. Although this case was not brought for nonpayment of rent, Plaintiff claims \$8,000.00 is owed for unpaid rent/use and occupancy. Defendant filed an answer alleging conditions of disrepair at the Premises.²

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 Defendant Hayes, Ms. Martinez-Balseca's mother, did not appear.

² The Court allowed Defendant's late answer on the day of trial and Plaintiff elected to go forward with trial.

Plaintiff purchased the property in early March 2023. Defendant was residing in the Premises at the time, having moved in approximately 17 years earlier. Shortly before his purchase of the property in early March 2023, Plaintiff received a letter from the City of Springfield Code Enforcement Department informing him that, following an inspection on February 24, 2023, the Premises were in compliance with the minimum standards for habitation described in the State Sanitary Code.

Defendant contends that Code Enforcement should not have issued such a letter because the Premises suffered from conditions of disrepair at the time of Plaintiff's purchase. She claims she informed Plaintiff of the need for repairs, but she was unable to provide any written evidence of such notice. Plaintiff testified credibly that Defendant did not ask him to make any repairs. The Court, therefore, finds that Defendant did not give actual notice to Plaintiff of the need for repairs in the Premises.

With respect to the conditions themselves, Defendant offered photographs into evidence. She testified that, although some of the photographs were taken prior to Plaintiff's ownership, the conditions remain the same today. The Court finds that the photographs fail to demonstrate any significant defects or substantial code violations that violate the minimum standards of fitness for human habitation described in the State Sanitary Code. As a result, Defendant failed to demonstrate by a preponderance of the evidence that she is entitled to any offset against the amounts owed to Plaintiff for her use and occupancy of the Premises.

With respect to the amount owed by Defendant, the Court finds that the last monthly rental amount Defendant agreed to pay to the prior owner was \$800.00. She did not enter into a rental agreement with Defendant, nor did the parties agree upon a specific rental

amount. She has never made any payment to Plaintiff. Therefore, the Court finds that amount of use and occupancy Defendant should have paid Plaintiff beginning in April 2023 was \$800.00, and the amount owed through the month of trial is \$8000.00.

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

1. Judgment for possession and damages in the amount of \$8,000.00, plus court costs, shall enter for Plaintiff.
2. The execution may issue by written application after expiration of the ten day appeal period.
3. If Defendant seeks more time to find replacement housing, she may file a motion with the Court with a copy of the motion served on Plaintiff's counsel.

SO ORDERED.

DATE: March 21, 2024

By: *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. 23-SP-5822

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

TIMOTHY SCOTT, et al.,

Defendants.

ORDER

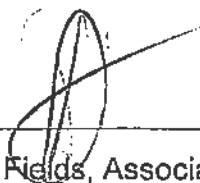
After hearing on March 19, 2024, on the tenants' motion for appointment of a Guardian Ad Litem for Frederick Scott and the landlord's motion for use and occupancy pending trial, the following order shall enter¹:

- Tenants' Motion for Appointment of a Guardian Ad Litem (G.A.L.) for Frederick Scott:** This motion is allowed. Because Attorney Patrick Toney was previously appointment G.A.L. in a matter involving the same parties herein (20-SP-298), Assistant Clerk Magistrate Kara Cunha is requested to ask Attorney Toney if he would accept another appointment in this matter before asking other attorneys on the court's G.A.L. list.

¹ The tenants' motion for taking a deposition of Missy Desrosler was withdrawn without prejudice pending the outcome of written discovery.

2. **Landlord's Motion for Use and Occupancy Pending Trial:** The landlord is seeking an order that the tenants pay their use and occupancy pending trial. The motion was not accompanied by an affidavit, nor did it aver as to the landlord's financial situation or how it would be affected if the tenants are not ordered to pay their use and occupancy into the court. Furthermore, the landlord does receive monthly rent for this tenancy from the subsidized portion which totals \$637 per month.
3. Additionally, the tenants are asserting counterclaims which allege breach of the warranty of habitability, breach of the covenant of quiet enjoyment, retaliation, discrimination, and consumer protection. In consideration of the standards when considering a request for injunctive relief including irreparability and upon reflection of the factors articulated in *Davis v. Comerford*, 483 Mass. 164 (2019), the motion is denied without prejudice.
4. **Case Management:** The Clerk's Office is requested to schedule this matter for a Case Management Conference

So entered this 22nd day of March, 2024.



Robert Fields, Associate Justice

Cc: Kara Cunha, Esq., Assistant Clerk Magistrate (Re: Appointment for a GAL)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-322

CHICOPEE HOUSING AUTHORITY,

Plaintiff,

v.

YASIRAMARIE DE LA ROSA,

Defendant.

ORDER

After hearing on March 19, 2024, on the tenant's motions for late filing of an Answer and Discovery Demand and for the continuance of this matter pending the outcome of the tenant's related criminal matters, the following order shall enter:

1. For the reasons stated by the undersigned judge on the record at the conclusion of the hearing, both motions are allowed.
2. The Answer and Discovery Demand are deemed filed and served. Inter alia, the tenant made a colorable claim that because the subject premises are federal

public housing there may be a preemption issue regarding the sufficiency of the G.L. c.139, s.9 notice.

3. The plaintiff shall respond to said discovery by March 29, 2024. The plaintiff may elect to propound discovery upon the tenant by that same date.
4. If the landlord propounds discovery upon the tenant, she shall have until April 19, 2024, to respond.
5. The motion for continuation of the trial in this matter is also allowed and the trial date shall be continued pending the disposition of the tenant's criminal matters to protect her constitutional protections against self-incrimination.
6. The parties shall discuss entering into a conduct agreement, if they feel it necessary, and file same with the court and schedule for judicial review of same on the record.
7. The Clerk's Office is requested to schedule a Case Management Conference for scheduling pretrial matters.
8. The tenant's counsel has agreed to extend his LAR appearance through the discovery process and up through the anticipated Case Management Conference.

So entered this 20nd day of March, 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate (regarding scheduling the CMC)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5288

VALERIY GIRSHICK and MARK GOLDMAN,

Plaintiffs,

v.

LAURA LAPOINTE,

Defendant.

ORDER

After hearing on March 19, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. Though the tenant did not strictly comply with the payment terms of the December 28, 2023, Agreement of the Parties (Agreement) she paid \$2,860 and RAFT paid \$2,260.

2. The remaining balance is \$1,745 plus court costs through March 31, 2024. This is substantially lower than the amount owed at the time of the Agreement (which was \$4,120).
3. The tenant also credibly explained that she was confused by the terms of the Agreement and also by an email she received from the landlord on February 24, 2024, seeking an additional \$1,000 in attorney's fees that were not part of (and contrary to the terms of) the Agreement.
4. Based on the above, the motion is denied, and the tenant shall return to the terms of the Agreement. To make such terms clearer, the tenant is required to pay \$600 twice per month and such payment shall be expected directly following her first paycheck of the month and then two weeks later until the balance is \$0.
5. The tenant also agreed that she will make a payment by March 31, 2024, in addition to her two payments due in April 2024.
6. Additionally, the landlord shall repair the cracked kitchen floor tiles.

So entered this 22nd day of March, 2024.

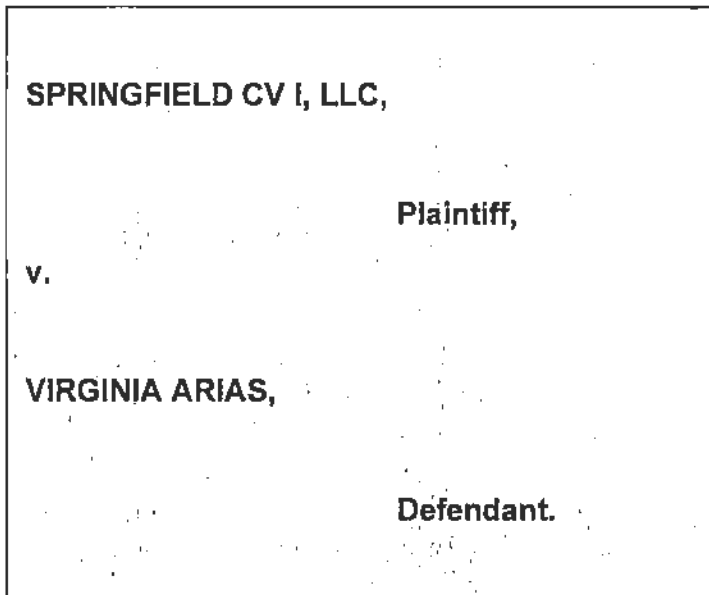
Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3425**



ORDER

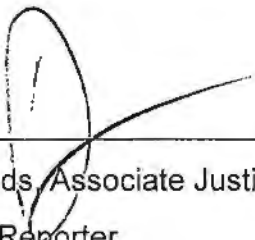
After hearing on March 19, 2024, on the landlord's motion for entry of judgment at which the tenant failed to appear, the following order shall enter:

1. The landlord met its burden of proof that the tenant failed to comply with the terms of the January 26, 2024, Agreement of the Parties.
2. Accordingly, judgment shall enter for the landlord for possession plus \$4,920 in rental arrearage plus court costs.
3. By agreement of the landlord, there shall be a stay on issuance of the execution so long as the tenant pays the landlord \$1,855 (rent plus \$500) by March 31,

2024, and thereafter complies with the terms of the January 26, 2024, Agreement of the Parties.

4. If the tenant fails to make the payments noted above due by March 31, 2024, the execution may issue upon the filing and service of a Rule 13 Application.
5. If the March 2024 payments are made timely and in full, and there is a breach thereafter, execution shall issue by motion.

So entered this 22nd day of March, 2024.



Robert Fields, Associate Justice
Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 20-CV-566

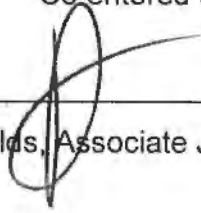
<p>TOWN OF LANESBOROUGH,</p> <p>Plaintiff,</p> <p>v.</p> <p>PETER & MICHELLE BEAUDOIN,</p> <p>Defendant.</p>
--

NO CIVIL CONTEMPT
SUMMONS TO ISSUE
AT THIS TIME

The Third Verified Complaint for Civil Contempt, though 67 pages in total, lacks any specific allegations of violation(s) of the court's orders. The plaintiff's September 21, 2023, Notice of Violation (attached as Exhibit H) fails to list any specific violation(s), and even upon review of the photographs (attached as Exhibit I), it is not clear what contemptuous behavior is being alleged by the plaintiff. Even the complaint, which title indicates verification, lacks any affidavit or certification that it is "verified".

As such, no civil contempt summons shall issue at this time.

So entered this 22nd day of March, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

Case No. 23-CV-853 and
23-SP-2945

VALLEY OPPORTUNITY COUNCIL,

Plaintiff,

v.

JANINE LIMA,

Defendant.

ORDER

After hearing on March 19, 2024, on the tenant's motion to modify the scope of the Guardian Ad Litem, at which both parties appeared through counsel in addition to the Guardian Ad Litem Sean Casey, the following order shall enter:

1. For the reasons articulated in the tenant's motion and attachment, without opposition from the plaintiff landlord and with the G.A.L.'s expressing his comfort with authority of substituted judgment, the motion is allowed.

2. Furthermore, the Court's previous order dated December 14, 2023, which granted certain authority for the G.A.L. is hereby vacated and the G.A.L. shall be granted authority to use substituted judgment *to direct the tenant's legal representation.*
3. The Clerk's Office is requested to schedule a Case Management Conference in this matter.

So entered this 22nd day of March, 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate (for scheduling of a CMC)
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3562**

MARK GOLDMAN,

Plaintiff,

v.

OVADNEY THORINGTON, et al.,

Defendant.

ORDER

After hearing on March 21, 2024, scheduled for a review and also for hearing on the landlord's second motion to lift the stay on the execution, the following order shall enter:

1. This is a for-cause eviction matter based on the unsanitary condition of the premises and the landlord's assertion that the extreme infestation of cockroaches is the fault of the tenant. That issue was not admitted to nor adjudicated as the parties entered into an agreement to address issues at the premises and engage the services of the Tenancy Preservation Program (TPP).

2. Ms. Bryant, of TPP, has been working diligently with the tenant. She reports that the tenant's unit was prepared for the extermination on the date scheduled by the landlord (March 18, 2024). Ms. Bryant also reported that Greater Springfield Senior Services (GSSS) is scheduled to conduct a deep cleaning of the premises on March 22, 2024.
3. Though the parties cannot agree upon the source of the cockroaches (as there are cockroaches in other units and possibly other locales in the 4-unit building in which the premises are located), it is clear that the infestation in the tenant's unit is extreme and must be addressed.
4. The landlord claims that the extermination company will not "fog" the tenant's unit. It is very likely, given the volume of infestation, that the tenant's appliances are infested and fogging may be the only way to address these issues more comprehensively. Ms. Bryant says that she is in contact with a licensed exterminator who is willing to address the infestation, including the use of "fogging".
5. The landlord shall investigate securing licensed extermination services for the subject unit to eradicate cockroach infestation therein. Such efforts shall include communication and hopeful coordination with the condominium association wherein the subject unit is located, so that the extermination is comprehensive and inclusive of other units and common areas in this 4-unit building.
6. The court is satisfied for the moment that the tenant's health condition---be it mental and/or physical---prevents her from properly addressing the cleanliness of her unit without support and or health treatment. As such, the court finds that the

continuation of this matter until further order of the court is a reasonable accommodation to the tenant's disability under state and federal fair housing laws.

7. That said, TPP will continue to work with the tenant to have her assessed and connected to proper health care and thereafter may be required to provide documentation of the tenant's disability. TPP shall also continue to coordinate services of GSSS for house cleaning and possible PCA support as well as their efforts so secure alternate accommodations for the tenant as she wishes to relocate.
8. Additionally, the court became concerned during the hearing regarding the tenant's competency and ability to navigate these proceedings without the appointment of a Guardian Ad Litem. As such, the Court requests that the tenant be evaluated by the Court Clinic is allowed. In order to determine if Ms. Thorington is an "incapacitated person" as that term is defined in G.L. c.c. 190B, ss.510 (9), the court hereby orders that she undergo a forensic psychological evaluation with the Court Clinic. The court requests that the clinician evaluate Ms. Thorington with respect to her decision-making capacity, her ability to comply with court orders regarding her housing, and her ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a guardian *ad litem* for Ms. Thorington.

9. TPP is requested to work with Assistant Clerk Kara Cunha, Esq. at the Court to coordinate and assist the tenant in participating in a Court Clinic evaluation.
10. The tenant shall pay \$1,125 which was ordered in the last Court order to the landlord by today, March 22, 2024, and pay her April 2024 rent in full and on time.
11. Based on the foregoing, the landlord's motion for a lifting of the stay of the execution is denied, without prejudice.¹
12. This matter shall be scheduled for review on **May 6, 2024, at 9:00 a.m.** Ms. Thorington has permission to appear by Zoom. All other parties and TPP shall appear in person.

So entered this 25th day of March, 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate (Re: Footnote 1 below)
Kara Cunha, Esq., Assistant Clerk Magistrate (Re: Court Clinic evaluation)
Court Clinic
Court Reporter

¹ The landlord's motion for issuance of a new execution heard on February 27, 2024, was allowed and the Court allowed for a new execution to issue upon the return of the old execution. The landlord's counsel reported to the court that he returned the old execution but has yet to receive a new execution. The Clerk's Office is requested to ascertain whether an old execution was returned to the court and, if so, issue a new one. Per the above order, there shall be a stay on the use of the execution until further order of the court.

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0068

DEIDRE A. DEPATHY,
PLAINTIFF

v.

WILLIAM DAVIS,
DEFENDANT

ORDER

Following a show cause hearing on March 26, 2024 on Plaintiff's complaint for contempt, at which hearing both parties were represented by counsel, the Court finds that Plaintiff has failed to demonstrate by clear and convincing evidence disobedience of a clear and unequivocal command. The Court's finding is based on its determination that the agreed-upon order of February 5, 2024 ("Order") is not a clear and unequivocal command with respect to the alleged disobedience. See *In re: Birchall*, 454 Mass. 837, 852-853 (2009) (a finding of a civil contempt must be supported by clear and convincing evidence of disobedience of a clear and unequivocal command). Accordingly, the complaint for contempt is dismissed without prejudice.

Defendant's motion to amend the Order is allowed as follows:

1. The Order is hereby modified to strike references to the dogs (see, e.g., ¶¶ 5 and 14). The Court rules that a determination of ownership of the dogs is outside the jurisdiction of the Housing Court.
2. Paragraph 9 of the Order is hereby modified to require Plaintiff to maintain wifi at the subject property and to allow Defendant access to the wifi provided that he pays half of the expense of monthly service. Neither party shall take any actions that would interfere with the other's use of wifi.
3. The Order is further modified to require Defendant to preserve and turn over to Plaintiff immediately upon request any mail received at the property addressed to Linda Herbert, the Estate of Linda Elizabeth Herbert, Deidre A. Depathy as Personal Representative, the Linda A. Herbert Irrevocable Trust or any Trustee of the Linda A. Herbert Irrevocable Trust.
4. With respect to the removal of items from the subject property, this Court makes no findings as to the ownership of personal property and directs the parties to the Probate and Family Court for resolution of disputes over Estate assets.

SO ORDERED.

March 26, 2024


Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

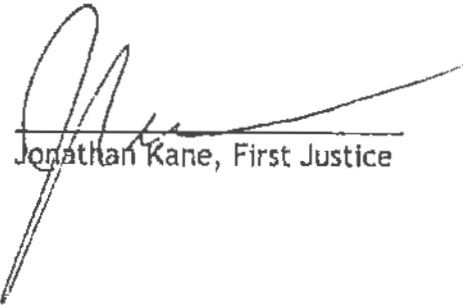
awards attorneys' fees in the amount of \$3,000.00, with costs awarded in their entirety.

Based on the foregoing, final judgment shall enter in favor of Defendant for possession and \$4,229.00 in damages and \$3,086.40 in attorneys' fees

SO ORDERED.

DATE: March 28, 2024

cc: Court Reporter



Jonathan Kane, First Justice

¹ The award of attorneys' fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.*, 394 Mass. 270, 272 (1985).

12

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0317

_____)
CHRISTOPHER GUZ AND ANGELA GUZ,)
))
PLAINTIFFS)
))
v.)
))
HAYASTAN INDUSTRIES,)
))
DEFENDANT)
_____)

ORDER ON PETITION FOR FEES
AND COSTS AND ENTRY OF
FINAL JUDGMENT

Plaintiffs petition this Court for an award of reasonable attorneys' fees and costs pursuant to the Court's findings and order dated January 25, 2024. Plaintiffs seek \$12,640.00 in attorneys' fees and \$1,176.80 in costs. Defendant opposes the petition. The damages awarded at trial were \$642.57.

The amount of a reasonable attorney's fee is largely left to the discretion of the judge. The judge 'should consider the nature of the case and the issues presented, the time and labor required, the amount of 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.'" *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC, supra*, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which

involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993).

In determining time reasonably spent on a matter, the court must be mindful of "the difficulty of the case" and "the results obtained" ... and "compensable hours may be reduced if the time spent was wholly disproportionate to the interests at stake." *Killeen v. Westban Hotel Venture, LLC*, 69 Mass. App. Ct. 784, 792 (2007) (citations omitted).

This case, one in a series of eviction-related cases between the same parties, was not complicated. The trial was completed in 45 minutes. In their answer, Plaintiffs (who, at the time of filing, were defendants in the related summary process case) asserted two counterclaims, one for breach of quiet enjoyment based on Defendant's attempt to evict them for rent not owed and one for violation of c. 93A for the same conduct. The majority of hours worked by Plaintiffs' counsel in this case involved pre-trial motions and discovery, including a two-part deposition of Mr. Shahabian, Defendant's principal.

The amount of time spent litigating this case appears to this judge to be disproportionate to the interests at stake. The significant value of Plaintiffs' claims related to their actual damages, and the Court awarded none, only nominal damages under c. 93A and statutory damages for breach of quiet enjoyment. Accordingly, taking into account the *Linthicum* factors, the Court rules that reasonable attorneys' fees in this case are \$3,500.00. The costs are allowed in their entirety.

Therefore, based on the foregoing, final judgment shall enter in favor of Plaintiff for damages in the amount of \$642.57 and attorneys' fees and costs of \$4,976.80.¹

SO ORDERED.

DATE: March 28, 2024

1st Jonathan J. Kane
Jonathan Kane, First Justice

cc: Court Reporter

¹ This figure accounts for the award to Ms. Henderson after trial in the amount of \$885.00, plus the attorneys' fees and costs.

CR

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-CV-595**

SHAWN LYNCH and LISA GREER,

Plaintiff,

v.

MITCHELL NADEAU,

Defendant.

ORDER OF DISMISSAL

After hearing on March 26, 2024, the following order shall enter:

1. The defendant's renewed motion to strike and/or dismiss the plaintiffs' claims and defenses due to their repeated failures to comply with discovery orders is allowed. The court is satisfied that the plaintiffs have failed to comply with the discovery demands and related court orders and that they have repeatedly failed to make reasonable efforts to comply with same.
2. As such, the plaintiffs' claims and defenses are dismissed or stricken without prejudice.

3. What remains after the ruling noted above, is the defendant's counterclaim for unpaid rent. Based on the ruling above, the defendant dismisses his claim for unpaid rent, also without prejudice.
4. Accordingly, this matter is dismissed in its entirety, without prejudice.

So entered this 28th day of March, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0939

ERIC MARKS,)
Plaintiff)

v.)

DANIAL CARTHON AND ALYCAR)
INVESTMENTS, LLC,)
Defendants)

ORDER ON PLAINTIFF'S MOTION
FOR ENTRY OF DEFAULT
JUDGMENT

On February 7, 2024, the Court held a status conference over Zoom at which Defendants did not appear. Plaintiff's motion for default judgment against Defendant Alycar Investments, LLC ("Alycar") was scheduled for the same time.

The Court first addresses Plaintiff's motion for default judgment against Alycar. Plaintiff asserts that default should enter and an assessment of damages hearing be scheduled as a result of Alycar's failure to retain counsel as ordered by the Court.¹ The Court denies Plaintiff's motion.

This case was filed by Plaintiff who, at that time, was self-represented. He did not file a complaint for damages, but instead filed a preprinted affidavit requesting an emergency order against only Mr. Carthon.² Mr. Carthon initially appeared with counsel, who informed the Court that Mr. Carthon operated his business through Alycar and asked that Alycar be added as a Defendant. Mr. Carthon was not dismissed

¹ Alycar's counsel was permitted to withdraw and Mr. Carthon, the principal of Alycar, was informed that Alycar, as a corporate entity, could not appear in this court without counsel. Since that date, there has been no appearance of counsel for Alycar.

² Because a complaint is necessary to commence litigation, this affidavit is also considered to be a complaint for injunctive relief.

from the case. The only relief sought by Plaintiff (at least prior to filing an Amended Complaint for damages on January 8, 2024) was alternative housing. The need for such relief is now moot. Accordingly, the Court has no reason to enter a default judgment against Alycar for failing to obtain counsel. Plaintiff will not be prejudiced by this ruling, as the sanctions resulting from Defendants' failure to comply with Court orders will enter jointly and severally against them.

Turning to such sanctions, Plaintiff asserts that Defendants failed to pay one week of the required food stipend in the amount of \$525.00 and that the calculation of daily fines imposed by the Court in order to coerce Defendants to rehouse Plaintiff is \$2,700.00. Given Defendants' failure to appear or otherwise oppose Plaintiff's calculation, the Court shall impose the sanctions requested by Plaintiff.

Accordingly, the Court hereby orders Defendants to pay Plaintiff \$3,225.00 within thirty (30) days.

SO ORDERED.

March 28, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-184

PNCHON TOWNHOMES, LLC,

Plaintiff,

v.

MARIA VILLEGAS BONILLA,

Defendant.

ORDER

After hearing on March 22, 2024, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. Given the tenant's asserted health issues including [REDACTED], and also given that this is a project-based rental subsidy and the landlord has been receiving approximately \$1,500 of the \$1,680 contract rent throughout these proceedings, and also because with today's referral to the Tenancy Preservation

Program the tenant may be able to file a successful RAFT application to pay towards the arrearage, the tenant's motion to stop the physical eviction scheduled for March 25, 2024, is allowed.

2. The landlord shall cancel the physical eviction.
3. This matter is referred to the Tenancy Preservation Program (TPP) and TPP is asked to work with the tenant on assessing whether she has (mental and physical) health issues that are not being sufficiently addressed as well as assist her with a new RAFT application.
4. The tenant shall, going forward, pay her rent on time and in full and pay an additional \$50 from her second DTA payment beginning with April 2024. This second payment (\$50) shall represent a "repayment plan" for RAFT purposes.
5. This matter shall be scheduled for review on **April 25, 2024, at 9:00 a.m.**

So entered this 25th day of March, 2024.



Robert Fields, Associate Justice

Cc: TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5842

ANASTAYSHA ROLLER AND YOUCHANA)
ROBINSON MITCHELL REALTY TRUST,)

Plaintiffs)

v.)

MAUSELA RIVIE,)

Defendant)

MEMORANDUM OF DECISION AND
ORDER ON PLAINTIFF'S RENEWED
MOTION FOR ATTACHMENT

This case came before the Court on March 13, 2024 for a hearing on Plaintiff's motion for a prejudgment real estate attachment. Defendant appeared through counsel and Plaintiff Roller, who is also the trustee and beneficiary of the Plaintiff trust and therefore present on behalf of the trust, appeared self-represented.

In her affidavit, Defendant asserts that Plaintiffs allowed bad conditions to persist in her apartment throughout her tenancy. At the hearing, the Court took evidence of failed Section 8 housing quality inspections and Code Enforcement violation notices. Defendant also presented a series of communications in which Ms. Roller used threatening, offensive and demeaning language toward her, as well as evidence to support a claim that Plaintiffs retaliated against her by demanding rent increases after Defendant reported conditions of disrepair.

Upon due consideration of the exhibits filed in this case and the testimony taken at the hearing, the Court finds that there is a reasonable likelihood that the

Defendant will recover judgment, including interest, costs and attorneys' fees, in an amount equal to or greater than \$25,000.00. Plaintiffs did not demonstrate that they have any liability insurance available to satisfy a potential judgment.

Accordingly, Defendant's motion for prejudgment real estate attachment on the subject property at 128 Maynard Street in Springfield, Massachusetts is ALLOWED in the amount of \$25,000.00.¹

SO ORDERED.
DATE: March 28, 2024

/s/ Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant does not contend that it has insurance coverage for Plaintiff's claims.

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1728

SPRINGFIELD CV1, LLC,)
)
)
 PLAINTIFF)
)
 v.)
)
 SHAWNA PEEBLES,)
)
)
 DEFENDANT)

RULING ON PETITION FOR
ATTORNEYS' FEES AND
ENTRY OF FINAL JUDGMENT

Following entry of an order under G.L. c. 239, § 8A, Defendant petitions this Court for an award of reasonable attorneys' fees in the amount of \$7,63.00.¹ Plaintiff opposes the amount of fees because Defendant prevailed only on her claim for violation of the security deposit statute and not on claims relating to conditions of disrepair, discrimination and illegal lease provisions.

"While the amount of a reasonable attorney's fee is largely discretionary, a judge 'should consider the nature of the case and the issues presented, the time and labor required, the amount of 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.'" *Twin*

¹ The petition does not seek costs.

Fires Inv., LLC v. Morgan Stanley Dean Witter & Co., 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twln Fires Inv., LLC, supra*, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993).

In determining time reasonably spent on a matter, the court must be mindful of the difficulty of the case and the results obtained. No fee should be awarded for unsuccessful claims unless the court finds that the unsuccessful claims are sufficiently interconnected with the prevailing claims. *Killeen v. Westban Hotel Venture, LLC*, 69 Mass. App. Ct. 784, 792-793 (2007).

After reviewing Defendant's petition and supporting materials, and considering Plaintiff's opposition, and considering the experience, reputation, and ability of counsel, and the usual price charged for similar services by other attorneys in this Court for cases of this nature, the Court finds that a reasonable hourly rate for Defendant's counsel is \$275.00. Given the results obtained, the Court reduces the number of hours expended in this matter to 9.0, resulting in an attorneys' fee award of \$2,475.00.

Based on the foregoing, final judgment shall enter in favor of Plaintiff for possession and \$9,739.20 in damages, and judgment shall enter in favor of Defendant for attorneys' fees in the amount of \$2,475.00.²

SO ORDERED.

DATE: March 28, 2024


Jonathan Kane, First Justice

cc: Court Reporter

² The award of attorneys' fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.*, 394 Mass. 270, 272 (1985).

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5048

ANTHONY ZHOU,

Plaintiff

v.

SHAKEILA WANNAMAKER,

Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR ENTRY
OF JUDGMENT

This no fault summary process case came before the Court for a bench trial on January 11, 2024. Both parties appeared self-represented. Defendant resides at 288 Walnut Street, Floor Two, Springfield, Massachusetts (the "Premises").

On the day of trial, the Court allowed Defendant to file a late answer raising certain claims and defenses. Plaintiff elected to continue with trial. Although this case was not brought for nonpayment of rent, Plaintiff claims unpaid rent for five months at a rate of \$1,800.00 per month. Defendant does not dispute the duration of the nonpayment, but asserts that monthly rent was \$1,600.00. Defendant stipulated to Plaintiff's case for possession, including receipt of the notice to quit. The Court thus turns its attention to Defendant's defenses and counterclaims. Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds as follows:

FINDINGS OF FACT

1. At the time Defendant signed the lease with Plaintiff, she had the benefit of a rental assistance voucher (subsidy).
2. Pursuant to the lease, monthly rent was set at \$1,800.00. Plaintiff reduced the rent to \$1,700.00 in August 2023.
3. At the time of move-in, Defendant made a payment of \$1,800.00 to Plaintiff.
4. Defendant received startup costs (first and last month's rent and a security deposit) through the RAFT program, which paid Plaintiff \$5,400.00 on Defendant's behalf.
5. Pursuant to the lease, Plaintiff held \$1,800.00 as a security deposit.
6. Plaintiff did not provide Defendant with the receipt and information required pursuant to G.L. c. 186, § 15B.
7. After Defendant moved in, Defendant's Section 8 administrator sent a housing inspector to the Premises. The inspector found numerous issues requiring repair.
8. Plaintiff declined to make the repairs because it would be too costly and time consuming. He instead agreed to reduce the monthly rent to \$1,700.00 per month.
9. The notice to quit is dated September 18, 2023.
10. Defendant contacted the City of Springfield Code Enforcement Department after receiving the notice to quit. A housing inspector visited the Premises on October 5, 2023 and generated a notice of violations dated October 6, 2023.
11. The Code Enforcement inspector cited several non-emergency Code violations, including:

- a. Defects in the porches (front porch screws sticking out, water damage and missing carpet on the rear porch);
- b. Insufficient water pressure in kitchen sink;
- c. Broken screens and problems with window (a broken lock, a window of track, a window that would not stay open), and
- d. Faulty electrical outlets and loose switches.¹

12. Defendant (together with the RAFT program) paid a total of \$7,200.00 to Plaintiff.

At a rate of \$1,700.00 per month for rent from July 6, 2023 through the date of trial on January 11, 2024, the total amount of use and occupancy (rent) that Defendant would have paid is \$10,200.00, leaving a balance due of \$3,000.00.

CONCLUSIONS OF LAW

A. Security Deposit Violation

The security deposit statute, G.L. c. 186, §15B, imposes strict requirements that must be followed by every landlord who accepts a security deposit from a residential tenant. Among other requirements, the landlord must deposit the security deposit in a separate interest-bearing account in Massachusetts bank and notify tenant of the name and address of the bank, the amount deposited, and the account number within thirty days of receipt. If a landlord fails to comply with these requirements, the tenant is entitled to damages in an amount equal to three (3) times the amount of the security deposit. See *Castenholz v. Caira*, 21 Mass. App. Ct. 758 (1986). Here, it is uncontested that Plaintiff accepted a \$1,800.00 security deposit (it makes no difference if Defendant paid it herself or if RAFT

¹ The inspector reported that Defendant complained that the toilet was using hot water, but he did not verify the claim. Defendant provided no evidence to support her allegation.

paid it on her behalf) and there is no evidence that Plaintiff complied with the statutory requirements. Therefore, Defendant is entitled to damages in the amount of \$5,400.00.²

B. Conditions-Based Claims

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). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State sanitary code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019). Here, it is undisputed that the Premises suffered from conditions of disrepair in light of Plaintiff's admission that the Section 8 housing quality inspection cited numerous issues.

Because the Section 8 inspection report was not offered into evidence, however, the only evidence of the conditions of disrepair are those cited in the Code Enforcement report and Defendant's trial testimony. Defendant did not demonstrate, by a preponderance of the evidence, that the conditions cited by Code Enforcement were substantial or that they had a significant adverse impact on the rental value of the Premises. Although Defendant testified that she informed Plaintiff of the need for repairs by text message, she failed to provide such messages and offered minimal evidence to corroborate her testimony. Accordingly, based on the lack of any credible evidence, the Court finds in favor of Plaintiff on Defendant's claims for breach of the warranty of habitability and interference with quiet enjoyment based on conditions of disrepair.

² Given the short duration of the tenancy, the Court does not award interest on the security deposit or last months' rent deposit.

C. Retaliation

Pursuant to Massachusetts law, a landlord who takes reprisals against a tenant for the tenant's complaint to a housing agency is liable for damages of not less than one month's rent or more than three month's rent. G.L. c. 186, § 18. "The receipt of notice of termination of tenancy, except for nonpayment of rent, or, of increase in rent, ... within six months after the tenant has ... made such report or complaint ..., shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant for engaging in such activities." *Id.*

Here, the only evidence of Defendant reporting bad conditions to Code Enforcement occurred after she received the notice to quit. Although the Section 8 inspector visited the Premises before the notice to quit was sent, it was not as a result of Defendant's complaints about living conditions, but was done in the ordinary course when a subsidized tenant is moving into new housing. Therefore, the Section 8 inspection is not a report or complaint that creates a presumption of retaliation. Further, Plaintiff testified credibly that the sole reason that he served the notice to quit on Defendant is that he did not want to comply with the Section 8 requirements. Accordingly, the Court finds in favor of Plaintiff on Defendant's claim for retaliation.

D. Discrimination

Pursuant to G.L. c. 151B, § 4(10), it is unlawful for landlords to discriminate against recipients of public assistance or a rent subsidy. Here, Plaintiff refused to make the necessary repairs cited by the housing quality inspector and refused to continue with Defendant's housing voucher application. Instead, he offered to reduce the monthly rent to \$1,700.00, an amount in excess of the portion she was required to pay with her housing

subsidy. When Defendant failed to pay the amount Plaintiff asked for, he served her with a notice to quit.³ Defendant demonstrated by a preponderance of the evidence that Plaintiff violated Massachusetts law prohibiting discrimination based on source of income.

Defendant did not testify clearly about the consequences of Plaintiff's decision not to continue with the voucher program. She did not convince the Court that Plaintiff's actions caused her emotional distress. Nonetheless, given Plaintiff's admission that he elected not to take the steps necessary to meet housing quality standards, the Court awards Defendant damages in the amount of \$5,400.00 on her claim of discrimination.⁴

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

1. Defendant is entitled to damages on her claims in the amount of \$10,800.00.
2. Plaintiff is entitled to \$3,000.00 in unpaid rent through the date of trial.
3. Final judgment for possession and damages in the amount of \$7,800.00 shall enter for Defendant.⁵

SO ORDERED.

DATE: March 28, 2024

By: *1st Jonathan J. Kane*
Jonathan J. Kane, First Justice

cc: Court Reporter

³ Moreover, Plaintiff required Defendant to pay full market rent for one month in advance (\$1,800.00), even though he knew that she had rental voucher that required her to pay less than full market rent.

⁴ Any award under G.L. c. 93A or G.L. c. 186, § 14 based on the Plaintiff's refusal to make necessary repairs would be duplicative of the discrimination damages.

⁵ Plaintiff may file a motion to amend the judgment to deduct any additional unpaid rent/use and occupancy since the date of trial.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0662

BOARD OF TRUSTEES THE CROSSING)
AT RIDGEWOOD VILLAGE)
CONDOMINIUM TRUST,)
)
Plaintiff/Defendant-)
in-Counterclaim)
v.)
)
JAMES T. HART AND LINDA J. HART,)
)
Defendants/Plaintiffs-)
in-Counterclaim)

ORDER ON PLAINTIFF'S
MOTION TO DISMISS

This matter came before the Court on November 13, 2023 on Plaintiff's motion to dismiss all counterclaims. Defendants, who are over 60 years of age, allege that Plaintiff has committed elder abuse and housing discrimination by repeatedly assessing fines and seeking injunctive relief as a result of Mr. Hart's behavioral issues. Plaintiff seeks to dismiss these claims.

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

plead “factual allegations plausibly suggesting ... an entitled to relief. *Iannacchino v. Ford Motor Co.*, 451 Mas. 623, 636 (2008).

With respect to Defendants' counterclaim for elder abuse pursuant to G.L. c. 19A, § 14, the facts plead do not plausibly suggest an entitlement to relief. The statute defines “abuse” in the elder context to mean, in relevant part, “an act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person ...”. G.L. c. 19A, § 14. To be abusive, the act or omission must be improper in some way, whether excessive, unjustified, cruel or otherwise intending to or having the effect of causing injury or exploitation. Plaintiff's assessment of fines, even if repeated, is not abusive or exploitative if warranted under the circumstances.

Here, Defendants, as condominium owners, are subject to the terms and conditions set forth in various condominium documents, defined in the complaint as “Constituent Documents.” The facts set forth in the Verified Complaint and the affidavits filed in support of Plaintiff's motion for preliminary injunction (which relief was granted by the Superior Court) clearly demonstrate that actions taken by Plaintiff to enforce the terms of the Constituent Documents were warranted by the behavior described therein. Defendants' offer no factual allegations to support the bare assertion that “the purpose and intent of these fines is to leverage these alleged violations into the potential forfeiture and loss of their [condominium unit].” Without more, the allegations cannot plausibly constitute abuse or financial exploitation.

With respect to the counterclaim for discrimination based on disability, both federal and state anti-discrimination laws prohibit discrimination in housing based on handicap. See 42 U.S.C. § 3604 (f)(2); G.L. c. 151B, § 4 (7). The term "handicap" is defined as a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment." 42 U.S.C. § 3602 (h); G.L. c. 151B, § 1 (17). Discrimination prohibited by the Fair Housing Act includes the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604 (f)(3)(B); G.L. c. 151B, § 4(7A)(2).

Nowhere in the counterclaim for discrimination do Defendants aver that they made a request for reasonable accommodations. The mere fact that Mr. Hart may suffer from disabilities such as [REDACTED] does not require Plaintiff to offer an accommodation or engage in an interactive process around accommodations without being asked or without it being obvious that an accommodation was needed. To overcome Plaintiff's motion to dismiss, Defendants would, at a minimum, need to assert that, in order for Defendants to have an equal opportunity to use and enjoy their dwelling with persons without disabilities, a reasonable accommodation was requested and rejected or ignored. The factual allegations here do not plausibly state a claim upon which relief could be granted.

For the foregoing reasons, Plaintiff's motion to dismiss all counterclaims is
ALLOWED.

SO ORDERED.

March 29, 2024

/s/ Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 24H79SP000570

CHARLES GERIVALTIS,

Plaintiff

VS.

JAMIE SALA and JAN WAGNER,

Defendants

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

This is a summary process action in which the plaintiff is seeking to recover possession of the premises from the defendants for non-payment of rent. The defendants filed a written answer that included counterclaims and an affirmative defense pursuant to G.L. c. 239, § 8A based on their assertion that defective conditions existed in their apartment.

Based upon all the credible testimony and evidence presented at trial conducted on March 27, 2024, and the reasonable inferences drawn therefrom, the Court finds as follows:

The plaintiff, Charles Gerivaltis, owns the four-unit residential building at 66 Howard Street, in Pittsfield, Massachusetts. The plaintiff has owned the property for 45 years. The defendants, Jamie Sala and Jen Wagner have occupied Apartment 4 at 66 Howard Street for five years. The rent is \$725.00 per month and is due by the first day of each month. As is set forth in a writing dated November 29, 2021, the defendants are responsible for maintaining an account with Berkshire Gas Company to pay for their heating fuel.

The defendants fell behind in their rental obligations beginning 2022. From 2022 through July 2023 the defendants' rent was paid by RAFT. The last RAFT payment the plaintiff received covered rent for July 2023. Therefore, the defendants were current with their rent through July 31, 2023.

The defendants did not make any rent payments to the plaintiff for the period August 2023 through March 2024. As of March 27, 2024 the defendants owed **\$5,800.00** in unpaid rent.

On November 24, 2023, a sheriff served the defendants with a legally sufficient fourteen (14) day notice to quit for non-payment of rent.

The plaintiff has established his prima facie case for possession subject to the defendants' affirmative defenses and counterclaims.

On January 29, 2023 the plaintiff received a written notice from the City of Pittsfield of two sanitary code violations that required repair.

The first violation involved the bathroom. The notice stated that a wall near the vanity was damaged; bathtub tiles required repair; and the floor near the bathtub needed recaulking. These violations were minor and did not adversely affect the habitability of the apartment.

The second violation involved the common area basement. The notice stated that there was excess moisture and that there was standing water on the floor. This standing water did not adversely affect the habitability of the defendant's apartment until October 2023.

The defendants did not pay their gas utility bills during the summer and into the fall of 2023. For that reason, the Berkshire Gas Company shutoff the gas to the defendants' unit. The defendants were able to resolve their payment problem in early October 2023 and Berkshire Gas agreed to restore their gas service. However, Berkshire Gas was unable to ignite the gas-fired furnace because of the standing water in the basement. The defendants notified the plaintiff of this problem in October 2023, but the plaintiff did not have the problem corrected until the end of November 2023. As a result of Berkshire Gas's inability to ignite the furnace, the defendants were without heat for a portion of October and all of November 2023. The defendants have had heat from December 2023 to the present.

G.L. c. 239, § 8A Defense. I find that the plaintiff knew about the standing water problem since January 2023. Accordingly, the defendant are entitled to an affirmative defense to possession under G.L. c. 239, § 8A because the plaintiff knew or should have known of the standing water condition prior to the date on which the defendants were first in arrears in their rent. The defendants shall have seven (7) days from the date that judgment enters to pay the plaintiff the amount due (unpaid rent less the damages assessed on their counterclaims).

Reprisal Defense and Counterclaim. A tenant is entitled to a defense to possession under G.L. c. 239, §2A and may recover damages under G.L. c. 186, §18 if the landlord's act of

commencing a summary process action or serving the tenant with a notice of termination upon which the action is based, was in retaliation for, among other things, the tenant's reporting to a health department (such as ISD) or reporting in writing to the landlord a violation or suspected violation of law "which has as its objective the regulation of residential premises." Under Section 2A (in all cases) and Section 18 (except in cases of non-payment of rent), the commencement of [a summary process action] against a tenant, or the sending of a notice to quit upon which the summary process action is based within six months after the tenant has engaged in such protected activity shall create a rebuttable presumption that the termination notice was served as an act of reprisal against the tenant for engaging in such protected activity. The burden then shifts to the landlord to rebut the presumption of retaliation by presenting clear and convincing evidence that such actions were not taken in reprisal for the tenant's protected activities, that the landlord had sufficient independent justification for taking such action, and that the landlord would have taken such action in any event, even if the tenant had not taken the actions protected by the statute.¹

The defendants are not entitled to a rebuttable presumption of retaliation with respect to their retaliation counterclaim because the plaintiff's summary process action was based upon a claim of nonpayment of rent. I find that the defendants are entitled to a rebuttable presumption of retaliation with respect to their affirmative defense. With respect to the defense (and counterclaim) I find that the plaintiff has established with clear and convincing evidence that he did not engage in any acts of retaliation directed against the defendants. I find that the sole reason he terminated the defendants' tenancy and commenced this summary process action was because the defendants had failed to pay rent over a significant period of time. He would have taken such action even if the defendants had not contacted the City of Pittsfield Board of Health.

Accordingly, I rule that the defendants have not established an affirmative defense to possession based on retaliation under G.L. c. 239, § 2A and have not established their retaliation counterclaim under G.L. c. 186, § 18.

¹"Clear and convincing" proof means evidence which "induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." *Callahan v. Westinghouse Broadcasting Co., Inc.*, 372 Mass. 582 (1977), quoting, *Dacey v. Connecticut Bar Assoc.*, 170 Conn. 520, 537, n. 5 (1976); *Stone v. Essex County Newspapers, Inc.*, 367 Mass. 849, 871 (1975).

Discrimination Counterclaim. The defendants did not present a scintilla of evidence that their landlord of five years engaged in any act of discrimination against the defendants based upon their sexual orientation (about which there was no evidence).

Accordingly, I rule that the defendants have not established their counterclaim based upon discrimination under G.L. c. 151B.

Breach of Implied Warranty of Habitability Counterclaim. The existence of the standing water condition in the defendant's apartment constitutes a material breach of the implied warranty of habitability for the period of October and November 2023. *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973). The measure of damages for breach of the implied warranty of habitability is the difference between the fair rental value of the premises free of defects and the fair rental value of the premises during the period that the defective condition existed. *Id.; Haddad v. Gonzalez*, 410 Mass. 855, 872 (1991). The fair rental value of the defendants' apartment free of defects is the agreed upon contract rent of \$750.00. Because of the lack of heat (resulting from the inability to ignite the boiler because of the standing water in the basement) I find that the fair rental value of the premises was diminished as follows: 50% (\$375.00) for October 2023 and 100% (\$750.00) for November 2023.

The fair rental value of the premises for the period from mid-October through November 2023 was diminished by **\$1,125.00**. This constitutes the damages due the defendants for the plaintiff's breach of the implied warranty of habitability.

G.L. c. 93A Counterclaim. I find that the plaintiff was engaged in trade or commerce with the meaning of G.L. c. 93A with respect to the rental of residential apartments. I further find that the plaintiff's failure to take prompt and effective measures to remove the standing water from the basement between mid-October and November 2023 constitute a violation of C.M.R. § 3.17(1)(b)(2), and thus a violation of 93A. I find and rule that the plaintiff's conduct did not constitute a willful or knowing violation of the statute.

Accordingly, I shall award the defendants actual damages of **\$1,125.00** (the diminished value of the premises established for breach of the implied warranty of habitability).

Interference with Quiet Enjoyment Counterclaim. The quiet enjoyment statute, G.L. c. 186, §14, provides that any landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises" shall be liable for "actual or consequential damages or three month's rent, whichever is greater . . ." While the statute does not require that the landlord's conduct be

intentional, *Simon v. Solomon*, 385 Mass. 91 (1982), it does require proof that the landlord's conduct caused a serious interference with the tenant's quiet enjoyment of the premises. A serious interference is an act or omission that impairs the character and value of the leased premises. *Doe v. New Bedford Housing Authority*, 417 Mass. 273, 284-285 (1994); *Lowery v. Robinson*, 13 Mass. App. Ct. 982 (1982); see also *Al-Ziab v. Mourgis*, 424 Mass. 847, 850-851 (1997).

The plaintiff failed to take prompt and effective action to remove the ground water in the basement between October and the end of November 2023. As a result, the defendants were without heat during this period. The plaintiff's failure to act impaired the character and value of the defendants' apartment, and constituted a violation of G.L. c. 186, § 14.

Since the actual damages (\$1,125.00 based upon the diminished value of the apartment) do not exceed three months' rent, I shall award the defendants statutory damages of **\$2,250.00** (three months' rent).

No Cumulative Damages. The defendants are not entitled to recover cumulative damages arising from the same operative facts. *Wolfberg v. Hunter*, 385 Mass. 390 (1982). Their breach of warranty, G.L. c. 93A and G.L. c. 186, § 14 counterclaims arise from the same operative facts. Since the statutory damages under § 14 is greater than the warranty and Chapter 93A damages,

Accordingly, I shall award the defendants statutory damages of **\$2,250.00** under G.L. c. 186, § 14, and use that amount to determine the amount due the plaintiff for unpaid rent under G.L. c. 239, § 8A.

Amount Due the Plaintiff under G.L. c. 239, § 8A. In accordance with G.L. c. 239, § 8A, the amount due the plaintiff for unpaid rent is **\$3,550.00**.²

ORDER FOR JUDGMENT

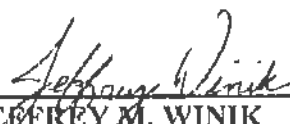
Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that:

1. **Damage Claims.**

² \$5,800.00 unpaid rent less \$2,250.00 (warranty damages) = \$3,550.000.

- a. **On April 10, 2024**, judgment shall enter for the plaintiff for unpaid rent of **\$5,800.00**, which amount shall be set off against the damages awarded the defendants under G.L. c. 186, § 14.
 - b. **On April 10, 2024**, judgment shall enter for the defendants on their counterclaims for breach of implied warranty, violation of G.L. c. 186, § 14 and violation of G.L. c. 93A, with statutory damages awarded under G.L. c. 186, § 14 in the amount of **\$2,250.00**, which amount shall be set off against the amount of unpaid rent.
 - c. The net amount due the plaintiff after set off of the defendants' damages (\$2,250.00) from the plaintiff's damages (\$5,800.00) totals **\$3,350.00**.
2. **Possession Claim in accordance with G.L. c. 239, § 8A.**
- a. **If the defendants deposit with the Clerk of the Housing Court the sum of \$3,350.00** (the net amount due for unpaid rent after set off) in the form of a money order payable to "Commonwealth of Massachusetts" by **April 9, 2024** then pursuant to the fifth paragraph of G.L. c. 239, § 8A judgment shall enter for the defendants for possession. The Clerk is directed to release these funds to the plaintiff in full satisfaction of his claim for unpaid rent.
 - b. **If the defendants do not deposit \$3,350.00 with the Clerk by April 9, 2024**, then judgment shall enter in favor of the plaintiff for possession on **April 10, 2024**.

SO ORDERED this 29th Day of March 2024.



JEFFREY M. WINIK *Am.*
FIRST JUSTICE

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3662**

MAPLE COMMONS APARTMENTS,

Plaintiff,

v.

FANTASIA CASH,

Defendant.

ORDER


This matter came before the court for hearing on the landlord's motion for entry of execution, at which the defendant Fantasia Cash failed to appear. After hearing, the following order shall enter:

1. The landlord's motion shall be continued to the hearing date noted below to allow for it to appear with video evidence. Landlord's counsel shall work in advance of the hearing date with the Clerk's Office to ensure that the digital evidence can be shown in the courtroom. The landlord shall also have a copy of the digital evidence to provide to the tenant should it be admitted into evidence.

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2. The landlord is alleging that the tenant or a household member caused disturbance of other tenants of the premises and that such violation supports an order of eviction by the court.
3. The tenant failed to appear at this hearing and is urged to appear at the hearing scheduled below. The tenant may also wish to reach out to Community Legal Aid (CLA) for assistance. CLA's telephone number is 413-781-7814 and is located at One Monarch Place in Springfield.
4. While generating this order, the undersigned judge became aware that these proceedings were commenced by the plaintiff using the name Maple Commons Apartments. Counsel for the plaintiff is requested to investigate that the plaintiff is an actual entity (as opposed to Maple Commons LP), move the court to make any necessary corrections to the caption of the case, and take steps to ensure that the plaintiff uses a proper legal title in any and all further litigation.
5. This matter shall be scheduled for hearing on the landlord's motion for entry of judgment on **April 18, 2024, at 9:00 a.m.**

So entered this 29th day of March, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
NO. 24H79CV000130

SANDRA PAIS,

Plaintiff

VS.

MICHAEL D. DICENZO.,

Defendant

**Findings of Fact and Rulings of Law on Plaintiff's Complaint for Contempt and
Injunctive Order**

This matter came before the court on March 27, 2024, for a trial on the merits of the plaintiff's complaint for contempt. The defendant was served with the contempt summons and complaint. The plaintiff appeared for trial, but the defendant failed to appear at court for trial.

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

Plaintiff Sandra Pais owns the two-family dwelling at 22 Lincoln Street, in Pittsfield, Massachusetts. Defendant Michael D. Dicenzo has occupied the apartment at 22 Lincoln Street, Unit 1, since January 1, 2024 subject to the terms of a written lease. The monthly rent is \$1,400.00. Under the term of the lease the defendant is the only person authorized to reside in Unit 1. The defendant has not paid rent to the plaintiff for February or March 2024.

Since the inception of the tenancy the defendant has engaged in dangerous, destructive behavior including damaging the windows and walls of Unit 1 and in the common areas. The defendant and his unauthorized occupants have engaged in what appears to be illegal drug activity. He has allowed numerous unauthorized persons to enter the property at all hours of the day and night. These unauthorized persons have been observed using syringes to inject substances into their arms in the hallway and backyard of

the property. The police have been called to the property and have removed and or placed a number of persons under arrest.

On February 23, 2024 the plaintiff commenced this civil action seeking an injunctive order against the defendant to enjoin him from engaging in dangerous, damaging, disruptive and unlawful conduct at the property. The defendant was served with the summons and complaint. He was instructed to appear in court on February 28, 2024. At the February 28, 2024 hearing (at which the defendant did not appear) the court issued an order enjoining the defendant from causing damage to the premises at 22 Lincoln Street.

The court scheduled a further hearing for March 13, 2024. Again, the plaintiff appeared in court, but the defendant did not. The defendant reported that the defendant continued to engage in dangerous, damaging, disruptive and unlawful conduct at the property. The court directed the plaintiff to file a contempt complaint and authorized the clerk to issue a contempt summons.

The plaintiff filed her contempt complaint on March 13, 2024, and had the summons and complaint served to the defendant by the Sheriff on March 14, 2024. The contempt trial was scheduled for March 27, 2024. Again, the defendant did not appear in court for the contempt trial.

I credit the testimony of the plaintiff and find that since March 13, 2024 the defendant has continued to cause substantial damage to Unit 1 and the common areas of 22 Lincoln Street. He and his unauthorized occupants have started fires in the rear yard and have left used syringes near the fires and in the hallways. The police have returned to the property where they have removed and/or arrested persons the defendant has allowed on the property. The defendant and his unauthorized occupants have placed the other lawful tenant residing in Unit 2 in fear for her safety. The lawful tenant has informed the plaintiff that she would need to terminate her tenancy and leave her apartment because of the defendant's conduct.

On March 22, 2024 the plaintiff entered a summary process action against the defendant in the Western Housing Court, *Pais v Dicenzo*, 24H79SP001273, seeking to recover legal possession of Unit 1. The summary process action is awaiting a trial date.

I find that the defendant's has failed to comply with this court's clear and unequivocal order issued on March 13, 2024. His continued actions have caused

additional damage to 22 Lincoln Street and have exposed the 22 Lincoln Street property a serious risk of damage resulting from fires he and his unauthorized occupants have started at the property. The other lawful resident of 22 Lincoln Street remains in fear for her safety.

I find and rule that the defendant's actions with respect to his misuse of 22 Lincoln Street since March 13, 2024 were done in willful and intentional noncompliance with a clear and unequivocal order of this court dated March 13, 2024.

I find and rule that the defendant is in contempt of this court's March 13, 2024 injunction order. The plaintiff is entitled to an injunctive order that ensures that the defendant does not cause further damage to Unit 1 and the common area of 22 Lincoln Street pending a decision in the pending summary process action.

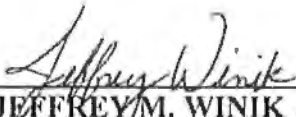
Judgment and Injunctive Order

Accordingly, it is **ORDERED** that:

1. Judgment shall enter in favor of the plaintiff on her complaint for contempt against defendant Michael D. Dicenzo.
2. Defendant Michael D. Dicenzo shall not enter the building at 22 Lincoln Street, Pittsfield, Massachusetts at any time or for any reason after 9 a.m. on April 3, 2024. The defendant's legal right to possession of the premises shall be determined in the pending summary process action.
3. Defendant Michael D. Dicenzo shall not allow any other person to enter the building at 22 Lincoln Street at any time or for any reason after 9 a.m. on March 30, 2024.
4. The plaintiff, accompanied by a municipal police officer or sheriff, change the locks to the front and rear doors of 22 Lincoln Street and Unit 1 after 10 a.m. on April 3, 2024. The plaintiff shall not otherwise enter Unit 1 or remove any property from Unit 1 unless and until the legal issue of possession of the premises is determined in the pending summary process action.
5. While this order remains in force, defendant Michael D. Dicenzo must first file a motion with the court if he wants access to 22 Lincoln Street and Unit 1 for any purpose. He may enter 22 Lincoln Street and Unit 1 only if the court grants such motion subject to such conditions as the court might set.

4. The municipal police and county sheriff are authorized to:
 - a. Remove Defendant Michael D. Dicenzo from 22 Lincoln Street if he is found on the property after April 3, 2024;
 - b. Remove any persons from 22 Lincoln Street if found in the hallways or other common areas of the property after March 30, 2024; and
 - c. Escort the plaintiff to 22 Lincoln Street and remain with her while she changes the locks to the front and rear entry doors and doors to Unit 1.
5. The plaintiff shall not be required to post a bond.

So ORDERED this 29th Day of March 2024.


JEFFREY M. WINIK (JM)
FIRST JUSTICE

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-977

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

DARLENE ZAMBRANA,

Defendant.

ORDER

After hearing on March 28, 2024, on the landlord's motion to enter judgment against the tenant for possession at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. Though the tenant complied for a period of time with the terms of the Agreement of the Parties filed in May 2023 she then fell off. Recently (this month), however, the tenant made a significant payment of \$660 (her rent is \$382).
2. The tenant credibly explained that her car was towed from the property's parking lot because the vehicle is registered to her mother, though the tenant uses it.

She explained that she has provided the landlord with proof of her mother's ownership and that she, the tenant, uses the vehicle but the landlord has not provided her with a "sticker" so it repeatedly has it towed from the lot. The tenant stated that this has occurred four times and each time it costs her \$145.

3. The tenant also credibly explained that her DTA benefits (cash and food stamps) were stolen and that was also a factor in her inability to pay her rent.
4. Lastly, the tenant is having problems with her mail. The court's notice for this hearing was returned by the postal service. The tenant shall inform the United States Postal Service and work with them to remedy this problem.
5. The landlord shall suspend towing of the tenant's vehicle (a black 2005 Acura) until further order of the court and shall provide a witness at the next hearing that has knowledge about the landlord's parking policy and explain why the tenant is not allowed to park the car she uses—even though it is owned by her mother.
6. The tenant shall pay her rent plus \$100 to the landlord timely in April 2024.
7. The tenant shall re-apply to RAFT and work with Springfield Partners on said re-application. They are located at 721 State Street in Springfield and can be reached by telephone at 413-263-6500.
8. This matter shall be scheduled for review on **April 25, 2024, at 9:00 a.m.**

So entered this 1st day of April, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0468

CITY OF SPRINGFIELD CODE ENFORCEMENT)
DEPARTMENT,)
)
PLAINTIFF)
)
v.)
)
YEMER SUASNABAR REYNA,)
)
)
DEFENDANT)
)

ORDER

This matter came before the Court on March 29, 2024 for hearing on the Special Attorney Receiver’s motion to enter into a purchase and sales agreement with Springfield City of Homes Development, LLC. Plaintiff and Attorney Michael Werman, the Special Attorney Receiver (“SAR”), appeared. Defendant appeared self-represented, but only after the Court issued a Notice to Appear after he failed to appear at the last hearing where the motion was scheduled. The Court also heard Defendant’s motion to dissolve the receivership.

By way of background, Defendant purchased the property on July 12, 2022 from a previous receiver appointed by the Court. Defendant did not correct the code violations and the premises were condemned on October 20, 2022 after the City of Springfield Code Enforcement Department deemed the premises to endanger and materially impair the health or well-being of residents in the surrounding area.

After hearing on August 4, 2023, with Defendant present, the Court found that Defendant was unable or unwilling to make the repairs necessary to bring the property into code compliance and appointed an SAR to secure the property, keep it clean of debris, litter and overgrowth, address emergencies and create a plan for demolishing the property or bringing it into code compliance. After numerous hearings and orders over the next six months, the SAR provided the Court with updates and obtained an appraisal for the sale of the premises in its current condition. It filed a motion to enter into a purchase and sale agreement with Springfield City of Homes Development, LLC on February 16, 2024. On February 29, 2024, Defendant filed his motion to dissolve receivership.

After hearing, the Court denies Defendant's motion to dissolve the receivership. Defendant showed proof of funds of approximately \$47,000.00;¹ however, the estimate for removing asbestos and demolishing the building is approximately \$37,000.00 and the receiver's lien, which would have to be paid before the receivership is dissolved, is approximately \$13,000.00 to date. He would also have to pay off any municipal taxes and liens. Furthermore, the City's Building Commissioner testified that the City would not be able to issue a demolition permit to Defendant without removal of the foundation and grading the site to make it safe, and it appears that the demolition estimate presented by Defendant does not account for this additional necessary work.

At the time of purchasing the property, Defendant was aware that he would have to quickly move ahead to either rehabilitate the property or demolish it. He has

¹ Defendant stated that he also had \$20,000.00 in cash, but provided no evidence of the cash and did not include it in the documentation given to Plaintiff showing available funds for the work.

been given ample opportunity to provide an acceptable rehabilitation plan with proof of adequate financing. The Court finds that he has not been able to do so and that he has no immediate prospects of having the funds necessary to complete the work. The Court finds that the best option to achieve minimum health and safety standards and to protect the health and safety of community is to permit the sale of the property to a developer who can pay off the receiver, address all environmental conditions (including asbestos removal), demolish the structure, remove the foundation and redevelop the parcel.

Accordingly, Defendant's motion to dissolve the receivership is DENIED and the receiver's motion to enter into a purchase and sales agreement with Springfield City of Homes Development, LLC is ALLOWED.

SO ORDERED.
April 1, 2024



Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 19-CV-335

CITY OF SPRINGFIELD, CODE
ENFORCEMENT DEPARTMENT,

Plaintiff,

v.

ROSE TAMESAR, et al.,

Defendants.

SUPPLEMENTAL ORDER

After hearing on March 22, 2023, the following order shall enter:

1. The Guardian ad Litem (GAL) is empowered and ordered to investigate and report on the process and the details by which Rose Tamesar, formally Glenrose Tamésar, came to be obligated to Revenue Services LLC with respect to a loan and a process intended to retire her Springfield property tax arrearages for the purpose of making her eligible for assistance programs with respect to which eligibility requires her to have no such arrearages; for this purpose, GAL is authorized to access from the City of Springfield any information to which Ms. Tamesar herself is entitled, and to be provided all relevant documents.

2. GAL is empowered and ordered to investigate and report on the process and the details the extent of Way Finders, Inc. in the process, and to determine what if any funds were committed by Way Finders Inc. to assist Ms. Tamesar with respect to the property tax arrearages, and whether Way Finders Inc. was at that time in position to offer the same or similar assistance for purposes that would have allowed Ms. Tamesar to make the repairs the City of Springfield has ordered her to make in this matter. For this purpose, GAL is authorized to access from the City of Springfield any information to which Ms. Tamesar herself is entitled, and to be provided all relevant documents. GAL is authorized to access from Way Finders Inc. any information to which Ms. Tamesar herself is entitled, and to be provided all relevant documents.

3. GAL is empowered and ordered to investigate and report on the role played by Revenue Services LLC and its representatives in this loan process, and to ascertain from Revenue Services LLC the extent of the obligation, the amount and number of payments called for, the payment history to date, including whether any payments have been missed, and whether any action has been taken or is contemplated due to any such overdue payment, and to obtain all corresponding documents. for this purpose, GAL is authorized to access from the City of Springfield any information to which Ms. Tamesar herself is entitled, and to be provided all relevant documents.

So entered this 1st day of April, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT, WESTERN DIV.
CIVIL ACTION NO.: 22-CV-0852

TOWN OF CHESTER)
Plaintiff)
)
v.)
)
ALBERT HOLLAND and)
U.S. BANK TRUST NA)
Defendants)

ORDER REGARDING UNPAID FINES

This code enforcement matter with respect to 1 Crane Road, Chester, MA (hereafter the “Property”) came before the Court on April 2, 2024 for review following an order entered on February 8, 2024 authorizing enforcement of the receiver’s priority lien and further authorizing the receiver to sell the Property to satisfy its priority lien. The only remaining issue adjudication is the amount of the daily fines that may be included in the receiver’s final lien.

Background

This case was commenced by a request for an emergency order filed by Plaintiff’s Health Agent (without counsel) on November 22, 2022. In the initial complaint, the Health Agent represented that, after numerous attempts to enter the Property for inspection, he conducted an inspection of the Property on October 27, 2022. Attached to the complaint was a Board of Health enforcement order dated October 29, 2022 and evidence that the order was received by the property owner, Mr. Holland, on October 31, 2022.

The order required Mr. Holland to remove all unregistered vehicles from the Property within fifteen days and to remove “all other materials” on the Property within thirty days. The

order included a provision reciting: “Failure to comply within the allotted time period, or subsequent violations, may result in a civil or criminal complaint against you. You are advised this violation carries fines of \$1,000.00 per day of violation.” A reinspection date was scheduled for November 30, 2022.¹ The reinspection report, if any, was not produced.

At the initial court date of December 6, 2022, the parties entered into an agreement that, among other things, gave Mr. Holland additional time to remove the “collapsed garage, remove any junk vehicles ... and remove all debris and bulk litter from the exterior of the Property.”² On March 7, 2023, Plaintiff filed a motion for the appointment of a receiver. The motion was denied at a hearing on March 29, 2023 in order to allow Defendant U.S. Bank Trust National Association, not in its individual capacity but sole as Owner Trustee for RCF2 Acquisition Trust (the “Bank”) to determine if it was willing to correct the violations. On May 1, 2023, the Bank opposed the appointment of a receiver and reported to the Court that it was unwilling to correct the violations itself because Plaintiff was requiring payment of fines in the amount of \$57,000.00 before it would issue a building permit.

By order dated May 18, 2023, in order to decide if the fines were appropriate and reasonable, the Court ordered Plaintiff to provide a breakdown of all taxes, fees and fines assessed to the Property. To date, Plaintiff has not provided such a breakdown. On June 29, 2023, the Court ordered that Plaintiff could not require payment of the fines as a condition of issuing a demolition permit, and deferred the issue of fines to a further hearing. Prior to the hearing that is the subject of this order, Plaintiff did not provide the Court with any authority for

¹ The Health Agent filed his complaint with the Court eight days before the reinspection date, so it is unclear to the Court what authority Plaintiff has to seek fines in the first place.

² The Court notes that an attorney, whose signature is illegible, signed the agreement on behalf of Plaintiff although no appearance of counsel was filed until February 16, 2023.

the assessment of such daily fines nor any evidence of the duration of time such fines accrued, the actual amount of the daily fines, or any notice to Mr. Holland of his right to due process relating to the imposition of fines.³

Ruling

Based on the record, the Court cannot determine whether the imposition of daily fines is appropriate and in what amount. The lack of a record is fatal to Plaintiff's efforts to collect fines. The Court finds the enforcement order is impermissibly vague regarding fines without additional evidence that Mr. Holland was made aware that Plaintiff was actually imposing daily fines. The Court further finds that once Plaintiff filed its complaint with this Court to enforce its order, daily fines should have stopped or at least been approved by the Court to avoid potential conflicts between Plaintiff's assessment of fines and the Court's orders.⁴ Plaintiff has known since at least May 18, 2023 that the Court sought a itemization of the fines, which it never produced. Without such evidence as to the start and end dates of said fines, as well as the actual amount of each daily fine, the Court can only speculate, which it is unwilling to do.⁵

In light of the foregoing, the fines assessed by Plaintiff shall not be included in the receiver's lien and shall not have priority over the receiver's lien. As a result, the daily fines shall be extinguished upon satisfaction of the receiver's lien.

³ The only evidence in the record that Mr. Holland was given an opportunity for a hearing to challenge the Board of Health's findings is in the October 29, 2022 enforcement order, which order only informs Mr. Holland that violation of the order carries fines, not that fines were being assessed.


⁴ Such a conflict is more than theoretical; as of March 29, 2023, the Court permitted Defendants further time to clean the Property, so the Town's assessment of fines after this date would contravene the Court's order.

⁵ The Court notes that the purpose of daily fines (namely, to coerce code compliance) has been achieved. Moreover, Mr. Holland is likely to lose his property as a result of the appointment of a receiver, and this result is a more than adequate sanction for his noncompliance.

SO ORDERED.

April 3, 2024

cc: Court Reporter



Hon. Jonathan J. Kane, First Justice