Western Division Housing Court
Unofficial Reporter of Decisions

Volume 32

Apr. 4, 2024 — May 22, 2024

Released Jun. 17, 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*
Aaron Dulles, Assistant Attorney General, *Massachusetts Attorney General's Office*
Raquel Manzanares, Esq., *Community Legal Aid*
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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0C7A FBA2 099C 5300 3A25  9754 89A1 4D6A 4C45 AE3D
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CONTACT US

Comments, questions, and concerns may be raised to any person involved in this project. However, out of respect for the Court's time, please direct such communications at the first instance to either Aaron Dulles (dulles@jd11.law.harvard.edu), Raquel Manzanares (rmanzanares@cla-ma.org), or Peter Vickery (peter@petervickery.com).

INDEX

[1] Date has been confirmed, though it is not stated in the decision.
[2] Date in decision confirmed to be typo.

SECONDARY INDEX — BY JUDGE

Hon. Jonathan Kane, First Justice

Hon. Robert Fields, Associate Justice

[3] Date has been confirmed, though it is not stated in the decision.

[4] Date in decision confirmed to be typo.

Hon. Benjamin Adeyinka, Associate Justice

Hon. Sergio Carvajal, Associate Justice

Hon. Alexander Mitchell-Munevar, Associate Justice

Hon. Jeffrey Winik, Associate Justice (Recall)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4263

GEMILLA ABDELLA,

Plaintiff

v.

MARSHANDA JOHNSON AND LORENZO OFFETT,

Defendant

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

This summary process case alleging lease violations came before the Court for a bench trial on January 19, 2024. Plaintiff appeared through counsel. Defendants appeared self-represented.[1] Defendants reside at 48 Silver Street, Springfield, Massachusetts (the "Premises"). Despite this case being bought for cause, the parties stipulated that monthly rent is $1,900.00 and that Defendants owe $10,400.00 in back rent. Defendants continue to reside in the Premises. Defendants stipulated to receipt of the notice to quit.

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:

The parties entered into a written lease dated July 7, 2023. Plaintiff terminated Defendants' tenancy with a seven-day notice to quit given on August 28, 2023. The lease permits termination of a tenancy upon seven days' notice in the

[1] The Court allowed Plaintiff's motion to add Lorenzo Offett as a named defendant.

event of a material breach. The Court finds the notice to be legally sufficient.

Plaintiff proved by a preponderance of the evidence that Defendant Johnson, who is the only tenant listed as an occupant in the lease, allowed Defendant Offett to reside in the Premises without authorization. Mr. Offett was not included in the application for tenancy. When Mr. Offett asked to be added to the lease, he agreed to complete a rental application but refused to be subjected to a background check and therefore Plaintiff did not accept him as a tenant. The Court finds Ms. Johnson's election to allow Mr. Offett to reside in the Premises without being added to the rental contract to be a material violation of the lease.[2]

Defendants assert that Plaintiff is evicting them in retaliation of their engagement in protected activities. The evidence shows that Ms. Johnson did ask Plaintiff about the status of repairs on August 26, 2023, and that the notice to quit is dated August 28, 2023.[3] Ms. Johnson does not contend that the text caused Plaintiff to send the notice to quit; instead she claims that a later comment she made that she was going to speak to a lawyer is what prompted Plaintiff to terminate the tenancy. She did not provide evidence of her statement about speaking with a lawyer. Although the timing of the text seeking an update on the repairs two days before the notice to quit was served is suspect, the Court finds Plaintiff's testimony credible that it was Mr. Offett's refusal to submit to a background check after he filled out an application to be added to the lease (which also occurred in August, 2023) that was the

[2] Plaintiff failed to prove by a preponderance of the evidence that smoking on the Premises or parking violations were material lease violations.
[3] The text in question was not admitted into evidence because it resides on Ms. Johnson's phone and she did not provide a hard copy.

precipitating factor for terminating Ms. Johnson's tenancy. Accordingly, the defense of retaliation fails.

Regarding unpaid rent, the parties stipulated to the amount owed through trial was $10,400.00. However, the complaint seeks only $2,800.00 and did not ask for use and occupancy payments accruing after the date of the complaint. The Court must limit the money judgment to the amount of rent sought in the complaint.[4]

Accordingly, 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 $2,800.00, plus court costs, shall enter for Plaintiff.
2. The execution may issue by written application after expiration of the ten day appeal period.

SO ORDERED.

DATE: April 4, 2024

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

cc: Court Reporter

[4] Plaintiff may seek to amend the judgment to add use and occupancy accruing after the complaint was filed, or she may bring a separate action for unpaid rent after September 2023.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4487

BRIDGE STREET SHELBURNE REALTY TRUST,

Plaintiff,

v.

COLLEEN VOUDREN,

Defendant.

ORDER

After hearing on March 29, 2024, with motions filed by both sides, the following order shall enter:

1. **The Tenant's Motion for Relief from Judgment and for a Stay:** The basis for the motion for relief from judgment from Judge Kane's Amended Order dated February 14, 2024, is that the court's corrected finding that the landlord was not on notice of conditions of disrepair until October 22, 2023, (October 19, 2023

Town of Shelburne Board of Health\ inspection) is erroneous because her testimony is that the conditions existed since the first day of the tenancy.

2. The trial in this matter took place in December 15, 2023, and the trial judge found that the landlord was made ware of the conditions of disrepair from the Health Department citation and not beforehand. The tenant was in a position to include in her trial testimony that the condition of disrepair existed from the first day of the tenancy and, thus, was known to exist by the landlord. Either she provided such testimony and the judge did not credit it or she neglected to provide said testimony and stating so at this juncture is not persuasive.
3. Accordingly, the motion for relief from judgment is denied.
4. **The Landlord's Motion to Amend the Judgment and Execution to Incluse John McWinnie:** The landlord has been made aware that Mr. McWinnie is residing in the tenant's unit and is concerned that when the sheriffs attempt to levy on the execution it will cause a problem because Mr. McWinnie's name is not on the execution. The tenant argues that the landlord was aware that Mr. McWinnie is a bona fide co-tenant and that the landlord's failure to name Mr. McWinnie was a failure to name him as necessary party.
5. After conducting an evidentiary hearing on these issues, the court concludes that no tenancy was ever created between Mr. McWinnie and the landlord. Mr. McWinnie has no possessory right beyond those that the tenant has and when the landlord levies on the execution against the tenant, Colleen Voudren, Mr. McWinnie is not permitted to remain at the premises. The sheriffs have authority

to remove Mr. McWinnie and his belongings at the time that it levies on the execution in this matter.

So entered this 4th day of April, 2024.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5135

TANISHA SALMON,

Plaintiff,

v.

STEPHANIE JACKSON, et al.,

Defendant.

ORDER

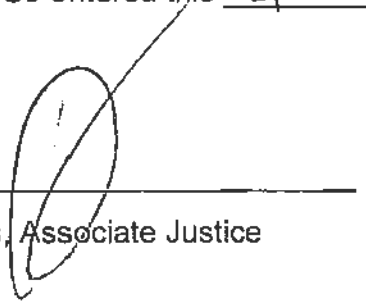
After hearing on April 2, 2024, on the tenant's motion to amend the Agreement of the Parties to extend the date by which the tenant must vacate the premises, the following order shall enter:

1. The parties entered into an Agreement (Agreement) dated January 10, 2024, whereby the tenants waived their counterclaims and defenses and agreed to a April 30, 2024, moveout date. In consideration, the landlord waived all monies owed through January 31, 2024 (proffered by landlord counsel to equal $10,000).

2. The tenants are dependent on RAFT funds to assist them in relocating and learned recently that they are not eligible for RAFT until July 1, 2024, and are asking the court to amend the Agreement to allow them to stay until a July 31, 2024, moveout date---a three-month extension to the original terms during which time they will pay their use and occupancy.
3. The tenant credibly testified that she suffers from anxiety and PTSD and is medicated for these afflictions. She also testified that she has an autistic son.
4. The landlord argued that she has waived $10,000 for the right to have the unit emptied by the tenant and that no extension should be given. The tenant pointed out that the consideration given (in addition to a move out date) included a waiver of her counterclaims and that such claims were substantial, arising out of the on-going construction/renovation at the premises during her tenancy.
5. The landlord also argued that there are on-going problems with the tenant and that she is texting and emailing (at all hours of the night) the landlord constantly alleging that another tenant at the premises is repeatedly smoking marijuana at the premises and that is causing significant problems for her and her daughter. The tenant explained, credibly, that the reason for the constant and late-hour texts and emails stems from her feeling desperate about the pot smoking.
6. The landlord did not proffer any other reasons why the extension of time being sought would be prejudicial (financial, scheduled renovations, new tenants, etc.).
7. Based on the record before the court, the tenant's motion is allowed and the moveout date shall be extended to July 31, 2024, contingent upon her paying her

use and occupancy in full and timely for the months that she continues to be in possession.

So entered this 4th day of April, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTYION
NO. 24H79SP000314

BEACON RESIDENTIAL MANAGEMENT LIMITED PARTNERSHIP, MANAGING AGENT FOR BC BERKSHIRE PEAK LLC,

Plaintiff

VS.

TARA K. CARTER,

Defendant

ORDER FOR ENTRY OF JUDGMENT

After conducting a hearing on April 3, 2024, at which both parties appeared, the plaintiff's ***Motion for Entry of Judgment*** against defendant Tara K. Carter is **ALLOWED**.

This a summary process action based upon nonpayment of rent. On March 12, 2024 the parties entered into a written *Agreement of the Parties*. The parties agreed that the defendant owed $1,450.00 in unpaid rent (plus costs of $246.94) through March 2024. The defendant represented that she had made a $500.00 online payment; however, the plaintiff had not been able to confirm that the payment had cleared at the time the agreement was signed. Under the terms of the agreement the defendant was obligated to pay $950.00 by March 8 (the balance due for unpaid rent assuming the $500.00 payment cleared) and $246.94 (court costs) by April 4, 2024. The defendant further agreed to pay her monthly rent each month when due. 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 March 8, 2024 agreement. Aside from the $500.00 payment (that cleared), she has failed to make any payments required under the terms of the agreement. As of April 4, 2024, the defendant owes $1,267.00 in unpaid rent (including April).

The defendant's failure to make the required payments constitutes a material violation of the March 8, 2024 agreement. The agreement required the plaintiff to make certain repairs to the

defendant's apartment. However, the plaintiff was unable to make these repairs because the defendant refused to allow the plaintiff's maintenance crew to enter her apartment.

Accordingly, it is **ORDERED** that judgment enter for the plaintiff for possession and damages in the amount of **$1,167.00** plus court costs. Execution shall issue in due course.

So **ORDERED** this 5th day of April 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. 23H79SP 5861

Karl-Marx Delphonse, PLAINTIFF v. Ruthdally Ramos, et al., DEFENDANT	**FINDINGS OF FACT, RULINGS OF LAW AND ORDER**

This summary process action was before the Court (Adeyinka, J.) for trial on March 28, 2024. Plaintiff Karl-Marx Delphonse ("Plaintiff/Landlord") seeks to recover possession of 116 Breckwood Circle, Springfield, MA (the "Premises") from Ruthdally Ramos ("Defendant/Tenant") based on a non-payment termination of her tenancy. On March 28, 2024, the Plaintiff and the Defendant appeared at trial[1] and represented themselves respectively.

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

BACKGROUND

The Premises is a two-family duplex home in which the landlord occupies one unit, and the tenant occupies the unit adjacent to the landlord. *See* **Pretrial Stipulation.** The Plaintiff is a first-time landlord and represented that he worked hard to purchase this home. The Defendant is a mother and has faced a major tragedy in her personal life when she lost her child's father. Both parties agree that the Defendant has resided at the Premises since February 9, 2023. *See* **Pretrial**

[1] On March 12, 2024, the Defendant filed a Motion to Amend her Answer, which was allowed by the Court on March 28, 2024.

Stipulation. Plaintiff is the owner of the Premise. Both parties agree that the rent is $1,450 per month. *See* **Pretrial Stipulation.**

On October 10, 2023, the Plaintiff served a notice to quit on Defendant, via text message, purporting to terminate the tenancy in fifteen (15) days. The notice to quit alleged that the Defendant owed $3,200.30. *See* **Notice to Quit, at Plaintiff's Exhibit #1.** On December 29, 2023, the Plaintiff filed this summary process eviction with the Court. On February 21, 2024, the Defendant filed and Answer and Counterclaim. *See* **Docket Entry at No. 8 & 9.** In the Defendant's Answer, she alleges that the Premises is "uninhabitable" and that she "reported conditions of [her] unit to code enforcement." *See* **Defendant's Answer.** The Court will liberally construe the Defendant's defenses and counterclaims under G.L. c. 239, § 8A, since she alleged that she withheld rent, based on conditions that existed within her unit. She also alleged a violation of the security deposit statute. *See* G.L. c. 186, § 15B.

On February 22, 2024, the Parties appeared in Court for a First Tier Court Event. Unfortunately, the Parties were unable to resolve their disputes at the First Tier Court Event. On February 23, 2024, the Defendant filed her Motion to Dismiss, and a hearing was held on March 7, 2024. At the hearing, the Court (Adeyinka, J.) denied the Defendant's Motion to dismiss without prejudice and the matter was scheduled for trial on March 28, 2024[2].

FINDINGS OF FACT AND RULINGS OF LAW

Defendant acknowledged receipt of the notice to quit, which was sent via text. However, the Defendant contested receipt of the required notice to quit accompanying form[3], which is required pursuant to G.L. c. 186, § 31. The Plaintiff has filed with the Court the required Affidavit of Compliance with G.L. c. 186, § 31, the Court credits the Plaintiff's testimony, as to the fact that he did serve the required accompanying form. Furthermore, the Plaintiff alleged that the

[2] At trial, the Court again presented the Parties with an opportunity to resolve their difference in mediation, but both Parties declined and elected to proceed forward with this bench trial.

[3] Pursuant to G.L. c. 186, § 31, any notice to quit for non-payment of rent shall be accompanied by a form developed by the Executive Office of Housing and Livable Community. The Courts may not accept for filing any summary process action for non-payment of rent which does not include an Affidavit of Compliance with G.L. c. 186, § 31.

Defendant owed $10,330.00 in rent, but the Defendant alleged that she owed $8,883.00. *See* **Pretrial Stipulation.** Plaintiff offered no proof (i.e. rent ledger, etc.) to support his claim that $10,330.00 is owed. As a result, the Court finds that the Defendant owes $8,700.00 ((6 months (September 2023 to March 2024) X $1,450.00 agreed upon rent)).

At the trial, the Defendant introduced a copy of a code enforcement report dated October 24, 2023, which showed issues with the: 1) bathroom vents; 2) cabinet drawer broken; 3) bathtub needing caulking; 4) bedroom window broken; 5) closet door damaged; 6) bedroom window not properly working; 7) faulty electrical outlet; 8) peeling paint on the door jams; and 9) damage to floors. The Plaintiff provided proof that the violations, with exception of the peeling linoleum floor tile, were corrected on or before January 10, 2024. *See* **Plaintiff's Exhibit 3.** As a result of the violations, the Court shall deduct $900 (a rental abatement of $300 per month for the three (3) months that the violations existed) as an offset to the Plaintiff's claim for money damages.

The Defendant also stated the landlord violated the Security Deposit law. The Plaintiff admitted to not providing the Defendant with a receipt for her security deposit and not providing her with the interest accrued. The Plaintiff admitted that he was unaware of the requirements under G.L. c. 186, §15B. Unfortunately, ignorance of the law is not a defense. Accordingly, pursuant to the law the Defendant is entitled to damages of $4,350.00, which equals three times the security deposit.

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Plaintiff terminate the Defendant's tenancy pursuant to the relevant laws and statute, as referenced above; (ii) by January 2024, the Plaintiff corrected the violations reported in October 2023, with the exception of the issues involving the floor; (iii) the Defendant has not paid rent since October 2023; and (iv) the Plaintiff failed to comply with the Security Deposit law.

SET-OFF

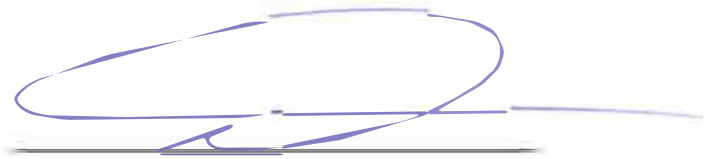
Setting off the $5,250.00 which the Plaintiff owes to the Defendant against the $8,700.00 which the Defendant owes to the Plaintiff, the Court finds that the Defendant owes the Plaintiff a balance of $3,450.00, plus costs.

ORDER FOR JUDGMENT

Based upon foregoing, and considering the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for unpaid rent in the amount of **$8,700.00**, plus court costs.
2. Judgment shall enter for the Defendant on her counterclaim for breach of the implied warranty of habitability for damages in the amount of $900.00.
3. Judgment shall enter for the Defendant on her claim of breach of the Security Deposit Law in the amount of $4,350.00.
4. The foregoing orders for judgment paragraphs 1-3 results in a net judgment for the Plaintiff in the amount of **$3,450.00**.
5. Pursuant to G.L. c. 239, §8A, the Defendant shall have **10 days** from the date of this Order to deposit with the Court a bank check or money order made out to the Plaintiff in the amount of $3,450.00, plus court cost in the amount of $ 183.76 and interest in the amount of $ 111.23 for a total of $ 3,743.99
6. If such payment is made, judgment shall enter for the Defendant for possession. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
7. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for the Plaintiff for possession and damages in the amount of $3,450.00, plus court costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.
8. The Plaintiff shall continue his efforts to remedy the issue relating to floor within the Defendant's unit.

SO ORDERED.



Benjamin O. Adeyinka
Associate Justice

April 5th, 2024

cc: Karl-Marx Delphonse
Ruthdally Ramos

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2519

GILBERT & SON INSULATION, INC.,)
)
PLAINTIFF)
v.)
)
ANGEL L. COLON,)
)
DEFENDANT)

SUMMARY PROCESS APPEAL
BOND ORDER

This summary process case came before the Court on March 13, 2024 for a hearing to set or waive the appeal bond pursuant to G.L. c. 239, § 5. Plaintiff appeared through counsel. Defendant appeared self-represented.

Judgment for possession of the property located at 68 Springfield Street, 2nd Floor, Chicopee, Massachusetts (the "Premises") entered in favor of Plaintiff on September 26, 2023. Defendant filed a timely motion for relief from judgment on October 5, 2023. The motion was denied on December 28, 2023, and a notice of appeal was filed and date-stamped by the clerk's office on January 5, 2024, although not docketed until January 18, 2024, along with a motion to waive the appeal bond and other costs. Plaintiff filed an opposition to the motion.

In its opposition, Plaintiff makes both procedural and substantive arguments. It argues that Defendant did not serve the notice of appeal and motion to waive bond in

a timely manner, did not file an affidavit of indigency until the day of the bond hearing, and failed to identify the judgment he is appealing. Given that Defendant is a self-represented litigant, and given that he did file an affidavit of indigency at the bond hearing, and further given that it was clear what judgment he was appealing, the Court rejects Plaintiff's arguments that the notice is defective.

As to the substance of Defendant's motion to waive the appeal bond, to satisfy the conditions for waiver of the appeal bond, a party must demonstrate both indigency, as defined in G. L. c. 261, § 27A, and the existence of a non-frivolous defense. *See* G. L. c. 239, § 5 (e). Based on his sworn financial statement, the Court finds that Defendant meets the statutory standard of indigency.

Having found Defendant indigent, the Court applies the second prong of the bond waiver statute, namely whether he has any defense which is non-frivolous. He does not. Defendant does not argue misapplication of the law, only a disagreement as to the underlying factual findings. Because the Court found Defendant was not a tenant, Defendant could not raise typical summary process defenses and counterclaims such as habitability and quiet enjoyment. The only plausible issue on appeal is an attack on the weight of the evidence and the judge's findings on credibility, areas which are within the province of the factfinder. Here, the Court had ample evidence before this Court to support its factual findings.

The Court found that Plaintiff did not enter into any written or oral agreement with Defendant and that there was no meeting of the minds as to the establishment of a tenancy. Moreover, the Court found that the authorized tenant of the property,

Mr. Ramirez, allowed Defendant (a relative) to reside with him on the first floor of a two-floor home, and that that that Defendant then moved to the empty second-floor unit without Plaintiff's permission or knowledge. The Court found that Defendant's right to occupy the Premises was solely through the authorized tenant and not directly with Plaintiff. The Court concluded that Defendant's testimony about payments not to be credible. Given the foregoing, the Court concludes that the appeal is frivolous. See *Adjartey v. Central Div. of Housing Court*, 481 Mass. 830, 859 (2019) (a "determination that a defense is frivolous requires more than the judge's conclusion that the defense is not a winner; frivolousness imports futility -- not 'a prayer of a chance'"). Accordingly, the Court denies Defendant's motion to waive the appeal bond.

With respect to the amount of the bond, because the parties never had a meeting of the minds as to monthly rent, and because Defendant never paid rent to Plaintiff, there is no baseline understanding of an agreed-upon value. The Court was not provided with any evidence of fair rental value. Therefore, because Defendant claimed at trial he had agreed to pay (and once paid) $750.00 per month to Mr. Ramirez (the authorized tenant) when he moved in, the Court adopts this figure and calculates the appeal bond at a rate of $750.00 per month for the months of February 2023 through March 2024.

In addition to the bond, Defendant must pay for his continued use and occupation of the Premises during the pendency of the appeal. See G.L. c. 239, § 5. In determining a fair monthly use and occupancy payment for the Premises, the Court

takes his ability to pay into consideration, as well as the factors set forth in *Davis v. Comerford*, 483 Mass. 164 (2019). Many of the *Comerford* factors are inapplicable to the present circumstances given the absence of a tenancy. The Court takes note of the fact that Defendant, a non-tenant, has excluded Mr. Ramirez, the authorized tenant, from the Premises and has taken exclusive control over both floors of the rental property.[1] He has deprived Plaintiff of all rental income from the home since February 2023, despite Plaintiff paying all of the expenses of the home. Plaintiff will continue to be without rental income from the home for the duration of the appeal.

In attempt to achieve a fair balancing of both parties' interests, the Court considers Defendant's ability to pay. Defendant claims his monthly income is approximately $700.00. Upon the Court's inquiry as to how he paid $750.00 each month (as he claimed) with income of $700.00 per month, he answered that he lost income due to his illness. On account of Defendant's limited ability to pay, the Court orders that he pay $550.00 per month for the duration of the appeal.

Based on the foregoing, the following order shall enter:

1. Defendant's motion to waive the appeal bond is denied. He shall pay Plaintiff $8,250.00 within fifteen days of the date this order enters on the docket.[2]

2. Defendant shall pay Plaintiff $550.00 each month for use and occupancy for those months that he occupies the Premises beginning in March 2024. The first

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[1] It does not matter that the Court found Defendant not to be a tenant. See *21st Mortgage Corp. v. DeMustchine*, 100 Mass. App. Ct. 792, 793 (2022) (the defendant's obligation to pay a bond and make use and occupancy payments arose when judgment for possession entered against him and is not dependent upon the existence of a landlord-tenant relationship).

[2] The payment is to be made directly to Plaintiff to offset the monthly carrying costs.

payment shall be due on March 15, 2024 and payments thereafter shall be made on the 15th of every month.

SO ORDERED.

DATE: April 5, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP000308

Carmen Rosa, PLAINTIFF	**FINDINGS OF FACT, RULINGS OF LAW AND ORDER**
v.	
Marie Maldonado, DEFENDANT	

This summary process action was before the Court (Adeyinka, J.) for trial on April 4, 2024. Plaintiff, Carmen Rosa ("Plaintiff/Landlord") seeks to recover possession of 41 Grover Street, Apt. 2, Springfield, MA (the "Premises") from Marie Maldonado[1] ("Defendant/Tenant") based on a no-fault termination of her tenancy at will. On April 4, 2024, the Plaintiff and the Defendant appeared at trial and represented themselves respectively.

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

BACKGROUND

The Premises is a two-family home in which the Plaintiff occupies Unit 1, and the Defendant occupies Unit 2 with her three children, ages 7, 10 and 13. *See* **Pretrial Stipulation.** Jose Aviles, the father of the Defendant's children, occupied the unit until December 2023, at which time the Plaintiff sought and obtained a restraining Order from the Springfield District Court (Docket No. 232RO2773). As a result of the restraining Order, Mr. Aviles shall not occupy or come near the Premises. Both parties agree that the Defendant has resided at the Premises since

[1] The Clerk's Office shall amend the Complaint to reflect the correct spelling of the Defendant, which is Maldonado.

April 1, 2019. *See* **Pretrial Stipulation,** *see also,* **Lease at Plaintiff's Exhibit 1**. Plaintiff is the owner of the Premise. Both parties agree that the rent is $1,000 per month. *See* **Pretrial Stipulation,** *see also,* **Lease at Plaintiff's Exhibit 1.**

On November 29, 2023, the Plaintiff served a thirty (30) day no fault notice to quit on Defendant, terminate the tenancy. *See* **Notice to Quit, at Plaintiff's Exhibit #2.** On January 23, 2024, the Plaintiff filed this summary process eviction with the Court. The Defendant did not file an Answer or Counterclaim. However, at trial the Defendant asked the Court to provide her with time to vacate the unit. The Court will liberally construe the Defendant's request for more time under G.L. c. 239, § 9-13.

On March 21, 2024, the Parties appeared in Court for a First Tier Court Event. Unfortunately, the Parties were unable to resolve their disputes at the First Tier Court Event and as a result, the matter was scheduled for trial on April 4, 2024.

FINDINGS OF FACT AND RULINGS OF LAW

On November 30, 2023, at the direction of the Plaintiff, Deputy Sheriff Kenardo Douglas, served a legally sufficient notice to quit on the Defendant, terminating the tenancy. Defendant acknowledged receipt of the notice to quit. Accordingly, the Court finds that the Plaintiff introduced sufficient evidence to satisfy her prima facie case for possession.

As stated above, the Defendant did not file an answer or assert defenses or counterclaims. Because Defendants failed to present any legally cognizable defenses, Plaintiff must prevail on her claim for possession. However, the Defendant alleged that there were issues: (i) with her ceiling: (ii) closet door in the living room: and (iii) issues with her rugs. The Plaintiff does not contest that those issues existed in the unit. The Plaintiff shall make the required repairs to the Defendant's unit within 30 days of entry of this Order.

With respect to Defendant's oral request for a stay pursuant to G.L. c. 239, §§9-13, the Court finds that Defendant has school age children who attend the local school and to uproot them from school would present issues for these children. The Court will exercise its equitable authority

to stay the issuance of the Execution through June 30, 2024, contingent on use and occupancy payments of $700 per month due and payable before the 10th of the month beginning May 1, 2024.

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Plaintiff terminated the Defendant's tenancy pursuant to the relevant laws and statute, as referenced above; (ii) issues of disrepair existed during the time of the Defendant's tenancy; (iii) the Defendant will use due and reasonable effort to secure other housing, and (iv) the Defendant's application for stay is made in good faith and she will comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, §10.

ORDER FOR JUDGMENT

Based upon foregoing, and considering the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession plus court costs in the amount of 182.76.
2. Issuance of the execution shall be stayed until June 30, 2024, on the conditions that:

   a. The Defendant shall continue to pay all use and occupancy in the amount of $700.00; per month before the tenth of each month for May 2024 and June 2024 pursuant to G.L. c. 239, §11.

   b. The Defendant shall continue to make reasonable efforts to locate and secure replacement housing 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 Defendant fails to make the required payments, Plaintiff may file a motion to issue the execution. If Defendant makes the required payments, they shall vacate the Premises on or before June 30, 2024, leaving the Premises in broom clean condition and returning all keys. If Defendants have not vacated voluntarily as of June 1, 2024, Plaintiff may apply in writing for issuance of the execution.

SO ORDERED.

Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice

April 5th, 2024

cc: Carmen Rosa
Maria Maldonado

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2480

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

KIMBERLY WRIGHT-DOMINGUEZ,

Defendant.

ORDER

After hearing on March 28, 2024, on review of this matter at which the defendant tenant failed to appear, the following order shall enter:

1. The landlord reported that since the last hearing on February 26, 2024, the tenant paid the landlord $2,607 in March 2024.
2. Ms. White from the Tenancy Preservation Program (TPP) appeared for the hearing and reported on behalf of her co-worker Ms. Cintron who was assigned to work with the parties in this matter.

3. Though the court included in its February 27, 2024, order that the tenant was to work with TPP on her RAFT application, it appears that this did not happen. Ms. Smith did not have any information as to what efforts were made by TPP reach and work with the tenant.
4. A representative from Way Finders, Inc. reported that the tenant's RAFT application was closed on March 5, 2024, due to the tenant's failure to submit sufficient hardship documentation.
5. The tenant is urged to call Ms. Cintron at TPP at 413-358-5823. Ms. Cintron is urged to reach out to the tenant and reapply to RAFT.
6. Though the landlord requested entry of judgment at the hearing, it was informed by the judge that because this was a Review hearing and it had not marked a hearing for judgment to enter, it would need to file and mark up such motion.

So entered this 15th day of April, 2024.

Robert Fields, Associate Justice

Cc: Yidialisse Cintron, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79CV001037

TRUSTEES OF BOSTON UNIVERSITY,

Plaintiff

v.

SHAWN McDONOUGH,

Defendant

ORDER FOR ASSESSMENT OF DAMAGES AND FOR ENTRY OF JUDGMENT

This matter came before the Court on April 3, 2024 for hearing on the plaintiff's *Motion for Judgment of Damages* (seeking assessment of damages and statutory attorney fees) against the defendant. The defendant did not appear (with or without counsel) and did not otherwise file any written opposition to the motion.

Procedural History and Facts

In June 2022 Plaintiff Trustees of Boston University ("Trustees") entered into a written lease with Defendant Shawn McDonough ("McDonough") pertaining to the residential property at 44 Strong Street, in Pittsfield, Massachusetts (the "dwelling"). The lease term was from June 18, 2022 through August 18, 2022. The Trustees intended to use the dwelling to house faculty members who were participating in summer academic programs. The rent set forth in the lease was $17,000.00 payable in advance. The lease also required payment of a $2,000.00 security deposit which was to be returned to the Trustees by October 1, 2022. The Trustees paid McDonough the $17,000.00 rent and $2,000.00 security deposit in full prior to June 18, 2022.

The faculty members moved into the dwelling on or about June 18, 2022 and surrendered possession in compliance with the lease on August 18, 2022.

McDonough did not return the deposit to the Trustees by October 1, 2022 (the return date set forth in the lease) and has never returned the deposit.

On September 19, 2023 the Trustees sent McDonough a written demand for relief via certified mail pursuant to G.L. c. 93A. The Trustees demanded the immediate return of the $2,000.00 security deposit plus accrued interest. Again, McDonough never responded in writing (or orally) to the Trustees' written demand.

In December 2023 the Trustees commenced this civil action against McDonough seeking damages arising from the 2022 tenancy. The Trustees asserted claims for violation of security deposit statute, G.L. c. 186, § 15B (Count I) and violation G.L. c. 93A (Count II).

McDonough failed to file an answer to the Trustees' complaint or file any other responsive pleading. Further McDonough has failed to enter a written appearance and failed to appear in court on February 14, 2024, the date of the scheduled case management conference.

On March 5, 2024 the Trustees filed an *Application for Default against the Defendant*. On March 13, 2024, a default under Rule 55(a) was entered on the docket.

As a result of the default McDonough's liability to the Trustees on the two counts of the complaint has been established. The court scheduled a hearing for April 3, 2024 to assess damages. McDonough was sent written notice of the hearing but failed to appear or otherwise respond to the Trustees' request for assessment of damages.

Assessment of Damages

Based upon the facts set forth in the complaint (which have been deemed established upon McDonough's default), the facts set forth in affidavits submitted by the Trustees, and the legal arguments presented by the Trustees' attorney, I assess damages as follows:

1. Violation of G.L. c. 186, § 15B (Count I - Security Deposit Statute). 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. Section 4 requires that a landlord who has held the deposit in accordance with the provisions of the statute must "return to the tenant the security deposit or any balance thereof" within thirty days after the termination of occupancy. Section 6 provides in relevant part that a landlord,

> shall forfeit his right to retain any portion of the security deposit for any reason . . . if he . . . (e) fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance with the provisions of this section, within thirty days after termination of the tenancy.

Finally, Section 7 provides that if the landlord fails to comply with Section 6 (e), the tenant "shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof . . . plus interest at the rate of five percent from the date when such payment became due, together with court costs and reasonable attorney's fees." See, *Castenholz v. Caira*, 21 Mass. App. Ct. 758 (1986).

McDonough's liability on the G.L. c. 186, § 15B claim has been established upon his default. McDonough has never returned to the Trustees the $2,000.00 security deposit paid at the inception of the tenancy.

Accordingly, I assess damages for violation of G.L. c. 186§ 15B in the amount of **$6,000.00** ($2,000.00 security deposit trebled) plus prejudgment interest on the deposit (5% per year) from October 1, 2022 to April 4, 2024 in the amount of **$151.05.**[1]

2. Violation of G.L. c. 93A (Count VIII - security deposit). McDonough's failure to return the security deposit to the Trustees by October 1, 2022 constitutes a violation of C.M.R. 940 § 3.17(4)(g), and thus a violation of G.L. c. 93A.

McDonough's liability on the G.L. c. 93A claim and that he was engaged in trade or commerce with respect to this tenancy relationship have been established upon his default. McDonough has never returned to the Trustees the $2,000.00 security deposit paid at the inception of the tenancy.

I assess actual damages for McDonough's violation of G.L. c. 93A in the amount of **$2,000.00.** I find and rule that McDonough's conduct with respect to his failure to maintain the premises in good repair was willful and knowing. Accordingly, I shall treble the actual damages to **$6,000.00** plus costs and a reasonable attorney's fee.

3. Cumulative Damages. The Trustees are not entitled to recover cumulative damages arising from the same facts under every theory of recovery but are entitled to recover damages under the theory that results in the largest award of damages. *Wolfberg v. Hunter*, 385 Mass. 390 (1982).

The Trustees' security deposit-based claims for violation of G.L. c. 186, § 15B and G.L. c. 93A arise from the same operative facts. Accordingly, I shall award damages under G.L C. 186, § 15B since that count provides the Trustees with the largest monetary recovery.

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[1] $2,000.00 x 5% = $100.00 / 18 months = $149.94 plus $1.11 (pro rata for 4 days). Total = $151.05.

3. Attorney Fees. The court should normally use the "lodestar" method to calculate the amount of a statutory award of attorney's fees. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorney's fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. at 388. An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorney's fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum v. Archambault*, supra. at 381, 388-9. See Heller *v. Silverbranch Const. Corp.*, supra. at 629 ("the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth . . . Absent specific direction from the Legislature, the crucial factors in making such a determination are: (1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney"). The prevailing party is entitled to recover fees and costs for the statutory claims on which he was successful.

As the prevailing party on their G.L. c, 186, § 14, G.L. c. 186, § 15B and c. 93A claims the Trustees are entitled to recover reasonable attorney's fee and costs.

I have reviewed the March 25, 2024 affidavit submitted by the Trustees' attorney, Lori A. Drayton, in which she presents sufficient facts to support her representation that she spent 22.55 hours (14.55 hours through March 25, 2024 + 8.0 hours since March 25, 2024) for work she performed on the Trustees' G.L. c. 186, § 15B and c. 93A claims. I find that this time was reasonable and reasonably related to the prosecution of the statutory claims. Based upon the relatively uncomplicated statutory claims at issue I find that Attorney Drayton is entitled to be compensated based upon a reasonable hourly rate of $295.00 (as she requested).

Accordingly, after considering the factors set forth above, I award the Trustees a reasonable statutory attorney's fee in the amount of **$6,652.25**. I find the costs incurred by Attorney Drayton in the amount **$516.73** are reasonable.

The award of attorney's fees and costs are without interest. See, *Patry v. Liberty Mobilehome Sales, Inc.*, 394 Mass. 270, 272 (1985).

ORDER FOR JUDGMENT

Based upon the entry of default and the credible and evidence presented at the assessment of damages hearing, in light of the governing law, it is **ORDERED** that:

1. Judgment shall enter for Plaintiff Trustees of Boston University against Defendant Shawn McDonough for violation of G.L. c. 186, § 15B (Count I) and G.L. c. 93A (Count II), with actual damages awarded under G.L. c. 186, § 15B in the amount of **$6,000.00** plus prejudgment statutory interest on the deposit (5% per year) from October 1, 2022 to April 4, 2024 in the amount of **$151.05**, plus reasonable attorney's fees and post-judgment interest and costs;
2. Plaintiff Trustees of Boston University shall be awarded a reasonable statutory attorney's fee pursuant to G.L. c. 186, § 14, G.L. c. 186, § 15B and c. 93A in the amount of **$6,652.25** plus costs in the amount **$516.73**.

SO ORDERED this 5th Day of April 2024.

Jeffrey M. Winik

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79CV001038

TRUSTEES OF BOSTON UNIVERSITY,

Plaintiff

v.

SHAWN McDONOUGH,

Defendant

ORDER FOR ASSESSMENT OF DAMAGES AND FOR ENTRY OF JUDGMENT

This matter came before the Court on April 3, 2024 for hearing on the plaintiff's *Motion for Judgment of Damages* (seeking assessment of damages and statutory attorney fees) against the defendant. The defendant did not appear (with or without counsel) and did not otherwise file any written opposition to the motion.

Procedural History and Facts

In June 2022 Plaintiff Trustees of Boston University ("Trustees") entered into a written lease with Defendant Shawn McDonough ("McDonough") pertaining to the residential property at 80 Vista Street, in Pittsfield, Massachusetts (the "dwelling"). The lease term was from June 18, 2022 through August 18, 2022. The Trustees intended to use the dwelling to house faculty members who were participating in summer academic programs. The rent set forth in the lease was $17,500.00 payable in advance. The lease also required payment of a $2,000.00 security deposit. The Trustees paid McDonough the $17,500.00 rent and $2,000.00 security deposit in full prior to June 18, 2022.

The faculty members moved into the dwelling on or about June 18, 2022. On or about July 7, 2022 water flooded the dwelling leaving standing water that created a mold problem. On July 7, 2022 the Trustees immediately notified McDonough via text message and email about the water penetration problem and demanded that he make prompt repairs. McDonough responded via text message that same day that he would remove the carpets and remove the standing water. He stated

that the sump pump lost power the week before after a storm. Despite his promise to the Trustees, McDonough did not make any effort to address the water penetration problem between July 7 and 9, 2022. The water penetration problem rendered the dwelling uninhabitable. For that reason, the faculty members vacated the dwelling on July 9, 2022 and took up temporary residence at a local hotel. Because McDonough never took any steps to remove the standing water and failed to test and correct the resulting mold problem, the faculty members did not return to the dwelling between July 10 and August 18, 2022.

On or about July 25, 2022 McDonough began to occupy the dwelling and using it as his residence. He changed the locks to the dwelling. McDonough continued in possession of the dwelling at least through August 18, 2022, the end of the lease term.

McDonough did not return the deposit to the Trustees within 30 days of August 18, 2022 (the end of the lease term).

On or about October 18, 2022, sent a written demand to McDonough (via email) that he return the $2,000.00 security deposit and refund $12,650.00 (that portion of the prepaid rent paid for the period from July 9 to August 18, 2022 based on a per diem rate of $286.50 x 44 days the dwelling was uninhabitable). McDonough never responded to the Trustees' demand and never returned the security deposit or any portion of the pre-paid rent.

On September 19, 2023 the Trustees sent McDonough a written demand for relief via certified mail pursuant to G.L. c. 93A. The Trustees demanded the immediate return of the $2,000.00 security deposit and the prorated rent in the amount of $12,650.00. Again, McDonough never responded in writing (or orally) to the Trustees' written demand.

In December 2023 the Trustees commenced this civil action against McDonough seeking damages arising from the 2022 tenancy. The Trustees asserted claims for breach of the implied warranty of habitability (Count I), interference with quiet enjoyment in violation of G.L. c. 186, § 14 (Count II), negligent failure to repair in violation of G.L. c 186, § 19 (Count III and VI), constructive eviction (Count IV), violation of security deposit statute, G.L. c. 186, § 15B (Count V) and violation G.L. c. 93A (Count VII-conditions and VIII-security deposit).[1]

[1] The Trustees are not seeking damages for Counts III, IV or VI.

McDonough failed to file an answer to the Trustees' complaint or file any other responsive pleading. Further McDonough has failed to enter a written appearance and failed to appear in court on February 14, 2024, the date of the scheduled case management conference.

On March 5, 2024 the Trustees filed an *Application for Default against the Defendant*. On March 13, 2024, a default under Rule 55(a) was entered on the docket.

As a result of the default McDonough's liability to the Trustees on the eight counts of the complaint has been established. The court scheduled a hearing for April 3, 2024 to assess damages. McDonough was sent written notice of the hearing but failed to appear or otherwise respond to the Trustees' request for assessment of damages.

Assessment of Damages

Based upon the facts set forth in the complaint (which have been deemed established upon McDonough's default), the facts set forth in affidavits submitted by the Trustees, and the legal arguments presented by the Trustees' attorney, I assess damages as follows:

1. Breach of the Implied Warranty of Habitability (Count I). There exists with respect to every residential tenancy an implied warranty of habitability that the premises are fit for human habitation. A landlord is in breach of this warranty where there exist defects that may materially affect the health or safety of occupants. *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973). A tenant is not entitled to receive damages for minor defects. Not every defect gives rise to a diminution in rental value. Isolated violations do not necessarily constitute a breach of the warranty. *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977). A breach of the implied warranty of habitability occurs from the point in time when a landlord had notice or should have known of a substantial defect or substantial Sanitary Code violation in the apartment. The breach continues until the defect or violation is remedied. *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979) [*landlord in breach of warranty from first notice of substantial Sanitary Code violations that recurred over a period of time despite the landlord's efforts to repair*]. The measure of damages for breach of the implied warranty of habitability is the difference between the fair rental value of the premises free of defects and the fair rental value of the premises during the period that the defective conditions existed. *Boston Housing Authority v. Hemingway*, supra; *Haddad v Gonzalez*, 410 Mass. 855, 872 (1991).

McDonough's liability for breach of the implied warranty of habitability for the period from July 9 through August 18, 2022 has been established upon his default.

I find that the fair rental value of the premises free of defects for the period June 10 through August 18, 2022 was $17,500.00 ($268.88 per day). Because the dwelling was uninhabitable (resulting in the constructive eviction of the faculty members), I find and rule that the fair rental value of the premises was reduced by 0% for the 44-day period from July 9 to August 18, 2022. The Trustees had paid the rent in full during this period. Accordingly, I assess actual damages for breach of the implied warranty of habitability in the amount of **$12,622.95.**[2]

2. G.L. c. 186, § 14 Violation (Count II). 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). A landlord violates G.L. c. 186, §14 where he had notice, or reason to know of a serious condition adversely affecting the tenant's use of the apartment and failed to take appropriate corrective measures. *Al Ziab v. Mourgis*, 424 Mass. 847, 850-851 (1997); *Cruz Management Co., Inc. v. Thomas*, 417 Mass. 782 (1994).

McDonough's liability the G.L. c. 186, § 14 claim has been established upon his default. McDonough's failure to take appropriate measures to correct the uninhabitable conditions at the dwelling directly or indirectly interfered with the faculty members' (and thus the trustees') quiet use and enjoyment of the dwelling in violation of G.L. c. 186, § 14.

The Trustees incurred actual or consequential damages arising from this violation for (1) diminution of the fair rental value of the premises ($12,622.95 for diminished fair rental value of the dwelling as calculated for breach of the implied warranty of habitability). The monthly rent ($17,500.00 divided by 2) is $8,750.00. Since the actual damages resulting from this G.L. c. 186, § 14 violation exceeds three month's rent, I assess actual and consequential damages of **$26,250.00 .00** plus costs and a reasonable attorney's fee.

[2] $286.88 x 44 days = $12,622.95.

3. G.L. c. 93A Violation (Count VII - Defective Conditions). G.L. c 93A makes it unlawful to engage in an unfair act or practice in the course of trade or commerce. "The existence of unfair acts and practices must be determined from the circumstances of each case." *Commonwealth v. DeCotis*, 366 Mass. 234, 242 (1974). A failure to remedy a breach of the implied warranty of habitability within a reasonable period after notice constitutes a violation of G.L. c. 93A. See 940 C.M.R. 3.17(1)(b).

Chapter 93A, § 9 (3) provides that damages " . . . shall be awarded in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the Court finds that use or employment of the act or practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated section 2." The prevailing party is entitled to reasonable attorney's fees and costs.

McDonough's liability on the G.L. c. 93A claim and that he was engaged in trade or commerce with respect to this tenancy relationship has been established upon his default. McDonough's failure to take appropriate measures to correct the uninhabitable conditions at the dwelling constituted a violation of 940 C.M.R. 3.17(1)(b), and therefore a violation of G.L. c. 93A.

The Trustees incurred actual or consequential damages arising from this violation in the amount of $12,622.95 (diminished fair rental value of the dwelling as calculated for breach of the implied warranty of habitability).

I assess actual damages for McDonough's violation of G.L. c. 93A in the amount of **$12,622.95.** I find and rule that McDonough's conduct with respect to his failure to maintain the premises in good repair was willful and knowing. Accordingly, I shall treble the actual damages to **$37,868.85** plus costs and a reasonable attorney's fee.

4. Violation of G.L. c. 186, § 15B (Count VII - Security Deposit Statute). 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. Section 4 requires that a landlord who has held the deposit in accordance with the provisions of the statute must "return to the tenant the security deposit or any balance thereof" within thirty days after the termination of occupancy. Section 6 provides in relevant part that a landlord,

> shall forfeit his right to retain any portion of the security deposit for any reason . . . if he . . . (e) fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance

with the provisions of this section, within thirty days after termination of the tenancy.

Finally, Section 7 provides that if the landlord fails to comply with Section 6 (e), the tenant "shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof . . . plus interest at the rate of five percent from the date when such payment became due, together with court costs and reasonable attorney's fees." See, *Castenholz v. Caira*, 21 Mass. App. Ct. 758 (1986).

McDonough's liability on the G.L. c. 186, § 15B claim has been established upon his default. McDonough has never returned to the Trustees the $2,000.00 security deposit paid at the inception of the tenancy.

Accordingly, I assess damages for violation of G.L. c. 186§ 15B in the amount of **$6,000.00** ($2,000.00 security deposit trebled) plus prejudgment interest on the deposit (5% per year) from September 18, 2022 to April 4, 2024 in the amount of **$154.10**.[3]

5. Violation of G.L. c. 93A (Count VIII - security deposit). McDonough's failure to return the security deposit to the Trustees within 30 days from the date the lease term ended on August 18, 2022 constitutes a violation of C.M.R. 940 § 3.17(4)(g), and thus a violation of G.L. c. 93A.

McDonough's liability on the G.L. c. 93A claim and that he was engaged in trade or commerce with respect to this tenancy relationship has been established upon his default. McDonough has never returned to the Trustees the $2,000.00 security deposit paid at the inception of the tenancy.

I assess actual damages for McDonough's violation of G.L. c. 93A in the amount of premises in good repair was willful and knowing. Accordingly, I shall treble the actual damages to **$6,000.00** plus costs and a reasonable attorney's fee.

6. Cumulative Damages. The Trustees are not entitled to recover cumulative damages arising from the same facts under every theory of recovery but are entitled to recover damages under the theory that results in the largest award of damages. *Wolfberg v. Hunter*, 385 Mass. 390 (1982).

The Trustees' conditions-based claims for breach of implied warranty of habitability, violation of G.L. c. 186, § 14 and violation of G.L. c. 93A arise from the same operative facts.

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[3] $2,000.00 x 5% = $100.00 / 18 months - $149.94 plus $4.16 (pro rata for16 days). Total = $154.10

Accordingly, I shall award damages under G.L. c. 93A since that count provides the Trustees with the largest monetary recovery.

The Trustees' security deposit-based claims for violation of G.L. c 186, § 15B and G.L. c. 93A arise from the same operative facts. Accordingly, I shall award damages under G.L. c 186, § 15B since that count provides the Trustees with the largest monetary recovery.

Attorney Fees. The court should normally use the "lodestar" method to calculate the amount of a statutory award of attorney's fees. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorney's fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. at 388. An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorney's fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum v. Archambault*, supra. at 381. 388-9. See Heller *v. Silverbranch Const. Corp.*, supra. at 629 ("the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth . . . Absent specific direction from the Legislature, the crucial factors in making such a determination are: (1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney"). The prevailing party is entitled to recover fees and costs for the statutory claims on which he was successful.

As the prevailing party on their G.L. c, 186, § 14, G.L. c. 186, § 15B and c. 93A claims the Trustees are entitled to recover reasonable attorney's fee and costs.

I have reviewed the March 25, 2024 affidavit submitted by the Trustees' attorney, Lori A. Drayton, in which she presents sufficient facts to support her representation that she spent 27.2 hours (19.2 through March 25, 2024 + 8.0 hours since March 25, 2024) for work she performed on the Trustees' G.L. c. 186, § 14, G.L. c. 186, § 15B and c. 93A claims. I find that this time was reasonable and reasonably related to the prosecution of the statutory claims. Based upon the relatively uncomplicated statutory claims at issue I find that Attorney Drayton is entitled to be compensated based upon a reasonable hourly rate of $295.00 (as she requested).

Accordingly, after considering the factors set forth above, I award the Trustees a reasonable statutory attorney's fee in the amount of **$8,024.00**. I find the costs incurred by Attorney Drayton in the amount **$516.73** are reasonable.

The award of attorney's fees and costs are without interest. See, *Patry v. Liberty Mobilehome Sales, Inc.*, 394 Mass. 270, 272 (1985).

ORDER FOR JUDGMENT

Based upon the entry of default and the credible and evidence presented at the assessment of damages hearing, in light of the governing law, it is **ORDERED** that:

1. Judgment shall enter for Plaintiff Trustees of Boston University against Defendant Shawn McDonough on its claims of liability for negligence (Counts III and VI) and constructive eviction (Count IV), but damages shall be awarded only on the counts set forth below;
2. Judgment shall enter for Plaintiff Trustees of Boston University against Defendant Shawn McDonough for breach of the implied warranty of habitability (Count I), violation of G.L. c. 186, § 14 (Count II) and violation of G.L. c 93A (Count VII – defective conditions), with actual damages awarded under G.L. c. 93A in the amount of **$12,622.95, trebled to $37,868.85** plus costs and a reasonable attorney's fee;
3. Judgment shall enter for Plaintiff Trustees of Boston University against Defendant Shawn McDonough for violation of G.L. c. 186, § 15B (Count V) and G.L. c. 93A (Count VIII), with actual damages awarded under G.L. c. 186, § 15B in the amount of **$6,000.00** plus prejudgment statutory interest on the deposit (5% per year) from October 1, 2022 to April 4, 2024 in the amount of **$151.05**, plus reasonable attorney's fees and post-judgment interest and costs;

4. Plaintiff Trustees of Boston University shall be awarded a reasonable statutory attorney's fee pursuant to G.L. c. 186, § 14, G.L. c. 186, § 15B and c. 93A in the amount of **$8,024.00** plus costs in the amount **$516.73**.

SO ORDERED this 5th Day of April 2024.

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

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 GARDNER,

Defendants.

ORDER

After hearing on April 5, 2024, the following order shall enter:

1. The defendants' motion is treated as one to cancel the physical eviction scheduled for April 8, 2024 (and not as a motion for reconsideration).
2. For the reasons stated on the record, mostly due to the defendants having secure alternate housing for May 15, 2024, the physical eviction is cancelled.
3. There shall be a stay on the use of the execution until May 16, 2024, contingent upon compliance with this Order.
4. The defendants shall pay $800 to the constables directly today (April 5, 2024).

5. The defendants shall pay April 2024 use and occupancy of $1,500 by April 9, 2024.
6. The March 2024 use and occupancy payment has been delayed due to the manner in which the defendants completed the check. The parties shall work together to clarify how those funds should be paid and do so by April 15, 2024.
7. The defendants shall pay $750 for half of May 2024 use and occupancy if they are still in possession of the subject premises by May 5, 2024.
8. Counsel for the parties shall work together to provide plaintiff counsel with verifiable information regarding the newly secured housing owned by Lori Grimsley and located at 1133 Huntington Road.
9. The plaintiff may return the execution to the court (as it is expiring prior to May 16, 2024) and a new one shall be issued without hearing, so that the plaintiff may levy on it if the defendants are still in occupancy on May 16, 2024.

So entered this 5th 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. 22-CV-0271

CITY OF CHICOPEE,

PLAINTIFF

v.

DALTON ALEXIS, ET AL.,

DEFENDANTS

ORDER DENYING MOTIONS TO DISMISS APPEAL

This case came before the Court on April 5, 2024 on two motions to dismiss the appeal, one filed by Dalton Alexis and one by Plaintiff, both on the grounds that the appellant, Alfred Shattleroe, failed to docket the appeal in a timely manner.

By way of background, on October 17, 2023, Mr. Shattleroe timely filed notices of appeal of two court orders. Mr. Shattleroe's counsel ordered transcripts on November 9, 2023. On January 23, 2024, Mr. Shattleroe's lawyer inquired with the Office of Transcription Services as to the status of the transcript order. On February 5, 2024, the transcription service asked for a deposit, and on February 9, 2024, informed counsel that the transcripts would be available on February 21, 2024. On the due date, he asked about the transcripts and was told that they were still in process. The transcripts were ultimately sent to counsel on February 27, 2024.

During the process described above, on January 2, 2024, the Court inadvertently sent notice to all counsel of record of the assembly of the record. The record was not, in fact, complete, because the transcripts remained outstanding. Based on Mr. Shattleroe's failure to docket the appeal within fourteen days of the

erroneous notice of assembly of record, both Plaintiff and Mr. Alexis filed motions to dismiss.

On March 13, 2024, Mr. Shattleroe's counsel filed a motion with the Appeals Court to docket the appeal late. The only reason the appeal had not been docketed is that the Court prematurely sent notice of assembly of the record. Mr. Shattleroe did not receive the transcripts until February 27, 2024, so there is no inexcusable neglect in not docketing the appeal before early March.[1] In fact, it appears that Mr. Shattleroe's counsel acted diligently to ensure that the transcripts were produced. He inquired as to their status multiple times, and when he was told that they would be done by February 21, 2024, he followed up on the same day.

In light of the foregoing, Plaintiff's motion to dismiss and Mr. Alexis' motion to dismiss are each DENIED.

SO ORDERED.

April 9, 2024

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

cc: Court Reporter

[1] Although counsel for Mr. Alexis argues strenuously that the case law requires the Court to dismiss the appeal, the Court finds the cases upon which Mr. Alexis relies do not compel such an order. The case of *Commonwealth v. Lampron*, 65 Mass. App. Ct. 340 (2005) is inapposite. The case involved a criminal defendant's failure to provide an adequate record on appeal. In *Britton v. Peloquin*, 79 Mass. App. Ct. 1128 (2011) (unpublished), the appellant sought to add transcripts after the assembly of the record and, despite two court orders to do so, had not docketed the appeal three months later. *Godfrey v Woburn Foreign Motors*, 2001 Mass.App.Div. 81 (2001) applied rules of the Appellate Division of the District Court, not the Appeals Court, and in that case the appellant failed to order transcripts over a year after the notice of appeal. None of these cases compel the result desired by Mr. Alexis.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-3359

CV GREENFIELD I, LLC,

Plaintiff,

v.

JACQUELYN MISA,

Defendant.

ORDER

After hearing on April 5, 2024, on the tenant's motion to stay issuance of the execution at which the landlord appeared through counsel and the tenant appeared self-represented and also at which Michael Richtell from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. This is not a sustainable tenancy. Judgment having already entered for the landlord for possession plus outstanding rent and court costs, an execution may issue.

32 W.Div.H.Ct. 58

2. There shall be a stay on the use of the execution, however, consistent with the terms of this Order. Said stay shall toll the clock on the use of the execution in accordance with G.L. c.235, s.23.
3. The court became increasingly concerned during the hearing about the tenant's competency to navigate these proceedings and her housing situation overall. To determine if Ms. Misa 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. Misa 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. Msa .
4. TPP is asked to work with the court and with Ms. Misa to coordinate an evaluation with the Court Clinic.
5. The tenant shall pay her use and occupancy in full for April 2024 by April 10, 2024. If the tenant fails to make this payment in full and timely, the landlord may be heard at the hearing scheduled below for lifting of the stay on the execution without filing said request in writing.
6. The goal of this order includes providing the tenant with time and resources to relocate to safe and secure and appropriate housing as soon as is practicable while also ensuring that the tenant's rent is paid going forward.

7. This matter shall be scheduled for further hearing on **April 26, 2024, at 9:00 a.m**

So entered this 9th day of April, 2024.

Robert Fields, Associate Justice

Cc: Kara Cunha, Assistant Clerk Magistrate (for referral to the Court Clinic)
Caitlin Castillo, First Assistant Clerk Magistrate
Michael Richtell, TPP
Court Clinic
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-4832

STEVEN GELMAN,

Plaintiff,

v.

OLEDA M. NEWCOMBE,

Defendant.

ORDER

After a hearing on April 5, 2024, at which both parties appeared self-represented, the following order shall enter:

1. On January 5, 2024, the parties entered into an Agreement ("Agreement") and filed same with the court, whereby the tenant would pay the landlord all outstanding rent through March 2024 out of proceeds from another lawsuit.
2. More specifically, the payment would be a total of $11,250, representing rent from July 2023 through March 31, 2024 (each month is $1,250).

32 W.Div.H.Ct. 61

3. On or about March 7, 2024, the parties agreed to amend the payment terms which increased and extended the payment terms of the Agreement. More specifically, the landlord agreed to a $15,000 payment to cover rent through June 30, 2024.
4. Based on this agreed upon amendment, the landlord's requests that the tenant make payments for April, May, and June 2024 or that she be required to vacate the premises, made orally at the hearing, are denied. He has already agreed to the amended payment schedule.
5. Additionally, the tenant asserts that though the landlord hired an independent contractor to address the conditions listed in the Agreement, all of those conditions of disrepair either still exist or returned (other than #1—the hole in the main dwelling staircase which has been repaired).
6. The landlord shall inspect the premises and make all necessary repairs forthwith.
7. This action shall dismiss upon a $0 rent balance.

So entered this 9th day of April, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-3831

NAVIAH 1738M LLC,

Plaintiff,

v.

CYNTHIA FLECHA, et al.,

Defendants.

ORDER OF DISMSISAL

After hearing on April 2, 2024, on the plaintiff landlord's motion for increased judgment at which the landlord appeared through counsel and the tenant, Cynthia Flecha, appeared self-represented, the following order shall enter:

1. The court has no option but to deny the motion and dismiss this action, without prejudice to the landlord to pursue collection of the underlying money judgment.
2. The Execution for possession and outstanding rent and court costs issued in this case on October 19, 2023, after an October 6, 2023, default judgment entered. That Execution expired on January 17, 2024.

3. Though the law allows for an Execution for possession to continue to be valid after three months of issuance, there are circumstances under which that three-month period can be *tolled* limited to "any period during which execution was stayed by order of the court or by an agreement of the parties filed with the court shall be excluded from the computation of the period of limitation." G.L. c.235, s.23.
4. On February 5, 2024 (after the Execution for possession expired), the landlord filed a Motion to Renew Execution for Rent and Possession. After hearing on March 8 ,2024, Judge Kane denied the motion due to the expiration of the three-month period, finding that there was no court order or agreement of the parties that acted as a stay or tolling of the three-month time period in accordance with G.L. c.235, s.23. See also, *Fort Point Investments, LLC v. Hope Kirunge-Smith, et al.*, Appeals Court Docket No. 22-P-1185 (2024).
5. I concur with Judge Kane's ruling and do not view the landlord's instant Motion for Increased Judgment distinguishable from the earlier motion for renewal of the execution nor as being allowable given Kane's correct ruling and G.L. c.235, s.23. The landlord's claim for possession should have been dismissed with Judge Kane's denial. It was not but will be here, without prejudice to collect on the underlying money judgment.
6. This dismissal does not bar the landlord from re-terminating the tenancy and pursuing Summary Process in the future---on grounds other than the non-payment of the sums upon which the underlying money judgment is comprised.

So entered this 9th day of April, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION
NO. 231179CV000240

IFTIKAHAR BUTT,

Plaintiff

VS.

ANGELINA CLIFFORD, JAMES CLIFFORD AND STAN DOE,

Defendants

ORDER FOR ENTRY OF JUDGMENT

This matter came before the court on the plaintiff's *Application for a Temporary Restraining Order*. The court conducted an evidentiary hearing on April 10, 2024, at which the plaintiff and defendant Angelina Clifford appeared.

Based upon the testimony and evidence presented at the hearing, and the reasonable inferences drawn, it is likely that the plaintiff will be able to establish the following:

Plaintiff Iftikahar Butt (Butt) owns the residential dwelling at 553 North Street, in Pittsfield, Massachusetts. The plaintiff rented Apartment 2 to Amanda Daigle (Deigle) subject to the provisions of a Section 8 lease. Under the terms of the lease Daigle was the only person authorized to occupy Apartment 2. On November 3, 2023 Daigle, acting in breach of her Section 8 lease, rented Apartment 2 to Defendants Angelina Clifford and James Clifford. Neither Daigle nor the defendants requested or obtained permission from Butt to sublet Apartment 2. And Butt never by word or act authorized Daigle to sublet Apartment 2 to the defendants.

In November 2023 Daigle surrendered legal possession of Apartment 2, returned the keys to Butt, and vacated the premises. When Butt learned that the defendants were living in Apartment 2 he demanded that they vacate. The defendants did not comply with a that demand and remain in possession of Apartment 2. The defendants have never paid any amount to Butt (neither rent nor use and occupancy payments). Butt has never entered into a tenancy relationship with the defendants.

As a matter of law whatever rights the defendants may have had to occupy Apartment 2 came to an end when Daigle vacated and surrendered legal possession of Apartment 2 to Butt. Thereafter, the defendants became trespassers without any legal right to possession of Apartment 2.

The plaintiff is likely to prevail on his claim for injunctive relief based upon the defendants' status as trespassers. There is no adequate remedy of law and Butt will likely suffer irreparable harm if injunctive relief is not granted. Since the defendants are trespassers, they are unlikely to suffer irreparable harm if injunctive relief is granted.

Accordingly, a preliminary injunction shall enter against the defendant. It is **ORDERED** that Defendants Angelina Clifford, James Clifford and Sam Doe vacated the premises at 553 North Street, Apartment 2, Pittsfield, Massachusetts by April 25, 2024, and are enjoined thereafter from entering 553 North Street, Pittsfield, Massachusetts. The plaintiff's obligation to post an injunction bond is waived.

This matter shall be scheduled for a trial on the merits. The trial shall commence at 10 a.m. on May 1, 2024, at the Pittsfield session of the Western Housing Court.

So **ORDERED** this 10th day of April 2024.

Jeffrey M. Winik
Associate Justice (Recall Appt)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION
NO. 23H79SP002885

KATHLEEN O'NEIL,

Plaintiff

VS.

THEORA LINSEY,

Defendant

ORDER

After hearing on April 10, 2024, at which all parties appeared, the plaintiff's motion for issuance of execution is **ALLOWED**. Execution shall issue on April 30, 2024, but the plaintiff shall not levy on the execution prior to June 24, 2024, provided the defendant makes the following payments for her monthly use and occupation of the premises:

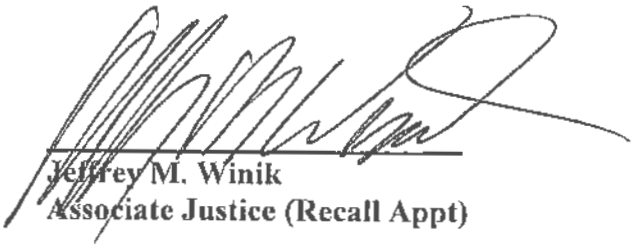
1. $900.00 by April 16, 2024 (April rent);
2. $900.00 by May 6, 2024 (May rent);
3. $900.00 by June 5, 2024 (June rent).

The defendant must make each payment by money order or bank check (not a personal check) payable to the plaintiff. The defendant must deliver each payment to the offices of plaintiff's attorney, Gregory M. Barry, 73 North Street, Suite 340, Pittsfield, Massachusetts.

If the defendant fails to make any one payment by the date due, the clerk is directed to issue the execution, without further hearing, 48-hours after the plaintiff's attorney files an affidavit of noncompliance (including a return of service attesting that the defendant received a copy of the affidavit). If the defendant believes that the affidavit is incorrect and that he had made the required payment, she may file a motion to stay levy with the court. The court, Winik, J., will hear such motion via Zoom on the next business day after such motion is filed.

32 W.Div.H.Ct. 68

So **ORDERED** this 10th day of April 2024.



Jeffrey M. Winik
Associate Justice (Recall Appt)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-619

THE COMMUNITY BUILDERS, INC.,

Plaintiff,

v.

JILLIAN WILLIAMS,

Defendant.

ORDER

After hearing on April 5, 2024, on the tenant's motion to cancel a physical eviction and stay the use of the execution, at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day (LFD) counsel, the following order shall enter:

1. The tenant is a veteran who has resided at the premises for 17 years. She currently has no income, and her rent is presently set at $0.
2. This is a non-payment of rent case, and the current balance is under $800.

3. The landlord (without a witness) proffered that it believes that there is unreported income and that once this issue is processed the rent will likely not be $0. The landlord further proffers that it believes that the retroactive rental adjustment will be thousands of dollars, once the recertifications are completed. The landlord also proffers that the tenant has failed to comply with the requirement to complete her interim/annual recertification. The tenant asserts that she has completed her recertification(s).
4. Based on the foregoing, the current physical eviction shall be canceled, and the landlord shall provide the tenant with the invoice for the costs associated with scheduling and cancelling the eviction.
5. The LFD counsel agreed to extend her LAR to include representation through to the next review hearing scheduled below, and to assist the tenant with her recertification and RAFT application in the meantime.
6. This matter shall be scheduled for review on **April 26, 2024, at 9:00 a.m.**

So entered this 10th day of April, 2024.

Robert Fields, Associate Justice

Cc: Mandy Wilnaslski, Esq. (CLA LFD/LAR counsel)
Court Reporter

Date Filed: 12/19/2023 2:17 PM
Housing - Western
Docket Number: 18H79CV000228

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION NO. 18 CV 228

TONY ZEBROWSKI AND OWEN IRWIN

Plaintiffs

v.

HAYASTAN INDUSTRIES INC.; and
STEPHEN SHAHABIAN, individually

Defendants

ORDER AND FINAL JUDGMENT

This matter having come before the Court upon a motion for final approval of the terms of a Stipulation of Settlement ("Stipulation") between Tony Zebrowski and Owen Irwin ("tenants") and Hayastan Industries, Inc. collectively ("Hayastan") in the above-captioned action (the "Action"), and the Court having held a hearing, as noticed, on April 9, 2024 (the "Final Approval Hearing") to consider the proposed Settlement as embodied in the Stipulation (the "Settlement"); and due and adequate notice (the "Notice") having been mailed by first class mail, postage prepaid, and further distributed to those persons and entities as set forth in the Order of Preliminary Approval; and having considered all papers submitted in connection with the Settlement, the oral presentations of counsel at the Final Approval Hearing; and all prior proceedings herein; and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of this Class Action and over all parties to the Action, including but not limited to, all Class Members.

2. This Court has certified a class pursuant to Massachusetts General Laws c. 93A between defendants and the plaintiffs/tenants of all residents of the defendants at the Bircham Bend Mobile Home Park who:

(1) were obligated by the Defendants to pay rent to the Defendants at the Bircham Bend Mobile Home Park ("Park") at any time between April, 2014 until December, 2016 and/or

(2) were charged a monthly rent of $260 or $268 between April, 2014 until December, 2016; AND/OR

(1) were obligated by the Defendants to pay rent to the Defendants prior to December, 2016, and/or

(2) were charged a monthly rent of $241 between December 2016 and January, 2018.

3. The Notice was disseminated in accordance with the Order of Preliminary Approval of Settlement.

4. The notice constitutes the best notice practicable under the circumstances, fairly and adequately informed members of the Class of all material elements of the Action and the Settlement, and complies fully with Rule 23 of the Massachusetts Rules of Civil Procedure, Massachusetts General Laws c. 93A and due process.

5. The Stipulation filed in this Action dated as of December 19, 2023 and the Settlement are approved as having been entered into in good faith and as fair, reasonable and adequate to the Class within the meaning of Massachusetts Rule of Civil Procedure 23, Massachusetts General

Laws c. 93A and as in the best interests of the Class. The parties to the Settlement are hereby directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation and the Order and Final Judgment.

6. All Settled Claims (as defined in the Stipulation of Settlement) between the tenants and Hayastan are dismissed with prejudice, with each party to bear its own costs, except as otherwise provided herein.

7. The tenants , and every member of the Class and their heirs, assigns, executors and successors in interest, shall be deemed to have released and are forever enjoined and barred from asserting, commencing or prosecuting any Settled Claim (as defined in the Stipulation) against Hayastan and any of the Released Parties (as defined in the Stipulation).

8. Without affecting the finality of this Judgment, the Court retains jurisdiction over: (a) enforcing and administering this Judgment, (b) enforcing and administering the Settlement, including any releases executed or deemed to have been executed in connection therewith; and (c) other matters related or ancillary to the administration and consummation of the Settlement. The Court hereby approves the agreed attorneys' fees and reimbursement of costs and expenses to counsel for the Class in the amount of $128,966.14 as agreed to in the Stipulation of Settlement.

9. The Court hereby directs that this judgment be entered by the clerk forthwith.

10. All Definitions set forth in the Stipulation are incorporated herein.

Dated: April 18, 2024

J. KANE
First Justice of the Housing Court
Western Division

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.
DEPARTMENT

HOUSING COURT

WESTERN DIVISION
DOCKET NO. 23-SP-4735

GMC PROPERTY MANAGEMENT LLC,

Plaintiff

v.

RAY BROWN AND SHANEQUA JONES,[1]

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 7, 2024. Both parties were represented by counsel. The residential premises in question are located at 116 Belmont Avenue, 4L, Springfield, Massachusetts (the "Premises"). Plaintiff is the landlord and the agent of the property owner, Belmont Pond LLC.

The parties stipulated that the tenancy began on October 15, 2023, that the landlord served and Defendants received the notice to quit terminating the tenancy as of September 1, 2023, that monthly rent is $975.00 and that the amount of rent/use and occupancy unpaid through the date of trial is $10,725.00. Given the foregoing, the Court finds that Plaintiff established its prima facie case for possession.

[1] On February 8, 2024, Defendants' counsel filed a suggestion of death of Defendant Ray Brown.

Defendants filed an answer alleging conditions of disrepair at the Premises, violation of the security deposit law and retaliation. The Court took evidence on Defendants' defenses and counterclaims. 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:

Conditions

Mr. Brown testified that for years he suffered from the presence of mice and animals living in the ceiling. He also claims that there were other conditions of disrepair in the unit, such as loose outlets and broken cabinets and tiles in the kitchen. Mr. Brown concedes that he never provided written notice but claims that he orally informed the landlord of these problems throughout his tenancy. The landlord's agent, Mr. Cangiolosi, testified that he was unaware of most of the issues Mr. Brown reported, other than an occasion flare up of mice. Mr. Cangiolosi arranged for quarterly pest treatments and provided treatments between scheduled exterminations as needed.

The Court finds that Defendants did not prove by a preponderance of the evidence that, prior to 2023, they gave adequate notice to the landlord of any conditions of disrepair other than the rodents. The Court's finding is supported by numerous court agreements between the parties from 2014 and 2015 in which Defendants acknowledged that no repairs were needed in the Premises, and a court agreement dated January 18, 2023 in which only repair mentioned was the need for the unit to be painted. In a complaint Mr. Brown filed with the Attorney General's

office on January 27, 2023, he made no mention of substandard living conditions other than a reference to painting.

The Court credits Mr. Cangiolosi's testimony that after getting notice of the need for repainting, he secured painters but the painters were denied access by Defendants in June 2023. The Court finds no evidence to suggest that lack of repainting violated the warranty of habitability or interfered with Defendants' quiet enjoyment. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim).

The Court finds that the only demonstrable evidence indicating that the landlord was aware of substandard conditions in the Premises is a report from the Springfield Code Enforcement Department ("Code Enforcement") dated November 6, 2023. The Code Enforcement report identified only three sanitary code violations: ceiling damage in a bedroom, a rodent or small animal chewing through a bedroom ceiling and missing smoke detectors and carbon monoxide alarms.[2] Notably, the inspector did not cite evidence of a rodent infestation, only a supposition that the hole in the ceiling was caused by an animal of some kind.

Defendants failed to demonstrate by a preponderance of the evidence that the hole in the bedroom ceiling was a substantial sanitary code violation or a significant defect in the Premises. Based on the testimony at trial, the Court finds that it had a *de minimis* effect on the habitability of the Premises as a whole. Defendants did not argue that the hole caused them or their family distress or required them to change

[2] The Court draws an inference from the evidence that Defendants are responsible for removing the detectors.

their living habits in any way. Furthermore, there is no evidence that the landlord was aware of the issue prior to November 2023, and Mr. Cangiolosi testified credibly that the hole was patched after the housing inspection. In light of the foregoing, the hole in the ceiling constitutes neither a breach of warranty nor interference with quiet enjoyment.

Security Deposit

Turning to Defendants' security deposit claim, Defendants failed to demonstrate by a preponderance of the evidence that Plaintiff violated the security deposit law. Mr. Cangiolosi offered evidence that he deposited the security deposit in TD Bank at the time it was paid. The Court credits Mr. Cangiolosi's testimony regarding the manner in which the deposit was held and how he informed Defendants of its location. Although Plaintiff failed to pay interest on the security deposit until 2022, it cured the error on April 22, 2022 when it paid the accrued interest of $3.48. G.L. c. 186, 15B requires a landlord to "pay interest at the rate of five per cent per year, or other such lesser amount of interest as has been received from the bank where the deposit has been held." The Court is satisfied that the interest paid to Defendants was the amount of interest earned in the account.

To the extent that the landlord failed to strictly comply with other provisions of the security deposit law, Defendants are not entitled to damages because on August 31, 2023, Plaintiff returned the security deposit in full, along with accrued interest since the interest was last paid in 2022. There is no evidence that Defendants made a demand for the return of the deposit prior to February 6, 2024, when Defendants filed an amended answer and counterclaim alleging violation of the

security deposit law. Therefore, Plaintiff insulated itself from further liability by returning the funds when it did. The Court rules that Plaintiff is not liable for violation of the security deposit statute.[3]

Retaliation

Regarding the claim of retaliation, Defendants contend that their complaint to the Attorney General's office on January 27, 2023 created a presumption of retaliation when Plaintiff served the notice to quit on July 28, 2023. This argument fails for multiple reasons. First, the notice to quit was served more than six months after the complaint was made. Defendants' assertion that Plaintiff acted fraudulently by waiting one additional day after the expiration of the six-month period is not supported by the evidence. Moreover, there is no evidence that Plaintiff or Mr. Cangiolosi were provided actual notice that such a complaint was filed.

As for the content of the complaint, it does not expressly complain about living conditions other than a statement that "I addressed issues of the apartment being painted, not once in 10 years [sic]."[4] The Court infers that the reason Mr. Brown filed the complaint is that the summary process case that was pending at the time (prior to the instant case) was instituted by Belmont Pond LLC, not GMC Property Management LLC, and he questioned whether Belmont Pond LLC was a legitimate company. Lastly, the Court finds Mr. Cangiolosi's testimony credible that he had good reason to serve the notice to quit when he did; namely, no rent had been paid for four months, and that he elected to serve a no-fault notice to quit instead of a nonpayment notice to

[3] Although Defendants initially argued that certain evidence regarding the security deposit should not be admitted because it was not provided in discovery, Defendants subsequently waived the objection.
[4] The Court notes that Defendants entered into a court agreement only nine days earlier in which the landlord agreed to repaint the unit.

make it easier for Defendants to relocate. For all of these reasons, the Court rules that Defendants did not demonstrate by a preponderance of the evidence that the notice to quit was retaliatory.[5]

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 $10,725.00, plus court costs, shall enter for Plaintiff.
2. Execution may issue by written application after expiration of the ten day appeal period.

SO ORDERED.

DATE: April 11, 2024

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

cc: Court Reporter

[5] Defendants argue that, in the past, Plaintiff served notices to quit for nonpayment of rent but elected to send a no fault notice in this case. The Court finds nothing wrong.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5331

PAMELA HARLOW,

Plaintiff,

v.

TARA GAGNON,

Defendant.

ORDER

This matter came before the court for trial on April 8, 2024, at which the landlord appeared with counsel and the tenant appeared self-represented. After consideration of the evidence admitted at trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Pamela Harlow (hereinafter, "landlord") owns a six-unit dwelling in Easthampton, Massachusetts. The defendant, Tara Gagnon (hereinafter, "tenant") rents one of the units located therein at 2 Pleasant Green West (hereinafter, "premises") and has resided there since 2015. From 2015

through January 31, 2022, the rent was $995 and then it was increased to $1,200 beginning in February 2022. As of July 2024, the rent has been $1,250.

2. On or about September 14, 2023, the landlord had the tenant served with a rental period termination for no-fault, effective November 1, 2024. The landlord thereafter commenced a summary process action. The tenant filed an answer with defenses and counterclaims arising out of conditions of disrepair at the premises and alleged that the landlord destroyed her property (to wit a firepit).
3. **The Landlord's Claim for Possession and Rent:** Prior to the commencement of the trial, the parties stipulated to the landlord's *prima facie* case for possession and for $2,500 in unpaid rent. What remains for adjudication by the court are the tenant's defenses and counterclaims relating to alleged conditions of disrepair and her claim of property destruction. Depending on the outcome of that analysis, the court might address the defense arising out of G.L c.239, s.9.
4. **The Tenant's Claim of Breach of the Covenant of Quiet Enjoyment:** There have been conditions of disrepair at the premises at various times during the tenancy which included problematic smoke detectors, cracked linoleum flooring adjacent to the interior saddle of the front door, a drafty front door, and dangerous accumulation of debris and broken glass underneath and adjacent to the back deck.[1]
5. Based on credible testimony in addition to various texts between the parties, the court finds that some of these conditions (including the drafting front door and torn linoleum adjacent to the front door) have lasted for years without repair by

[1] The tenant alleged other conditions of disrepair but was unable to meet her burden of proof on those claims.

the landlord. The linoleum is a tripping hazard, and the non-weathertight door (recently fixed) caused the living room to be cold and was source of heating loss. The court also finds that in 2022 the smoke detectors were sounding without cause in the middle of the night on several occasions requiring assistance from the Fire Department, and despite the landlord attempting to make repairs, the reason that they have stopped malfunctioning is because the tenant is forced to vacuum them weekly. The landlord was also aware for a long time that the heater covers were in disrepair and with parts sticking out in a dangerous manner and has failed to repair same. Additionally, the former tenants that resided in the unit directly next to the premises vacated in the fall of 2023 and since that time there has been debris left under and next to the deck. The broken glass contained in that debris is dangerous and the landlord has neglected to clean it up.

6. Earlier this year, the landlord's husband Scott Harlow (who in charge of maintenance at the premises) dismantled a firepit which had been used openly by the tenant for years. Mr. Harlow explained that he was walking through the yard with an insurance agent who was alarmed by the existence of the pit. Mr. Harlow quickly, and without any notice to the tenant, threw the cinderblocks making up the perimeter of the firepit into a debris pile and the cinder blocks all broke apart. In fact, even after doing so, neither the landlord nor Mr. Harlow ever provided notice to the tenant of this event and never engaged in any follow up.
7. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of her acts causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c.

186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). In this instance, the Court finds the landlord's acts and omissions were knowing and inappropriate and rule that the landlord breached the tenant's covenant of quiet enjoyment by failing to address the conditions of disrepair discussed above for a protracted period of time and without notice nor process of any kind unilaterally destroyed the tenant's firepit as described above.

8. Having found a breach of the covenant of quiet enjoyment, the Court hereby awards the tenant three months' rent in accordance with G.L. c.186, s.14, totaling $3,750.

9. **Conclusion and Order:** Based on the foregoing, and in accordance with G.L.c.239, s.8A, judgment shall enter for the tenant for possession and for $1,250 in damages.

So entered this 11th 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. 24-SP-0631

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff

v.

GISELA CORREA QUILES ET AL.,

Defendants

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

This summary process case brought for nonpayment of rent came before the Court for a bench trial on April 12, 2024. Plaintiff (the "landlord") appeared through counsel. Defendants Gisela Correa Quiles and her daughter Daniella Martinez Correa ("the tenants") appeared self-represented.[1] Defendants reside at 4 Gerrish Court, Apt. 203, Springfield, Massachusetts (the "Premises").

The tenants stipulated to the landlord's prima facie case for possession, acknowledging receipt of the notice to quit and their failure to vacate after termination of the tenancy. The tenants did not file an answer.

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 $972.00 per month. The balance of unpaid rent through the date of trial is $12,363.00.[2] The tenants have not made a payment since

[1] Defendant Andrea Carrion Correa, Ms. Correa's daughter, did not appear.
[2] The Court accepted Plaintiff's rent ledger as a business record without objection.

April 2022. They assert no legal defenses for their failure to pay rent.[3] 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 $12,363.00, plus court costs, shall enter for Plaintiff.[4]

2. The execution shall issue by application following expiration of the ten-day appeal period.

SO ORDERED.

April 12, 2024

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

cc: Court Reporter

[3] The only reason given for the nonpayment is Ms. Correa's illness which, although unfortunate, is not a legal defense to payment. It appears that Ms. Correa does not ask her adult daughter's to contribute to the rent despite residing in the Premises with her.

[4] The Court rules that G.L. c. 239, § 15 does not apply because Defendants owe far in excess of the maximum amount they could receive by way of rental assistance (six months of the tenant's share, which in this case is a total of $5,832.00). Given that rent is based on household income, and given that Ms. Correa refused to ask her adult daughters to share in the rent, the Court finds that the nonpayment of rent was not due to a financial hardship.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0247

STEVEN F. TERESO, TRUSTEE OF THE REVOCABLE INDENTURE OF TRUST OF STEVEN F. TERESO ,	)	
Plaintiff	)	PRELIMINARY INJUNCTION
v.	)	(G.L. c. 139, § 19)
DANIEL TERESO and LISA TERESO,	)	
Defendants	)	

After hearing on the Plaintiff's Motion for Preliminary Injunction, the Court finds that the Plaintiff, having annulled and made void the Defendants' lease, has demonstrated a likelihood of success of the merits and that it may suffer irreparable harm absent an injunction. The Court allows the motion and orders as follows:

1. Twenty-four hours following service of this notice, the Defendants, as well as any guests, invitees, or other persons claiming right of access under the Defendant's occupancy, shall be enjoined and restrained:
   a. From entering or trespassing on the property located at 22 Archie Street, Chicopee, Massachusetts (the "Property"); and
   b. From in any way attempting to access said Property.
2. Twenty-four hours following service of this notice, the Defendants, as well as any guests, invitees, or other persons claiming right of access under the

Defendants' occupancy, shall vacate the Property immediately, and without any further delay or notice.

3. The Plaintiff shall be entitled to enter and secure the Property twenty-four hours following service of this notice, and may change the locks, as well as take any other measures it deems necessary or appropriate in securing the Property.
4. The Plaintiff shall not remove any personal property of the Defendants from the Property prior to the next hearing.
5. Any person aggrieved by this order may file an emergency motion to dissolve the preliminary injunction with service to counsel for the Plaintiff.
6. A hearing on the Plaintiff's request for a permanent injunction shall be scheduled for **April 23, 2024 at 9:00 a.m.**

SO ORDERED, this 12th day of April, 2024.

/s/ Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0636

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff

v.

EUSEBIO SOSA DISLA,

Defendant

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

This summary process case brought for nonpayment of rent came before the Court for a bench trial on April 12, 2024. Plaintiff (the "landlord") appeared through counsel. Defendant ("the tenant") appeared self-represented. Defendant resides at 100 Ashley Street, Apt 401, Springfield, Massachusetts (the "Premises").

The tenant stipulated to the landlord's prima facie case for possession, acknowledging receipt of the notice to quit and his failure to vacate after termination of the tenancy. The tenants did not file an answer.

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 $972.00 per month. The balance of unpaid rent through the date of trial is $13,234.00. The rent ledger indicates that the tenant has made periodic payments but failed to pay for numerous months from August 2022 to

the present.[1] He did not file an answer and the Court finds that he did not assert a viable legal defense.[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 $13,234.00, plus court costs, shall enter for Plaintiff.[3]

2. The execution shall issue by application following expiration of the ten-day appeal period.

SO ORDERED.

April 16, 2024

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

cc: Court Reporter

[1] The Court accepted Plaintiff's rent ledger as a business record without objection.
[2] The only explanation he gave at trial for not paying rent is that his adult daughter moved out of the household and the landlord did not notify him that he owed all of this money prior to the notice to quit.
[3] The Court rules that G.L. c. 239, § 15 does not apply because the tenant did not demonstrate that he has a pending application for rental assistance.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 05-CV-0005

TOWN OF LUDLOW, Plaintiff v. PAUL B. COCCHI, Defendant	INTERIM ORDER ON PLAINTIFF'S COMPLAINT FOR CONTEMPT

This matter came before the Court on April 12, 2024 for a hearing on Plaintiff's complaint for contempt. The Town of Ludlow (the "Town") appeared through counsel; Defendant Cocchi ("Mr. Cocchi") appeared self-represented.[1]

By way of background, on March 8, 2018, this Court found Mr. Cocchi in contempt of the Court's July 31, 2006 amended order requiring him to cease and desist from engaging in the storage and maintenance of business related vehicles on the premises at 312 Miller Street, Ludlow, Massachusetts (the "Premises") and from storing tree service equipment there. In the 2018 order, the Court permitted Plaintiff and/or its designees to enter upon the Premises and tow or cause to be removed all tree service and commercial vehicles after a minimum of 48 hours advanced written notice of the scheduled removal or towing.[2]

[1] The other named Defendant, GMAC Mortgage Corp., did not appear, but Plaintiff only seeks an order on zoning enforcement against Mr. Cocchi.
[2] It is not clear to the Court why the Town did not act upon the authority given it by the Court in 2018.

The Town contends that Mr. Cocchi continues to operate a business at the Premises, which is zoned for agricultural use only. Mr. Cocchi does not deny that he operates a business there, but asserts the Town has acquiesced to his activities by granting him a home business license. Because Mr. Cocchi does not contest the facts regarding his activities at the Premises, the only issue for the Court is whether the Town has consented to his continuing business operation or has changed its zoning bylaws to allow for the business to be conducted at the Premises.

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

1. Mr. Cocchi's oral motion for a jury trial is denied. He did not file an answer to Plaintiff's contempt complaint and this oral motion on the day of trial is without basis.
2. Mr. Cocchi's motion to vacate or dismissal is denied. None of the arguments set forth in the motion have merit.
3. Each party shall have until May 1, 2024 to submit written argument regarding Mr. Cocchi's right to conduct a business (Paul's Tree Service) and maintain commercial vehicles and equipment at the Premises. To be clear, the Court is not seeking evidence to demonstrate Mr. Cocchi's business activities at the Premises. Mr. Cocchi has not challenged the findings in the Notice of Violations dated May 26, 2023 attached to the Town's Verified Complaint for Contempt and there is no evidence to suggest that he appealed the violation notice or obtained a special permit. The Court only seeks legal argument as to whether the Town, based on its acts or omissions, can be deemed to have assented to his activities at the Premises

or amended its zoning regulations since the last court order in 2018 to allow his business to operate there.

4. The Court will rule on the papers unless it orders further hearing. If Mr. Cocchi fails to convince the Court that his activities at the Premises are permitted, the Court shall reiterate the sanctions set forth in its 2018 order, and will permit the Town to record a lien for the expenses reasonably incurred in accomplishing the Court ordered enforcement.

SO ORDERED.

April 16, 2024

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. **24H79CV000260**

Mobile Home Parks, Inc.
Plaintiff,

v.

Estate of James Walton
Defendant.

ORDERS ON PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF

On April 17, 2024, the Plaintiff appeared for hearing on the Plaintiff's ("Landlord") request for emergency ex parte Motion for Access. The Landlord appeared through counsel and the Defendant, Estate of James Walton ("Tenant"), did not appear. The Court (Adeyinka, J.) hereby ORDERED that:

1. On April 1, 2024, the Chicopee Fire Chief, Daniel Stamborski, sent the Plaintiff a Notice of Violation from the City of Chicopee (Chicopee) citing the property located at 1760 Westover Road, Lot 10, Chicopee, MA ("Property") with violations of the Fire Safety Code. *See* 527 CMR 1.00.
2. Chicopee required the Plaintiff to abate the issues at the Property within seven (7) days of their Notice of Violation.
3. The Defendant, James Walton, died on or about December 17, 2023.
4. The Plaintiff has done a due diligence search and represents that the decedent's sister, Mary Howard ("Howard") who lives in Arizona, would assist in taking care of the brother's affair.
5. As a result of the Notice of Violation, the Plaintiff and its agents are authorized to access the Property upon 48 hour written notice to Howard to inspect and determine the nature of the violations alleged by the Chicopee.

6. The Plaintiff is further authorized to abate the violations alleged by the Chicopee.
7. Plaintiff shall immediately serve a copy of this Order to Howard.
8. This Order shall become effective on Thursday, April 18, 2024.
9. The Clerk's Office shall schedule this matter for further review in 45 days.

So **ORDERED** on this April 17, 2024:

Benjamin O. Adeyinka

Hon. Benjamin O. Adeyinka
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0195

AMELIA ORTIZ,

Plaintiff

v.

HANATI LUBEGA,

Defendant

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

This civil claim for damages came before the court for a bench trial on February 2, 2024. Both parties were represented by counsel. Ms. Ortiz is a tenant of Ms. Lubega at 18 Lombard Street, Springfield, Massachusetts (the "Premises"). Ms. Ortiz alleges that Ms. Lubega engaged in retaliation and reprisal, committed a breach of the warranty of habitability by permitting conditions of disrepair in the Premises, interfered with her quiet enjoyment due to the defective conditions, engaged in discriminatory conduct and violated G.L. c. 93A.

I. Relevant Procedural Background

A. On July 19, 2022, Ms. Ortiz filed a request in this Court (docket no. 22CV0504) for an emergency order to compel Ms. Lubega to make repairs and pay her $2,000.00 in damages.

B. On the same date, July 19, 2022, Ms. Ortiz filed a small claims case against Ms. Lubega (docket number 22SC0077) seeking $2,000.00 for the same damages referenced in her request for an emergency motion. A small claims

trial took place on December 21, 2022.

C. On October 18, 2022, Ms. Lubega commenced a summary process action against Ms. Ortiz, docket number 22SP3667 ("First SP"). The notice to quit was dated September 1, 2022.

D. On March 10, 2023, this Court dismissed Ms. Lubega's claim for possession in docket number 22SP3667 and transferred Ms. Ortiz's counterclaims to the civil docket (docket number 23CV0195), which is the subject of this order.

E. On June 26, 2023, Ms. Lubega filed a new summary process case, docket number 23SP2818 ("Second SP"). The notice to quit was dated February 24, 2023.

F. On July 7, 2023, Ms. Ortiz's claims in this case (docket number 23CV0195) were consolidated with the Second SP case.

G. On August 29, 2023, a trial was held in the Second SP action. Ms. Ortiz did not appear. Judgment for possession and $2,937.85 in damages entered in favor of Ms. Lubega. Ms. Ortiz's claims for damages were not addressed. Issuance of the execution has been stayed pending Ms. Ortiz's ongoing housing search.

II. Claim and Issue Preclusion

Ms. Ortiz previously brought a small claims case for damages (docket number 22SC0077) based on conditions of disrepair in the Premises which went to trial on December 21, 2022.[1] The conditions-based claims in this case are substantially

[1] In the small claims case, Ms. Ortiz provided no evidence to support her claim for a specific amount of damages and judgment entered in favor of Ms. Lubega.

identical and the Court therefore rules that, based on the doctrine of res judicata, Ms. Ortiz is barred from seeking monetary damages for the claims based on defective conditions that existed as of December 21, 2022. She is not precluded from asserting claims relating to conditions that continued or arose after this date, nor is she precluded from asserting a claim for retaliation and reprisal under G.L. c. 186, § 18.

III. Findings of Fact

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. Ms. Ortiz began her tenancy with a former owner of the Premises on September 25, 2015.
2. Ms. Lubega became the owner on April 1, 2021.
3. Ms. Lubega first sent Ms. Ortiz a notice of termination dated April 30, 2021, and subsequently sent notices to quit on September 1, 2022 and February 24, 2023.
4. Ms. Ortiz has a Section 8 Housing Choice Program voucher.
5. At all relevant times, the contract rent has been $800.00 and Ms. Ortiz's share is $157.00 per month.
6. Ms. Ortiz is Spanish-speaking, and communication with Ms. Lubega was primarily done by her children. For purposes of this case, the Court finds that Ms. Ortiz's daughter, Ms. Montes ("Ms. Montes"), was the primary person of contact with Ms. Lubega.
7. The Premises suffered numerous conditions of disrepair about which Ms. Lubega knew and attempted to repair. Ms. Ortiz's subsidy provider (Way

Finders) withheld its portion of the rent between May 20, 2022 and October 12, 2022 and ultimately determined that it would abate the rent paid to Ms. Lubega by 5% for that period of time. Way Finders found the unit to be in compliance with housing standards as of October 13, 2022.

8. Ms. Montes contacted the City of Springfield Code Enforcement Department to complain about conditions in the Premises. The first complaint after Ms. Lubega purchased the Premises was made on August 11, 2021. At that time, the unit passed inspection and the case was closed.
9. Another complaint was made to Code Enforcement on October 21, 2022. The inspector found violations and ordered them to be corrected. The Premises passed re-inspection on November 8, 2022.
10. Ms. Ortiz made another complaint to Code Enforcement on March 2, 2023. The Housing Inspector visited on March 16, 2023 and found no violations.

IV. Conclusions of Law

Although the evidence shows that conditions of disrepair existed in the Premises during Ms. Lubega's ownership, as of November 9, 2022 the unit had passed housing inspections by both Way Finders and the Springfield Code Enforcement Department. Any claims for defective conditions prior to November 9, 2022 were known by the time of the small claims trial on December 21, 2022 and are therefore not considered in this case.

With respect to Ms. Ortiz's claims for defective conditions after December 21, 2022, the evidence shows that Code Enforcement inspected the Premises in March 2023 and found no violations. Plaintiff did not introduce any other evidence of

inspections that occurred after December 21, 2022. Ms. Montes testified as to insufficient hot water and broken heaters, as well as clogged toilets and a continuing mice infestation. She did not, however, prove by a preponderance of the evidence that such conditions were substantial code violations or significant defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim).

The testimony offered at trial by Ms. Montes and Ms. Ortiz relating to living conditions after December 21, 2022 was not specific or detailed as to time, duration or significance, and the Court found their testimony not to be credible. Based on the texts and numerous reports to housing agencies, Ms. Ortiz was well aware of how to assert her rights if she believed that the conditions of disrepair were significant, and the only evidence of such a complaint came in March 2023, at which time no code violations were found. With respect to the toilet problem, Ms. Lubega's plumber testified credibly that the clogs were caused by the tenants, and that nothing was wrong with the water or sewer lines. Ms. Lubega replaced one toilet twice and a different toilet once, despite her plumber finding no defects. The Court rules that Ms. Ortiz failed to prove by a preponderance of the evidence that Ms. Lubega is liable for breach of warranty or interference with quiet enjoyment based on bad living conditions.

Turning to Ms. Ortiz's allegation of retaliation and reprisal, G.L. c. 186, § 18 recites that a landlord who takes reprisals against a tenant for the tenant's complaint to a code enforcement agency is liable for damages of not less than one month's rent or more than three month's rent. § 18, first para. The receipt of notice of termination

of tenancy for no cause, as is the case here, creates a rebuttable presumption that such notice is a reprisal against the tenant for engaging in such activities. *See* § 18, second para.

Here, although there is no evidence that Ms. Ortiz contacted Code Enforcement within six months of the September 1, 2022 notice to quit,[2] Ms. Ortiz filed an emergency motion for repairs with this Court on July 19, 2022. Given that the relevant notice to quit is dated September 1, 2022,[3] a presumption of retaliation is created under these circumstances. In order to rebut the presumption, Ms. Lubega must prove by clear and convincing evidence that she had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of Ms. Ortiz's engaging in protected activities. *See* G.L. c. 186, § 18.

The Court finds that Ms. Lubega satisfied this requirement. Her relationship with Ms. Ortiz was fraught from the outset. Ms. Ortiz refused access for Ms. Lubega's pre-purchase inspection in 2021. Ms. Lubega hired a Spanish interpreter to coordinate access to the Premises and Ms. Ortiz hung up on them. After Way Finders did its housing quality inspection (which was required by Way Finders and not based on a complaint from Ms. Ortiz), Ms. Lubega and Ms. Montes engaged in contentious communications with Ms. Lubega regarding attempts to gain access for repairs. The Court finds Ms. Ortiz's denial that she ever declined access to lack credibility.[4]

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[2] The evidence shows complaints to Code Enforcement in 2021, October 2022 and March 2023.
[3] The notice of termination that forms the basis of this case is from February 2023, but it was served only after the September 2022 notice was found (or likely to be found) to be defective and thus relates back to the September 1, 2022 notice.
[4] Ms. Ortiz's response to claims that she refused access was simply to say "lies, lies, lies." She testified that the case workers from Way Finders were also lying about their inability to get her cooperation.

Ms. Lubega's testimony was supported by evidence showing that case workers from Way Finders were likewise frustrated with the lack of communication with Ms. Ortiz. Ms. Lubega testified credibly that her service providers were also unwilling to continue working at the Premises; for example, in one instance, Ms. Lubega's plumber, who was working in the Premises, went outside to get tools from his truck and Ms. Ortiz locked the door behind him and refused to let him reenter to work or collect his tools.

The evidence presented in this case demonstrates by clear and convincing evidence that Ms. Lubega had sufficient independent justification for terminating Ms. Ortiz's tenancy at the time she did. Therefore, the Court finds in favor of Defendant on Plaintiff's claim under G.L. c. 186, § 18.[5]

V. Order

Given the foregoing, and in light of the governing law, judgment shall enter for Defendant on all claims.

SO ORDERED.

DATE: April 17, 2024

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

cc: Court Reporter

[5] The Court dismisses Plaintiff's claims for unlawful discrimination and violation of G.L. c. 93A for lack of evidence.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5832

ISMARIE RODRIGUEZ,

Plaintiff

v.

KATHY RIVER AND KAYLA RIVERS,

Defendants

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

This summary process case brought for nonpayment of rent came before the Court for a bench trial on March 7, 2024. Plaintiff and Defendants appeared self-represented. Defendants rent a room in a single-family home located at 139 Pendleton Avenue, Springfield, Massachusetts (the "Premises").

Based on the stipulated facts, the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows: Defendants are tenants at will. Plaintiff served a notice to quit on November 21, 2023. Defendants continue to reside in the Premises. Rent is currently $800.00 per month (it was previously $500.00 per month when each Defendant rented a separate bedroom) and Defendants owe $9,600.00 in back rent.

Defendants were permitted to file a late answer prior to trial. The answer asserts that they have a pending rental application,[1] that they have no heat and that they do not have a

[1] Defendants failed to demonstrate, to the satisfaction of the Court, a pending application for emergency rental assistance. Therefore, G.L. c. 239, § 15 does not apply.

key to the main entrance of the house. At trial, however, they primarily complained about the lack of heat for the past few months. Plaintiff admitted that she has had problems with the heating system and is waiting to install a new boiler. She provided Defendants with space heaters to use in the meantime.

The Court finds by a preponderance of the evidence that Plaintiff's failure to furnish heat through a central heating system is a violation of G.L. c. 186, § 14. Defendants are thus entitled for actual and consequential damages or three month's rent, whichever is greater. *See* G.L. c. 186, § 14. Here, having not offered any evidence as to their actual and consequential damages, Defendants are entitled to statutory damages in the amount of $2,400.00.[2] Defendants did not prove that Plaintiff knew of the heating problems before they were in arrears in their rent, and they may not use such damages to defeat Plaintiff's claim for possession. *See* G.L. c. 239, § 8A.

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 $7,200.00, plus court costs, shall enter for Plaintiff.
2. The execution shall issue by application after expiration of the ten-day appeal period.

SO ORDERED.

DATE: April 17, 2024

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

cc: Court Reporter

[2] Defendants did not raise the issue about the absence of a front door key at trial. Their assertion that their circuit breakers trip regularly was not supported by any credible evidence.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0012

PAUL RUEL,

Plaintiff

v.

VU HO NGUYEN,

Defendant

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

This civil action for damages came before the court for a bench trial on March 5, 2024. Plaintiff ("Mr. Ruel") appeared self-represented. Defendant ("Mr. Nguyen") appeared with counsel. Defendants City of Springfield and Tony Nguyen are dismissed from the case.[1]

Based on the credible testimony and the other evidence presented at trial,[2] and the reasonable inferences drawn therefrom, the court finds as follows:

Mr. Ruel rented a room at 341 Oakland Street, Springfield, Massachusetts (the "Premises"), a single-family home owned and occupied by Mr. Nguyen. The room rented by Mr. Ruel was one of three rooms rented to unrelated individuals located in the basement of the home. Mr. Ruel moved in on June 7, 2023 by a verbal agreement with Mr. Nguyen's father. Rent was $500.00 per month. Mr. Ruel paid $1,000.00 for

[1] This case began as a complaint for a temporary restraining order filed by a self-represented litigant. The two parties that are being dismissed have had no part in this case.
[2] This trial resolves all matters between the parties related to Plaintiff's tenancy at the Premises. Two other cases, 23CV0878 and 245C0006, were consolidated into this matter and a related summary process case, 235P5835, was dismissed on January 16, 2024 (before an answer had been filed) when possession became moot.

first and last month's rent, and paid an additional $500.00 for July and $500.00 for August of 2003. In total, he paid $2,000.00 for rent.[3]

On October 17, 2023, Mr. Ruel filed a request with this court for an emergency order. He sought repairs and an inspection of the basement due to what he believed to be unsafe electrical wiring. On October 24, 2023, Mr. Nguyen served Mr. Ruel with a no fault notice to quit. Mr. Nguyen served Mr. Ruel with a summary process summons and complaint on December 4, 2023 and subsequently filed the case in Springfield District Court. On December 21, 2023, Mr. Ruel transferred the eviction case to this court.

On December 11, 2023, another tenant living in the basement at the Premises, Gloria Skerrett, obtained an ex parte Abuse Prevention Order against Mr. Ruel, who was removed from the Premises by law enforcement the same day. Mr. Ruel stayed in a hotel for a period of time as he was unable to return to the Premises. On approximately December 26, 2023, after the Abuse Prevention Order was dissolved, Mr. Ruel attempted to return to the Premises and found that the locks had been changed. He filed a request for an emergency order for access and was able to return to his room after Mr. Nguyen provided him with keys.

Mr. Ruel contacted the Springfield Code Enforcement Department regarding his safety concerns, and a housing inspection took place on December 27, 2023. The City's housing inspector deemed the basement rentals to be unfit for human habitation and condemned all of the basement rental units. Mr. Ruel was ordered to

[3] Although he only has receipt for the initial $1,000.00 payment, the court credits his testimony with respect to the other payments. Given that the payments were made to Mr. Nguyen's father, who moved out of the country and was not present at trial, Mr. Nguyen has no first-hand knowledge disputing Mr. Ruel's testimony.

vacate immediately. With no place to go, Mr. Ruel did not immediately leave the Premises. On January 5, 2004, Mr. Nguyen contacted law enforcement to have Mr. Ruel removed from the Premises.

After Mr. Ruel filed a request for an emergency order. Mr. Nguyen was ordered to provide him with alternative housing. *See* 410 CMR 900(E). Mr. Nguyen complied with the court order. During a court hearing on January 10, 2024, Mr. Ruel surrendered possession of the unit, but the alternative housing order was extended. After February 5, 2024, when the order for alternative housing expired, Mr. Ruel spent approximately one week sleeping in his car prior to securing new housing.

Mr. Ruel claims that he should be refunded all of the rent he paid to the landlord because it was an illegal dwelling unit. He also seeks reimbursement for the hotel he paid for in December after the Abuse Prevention Order was obtained by Ms. Skerrett, claiming that Mr. Nguyen (who accompanied Ms. Skerrett to District Court for the hearing) was behind it. He also seeks reimbursement for lost food, travel and moving expenses due to the condemnation. Lastly, he contends that the eviction case was brought in retaliation for his appearance in court regarding the electrical issues. By way of counterclaim, Mr. Nguyen seeks $3,000.00 in unpaid rent, based upon a claim that no rent was paid for the six months from July 2023 through December 2023.

The court rules that the fair rental value of an illegal dwelling unit is zero, and therefore Mr. Ruel is entitled to a return of the $2,000.00 he paid for rent. Because he owes no rent, Mr. Nguyen's counterclaim for unpaid rent is dismissed. With respect to Mr. Ruel's claim for reimbursement of the hotel expenses incurred in December

2023 after issuance of the Abuse Prevention Order, the court finds no credible evidence to support Mr. Ruel's assertion that Mr. Nguyen was behind Ms. Skerrett's request for the order. Nor did the court find any evidence to support Mr. Ruel's claim for lost food and his travel and moving expenses.

As for Mr. Ruel's claim for retaliation, Massachusetts law provides that a landlord who takes reprisals against a tenant for seeking to enforce the tenant's housing rights 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 ... 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 ... [which] presumption shall be rebutted only by clear and convincing evidence that such person's action was not a reprisal against the tenant and that such person had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of [the tenant's protected activities]." *Id.*

Mr. Nguyen served Mr. Ruel with a no fault notice to quit approximately one week after Mr. Ruel filed a request for an emergency order in Housing Court. In his testimony at trial, Mr. Nguyen provided conflicting testimony as to his reason for terminating Mr. Ruel's testimony when he did. He said that his father rented to Mr. Ruel and that he (Mr. Nguyen) did not know him. He said that Mr. Ruel treated other tenants poorly, and that he had a guest that Mr. Nguyen did not like the look of, but he offered no evidence or testimony in support of his generalized concerns. To

the extent that Mr. Nguyen was referring to Mr. Ruel's conflict with Ms. Skerrett, the Abuse Prevention Order was issued in December, 2023, two months after the notice to quit was served. The Court finds that Mr. Ruel did not demonstrate by clear and convincing evidence that he had independent justification for serving Mr. Ruel with a notice to quit when he did. As damages for reprisal and retaliation, the Court awards Mr. Ruel damages equal to three months of rent at a rate of $500.00 per month.

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

1. Judgment shall enter for Plaintiff in the amount of $3,500.00,[4] without court costs.

2. Defendant's counterclaim is dismissed.

SO ORDERED.

DATE: April 17, 2024

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

cc: Court Reporter

[4] This figure is the sum of the refunded rent ($2,000.00) and retaliation damages ($1,500.00).

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-248

ERNEST BROUILLETTE,

Plaintiff,

v.

REBECCA HAYWOOD,

Defendant.

ORDER

After hearing on April 11, 2024, on the plaintiff-tenant's motion for injunctive relief, at which the parties appeared self-represented, the following order shall enter:

1. The defendant is the new owner of the subject property, and the plaintiff resides in the premises with his girffriend---stemming from a tenancy with the former owner of the property.
2. The property has been condemned by the city. It is unclear from the current record exactly the basis for the condemnation and whether it is due to conditions for which the owner is responsible, or the tenant, or both.

3. The defendant landlord shall provide a pet-friendly hotel for the tenant's household starting the evening of April 11, 2024, and for each subsequent night until the condemnation is lifted by the City or by leave of court.
4. The defendant owner may change the locks on the premises but must allow the tenant and his roommate (girlfriend) unfettered access to the premises during the daylight hours of 9:00 a.m. and 5:00 p.m.
5. The tenant and his girlfriend shall utilize such access to respond to that part of the city's citations that are directed at them.
6. The owner shall make all corrections and repairs that are required of them by the City in order to have the condemnation lifted. For each time that the owner wishes to enter the premises for repairs, she must notify the tenant.
7. This matter shall be scheduled for further hearing on **Thursday, April 18, 2024, at 2:00 p.m.**

So entered this 18th 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-SP-5512

IRENE HOPP AND STEPHEN HOPP,

Plaintiffs

v.

KIMBERLY LONGO AND GALEN WOODWARD,

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 29, 2024. Plaintiffs appeared through counsel. Defendants appeared self-represented. Defendants reside at 480 Dipping Hole Road, Wilbraham, Massachusetts (the "Premises").

On the day of trial, the Court allowed Defendants to file a late answer. The same answer was filed in a previous case between the parties (docket number 23SP2592) that was voluntarily dismissed by Plaintiffs. Because Plaintiffs were aware of the claims asserted by Defendants, they did not object to allowing the answer to be filed in the instant case.[1] Prior to trial, the Court permitted Plaintiffs' oral request to amend the complaint to add unpaid rent given that Defendants were asserting defenses and counterclaims.

[1] The Court notes that the defenses about defects in the notice asserted in the answer in docket number 23SP2592 were addressed when Plaintiffs voluntarily dismissed that case and served a new notice to quit that forms the basis of the instant action.

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

1. Defendants received the notice to quit dated August 24, 2023. The notice to quit terminated the tenancy as of November 1, 2023.
2. When Defendants took possession of the Premises in 2022, monthly rent was $1,250.00. The rent increased to $1,350.00 as of August 2022. Defendants paid the new amount through April 2023. No rent has been paid after April 2023.[2] As of the date of trial, no rent has been paid for the previous ten months, leaving a balance due of $13,500.00 through February 2024.
3. As of November 28, 2023, Mr. Woodward was incarcerated and therefore was no longer residing in the Premises; however, he has never surrendered legal possession.
4. Defendants primary complaint about the living conditions at the Premises involves a substance that they believed to be mold throughout areas of the Premises, including the sunroom, bathroom and basement.
5. In response to Defendants' complaints about mice and spiders in the Premises, Plaintiffs sent a pest control contractor in 2020 and 2022.
6. As a result of water leaks in the bathroom, a significant amount of repair work was undertaken by Plaintiffs in the fall of 2003, after the notice to

[2] Plaintiff attempted to increase the rent to $1,500.00 per month as of November 2023. This new amount was neither agreed upon nor paid, so the Court deems the monthly rent to be $1,350.00 for purposes of this case.

quit was served on Defendants. Plaintiffs paid for Defendants to spend two nights in a hotel while the plumbing was being repaired.

7. Defendants did not contact the Board of Health or other inspectional service to document any violations of State housing codes.

In order to be entitled to damages resulting from substandard living conditions, Defendants have the burden of proving that the problems in the Premises constituted substantial code violations or significant defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim). The evidence presented by Defendants does not establish either. The Court cannot simply accept Defendants' statements that the substance in the sunroom, bathroom and basement was harmful. They did not provide the Court with the results of any scientific tests or expert testimony to establish that the dark substance found in the Premises was harmful. They ask the Court to find that they suffered adverse health consequences as a result of the substance, but produced no evidence to link their health problems with the conditions in the Premises.

Moreover, Defendants failed to explain the significance of the conditions of disrepair or describe the impact on their tenancy. For example, although they notified Plaintiffs about mice from time to time, Plaintiffs arranged for exterminations and Defendants did not testify credibly that the treatments were ineffective or that the mice problem was severe and had an adverse impact on the rental value of the Premises. With respect to the bathroom renovations, the parties

agree that the work was necessary but, according to Ms. Longo, Plaintiffs completed the work "pretty quickly." Without more, the Court has an insufficient basis to determine what, if any, rent abatement is appropriate as a result of the conditions of disrepair in the Premises. Therefore, the Court finds in favor of Plaintiffs on Defendants' counterclaims.

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

1. Judgment for possession and $13,500.00 in damages, plus court costs, shall enter in favor of Plaintiffs.[3]
2. Execution shall issue by written application after expiration of the 10-day appeal period.

SO ORDERED.

DATE: April 18, 2024

By: _____
Jonathan J. Kane, First Justice

cc: Court Reporter

[3] G.L. c. 239, § 15 does not apply as the tenancy was not terminated solely for nonpayment of rent.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP000584

Mitchell Nadeau and Darayus J. Gardin,	
PLAINTIFFS	
v.	**FINDINGS OF FACT, RULINGS OF LAW AND ORDER**
Shawn Lynch and Lisa Greer,	
DEFENDANTS	

This summary process (eviction) action was before the Court (Adeyinka, J.) for trial[1] on April 10, 2024. The Plaintiffs, Mitchell Nadeau and Darayus J. Gardin ("Plaintiffs"), seek to recover possession of 41 Southwick Street, Unit #2, Chicopee, MA (the "Property") from the Defendants, Shawn Lynch and Lisa Greer ("Defendants"), based on a cause termination of a tenancy at will. The Defendants[2] appeared at trial and represented themselves. Plaintiffs were represented by counsel. The Defendants did not file an Answer[3] citing defenses.

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 issues these findings of fact, rulings of, law and the ensuing Order as follows:

FINDINGS OF FACT

The subject Property is a two-family home, and the Defendants reside in Unit #2, which is located on the second floor. The Defendants unit is a three-bedroom apartment and at the time of

[1] On March 26, 2024, both parties appeared for the original Tier I mediation, where they were unable to resolve this matter through an agreement.
[2] At the trial, Shawn Lynch was not present, but in the interest of judicial economy, the Plaintiffs' counsel did not pursue a Default Judgment against Mr. Lynch.
[3] In this caused based eviction, counterclaims are not available to the Defendant. *See* G.L. c. 239 § 8a

trial Unit #1, which is located on the first floor, was unoccupied. On November 7, 2022, the Plaintiffs became the owner of the Property. *See* **Quit Claim Deed at Plaintiff's Exhibit #1**.

Prior to the Plaintiffs' purchase of the property, the Defendants resided at the premises. In December 2022, the Defendants executed a lease with the Plaintiffs. *See* **Pretrial Stipulation;** *see also* **Lease at Plaintiff's Exhibit 2.** The current use and occupancy/rent is $1,100.00 per month. *See* **Pretrial Stipulation;** *see also* **Lease at Plaintiff's Exhibit 2.** On December 29, 2023, Deputy Sheriff Kenardo Douglas served a legally sufficient notice to quit on Defendants, terminating the tenancy as of February 1, 2024. The notice to quit alleged, among other things, that the Defendants breached their lease agreement by: 1) allowing unauthorized occupants to reside at the premise; 2) causing the gas to be disconnected due to nonpayment; 3) using controlled substances or possessing drug paraphernalia; 4) causing water damage to the Property; 5) causing waste to Property; and 6) breaching the quiet enjoyment of other tenants. *See* **Notice to Quit, at Plaintiff's Exhibit #3.** At trial, the Plaintiffs conceded that causing water damage to the Property and causing waste to the Property are the prevailing reasons they wish to pursue their claim for possession. The notice to quit further alleged that the Defendants owed $15,400.00 in rental arrearages from January 2023 to February 2024. Defendants acknowledged receipt of the notice to quit.

At trial, the Owner/Property Manager, Mitchel Nadeau ("Nadeau") testified that he has been the Property manager since December 2022. Nadeau also testified that he has been a general contractor for approximately 20 years. Nadeau testified that the Defendants have not paid use and occupancy since August 2023, and have a balance owed of approximately $9,900.00. *See* **Pretrial Stipulation;** *see also* **Rent Ledger at Plaintiff's Exhibit 4.** At the trial, the Defendants did not dispute that they owe $9,900.00 in unpaid rent.

Nadeau also testified credibly that in May 2023 the Defendants portable dishwasher[4] caused extensive flooding to the first-floor apartment because dishwasher had used excessive

[4] The Defendants owned the portable dishwasher, prior to the Plaintiffs purchasing the premises. Maintenance of the dishwasher was the responsibility of the Defendants.

water pressure, in violation of the lease. Nadeau further testified that the flooding caused damage to the first-floor ceiling, sheet rock and wood. Nadeau testified credibly that he had provided several notices to the Defendants regarding the proper use of the portable dishwasher, but they continued to use the portable dishwasher in a manner that continued to cause damage to the first-floor unit. The Defendants did not contest the fact that extensive water damage had occurred, because of their portable dishwasher. Nadeau also testified that on multiple occasions the Defendants violated the terms of their tenancy by causing the garage, in which the trash receptacles are stored, door to be left open attracting rodents (i.e. squirrels and racoons). The Defendants also conceded this fact at trial.

RULING OF LAW

In this "cause" eviction, a landlord bears the burden of proving – by a fair preponderance of admissible testimonial and/or documentary evidence – the causes cited in the notice to quit. The landlord's proof is confined to events described in the notice to quit. *See e.g.* Roseman v. Day, 345 Mass. 93 (1962). Matters outside the notice to quit are not admissible as reasons to terminate the tenancy. This Court finds that the grounds cited in the notice to quit are consistent with the provisions in the Lease. Therefore, this Court finds that the notice was legally sufficient to terminate the Defendants tenancy upon proof of one or more of the causes.

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Plaintiff proved the cause stated in the notice to quit, specifically that the Defendants committed waste and caused extensive water damage to the first floor unit; (ii) the Defendants have not paid use and occupancy since August 2023, and have a balance owed of approximately $9,900.00; and (iv) the Defendant remain in possession of Unit #2 after being served a legally sufficient notice to quit.

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 $9,900.00, plus court costs in the amount of 236.30 totaling 10,361.04.
2. Issuance of the execution shall be stayed until June 30, 2024[5], on the conditions that:
    a. The Defendant pay use and occupancy in the amount of $1,100.00; per month before the fifth of each month for April[6], May and June 2024 and abide by the terms of the lease;
    b. The Defendant shall continue to make reasonable efforts to locate and secure replacement housing 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 this Order, Plaintiff may file a motion to issue the execution. If the Defendant makes the required payments, they shall vacate the Premises on or before July 1, 2024, leaving the Premises in broom clean condition and returning all keys. If the Defendant has not vacated voluntarily as of July 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
Benjamin O. Adeyinka
Associate Justice

April 18th, 2024

cc: Stanley Komack, Esq.
Shawn Lynch and Lisa Greer
Court Reporter

[5] 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 Defendants finds suitable housing.
[6] As a result of the date of this Order, the Defendant shall pay April 2024 use and occupancy on or before April 30, 2024.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-SP-3817
SPRINGFIELD HOUSING AUTHORITY, PLAINTIFF	)	
v.	)	ORDER
CARMEN ALBERTORIO, OVIDIO BURGOS, AND ADRIEN BURGOS, DEFENDANTS	)	

This for-cause summary process case came before the Court for the second day of a bench trial on April 18, 2024. After Plaintiff put on its case in chief, Defendants made a motion for judgment, claiming that Plaintiff failed to provide the allegations set forth in the notice to quit. The Court has taken the motion under advisement and enters the following order:

1. Within three weeks, Plaintiff shall file and serve a brief supporting its argument that Adrien Burgos's registration as a sex offender prohibits him from being present at his parent's unit at 25 Saab Court, Apt. 502, Springfield, Massachusetts. It shall submit with the brief an affidavit attaching evidence of Adrien Burgos' current status as a sex offender.
2. Within two weeks thereafter, Defendants, with the assistance of the guardian ad litem appointed for his parents, may file a brief in response.

3. After reviewing the submissions, if the Court denies the motion for judgment, it shall schedule another day of trial to hear Defendants' defenses to Plaintiff's claim for possession.

SO ORDERED.

/s/ Jonathan J. Kane

DATE: April 18, 2024

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERNDIVISION
SUMMARY PROCESS
NO. 20H79SP000439

WELLS FARGO BANK, N.A.

Plaintiff

VS.

NICHOLAS KALOGERAS and EUGENIA KALOGERAS,

Defendants

Order

This matter came before the court for hearing on April 17, 2024. The plaintiff appeared through counsel and the defendants appeared pro se. This case involves a post-foreclosure claim for possession of a residential dwelling asserted by the plaintiff against the former owners.

On April 15, 2022 judgment entered for the plaintiff on its claim for possession. The defendants filed a timely appeal. In an assented to order entered on May 25, 2022, the appeal bond was waived, and the defendants were required to pay the plaintiff $1,000.00 per month for their continued use and occupancy of the property during the pendency of the appeal. The plaintiff's attorney agreed to hold the use and occupancy payments in escrow. The defendants complied with their obligations under the payment order. As of April 17, 2024 the plaintiff's attorney was holding $23,000.00 in escrow. This amount represented the defendants' use and occupancy payments through April 2024.

In an unpublished Rule 23.00 memorandum and order entered on February 8, 2024 the Appeals Court affirmed the April 15, 2022 judgment for possession in favor of the plaintiff (22-P-989). On March 8, 2024 the Appeals Court issued its Rescript, and the matter was remanded to the Housing Court to address the remaining post-appeal issues.

On March 25, 2024 the plaintiff filed a *Motion to Issue Execution for Possession and Authorize Release of Funds Held by Plaintiff's Counsel.* Since the judgment is now final with all appeals having been resolved, the plaintiff's motion is **ALLOWED.**

Accordingly, it is **ORDERED** that:

1. Execution for possession shall issue on June 1, 2024; however, the plaintiff shall not levy on the execution until on or after July 1, 2024.
2. During the period from April through June 2024 the defendants must pay the plaintiff **$1,000.00** for their continued use and occupancy of the property. Each payment shall be made by the first day of each month. The defendants shall continue to be responsible for the payment of their utility bills (including electricity and oil/gas for heat and hot water) while they remain in possession. The defendants must make each monthly payment in the form of a personal check, money order or bank check payable to ***Wells Fargo Bank, N.A.,*** and delivered via first class mail to ***Sean R. Higgins, Esq.*** at ***K&L Gates LLP., 1 Congress Street, Suite 2900, Boston, MA 02114***. Attorney Higgins may release each payment at the plaintiff's direction without further order of the court. If the defendants vacate the property after the first of day of the month (April, May or June) they shall be obligated to pay for their use only on a per diem basis measured from the first day of the month through the date on which the vacate. The defendants shall not be obligated to make use and occupancy payments for any month or portion of a month after June 2024.
3. If the defendants fail to make any one use and occupancy payment when due the plaintiff may file a motion requesting the immediate issuance of and right to levy upon the execution.
4. The court-ordered post-judgment escrow order pertaining to use and occupancy payments is **VACATED**. Attorney Higgins may disburse the **$23,000.00** formerly held in escrow at the plaintiff's direction without further order of the court.

SO ORDERED this 18th day of April 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-4359

NAVJIWAN FULLER,

Plaintiff

v.

MOLAVEN DUARTE,

Defendant

ORDER FOR ENTRY OF JUDGMENT

This motion for entry of judgment came before the Court for an evidentiary hearing on March 7, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. A representative of the Tenancy Preservation Program ("TPP") appeared by Zoom.[1] Defendant resides at 238 Lyman Street, First Floor Holyoke, Massachusetts (the "Premises").

By way of background, the case was scheduled for trial on November 28, 2023. In lieu of trial, the parties reached a binding agreement that was reviewed on the record and signed by a judge (the "Agreement"). In relevant part, the Agreement required Defendant not to interfere with the quiet enjoyment of other occupants of the building, to observe quiet hours between 10 p.m. and 8 a.m., and to dispose of her trash in a sanitary manner.

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

[1] The TPP representative indicated that the tenancy is unsustainable and made a number of referrals for Defendant for assistance with relocating.

Plaintiff demonstrated by a preponderance of the evidence that Defendant has engaged in behavior that constitutes a material violation of the Agreement. The evidence shows that Defendant has hosted groups of people late at night and has created excessive noise after 10 p.m. on numerous occasions. Her justification that the second floor tenant often gets up in the nighttime to pick up her husband from work and therefore should not be bothered by the noise is not a viable defense. Her explanation that she has a difficulty gauging the volume of her music and her speaking voice was not supported by any evidence and lacks credibility. Defendant's friend, who she considers like a brother and by her own admission is actively using drugs, is shown on video using and then leaving behind a hypodermic needle in the common area that the upstairs tenant (and her children) use regularly. The evidence clearly supports Plaintiff's motion for entry of judgment.

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

1. Judgment for possession shall enter for Plaintiff.
2. The execution shall issue by application after expiration of the ten-day appeal period.

SO ORDERED.

DATE: April 19, 2024

By: /s/ 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. 24-CV-0220

HOUDINI REALTY LLC,

PLAINTIFF

v.

ALONZO WILLIAMS, ET AL.,

DEFENDANTS

ORDER TO VACATE OR SHOW CAUSE

This matter came before the Court on April 19, 2024 for further hearing on Plaintiff's motion for injunctive relief. Mr. Williams did not appear. He was served with a court order on April 2, 2024 requiring him to cease permitting unauthorized occupants to remain in the premises located at 162 Fort Pleasant Street, 2R, Springfield, Massachusetts (the "Premises") and to disclose to Plaintiff the names of all persons residing there. A capias (civil arrest warrant) issued for his appearance today, but again he failed to appear. In light of the foregoing, the following order shall enter:

1. All individuals other than the authorized tenant, Alonzo Williams, shall vacate the Premises within 72 hours following service of this notice at the Premises.
2. If any individuals believe they have the right to reside at the Premises, they must file a motion within the 72-hour period and show cause why the Court should not order them to immediately vacate the Premises.

SO ORDERED.

April 19, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4364

WOBURN 3 STEP, LLC,

Plaintiff,

v.

TROVAN HILLMAN,

Defendant.

ORDER

After hearing on April 16, 2024, at which both parties appeared through counsel, the following order shall enter:

1. For the reasons stated on the record which included learning from Ms. Luna of Way Finders, Inc. (who joined the hearing on Zoom) that the tenant's RAFT application was "timed out" due to the landlord's failure to engage in the application process, the tenant's motion to stop a physical eviction scheduled for April 16, 2024, is allowed.
2. The tenant paid the landlord $1,000 in money orders during the hearing.

3. The tenant shall also pay $500 additional by the end of April 2024 towards the costs incurred by the landlord for scheduling and cancelling the levy on the execution.
4. Thereafter, beginning in May 2024, the tenant shall pay his rent in full and timely plus an additional $300 per month by the 15th of each month until the arrearage balance is $0. This second payment each month should be viewed by RAFT as a repayment plan for any rent arrearage above and beyond what RAFT might pay.
5. The tenant shall reapply for RAFT and the landlord shall cooperate with said application process.
6. The court notes that Attorney Chavin filed a full appearance on behalf of the tenant. The landlord's attorney shall immediately cancel the physical eviction.

So entered this 19th day of April, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
NO. **24SP561**

ANGELIKA RODRIGUEZ
Plaintiff[1]

VS.

AMANDA WALMSLEY, IVAN MONTANEZ, BENEZA COLON, CANDIDA MALDONADO
Defendants[2]

This matter came before the court on April 22, 2024, on Defendants, Beneza Colon and Candida Maldonado, Motion to Dismiss (Paper #15). Plaintiff appeared self-represented. Defendants, Beneza Colon and Candida Maldonado appeared represented by counsel. After hearing, the Court orders as follows.

1. Defendants, Beneza Colon and Candida Maldonado, Motion to Dismiss (Paper #15). is **ALLOWED.**
2. Defendants, Amanda Walmsley and Ivan Montanez signed an Agreement and are vacating by June 1, 2024. They waived their argument to have matter dismissed based on inconsistent grounds from Notice to Quit and Summons and Complaint.
3. The Summons and Complaints states cause grounds as the basis for the eviction. (Paper #1). The Notice to Quit to terminate a tenancy at will. However, the summons failed to incorporate the no-fault Notice to quit. Given the inconsistent grounds asserted in Summons and Notice to Quit, the case must be dismissed as Defendants Colon and Maldonado.
4. Dismissed without prejudice as to Defendants Beneza Colon and Candida Maldonado only.
5. Defendants' Answer and Counterclaims are to be transferred to the civil docket.

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[1] As used herein, the term "Plaintiff" refers to all persons identified in the caption on the line marked "Plaintiff." [2] As used herein, the term "Defendants" refers to all persons identified as in the caption on the line marked "Defendants."

SO ORDERED

Sergio E. Carvajal

SERGIO E. CARVAJAL, J.
HOUSING COURT

April 22, 2024

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4025

ALOYSIUS ALFRED,

Plaintiff,

v.

AUSTIN COLON ALICEA,

Defendant.

ORDER

After hearing on April 18, 2024, on the landlord's motion to amend judgment and to extend execution, at which both parties appeared self-represented, the following order shall enter:

1. On December 20, 2023, the landlord received $6,073 through the RAFT program. This amount is equal to all the rental arrearage through December 2023 ($5,850) plus $223.52 in court costs.

32 W.Div.H.Ct. 131

2. As such, the underlying balance of unpaid rent and costs in this non-payment of rent matter were paid in full, the balance was $0, the motion is denied, and the case is hereby dismissed.
3. The landlord was informed that unpaid rent in January 2024 (after the balance was $0) or thereafter may be subject of another eviction action in the future.

So entered this 23 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. **23H79SP005729**

Dsz Management, LLC, PLAINTIFF v. Colleen Ayers, DEFENDANT	**FINDINGS OF FACT, RULINGS OF LAW AND ORDER**

This summary process action was before the Court (Adeyinka, J.) for trial on April 18, 2024. Plaintiff, Dsz Management, LLC ("Plaintiff/Landlord") seeks to recover possession of 53 Chase Avenue, 2nd floor, Springfield, MA (the "Premises") from Collen Ayers ("Defendant/Tenant") based on a no-fault termination of her tenancy at will. At the trial, the Plaintiff was represented by counsel. The Defendant was self-represented at trial.

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

BACKGROUND

The Premises is a multifamily home in which the Defendant occupies the 2nd floor unit. *See* **Pretrial Stipulation.** Plaintiff is the owner of the Premise. Both parties agree that the rent is $650.00 per month. *See* **Pretrial Stipulation.** On October 18, 2023, the Plaintiff served a no-fault notice to quit on Defendant, terminating her tenancy. *See* **Notice to Quit, at Plaintiff's Exhibit #2.** On December 18, 2023, the Plaintiff filed this summary process eviction with the Court and a First-Tier Court event was scheduled for January 30, 2024. *See* **Docket.** On January 30, 2024, Plaintiff, through counsel, only appeared at the First-Tier Court event and as a result, a Default

Judgment entered against the Defendant. *See* **Docket Entry at No. 7.** On February 9, 2024, the Defendant filed her Motion to Vacate Default, and a hearing was scheduled for March 13, 2024. *See* **Docket Entry at No. 9.** On March 5, 2024, the Defendant filed her Motion for Late Answer and Discovery. *See* **Docket Entries at Nos. 11-13.** On March 13, 2024, the Court Allowed the Defendant's Motion to Vacate Default, her request to File Late Answer and Discovery[1]. A trial was scheduled for April 18, 2024.

At trial the Defendant essentially conceded to the Plaintiff's claim for possession and did not present evidence to support her defenses. However, the Defendant asked the Court to provide her with time to vacate the unit. The Court will liberally construe the Defendant's request for more time under G.L. c. 239, § 9-13.

FINDINGS OF FACT AND RULINGS OF LAW

On October 18, 2023, at the direction of the Plaintiff, Constable Robert Del Pozzo, served a legally sufficient notice to quit on the Defendant, terminating the tenancy. Defendant acknowledged receipt of the notice to quit. The Plaintiff, through the Property Manager, Mr. Zhang testified that the Defendant had not paid rent since July 2023. Mr. Zhang also introduced a current rent ledger into evidence, which is kept in the ordinary course of the Plaintiff's business, that showed a current balance of $5,850.00. *See* **Plaintiff's Exhibit 1.** Accordingly, the Court finds that the Plaintiff introduced sufficient evidence to satisfy its prima facie case for possession and damages in the amount of $5,850.00.

As stated above, the Defendant did file an Answer asserting defenses and counterclaims, but at the trial she did not present evidence or proof to support the claims represented in her Answer. Moreover, the Defendant conceded to the Plaintiff's claim for possession. Because Defendant failed to present any legally cognizable defenses, Plaintiff must prevail on its case to recover possession.

[1] Before the trial commenced, the Parties both agreed that Discovery was completed.

With respect to Defendant's oral request for a stay pursuant to G.L. c. 239, §§9-13, the Court finds that Defendant is experiencing severe health issues and she testified credible to her current chemotherapy treatments. The Court is sympathetic to the Defendant's request for more time given her current medical condition. As a result, the Court will exercise its equitable authority to stay the issuance of the Execution through June 30, 2024, contingent on use and occupancy payments of $700 per month due and payable before the 10th of the month beginning May 1, 2024.

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Plaintiff terminated the Defendant's tenancy pursuant to the relevant laws and statute, as referenced above; (ii) the Defendant has a current rent balance of $5,850.00; (iii) the Defendant will use due and reasonable effort to secure other housing, and (iv) the Defendant's application for stay is made in good faith and she will comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, §10.

ORDER FOR JUDGMENT

Based upon foregoing, and considering the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession and unpaid rent in the amount of $5,850.00 plus court costs in the amount of $ 222.25
2. Issuance of the execution shall be stayed until June 30, 2024, on the conditions that:
   a) The Defendant shall continue to pay all use and occupancy in the amount of $200.00; per month before the tenth of each month for May 2024 and June 2024 pursuant to G.L. c. 239, §11.
   b) The Defendant shall continue to make reasonable efforts to locate and secure replacement housing 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 Defendant fails to make the required payments, Plaintiff may file a motion to issue the execution. If Defendant makes the required payments, they shall vacate the Premises on or

before June 30, 2024, leaving the Premises in broom clean condition and returning all keys. If Defendants have not vacated voluntarily as of June 30, 2024, Plaintiff may apply in writing for issuance of the execution.

SO ORDERED.

Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice

April 23, 2024

cc: Attorney Richard Herbert
Colleen Ayers
Court Report

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 24-CV-0277
PATRIOT PROPERTY MANAGEMENT GROUP, INC., PLAINTIFF v. KARL VINCENT, DEFENDANT	ORDER FOR INJUNCTIVE RELIEF

This matter came before the Court on April 23, 2024 on Plaintiffs' complaint and motion for injunctive relief. Plaintiff appeared though counsel. Defendant did not appear. Plaintiff seeks an injunction requiring Defendant and any other occupants to cease from residing in the commercial space.

Based on the facts set forth in the Verified Complaint and the evidence presented at the hearing, the Court finds that Plaintiff has a high likelihood of success on the merits and that failure to issue the injunction would subject Plaintiff to a substantial risk of irreparable harm. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). Accordingly, in light of the foregoing, the following order shall enter as a preliminary injunction:

1. Defendant and any other occupants shall cease residing in the commercial space located at 143 Main St, Unit 312 Springfield, MA immediately and shall remove all property related to residential occupancy of the leased space.

2. After providing proper 24-hour notice, Plaintiff may enter the subject premises to inspect and ensure that they are not utilized as living space.

3. The statutory fee for injunctions is hereby waived.

SO ORDERED.

DATE: April 23, 2024

By: /s/ 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. 23-SP-5117

VALLEY OPPORTUNITY COUNCIL,	)	
	)	
Plaintiff	)	
	)	
v.	)	INTERIM ORDER
	)	
CALEINNY PEREZ,	)	
	)	
Defendant	)	

On April 1, 2024, the Court allowed Defendant's motion to stop a physical eviction from the residential premises located at 52 Franklin Street, Apt. 5L, Holyoke, Massachusetts (the "Premises") provided she make a payment of $1,000.00. If payment was made, the parties were ordered to return for trial on April 8, 2024. The order was vague as to the entry of judgment on January 31, 2024. Given the lack of clarity, the Court clarifies its April 1, 2024 order and rules that the judgment entered on January 31, 2024 is vacated.

The case came before the Court for a bench trial on April 8, 2024 The Court found that Defendant received the notice to quit and has not vacated. The property manager testified credibly that she issued a lease violation to Ms. Perez for having an unauthorized occupant living with her in the Premises. Ms. Perez met with the property manager and admitted that an individual named Justin Mangual was living with her and asked if he could be added to the lease. The property

32 W.Div.H.Ct. 139

manager informed her that Mr. Mangual would need to apply for residency, which he did. As part of the application, he supplied an identification card listing his address as that of the Premises. His application was denied after Plaintiff conducted a background check.

The Court finds that Plaintiff demonstrated by a preponderance of the evidence that Ms. Perez has violated a material term of her lease by permitting Mr. Mangual to occupy the Premises for longer than a temporary visit. In her defense, Ms. Perez testified that Mr. Mangual no longer lives at the Premises and has a permanent address elsewhere. She offered a temporary identification card with an address on Grape Street in Chicopee and claimed to have other evidence of his residence that she did not bring with her to trial.

Because Defendant was self-represented at the time and is not an English speaker, the Court gave her a brief window of time to provide the additional evidence she referenced, and to bring Mr. Mangual if he wished to testify about his living arrangements. When the trial continued on April 23, 2024, counsel appeared for Ms. Perez with the apparent impression that they would be able to present defenses on her behalf. At the time, the judge had not refreshed its recollection as to the purpose of the hearing. The case was continued to allow the judge to review his notes from the trial to give time for Plaintiff to file and schedule a motion in the nonpayment case (Docket No. 23SP3394).

Having now reviewed the record, the Court rules that the trial was completed and that the purpose of the continuance was to allow Defendant time to locate additional evidence (e.g., a rental agreement, public records, official mail)

to support her defense that Mr. Mangual resided elsewhere. The Court also ruled that Plaintiff did not need to file a separate motion for entry of judgment in the nonpayment case and instead gave Defendant notice that the issue would be placed before the Court at the next Court date on April 23, 2024.[1]

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

1. Plaintiff established its prima facie case for possession.
2. Defendant presented her defenses, and the Court held the record open for the sole purpose of accepting additional documentary evidence regarding Mr. Mangual's permanent residence and testimonial evidence from Mr. Mangual himself.
3. Docket No. 23SP3394 shall be called together with this case at the next court date. Plaintiff may file a motion for entry of judgment in writing in 23SP3394 or may make an oral motion for entry of judgment at the next at the next court date.
4. Further hearing consistent with the terms of this order shall be scheduled for **May 9, 2024 at 9:00 a.m.**

SO ORDERED.
DATE: April 23, 2024

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

cc: Court Reporter

[1] In fact, the motion was not heard because the nonpayment case was not scheduled by the Court.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1786

JOANNE ABEL,

Plaintiff,

v.

DEBORAH GALLGHER,

Defendant.

ORDER

After hearing on April 18, 2024, on the landlord's motion for issuance of an execution (and amendment of the underlying judgment), the following order shall enter:

1. In accordance with Judge Kane's decision issued after trial on September 25, 2023, the outstanding rent balance as of $148 as of September 30, 2024.
2. On March 13, 2023, the landlord received $7,000 through the RAFT program.
3. At the time of the receipt of such RAFT funds, the tenant's outstanding balance was way lower than $7,000, including court costs and interest assessed by the court.

4. In fact, the RAFT payment results in the tenant owing no monies to the landlord even for the intervening months since the trial.
5. Accordingly, that part of the landlord's motion for amendment of the underlying judgment for $2,750 is denied.
6. The landlord is also seeking the issuance of a new execution. That request, made on March 10, 2024, must also be denied as her request has come after the expiration of the execution which was only good until February 5, 2024. See G.L. c.235, s.23 as well as *Fort Point Investments, LLC vs. Hope Kirunge-Smith,* 103 Mass. App. Ct. 758 (2024).
7. Based on the forgoing, this case is dismissed.

So entered this 24th day of April, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19H79CV001088

TOWN OF EAST LONGMEADOW HEALTH DEPARTMENT,
Plaintiff

vs.

WILLIAM ROGERS, ANY AND ALL OCCUPANTS, AND METROPOLITAN LIFE INSURANCE COMPANY,
Defendants

ORDER ON PETITION FOR APPOINTMENT OF A RECEIVER

RE: Premises: 37 Thompson Street, East Longmeadow, MA 01028

Pursuant to the general equity powers of this Court and M.G.L. Chapter 111, Section 127I, following hearing on January 12, 2024 and a review hearing on February 28, 2024, with respect to 37 Thompson Street, East Longmeadow, Massachusetts (the "Property"), the Court hereby **ORDERS** as follows:

1. Background. The background facts set forth in the Order for Appointment of a Receiver signed by First Justice Jonathan J. Kane and entered by the Court on January 12, 2024 (See File Ref. No. 10), are hereby restated. After review in this code enforcement matter was held on February 28, 2024, the Plaintiff selected a receiver for the Property and such receiver was appointed.
2. Receiver. Erica Nunley, 380 Main Street, Wilbraham, Massachusetts 01095, 413-364-2160, ("Receiver") is hereby appointed Receiver of the Property. At any time, any party to these proceedings or the Housing Specialist Department may request a review or modification of this appointment and the terms thereof, as set forth below. A review date

shall be set for June 3, 2024 at 2:00 p.m. Until the review date, the Receiver's powers and duties are limited to boarding and securing the Property, posting the Property with the Receiver's contact information, and inspecting / assessing the Property to make a determination relative to a demolition plan and/or a rehabilitation plan for approval by the Court. The Receiver may also address any emergencies, as defined in Paragraph(3)(c)(i), that arise at the Property. After the review date, the Receiver's authority and duties shall be as set out in Paragraph 3 below.

3. Access to Property. The Receiver has the express authority to appear at and enter the Property including but not limited to the exterior, interior, yard, driveway, and any buildings and structures at the Property, and has the express authority to coordinate appearance, entry, and inspection by the Parties, counsel for the Parties, and/or the Receiver's hired agents. The Receiver has the express authority to change the locks and secure the Property. Counsel for the Plaintiff shall provide a copy of this Order to the East Longmeadow Police Department and shall attend the Receiver's initial inspection / assessment. Notice of the date of such inspection / assessment shall be provided to the Owner and the East Longmeadow Police Department forty-eight (48) hours in advance.

4. Authority and Duties of Receiver. The authority and duties of the Receiver shall be as follows:

    a. To employ companies, persons, or agents to perform duties hereunder.

    b. To deposit all amounts received on account of the Property into a separate account under the control of the Receiver and to disburse said funds in accordance with the Court's instructions.

c. To inspect the Property to determine what "Emergency Repairs" are needed to correct violations of the State Sanitary Code and of any and all applicable fire safety, electrical, building, zoning, and plumbing codes existing at the Property, and to perform or cause to be performed, if necessary, such Emergency Repairs.

   i. For the purposes of this section, "Emergency Repairs" are repairs necessary to eliminate violations which materially endanger or materially impair the health or safety of the tenants/occupants or public safety in the near future if corrective action is not taken.

d. To disburse funds received by the Receiver on account of the Property in the following order of priority:

   i. **First.** To reimburse the Receiver for actual out-of-pocket expenses incurred in the capacity as Receiver, including without limitation reasonable legal fees, allocable overhead and labor costs, and costs of liability insurance ("Receiver Out-of-Pocket Expenses");

   ii. **Second.** To secure the Property;

   iii. **Third.** To make Emergency Repairs to the Property;

   iv. **Fourth.** To pay the Receiver for costs incurred in the capacity of Receiver, as set forth below:

      1. A reasonable management fee consistent with industry standards in the area; and

      2. A reasonable hourly rate consistent with industry standards for maintenance work performed by the Receiver, or agents thereof, in repairing or maintaining the Property.

v. **Fifth**. To make repairs, to the extent possible, of conditions that may violate the Code or applicable fire safety, electrical or building codes or ordinances, but which do not rise to the level of "Emergency Repairs" as defined above;

vi. **Sixth**. To make payments, to the extent possible, toward any unpaid taxes, assessments, penalties, or interest; and

vii. **Seventh**. To make payments, to the extent possible, due any mortgagee or lienor of record.

e. The Receiver shall file periodic reports with the Court, setting forth all expenses and disbursements of the Receivership, with attached receipts, and an accounting of all funds received by the Receiver during the period covered by such report.

f. On or before May 24, 2024, the Receiver shall file her first report, and shall in that report include a detailed list of what repairs have been performed to date, what will be completed within the next eight (8) weeks, and whether the Property should be demolished or if a rehabilitation plan is feasible. The Receiver shall also file a motion to approve a demolition and/or rehabilitation plan at that time, with a schedule prioritizing the order in which repairs or other work shall be completed. A rehabilitation plan shall include a list of all repairs to be made, accompanied by firm start and completion dates as well as estimated costs and fees associated with the rehabilitation.[1]

g. The Receiver shall file with the Court and serve upon all parties a copy of this report **no later than May 24, 2024, and every eight (8) weeks thereafter**, unless a

[1] Although it is the Receiver's duty to prepare the reports and supporting documentation, it is the duty of counsel for the Receiver to cause the reports to be filed with the Court and sent to all parties and lienholders; a certificate of service confirming service of the report will be timely filed with the Court and parties.

different schedule is authorized by the Court. The Receiver shall also conduct a title run-down every eight (8) weeks and shall notify all parties to this action as well as the Court of any changes, if any are identified.

h. The Receiver shall forthwith determine what outstanding Municipal Real Estate Taxes as well as any outstanding utilities and fees are due and shall include that information in her first report. Copies shall be sent to any mortgagees or lienors as well as all parties to this action each time any report is filed with the Court in this matter, and each report shall be accompanied by a Certificate of Service documenting that the reports have been forwarded as set forth herein.

i. The Receiver shall be represented by an attorney at all future proceedings relative to this Receivership. The Receiver has identified Attorney Katharine Higgins-Shea of Lyon & Fitzpatrick, LLP as her attorney in this matter.

5. Bond and Inventory. The Receiver shall not be required to file a bond, nor shall the Receiver be required to file an inventory, list of encumbrances, list of creditors, or any other report required to be filed by Rule 66 of the Massachusetts Rules of Civil Procedure, except as otherwise specifically provided herein.

6. Notice of Receivership. The Receiver shall forthwith complete and post the Notice of Receivership, attached hereto as Exhibit A, in an area visible to the public at the Property at all entrances, or an equivalent sign with the required information listed in Exhibit A.

7. Liability and Agency.

a. The Receiver shall forthwith acquire general liability insurance in the amount of $1,000,000.00, or such other amount as is consistent with industry standards, and casualty loss insurance. The Receiver shall provide proof of coverage to the Court

within fourteen (14) days of appointment. The cost of insurance shall be given first priority under Paragraph 3 of this Order.

b. The Receiver shall have no responsibility whatsoever to make any advances on account of the Property, except as approved by the Court.

c. The Receiver's liability for injuries to persons and property shall be subject to the limitations set forth in G.L. c. 111, § 127I.

d. Pursuant to G.L. c. 111, § 127I, no suit shall be brought against the Receiver except as approved by the Court as the court which appointed the Receiver.

8. Right to Resign. The Receiver shall have the right to resign at any time by giving seven (7) days prior written notice to the Court and to the Parties. The Receiver shall request a comprehensive inspection to be conducted by the town or city in which the Property is located prior to the hearing date to determine the status of the repairs that have been completed by the Receiver and the current status of any violation of applicable state or local codes still present at the Property. Such resignation shall be effective upon order of the Court. The notice of resignation shall include the reason for resignation, an accounting of all funds the Receiver received and disbursed during her term, a thorough list of repairs made to date, and the amount of the Receiver's asserted lien to date. The Court may require the Receiver to take additional actions after the date of resignation if the Court determines that such actions are required and that the Receiver has the capacity to perform such functions consistent with the terms of this Order. Unless otherwise ordered, on the effective date of such resignation, the Receiver shall assign any and all amounts received by it to the Court or to a successor Receiver.

9. Right to Borrow Funds. Pursuant to M.G.L. c. 111, § 127I, the Receiver shall have full power to borrow funds and to grant security interests or liens on the Property, with leave of Court upon a motion served upon all interested Parties. The Receiver shall also have full power to make such contracts and the Receiver may deem necessary, and, notwithstanding any special or general law to the contrary shall not be subject to any public binding law nor considered a state, county, or municipal employee for any purpose.

10. Priority Liens and Mortgages. The Receiver shall have a lien with priority over all other liens or mortgages except municipal liens and taxes on the Property pursuant to the "super-priority" provisions of M.G.L. c. 111, § 127I upon the recording of this Order.

11. Notice to Creditors. The Receiver shall cause a title exam to be conducted and shall send a copy of this Order to all mortgagees and lienors of record as well as any mortgagee and lienors provided to them by the owner / respondent and any mortgagees and lienors of which the Plaintiff and/or the Receiver may be aware.

12. Sale and/or Assignment of Lien of the Property. The Property shall not be transferred, foreclosed upon, sold, encumbered (except as otherwise provided in this Order) or placed under contract for sale without prior leave of the Court. Furthermore, any Owner and/or Holder of a Mortgage and/or Security Instrument on the Property shall not sell, transfer, assign, grant or convey their right, title, and/or interest of said Mortgage and/or Security Instrument without notice of the same to the Court and all Parties to this action.

13. The Respondent / Owner. To the extent not already completed, the Respondent / Owner,. William Rogers, shall (i) within seven (7) days of the signing of this Order, transfer to the Receiver all keys for the Property; (ii) within seven (7) days of the signing of this Order,

provide to the Receiver copies of all documents necessary to manage and maintain the Property and shall provide at least the following information:

a. Mortgages and Liens. The name and address of all mortgagees and lienors of record and the amount of the lien or mortgage.

b. Insurance. The name, address, and telephone number of all insurance companies and their agents providing insurance coverage for the Property, the amount and type of coverage, and the amount and due dates of premiums.

c. Utilities. The amount of the most recent water, sewer, gas, and electric bills; the amount of any outstanding balance, and the date and amount of the last payment.

d. Real Estate Tax. The amount of the most recent real estate tac bill; the amount of any outstanding balance; and the date and amount of the last payment.

e. Contracts. Copies of all warranties for prior work done, service contracts for ongoing maintenance, and all contracts or bids for repairs.

f. Other. Any and all information relevant to any outstanding expenses relating to the Property.

The Respondent / Owner shall not enter any part of the Property without prior written approval of the Receiver or the Court. The Respondent / Owner shall not terminate any insurance coverage for the Property without leave of Court.

14. Motions and Notices. Any interested part shall have the right to request from the Court, by motion and with advance notice, further orders consistent with M.G.L. c. 111, § 127I, common law, or the terms of this Order. In the event of emergencies, service of motions to the Parties on this action by email transmission shall be acceptable.

15. Recording. The Receiver shall forthwith record a copy of this Order at the Hampden County Registry of Deeds.

16. Inspection(s). In the determination of the Receiver, if a rehabilitation plan is feasible (rather than a demolition plan) a date for a comprehensive inspection by the Plaintiff shall be set at the next review date, following confirmation by the Receiver that the Property is safe and secure to enter by the Plaintiff.

17. Review by Court. The foregoing Order shall remain in effect until further order of the Court. The Receiver and all other affected parties shall report on the Receiver's progress to the Court on June 3, 2024 at 2:00 p.m.

18. Effective Date. This Receivership shall take effect on April 29, 2024 at 9 a.m.

SO ENTERED.
April 24, 2024

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION-SPRINGFIELD SESSION
DOCKET NO.: 23H79P005448

MANINDER KAUR
Plaintiff

v.

MANUEL DEJESUS
Defendant

ORDER ON REQUEST TO STAY THE LEVY

On April 24, 2024, a hearing occurred on the defendant's request for a stay of the levy on the execution for possession. Both parties appeared as self-represented litigants. Based on the arguments presented, the request is **DENIED**, and the pending motion scheduled for May 5, 2024, is also **DENIED** as follows:

The plaintiff brought this eviction action seeking to recapture possession of the residential, rental premises, which the defendant occupies, under a no-fault basis with a separate account annexed for unpaid rent. The defendant defaulted at the tier one event, and judgment was entered for the plaintiff awarding possession, costs, and damages of unpaid rent all totaling $5,187.63. The defendant moved to vacate the default judgment and another justice denied the request, which the defendant did not appeal. (Entry 14) The defendant now appears before the Court seeking to stay the scheduled levy on the execution for possession, which is set to occur on April 26, 2024. (Entry 17) The defendant also filed a motion that states only "I want to go for of the judge Appear this decision," which the clerk scheduled for a hearing on May 5th, 2024"(Entry 13)

At the hearing to stay, the defendant argued that he has evidence in support of his claims and in defense of the plaintiff's claim for possession. The defendant went on to say that he wanted an opportunity to go before the court and present the evidence. The plaintiff opposed the request to stay, arguing the defendant continues to be disruptive at the premises. The defendant did not have funds to pay the rent balance or a possible levy cancellation fee. The defendant argued that a social service agency was willing to pay either some or all the rent claimed due. The Court inquired from the defendant about the prior hearing to vacate the default and whether he presented the same arguments, to which he alleged the justice presiding over the motion to vacate the default did not listen.

Though this eviction was brought under a no-fault basis and the defendant is entitled to request a stay (G.L. c. 239 § 9) granting of a stay is discretionary. *Opinion of the Justices*, 321 Mass. 772, 774 (1947) (Authority to grant a stay in summary process proceedings "is designed to mitigate hardships of tenants, and at the same time to protect adequately rights of owner of the premises.") Based on the arguments presented before this Court, a stay is not warranted. The defendant essentially is seeking the opportunity to relitigate the denial of his request to vacate the default judgment, which he could have appealed. To grant a stay is not only inconsistent with the defendant's main objective, to open the case and have a trial, as stated above, the defendant's arguments were already heard at the hearing to vacate the default or could have been raised at that hearing. To grant a stay in this instance would prejudice the plaintiff and cause them a further financial burden. Additionally, the defendant's other motion stating that he wants to see the judge, on its face, appears frivolous and echoes of the same arguments presented at the stay hearing. The Court can clearly discern that the defendant is seeking another opportunity to relitigate his request to vacate the default judgment. This view is supported by what the

32 W.Div.H.Ct. 154

defendant wrote in his motion to stay which states "I need new court day for + hearing for I new decision to stop the eviction.[1]"

For the reasons stated above, the defendant's motion to stay is **DENIED**, and the defendant's motion to go before the judge is also **DENIED**, and the scheduled hearing set for May 5th, 2024, is stricken.

So Ordered
/s/ Alex Mitchell-Munevar
Associate Justice
Date: 4/25/2024

[1] The Court notes that the defendant's native language appears to be Spanish. The judge inquired from the defendant if he wanted a Spanish speaking interpreter and the defendant refused stating that he was able to understand the proceedings.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-669

MELINDA MEDINA,

Plaintiff,

v.

TIFFANY SCOTT,

Defendant.

ORDER OF DISMISSAL

This matter came before the court for trial on April 24, 2024, at which both parties appeared self-represented. After hearing on a preliminary matter regarding the Notice to Quit, the following order of dismissal shall enter:

1. As a preliminary matter upon review of the Pretrial Stipulation, in which the tenant denied having received the "14-day Notice to Quit", the court focused its attention on that notice and became aware that it was insufficient to terminate the tenancy.

2. The Notice to Quit (hereinafter, "Notice") is dated November 1, 2023, and requires that the tenant vacate by November 15, 2023. By doing so, it failed to provide the full 14 days required to terminate a tenancy-at-will for non-payment of rent.[1] Even if the Notice was received by the tenant on November 1, 2023, day "one" in counting the fourteen days was November 2, 2023, and so on. Thus, the earliest date by which the landlord could require the tenant to vacate the premises was November 16, 2023, and not the date stated on the Notice (November 15, 2023). G.L. c.186, s.12.
3. Additionally, though not considered at the time of the hearing and order of dismissal from the bench, the Notice's return of service by the Berkshire County Sheriffs states that the Notice was served at "last and usual" on December 1, 2023, which was weeks after the required vacate date.
4. Accordingly, this matter is dismissed without prejudice.

So entered this 25 day of April, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] The landlord described the tenancy as a tenancy-at-will after the expiration of the one-year lease.

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, JR. DAVID WHITE, and RACE STREET PROPERTIES, LLC,

Defendants.

ORDER

1. The defendants David White and Race Street Properties, LLC were ordered by this court to provide to the parties and to the court by April 19, 2024, proof of its licensure as a mover of household goods within Massachusetts at the time of each move of Mr. King's belongings.
2. On April 1, 2024, counsel for the defendants David White and Race Street Properties, LLC filed an "Objection to Order for Additional Evidence". The court inadvertently scheduled a hearing on said "objection".
3. The "Objection" is duly noted in the file but shall not act as a basis for not serving and filing the required documentation.

4. The defendants David White and Race Street Properties, LLC shall have until ten days additional time from the date of this Order to comply with the court's order for said documentation. If said documentation is not provided, the court shall consider same as a basis to find that Race Street Properties, LLC was not licensed as a mover of household goods within Massachusetts at the time of each move of Mr. King's belongings.
5. The hearing recently scheduled for May 13, 2024, shall be taken off the list.

So entered this 26th day of April, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-261

CLAUDETTE POWELL,

Plaintiff,

v.

LEANNA GAYNOR and CYNTHIA DE RUIZ,

Defendants.

ORDER

After hearings on April 24 and 25, 2024, at which all parties appeared self-represented, the following order shall enter:

1. The Court is satisfied based on the record currently before it that Ms. Gaynor is a "sub-tenant" of Ms. De Ruiz.
2. Though she and her family are not tenants of the plaintiff property owner Claudette Powell, Ms. Powell agrees to let them stay in the subject unit as her licensees until May 27, 2024. Ms. Gaynor and her family shall vacate the

premises prior to May 28, 2024, and shall give the keys to Ms. Powell at the time thy vacate the premises.

3. Ms. De Ruiz shall remain responsible for all utilities during s. Gaynor's occupancy.
4. Ms. De Ruiz, however, is not permitted to be at the subject premises until after Ms. Gaynor and her family vacate.
5. Ms. De Ruiz shall pay $370 to Ms. Powell by no later than May 5, 2024. This represents the costs of this court filing of $175 plus May 2024 rent of $195.
6. Ms. De Ruiz is considered an indispensable party and shall be added as a party-defendant with the following mailing address: [redacted].

So entered this 26th 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. 24H79SP000577

Beacon Residential Management,	)
	)
PLAINTIFF	)
	)
v.	)
	)
Elizabeth Mateo and Stephanie M. Gonzalez Mateo,	)
	)
DEFENDANTS	)

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This summary process action was before the Court (Adeyinka, J.) for a bench trial on April 25, 2024. The Plaintiff, Beacon Residential Management ("Plaintiff") seeks to recover possession of 317 Beacon Circle, Springfield, MA (the "Premises/Apartment") from Elizabeth Mateo and Stephanie M. Gonzalez Mateo ("Defendants") based on a claim for non-payment of rent. The Plaintiff was represented by counsel and the Defendants were 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:

FINDINGS OF FACTS:

The Defendants have rented the Apartment from the Plaintiff since August 2010. *See* **Pretrial Stipulation**; *see also* **Lease at Plaintiff's Exhibit 1.** The Apartment is subsidized. The Defendants monthly rent is $420.00. *See* **Pretrial Stipulation.** On October 30, 2023, a legally sufficient notice to quit was served on Defendants. *See* **Pretrial Stipulation**; *see also* **Notice to**

Quit at Plaintiff's Exhibit 3. At the trial, the Defendants disputed receipt of the notice to quit. However, the Senior Property Manager, Dan Bresnahan ("Bresnahan"), testified credibly that he served the notice to quit, by leaving it at "their last and usual place of abode, and by mailing a copy of the same via United States Postal Service first-class mail, postage prepaid." *See* **Notice to Quit at Plaintiff's Exhibit 3**. The Defendants continue to reside at the Premise. Accordingly, the Court finds that Plaintiff introduced sufficient evidence to satisfy their prima facie case for possession.

RULINGS OF LAW:

The Defendants did not file an answer or assert defenses or counterclaims but stipulated to owing $9,365.64 to the Plaintiff in unpaid rent. *See* **Pretrial Stipulation.** Moreover, Bresnahan testified to the current balance, and introduced a rent ledger[1], which is kept in the ordinary course of business, to substantiate the amount of rent owed by the Defendants through the date of trial. *See* **Rent Ledger, at Plaintiff's Exhibit 2.** Because the Defendants failed to present any legally cognizable defenses, the Plaintiff must prevail on its case to recover possession and unpaid rent.

The Defendants asserted that they applied for RAFT but were denied due to the landlord failing to complete its portion of the application. At the trial the Court confirmed, through a RAFT representative, Ms. Luna, that in December 2023 the Defendants' application (00401061) was closed due to the landlord not completing its portion of the application. Despite the Defendants claim, the Court finds that a stay under G. L. c. 239, § 15 is not appropriate. This is a subsidized tenancy, if RAFT were approved, it would not cover the entire balance owed to the Plaintiff. Therefore, the Court rules that the protections afforded in G. L. c. 239, § 15 does not apply in this case. *See* **Fort Point Investments, LLC v. Kirunge-Smith, Case No. 2022-J-477 (Mass. App.Ct. Sept. 1, 2022) at pgs. 11-12.**

[1] The rental ledger showed a total balance of $9,739.64 owed. However, to credit of Plaintiff's counsel they conceded that $374.00 in charges were no rent related and therefore should be subtracted from the final balance.

ORDER FOR ENTRY OF JUDGMENT:

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

1. Judgment shall enter for Plaintiff for possession and $9,365.64 in unpaid rent, plus court costs in the amount of 235.54 totaling 9,601.18.
2. Issuance of the execution shall be stayed until June 30, 2024[2], on the conditions that:
   a. The Defendants pay use and occupancy in the amount of $420.00; per month before the fifth of each month for May and June 2024 and abide by the terms of the lease;
   b. The Defendants shall continue to make reasonable efforts to locate and secure replacement housing 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 Defendants fail to make the required payments or comply with terms of this Order, Plaintiff may file a motion to issue the execution. If the Defendants makes the required payments, they shall vacate the Premises on or before July 1, 2024, leaving the Premises in broom clean condition and returning all keys. If the Defendants has not vacated voluntarily as of July 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
Benjamin O. Adeyinka
Associate Justice

April 29, 2024

cc: Drew Michael Champigny, Esq.
Elizabeth Mateo
Stephanie M. Gonzalez Mateo
Court Reporter

[2] At trial, the Plaintiff appeared to express a willingness to ensure the Defendants finds suitable housing and did not oppose the stay.

CR

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT, WESTERN DIVISION
DOCKET NO.: 24-CV-0274

MFJ Enterprises, LLC c/o Chase Property Services, Inc.
Plaintiff

v.

Timothy J. Corbin
Defendant

ORDER

After hearing on April 25, 2024, in which the Plaintiff appeared with counsel, and the Defendant appeared without counsel, the following Order shall enter:

1. The Defendant admitted to damaging the vehicles of two of his neighbors.
2. Defendant indicated that he wishes to vacate the Subject Premises located at 1139 Thorndike Street, Unit 5 in Palmer Massachusetts to move to Belchertown as he does not have a vehicle and it would enable himself to get to his employment.
3. Defendant believed that he would secure alternate housing in Belchertown within one week.
4. This Court will grant Defendant the week to move to alternate housing.
5. Defendant shall refrain from taking any actions against any of his neighbors or their property, including, but not limited to, their motor vehicles during the time he remains a tenant at the Subject Premises or thereafter.
6. If Defendant believes any of his neighbors or their guests are creating too much noise

he is to contact the management or the police, but not take any actions himself toward any neighbor.

7. This matter is continued to May 2 at 2:00 p.m.
8. Plaintiff may proceed with a hearing on their request for a Temporary Restraining Order on the continuance date if Defendant has not moved by that time.
9. The Court reserves all other determinations to the continuance date.
10. If Defendant vacates the Subject Premises by the continuance date, this matter shall be dismissed at that time.

SO ORDERED:

Benjamin O. Adeyinka
Associate Justice
Hon. Benjamin Adeyinka 4/29/24

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 22H79SP002098

NATIONSTAR MORTGAGE LLC, D/B/A MR. COOPER,

Plaintiff

VS.

SORN SIM and SINEY SIM,

Defendants

Modification Pertaining to November 18, 2023 Appeal Bond Order

This matter came before the court for hearing on ***Plaintiff's Motion for Modification of Appeal Bond Order***. An interpreter was present at the hearing to assist the defendants.

After considering the arguments presented at the hearing the ***Plaintiff's Motion for Modification of Appeal Bond Order*** is **ALLOWED** in part.

This case involves a post-foreclosure eviction. On November 7, 2023 judgment entered in favor of the plaintiff on its claim for possession of an apartment currently occupied by the defendants.[1] On November 15, 2023 the defendants filed a timely filed a *Notice of Appeal*. On November 22, 2023 the plaintiff filed a motion to set or waive the appeal bond. In an order entered on December 18, 2023 pursuant to G.L. c 239, §§ 5 and 6, I set an appeal bond at $20,000.00 and issue a use and occupancy order directing the defendants to pay $1,000.00 per month pending the defendants' appeal.

With respect to how the defendant would be required to furnish the court with the appeal bond, I allowed the defendant "to pay the bond in monthly increments of **$250.00** with the first payment to be made by January 30, 2024 (for the month of January) and by the last day of each month thereafter during the pendency of the appeal."

[1] The findings of fact, rulings of law and order granting the plaintiffs' motion for summary judgment, Winik, J., was entered on November 3, 2023 (Docket No. 5). The plaintiff waived its claim for unpaid use and occupancy from the foreclosure date through the date of the judgment.

G.L. c. 239, § 5 is silent regarding whether the court may in appropriate circumstances allow the appellant to post the bond by making incremental payments over time. I concluded that for good cause shown the court has discretion to set the terms regarding when and how the appeal bond may be paid. See generally, *Davis v. Comerford,* 483 Mass. 164 (2019). In deciding that incremental monthly bond payments were appropriate, I took into consideration that defendant Som Sim cares for his seriously disabled son, and that he has significant ongoing financial obligations associated with such care. I also considered that the incremental monthly payment provision of the bond order would not unfairly prejudice the plaintiff given that at the summary judgment hearing the plaintiff waived its claim for use and occupancy damages from the foreclosure date through the date of the judgment and was seeking only possession.[2]

In response to the issue raised by the Single Justice (Appeals Court No. 2024-J-0049) in the February 9, 2024 bond review order ("I remain unsure whether the judge intended the prompt assembly, entry and prosecution of the appeal . . ."), I shall clarify the November 18, 2023 bond order.

It is **ORDERED** that the November 18, 2023 bond order is modified and supplemented by adding the following paragraph to provide with clarity that:

> "Notwithstanding that the defendants' bond is to be paid through incremental monthly payments to court, the defendants' appeal from the judgment may proceed without delay. The defendants shall take all necessary steps to assemble the record in accordance with the Massachusetts Rules of Appellate Procedure, Rules 9(d) and 10."

The defendants must understand that their right to prosecute their appeal is subject to (1) their continued compliance with the November 18, 2023 bond/use and occupancy order, and (2) their timely compliance with Massachusetts Rules of Appellate Procedure, Rules 9(d), 10 and 16.

SO ORDERED this 29th day of April 2024.

Jeffrey M. Winik
JEFFREY M. WINIK

[2] I recognize that notwithstanding the waiver of its use and occupancy damage claim, in accordance with G.L. c. 239, § 5 the plaintiff would be entitled to seek to recover the bond for unpaid use and occupancy from the date of the foreclosure should it prevail on appeal. However, for the purpose of assessing whether the incremental payment provision of the bond order would cause unfair prejudice to the plaintiff, I see a difference between a bond intended to secure a money judgment and a right to recover a bond under the aforesaid statutory provision where the monetary claim has been waived. The potential prejudice is much less significant in the later circumstance.

Associate Justice (Recall Appt.)

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV000247

STEVEN F. TERESO, TRUSTEE OF THE REVOCABLE INDENTURE OF TRUST OF STEVEN F. TERESO,

Plaintiff

v.

DANIEL TERESO and LISA TERESO,

Defendants

ORDER FOR JUDGMENT ON PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF PURSUANT TO M.G.L. c. 139, § 19

After Hearing in this matter held April 30, 2024, at which Plaintiff was present with counsel, and at which Defendant Lisa Tereso failed to appear despite having received prior notice of the same,[1] the Court does order as follows:

1. The Court finds that the Defendants, Daniel Tereso and Lisa Tereso, unlawfully kept controlled substances at the subject Property, 4R Archie Street, Chicopee, Massachusetts, (the "Property") in violation of M.G.L. c. 139, § 19. Plaintiff elected to annul and make void all rights of occupancy of Defendants relative to the Property, in compliance with M.G.L. c. 139, § 19.
2. The Court finds that, in view of said conduct, Plaintiff has satisfied the legal standard for granting permanent injunctive relief; that is, it has shown actual success on the merits, it has demonstrated irreparable injury in the absence of such an order which injury outweighs the harm to Defendants resulting from the order and that the injunction is not adverse to public interest.

[1] On the original hearing date of April 23, 2024, Defendant Lisa Tereso was present and this hearing date was selected in her presence.

3. Judgment for possession of the Property shall enter in favor of the Plaintiff pursuant to M.G.L. c. 139, § 19.

4. A permanent injunction shall enter in favor of the Plaintiff against the Defendant, Lisa Tereso, as well as any guests, invitees, or other persons claiming right of access under her, permanently enjoining and restraining each of them:

    a. From entering, trespassing upon or attempting to access the Property; and

    b. From entering, trespassing upon or attempting to access the property located at 22 Archie Street, Chicopee, Massachusetts, a property that shares access and common areas with the Property.

5. Pursuant to M.G.L. c. 139, § 19, an execution for possession of 4R Archie Street, Chicopee, Massachusetts shall issue forthwith and Plaintiff may immediately levy on such execution.

SO ORDERED.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-406

KENIA DAVILA and MIGUEL PEREZ,

Plaintiffs,

v.

YACELIN CARABALLO and NARIET DIAZ,

Defendants.

ORDER

After hearing on April 25, 2024, on the landlords' motion to reopen the case, the following order shall enter:

1. The landlords missed the First-Tier event and the matter was dismissed by the court on March 28, 2024.
2. Based on a review of the Notice to Quit, the motion is denied and the case is dismissed.
3. More specifically, the Notice to Quit purports to be a "30-Day Notice to Quit to Terminate Tenancy" (hereinafter, "Notice") and is dated December 11, 2023. Assuming it was received on that date, the notice was required to give the

tenants until January 11, 2024, to vacate the premises. The Notice, however, requires the tenants "on or before" January 10, 2024. Thus, it provided an insufficient termination period which is thirty days according to the parties' lease.

4. Accordingly, the motion to reopen is denied and the case is dismissed. Additionally, the court docket should reflect that defendant Luis Gonzalez is a minor and the Clerk's Office is asked to dismiss him from the action prior to dismissal of the entire case.

So entered this 1st day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-CV-269

GORDON HAMILTON,

Plaintiff,

v.

JODY STIMPSON,

Defendant.

ORDER

After hearing on April 24, 2024, at which only the plaintiff appeared, the following order shall enter:

1. The plaintiff explained that the defendant was a guest in his home and though the defendant has left the premises he left belongings at the premises and the plaintiff is seeking a court order relative to the removal of those belongings.
2. The plaintiff also explained that he has a current G.L. c.209A Restraining Order from the Pittsfield District Court against the defendant in this matter.

32 W.Div.H.Ct. 174

3. Because the plaintiff already has an action in District Court against the same defendant over the same and related issues for which he is seeking remedy in this court, he was instructed by the undersigned judge to seek his remedy in that District Court action.
4. This instruction was given so as to avoid two courts issuing orders relative to the same parties stemming from the same dispute.
5. This matter shall remain open and scheduled for a status hearing on May 22, 2024, at 9:00 a.m. If no one appears because the matter was sufficiently addressed, the case shall be dismissed without prejudice.

So entered this 1st day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

32 W.Div.H.Ct. 175

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-4606

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

JANET GONZALEZ-ORTIZ,

Defendant.

ORDER

After hearing on April 25, 2024, the following order shall enter:

1. The tenant paid the $900 required by the court's earlier order.
2. TPP (Ms. Cintron) reported that a RAFT application has now been re-submitted.
3. TPP had a glitch setting up a Representative Payee due to the fact that the tenant currently has a Representative Payee who was confused about the process of switching to a different payee. Fortunately, the current payee was present in court and agreed on the record that there would be no problem to

end his service and utilize a different Representative Payee. TPP, with the approval of the tenant, will now move forward in this endeavor to have Friend Money Management installed as the tenant's new Representative Payee.

4. The outstanding rental arrearage balance is $2,889.44 through April 2024.
5. The tenant shall pay her rent timely and full for May 2024 plus an additional $100 at some point during the month towards the arrearage. This should be considered by RAFT as a "repayment agreement" for programmatic purposes and TPP and the tenant shall provide RAFT with a copy of this order.
6. TPP shall continue to assist the tenant with her RAFT application. TPP shall also accompany the tenant directly after the hearing into the court's Resource Room to connect her to Community Legal Aid for assistance particularly with Domestic Violence-related issues.
7. The tenant shall also work cooperatively with TPP to schedule a psychiatric/competency evaluation with the tenant's treating health care providers.
8. This matter shall be scheduled for review on **May 30, 2024, at 9:00 a.m.** There shall be a stay on the use of the execution until further order of the court.

So entered this 2nd day of May, 2024.

Robert Fields, Associate Justice

Cc: TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:
HOUSING
COURT
DEPARTMENT

WESTERN DIVISION
CIVIL ACTION
NO. 24H79CV000240

IFTIKHAR BUTT,

Plaintiff

VS.

ANGELINA CLIFFORD, JAMES CLIFFORD AND STAN DOE,

Defendants

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

The plaintiff filed a complaint seeking to enjoin the defendants from continuing to trespass on the residential premises at 553 North Street, in Pittsfield, Massachusetts. The Court conducted an evidentiary hearing on April 10, 2024 and issued a preliminary injunction against the defendants ordering them to vacate the premises by April 25, 2024 (the plaintiff and defendant Angelina Clifford appeared at that hearing). The court scheduled a trial on the merits that was to commence on May 1, 2024 in the event that the defendants failed to comply with the preliminary injunction order. The defendants did not vacate the premises and the trial on the merits was held on May 1, 2024 (again the plaintiff and defendant Angelina Clifford appeared at that hearing. Defendants James Clifford and Stan Doe did not appear at either the injunction hearing or the trial. A default judgment shall enter against James Clifford and Stan Doe.

Based upon the testimony and evidence presented at the trial, and the reasonable inferences drawn, the court finds the following facts:

Plaintiff Iftikhar Butt (Butt) owns the residential dwelling at 553 North Street, in Pittsfield, Massachusetts. The plaintiff rented Apartment 2 to Amanda Daigle (Daigle) subject to the provisions of a Section 8 lease. Under the terms of the lease Daigle was the only person authorized to occupy Apartment 2. On November 3. 2023 Daigle, acting in breach of her Section 8 lease, rented Apartment 2 to Defendants Angelina Clifford and James Clifford. Neither Daigle nor the defendants requested or obtained permission from Butt to sublet Apartment 2. And Butt never by word or act authorized Daigle to sublet Apartment 2 to the defendants.

In November 2023 Daigle surrendered legal possession of Apartment 2, returned the keys to Butt, and vacated the premises. Shortly thereafter Butt learned that the defendants were living in Apartment 2. Butt went to the property, spoke with the defendants, and demanded that they vacate immediately. The defendants did not comply with a that demand and have remained in possession of Apartment 2. The defendants have never made any payment to Butt (neither rent nor use and occupancy payments). Butt has never entered into a tenancy relationship with the defendants.

I find and rule that defendants Angelina Clifford, James Clifford and Stan Doe are trespassers with no lawful right to enter the premises at 553 North Street Pittsfield, Massachusetts or occupy Apartment 2 therein. Their continued trespass on the premises interferes with the plaintiff's lawful right to possession of his real property.

Accordingly, plaintiff has established his claim for trespass against the defendants. Defendants Angelina Clifford, James Clifford and Stan Doe are ordered to vacate the premises at 553 North Street Pittsfield, Massachusetts immediately and are permanently enjoined from entering the premises or Apartment 2 for any reason.

To effectuate this judgment and injunction order an execution for possession shall issue ten days from the date on which judgment enters.

So **ORDERED** this 2nd Day of May 2024.

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

ESTATE OF DOLORES STARR, Plaintiff, v. TYLER and ERIN SINCLAIR, Defendants, AND ESTATE OF DOLORES STARR, Plaintiff, V. MICHAEL SNOW, Defendant.	Case No. 23-SP-1150 Case No. 23-SP-1152

ORDER

After hearing on April 26, 2024, on the defendants' (in both cases) motion for a

stay of the execution, the following order shall enter:

1. The parties entered into an agreement (Agreement) filed with the court on February 5, 2024, for execution to issue but for it to be stayed until April 15, 2024. As referenced in Paragraph 4 of that Agreement the parties all have a pending action in Franklin Superior Court (Docket Number 2178CV65). In that action, the defendants of this summary process matter are the plaintiffs who are seeking Specific Performance of a contract they alleged to have entered into with the plaintiff of this summary process action for the purchase of the subject premises.
2. Paragraph 4 of the Agreement allows for the judgment in this summary process matter to be vacated if the defendants prevail in the Superior Court and can complete the purchase of the subject premises.
3. At the time of the Agreement, the Superior Court matter was scheduled for trial on March 25, 2024. It has since been moved to June 24, 2024.
4. The defendants explained that they have literal tons of equipment and materials stored at the subject premises. They also indicated that they thought at the time they entered into the Agreement that the Superior Court would have been resulted before the April 15, 2024, vacate date.
5. Given that the Superior Court matter is pending, having been scheduled for a short continuance to June 2024, and given that *that* matter may result in the defendants in this action ending up owning the subject premises, the court shall stay the terms of the Agreement (and therefore use of the execution) until the

Superior Court action is adjudicated, and in a manner consistent with the Superior Court's ruling.

So entered this 2nd. day of April 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

CF

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-208

ELYSA ROSS,

Plaintiff,

v.

PETER DUDLEY,

Defendant.

ORDER

This matter came before the court for a Contempt Trial on April 24, 2024, with both parties appearing through counsel. After hearing, the following order shall enter:

1. Because the contempt complaint was not sufficiently clear that the tenant alleges that some of the "lock outs" stem from threatening behavior by the landlord and/or his other tenant, this matter shall be continued for a contempt trial to the date noted below to allow for some truncated discovery.
2. The parties have until April 26, 2024, to propound discovery limited to the tenant's allegations of being locked out of the premises since February 2,

2024, either due to any locking or blocking of the door which prevents the tenant from using her key to access the premises or due to any threatening behavior by the landlord directly or by his upstairs tenant with his knowledge.

3. Additionally, the injunctive relief in the court's February 2, 2024, order which prohibits the landlord locking the tenant out shall be amended to include a prohibition against his "blocking the doors" as a means of preventing their being able to be used for access by the tenant. Also, the landlord is prohibited from acting in a threatening manner or allowing his tenant to do so towards the tenant so that the tenant is afraid to access the premises.
4. This matter shall be scheduled for a Contempt Trial on **May 22, 2024, at 9:00 a.m.**

So entered this 2nd day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3381

THEODORE BURRELL,

Plaintiff,

v.

JOHN TERAULT,

Defendant.

ORDER

After hearing on April 18, 2024, at which the landlord appeared with counsel and the tenant appeared self-represented, the following order shall enter:

1. The court's earlier order dated March 1, 2024 ("Order"), scheduled this matter for hearing today and ordered a stay on the entry of judgment so long as the tenant complied with the terms of an agreement dated September 8, 2023 ("Agreement").

2. Specifically, the tenant was required to not allow any guests in his apartment other than his mother Theresa Tetrault, his cousin Dalton Stevenson, and his friend Charles (JC).
3. The landlord was heard on his motion for judgment to enter which alleges that the tenant violated the underlying Agreement and the court's March 1, 2024, order.
4. After hearing, the court finds that the tenant violated the terms of the Agreement and Order by allowing a person or persons to be inside his apartment other than those specifically listed by the Agreement on multiple occasions.
5. That said, Michael Richtell from the Tenancy Preservation Program (TPP) joined the hearing and agreed to meet and work with the tenant. Mr. Richtell was able to speak with Amy Williams, a family friend to the tenant, who agreed to be present at the tenant's unit during evening hours to assist the tenant in keeping visitors from being at the premises.
6. Additionally, as Attorney Farber presented to the court, the tenant is not by himself a problem it is his apparent inability to keep people from entering his unit and staying overnight.
7. The court is concerned that the tenant's inability to keep such people from entering and staying at his unit stems from a disability. With the referral to TPP, it is the court's hope that steps can be designed and taken to eliminate this offending behavior as part of a reasonable accommodation.

8. This matter shall be scheduled for review and for further hearing, if needed, on the landlord's motion for entry of judgment, on the date noted below. In the meantime, the tenant shall work cooperatively with TPP and make his best efforts to not allow guests (other than those allowed above) to enter his unit.
9. This matter shall be scheduled for review and for further hearing on the landlord's motion for entry of judgment on **May 24, 2024, at 9:00 a.m.**

So entered this 3rd day of May, 2024.

Robert Fields, Associate Justice

Cc: Michael Richtell, TPP
Court Reporter

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 April 24, 2024, the following order shall enter:

1. Pursuant to the court's most recent order dated March 29, 2023 ("the Order"), the tenant allowed Matt Powers of Berkshire Property Management access for inspection and anticipated repairs.
2. The Order also required the tenant to provide photographs of the interior of the subject premises and though the tenant failed to comply with this requirement, she has now this day shared photographs with the

landlord/landlord counsel and the parties are reviewing same to determine if additional photographs are required for the realtor to list the property.

3. The Order also required the tenant to speak with the Post Office to make sure there are not problems with her mail delivery and the tenant reported that there appears to not be any problem.
4. If the photographs are insufficient for the realtor listing the property, the landlord's realtor shall have access for taking photographs of the premises after one week's notice to the tenant. If the tenant is unable to accommodate the time suggested by the realtor, she shall respond immediately with an alternative time for the photographs to be taken. The length of time for advance notice is to provide time for the tenant to move personal items from view for the photographs to provide her greater safety.
5. The landlord shall have access for repairs after at least 48-hour notice in advance to the tenant. If the tenant is unable to accommodate the time suggested by the realtor, she shall respond immediately with an alternative time for said repairs. The notice for access for repairs shall identify the anticipated repairs and if any preparation is required by the tenant beforehand.
6. The Tenancy Preservation Program (TPP) reported that they are no longer willing to work with the tenant in this matter. The Clerk's Office shall remove TPP from the mailing list in this case unless it notifies the court that it will be re-entering the case.

7. The landlord may bring potential buyers to the premises from noon until 2:00 p.m. on Sundays beginning on April 28, 2024. By Thursday of each week, the landlord shall notify the tenant whether or not they will be arriving at the subject premises the following Sunday. NOTE: There will be no showing at the premises on May 5, 2024, due to a scheduling conflict for the tenant.
8. The landlord's motion to enter judgment is denied, without prejudice, to allow for the accommodations issued herein to be engaged.

So entered this 6th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-1915

NORTHERN HEIGHTS, LP,

Plaintiff,

v.

LAVERNE CRUMP,

Defendant.

After hearing on April 29, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. The basis for the motion is that the tenant has failed to comply with the payment terms of the parties' agreement dated December 7, 2023.
2. Presently the landlord asserts that the outstanding use and occupancy through April 2024 is $4,392.51 plus court costs.
3. The record reflects that the tenant has a one-bedroom mobile Section 8 mobile rental voucher but she is paying rent for a two-bedroom unit.

32 W.Div.H.Ct. 191

4. Additionally, the tenant's work hours have decreased and also may fluctuate in a manner that makes it difficult to consistently have her rent properly adjudicated.
5. Though the tenant worked with the Tenancy Preservation Program (TPP), and applied for RAFT, the application was denied and TPP closed the case.
6. The court shall re-refer the matter to TPP ask them to re-open the case or consult with the case, and also ask to investigate whether the fact that she is "over-housed" is a significant part of the rental arrearage, whether she should look to relocate to a one-bedroom unit, and whether this issue (or the fluctuating income) might be a "hardship" for RAFT purposes.
7. The landlord's motion is continued for hearing to the date below.
8. This matter shall be scheduled for further hearing on **May 30, 2024, at 9:00 a.m.**

So entered this 6th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-2028

PHILLIPS STREET GREENFIELD REALTY, LLC,

Plaintiff,

v.

JENNIE KIMPLIN,

Defendant.

After hearing on April 26, 2024, on the landlord's motion for entry of judgment, at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day counsel, the following order shall enter:

1. This is an eviction based on a notice to quit dated February 26, 2023, for no fault.[1] The tenant filed an Answer with various counterclaims.
2. The parties entered into an Agreement of the Parties (Agreement) dated July 21, 2023 which included a vacate date of April 1, 2024.

[1] The terminated purported to be for "other good cause" to wit: renovations.

3. After the tenant failed to vacate on April 1, 2024, the landlord filed this motion for entry of judgment for possession the next day.
4. The tenant has paid her portion and Way Finders, Inc. (which administers the tenant's Section 8 Voucher) has paid its portion through April 2024.
5. The Agreement also included a term in which the tenant reserved her right to request a stay from the court (Paragraph 23).
6. Though the tenant has diligently searched for housing, she has not been able to secure any such housing for relocation.[2]
7. The tenant, through counsel, asserts that she has mental health issues, and that the murderer of her brother was released from prison this week and it is causing her significant stress. [redacted]. The court, after hearing this, asked a representative from the Tenancy Preservation Program to meet with the tenant to ensure that she is connected to appropriate services.
8. Given the court's general equitable powers as well as those authorized by statute (G.L. c.239, ss. 9 & 10), and given the court's concern for the tenant's well-being due to her mental health and extreme stress, the court shall grant the tenant an extension to vacate the premises contingent upon the compliance with the terms of this Order.
9. The tenant shall continue to pay her monthly use and occupancy in addition to Way Finders, Inc. paying its portion.

[2] The tenant provided a three-page housing search log.

10. The tenant shall continue to diligently search for housing and maintain a log of such efforts.

11. This matter shall be schedule for further hearing on the landlord's motion for entry of judgment and the tenant's request for additional time on **June 14, 2024, at 9:00 a.m.**

So entered this 6 day of May, 2024.

Robert Fields, Associate Justice

Cc: Attorney Jennifer Alpert, Esq. (CLA Lawyer for the Day)
Mike Richtell, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SC-115

MARIBEL HERNANDEZ, **Plaintiff,** **v.** **ANTINE SABI,** **Defendant.**	**ORDER**

This matter came before the court for trial on April 17, 2024, with each party self-represented. After consideration of the evidence admitted therein, the following order shall enter:

1. The plaintiff, Maribel Hernandez, is the former tenant of the defendant Antine Sabi.
2. The plaintiff filed a small claims complaint on September 20, 2023, alleging that the defendant harassed her, removed her name form the mailbox, installed cameras in the basement, gave bad references, and failed to return her $900 security deposit in violation of the Security Deposit laws at G.L. c.186, s.15B.
3. The defendant admits he held the tenant's security deposit asserting a defense that after deductions for repair to damages he alleges were caused by the

plaintiff there was nothing to return. He also alleges that he did not have the plaintiff's mailing address after she moved out on September 9, 2023.

4. The plaintiff admits that she did not provide the defendant her mailing address and claims that it was because she feared the defendant.
5. G.L. c.186, s.15B (4) requires landlord to return the security deposit or any balance thereof to the tenant within 30 days of the end of the tenancy. Additionally, if a landlord is going to keep any portion of the deposit for alleged damage, he must within 30 days of the end of the tenancy he must provide the tenant with an "itemized list of damages, sworn to by the lessor or his agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct such damage, and written evidence , such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof."
6. The defendant in this matter had the plaintiff's address as early as September 29, 2023, when he received the small claims complaint which included the address. Additionally, he could have complied with the statute by using the subject premises' address and the United States Postal Service would have forwarded the correspondence. The defendant could have also either returned the security deposit or attempt to provide a letter with estimates in accordance with the law at the December 20, 2023, trial.
7. The defendant did not use any of these options.

8. Additionally, the letter that the landlord put into evidence which purports to be the letter required by G.L. c.185, s.15B is not sworn under the pains and penalties of perjury. (Exhibit #1)
9. Based on the foregoing, the Court finds that the defendant violated the Security Deposit laws and he is required to pay the plaintiff three times the security deposit, totaling $2,700 together with costs. See, G.L. c.186, s.15B (6)e and 7.
10. The Court finds that the plaintiff failed to meet her burden of proof on her other claims.
11. **Conclusion and Order:** Judgment shall enter for the plaintiff for **$2,700** ($900 X 3) plus applicable interest payable to the plaintiff plus $50 in costs, totaling **$2,750** plus interest. The Clerk's Office shall calculate and add appropriate interest to the judgment. The **$50** in costs shall be paid directly to the Commonwealth of Massachusetts payable at the Clerk's Office.
12. The Clerk's Office is requested to release the funds in escrow to the plaintiff, minus the previously waived filing fee.

So entered this 7 day of May, 2024.

Robert G Fields, by RC Asm
Robert Fields, Associate Justice
5/7/24

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0317

WINDSOR REALTY LLC.,
Plaintiff

v.

CHRYSTAL G. SMART
Defendant

PRELIMINARY INJUNCTION ORDER

This matter came before the Court on May 8, 2024 for hearing on Plaintiff's request for injunctive relief under G.L. c. 139, §19 prohibiting Defendant and any her household members from residing at 145 Essex Street, Apt. 2L, Holyoke, Massachusetts (the "Premises") and from entering the properties located at 145-149 Essex Street, 212 Walnut Street, 365 Appleton Street, and 173-177 Elm Street in Holyoke, Massachusetts (the "Property").

After a hearing in which the Plaintiff was represented by counsel and the Defendant Chrystal G. Smart[1] appeared without counsel and advised of her fifth amendment right against self-incrimination, the following order shall enter based on the facts set forth in the Verified Complaint and given the testimony of Plaintiff's witnesses, Detective Everett from the Holyoke Police Department and the Property Manager, the following shall order as a Preliminary and Permanent Injunction:

1. The Plaintiff provide clear and convince evidence of drug activity at the Defendant's Premises. *See* **Plaintiff's Exhibits I and II.**

[1] The Defendant was haled into Housing Court and upon information and belief, remains in custody pending further hearing in the District Court.

2. Members of the Holyoke Police along with other law enforcement agencies executed a search warrant at the Premises and discovered controlled substances that appeared to be packaged for distribution. **Plaintiff's Exhibits I and II.**
3. Defendant Chrystal G. Smart and her household members are hereby enjoined from residing at the Premises and from entering the Property.
4. If Defendant Chrystal G. Smart or her household members remain at the Premises located at 145 Essex Street, Apt. 2L, Holyoke, Massachusetts, they shall be considered trespassers and the Plaintiff may enlist the assistance of law enforcement to remove Defendant and her household members from the Premises. Plaintiff may thereafter change the locks to prevent Defendant and her household members from reentering the Premises.
5. Clerk's Office is directed to issue and Execution to the Plaintiff on or before May 17, 2024, to effectuate this Order.
6. Any belongings left in the Premises at the time Defendant and her household members are removed shall be stored, pursuant to the relevant laws and statute of the Commonwealth, by Plaintiff in a secure location for no less than 60 days to allow Defendant to retrieve them.
7. Plaintiff shall pay the $90.00 legislative fee for injunctive relief within twenty days of this order.
8. Plaintiff shall serve, via Constable or Sheriff, a Copy of this Order to Defendant Chrystal G. Smart on or before May 13, 2024, at 4:30pm.
9. The Defendant appellate rights are preserved, and she may appeal the ruling of this Court.

SO ORDERED.

Date: May 8, 2024

Benjamin O. Adeyinka
Hon. Benjamin Adeyinka Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-798

HIGH RIDGE REAL ESTATE, LLC,

Plaintiff,

v.

QUATRICE CARTER,

Defendant.

ORDER

After hearing on April 16, 2024, on the plaintiff's motion to amend the judgment at which both parties appeared through counsel, the following order shall enter:

1. Through this motion, the plaintiff is seeking an amendment of the underlying judgment to include use and occupancy for the months of November and December 2023 and for January and February 2024 and $550 for the costs of scheduling and cancelling the February 1, 2024, levy on the execution.
2. After hearing on January 25, 2024, on the defendant's motion to cancel a physical eviction then scheduled for February 1, 2024, the court ordered that the

defendant pay the plaintiff $550 to cover the costs associated with scheduling and canceling the physical eviction in order to be able to remain at the premises until March 1, 2024. The defendant failed to do so, and the physical eviction was rescheduled and completed on February 14, 2024.

3. Regarding use and occupancy, the first issue is that the judgment already includes use and occupancy for November 2023. Contrary to the assertion of the plaintiff that it is October 2023 use and occupancy covered by the judgment, it is clearly November 2023 use and occupancy which was sought by the plaintiff's motion heard by the court on November 30, 2023. The plaintiff's motion at that time asserted that the basis of the motion was the failure of the defendant to pay November 2023 use and occupancy.

4. As such, and relative to use and occupancy, the instant motion shall be considered for amending the judgment to include unpaid use and occupancy for December 2023 through February 2024. That said, the parties stipulate that the physical levy took place on February 14, 2024. Accordingly, the most the plaintiff make seek to amend would be for 14 days of February 2024, as the monies unpaid are for use and occupancy and the defendant was in occupancy until February 14, 2024.

5. The defendant now asserts that she has claims that accrued after the August 28, 2024, Agreement (Agreement) against the landlord in the nature of breach of the warranty of habitability, breach of the covenant of quiet enjoyment, and Chapter 93A. Though those claims and others were waived through the date of the August 28, 2023, Agreement, they are not barred after that date and, among

other things, such claims might have the effect of reducing the very use and occupancy the plaintiff seeks in this instant motion.

6. Thus, the landlord has claims for unpaid use and occupancy and for costs such as for scheduling and cancelling a physical eviction and perhaps other claims, and the defendant has post-Agreement claims arising out of the tenancy.
7. Based on the foregoing, the plaintiff's motion to amend the judgment is denied *without prejudice*. Both parties are free, of course, to bring these claims (and possibly others) against one another in a separate civil action.

So entered this 9th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-SP-1463

MARIA PAZ,

Plaintiff,

v.

CAMARI LONG, et al.,

Defendants.

ORDER FOR HOTEL ACCOMMODATIONS

After hearing on the tenants' emergency motion for alternate living accommodations, the following order shall enter:

1. The subject premises have been condemned by the city and the tenants have been ordered to vacate by the city.
2. The landlord shall be required to provide alternate housing for the tenants in a hotel or motel that has cooking facilities and allows a dog until the condemnation is lifted by the city or by leave of court.

32 W.Div.H.Ct. 204

3. The parties met with Housing Specialist Liz Cruz directly after the hearing and were able to identify an appropriate hotel.
4. This matter shall be scheduled for further hearing **May 22, 2024, at 9:00 a.m.** If either party wishes to be heard on a motion at that time, they must file same by May 15, 2024.

So entered this 9th day of May, 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-5117

VALLEY OPPORTUNITY COUNCIL,	)	
	)	
Plaintiff	)	
	)	
v.	)	ORDER FOR ENTRY OF
	)	JUDGMENT
CALEINNY PEREZ,	)	
	)	
Defendant	)	

The case came before the Court on May 9, 2024 pursuant to an interim order dated April 23, 2024. After trial on April 8, 2024, the Court found that Ms. Perez substantially violated a material term of her lease by permitting Justin Mangual to occupy her apartment at 52 Franklin Street, Apt. 5L, Holyoke, Massachusetts (the "Premises") for longer than a temporary visit. In order to determine if the violation was continuing, the Court scheduled further hearing to take evidence as to Mr. Mangual's current living arrangements.

After hearing, Mr. Mangual demonstrated that he receives mail at a different address; namely, 117 Graves Street, Chicopee, Massachusetts. The evidence is less clear, however, that Mr. Mangual actually resides at this address, as he provided no rental agreement, no evidence of rental or utility payments, nor any corroborating witnesses. Nonetheless, the Court is satisfied that, at the present time, the lease violation is not continuing.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall not issue in this case so long no unauthorized occupants reside at the Premises.[1]
3. If, after the date of this order, Plaintiff contends that an unauthorized occupant resides at the Premises, it may file a motion to issue the execution. It shall provide a copy of any evidence it intends to present at the hearing, as well as the name of any witnesses it intends to call. This information shall be provided to Ms. Perez's counsel; provided, however, if counsel withdraws from this case, the information shall be provided directly to Ms. Perez.
4. If no motion has been filed in this case by November 30, 2024, Ms. Perez may file a motion to be vacate the judgment pursuant to Mass. R. Civ. P. 60(b)(5).

SO ORDERED.

May 9, 2024

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

cc: Court Reporter

[1] A summary process case based on nonpayment of rent is pending (Docket No. 23-SP-3394). A hearing on Plaintiff's motion for entry of judgment in that case has been scheduled for June 13, 2024.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-386

MASS COURTYARDS, LP,

Plaintiff,

v.

KENNETH SYMINGTON,

Defendant.

ORDER

After hearing on May 6, 2024, on the landlord's motion to enter judgment, the following order shall enter:

1. The landlord met its burden of proof that Mr. Symington failed to comply with the March 7, 2024, Agreement of the Parties.
2. The tenant admitted as much but explained to the court that he now has a new job and is confident that he'll be able to pay his rent plus approximately $200 towards his arrearage.

32 W.Div.H.Ct. 208

3. The judgment shall enter for the landlord for possession plus $4,231.95 plus court costs. An execution may issue, if the landlord wishes, to file and serve a Rule 13 Application. If the execution is issued and the tenant fails to make the payments required below, the landlord may levy on the execution without leave of court.
4. Use of the execution is stayed as long as the tenant complies with the payment terms of this Order.
5. The tenant shall pay $331.16 per week beginning May 24, 2024. This represents one-fourth of his rent plus $50 per week towards the arrearage.
6. If there is still arrearage owed in December 2024, the tenant will be eligible for RAFT up to $4,400 and may apply for RAFT at that time.

So entered this 16th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

32 W.Div.H.Ct. 209

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1134

KATHLEEN SULLIVAN,

Plaintiff,

v.

KENNETH ASTE,

Defendant.

ORDER TO RESTORE ELECTRICAL SERVICE

After hearing on May 10, 2024, the following order shall enter:

1. The plaintiff, Kathleen Sullivan, shall IMMEDIATELY make all necessary efforts to have the electricity restored at the subject premises located at 559 tea Street, Mohawk Mobile Home Park, in Charlemont, Massachusetts.
2. The court understands that Ms. Sullivan's mother is the owner of the unit and that she is presently in a nursing home and may be *non compos mentis*, and that she may have an outstanding bill with the electric company.

3. Ms. Sullivan shall immediately place the utility service in her name so that the utility may be restored so that a medical emergency can be avoided. That emergency is based on the fact that the occupant of that dwelling requires electricity for, among other things, his oxygen.
4. This matter shall be scheduled for review and compliance with the terms of this order on **May 17, 2024, at 9:00 a.m.**

So entered this 10th day of May, 2024.

Robert Fields, Associate Justice

Cc: Christoher Loud, Esq., LAR Counsel for the plaintiff
Jennifer Alpert, Esq., LAR Counsel for the defendant
Court Reporter

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV000247

STEVEN F. TERESO, TRUSTEE OF THE REVOCABLE INDENTURE OF TRUST OF STEVEN F. TERESO,

Plaintiff

v

DANIEL TERESO and LISA TERESO,

Defendants

ORDER FOR STAY ON USE OF THE EXECUTION

After an evidentiary hearing conducted on May 10, 2024 at which Plaintiff was present with counsel and at which Defendant Lisa Tereso appeared self-represented, the following order shall enter:

1. The Court finds that Plaintiff demonstrated by a preponderance of the evidence that Defendant Lisa Tereso used the premises located at 4R Archie Street, Chicopee, Massachusetts, (the "Premises") for the illegal keeping, sale or manufacture of controlled substances in violation of G.L. c. 139, § 19.
2. Plaintiff elected to annul and make void all of Lisa Tereso's rights of occupancy at the Premises.
3. The judgment for possession that issued on April 30, 2024 shall remain in place and the execution issuance to Plaintiff shall not be recalled.
4. No levy on the execution shall take place before May 28, 2024 on the conditions that Lisa Tereso:
    a. not create any substantial disturbances at the Premises or in areas used in common with 22 Archie Street and 4 Archie Street, Chicopee, Massachusetts

("common areas") that adversely impact on the peaceful enjoyment of the occupants of 22 Archie Street and 4 Archie Street, Chicopee, Massachusetts; and

b. not engage in any illegal activities at the Premises or in the common areas.

5. If Plaintiff asserts that Lisa Tereso has materially violated the conditions set forth in paragraph 4, it may schedule a motion to lift the stay of use of the execution with notice to Lisa Tereso describing the nature of the allegations and the evidence that Plaintiff intends to present to the court.

6. If Lisa Tereso has not vacated the Premises on or before May 27, 2024, Plaintiff may conduct a physical move-out on or after May 28, 2024. A 48-hour notice pursuant to G.L. c. 239, § 3 shall be served prior to the levy, and may be served prior to May 27, 2024 provided that the move-out date is not until May 28, 2024 or later (subject to any motion to lift the stay contemplated herein).

7. Lisa Tereso shall not be entitled to any stays on use of the execution.

SO ORDERED.

May 10, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-56

145 MAIN STREET PROPERTY, LLC,

Plaintiff,

v.

KATHLEEN RODGERS,

Defendant.

ORDER OF DISMISSAL

After hearing on May 6, 2024, at which the plaintiff appeared through counsel and the defendant appeared self-represented, the following order shall ender:

1. This matter was scheduled for trial and during the review of the pre-trial stipulation the court's attention was focused on the Notice to Quit.
2. The court finds the Notice to Quit in insufficient to terminate the tenancy and this action is dismissed.
3. More specifically, the Notice to Quit stipulated to by the parties states that it is for non-payment of rent and includes allegedly unpaid "Past Rent" through

32 W.Div.H.Ct. 214

December 2023 plus "Late Fees" plus "Other Fees" which adds December 2023 again. The notice instructs the tenant that 'if the above payment is not made within the required timeframe (within 14 days), she will be required to vacate.' Additionally, the notice indicates that it is for a no-fault month-to-month termination, which requires the tenant to vacate by a different date, January 1, 2024.

4. As such, the notice to quit is equivocated by stating that it is for two different reasons (non-payment and no-fault), provides two different vacate dates, and includes both non-rent (late fees) and double for the month of December 2023.
5. Additionally, the parties were engaged in a lease which terms were in effect at the time of the notice to quit. As such, the no-fault section of the notice was not valid.
6. For all these reasons, the case is dismissed without prejudice.

So entered this 13th day of May, 2024.

Robert Fields, Associate Justice

Cc: 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.)

ORDER FOR INJUNCTIVE RELIEF

On May 9, 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") did not appear after notice of the hearing was provided. The Defendant's sister, Marcia Rivera[1], appeared via Zoom. After hearing, the Court enters the following Order:

1. This action concerns the premises located at 76 Belmont Avenue, Apartment 2L, Springfield, Massachusetts 01108.

2. The Court finds the Tenant in material and substantial violation of the Court's February 29, 2024 Order.

3. The Plaintiff, through its witness, property manager Jeanette Reyes, credibly testified that the subject premises (a) continues to be occupied by unknown, unauthorized persons, (b) that the unit is being damaged by its occupants, (c) and that serious unsanitary conditions persist at the premises.

4. The Defendant and all unauthorized occupants are hereby ordered to vacate the premises on or before May 30, 2024. The Landlord is then permitted to change the locks and secure the premises subject to further Order of the Court.

5. A copy of this Order shall be served forthwith by the Plaintiff via constable or sheriff's service.

So ORDERED on this May ~~12~~ 13th, 2024:

Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice of the Housing Court

[1] At the hearing, the Tenant's sister, Marcia Rivera, expressed concern for substance abuse in the subject household. This Court cannot presently issue an order addressing those concern, but the parties are reminded that G.L.c. 123, § 35 authorizes close relatives to petition the District Court to issue a Summons or Warrant of Apprehension for persons presenting a substantial risk of harm to themselves or others due to a substance abuse disorder.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.	HOUSING COURT DEPARTMENT OF THE TRIAL COURT WESTERN DIVISION CIVIL ACTION NO.: 17CV1000
JOHN G. KUDLIC Plaintiff vs. AGAWAM BOARD OF APPEALS Doreen Prouty, Richard Maggi, Aldo Mancini, and Gary Geiger As the Agawam Board of Appeals a/k/a Zoning Board of Appeals of the Town of Agawam Defendants	**FINDINGS OF FACT AND ORDER FOR JUDGMENT**

This action came on for a hearing before the Court on December 21, 2023, with the Honorable Robert G. Fields, presiding, and the issues having been duly heard and Findings of Fact and Conclusions of Law, having been duly rendered after the Plaintiff's Motion for Summary Judgment under Mass. R. Civ. P. 56(a). The Court makes the following Findings of Fact and Order for Judgment:

FINDINGS OF FACT

1. The Plaintiff, John G. Kudlic, purchased 33 Highland Avenue, Agawam, Massachusetts in 2002. The property had a single-family house on it (built in the early 1900's prior to zoning) at the time of purchase, but it was being used as the Victor Emmanuel Social Club.

2. The property at 33 Highland Avenue, Agawam, Massachusetts was vacant from 2002 through 2012. Because of vandalism at the property, then Building Inspector Dominic Urbinati requested the Plaintiff to demolish the building, which he did in 2013.
3. At the time of the demolition of the structure at 33 Highland Avenue, the existing foundation would have violated both the setback and side yard requirements of the Agawam Zoning Ordinance.
4. The Plaintiff, John G. Kudlic, was led to believe by the former Agawam Building Inspector that a Special Permit would be granted to put in a new foundation that would comply with both the setback and side yard requirements.
5. The Plaintiff then sold 33 Highland Avenue, Agawam, Massachusetts to Calabrese Construction, LLC for $98,000.00 but had to buy it back for $98,000.00 in 2016 when Calabrese was denied a Special Permit to build a duplex on the lot.
6. The Plaintiff, John G. Kudlic, then sought a Variance to build a duplex without the 100 feet of frontage needed under Section 180-35 of the Agawam Zoning Ordinance with the Agawam Board of Appeals in 2017. The location of 33 Highland Avenue is zoned Residence "B" which allows for single family and two-family structures.
7. The Agawam Board of Appeals held hearings on September 11, 2017 and October 10, 2017. Some of the opposition from neighbors suggested a single-family house would be better for the area as there would be less traffic from a single family as opposed to a two-family structure.

8. Doreen Prouty was the Senior Member of the Agawam Board of Appeals in 2017 as she was a member since 1993. She voted in favor of a Variance for a duplex house on 33 Highland Avenue because she thought it met the three requirements for a Variance.

9. In 2017, a Plaintiff would be entitled to a Variance if he met the following three requirements.

   a. There are circumstances on account of soil conditions, shape or topography, but not affecting generally the zoning district.

   b. A literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship financial or otherwise to the petitioner.

   c. Desirable relief may be granted without nullifying or substantially derogating from the intent of the purpose of the bylaw.

10. a. As to the first requirement for a Variance, the Court finds that it is the only triangular shaped lot on Highland Avenue and it was the only lot on that street that had frontage on two streets.

10. b. As to the second Variance requirement, the Court finds that the Plaintiff John G Kudlic would endure a substantial financial hardship by not being able to build on this lot that had a single-family house on it when he purchased it in 2002. Although Mr. Kudlic had the lot sold to Calabrese Construction, LLC after he demolished the structure on it in 2013, he had to buy it back for $98,000.00 when Calabrese could not obtain a special permit to build on it.

10. c. As to the third requirement to a Variance, the Court finds that granting the Variance would not nullify or substantially derogate from the intent of the bylaw (100 feet of frontage required under Section 180-35 of the Agawam Zoning Ordinance) because there are currently 18 houses on Highland Avenue and only 5 of them have 100 feet of frontage.

11. Thus, the Court finds that the Agawam Board of Appeals denial of the Variance on October 10, 2017 is based on legally untenable grounds and it is unreasonable, whimsical, capricious and arbitrary as it applied to the Plaintiff John G. Kudlic.

ORDER FOR JUDGMENT

Accordingly, I order Judgment to enter for the Plaintiff, John G. Kudlic, and this Court further confirms judgment to enter on the following matters:

1. The October 10, 2017 decision of the Agawam Board of Appeals denying the Plaintiff's request for a Variance is hereby annulled.
2. Judgment should enter for the Plaintiff John G. Kudlic.
3. The Plaintiff John G. Kudlic is hereby given a Variance to build a single family 2200 square foot Garrison style house at 33 Highland Avenue, Agawam, Massachusetts.

Subscribed and Sworn to Under the Pains and Penalties of Perjury this 15th day of May, 2024.

The Honorable Judge Robert G. Fields

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4332

BC PALMER GREEN, LLC,

Plaintiff,

v.

STACY A. PARENT,

Defendant.

ORDER

After hearing on May 9, 2024, on the tenant's motion to stop a physical eviction, the following order shall enter:

1. For the reasons stated on the record, mostly relating to the concern that the tenant may have mental health disabilities that may be related to the underlying claims as well as the tenant's default, and also based on the tenant payment to the landlord of $75 towards the cancellation of the levy scheduled for next week (May 14, 2024)[1], the physical eviction is cancelled.

[1] Payment shall be made to the landlord today, May 9, 2024.

32 W.Div.H.Ct. 221

2. Additionally, the default judgment shall be vacated, and this matter shall be reached on the merits of the for-cause eviction.
3. A referral was made at the hearing to the Tenancy Preservation Program (TPP) who were present in the courtroom and agreed to meet with the tenant directly following the hearing.
4. The tenant shall work with TPP on a RAFT application and shall cooperate with TPP's other recommendations.
5. If the landlord incurs more costs beyond the $75 discussed above, they may add that to the tenant's ledger.
6. This matter shall be scheduled for a Status Hearing on **May 23, 2024, at 9:00 a.m.**

So entered this 17 day of May, 2024.

Robert Fields, Associate Justice

Cc: TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-559

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPARTMENT HOUSING DIVISION,

Plaintiff,

v.

44 HOLLYWOOD REALTY TRUST,

Defendant.

ORDER

After hearing on April 5, 2024, at which the plaintiff city was seeking sanctions for the defendant property owner's failures to comply with court orders relative to code violations at 44 Hollywood, Springfield, Massachusetts (premises), the following order shall enter:

1. The plaintiff is seeking two types of sanctions stemming from the defendant's failure to comply with orders to make repairs. First, reimbursement to the city for seven inspections, each at $75, totaling $525. Second, a daily sanction of $100 for each of the 31 days from March 4 through April 5, 2024, for failure to comply with the court's orders to correct. Specifically, the failure to secure the premises and clear the premises of trash and debris.

2. **Fines, penalties, sanctions:** The Court does not see a mechanism under the various State Codes involved in this action, nor vis-à-vis the manner in which the city cited the defendant and pursued this court action, that allows for monetary fines, penalties, and/or sanctions. That said, if the posture of this matter was a contempt proceeding, the court is authorized to impose such fines, penalties, and/or sanctions as part of its finding of contempt. This hearing, however, was not a contempt hearing and thus no basis to impose such monetary fines, penalties, and/or sanctions.
3. The defendant agreed, however, that it should be liable for all inspections that were required after the deadlines imposed by the court's various orders. The Court finds that there were seven such inspections including the one conducted on the morning of the hearing, totaling $525 (7 X $75).
4. This amount ($575) shall be paid by the defendant forthwith to the plaintiff.

So entered this 14th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-667

HOUSING MANAGEMENT RESOURCES, INC.,

Plaintiff,

v.

AIDA ORTIZ,

Defendant.

ORDER

After a Status Hearing on May 13, 2024, at which the defendant tenant failed to appear, the following order shall enter:

1. The landlord reported that the outstanding balance though May 2024, totals $1,842 plus court costs.
2. A representative from the RAFT program (Way Finders, Inc.) was asked to join the hearing and reported that applications for RAFT funds have timed out but that if the tenant should reapply to RAFT, she will likely be eligible for all of the rental arrearage and court costs.

32 W.Div.H.Ct. 225

3. If RAFT makes a payment but there is still outstanding monies owed, the tenant shall be permitted to pay such amount at a monthly rate of $25 in addition to her rent.
4. Attorney Raquel Manzanares from Community Legal Aid was in the courtroom and asked that the tenant be referred to Community Legal Aid, which can be reached at 413-781-7814, for assistance with her RAFT application.
5. The tenant is urged to reapply for RAFT funds forthwith.

So entered this 14th day of May, 2024.

Robert Fields, Associate Justice

Cc: Raquel Manzanares, Esq. (CLA)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-494

WINNER'S O, LLC,

Plaintiff,

v.

TAYJONNA SPARKS WILLIAM,

Defendant.

ORDER

This matter was brought before the court on the motion of an interested party who claims he is an occupant of the subject premises, Kmel Legette, seeking an injunction to cancel a physical eviction. After hearing, at which Mr. Legette and the landlord appeared (though counsel), the following order shall enter:

1. Mr. Legette, testified that he has been occupying the subject premises for more than a year. He states that he rented a room from someone living there

and paid his monthly rent for a period of time and then that person, John Smith, vacated the premises.

2. Thereafter, and for all of the intervening time, Mr. Legette states that he continued to reside at the property alone without ever communicating with the property owner or manager.
3. The plaintiff had no idea that Mr. Legette was residing at the premises or that any person other than the named tenant, Tayjonna Sparks William, was not residing therein. Mr. Legette also shared that when he moved into the subject premises Ms. William was not living there and he does not know who she is.
4. As explained in greater detail on the record, even accepting everything Mr. Legette testified to as accurate, he has never established a tenancy with the property owner.
5. He also is unable to make any payment to defray the costs of a possible cancellation of the physical eviction *and* the sheriff is presently at the premises to levy on the execution and the moving trucks are idling.
6. Based on this record, the physical eviction shall be delayed until 3:00 p.m. this day (May 9, 2024).
7. Though Mr. Kmel Leggett is not a tenant, if he is unable to remove all of his belongings prior to that time and they are transported in accordance with the 48-hour notice to Goldvine Moving & Storage at 936 Suffield Street in

Agawam, MA, that company shall treat Mr. Leggett as a tenant whose belongings have been stored at their facility in accordance with G.L. c239.

8. Plaintiff counsel shall ensure that a copy of this Order is provided forthwith to Goldvine Moving & Storage.

So entered this 14th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-2478

A.P. ii, LP,

Plaintiff,

v.

ANNISABEL GARCIA,

Defendant.

ORDER

After hearing on May 9, 2024, on the defendant's motion for leave to add a third party, at which both parties and the Springfield Housing Authority (now third-party defendant) appeared through counsel, the following order shall enter:

1. The motion is allowed and the Springfield Housing Authority shall be added as a third-party defendant and represented by Priscilla Chesky.
2. The defendant, Annisabel Garcia, has until May 17, 2024, to serve her complaint upon the Springfield Housing Authority. Attorney Chesky agreed

32 W.Div.H.Ct. 230

that service may be made upon her on behalf of the housing authority, but service by sheriff/constable is still required.

3. The housing authority has twenty (20) days after receipt of the complaint to file and serve its Answer.
4. Garcia and the housing authority have until July 1, 2024, to file and serve a discovery demand.
5. Responses to said discovery demand are due by July 29, 2024.
6. Counsel for the housing authority and the landlord are partners in the same law firm and shall maintain an *Ethical Wall* while involved in this litigation.
7. This matter shall be scheduled for a Judicial Case Management Conference on **August 1, 2024, at 9:00 a.m.**

So entered this 16th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1313

CHC WINDFIELD, LLC,

Plaintiff,

v.

GREGORY PAULEY, et al.,

Defendants.

ORDER

After hearing on May 13, 2024, on the tenant's motion to contest court costs and cancellation fees for a physical eviction, the following order shall enter:

1 **Procedural Background:** This action was a for-cause eviction commenced in March 2023 and was closed on March 1, 2024, by the terms of the Agreement of the Parties ("Agreement") entered into and filed on October 16, 2023. Even though the case is closed, the tenant, who maintained possession of the premises in accordance with that Agreement, now seeks to contest the costs of judgment of the cancelation of physical move-out because they have been added to his rent ledger. The terms of the Agreement allowed for the tenant to contest these costs, made up of "court

32 W.Div.H.Ct. 232

costs" for filing and service of the summons and complaint ($246.58) and for cancelation of the physical eviction scheduled for August 8, 2023 ($300).

2. **Court Costs:** The landlord asserts that it incurred $246.58 in court costs, consisting of filing fees, summons, and service of process. In a case which was settled by an Agreement with terms that included "without admitting any wrongdoing" and also a term by which the tenant could "contest" these costs, and in a Summary Process matter in which no judgment entered and the tenant essentially prevailed by restoring his tenancy, the court does not find a basis to hold the tenant responsible for said costs and the landlord shall remove them from the tenant's rent ledger.
3. **Costs incurred by scheduling and cancelling a physical eviction:** The landlord asserts that it incurred $300 for scheduling and cancelling a physical eviction for August 8, 2023[1]. The eviction was scheduled after the tenant defaulted at the Tier 1 event on May 19, 2023. Execution was issued on June 7, 2023, and the Hampshire County Sheriff Civil Process Division served a 48-hour notice on June 16, 2023, for a physical eviction scheduled for August 8, 2023. On July 17, 2023, the tenant filed a motion to stop the move out with an attached statement that, among other things, went to great lengths to describe how mental illness caused his default.
4. There are sufficient averments contained in said attachment, in addition to the tenant and his fiancé's statement at this hearing that it would be extraordinarily difficult given their limited income to incur these costs, for the

[1] No invoice was provided to the court on said costs and the court does not make a finding as to an amount incurred by the landlord to schedule and cancel the move-out

Court to determine that under fair housing laws the parties must engage in a reasonable accommodations dialogue regarding these costs.

5. If the parties are unable to reach an agreement regarding these fees after engagement in a reasonable accommodations dialogue, either party may file a motion for the court to determine how much, if any, of these fees may be passed on to the tenant. Said hearing, if scheduled, shall be evidentiary in nature and, among other things, will be reviewed as a reasonable accommodations request by the tenant for diminution or elimination of these costs from their rent ledger.
6. For the time being, the landlord shall not bring a subsequent eviction action against the tenant based on non-payment of rent for any portion of these costs.
7. As stated above, and iterated by the landlord's counsel at the hearing, the possessory claim in this action is dismissed by the terms of the Agreement and it is only re-opened to the limited extend of the court addressing, if need be, the costs incurred by the landlord in scheduling and cancelling the August 8, 2023, physical eviction.

So entered this 16 day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP000854

Ana Maria and Israel Paulino,	)	
	)	
PLAINTIFFS	)	
	)	**FINDINGS OF FACT, RULINGS**
v.	)	**OF LAW AND ORDER**
	)	
Dayna Garcia,	)	
	)	
DEFENDANT	)	
	)	

This summary process action was before the Court (Adeyinka, J.) for trial[1] on May 9, 2024. The Plaintiffs, Ana Maria and Israel Paulino ("Plaintiffs/Paulinos"), seek to recover possession of 22 Berkshire Street, Unit 1R, Indian Orchard, MA (the "Premises") from Dayna Garcia ("Defendant/Ms. Garcia") based on a no-fault termination of a tenancy at will. The Plaintiffs and Defendant, with the assistance Spanish interpreter, appeared at trial and represented themselves.

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

The Paulinos, own a three-family home at 22 Berkshire Street, Indian Orchard, MA. The Paulinos purchased the property in November 2023 and reside on the 2nd floor. Ms. Garcia occupies the unit on the right of the 1st floor. Since 2021, and prior to the Paulinos purchasing the Premises, Ms. Garcia resided at the Premises as a tenant of the former owner. *See* **Pretrial Stipulation**. After the Paulinos purchased the Premises, they maintained a tenancy at will with Ms. Garcia. *See* **Pre-Trial Stipulation**, Ms. Garcia's pays $1,250.00 per month and her tenancy is subsidized. Her portion of the rent $365.00. *See* **Pretrial Stipulation**.

[1] On the day of trial, Ms. Garcia filed a Motion to Dismiss based on what she alleged was a defective Notice to Quit. The Court DENIES Ms. Garcia's Motion to Dismiss for reason explained *infra*.

On December 6, 2023, the Paulinos served a legally sufficient notice to quit for no fault on Ms. Garcia terminating her tenancy as of February 6, 2024. *See* **Notice to Quit at Plaintiff's Exhibit I.** At the trial, Ms. Garcia admitted that she received the Notice to Quit. Ms. Garcia did not vacate the unit on February 6, 2024.

On February 14, 2024, the Paulinos served, via Deputy Sheriff Michael Powers, a summons and Complaint on Ms. Garcia. On February 26, 2024, the Paulinos filed this no-fault summary process eviction in this Court, seeking to obtain lawful possession of the Premises. On April 25, 2024, the Court scheduled a First-Tier Court event. *See* **Docket Entry No. 4.** On April 25, 2024, the parties appeared for First-Tier Court event, but unfortunately, they were unable to resolve their dispute amicably in mediation. At the First-Tier Court event, Ms. Garcia filed her motion for late Answer with defenses and counterclaims, which the Paulinos assented to. In Ms. Garcia's Answer, she alleged the Paulinos did not: 1) fix two (2) doorknobs in her apartment; 2) and failed to fix the power outlet in the bathroom. *See* **Ms. Garcia's Answer.**

At trial, the Paulinos testified and introduced photographic evidence to show they made the repairs to the doorknobs and the power outlet in the bathroom on or about May 5, 2024. *See* **Photos of the Repairs at Plaintiff's Exhibits II.** Moreover, the Paulinos testified credibly that upon first learning of the conditions of disrepair that Ms. Garcia complained about, they took swift action (approximately eleven (11) days)) to make the necessary repairs. As a result, Ms. Garcia's defense and counterclaims to the summary process eviction fails as a matter of law. However, at trial Ms. Garcia expressed a need for more time to find suitable housing. *See* **Garcia's Letter at Plaintiff's Exhibit III.**

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Paulinos established their prima facia case for possession; (ii) the Plaintiff did not allege fault on the part of Ms. Garcia as a reason for terminating her tenancy; and (iii) in accordance with G.L. c. 239, §§ 9 and 10 the Court shall grant a reasonable stay of the Execution;

ORDER FOR JUDGMENT

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

1. Judgment enters for the plaintiff for possession, plus court cost in the amount of 229.16;
2. Issuance of the execution shall be stayed until July 1, 2024, on the conditions that:
   a. The Defendant pay use and occupancy in the amount of $365.00 for June 2024 before the fifth;
   b. The Defendant shall continue to make reasonable efforts to locate and secure replacement housing 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 payment the Plaintiff may file a motion to issue the execution. If the Defendant makes the required payments, they shall vacate the Premises on or before July 1, 2024, leaving the Premises in broom clean condition and returning all keys. If the Defendant has not vacated voluntarily as of July 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.
5. Judgments enters for the plaintiff on the defendant's counterclaims.

SO ORDERED.

Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice

May 16th, 2024

cc: Ana Maria and Israel Paulino
Danya Garcia
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1065

B.G. MASSACHUSETTS, LLC,

Plaintiff,

v.

YESENIA FALU-REYES,

Defendant.

ORDER

This matter came before the court for trial on May 16, 2024, at which the landlord appeared through counsel and the tenant appeared self-represented. After hearing, the following order shall enter:

1. The parties stipulated to the landlord's case for possession and for outstanding rent through May 2024 totaling $11,934.67.
2. Judgment shall enter for the landlord for possession and for said amount.
3. An execution may issue upon a timely filing and service of a Rule 13 application, but its use shall be stayed contingent upon the tenant complying with the terms of this Order. If the landlord obtains execution in

32 W.Div.H.Ct. 238

this manner but is does not use it, the terms of this Order shall toll the expiration of the execution in accordance with G.L. c.235, s.23.

4. The tenant shall pay her May 2024 rent of $1,068 today by money order.

5. Starting with June 2024, the tenant shall pay her rent timely and in full and then two weeks later pay $300 towards the arrearage.

6. The Way Finders, Inc. representative joined the hearing and explained that the tenant may be eligible for $1,382. She will then be eligible again for RAFT in July 2024 for an additional $5,617.

7. The tenant shall apply for RAFT forthwith and, if there is still a rental balance in July 2024, shall reapply then for RAFT. The $300 paid towards arrearage each month noted above shall act as a repayment plan for RAFT purposes.

8. The tenant is awaiting a tax return, though it is being held up by issues with identity theft of her son. The tenant shall report to the landlord if and when she receives her tax return. If she does receive tax return funds, she shall use same to pay the arrearage within five business days of receipt of said funds.

9. Any and all payments from the tenant to the landlord shall be by money order or bank check.

So entered this 17th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3642

PALPUM RAW, LLC, Plaintiff, v. GARY YARD, INDIRA YARD, INGRIM YARD, and INGLYANA YARD, Defendants.	ORDER

After hearing on April 30, 2024, on the plaintiff's motion to add a party, its motion for use and occupancy, and Gary Yard's motion for adding additional parties, the following order shall enter:

1. **Plaintiff's Motion to Add Bank of New York Mellon:**[1] This motion is allowed by assent of the all the parties and Bank of New York Mellon f/k/a Trustee for the Certificate Holders of the CWABS Inc. Asset-Backed

[1] The full title of the motion is: Plaintiff's Motion to Add Bank of New York Mellon FKA the Bank of New York as Trustee for the Certificate Holders of the CWABS Inc. Asset-Backed Certificates, Series 2005-7 as an Indispensable Party or Party Defendant.

Certificates, Series 2005-7 shall be added as an indispensable third-party defendant. The motion was not accompanied by a complaint against the Bank of New York Mellon ("the Bank"). Though such a complaint may likely be filed by the plaintiff, Palpum Raw, LLC at a later date, the court views the Bank as an indispensable party under Rule 19 of the Massachusetts Rules of Civil Procedure and does not require a complaint to be filed at this juncture[2].

2. **Gary Yard's Motion to Join Additional Parties (in addition to Bank of New York Mellon):** This motion as it relates to adding Countrywide, MERS, Park Monaco Inc., Park Sienna, LLC, and the Commonwealth of Massachusetts is denied, without prejudice.
3. **Plaintiff's Motion for Use and Occupancy Pending this Action:** The plaintiff is seeking use and occupancy payments to be made by the defendants each month pending the final adjudication of this action. Though no affidavit was filed by the plaintiff in support of its motion, it avers in the body of the motion, and its owner confirmed these figures at the hearing, that the monthly carrying costs of the subject premises is approximately $2,200.
4. The plaintiff did not assert, however, how such carrying costs effect (if at all) its financial situation. *Davis v. Comerford*, 483 Mass. 164 (2019) (additional factors [....] such as where the landlord demonstrates that use and occupancy payments are necessary for the landlord to pay a mortgage on the premises or meet other pressing financial obligations) and (to avoid creating a "monetary barrier" to an impecunious tenant with a potentially meritorious

[2] The issue of whether and when a compliant will be filed against the Third-Party-Defendant Bank shall be discussed among other things at the Judicial Case Management Conference scheduled below.

defense who has requested a jury, while also keeping in mind financial hardship to a landlord, the judge has discretion to consider factors bearing on the financial positions of the parties when deciding on the award of interim use and occupancy payments.,

5. Though the defendants did not file any affidavits, they aver that Mr. Yard is indigent and is no longer employed due to a disability. They also assert that it would be unreasonable to believe that the plaintiff was not aware of the defendants' longstanding challenges to the underlying foreclosure prior to purchasing the property and also that the plaintiff is in the business of purchasing similarly situated properties and "knew what they were getting into" when they purportedly purchase this property. Moreover, and at the heart of this litigation, they argue that they are and were never tenants, that they are the owners of the property who challenge the underlying foreclosure and that if they are successful, they may be adjudicated as the current owners of the property.
6. 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.
7. **Access for Inspection:** The Court, *sua sponte*, hereby issues an access order out of concern about the safety of the defendants and all occupants. The plaintiff may inspect the premises upon proper and reasonable advance notice. Upon receipt of said notice, the defendants shall either notify the

plaintiff that the proposed schedule for the inspection is adequate or, if they cannot accommodate that date and time, they shall immediately provide reasonable alternate times and communicate in good faith until a mutually agreeable time is reached.

8. **Judicial Case Management Conference:** This matter shall be scheduled for a Judicial Case Management Conference for scheduling of discovery, pretrial events, and trial dates on **May 31, 2024, at 9:00 a.m.**[3] A copy of this Order shall be sent to Jonathan Rankin, Esq., counsel for Bank of New York Mellon. The Bank shall appear through counsel at this Case Management Conference.

So entered this 17th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[3] Plaintiff counsel reported during the hearing that she has been in touch with Attorney Jonathan Rankin who represented Bank of New York Mellon in earlier cases against those same defendants regarding these same premises prior to their sale to the current plaintiff.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-331

RELIABLE PROPERTY DEVELOPMENT, LLC,

Plaintiff,

v.

JAMIE BISHOP and GEORGE LEBEAU,

Defendant.

ORDER

This matter came before the court for review of a mediated agreement and because it is a CV action for access to inspect and make repairs at the subject premises but includes the tenants' waiver of Summary Process and a vacate date, the judge continued this matter so that the tenant could consult with legal counsel.

As such, the following order shall enter:

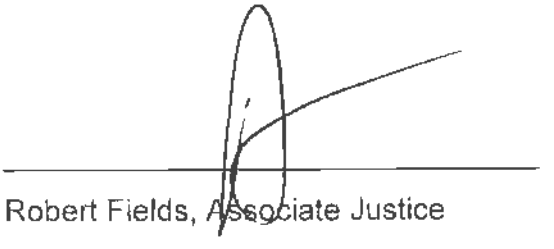
1. By agreement of the parties, the terms for access in the draft agreement shall go into effect. These include the tenants providing access to the premises for the plaintiff's contractors upon 48 hours' notice on all Fridays and Mondays

32 W.Div.H.Ct. 244

between 8:00 a.m. and 2:00 p.m. and that the landlord will make all known repairs within 30 days. For repairs subsequent to the current ones, the landlord shall provide a 48 hours' notice for access and will make those repairs in a reasonable amount of time.

2. This matter shall be scheduled for hearing on **May 23, 2024, at 9:00 a.m.** If the tenants have not already consulted with a lawyer, they shall meet with Community Legal Aid in the Court's Resource Room on the hearing date before doing anything else.

So entered this 17th day of May, 2024.



Robert Fields, Associate Justice

Cc: Liz Cruz, Housing Specialist
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1078

B.G. MASSACHUSETTS I, LLC,

Plaintiff,

v.

MADELINE MATEO,

Defendant.

ORDER

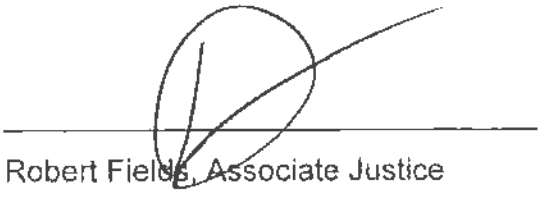
After hearing on May 16, 2024, at which both parties appeared through counsel, the following agreed-upon order shall enter:

1. The physical eviction currently scheduled for May 20, 2024, is cancelled.
2. If the landlord incurred any expenses for said cancelation, it shall provide the tenant with an invoice (or invoices) for same which shall be added to the tenant's ledger.

32 W.Div.H.Ct. 246

3. The tenant's counsel reported that she is representing the tenant in an appeal of her Section 8 Rental Voucher termination and also that she will assist the tenant with a new RAFT application.
4. The tenant shall pay the remainder of the May 2024 rent (she had already paid her "portion" and now will pay what was the subsidy portion), postmarked by May 17, 2024.
5. This matter shall be scheduled for review on **June 13, 2024, at 9:00 a.m.**

So entered this 20 day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-767

JOSE FEBRES,

Plaintiff,

v.

ZULEIKA FEBRES,

Defendant.

ORDER

After hearing on May 16, 2024, at which both parties appeared self-represented, the following order shall enter:

1. The plaintiff's complaint for injunctive relief is denied, and the case is dismissed without prejudice.
2. The parties co-own a two-family home in Springfield. The plaintiff is seeking a court order to "coordinate all legal obligations regarding ownership" and improve the parties' communications regarding their co-owned property.

32 W.Div.H.Ct. 248

3. One thing the parties did agree on is that there is no written contract or other document between them that clarifies any obligations or rights relative to the property other than a deed.
4. The court finds and so rules that on the record before the court the plaintiff has not shown irreparable harm nor a likelihood of success on the merits. In fact, the court does not view the complaint as asserting a legal claim upon which this court can adjudicate.

So entered this 20th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4843

CHRISTOPHER DUCHARME,

Plaintiff,

v.

RENEE JENKINS,

Defendant.

ORDER

After hearing on May 16, 2024, on the tenant's motion to dismiss, the following order shall enter:

1. The plaintiff, Christopher Ducharme, is neither the owner of the subject premises nor the lessor in this tenancy. Mr. Ducharme is also not an attorney representing either a lessor or owner.
2. Accordingly, pursuant to G.L. c.239, s.1, the plaintiff does not have superior right to possession over the defendant and the motion to dismiss is allowed.

32 W.Div.H.Ct. 250

See also, Rental Property Management Services v. Hatcher, 479 Mass. 542 (2018).

3. This matter shall be dismissed, without prejudice.

So entered this 21st day of May, 2024.

Robert Fields, Associate Justice

Cc: David DeBartolo, Esq., LAR Counsel for the Defendant
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 22-SP-3238

HOUSING MANAGEMENT RESOURCES, INC.,

Plaintiff,

v.

LEE-ONA HUGHES,

Defendant.

ORDER

After hearing on May 15, 2023, on the tenant's motion to stop a physical eviction scheduled for May 24, 2024, the following order shall enter:

1. The motion to cancel the physical levy on the execution is allowed, but not for the reasons stated by the tenant. It is cancelled due to the landlord's failure to comply with the court's February 28, 2024, order which required the landlord to serve a copy of the Rule 13 application.

32 W.Div.H.Ct. 252

2. The landlord shall cancel the current scheduled levy and reschedule with upon a new "48-hour" notice in compliance with G.L. c.239. The landlord is not required to file and serve a new Rule 13 application.

So entered this 21st day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-5064

BICH T. REED,

Plaintiff,

v.

TRISHA PECOR and NATHAN FRANKLIN,

Defendant.

ORDER

After hearing on May 17, 2024, on the landlord's motion to alter and/or amend execution at which the defendants failed to appear, the following order shall enter:

1. With averments from the landlord that Nathan Franklin was never a tenant but merely an occupancy invitee of the tenant and that Mr. Fanklin was present at the premises and that the sheriffs cancelled an levy on the execution due to Mr. Fanklin's presence at the premises, the court added Mr. Franklin as an indispensable party defendant in a May 1, 2024, Order.

32 W.Div.H.Ct. 254

2. This hearing was scheduled only after notice of said hearing was served by sheriff to afford the defendants further opportunity to be heard as to whether or not Mr. Franklin had any possessory rights beyond those of Ms. Pecor.
3. After the defendants' failure to appear today, the motion is allowed.
4. A new execution shall issue for the plaintiff landlord for possession *only,* [1] with both names of the defendants, Trisha Pecor and Nathan Franklin

So entered this 21st day of May, 2024.

Robert Fields, Associate Justice

Cc: Clerk Magistrate, Michael Doherty
Court Reporter

[1] There is already a valid execution for money damages against the tenant, Trisha Pecor.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-1402

ECP HOLDINGS, LLC,

Plaintiff,

v.

PAUL GRZYBOWKSI,

Defendant.

ORDER OF DISMISSAL

After hearing on May 17, 2024, on the landlord's motion for issuance of the execution, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. **Procedural History:** After trial on the merits on June 21, 2023, the Court issued a decision (Kane, J.) on that same date entering judgment for the plaintiff for $3,600 plus court costs. Execution could issue at the expiration of the appeal period, but its use was stayed through July 31, 2023, to allow for a RAFT application to be processed. An execution for those sums and for possession issued on July 13, 2023, to the landlord. On August 11, 2023, the

Court held a hearing on the tenant's motion to stay execution. The Court issued the following order as a result of that hearing:

> 8/11/23 Motion allowed because of pending RAFT application (00248545). The landlord will complete its portion forthwith. The tenant will pay August rent by 8/31/23 and September by 9/15/23. If the landlord has not received confirmation of approval by RAFT by 9/12/23 it may schedule a motion to lift the stay. The landlord may renew its execution upon request. (Kane, J.)

2. On April 12, 2024, the landlord filed a motion for a new execution and returned the expired execution to the court.

3. **Discussion:** G.L. c.235, s.23 states in its second paragraph:

> Executions for possession of premises rented or leased for dwelling purposes obtained in actions pursuant to chapter two hundred and thirty-nine shall not e issued later than three months following the date of judgment, except that any period during which execution was stayed by order of the court or by management of the parties filed with the court hall be excluded from the computation of the period of limitation. Such executions shall be made returnable within three months after the date of issuance and shall state the date of issuance and the return date. No 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.

4. In this instant matter, the landlord did not motion the court for a lifting of the stay at any time; not prior to September 12, 2023, nor thereafter. The landlord also did not return the execution nor seek issuance of a new one prior to April 2024, some six months after it expired. Though the landlord may argue that in accordance with the judge's order on August 11, 2023, use of the execution was tolled by court order until the December 19, 2023, payment by RAFT, the request for a new execution (on April 12, 2024) was still beyond

the three months the statute allows for, even from that latest date (December 19, 2023).

5. Accordingly, the Court is unable to allow the motion for a new execution for possession. Though the underlying judgment remains valid, the landlord's claim for possession in this action is dismissed. See, *Fort Point Investments, llc, v. Hope Kirunge-Smith,* 103 Mass. App. Ct. 758 (2023).

So entered this 22nd day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4405

SECRETARY OF VETERAN AFFIARS,

Plaintiff,

v.

RONEY L. HARRIS,

Defendant.

ORDER

After hearing on May 6, 2024, on plaintiff's motion for summary judgment and the defendant's opposition to same as well as on the defendant's revised request for order of immediate intervention and injunction, due to plaintiff's continued failure to appear, the following order shall enter:

1. The plaintiff's motion for summary judgment for possession is hereby allowed for the reasons asserted by the plaintiff in its motion and based on the doctrine of *res judicata*. The plaintiff has met it *prima facie* case herein for possession and any and all challenges to the underlying foreclosure have been adjudicated by the Hampden Superior Court (and affirmed by the Appeals Court), the Bankruptcy Court, and the U.S. District Court (D. Mass).

32 W.Div.H.Ct. 259

2. The defendant's motion for intervention and injunction is denied. The court record indicates that all other motions filed by the defendant have been adjudicated. If there are any pending motions filed by the defendant not yet addressed, they are hereby denied.
3. This order is for an award of possession to the plaintiff and dismissal of any counterclaims asserted by the defendant, but not yet a judgment. This is because the summons and complaint in this matter has an Account Annexed in which the plaintiff is seeking use and occupancy.
4. If the plaintiff withdraws its claim for use and occupancy in writing to the court, a final judgment for possession shall be entered for the plaintiff without need for further hearing.
5. If the plaintiff seeks to be heard on its claim for use and occupancy, it shall so move the court and an evidentiary hearing shall be scheduled by the court. Parties should be made aware that documents in support of establishing an amount for use and occupancy may not be admissible without coming through a live witness at hearing.

So entered this 22nd day of May, 2024.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Court Reporter