Western Division Housing Court
Unofficial Reporter of Decisions

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

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

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

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

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

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

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

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

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment and taking the Court's views into consideration. Our current redaction and exclusion criteria are as follows: (1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) Stipulated or agreed-upon orders will generally be excluded. (4) Decisions made as handwritten endorsements to a party's filing will generally be excluded. (5) Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, specific personal financial information, and/or certain criminal activity will be redacted if reasonably possible, or excluded if not. As applied to orders involving guardians ad litem or the Tenancy Preservation Program, redaction or exclusion is not triggered by virtue of such references alone but rather by language revealing or fairly implying specific facts about a mental health disability. (6) Non-public contact information for parties, attorneys, and third-parties are generally redacted.

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

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

PUBLICATION

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

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

SECURITY

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

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

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

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THE TRIAL COURT

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HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV0471

RANSFORD PROPERTIES,

PLAINTIFF

v.

HENRI O'NEIL,

DEFENDANT

AGREED-UPON ORDER

This application for temporary restraining order came before the Court by Zoom on August 20, 2021. Plaintiff appeared through counsel, and Defendant represented himself. He was accompanied by Mr. Peck from the Tenancy Preservation Program ("TPP"). Because Defendant appeared after notice, the Court treats this application as a motion for a preliminary injunction.

The parties agreed to the following terms as a resolution of this matter, which the Court hereby enters as an order:

1. Defendant will not use the range or oven to cook.
2. Defendant will use not use anything other than the microwave to prepare meals in his room.
3. Defendant will cooperate with TPP and follow its recommendations regarding a housing search.
4. The legislative fee for injunctions set forth in G.L. c. 262, § 4 is waived.
5. This order shall remain in effect until further order of this Court.

SO ORDERED this 24th day of August 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

KARELYZ TORRES,

Plaintiff,

v.

DOCKET NO. 21CV00514

OCEAN PROPERTY,

Defendant.

ORDER

This matter came before the court on August 19, 2021 on the plaintiff-tenant's request for an emergency order against the defendant-landlord. Both parties were represented by counsel at the hearing. Karelyz Torres testified on her own behalf and submitted evidence. Felicia Cortes, office manager for Ocean Property Management, testified for the defendant. The case was referred to the Tenancy Preservation Program (TPP). Two TPP clinicians were present for the hearing.

The tenant has lived at the subject rental premises located at 304 Chestnut Street #4B in Holyoke, Massachusetts with her minor children since December 2018. The apartment is a three-bedroom Section 8 moderate rehab unit. The subsidy is administered by the Holyoke Housing Authority.

Ms. Torres requested that the landlord relocate her family temporarily and then move them out of the apartment to another building in the development because of a recurring sporadic problem with bats. She testified that she has seen one to three bats in her apartment, always at night, at different times since she moved into the apartment or at least since 2019. She submitted a letter from her daughter's pediatrician dated August 28, 2019 referencing the need to address of

the issue of bats in the apartment. She submitted three pictures, two of which clearly show a bat in her apartment. The pictures were taken on August 7 and 11, 2021.

There is a dispute between the parties about when Ms. Torres first gave notice to the landlord,[1] but for the purpose of the August 19 hearing on her request for an emergency order, the evidence shows that there is a recent presence of bats in the plaintiff's apartment. Ms. Torres testified that she last saw a bat on the night of August 14, 2021. She has called Sam, one of the maintenance workers for Ocean Property, when she sees a bat. He promises to come the next day to deal with the problem. By then she has called a family member to deal with the bat and there is no evidence of bats during the day. She was staying with a friend at the time of the hearing. She testified that she did not "feel comfortable" going back to stay at the apartment.

There is also a dispute about whether Ms. Torres is using the most effective means of notifying the landlord about the problem because it occurs only at night. The management does not consider it to be as much of an emergency as Ms. Torres does, so they do not send a worker during the night when she calls. Sam is not always on call when she calls him, so he would not respond until the next day. Again, for the purpose of the August 19 hearing on the plaintiff's request for an emergency order, such issues are of limited relevance.

Ms. Cortes testified that she first became aware of the bat issue on August 12, 2021 when Ms. Torres called. She sent the maintenance worker Sam to check for holes in the apartment and to move the ceiling tiles to inspect for holes. Sam knocked on her door on August 12 and 13, but Ms. Torres did not let him in. Ms. Cortes telephoned her about access and Ms. Torres told her to give twenty-four hour notice for access. She gave such notice for August 16. Ms. Cortes contacted Bug Off Exterminators about the problem. She learned that because bats are a protected species in Massachusetts, she cannot have them "exterminated". The company suggested that she order bat repellant. She did so, but it was on back order. During the hearing she learned that it was due to be delivered on August 20.

It is not disputed that there is at least a sporadic bat infestation at Ms. Torres' top floor apartment. [redacted] The landlord needs to eliminate the infestation from her apartment. Because bats are a protected species in Massachusetts, the landlord must consult a licensed

[1] Ms. Torres submitted an exchange of texts with a maintenance worker, Sam. The written document and Ms. Torres' testimony offered different dates for when they occurred.

problem animal control agent, i.e., a bat specialist, to deal with the issue according to state law and scientific principles.[2]

The court does not find that it is necessary for the landlord to move the plaintiff into alternative housing on a temporary basis at this time. If for some reason, the remediation work is not started promptly, if the work stalls for reasons that are beyond Ms. Torres' control, or if the problem cannot be remedied, the plaintiff may renew her request.

Ms. Torres applied for a transfer to another apartment. Ms. Cortes testified that she is first on the transfer list and that there is another three-bedroom subsidized apartment available on the first floor of her building where she could move effective October 1, 2021. Ms. Torres testified that she does not want to move into another apartment in the same building because [redacted] She would prefer to move to a two-bedroom apartment in another building in the development. Ms. Cortes testified that unfortunately, there are no such apartments available at this time. There was no decisive evidence at the hearing regarding whether other apartments in Ms. Torres' building have a similar problem with bats and whether there is a basis for [redacted] Ms. Cortes testified that Ms. Torres is the only tenant who has complained about bats, although Ms. Torres has heard anecdotally of similar problems in the building. Such information is relevant to any plan to eliminate the bats in Ms. Torres' top floor apartment effectively.

Plaintiff's counsel reported that Ms. Torres intends to file a request for a reasonable accommodation regarding a transfer based on [redacted] She should do so as soon as possible and then enter into the interactive process with the defendant and the defendant's counsel. Plaintiff's counsel appeared on a limited assistance representation basis at the hearing. However, he is asked to continue to work with Ms. Torres on her reasonable accommodation request and any issues that may arise concerning the Holyoke Housing Authority and the transfer process.

Plaintiff's counsel referred the case to TPP and the TPP clinicians were present at the hearing. They are asked to work with Ms. Torres on issues concerning her tenancy and a possible transfer to another unit.

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[2] See www.mass.gov/service-details/bats-in-the-home.

Orders

After hearing, the following orders will enter:

1. The defendant will retain the services of a licensed problem animal control agent, i.e., a bat specialist, forthwith to develop a comprehensive plan
   a. to inspect for any holes or smaller cracks where bats may be entering the building and the plaintiff's apartment,
   b. to seal any such holes and cracks and/or to install any protective devices as recommended,
   c. to remove all bats from the building, as recommended.

   All such work will be done in compliance with Massachusetts laws regarding bats and will be completed by October 15, 2021.
2. The defendant will inquire of all tenants in the building whether they have experienced bats in their apartments or in the common areas, as part of the comprehensive plan to be developed pursuant to order no. 1 above.
3. The plaintiff's request for temporary emergency alternative housing is **DENIED** at this time. However, the parties will work together in a good faith effort to transfer the plaintiff and her family to an appropriate subsidized apartment within the development by October 1, 2021 [redacted] even after remediation work is completed.
4. The parties will enter into an interactive dialog pursuant to the principles of *Boston Housing Authority v. Bridgewaters*, 452 Mass. 833 (2009) regarding any request(s) for reasonable accommodation made by the plaintiff.
5. The case was referred to the Tenancy Preservation Program of this court. All parties will work with the TPP clinician to resolve outstanding issues concerning the plaintiff's tenancy.

The statutory fee for injunctive relief in this case is waived.

So entered: 24 August 2021

Fairlie A. Dalton
Fairlie A. Dalton, J. (Recall)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

WINN MANAGED PROPERTIES, LLC, AS AGENT FOR NORTHERN HEIGHTS, LP,

Plaintiff,

v.

DOCKET NO. 21CV00525

EUGENEA CARTER,

Defendant.

ORDER

This matter came before the court on August 24, 2021 for a hearing on the plaintiff-landlord's verified complaint for a civil restraining order against the defendant-tenant. The plaintiff was represented by counsel. Property manager Jenn Adams testified on behalf of the plaintiff. The defendant was self-represented and testified on her own behalf.

The tenant lives at the subject rental premises located at 7 Central Street #2A in Springfield, Massachusetts with her husband. She has lived in this second floor apartment for about two and one-half years. She lived in a third floor apartment in the same building for many years before moving to the second floor.

Ms. Adams testified that on August 9, 2021 she was on the telephone in her office with her boss when Ms. Carter came into the outer office and confronted the assistant property manager, Felicia Orr.[1] Ms. Adams testified that she could hear what was said and could see Ms. Carter pointing at her through a window between the offices. Ms. Carter was very angry and upset about an ongoing mice infestation in her apartment. She yelled and made threats directed at Ms. Adams because the infestation had not been eliminated.

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[1] Ms. Orr was not available to testify because she began a maternity leave earlier than planned.

Ms. Carter questioned whether Ms. Adams could hear her from her office, but she agreed that she was very upset and that she was yelling when she went to the office on August 9. She wanted Ms. Orr to relay what she was saying to Ms. Adams. She testified that there has been an ongoing problem with mice in her apartment and that efforts to resolve the problem to date have not been effective. Except for this incident, she feels that she has had a good relationship with Ms. Adams and Ms. Orr.

The court accepts that Ms. Carter was upset about the ongoing mice infestation, but her behavior in the office on August 9 was unacceptable and posed a risk of harm to the staff and other residents which cannot be repeated. The court orders a cooling off period as outlined below. Because the parties agree that this has not been a pattern of behavior by Ms. Carter, the court does not make the injunction permanent as requested by the plaintiff in the verified complaint. However, the plaintiff may renew its motion if there is any further incident.

In an attempt to address the underlying circumstances here, the court discussed the efforts to reduce the mice infestation with the parties. The plaintiff reported that they have an exterminator come to the property twice a month and exterminate in any apartment with an infestation. Ms. Carter's apartment is scheduled for such a treatment this afternoon. She reported that she is ready to have the extermination done. The property's maintenance staff is available to block any holes where mice may enter an apartment. Ms. Carter and her husband are in the best position to know where such holes or openings may be in their apartment. They should prepare a list and give it to the maintenance worker when he comes to block the holes.

Orders

After hearing, the following orders will enter:

1. For a period of two months from the date of this order:
    a. The defendant Eugenea Carter will not enter the management offices at Northern Heights for any reason.
    b. The defendant Eugenea Carter will communicate with management only in writing, except in the case of a true emergency.
    c. It is inevitable that Ms. Carter will come into contact with maintenance workers and vendors of the plaintiff during this time. She will interact with them in a professional manner.

2. The plaintiff will continue its efforts to exterminate the mice infestation at the premises until it has been eliminated. This may require treatments at Ms. Carter's apartment more frequently than twice a month, if recommended by the exterminator.
    a. Before the next scheduled extermination, the plaintiff will have a maintenance worker inspect for holes and openings where mice may be entering Ms. Carter's apartment
    b. Ms. Carter will prepare a written list of holes or openings in her apartment that she is aware of where mice may be entering. She will give this written list to the maintenance worker when he inspects for holes and openings in her apartment.
    c. The maintenance worker will close all such holes and openings before the next scheduled extermination.
3. When the two month cooling off period referred to in no. 1 above ends, Ms. Carter will communicate with management and staff in a professional manner.

So entered: 24 August 2021

Fairlie A. Dalton
Fairlie A. Dalton, J. (Recall)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1307

ROCKRIDGE RETIREMENT COMMUNITY,	)	
	)	
PLAINTIFF	)	
	)	**ORDER FOR JUDGMENT**
V.	)	
	)	
KEVIN COURTNEY,	)	
	)	
DEFENDANT	)	

This case came before the Court by Zoom on August 23, 2021 for a hearing on Plaintiff's motion for entry of judgment based on alleged violations of an Agreement of the Parties dated July 7, 2021 (the "Agreement"). Plaintiff appeared with counsel. Defendant represented himself.

The Agreement prohibited Defendant from, among other things, "harassing any staff or other resident, whether physical or verbal." Based on the testimony offered at trial, the Court finds, that Defendant substantially violated this provision by speaking and gesturing at staff in a manner that caused them to feel intimidated and uneasy.[1]

The Agreement also required Defendant to "declutter his unit and remove any unsafe fire load, such that there are clear egresses into the unit, as well as clear egresses to all rooms within his unit" and to permit access to Plaintiff's staff to enter his unit for the purpose of cleaning each

[1] Plaintiff's witnesses testified credibly that Defendant makes hand gestures and seems to be placing "curses" and "hexes" on people. In addition to making staff very uncomfortable, other residents are in fear of him, particularly after an employee died and Defendant claimed that his "curse" caused her death.

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week. Defendant concedes that he has not complied with this requirement. The Court finds his failure to comply is a substantial violation of a material term of the Agreement.

Accordingly, Plaintiff is entitled to entry of judgment. The execution (eviction order) shall only issue upon further order of this Court. The following order shall enter:

1. The parties shall return for a Zoom hearing on **September 9, 2021 at 3:00 p.m**. by Zoom to determine whether the execution will issue and if the Court will impose any conditions on its use.
2. Prior to the next Court date, Defendant shall make diligent efforts to remove the excessive clutter in his unit so that weekly cleanings can begin. He initially testified that he did not want anyone to move his books, but subsequently stated that he would allow others, under his supervision, to put books in boxes. If management is not able to locate an agency or entity to assist Defendant with this task, Plaintiff's counsel may make a referral to the Pioneer Valley Tenancy Preservation Program ("TPP") for an assessment of Defendant's eligibility for services. If Defendant is eligible, TPP may be able to arrange for a heavy chores company to help Defendant.
3. Defendant shall allow access to management for an inspection of his unit on September 2, 2021 at 1:00 p.m. Both Plaintiff and Defendant are invited to take photographs to show the Court the condition of the unit.
4. Defendant shall not communicate (verbally or through gestures) with any staff member except as necessary to address bona fide landlord-tenant issues, and he shall refrain from any action that disturbs other residents or places them in fear. Defendant is on notice that the manner in which he has addressed staff members and other residents in the past as described by witnesses at the hearing today is the type of

conduct that is prohibited by this order.

5. Defendant shall cooperate with Highland Valley Elder Services and Plaintiff's staff with respect to a search for a different housing option where Defendant might move as a resolution of this case.

SO ORDERED this 25th day of August 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1275

FRANK OFORI BOATENG,

PLAINTIFF

V.

GABRIEL GUTIERREZ, ET AL. ,

DEFENDANTS

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process case came before the Court for an in-person trial on August 24, 2021. All parties appeared through counsel. Defendants concede that they did not provide Plaintiff with a CDC declaration nor do they have a pending application for emergency rental assistance; therefore, neither the Federal nor Massachusetts eviction moratoria apply.

Based on the testimony and evidence presented at trial, the Court finds that Defendants live at 164 Dunmoreland Street, Springfield, Springfield, Massachusetts (the "Premises") in a first-floor apartment in a two-family house owned by Plaintiff. Plaintiff purchased the house on January 25, 2021. Defendants were tenants of the prior owner under a written lease that expired by its terms on March 1, 2021.

When Plaintiff commenced this case, he filed with this Court two different notices to quit along with the summons and complaint. In one notice, dated March 15, 2021, Plaintiff informed Defendants to vacate within thirty days from service of the notice and cited a balance due of "$1800 plus." In the other notice, dated March 17, 2021, Plaintiff served a 14-day notice based on Defendants' failure to pay rent in the amount of $1800. The summons and complaint cites the

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reason for the eviction as "expired lease" and references a balance due of $1850 after adding on late fees.[1]

A landlord's termination of a tenancy must be unequivocal. *See Maguire v Haddad*, 325 Mass. 590, 593 (1950). Because a tenant may reasonably misunderstand the legal force of a notice to quit, *see Adjartey v. Central Div. Housing Court Dep't*, 481 Mass. 830, 850 (2019), a tenant is entitled to a clear, unequivocal and unambiguous termination notice. By providing Defendants with two notices to vacate in the same month citing different termination dates (one being 14 days and the other 30 days), Plaintiff sent Defendants a mixed message regarding the actual timing of the termination and created confusion around Defendants' right to cure and reinstate the tenancy. The Court deems the sending of multiple inconsistent notices to quit in this case to be a substantive error with a meaningful practical effect, thereby rendering the notice relied upon by Defendants defective.

Moreover, in bringing a summary process case, a landlord is confined to the grounds set forth in its notice to quit. *See* Uniform R. Summary P. 2(d). Where the basis for termination of the tenancy does not comport with the reason set forth in the Summary Process summons and complaint, the complaint is defective and must be dismissed. In this case, the notices to quit were for non-payment of rent, and the reason given in summons and complaint is "expiration of lease," which implies a no-fault eviction for holding over after the expiration of a written lease.

Because of the defects in pleading, this case is hereby dismissed.

SO ORDERED this 26th day of August 2021.

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

cc: Court Reporter

[1] Although not a central issue in this case, because Plaintiff never entered into a rental agreement with Defendants, he has no legal basis to assess late fees.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-418

SPRINGFIELD GARDENS, LP,

Plaintiff,

v.

TINA BURS,

Defendant.

ORDER

After hearing on August 24, 2021 on the defendant tenant's motion for the completion of repairs, at which she appeared *pro se* and the plaintiff landlord appeared through counsel, the following order shall enter:

1. The landlord shall provide the tenant with 48-hour written notice in advance of any work to be performed in her unit that explains the time for that day that the work will be effectuated, a description that is as detailed as possible of the

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anticipated work, and any other helpful instructions/information. The work will be done by professionals and in a clean and workmanlike fashion.

2. The tenant shall not interfere with said work and shall not speak with the workers when they are performing their work other than what is minimally necessary.
3. During any time that workers are performing work at the premises, they shall wear mask and maintain at least six feet from the tenant and shall comply with all current COVID-19 protocols.
4. This judge's impression from the testimony at the hearing was that both the landlord's worker and the tenant felt that the other was rude and each were offended by each other. Both sides shall make their best efforts to avoid behaviors that can be perceived by the other side as rude and/or offensive.

So entered this 24th day of August, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21 CV 0512

TOWN OF WEST STOCKBRIDGE,

PLAINTIFF

v.

KEVIN P. SULLIVAN,

DEFENDANT

ORDER ON MOTION FOR PRELIMINARY INJUNCTION

This case, brought by the Town of West Stockbridge (the "Town") pursuant to G.L. c. 40A, § 7 to enforce its zoning bylaws, came before the Court by Zoom on August 23, 2021. Defendant appeared and represented himself. The Town seeks a preliminary injunction enjoining Defendant from continuing to use his property located at 29 Pixley Hill Road, West Stockbridge, Massachusetts (the "Property") for the keeping of a trailer for dwelling purposes. Such use is expressly prohibited pursuant to the Town's zoning bylaws.

In cases in which a municipal entity is requesting injunctive relief, the Court must determine whether the municipality has established a likelihood of success on the merits and whether the requested relief "promotes the public interest or, alternatively, will not adversely affect the public." *See LeClair v Town of Norwell*, 430 Mass. 328, 331-332 (1999) (citation omitted). Here, the Town has satisfied its burden. The Court finds that the Town is likely to be able to demonstrate at trial that Defendant is keeping a trailer on the Property in violation of the Town's zoning bylaws and that issuance of injunctive relief in this case promotes the public interest.

In light of the foregoing, the following order shall enter as a preliminary injunction:

1. Defendant shall vacate the Property no later than Friday, August 27, 2021 at 12:00 p.m. and not reside on the Property in the future except with the written approval of the Town.
2. Defendant shall remove the trailer from the Property no later than September 3, 2021 at 12:00 p.m.
3. Defendant shall allow Plaintiff's inspection officials to access the Property to determine compliance with this order.
4. If Defendant obtains a special permit allowing temporary use of the trailer for living purposes while a dwelling is actively under construction on the same lot, he may seek relief from this order.

SO ORDERED, this 24th day of August 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-597

CLINT STONACEK McCRAYS PROPERTY MANGEMNET,

Plaintiff,

v.

SANDRA HAMLETTE,

Defendant.

ORDER

After hearing on August 26, 2021, at which the landlord Clint Stonacek appeared with counsel and the tenant Sandra Hamlette appeared with counsel, the following order shall enter:

1. The tenant's motion to dismiss this action, without prejudice, is allowed.
2. The court makes this ruling in accordance with *Rental Property Management Services & Another v. Loretta Hatcher,* 479 Mass. 542 (2018). As in *Hatcher*, there is no dispute that the "plaintiff" listed on the summons, Edwin McCray, was

neither the owner nor the lessor of the property. Additionally, the summons is made more confusing by the amounts of use and occupancy sought by Mr. McCray which have no relationship to the amounts of use and occupancy outstanding at the time of the summons[1]. As such, the court shall use its discretion as described in *Hatcher* to dismiss this action and allow the landlord to properly commence a new eviction matter against the tenant, if he so chooses[2].

3. **Order:** This matter is dismissed without prejudice as to the parties right to asserts their claims in another proceeding.

So entered this 30th day of August, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] As such, Stonacek's motion to amend the complaint to properly reflect his rent claim is moot. It is noteworthy, however, that said motion does not seek to clarify the name of the plaintiff which currently is an amalgam of Stonacek and McCray Property Management.

[2] The parties are also directed to seek RAFT and/or ERMA funds from Way Finders, Inc. (reached on-line at www.wayfindersma.org/hcec-assessment or by phone at 413-233-1600) to apply for rental arrearage funds---this may resolve the rent issue as well as dispense with the need for filing a new summary process action.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP1189

CHICOPEE HOUSING AUTHORITY,

PLAINTIFF

v.

MICHAEL S. BOUTIN,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This for-cause summary process action was before the Court for an in-person trial on August 12, 2021 and August 16, 2021. Plaintiff landlord seeks to recover possession of 100 Debra Drive, PR. 4-F, Chicopee, MA (the "Premises") from Defendant tenant based on alleged lease violations. Plaintiff appeared through counsel and Defendant appeared and represented himself. Defendant filed an answer asserted numerous defenses and counterclaims. Because Defendant's tenancy was terminated for cause, conditions-based counterclaims are not statutorily permitted. *See* G.L. c. 239, § 8A;[1] however, the defenses of retaliation and discrimination, both of which can be asserted as a defense and a counterclaim, shall be considered as part of this action.

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

[1] Defendant's conditions counterclaims shall be severed and transferred to the civil docket with a new civil action number with Mr. Boutin as the plaintiff in that case and Chicopee Housing Authority as the defendant.

Defendant moved into the Premises on June 14, 2013. The Premises are part of the Memorial Apartments complex owned and managed by Plaintiff Chicopee Hosing Authority ("CHA"). The particular building in which the Premises are located has eight units, with two units on each of four floors. Defendant is party to a written lease that, among other things, requires Defendant to act in a manner that does not threaten the health or safety of other residents or Plaintiff's employees or disturb the rights of other residents to the quiet and peaceful enjoyment of the premises.

As specified in the notice to quit, CHA brought this case as a result of Defendant's actions with respect to the other resident of the 4th floor, Ramon Ortiz. Mr. Ortiz has lived across from Defendant in unit 4-E for approximately five years. Although Defendant and Mr. Ortiz did not have issues at the outset, at some point over the past two or three years, Defendant began making numerous complaints about Mr. Ortiz and his visitors, both to management and also to the Chicopee Police Department. Other tenants have not lodged complaints about Mr. Ortiz.

The Court finds that Defendant has legitimate concerns about the actions of Mr. Ortiz and his visitors, including individuals sleeping in common areas outside of Defendant's door and people making excessive noise and smoking when coming and going from the building in which the Premises are located. His complaints that people have in the past knocked on his door in the middle of the night looking for Mr. Ortiz are less credible, however, given that he testified that these incidents began before Mr. Ortiz had moved into the building.

Defendant concedes that he regularly videotapes interactions with Mr. Ortiz and his visitors. He claims he does this because, after he complained to CHA management about Mr. Ortiz, he was told that he needed to have evidence if he wanted management to take action. Defendant took this requirement literally and has been keeping close tabs on the activities of Mr.

Ortiz and his guests. The Court finds that Defendant zealously videotapes Mr. Ortiz because he feels compelled to prove the legitimacy of his complaints, not for the purpose of harassing his neighbor.[2]

Regardless of his rationale for closely observing the activities of Mr. Ortiz and his visitors, Defendant's behavior has had an adverse effect on Mr. Ortiz's mental health. Mr. Ortiz testified that Defendant's constant surveillance has caused him extreme anxiety. He said that he has lost sleep and suffered emotional harm as a result of being the subject of so many complaints to the police and management. Mr. Ortiz also claims that Defendant has screamed at him in fits of rage and has made offensive comments about his ethnicity and national origin.

In addition to his claims about his neighbor, Defendant asserts that management does not apply rules fairly, and that he is being unfairly targeted for conduct in which others also engage. For example, he testified that management threatens to tow his car when he fails to move it for snow plowing but allows others to leave abandoned vehicles in the parking areas. The Court does not find evidence of unequal treatment or retaliation by management for any of the complaints made by Defendant. Nor does the Court have any reason to believe, as Defendant claims, that others are listening in on him at the Premises through the building's intercom system.

Plaintiff has satisfied its burden of demonstrating that Defendant is in substantial breach of his lease by interfering with Mr. Ortiz's right to the peaceful enjoyment of his home. The Court does not find sufficient evidence to support Defendant's claims that CHA retaliated against him or engaged in discriminatory acts. Because the Court finds that Defendant is operating under the mistaken belief that it is his obligation to document every perceived offense

[2] At trial, Defendant provided the Court with a flash drive with dozens of video clips and pictures, meticulously labeled and categorized according to each alleged transgression.

by Mr. Ortiz and his visitors, however, the Court is willing to allow Defendant the opportunity to modify his behavior. If he wishes to remain as a tenant of CHA, he must accept a transfer to a unit in a different building or location.[3] He must also accept a psychological evaluation by the Court clinic to determine if he would benefit from mental health services related to his ability to live in multifamily housing.

Accordingly, in light of the foregoing, the following order shall enter:

1. Plaintiff is entitled to entry of judgment for possession, but entry of judgment will be deferred until further Court order.
2. Plaintiff shall investigate whether it has another unit available in the same complex to which to transfer Defendant. If another unit is available, Defendant shall accept the transfer.
3. Defendant shall be referred to the Tenancy Preservation Program ("TPP") for a determination of eligibility. [redacted]
4. Defendant shall cease and desist from:
    a. interfering with Mr. Ortiz's right to the peaceful enjoyment of his tenancy including but not limited to videotaping and recording him and his guests; and

[3] Mr. Boutin says he feels comfortable in the neighborhood in which Memorial Apartments are located and doesn't want to move to a different development. Accordingly, the first option should be to transfer Mr. Boutin to another building in the same complex, if one is or soon becomes available.

b. making complaints about Mr. Ortiz and his visitors to management and to the police except in the case of an urgent threat to Defendant's health or safety.

5. Defendant shall allow access for repairs on 24 hours' advance written notice and shall not obstruct management's efforts to complete said repairs.

6. If Defendant substantially violates any terms of this order, Plaintiff may file and serve a motion for entry of judgment.

7. The parties will return for a status hearing on October 28, 2021 at 9:00 **in person** at the Western Division Housing Court, 37 Elm Street, Springfield, Massachusetts 01103. If at that hearing the Court determines that Defendant has not been making good faith reasonable efforts to comply with this order, Plaintiff may request entry of judgment.

SO ORDERED this 1st day of September 2021.

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

cc: Chief Housing Specialist (TPP referral)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 18CV0228

TONY ZEBROWSKI and OWEN IRWIN,	)	
	)	
PLAINTIFFS	)	
v.	)	ORDER ON ASSESSMENT OF DAMAGES
	)	
HAYASTAN INDUSTRIES, INC., ET AL.,	)	
	)	
DEFENDANTS	)	
	)	

This matter came before the Court by Zoom on April 14, 2021 for trial on the assessment of multiple damages under G. L. c. 93A, § 9 ("Chapter 93A"). Both parties appeared through counsel.

The case was tried by agreement on a "case stated" basis, the parties having agreed to stipulate to all facts to be considered by the Court.[1] In such circumstances, the Court may draw inferences and conclusions from the stipulated facts and documents. *See Ware v. Hardwick*, 67 Mass. App. Ct. 325, 326 (2006). Further, the Court considers the Ruling and Order on Cross-Motions for Reconsideration and Revised Ruling and Order on Plaintiff's Motion for Partial Summary Judgment ("2020 Order") dated August 7, 2020 (Fein, J.) to be the binding law of the case.

[1] The stipulation of facts upon which this Court relies was filed on April 1, 2021 and entitled "Amended Stipulation of Facts for Trial on Multiple Damages" (hereinafter referred to as the "Stipulation").

The Court, in its 2020 Order, ruled that Defendants were liable under Chapter 93A because they unlawfully imposed rent increases at Bircham Bend Mobile Home Park ("the Park") and failed to refund the rent increase after demand by Plaintiffs. The Court concluded that Defendants were obligated to send notices to quit to Park tenants under G.L. c. 186, § 12 before implementing rent increases approved by the Springfield Mobile Home Rent Control Board (the "Board"), which Defendants did not do. The Court decided that Plaintiffs were entitled to single damages under Chapter 93A in the amount of the difference between the rent rates they originally agreed to and the increased rent rates subsequently collected by Defendants. The parties stipulated to a single damages figure of $222,238.00 (*see* Stipulation, ¶ 43). The Court required further proceedings to determine whether the damages are subject to doubling or trebling under Chapter 93A, which is the subject of this order.

Chapter 93A provides in pertinent part as follows: "[I]f the court finds for the petitioner, recovery shall be 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 the 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 said section two." *See* G.L. c. 93A, § 9 (3). The provisions of § 9 (3) are disjunctive, and multiple damages *shall* be recovered if either provision is established. *See Heller v. Silverbranch Construction Corp.*, 376 Mass. 621, 628 (1978) (emphasis added). The court may consider the "egregiousness" of the defendants' conduct in determining whether to double or treble damages. *See Brown v. LeClair*, 20 Mass. App. Ct. 976, 980 (1985).

In this case, at the time Defendants received the first of three Chapter 93A demand letters, dated April 17, 2017 (hereinafter referred to as the "2017 demand letter" and attached to

the Stipulation as Exhibit 4), this Court had already vacated the 2014 decision of the Board allowing an increase in the maximum allowable rent at the Park. Despite the Court's ruling that the rent increase was unlawful, Defendants continued to demand payment of the increased rental rate for three months. Moreover, the 2017 demand letter put Defendants on notice of Plaintiffs' position that unilateral imposition of a rent increase without providing a notice of termination was unlawful under Massachusetts' landlord-tenant law, that they had no legal authority to continue to collect the increased rent after the Court's decision, that Plaintiffs did not consent to the higher rent, and that the excess rent above that originally agreed-upon should be returned. Defendants made no offer of settlement in response to the 2017 demand letter.[2]

Instead of making an offer of settlement, Defendants took the position that Plaintiff's claims were premature until all court proceedings, including appeals, had been completely adjudicated. Stipulation, Ex. 5. They asserted that they followed the direction of the Board in imposing rent increases and communicated the increases to the Park's tenants with advance notice consistent with the rules and policies of the Board. *Id.* They declined to make any offer of settlement because it is "unreasonable and unwarranted" to make a Chapter 93A demand with matters related to the claims under consideration aby the Court and subject to appeal to higher courts in the Commonwealth. *Id.* Defendants conceded, however, that once the Housing Court rendered a decision on pending motions, they would "revisit these issues" and they "reserve[d] the right to amend" the response. *Id.* Subsequently, in response to two later Chapter 93A demand letters, Defendants made offers of settlement, but at no time did they unconditionally to reimburse tenants of the Park for the rent increases unlawfully imposed. Moreover, by the time

[2] The Court notes that Defendants' response to the April 27, 2017 demand letter is dated June 23, 2017, well beyond the thirty-day window set forth in Chapter 93A. Because Defendants declined to make any offer of settlement, their failure to respond within thirty days is immaterial.

Defendants' made a settlement to resolve all rent adjustment issues at the Park, nearly two years had passed since Defendants received the initial demand letter.

The Court finds that Defendants willfully and knowingly engaged in unfair or deceptive trade practices by imposing rent increases without first providing each tenant with a notice of termination pursuant to G.L. c. 186, § 12 and then refusing to refund the increases upon demand.[3] The fact that the Board approved the increase of maximum allowable rent at the Park does not excuse Defendants from the obligation to act in accordance with landlord-tenant law. *See Gates v. Mountain View MHC, LLC, 99 Mass. App. Ct. 1112, 2021 Mass. App. Unpub. LEXIS 132, 2021 WL 710197* (2021) (Rule 23.0 decision). Defendants' good faith belief that G.L. c. 186, § 12 does not apply to rent increases authorized by the Board does not change the analysis. *Id.*, citing *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956 (1987) ("Neither the failure of the defendant to apprise himself fully of the law, nor his misapprehension of what he did know about his obligations, is sufficient in the circumstances to negate the conclusion that his conduct runs afoul of the penalty provisions of G.L. c. 93A, § 9").

The Court finds Defendants' actions to be willful and knowing for a second reason; namely, they applied the rent increase to every tenant at the Park for three months after this Court's ruling in August 2016 invalidating the rent increase. *See* Stipulation, ¶ 4 (rent increase applied through November 2016). It is disingenuous for Defendants to contend that they had the right to continue charging the higher rent authorized by the Board after that rent increase had been rejected by the Court because "matters associated with [Plaintiffs'] claims are under consideration by the Court and subject to appeal to higher Courts in the Commonwealth." Stipulation, Ex. 5. Defendants engaged in callous and intentional violations of the law by

[3] The Court refers to the 2020 Order (¶¶ 16-24) for a thorough analysis of why a manufactured housing community operator may only increase rent for tenants at will by using the mechanism laid out in G.L. c. 186, § 12.

continuing to demand an increased rent after the Court had ruled that the very rent increase they were demanding was not properly authorized by the Board. Under these circumstances, an award of double damages under Chapter 93A is required. *See Gates*, citing *Hyannis Anglers Club, Inc. v. Harris Warren Commercial Kitchens*, 91 Mass. App. Ct. 555, 560-562 (2017) (judge erred by failing to impose multiple damages where the defendant's violation of Chapter 93A was willful and knowing).

Defendants' refusal to make any offer of settlement in response to the 2017 demand letter gives the Court a separate and independent basis to impose double damages under § 9 (3). Defendants have the burden of proving that their refusal to make an offer of settlement was reasonable and made in good faith in light of the demand and attendant circumstances. *See Parker v. D'Avolio*, 40 Mass. App. Ct. 394, 395 (1996). They did not carry their burden. They knew that the Court had invalidated the rent increases authorized by the Board. Nonetheless, they took the position that, because no final judgment had entered with respect to the rent increases, and because Plaintiffs had not filed "any motions for equitable or other relief freezing or otherwise addressing the rents," they would not entertain any request for a refund of the increased rent amounts. Defendants' conduct in light of the circumstances is objectively unreasonable.[4]

Although an award of double damages is required based on the foregoing, the Court finds that Defendants' conduct was not sufficiently egregious to warrant an award of treble damages. Defendants' misguided decision to continue to demand the increased rent after the Court had ruled the increase invalid was short-lived, and the question of whether a manufactured housing

[4] The purpose of the written offer of settlement is to promote prelitigation settlements by making it unprofitable for the defendant either to ignore the plaintiff's request for relief or to bargain with the plaintiff with respect to such relief in bad faith. *See Heller*, 376 Mass. at 627. By refusing to make a settlement offer, Plaintiffs were left with little choice but to continue to litigate the refund of overcharged rent.

community operator has to terminate a tenancy pursuant to G.L. c. 186, § 12 has not been answered by an appellate court. Under the circumstances, the Court finds that Plaintiffs' damages are not subject to trebling.

With respect to Defendant Shahabian's personal liability for double damages, based on the stipulated facts, the Court finds that judgment should be awarded against the Defendants jointly and severally. The stipulations repeatedly refer to "the defendants" collectively, and ¶ 17 of the Stipulation refers to Shahabian as manager of the Park. Shahabian fits within the definition of an "operator" of the Park and is thus subject to personal liability. *See* 940 CMR 10.01 (1996) (operator defined as "any person who directly or indirectly owns, conducts, controls, manages or operates any manufactured housing community, and his/her agents or employees"). Plaintiffs, however, are not entitled to two separate awards of damages under Chapter 93A, but instead are entitled to one award of double damages against Defendants collectively.[5]

For the foregoing reasons, Plaintiffs are entitled to an award of double damages under G.L. c. 93A § 9 against Defendants, jointly and severally. The parties having stipulated to actual damages in the amount of $222,238.00 (Stipulation, ¶ 43), Plaintiffs are entitled to a monetary award of $444,476.00, plus costs and reasonable attorneys' fees. Plaintiffs may submit, within fifteen days of receipt of this order, a petition for attorneys' fees and costs, together with supporting documentation. Defendants shall have fifteen days thereafter to respond.

SO ORDERED, this 2nd day of September 2021.

Jonathan J. Kane
Jonathan Kane, First Justice

[5] Recovery under Chapter 93A shall be in the amount of actual damages, and joint and several liability assures that Plaintiffs will recover their actual damages only once. *See Kattar v. Demoulas*, 433 Mass. 1, 15 (2000).

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 20-SP-1266
HAYASTAN INDUSTRIES, INC., PLAINTIFF v. ANGELA GUZ, ET AL., DEFENDANTS	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

The parties in this action appeared before the Court on June 7, 2021 by Zoom for a bench trial. Plaintiff and Defendant Angela Guz ("Ms. Guz") appeared with counsel. Defendant Christopher Guz failed to appear. Plaintiff seeks to recover possession of a manufactured home occupied by Defendants located at 93 Grochmal Avenue, Lot 119, Indian Orchard, Massachusetts (the "home").

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

Plaintiff owns and operates Bircham Bend Mobile Home Park, a manufactured housing community in Springfield, Massachusetts (the "Park"). Defendants purchased the home from Plaintiff in 2011 and have resided there since that time. On February 13, 2020, after a loan default, Leominster Credit Union ("LCU") repossessed the home. On March 9, 2020, LCU conveyed the home to Plaintiff pursuant to a bill of sale. By letter dated March 18, 2020, Plaintiff purported to terminate Defendants' tenancy without cause at the expiration of the last day of April 2020.

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Although Ms. Guz denies receipt of the notice, the Court does not find her denial credible. The issue is moot, however, because Defendants assert a separate basis for dismissal of Plaintiff's claim for possession; namely, that a tenancy in a manufactured housing community cannot be terminated without cause as is the case here. *See* G.L. c. 140, § 32J. Pursuant to § 32J, "[a]ny tenancy or other estate at will or lease in a manufactured housing community, however created ... may be terminated by the licensee entitled to the manufactured home site or his agent only for one or more" of the reasons specified therein.[1] Plaintiff contends that, as the purchaser of the home following repossession, it is not acting in its capacity as the Park operator entitled to the manufactured home site and therefore § 32J does not apply to it.[2]

Plaintiff cannot escape the fact that it is a "licensee" as that term is defined in the regulations associated with § 32J. A "licensee" is defined as "an operator who holds a current manufactured housing community license from the local board of health." 940 C.M.R. 10.01. An "operator" is defined as "a person who directly or indirectly owns, conducts, controls, manages, or operates any manufactured housing community, and his or her agents or employees." *Id.* Regardless of whether Plaintiff is acting in the role of homeowner in this case, the Court finds that Plaintiff is a licensee under the clear and unambiguous language of § 32J and is thus

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[1] The reasons set forth in § 32J are:

(1) Nonpayment of rent;
(2) Substantial violation of any enforceable rule of the manufactured housing community;
(3) Violation of any laws or ordinances which protect the health or safety of other manufactured housing community residents;
(4) A discontinuance in good faith by the licensee, of the use of part or all of the land owned by the license...";
(5) In the case of an existing tenancy at will, to create a new tenancy at will at an increased rent in accordance with the provisions of section twelve of chapter one hundred and eighty-six.

[2] Plaintiff also asserts that § 32J does not apply because it never entered into a landlord-tenant relationship with Defendants. This argument fails. Defendants are tenants at sufferance, a status apparently acknowledged by Plaintiff given that its notice to quit purports to terminate Defendants' "tenancy" and instructs them to present their case in court if they believe that they "are entitled to remain as a tenant [sic]."

precluded from terminating a tenancy of a resident of the Park for no cause.[3] As a result, the notice to quit is defective and Plaintiff's claim for possession is hereby dismissed.

Turning to Ms. Guz's counterclaims as set forth in the Defendants' Second Amended Answer and Counterclaims, the Court first addresses Ms. Guz's assertion that Plaintiff interfered with her right to quiet enjoyment of the premises by seeking to evict her for unpaid rent or use and occupancy that was not owed in violation of G.L. c. 186 § 14. Ms. Guz testified that she suffered anxiety and stress as a result of receiving the letter from Plaintiff on April 27, 2020. She thought that she might need to vacate immediately but had no place to go. The Court infers from the totality of her testimony that her distress upon receiving the notice to quit stemmed from her fear of becoming homeless as a result of the repossession of her home, not from any demand Plaintiff made for rent that was not lawfully owed. In fact, the notice to quit that caused her anxiety and stress does not mention that money is owed.[4] Therefore, the Court finds that Plaintiff did not interfere with her quiet enjoyment by making a demand for monies that were not owed.

Next, the Court examines Ms. Guz's claim that Plaintiff's effort to evict her violates G.L. c. 186, § 18 because Ms. Guz is part of a certified class action seeking damages from Plaintiff for overcharging tenants of the Park and for her joining a tenants' organization. Section 18 prohibits a landlord from "tak[ing] reprisals against any tenant of residential premises" for a number of protected activities, including in relevant part "organizing or joining a tenants' union or similar organization." Accepting, arguendo, that Ms. Guz's participation in the class action is equivalent to joining a tenants' organization, the Court finds that Plaintiff had an independent justification for serving Defendants with the notice to quit. Through his credible testimony, Mr.

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[3] This is the case even though Plaintiff is also the homeowner seeking to remove the former homeowners from the home.

[4] The summons and complaint, which did seek rent for a period of time predating Plaintiff's ownership of the home, was not served on Ms. Guz until approximately eight months after Plaintiff the date of the notice to quit.

Shahabian, Plaintiff's president, rebutted any presumption of reprisal with clear and convincing evidence that he would have sought to regain possession from Ms. Guz after purchasing the home from LCU regardless of whether Ms. Guz was part of the class action litigation. The Court finds that Plaintiff commenced eviction proceedings approximately nine days after purchasing the home because it intended to make repairs and put it on the market for sale.

Regarding Ms. Guz's counterclaim under G.L. c. 93A, she asserts that Plaintiff violated the statute in several ways; namely: (a) by attempting to terminate her tenancy without cause in contravention of state laws and regulations governing manufactured home parks, (b) by overcharging her for rent, (c) by seeking excessive use and occupation charges, and (d) by violating the statewide moratorium on eviction by requesting that Defendants vacate during the existence of the moratorium.[5] As a preliminary matter, the Court finds that Plaintiff is in the trade or business of operating manufactured housing communities. The question for the Court is whether Ms. Guz can prove a causal connection between any unfair or deceptive act or practice and a resulting injury. *See Henry v. Bozzuto Management Co.*, 98 Mass. App. Ct. 690, 711-712 (2020). To meet the injury requirement, "a plaintiff must have suffered a 'separate identifiable harm arising from the [regulatory] violation' that is distinct 'from the claimed unfair or deceptive conduct itself.'" *Id.* at 712 (internal citations omitted).

With respect to Plaintiff's attempt to terminate Ms. Guz's tenancy without cause, the Court has already determined that Plaintiff, as licensee and operator of the Park, improperly terminate Ms. Guz's tenancy without cause. Its conduct constitutes an unfair or deceptive business practice. *See* 940 C.M.R. § 10.02(2) (it is an unfair or deceptive act or practice for an operator to take action that conflicts with § 32J). The G.L. c. 93A violation is merely a technical

[5] Having already ruled that Ms. Guz did not prove violations of G.L. c. 186, §§ 14 or 18, the Court does not address these claims in the context of G.L. c. 93A.

one, however, because had Plaintiff properly cited one of the reasons listed in the statute, its conduct would not have been an unfair or deceptive act. Despite the violation being a technical one, service of the unlawful notice caused Ms. Guz to suffer stress and anxiety, which qualifies as an injury for purposes of G.L. c. 93A. Accordingly, the Court finds a causal connection between Plaintiff's unlawful notice to quit and an injury to Ms. Guz justifying an award of statutory damages in the amount of $25.00.

Turning next to Ms. Guz's claim that Plaintiff violated G.L. c. 93A by seeking to collect rent that was not owed in this proceeding, the Court finds that Plaintiff's demand for payment of rent not due is an unfair and deceptive business practice. Plaintiff included in its "account annexed" in the summons and complaint a claim for rent that was due Plaintiff in its role as the Park's operator, not homeowner.[6] Although Ms. Guz suffered no direct economic harm as a result of the erroneous inclusion of rent accruing prior to the time Plaintiff purchased the home, she did suffer non-economic harm. She testified that lost sleep and suffered anxiety upon seeing how much money Plaintiff claimed she owed. To the extent that she cites the excessive rent claim as the primary source of her distress, the Court finds her testimony not credible. Nonetheless, the Court is satisfied that there is some causal connection, however thin, between Ms. Guz's distress and Plaintiff's claim for unpaid rent. She is therefore entitled to a separate award of statutory damages for this G.L. c. 93A violation in the amount of $25.00.

Plaintiff's request for an award of use and occupancy in the amount of $1,000.00 beginning from its purchase of the home from LCU is not a violation of G.L. c. 93A. Although Ms. Guz claim that there is no relationship between the use and occupancy amount sought by Plaintiff and fair rental value, the evidence does not support Ms. Guz's assertion that Plaintiff's

[6] Plaintiff amended its claim for damages in April 2021, nearly five months after the summons and complaint was filed, to eliminate the demand for past due rent.

request for use and occupation of $1,000.00 per month from its date of purchase through trial is an unfair or deceptive act or practice.

Lastly, with regard to Plaintiff's claim that Plaintiff violated the statewide moratorium on eviction by requesting that Defendants vacate during the existence of the moratorium, the Court finds that Plaintiff did not violate G.L. c. 93A. Chapter 257 of the Acts of 2020, as amended by Chapter 20 of the Acts of 2021 applies to cases in which "the tenancy is being terminated solely for non-payment of rent for a residential dwelling unit." *See* Stat. 2020, c. 257 § 2(b). This case is not one brought solely for non-payment of rent, nor was it commenced as a no-fault eviction in an attempt to circumvent the moratorium on non-payment of rent actions.

Ms. Guz is entitled to an award of multiple damages (not less than double nor more than treble) if the Court finds that Plaintiff's violations of G.L. c. 93A were willful or knowing. "The 'willful or knowing' requirement of [G.L. c. 93A,] § 9(3), goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the [landlord] knows it or not, amount to violations of the law." *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956, (1987). The Court finds that Plaintiff's actions and omissions were willful or knowing as that concept is applied under G.L. c. 93A given that Plaintiff willfully and knowingly sought to recover possession with a no-fault notice. The Court therefore awards double damages, plus costs and attorneys' fees, for each of the two violations of G.L. c. 93A.[7]

For the foregoing reasons, the following order shall enter:

1. Plaintiff's claim for possession is dismissed as to both Defendants.

[7] The Court does not find Plaintiff's conduct sufficiently egregious to award treble damages. The Court finds that Plaintiff had a genuine belief that it could terminate Defendants' tenancy without cause because it was the new owner of the home.

2. Defendant Angela Guz is entitled to entry of judgment in the amount of $100.00, plus costs and reasonable attorneys' fees, as a result of two separate willful and knowing violations of G.L. c. 93A.
3. Ms. Guz may submit, within fifteen days of receipt of this order, a petition for attorneys' fees and costs, together with supporting documentation. Plaintiff shall have fifteen days to respond.
4. The Court shall thereafter rule on the pleadings and issue a final order for entry of judgment.

SO ORDERED.

DATE: 9/13/21

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0224

VU NGUYEN,
PLAINTIFF

v.

GRISELLE RESTO,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This matter came before the Court for a Zoom trial on June 10, 2021. Both parties appeared with counsel. The case began as a summary process action brought by Plaintiff landlord ("Nguyen") against Defendant tenant ("Resto") in docket number 20SP1307 and was transferred to the civil docket when Resto vacated the subject premises.[1] Although the caption lists Nguyen as the plaintiff, Resto is the party seeking damages from Nguyen.

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

Nguyen owns a two-family home located at 58 Euclid Avenue, Springfield, Massachusetts (the "property"). Resto initially resided on the first floor with her family, but in late 2018, she asked and was granted permission move into the third floor (the "Premises") with her husband. She paid $400.00 monthly rent, first to Nguyen's father, and subsequently to

[1] The Court takes judicial notice of the related summary process case.

Nguyen. After moving into the Premises, Resto no longer resided in the first-floor unit. On October 13, 2020, the City of Springfield Code Enforcement Department inspected the Premises and cited Nguyen for numerous code violations, including the lack of a second means of egress and unsafe conditions, including missing smoke detectors. Thereafter, Nguyen was issued building code violations citing the third floor as an illegal dwelling unit and ordering that it be vacated. Nguyen did not appeal the citations, nor does he contest the fact that the third floor did not have a second means of egress.

By letter dated October 17, 2020, Nguyen served Resto with a notice to quit for non-payment of rent. He filed a summary process case on November 23, 2020 (Docket No. 20SP1307) and, after a first-tier mediation event on January 26, 2021, Resto agreed to start a diligent housing search prior to the trial scheduled for February 23, 2021. On February 1, 2021, Nguyen filed an application for an order that Resto vacate the Premises immediately because it was an illegal dwelling. At the hearing for injunctive relief on February 16, 2021, Resto was ordered to vacate the Premises and Nguyen was ordered to provide alternative housing through March 9, 2021. Nguyen's obligation to provide alternative housing was subsequently extended through the trial date on March 25, 2021. On or about February 18, 2021, Resto vacated the Premises. She has had no permanent residence since leaving the property.

The evidence shows that, from the outset of the tenancy, the Premises did not have second means of egress or a working kitchen. As an owner of the property at the time Resto moved to the Premises, Nguyen is charged with knowledge of the condition of the Premises at the outset of the tenancy, even if his father was the primary contact with Resto initially. The

Court finds that Nguyen knew or should have known that the unit was unsafe and illegal from the inception of the tenancy.[2]

The credible evidence demonstrates that other serious defects existed in the Premises, including a lack of operable smoke detectors, broken stairs leading to the entrance into the third floor, defective windows, cracks in the walls and a defective electrical system that caused circuit breakers to trip repeatedly during normal usage. Nguyen had notice of these defects since at least September 2020, when Resto asked that Nguyen fix various issues in the Premises. Resto testified that she also notified Nguyen of the defective conditions in July 2020 when he confronted her about tickets he had received from the City relating to vehicles on the property. Although the evidence indicates that some of the conditions of disrepair, such as a broken entry door and holes in walls, were likely caused by Resto or her guests, the Court finds that most of the serious conditions of disrepair were not the fault of Resto or her guests.

Nguyen asserts that Resto refused access to make repairs. The evidence does not support his claim. A repairman called as a witness by Nguyen testified that in the two instances in which he had direct contact with Resto, she allowed him access to make repairs. On other occasions, the witness stated that Resto did not answer the door and he did not want to enter because he is terrified of dogs (which he could hear in the Premises). He further stated that he was not sure of whether Nguyen had given Resto advance notice of his visits and, in any event, he did not have a key to the Premises. A pest control contractor likewise that he did not enter the Premises when Resto failed to answer the door because he was uncertain about what notice Nguyen had given Resto with respect to his visits.

[2] Nguyen's contention that he thought Resto would use the first floor unit's kitchen, even if credible, would not excuse him from renting an apartment without a kitchen.

Nguyen offered into evidence various notices for access. He asserts that these notices were given to Resto; however, the evidence is insufficient to show that they were actually received by Resto. In one instance, Nguyen testified that he gave the notice to her brother to give to her, and in another he left the notice in her mailbox. On balance, the Court finds that the evidence is insufficient to show that Resto unreasonably refused access for repairs. In any event, the two major issues with the Premises, the lack of a second egress and kitchen, were not the reason why Nguyen was asking for access to make repairs.

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

Here, the violations of the State Sanitary Code described in reports from the City of Springfield's Code Enforcement Department were substantial. The lack of a second egress and the lack of a kitchen rendered the Premises uninhabitable. Under these circumstances, where these conditions cannot in any practical way be remedied, the Premises have no meaningful rental value. The appropriate remedy for breach of the warranty of habitability in this case is a forfeiture of all rent Resto paid for the Premises, which based on the evidence at trial amounts to $4,300.00.[3]

[3] The Court deems any damages for breach of contract to be duplicative of damages awarded herein because both theories rest on the concept that Resto should not be required to pay rent for an illegal and unsafe apartment.

Nguyen had notice or reason to know of the defective conditions in the Premises and did not correct the conditions. *See Al Ziab v. Mourgis*, 424 Mass. 847, 850-851 (1997). Nguyen's negligent act of renting an illegal unit without a kitchen or second means of egress led directly to Resto's constructive eviction in violation of G.L. c. 186, § 14. The remedy for interference with quiet enjoyment is three months' rent or actual and consequential damages, whichever is greater. In this case, the Court finds that Resto's actual and consequential damages exceed the statutory damages of $1,200.00.

The Court calculates Resto's actual and consequential damages by adding together Resto's alternative housing expenses, storage and moving truck costs and emotional distress damages. With respect to alternative housing, Resto submitted relevant hotel receipts for intermittent nights between February 18, 2021 and May 7, 2021 in the aggregate amount of $1,940.62. However, the Court had ordered Nguyen to provide alternative housing for 36 days between February 18, 2021 and March 25, 2021. At a daily rate of $100.00,[4] Nguyen would have paid $3,600.00 for Resto's alternative housing. [5] The Court will use the $3,600.00 figure instead of the $1,940.62 figure to avoid a situation in which Nguyen benefits from not having paid for the alternative housing ordered by the Court.

Regarding storage and moving costs, Resto produced invoices showing that she rented a storage unit from December 4, 2020 through the trial date at the aggregate amount of $1,045.87 and U-Haul trucks on December 11, 2020, February 8, 2021 and February 17, 2021 in the aggregate amount of $130.70. The storage and moving expenses total $2,076.57.

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[4] The Court uses the rate of $100.00 per day based on the average cost of hotels used by Resto as illustrated by her receipts, plus a reasonable food stipend for one person.

[5] Although he claims to have paid for some of Resto's hotel stays, Nguyen did not submit any evidence that he did so. Resto's hotel receipts demonstrate that she paid for many of the nights between February 18 and March 25, 2021.

Emotional distress, where foreseeable, can be a component of actual and consequential damages under G.L. c. 186, § 14. *See Homesavers Council of Greenfield Gardens, Inc. v. Sanchez*, 70 Mass. App. Ct. 453, 458 (2007). Here, once she learned that she had to vacate her unit because it was not a legal dwelling, Resto testified that she essentially became homeless, moving from hotel to hotel, living in a shelter and spending approximately ten nights living in her car. She said that she sometimes did not have money to buy food. She testified about suffering anxiety and depression [redacted] She had to give up two of her three dogs.[6] The Court awards Resto $2,500.00 as emotional distress damages.[7]

The Court finds that Nguyen, who has rented and managed this two-family investment property for years, is in the business of owning and managing residential units for purposes of G.L. c. 93A. He engaged in unfair and deceptive practices within the meaning of G.L. c. 93A and the Attorney General regulations thereunder for, among other acts, interfering with Resto's quiet enjoyment and breaching the implied warranty of habitability. Ms. Resto is entitled to an award of multiple damages (not less than double nor more than treble) if the Court finds that Nguyen's violation of G.L. c. 93A was willful or knowing. "The `willful or knowing' requirement of [G.L. c. 93A,] § 9(3), goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the [landlord] knows it or not, amount to violations of the law." *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956, (1987). Although there is no evidence that Nguyen intended harm to Resto, his actions and omissions

[6] It is not clear to the Court what role Jorge Valle plays in Ms. Resto's life. Some of the hotel bills were in his name, some of the food receipts were for two people, and she travelled to other states with him looking for a new place to live. Her testimony about being homeless and on her own after vacating the Premises, while generally credible, loses some of its impact given the support she apparently received from Mr. Valle.

[7] The Court does not award emotional distress damages for the time Resto resided in the Premises. Her trial testimony focused on the period of time when she was forced to vacate the unit, and she was aware of the condition of the unit and decided to move there from the first floor unit where she had been living with her family.

were nevertheless willful or knowing as that concept is applied under G.L. c. 93A. Pursuant to G.L. c. 93A, § 9, the Court awards double damages, plus costs and attorneys' fees.[8]

Accordingly, in light of the foregoing, the following order shall enter:

1. Defendant Resto is entitled to single damages in the amount of $12,476.57, which when doubled pursuant to G.L. c. 93A, entitles Resto to damages in the amount of $24,953.14.
2. Defendant Resto may submit, within fifteen days of receipt of this order, a petition for attorneys' fees and costs, together with supporting documentation. Plaintiff Nguyen shall have fifteen days to respond.
3. The Court shall thereafter rule on the pleadings and issue a final order for entry of judgment

SO ORDERED this 17th day of September 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

[8] The court may consider the "egregiousness" of the landlord's conduct in determining whether to double or treble damages. *Brown v. LeClair*, 20 Mass. App. Ct. 976, 980, 482 N.E.2d 870, 874 (1985). Here, the Court does not find Nguyen's conduct to rise to the level of egregiousness to warrant treble damages.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21 CV 0504

TRACY CROSBY, ET AL.,

PLAINTIFFS

v.

SHELLY KAIGLE, ET AL.,

DEFENDANTS

ORDER ON ASSESSMENT
OF DAMAGES

Following transfer from the summary process docket (20H79SP000949), this case came before the Court for an assessment of damages hearing. The hearing commenced on Zoom on September 8, 2021 and continued in person on September 15, 2021. The parties appeared self-represented. Based on all the credible testimony and evidence presented, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Plaintiffs own a single-family home located at 35 Quarry Road, Lanesboro, Massachusetts (the "Property"). Defendant Shelly Kaigle resided at the Property for 29 months, from March 2019 to July 2021. Defendant Jesse Kaigle resided at the Property on and off during the same period of time. Monthly rent was $1,400.00. The evidence shows that the parties first agreed verbally on a lease-to-own arrangement, and some months after Defendants took possession, the lease-to-own agreement was memorialized in writing. Only Plaintiffs and Shelly Kaigle signed the document.[1] Plaintiff David Crosby testified that Plaintiffs intended to apply the

[1] Shelly Kaigle denied ever signing the agreement, but when Plaintiffs produced a copy with her signature on it, she did not dispute the authenticity of her signature.

rent payments as the down payment on the purchase price. Defendants would have the option of purchasing the Property for fair market value so long as they were not in default under the lease.

The parties agree on three payments made by Defendants. The first was in the amount of $3,000.00 on March 2, 2019, comprising first month's rent ($1400) , a security deposit ($1400), and $200 applied toward last month's rent. The next payment was in the amount of $1,000.00 on April 3, 2019 and the last payment was in the amount of $600.00 on June 22, 2019. Defendant Shelly Kaigle claims to have made other cash payments but had no receipts or other evidence that any such payments were ever made.

Defendants assert that the house was not in good condition when they moved in and that they spent many hours painting, cleaning and improving the Property. They also seek to collect for their labor performing regular maintenance during their tenancy, including pest control, lawn mowing and snow removal. They are not entitled to payment for these activities, however, because as part of their lease-to-own arrangement with Plaintiffs, they accepted full responsibility for maintaining the Property (and were permitted to make certain improvements if they so desired) in consideration of the option to purchase. The parties' agreement did not require Plaintiffs to pay Defendants for services provided in the event Defendants did not exercise the option. Accordingly, the Court does not award Defendants any money for their labor. To the extent Defendants demonstrated that they incurred out-of-pocket expenses related to actions that were the responsibility of Plaintiffs, however, they are entitled to reimbursement.

Because Defendants did not exercise their option to purchase the Property, they were lawful tenants for the duration of their occupancy. Plaintiffs, therefore, were obligated to comply with all landlord-tenant laws, including those relative to security deposits. Plaintiffs mishandled the security deposit by failing to place it in a separate account outside the reach of their creditors

and no receipt was provided to Defendants. *See* G.L. c. 186, § 15B(3)(a)[2]. There is no evidence that Plaintiffs paid interest on the security deposit (*see* G.L. c. 186, § 15B(3(b) or provided a statement of condition when Defendants moved in (*see* G.L. c. 186, § 15B(2)(c)).[3] They also failed to pay interest on the last months' rent. *See* G.L. c. 186, § 15B(2)(a). Moreover, Plaintiffs charged a $30.00 late fee each month after fifteen days, which is a violation of the Attorney General's landlord-tenant regulations. *See* 940 C.M.R § 3.17(6)(a) (it is an unfair and deceptive practice for landlord to impose penalty for late payment of rent unless such payment is 30 days overdue).

Turning to the calculation of damages, the Court finds that, had Defendants paid monthly rent for each of the 29 months of their tenancy, they would have paid $40,600.00. The rent payments they actually made consisted of a first month's rent of $1,400.00, two payments totaling $1,600.00 and $200.00 toward las month' rent. They also paid a $1,400.00 security deposit. They incurred out-of-pocket expenses of $865.00 for replacing the water heater, $325.00 for removing items left behind by the prior tenant and $99.00 for an auger motor for the pellet stove.

Because Plaintiffs mishandled the security deposit, Defendants shall be awarded three times the amount of the security deposit pursuant to G.L. c. 186, § 15B(6);[4] namely, $4,200.00. Because they did not pay interest after the first year of tenancy, Plaintiffs are required to pay five

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[2] A security deposit "shall be held in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors of the lessor … [and a] receipt shall be given to the tenant within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit."

[3] Although Plaintiffs contend that Defendants should have to pay for damages caused at the Property during their tenancy, Plaintiffs have no statement of the condition of the Property when Defendants moved in, nor did they provide any photographs showing the original condition. Accordingly, they cannot demonstrate that the damages they seek were actually caused by Defendants.

[4] It makes no difference if Plaintiffs were unaware of the requirements of the security deposit law or made an innocent mistake. *See Castenholz v Caira*, 21 Mass. App. Ct. 758, 763 (1986)

percent interest on the amount of the security deposit, which the Court calculates as $169.00 for the 29 months of the tenancy, which amount shall be trebled to $507.00. Interest on the last month rent ($200.00) amounts to $24.17, which shall be trebled to $72.51. The violation of the Attorney General regulations entitles Defendants to nominal damages in the amount of $25.00. In sum, Defendants shall be credited the sum of $8,955.51[5] against the total rent owed of $40,600.00.

Based on the foregoing, judgment for damages in the amount of $31,644.49 shall enter in favor of Plaintiffs.

SO ORDERED

DATE: 9/21/2021

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

cc: Court Reporter

[5] This sum is calculated as follows: $1400.00 first month's rent + rent payments of $1,000.00 and $600.00 + $200.00 last month's rent + $865.00 water heater + $325.00 disposal fee + $99.00 auger motor + $4,200.00 security deposit damages + $169.00 security deposit interest + $72.51 last month's rent interest + $25.00 illegal lease provisions.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1456

TAVAR MCKENZIE,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER ON DEFENDANT'S**
	)	**MOTION TO DISMISS**
GLENDALY CINTRON,	)	
	)	
DEFENDANT	)	

This matter came before the Court on September 22, 2021 on Defendant tenant's motion to dismiss.[1] Both parties appeared through counsel.

The tenant seeks dismissal of the complaint on two grounds. The Court only needs to address one of the grounds; namely, whether the complaint is defective because it seeks possession based upon violation of an unenforceable lease provision.[2] The lease provision in question requires the tenant to pay the difference in Plaintiff landlord's water bill if she "fails to notify Landlord of any water leaks and it is determined that the water bill is in excess because of the leak." The landlord asserts that he incurred excessive water bills due to a leak and imposed a charge of $100.00. The notice to quit (which is incorporated into the complaint) recites that the tenant must pay this charge to cure the lease violation and, presumably, reinstate the tenancy.[3] At its core, then, this summary process case hinges on the tenant's failure to pay $100.00 in water charges.

[1] Plaintiff moved in the alternative, seeking dismissal of summary judgment. Because the material facts are not in dispute, the outcome in this case would be no different if the Court treated Plaintiff's motion as one for summary judgment.

[2] The second ground for dismissal is that the notice to quit is not clear and unequivocal because it rests on both a lease violation and the failure to pay rent.

[3] The notice to quit also references a missed rent payment, but Defendant testified that the payment has since been made. In any event, the primary basis for terminating the tenancy is the failure to pay the excess water charges.

G.L. c. 186, § 22 prohibits a landlord from charging a tenant for water use unless certain requirements have been met, such as the use of submetering equipment. In this case, the landlord concedes that water is not submetered. The landlord contends that because he is not charging for on-going water usage, the statutory restriction is inapplicable. The Court disagrees. A lease provision that allows the landlord to charge a tenant for water usage without complying with G.L. c. 186, § 22, regardless of whether he imposes such charges regularly or only upon excessive use, is unlawful. A notice to quit terminating a tenancy for violation of an unenforceable lease provision is defective, and a summary process complaint that rests on the same grounds is fatally flawed. Accordingly, Defendant's motion to dismiss is ALLOWED and this case shall be dismissed in its entirety.[4]

SO ORDERED this 23rd day of September 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[4] Although Plaintiff filed counterclaims, because Defendant's claim for possession is dismissed, Plaintiff requests that her counterclaims be dismissed without prejudice.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1804

MARY CHAPLIN,
PLAINTIFF

v.

TIM ABARE,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action came before the Court by Zoom for a bench trial on September 21, 2021. Plaintiff seeks to recover possession of 82 Mechanic Street, 1st Floor Rear, Orange, Massachusetts (the "Premises") from Defendant based on a no-fault termination of a tenancy at will. Plaintiff appeared through counsel; Defendant appeared and represented himself. The tenancy having been terminated without fault of Defendant, the Court accepted Defendant's testimony at trial as an oral petition for a stay pursuant to G.L. c. 239, § 9. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that Plaintiff owns the Premises. She served Defendant with a legally adequate notice to quit that expired at the end of May 2021. Defendant received the termination notice but did not vacate. Plaintiff timely served and filed a summons and complaint. Rent is $650.00 per month. Defendant owes no back rent. Defendant did not file an answer but asked for additional time to vacate.

The Court has discretion in a no fault eviction case to grant a stay on use of the execution. *See* G.L. c. 239, § 9. The Court finds that (i) the Premises are used for dwelling purposes, (ii) Defendant has been unable to secure suitable housing elsewhere in a neighborhood similar to that in which the Premises are located, (iii) Defendant is using due and reasonable effort to secure other housing, and (iv) Defendant's application for stay is made in good faith and that he will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, § 10. The Court finds sufficient facts to warrant a stay, conditioned upon Defendant paying Plaintiffs for use and occupation for the duration of the stay. *See* G.L. c. 239, § 11.

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

1. Judgment for possession shall enter in favor of Plaintiff.[1]

2. Execution shall not issue until further order of this Court.

3. Defendant shall pay $650 on or before October 5, 2021, for use and occupation of the Premises during the month of October 2021.

4. Defendant shall continue to make diligent efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which he has visited or made inquiry, including the address, date and time of contact, method of contact, name of contact person and result of contact.

5. The parties shall return for a status conference by Zoom on **November 4, 2021 at 3:00 p.m.**, at which time the Court shall review Defendant's compliance with this order and his

[1] The Court finds that Defendant is not entitled to protection from eviction pursuant to Stat. 2020, c. 257 because this case was not brought solely for non-payment of rent.

housing search efforts. At this status conference, the Court shall either extend the stay or enter an order for the execution to issue.

SO ORDERED this 27th day of September 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1881

COSIMO FERRANTE,)
)
PLAINTIFF)
)
v.)
)
KIMBERLY COBLE,[1])
)
DEFENDANT)

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action came before the Court by Zoom for a bench trial on September 20, 2021. Plaintiff seeks to recover possession of 5 North Street, Apt. B, Williamsburg, Massachusetts (the "Premises") from Defendant based on a no-fault termination of a tenancy at will. Plaintiff appeared through counsel; Defendant appeared and represented herself. The tenancy having been terminated without fault of Defendants=, the Court accepted Defendant's testimony at trial as an oral petition for a stay pursuant to G.L. c. 239, § 9. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that Plaintiff owns the Premises. He served Defendant with a legally adequate notice to quit that expired on June 30, 2021. Defendant received the termination notice but did not vacate. Plaintiff timely served and filed a summons

[1] Tarik Coble was named in the complaint but was dismissed form this case prior to the commencement of trial.

and complaint. Monthly rent is $1,525.00 per month. Plaintiff is entitled to use and occupancy payments for the months of July, August and September 2021 in the aggregate amount of $4,575.00. Defendant did not file an answer but asked for additional time to vacate.

The Court has discretion in a no fault eviction case to grant a stay on use of the execution. *See* G.L. c. 239, § 9. The Court finds that (i) the Premises are used for dwelling purposes, (ii) Defendant has been unable to secure suitable housing elsewhere in a neighborhood similar to that in which the Premises are located, (iii) Defendant is using due and reasonable effort to secure other housing, and (iv) Defendant's application for stay is made in good faith and that they will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, § 10. The Court finds sufficient facts to warrant a stay, conditioned upon Defendants paying Plaintiffs for use and occupation for the duration of the stay. *See* G.L. c. 239, § 11.

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

1. Plaintiff is entitled to entry of judgment for possession.[2]

2. Execution shall not issue until further order of this Court.

3. Defendant shall pay $1,525.00 on or before October 5, 2021, for use and occupation of the Premises during the month of October 2021.

4. Defendant shall continue to make diligent efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which she has

[2] The Court finds that Defendants are not entitled to protection from eviction pursuant to Stat. 2020, c. 257 because this case was not brought solely for non-payment of rent.

visited or made inquiry, including the address, date and time of contact, method of contact, name of contact person and result of contact.

5. The parties shall return for a status conference by Zoom on **October 18, 2021 at 9:00 a.m.**, at which time the Court shall review Defendant's compliance with this order, her housing search efforts, and her ability to pay the $4,575.00 of past due use and occupancy. At this status conference, the Court shall either extend the stay or enter an order for the execution to issue.

SO ORDERED this 27th day of September 2021.

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. 21-SP-1685

HURRICANE PROPERTIES, LLC,

PLAINTIFF

v.

JUDITH RICHARDSON,[1]

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action came before the Court by Zoom for a bench trial on September 24, 2021. Plaintiff seeks to recover possession of 702 Chicopee Street, Apt. B, Chicopee, Massachusetts (the "Premises") from Defendant based on a no-fault termination of a tenancy at will. Plaintiff appeared through counsel; Defendant appeared and represented herself.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following facts: Plaintiff purchased the Premises in October 2020. Rent is $900.00 and is due on the first of each month. Defendant has paid no rent since Plaintiff purchased the Premises, a period of eleven months. The total amount of back rent owed is $9,900.00. Plaintiff served Defendant with a legally adequate notice to quit that expired on June 1, 2021. Defendant received the termination notice but did not vacate. Plaintiff timely served and filed a summons and complaint. Defendant did not file an

[1] Matthew Wholley was named as a co-defendant in this case; however, Plaintiff requested that Mr. Wholley be dismissed from this case.

answer but testified at trial to deficient conditions. Plaintiff waived the late notice of claims and assented to moving forward with trial.

Defendant alleged mold-like substances climbing up the walls of the Premises. She claims that she has a report "from housing" that supports her claims but did not produce it. Nor did she present any other evidence to support her claims. She claims all of the paperwork is with her former attorney, whose motion for leave to withdrew from this case was allowed on September 3, 2021. She asked for additional time to find an attorney but given the time that has passed since her attorney withdrew and since she last paid any rent, the Court denied a continuance for this purpose.

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

1. Judgment for possession shall enter in favor of Plaintiff for possession and damages in the amount of $9,900.00 plus court costs.[2]

2. Execution shall not issue until further order of this Court.

3. The parties shall return for hearing on issuance of the execution on **October 5, 2021 at 2:00 p.m.** Defendant shall appear in-person at the Western Division Housing Court at 37 Elm Street, Springfield, Massachusetts to use a public Zoom station. Plaintiff may appear for the hearing by Zoom. Defendant may use this time to retain new counsel, but the hearing will not be continued if she fails to have counsel. If Defendant brings the evidence she

[2] The Court finds that Defendant is not entitled to protection from eviction pursuant to Stat. 2020, c. 257 because this case was not brought solely for non-payment of rent. To the extent that the Court might consider a stay nonetheless given the inclusion of an account annexed in the summary process summons and complaint, Defendant did not assert that she had a pending application for rental assistance.

claims to have about the conditions of the Premises, she may bring them to the hearing and make an appropriate motion for such evidence to be considered by the Court.

SO ORDERED this 30th day of September 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1608

BERKSHIRE FUND, INC.,	)	
	)	
PLAINTIFF	)	ORDER ON MOTION
	)	FOR SUMMARY JUDGMENT
v.	)	
	)	
CHRISTOPHER DYE,	)	
	)	
DEFENDANT	)	

This matter came before the Court by Zoom on October 4, 2021 on Plaintiff's motion for summary judgment. Plaintiff appeared through counsel. Defendant appeared and represented himself.

To prevail on its motion for summary judgment, Plaintiff must demonstrate with admissible documents that there are no genuine issues as to any material facts regarding its right to recover possession of the premises located at 48 Elizabeth Street, Apt. 303, Pittsfield, Massachusetts (the "Premises"). *See* Community National Bank v. Dawes, 369 Mass. 550, 553-56 (1976). Here, Plaintiff relies upon the record in this matter, and in the related matter between the parties (of which the Court takes judicial notice) with docket number 21CV0084. In support of its motion, Plaintiff submitted numerous affidavits describing Defendant's conduct. These affidavits, in conjunction with the legally sufficient notice to quit and timely filed summons and complaint, establish Plaintiff's prima face case for possession of the Premises.

Defendant did not file a written opposition to Plaintiff's motion and failed to articulate a defense or submit any admissible evidence showing a genuine, triable issue as to Plaintiff's superior right to possession of the Property. Accordingly, Plaintiff is entitled to judgment as a matter of law and its motion for summary judgment is ALLOWED. Execution (eviction order) shall issue upon Plaintiff's written application after expiration of the appeal period.

As an accommodation for Defendant's [redacted] use of the execution shall be stayed through October 31, 2021 on the condition that [redacted] and that he pays for his use and occupation of the Premises at the same rate as the monthly rental amount. The parties shall appear for a status conference by Zoom at **9:00 a.m. on October 27, 2021**[1]. If, at the time of the status conference, Defendant has been unable to locate replacement housing, he may make a request to extend the stay. In considering such a request, the Court will balance the risk of harm that could occur to Defendant if the stay is not extended with the risk of harm to Plaintiff if the stay is extended.

SO ORDERED this 7th day of October 2021.

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

cc: Court Reporter

[1] Defendant may come in person to the Housing Court session sitting in Pittsfield that morning to use a public Zoom station.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1685

HURRICANE PROPERTIES, LLC,

PLAINTIFF

v.

JUDITH RICHARDSON,[1]

DEFENDANT

ORDER TO ISSUE EXECUTION

After a bench trial held on September 24, 2021, judgment entered in favor of Plaintiff for possession and damages in the amount of $9,900.00 plus court costs. The Court scheduled a hearing for October 5, 2021 for Plaintiff's motion to issue the execution. The brief stay on issuance of the execution was to allow time for Defendant to retain counsel and to bring in documents she referenced at trial. The Court allowed Defendant the opportunity to move to vacate the judgment and allow her to raise defenses and counterclaims regarding defective conditions.

After reviewing the documents that Defendant claimed supported her defenses and counterclaims, the Court finds that there is no basis to vacate the judgment. She claims to have mold in her apartment but provided no photographs and both of the Board of Health reports she offered (from 2020) were promptly remedied. The judgment shall stand.

[1] Matthew Wholley was named as a co-defendant in this case; however, Plaintiff requested that Mr. Wholley be dismissed from this case.

Defendant does not qualify for a statutory stay pursuant to G.L. c. 239, § 9 because she cannot pay the balance or rent owed nor can she pay any use and occupancy for the period of the stay. The Court will exercise its equitable powers, however, to give Defendant a brief amount of time to seek financial help from Way Finders for moving costs. Accordingly, execution shall issue in the amount of $10,800.00 plus court costs.[2] Use of the execution shall be stayed through October 31, 2021.

SO ORDERED this 8th day of October, 2021.

Jonathan J. Kane, First Justice

cc: Court Reporter

[2] The judgment amount is increased to account for unpaid rent/use and occupancy for October 2021.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1601

LAUREL RIDGE APARTMENTS, LLC,
PLAINTIFF
v.
VICTOR ZAYAS,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action came before the Court for an in -person bench trial on September 30, 2021. Plaintiff seeks to recover possession of 22 Nashawannuck Street, 18A, Easthampton, Massachusetts (the "Premises") from Defendant. Plaintiff appeared through counsel. Defendant appeared and represented himself.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that Plaintiff owns the Premises. Defendant began visiting the Premises in 2015 to assist Phillip Fielding, the tenant who resided there. Beginning in or about February 2017, as Mr. Fielding's health deteriorated and he needed more help, Defendant began living in the Premises. Mr. Fielding passed away in April 2021. Plaintiff's property manager served Defendant with a legally adequate notice to vacate in April 2021 giving him until June 1, 2021 to move out. Defendant failed to vacate and continues to reside in the Premises.

Defendant filed an answer without counterclaims. He asserts that he was a subtenant actually known to Plaintiff. The Court finds that, although Plaintiff's agents were aware that Defendant was assisting Mr. Fielding in the Premises prior to his death and was in the Premises frequently, perhaps even sleeping there at times, they did not know he was using the Premises as his place of residence. He was never added to Mr. Fielding's lease and never asked permission to become an authorized occupant of the Premises. Prior to Mr. Fielding's death, Defendant never paid rent to Plaintiff[1] and never applied for tenancy,[2] In 2019, in Mr. Fielding's last annual update provided to management, he did not list any other occupant living in the residence with him. Simply put, there was no meeting of the minds between Plaintiff and Defendant as to the terms of his occupancy at the Premises, and therefore Defendant does not have the legal status of a tenant.

Because Defendant is not and never was a tenant, he does not have a right to a statutory stay under G.L. c. 239, § 9. Given the length of time that Defendant used the Premises as his place of residence, however, the Court will exercise its equitable powers and allow Defendant additional time to move conditioned upon his payment for use and occupation.

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

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

---

[1] After Mr. Fielding died, Defendant submitted an electronic payment for rent for the month of May 2021, but Plaintiff rejected the payment.

[2] Defendant testified that, after Mr. Fielding died, he applied to take over the lease. Plaintiff initially agreed to consider him for tenancy if he had a qualified cosigner but apparently had a chance of heart and served Defendant with a notice of termination before a cosigner could submit information. Because Plaintiff was under no obligation to consider Defendant's rental application, the Court does not find Plaintiff's actions to be unlawful.

2. Execution (eviction order) shall issue by application after expiration of the statutory period.

3. Use of the execution shall be stayed through October 31, 2021 on the condition that Defendant pay $850.00 by October 11, 2021 for his use and occupation in the month of October.

4. If Defendant has not located replacement housing, he may file a motion to extend the stay before October 31, 2021. If Defendant files a motion to stay use of the execution, the execution shall not be used until the Court holds a hearing on the motion. At this hearing, which will be held over Zoom, Defendant shall explain his efforts to find housing and show evidence of same. If the Court grants an additional stay, it will extend no longer than November 30, 2021, will be conditioned upon payment for use and occupation, and will not be further extended.

SO ORDERED this 8th day of October, 2021.

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. 21-SP-1911

ROXANNE POLGAR,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER TO CONTINUE FOR
	)	MOTION TO AMEND COMPLAINT
CHRISTY TORRES,	)	
	)	
DEFENDANT	)	

This matter came before the Court on October 7, 2021 for an in person trial. Both parties appeared and represented themselves. In the complaint, Plaintiff named only one of the two occupants of the subject premises. The other occupant was not served with a notice to quit. He was present in the courtroom but did not assent to being added as a defendant. Accordingly, instead of dismissing this case, the Court will continue it in order to allow Plaintiff time to serve a rental period notice on the other occupant and then request that the Court allow her to amend the complaint to name both occupants. The parties will return to Court by Zoom on December 10, 2021 at 10:00 a.m., for purposes of Plaintiff's motion to amend and a Tier 1 status hearing.

SO ORDERED this 8th day of October 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21 SP- 2275

DONNALEE FIELDS, ET AL.,	)	
	)	
PLAINTIFFS	)	
	)	
V.	)	**ORDER FOR USE AND OCCUPANCY PAYMENTS**
	)	
PAMELA CALLAHAN,	)	
	)	
DEFENDANT	)	

This matter came before the Court on October 5, 2021 for a Zoom hearing on Plaintiff's motion for use and occupancy payments pending trial. Plaintiffs appeared with counsel. Defendant failed to appear.

After hearing, the Court finds that Defendant owes rent and use and occupancy in the amount of $8,600.00 through September 2021. Monthly rent is $1,200.00, and Defendant owed $5,000.00 at the time the notice to quit was served in June 2021. She has made no payment since then. The case has yet to be scheduled for trial. Defendant has not filed an answer and, because she did not appear for the hearing, the Court cannot determine if she has any meritorious claims against the landlord. A text message attached to Plaintiff Fields' affidavit in this matter indicates that Defendant may have received emergency rental relief but has not used those funds to pay the landlord. Given the foregoing, the following order shall

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enter:

1. Pending trial, Defendant shall pay $1,200.00 per month for her use and occupation of the premises, with the first payment due (for October 2021) upon receipt of this order, and subsequent payments due on the first of each month.
2. All payments shall be made by certified check or money order payable to Plaintiff's counsel (Murphy McCoubrey, 272 Exchange Street, PO Box 237, Chicopee, MA 01014) and received at counsel's office within three (3) days of the due date to account for weekends and holidays.
3. Counsel for Plaintiff shall hold the funds in an IOLTA account and maintain an accounting of payments, including the amount and date received, and may not disburse any funds without order of the Court.

SO ORDERED, this 13th day of October 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1587

RESIDENTIAL MANAGEMENT CORP,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**FINDINGS OF FACT, RULINGS**
	)	**OF LAW AND ORDER**
BOBBI COTE,	)	
	)	
DEFENDANT	)	

This summary process action came before the Court for an in-person trial on September 24, 2021. The landlord, Residential Management Corporation, Managing Agent for Redbrook Village, LLC ("Plaintiff") seeks to recover possession of 50 Redbrook Lane, Apt. 3F, Orange, Massachusetts (the "Premises") from the tenant, Bobbi Cote ("Ms. Cote") due to alleged material violations of her lease.[1] Ms. Cote filed an answer and all parties appeared for trial represented by counsel.

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

Ms. Cote signed a lease for the Premises on March 10, 2021. The building in which she lives houses eight units, four on the first floor and four on the second floor. The Premises

[1] Because this case is not based on the non-payment of rent, the protections against eviction set forth in Stat. 2020, c. 257, as amended, do not apply.

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are on the second floor. Ms. Cote lives alone. She receives a project-based Section 8 rental subsidy.

Plaintiff claims that it is entitled to possession of the Premises based on material lease violations. Paragraph XXII of her lease authorizes the landlord to terminate a tenant's tenancy for:

> *Action or conduct of Tenant or member of its household that disrupts the livability of the surrounding apartments or adversely affects the health or safety of any person.*
>
> and
>
> *Action or conduct of tenant or members of its household that adversely affects the right of any other Tenant to the quiet enjoyment of the premises and related apartment complex.*

A notice to quit was served on Ms. Cote on April 27, 2021 terminating the tenancy at the end of May 2021. Ms. Cote did not challenge the sufficiency or service of the notice and the Court finds it to be legally adequate.

In support of its claim for possession, Plaintiff called as witnesses the property manager and four tenants who reside in the same building as Ms. Cote. The four other tenants testified consistently and credibly that the disruptions caused by Defendant and her guests have been frequent, prolonged and significant. Ms. Cote has had numerous visitors arrive and leave in the overnight hours multiple times each week for an extended period of time following the commencement of her tenancy. Although the property manager sent two letters notifying Ms. Cote of the disruptions her guests were causing to other residents, Ms. Cote never scheduled a time to discuss the concerns with management nor did she appear to modify her behavior in any meaningful way.

Each of the tenant witnesses testified that Ms. Cote's visitors regularly arrive late at night or in the early morning hours after midnight. Her visitors frequently stay in the Premises

for only a brief time. More than one witness testified that they have been startled awake by Ms. Cote's visitors pressing the wrong buzzer to be let into the building. Once in the building, her visitors often have been unruly. At some point, someone propped open the back door to the building so that people could come and go without being buzzed in, and the volume of visitors to the building only increased. Tenants testified that groups of people sometimes enter together and are disruptive as they passed through the hallways to the Premises.

The conduct of Ms. Cote's visitors is attributable to Ms. Cote herself. Witnesses testified credibly that the visitors' behavior has substantially interfered with the use and enjoyment of their tenancies over the months that Ms. Cote has lived in the Premises. Her neighbors have been awakened in the nighttime several times each week and at least one feels unsafe in her own home because of all of the traffic. One witness testified that she has severe asthma and that the pervasive smoke from Ms. Cote's guests has caused her to sleep at friends' houses or in her car when Ms. Cote's visitors are in the building. Another witness testified about not being able to leave her apartment out of fear that the smoke in the air and air freshener used to hide the smoke odors will trigger her asthma.

In her defense, Ms. Cote testified that she was suffering through major life events at the time she moved into the property. Her mother passed away a week before she moved in, and she was in the midst of a divorce after 26 years of marriage. She was very close to her mother, and her passing hit her hard. She had a celebration of life event after which she had numerous friends and family members come to the Premises. She admits this event was loud and disruptive, and she wrote apology notes to her neighbors afterwards.

The incident for which Ms. Cote apologized, however, was not an isolated one. Had this case emanated from a single incident, or even multiple incidents in the immediate

aftermath of traumatic events, she might be entitled to some leeway. However, the Court finds that Ms. Cote allowed her guests to cause repeated disturbances for a prolonged period of time. Her testimony that she has numerous family members who come to visit her is not a credible explanation to explain the events described by the other tenants. The interference caused by Ms. Cote and her visitors with the peaceful enjoyment of other tenants to their homes has been severe and unreasonable.

Based on the foregoing, the Court finds that Defendant's actions and those of her visitors constitute a material violation of the lease and entitle Plaintiff to judgment for possession. Although Ms. Cote is not entitled to a statutory stay on use of the execution, the Court is cognizant of the fact that she has a project-based subsidy and will permit her a brief period of time to relocate prior to a levy, provided that she satisfies certain conditions. Accordingly, the following order shall enter:

1. Judgment for possession shall enter for Plaintiff forthwith.
2. Execution for possession shall issue upon written application after expiration of the statutory appeal period.
3. Use of the execution shall be stayed through November 30, 2021 on the conditions that Defendant:
    a. have no visitors who are not family members between the hours of 8 p.m. and 7 a.m., provided that if family members do visit, Ms. Cote shall limit the number of visitors at any time to two;
    b. smoke and allow visitors to smoke only in designated smoking areas outside of the building;
    c. instruct visitors to press only her entry buzzer and not any others;

d. not prop open the back door, and

e. not cause any significant disturbances at the property that adversely affect the quiet enjoyment of other tenants.

4. If Plaintiff alleges a violation of any of these conditions, it shall file a motion to lift the stay on use of the execution, providing notice of the nature of the allegations, the date and time of the incident(s) and the witnesses it intends to call at the hearing.

SO ORDERED this 14th day of October 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1297

613, LLC,

Plaintiff,

v.

ANGELA BEATTIE, TYLER BEATTIE, and THOMAS BEATTIE,

Defendants.

ORDER

After hearings on September 3, 2021 and October 8, 2021, the following order shall enter:

1. The plaintiff's motion for an order for access is allowed. More specifically, the defendants shall allow the plaintiff access to the premises upon 48 hours written notice that includes the date and time of the desired access and a description of the anticipated work to be performed.

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2. Anyone appearing to make said repairs shall provide their identification (ie., driver's license, repairperson's license).
3. Access shall not be unreasonably denied by the defendants.
4. The plaintiff's motion for requiring $1,350 to be paid by the defendants for monthly use and occupancy pending trial is denied, without prejudice. The plaintiff failed to provide sufficient evidence upon which the court can establish the fair market rent at that level. The plaintiff's witness, though knowledgeable about rental units in Chicopee, did not have any detailed information about the condition of the subject premises. He has never been inside the unit and gave his opinion of the rental value mistakenly based on photographs that were in fact never provided him of the interior of the subject.

So entered this 15th day of October, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2181

WILBERTO SANTIAGO,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER FOR DISMISSAL**
	)	
MAYRA GRACIA AND HECTOR PEREZ,	)	
	)	
DEFENDANTS	)	

This matter came before the Court for a bench trial on October 14, 2021. Upon reviewing the file, the Court finds that the case was not timely filed. Uniform Summary Process Rule 2(b) requires that service of the summons and complaint (the "writ") be made no earlier than the thirtieth day before the entry day. Here, the writ was served on Defendants on August 4, 2021 and e-filed with the Court on September 10, 2021 (despite the face of the writ listing the entry date as August 16, 2021). Accordingly, because service of the writ was made more than thirty days before the case was filed, this case must be dismissed.

SO ORDERED this 18th day of October 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

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R

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE Nos. 15-SP-823 and 845

SILAR DISTRESSED REAL ESTATE FUND, LP,

Plaintiff,

v.

CAMILLA MATTHIEU, et al.,

Defendants.

ORDER

A post foreclosure summary process trial was held in these consolidated cases on September 27 and 28, 2021. All parties appeared represented by counsel. At the close of the plaintiff's case, the defendants moved for a directed verdict. The motion was taken under advisement in favor of completion of the trial, however, due to technical and practical difficulties preventing Defendant Camilla Matthieu from testifying in support of her defenses and counterclaims, trial was postponed until October 29, 2021. The following order shall enter regarding the defendants' motion for directed verdict:

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BACKGROUND AND PROCEDURAL HISTORY

1. On August 14, 2006, the defendants, Roberto Botta and Camilla Matthieu (hereinafter, "Defendants"), executed a Note in favor of Novastar Mortgage, Inc., in the original principal amount of $184,000.00.

2. The Note was secured by a mortgage to Mortgage Electronic Registration Systems, Inc. (hereinafter, "MERS"), as nominee for Novastar Mortgage, Inc. dated August 14, 2006 and recorded at the Hampden County Registry of Deeds at Book 16122, Page 1.

3. On December 31, 2008, MERS, as nominee for Novastar Mortgage, Inc. assigned the mortgage to Quantum Servicing Corp. and said assignment was recorded on January 15, 2009 at Book 17607, Page 127.

4. On August 13, 2009, Marix, as servicer for the previous mortgagee sent to the defendants a notice of default and right to cure letter stating that the total amount due as of August 12, 2009 was $19,152.89. The August 13 letter also states that "[y]ou are hereby informed that you have the right to 'cure' or reinstate the loan after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense you may have to acceleration and sale."

5. On January 10, 2012, Quantum Servicing Corporation assigned the mortgage to Silar Distressed Real Estate Fund-1, LP and said assignment was recorded on January 30, 2012 at Book 19098, Page 245.

6. On or about May 18, 2007, the defendants entered into a Forbearance Agreement with Novastar Mortgage, Inc., at which time the loan was in default, there

was an arrearage due, and the defendants agreed to make a lump sum payment and thereafter certain monthly payments to cure the arrears.

7. On January 20, 2009, the Defendants filed Chapter 13 Bankruptcy.

8. On January 23, 2009, Quantum Servicing Corp., through its servicer as the mortgage holder, filed its Proof of Claim indicating a total debt of $205,355.10 and pre-petition arrears in the amount of $22,001.28 (payments due from January 1, 2008 through January 1, 2009). There was no objection filed by the debtors.

9. On April 21, 2009, Quantum Servicing Corp., as the then mortgage holder, filed its Motion for Relief from the automatic stay, indicating that the note and mortgage were in post-petition default for the February 1, 2009 payment.

10. On May 4, 2009, Quantum Servicing Corp. and its servicer, REMN modified the defendants' loan by reducing the interest rate and therefore the monthly payment.

11. On May 8, 2009, the defendant, Matthieu, entered into a Stipulation with respect to Quantum's motion for relief and agreed that the total post-petition payments were due in the amount of $7,100.80 (including monthly payments in the amount of $1,575.20 from February 1, 2009 through May 1, 2009 and attorneys' fees and costs of $800.00). Matthieu agreed to pay $4,725.60 immediately, with $1,575.20 due before May 29, 2009 and $2,375.20 due before June 29, 2009 with regular monthly payments commencing for the July 1, 2009 payment.

12. On September 22, 2009, Matthieu's Chapter 13 Plan was confirmed wherein Quantum's pre-petition arrears of $22,001.28 would be paid through the plan at $611.51 each month for thirty-six months.

13. On December 2, 2011, Matthieu's bankruptcy matter was closed and all payments made by the Chapter 13 Trustee to Quantum were credited to the loan in the amount of $22,001.28.

14. On or about January 27, 2012, Silar Distressed Real Estate Fund, LP, (hereinafter, "Plaintiff" or "Silar") through its servicer, caused the Complaint to Determine Military Status to be filed with the Massachusetts Land Court and Judgment entered April 20, 2012.

15. On April 20, 2012, defendant, Roberto Botta and his wife Carmella Botta filed Chapter 13 Bankruptcy (Case No. 12-30614).

16. On April 20, 2012, the defendants filed their Chapter 13 Plan listing the plaintiff's pre-petition arrears in the amount of $55,654.90 to be paid through the Plan.

17. On September 4, 2012, the plaintiff filed its Proof of Claim, indicating a total debt of $202,185.90 and pre-petition arrears in the amount of $51,490.95 (payments due from March 1, 2010 through April 1, 2012 at $961.05 per month, along with pre-petition fees and expenses in the amount of $26,503.65). There was no objection filed by the debtors.

18. On June 27, 2013, the plaintiff filed its Motion for Relief indicating that the loan was in default for the post-petition payments from April 1, 2013 through June 1, 2013 at $960.97 per month, along with fees, less suspense balance for total of $2,906.49.

19. On August 2, 2013, Defendant Botta entered into a Stipulation with the plaintiff with respect to the motion for relief, agreeing that there was a total of $3,759.64 in post-petition payments, fees and costs due (May 1, 2013 through July 1, 2013), and agreed

to make a payment of $1,921.94 before August 5, 2013, another payment of $2,798.67 before August 30, 2013 and resume regular monthly payments on September 1, 2013.

20. On December 30, 2013, Defendant Botta filed a motion to voluntarily dismiss the bankruptcy action, which was allowed by the Court.

21. On January 29, 2014, the plaintiff's counsel sent to the defendants a "NOTICE OF ACCELERATION" by first class mail and certified mail return receipt requested. The letter states in part that "[y]our mortgage is in default for the payment due November 1, 2011." The stated amount past due was $27,536.42. The letter further stated that "[y]ou may cure the default by paying the above sum of money on or before February 28, 2014," and "[y]ou have the right to reinstate your mortgage. . . . [y]our right to reinstate remains in effect even after acceleration and you have the further rights, including the right to bring suit to assert the non-existence of a default or any other defense to acceleration and sale."

22. On February 25, 2014, the plaintiff's counsel sent another letter titled "NOTICE OF ACCELERATION" via first class mail and certified mail return receipt requested. This letter states in part that "[y]our mortgage is in default for the payment due December 1, 2011. You are required to pay the entire mortgage indebtedness and you are hereby notified that the mortgage and note are declared immediately due and payable. . . . [t]he amount of the past due indebtedness under the note and deed of trust as of this date is $27,625.96 plus interest and expenses." The letter also notifies the defendants of the right to reinstate the mortgage and the right to bring suit to assert the non-existence of a default or any other defense to acceleration and sale.

23. On April 24, 2014, the plaintiff's counsel sent notice of the scheduled foreclosure sale on May 16, 2014 by certified mail return receipt requested and first class mail

24. The bankruptcy matter 12-30614 was closed as of April 17, 2014.

25. On May 14, 2014, the defendants filed another Chapter 13 Bankruptcy.

26. On June 25, 2014, the plaintiff filed its Proof of Claim, indicating a total debt of $198,545.39 and pre-petition arrears in the amount of $45,365.66 (payments due from December 1, 2011 through May 1, 2014, along with pre-petition fees and expenses in the amount of $12,469.24).

27. On May 28, 2014, Defendant Botta filed a motion to extend the automatic stay pursuant to 11 U.S.C. 362(c)(3)(B).

28. After hearing, the Bankruptcy Court allowed said motion but only on an interim basis through June 30, 2014, and an evidentiary hearing on the motion to extend the automatic stay was scheduled for June 30, 2014.

29. Through a series of motions to continue the evidentiary hearing filed by both parties, the automatic stay was in place on an interim basis through July 17, 2014.

30. On July 16, 2014, Defendant Botta filed a motion to voluntarily dismiss the bankruptcy action, which was allowed.

31. The Bankruptcy matter was closed on July 16, 2014.

32. On December 15, 2014, the plaintiff recorded a foreclosure deed and affidavit of sale for the property at the Hampden County Registry of Deeds book number 20534

page 105-07. The foreclosure deed, executed on September 8, 2014, states that Silar as mortgagee grants to Silar the premises conveyed by said mortgage for $150,000.

33. The affidavit of sale, recorded at the Hampden County Registry of Deeds book 20534 page 106, executed by Kelly Marling as the "AVP of Seneca Mortgage Servicing LLC, Attorney-in-Fact," states in part that "I had published on April 24, 2014, May 1, 2014, and May 8, 2014 in the Journal Register, a newspaper purporting to have a circulation in Monson, Massachusetts, a notice of which the following is a true copy." The affidavit also asserts compliance with G.L c. 244, § 14 notice requirements, and that "[p]ursuant to said notice at the time and place therin appointed, I sold the mortgaged premises at public auction. . . ."

34. Attached to the Marling Affidavit of Sale as Exhibit A and recorded at the Hampden County Registry of Deeds book 20534 page 107 is a copy of public notice of sale which states in part that "the [property] will be sold at Public Auction at May 16, 2014 at 10:00 a.m. on the mortgaged premises known as 32 Green Street, Monson, MA 01057."

35. On August 19, 2014, the property was sold at public auction.

36. These summary process actions were filed on March 3, 2015.

37. On March 26, 2020, this Court denied parties' cross motions for summary judgment. As part of the record for the plaintiff's motion, the Court considered an affidavit of Alfred Christofaro, of Max Pollack & Co. Auctioneers. Ltd., dated February 10, 2016 ("Christofaro Affidavit"). As reason for denying the plaintiff's motion, the Court stated in part that "the affidavit of sale recorded on December 15, 2014 contains a

defect, stating the foreclosure sale occurred on May 16, 2014 when it did not, in fact, occur until August 19, 2014," and that "[the Christofaro Affidavit] cannot be considered to have corrected the deficient affidavit of sale due to it relying on hearsay evidence."

38. At trial, the plaintiff called Alfred Chistofaro as a witness to provide further testimony regarding the statements made in his affidavit, which was put forward as a proposed trial exhibit. Mr. Christofaro could not recall any of the circumstances described in his affidavit relating to the particular auction, several postponements, and sale of the premises. Following objection by the defendants' counsel, the affidavit was not admitted into the record and any testimony regarding the specific details of the sale of the premises beyond general business practices was deemed inadmissible.

39. At the conclusion of the plaintiff's case, the defendants moved for directed verdict on the plaintiff's summary process claim for possession for failure to establish *prima facie* case.

DISCUSSION

40. "In a summary process action for possession after foreclosure by sale, the plaintiff is required to make a *prima facie* showing that it obtained a deed to the property at issue and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded." *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). "[A] deficient affidavit of sale does not void a foreclosure sale or the right to possession. A deficient affidavit may be cured by extrinsic evidence that the power of sale was exercised properly and the foreclosure was valid" (citations omitted). *Fed. Nat. Mortg. Ass'n v. Hendricks*, 463 Mass. 635, 637 (2012).

41. The statutory form copy of affidavit of sale asserts compliance with G.L. c. 244, § 14. That statute provides for the exercise of the power of sale by a mortgagee, upon breach of condition, provided that no sale under such power shall be effectual to foreclose a mortgage unless notice of the sale has been published in three (3) successive weeks in a newspaper published in the city or town where the property is located and notice of the sale has been sent by registered mail to the owner or owners of record.

42. Where the affidavit of sale was defective on its face, it was incumbent upon the plaintiff to assert by extrinsic evidence compliance with the notice requirements of G.L. c. 244, § 14, and the power of sale generally. The Court finds that the prerequisite notices of default, acceleration, and foreclosure sale were sent in accordance with statute. (See Trial Exhibits 21-23). The remaining requirement of section 14 is for public notice published in a local newspaper for three (3) consecutive weeks. The only evidence presented to show compliance with such publishing is statement in the defective affidavit of sale and attachment thereto. Even accepting that the affidavit of sale shows that notice of sale was published in "The Journal Register" on April 24, May 1, and May 8, 2014, there is no evidence of record to show a public announcement occurred to postpone the foreclosure sale until August 19, 2014.

43. It has long been accepted practice in Massachusetts that, while details of the initial auction must be provided by written notice to the appropriate parties and published in a newspaper in accordance with G.L. c. 244, §§ 11–17B, a postponement of the sale may be announced by public proclamation to those present at the auction site, particularly when the adjournment is requested by the mortgagor. This is in

keeping with the overriding principle that, beyond the statutorily-prescribed procedures, the mortgagee's duties are embraced under the general obligation to make reasonable efforts to prevent a sacrifice of the property (citations and quotations omitted). *Fitzgerald v. First Nat. Bank of Bos.*, 46 Mass. App. Ct. 98, 100 (1999).

44. While "there [is] no State law requirement for noticing continuances," and it is appropriate for a bank to "continue the sale by public proclamation at the time and place of the scheduled auction, ... questions regarding notice of foreclosure proceedings will continue to be viewed . . . . in light of the mortgagee's general obligations of good faith, diligence, and fairness in the disposition of the mortgaged property." *Fitzgerald*, 46 Mass. App. Ct. at 100-101 (1999).

45. In cases interpreting *Fitzgerald* with findings in favor of the former mortgagee, there is generally a statutorily sufficient affidavit of sale describing the public proclamation postponements and/or extrinsic evidence of such public proclamations occurring. See *Chaves v. U.S. Bank, N.A.*, 335 F. Supp. 3d 100, 110 (D. Mass. 2018) ("The Affidavit of Sale states that the auction, originally scheduled for February 2, 2015, was 'postponed by public proclamation' several times" and the defendants submitted corroborating affidavit of the auction director); *Branch Ave Cap., LLC v. U.S. Bank Nat. Ass'n*, U.S. Dist. Ct., No. CIV.A. 12-40140-TSH (D. Mass. Sept. 16, 2013) ("The defendants informed Chase of the new auction date through email over a week before the sale. Moreover, the defendants hired an auctioneer who extensively advertised the foreclosure sale in the weeks leading up to it); *Bank of New York Mellon Tr. Co., Nat'l Ass'n v. Bradeen*, 2019 Mass. App. Div. 107 (Dist. Ct. 2019) ("The affidavit of sale states that a public proclamation to postpone the foreclosure sale occurred on the

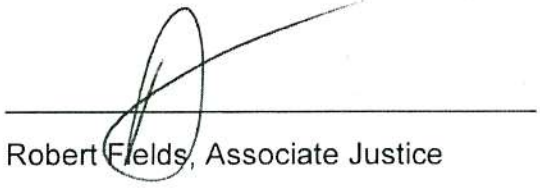
original May 5, 2015 foreclosure sale date"); *Stephens-Martin v. Bank of New York Mellon Tr. Co., Mass. Land Ct.*, No. 12 MISC 465277 AHS (Feb. 20, 2015) (multiple sources of corroborating evidence of public proclamation including statement of postponements in affidavit of sale).

46. The Court finds that the recorded affidavit of sale was defective on its face and unable to satisfy the plaintiff's *prima facie* burden necessitating the Court to consider extrinsic evidence of compliance with the statutory power of sale; there was no submission concerning the published notice of sale outside of an attachment to the deficient affidavit of sale; and the only witness testimony at trial could not recall any details of the sale of the property. Under these specific circumstances, the Court is not satisfied that the plaintiff carried its *prima facie* burden, and/or in the alternative, the plaintiff's inability to prove the sale was postponed by public proclamation, or any alternative means, prohibits a finding that it fulfilled its general obligations of good faith, diligence, and fairness in the disposition of the mortgaged property.

CONCLUSION

47. For the reasons set forth above, the defendants' motion for directed verdict is hereby ALLOWED as to the plaintiff's claim of superior right to possession. Trial will continue as scheduled on October 29, 2021, for the defendants to present their case for full payment of their mortgage obligations and other claims.

So entered this 20th day of October, 2021.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

CASE NO. 21-SP-1301

ELMIR SIMOV,

Plaintiff,

v.

LOIS LEDOUX and THOMAS LEDOUX,

Defendants,

ORDER

After trial on September 9, 2021, at which all parties were self-represented, based upon all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the following order shall enter:

1. On April 16, 2021, Elmir Simov ("Plaintiff") had a seven day notice to quit served upon Lois Dedoux and Thomas Ledoux ("Defendants").
2. The notice to quit stated the Defendants were requested to leave because of their refusal to provide information regarding their electricity bill through National

Grid and that the Plaintiff considered this refusal a violation of paragraph 19 and paragraph 26 of the lease agreement.

3. After expiration of the notice to quit, the Plaintiff had served a summary process summons and complaint upon the Defendants on April 27, 2021. The summons and complaint simply states the reason for eviction is "for cause."
4. Paragraph 19 of the lease agreement states: "**Interference with Management.** Tenant(s) agree not to interfere with the Landlord or Landlord's employees or agents with respect to their management of the Premises and/or the building in which the Premises are located. Tenant agrees to answer landlord's text messages promptly not later than the same day." Paragraph 26 of the lease agreement defines the circumstances under which the landlord may enter the dwelling unit.
5. At trial, Plaintiff stated he did not want to evict the Defendants but that they were the last holdout in the property to refuse to provide certain information the Plaintiff claimed was required to access funding to insulate the property through the Mass Save program. Plaintiff suggested a preferred alternative to undertake the electric bill to be reimbursed on a monthly basis by the Defendants to avoid collecting the desired personal information.
6. In turn, the Defendants stated a desire to leave the property despite not having done so since the initiation of this case in April 2021. Defendants stated they would grant reasonable access to the unit, but would not share their electric bill information and were not otherwise amendable to Plaintiff's suggested alternative

of placing the bill in his name. Accordingly, trial proceeded and all parties were heard on their claims and defenses respectively.

7. The Court finds that Defendants' refusal to provide the information requested regarding details of their electric bill was not a violation of the lease agreement. If anything, this refusal was *de minimis*, and any interference with management was centered on a request for information that the Defendants were otherwise not obligated to share. See *Chestnut Park Associates v. Munford*, Hampden Housing Court No. SP2224-S87 (June 18, 1987, Abrashkin, J.)
8. "The courts in the Commonwealth of Massachusetts consider a lease a valuable property right and have found that, if the breach is 'de minimis,' the tenant's rights would not be terminated by a forfeiture." See *Father Walter J. Martin Cooperative Homes v. Anne Marie Berry and Michelle Ryan,* Southeast Housing Court No. 02SP248 (October 15, 2002, Edwards, J.).
9. **Conclusion and Order:** Based on the foregoing, judgment for possession shall enter for the Defendants.

So entered this 20th day of October, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1305

LAMONTAGNE PROPERTY GROUP, LLC,

Plaintiff,

v.

KRISTY REIN and EDDIE FIGUEROA,

Defendants.

ORDER

This matter came before the court on October 18, 2021, at which the landlord appeared through counsel and the tenants appeared *pro se*. As a preliminary matter, the tenants having asserted as a defense that the matter must be dismissed due to inconsistencies between the Notice to Quit and the Summons, the following order shall enter:

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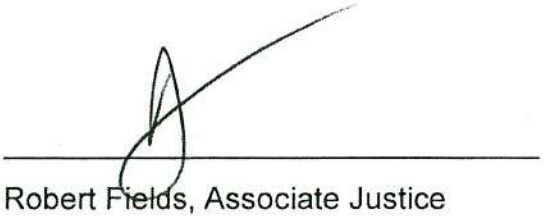
1. For the reasons stated on the record, and due to the landlord utilizing a "no fault" Notice to Quit but inserting "fault" reasons on the summons, the landlord's claim for possession is dismissed, without prejudice.
2. More specifically, the landlord had the tenants served with a Notice to Quit on or about February 10, 2020 for "no fault". Thereafter, on or about November 9, 2021, the landlord had the tenants served with a Summons and Complaint that listed the following reasons for the eviction: "illegal use of residence, fraudulent inducement to enter rental agreement, and landlord requires use of residence." The first two reasons stated being "for fault".
3. A landlord is assigned the grounds for termination stated in the notice to quit. *Tuttle v Bean*, 13 Met. 275 (1847); *Strycharski v. Spillane*, 320 Mass. 382 (1946).
4. Additionally, the Uniform Summary Process Rules 2(d) requires that the landlord state the reason(s) for the eviction "in concise, untechnical form and with sufficient particularity and completeness to enable a defendant to understand the reasons for the requested eviction and the fact underlying those reasons." Because the reasons stated on the summons do not comport with the notice to quit, and the law requires that it does, the landlord failed to comply with U.S.P.R. 2(d).
5. Statutory requirements governing both summary process proceedings and termination notices "must be sufficient and perfect of [themselves] without reference to any subsequent proceedings." *Oakes v. Monroe*, 62 Mass. (8 Cush.) 282 (1851). In ruling so, the Oakes court measured the language against the

statutory requirements and contains no suggestion that the tenant was actually misled or prejudiced by the deficiencies in the language of the notices.

6. The relevant cases share a "purposeful reluctance to look beyond the four corners of the notice in question" and not whether or not the tenant is misled in a given matter. See, *Springfield II Investors v. Amita Marchena*, Hampden County Housing Court Docket No. 89-SP-1342-S (Abrashkin, J.), citing *Strucharski v.Spillane*, 320 Mass. 282, 69 N.E.2d 589 (1946) *U-Dryvit Auto Rental Co. v. Shaw*, 319 Mass. 684, 67 N.E.2d 225 (1946); *Connors v. Wick*, 317 Mass. 628, 59 N.E.2d 277 (1945); and Hall, Massachusetts Law of Landlord and Tenant (4th ed. 1949), s.s.173, 174.
7. Based on the foregoing, the landlord has failed to commence this summary process matter in accordance with the law and the landlord's claim for possession must be dismissed without prejudice. See also, *Christopher Barber v. Lyna Maquire*, Southeast Housing Court Docket No. 03-SP-5962 (Edwards, J.); *Haile g. Aberaha v. Erica Hues*, Boston Housing Court Docket No. 07-Sp-3556 (Muirhead, J.).
8. The tenants' counterclaims shall be transferred to the Civil Docket with the caption of Kristy Rein and Eddie Figueroa v. Lamontagne Property Group, LLC, and the Clerk's Office shall schedule a Case Management Conference in that matter.
9. The landlord (and soon to be defendant in the new civil matter) shall file an Answer to the tenants' counterclaims by no later than November 22, 2021.

So entered this 21st day of October, 2021.



Robert Fields, Associate Justice

Cc: Clerks' office (for scheduling of the Case Management Conference)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-3771

RAYMOND LABONTE, JR.,

Plaintiff,

v.

ANN M. BECKER, JOHN C. BECKER, and JOSEPH WILSON,

Defendants.

ORDER

After hearing on October 22, 2021 on the plaintiff's motion for summary judgment, at which the plaintiff appeared with counsel and the defendants all appeared *pro se,* the following order shall enter:

1. **Background:** This is a post-foreclosure eviction matter in which the plaintiff, Raymond Labonte, Jr. (hereinafter, "LaBonte"), purchased the subject premises on or about May 28, 2019 from the Bank of New York Mellon (hereinafter, "Bank") after the Bank conducted a foreclosure auction on July 12, 2018. The

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defendants, Ann and John Becker (hereinafter, "the Beckers"), are the mortgagors upon whom the foreclosure was conducted and continue to occupy the premises. The defendant Joseph Wilson (hereinafter, "Wilson") purports to be the tenant of the co-defendants and also continues to occupy the premises.

2. The Beckers assert two defenses to this summary process eviction; that the foreclosing institution failed to send them a cure notice in accordance with G.L c.244, s.35A as required before a foreclosure may be commenced and at the foreclosure auction, the Bank failed to qualify as a bidder by failing to make the required $10,000 payment to the auctioneer.
3. Wilson asserts one defense, that he is a tenant of the Beckers and that Labonte failed to provide him with a proper notice to quit---with three month's notice in accordance with G. L. c.186, s.12 or 20 days in accordance with G.L. c.186A.
4. **35A Cure Letter:** Even if the court was to fully credit the Beckers' recollection that they never received the 35A cure letter, Labonte's burden is to show that there is no genuine dispute of fact that said letter was *sent* to the Beckers by the Bank. Given the submissions by the parties, including the Affidavit of Gerardo Trueba, the court is satisfied that there is no genuine issue of fact regarding the mailing by the Bank of the 35A cure letter. See, *Anthony Ricci v. Rushmore Loan Management Services, LLC,* Appeals Court 20-P-1151 (October 18, 2021).
5. **Bank's Bid at the Foreclosure Sale:** Though it is unclear from the record before the court whether the Bank made a $10,000 payment to the auctioneer at the foreclosure auction, the court does not find that failure to make such payment would void the sale to the Bank stemming from the auction once the foreclosure

deed dated July 20, 2018 was recorded in the Hampden County Registry of Deeds on August 6, 2018. Accordingly, the Bank's subsequent sale to LaBonte is valid and he has satisfied the court of his superior right to possession as to the Beckers.

6. **Summary Judgment as to the Plaintiff's Claim for Possession Against the Beckers:** Based on the foregoing, summary judgment shall enter on behalf of the plaintiff, Raymond Labonte, Jr. on his claim of possession as to the Beckers. What remains for further adjudication is Labonte's claim for use and occupancy.
7. **Wilson's Opposition to the Summary Judgment Motion:** There continues to exist genuine disputes of fact regarding Wilson's status as a tenant of the subject premises. Wilson asserts that he is a tenant who preforms work/chores for the Beckers in lieu of rent and, thus, must be afforded either a three month notice in accordance with G. L. c186, s.12 or a no fault notice in accordance with G. L. c.186A. The plaintiff does not offer sufficient documentation or a persuasive argument upon which the court can find that there are not genuine factual disputes for determination at trial and, thus, LaBonte's motion for summary judgment for possession against Wilson is denied.
8. **Summary Judgment as to Wilson:** Based on the foregoing, the plaintiff's motion for summary judgment as to Wilson is denied.

So entered this 26th day of October, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1926

RICHARD REIL,

Plaintiff,

v.

KEVIN BLANCHARD,

Defendant.

ORDER

This matter came before the court for trial on October 22, 2021, at which the plaintiff landlord appeared with counsel and the defendant tenant appeared *pro se*. After consideration of the evidence admitted at said trial, the following order shall enter:

1. The plaintiff, Richard Reil (hereinafter, "landlord"), owns a manufactured home in Turners Falls and rents same to the defendant, Kevin Blanchard (hereinafter, "tenant"). The tenancy began in 2015 and the address of the premises is 259 millers Falls Road, Lot 6, Turners Falls, Massachusetts (hereinafter, "premises"

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or "property"). The monthly rental arrangement was that the tenant would pay his lot rent to the mobile home park plus $350 each month paid to the landlord. The agreement was also that if the tenant paid a total of $25,000 the home would be sold to the tenant. The lease, which also acted as a bill of sale, allowed for the $25,000 to be paid in 72 monthly payments (@$350). There is not dispute that the tenant has not yet paid the full purchase price for the home.

2. On or about May 26, 2021 the landlord had the tenant served with a "for cause" Notice to Quit. In said notice, the landlord listed the following acts and/or damages as the basis for the eviction:

    a. Kitchen sink full of cat litter and feces;
    b. Removal of and breaking storm windows;
    c. Damage to shower wall by screwing board to it;
    d. Removal of bedroom closet;
    e. Installation of pellet stove without permission or obtaining permit;
    f. Trash and recycling piled up outside trailer;
    g. Damage to front and back doors;
    h. Damage to screen porch;
    i. Excessive amount of personal belongings piled on porch and in rooms;
    j. Electric light in bedroom removed;
    k. Tampering with/damaging cold water pipe in kitchen.

3. **The Landlord's Case for a *For Cause* Eviction:** The landlord met his burden of proof that the tenant caused the breaking or removal of storm windows, damage to the shower, the removal of the bedroom closet, the installation of a

pellet stove without the landlord's permission, damage to the doors, and removal/damage to the bedroom light fixture.

4. **The Tenant's Defense:** The tenant's defense that the landlord gave him tacit permission to remove the closets and install the pellet stove by telling him a bar in 2018 that he could do whatever he wanted to the home, and that the other damages were normal wear and tear, was not a prevailing argument.
5. **Conclusion and Order:** Based on the foregoing, the court finds an so rules that the landlord met his burden of proof that the tenant violated the terms of the leasehold and judgment shall enter for the landlord for possession and for court costs. The execution shall issue in due course upon the filing and service of a Rule 13 Application.

So entered this 26th day of October, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21H79CV000512

TOWN OF WEST STOCKBRIDGE, by and through its ZONING ENFORCEMENT OFFICER,

Plaintiff

v.

KEVIN P. SULLIVAN,

Defendant

FINDINGS AND ORDER ON CIVIL CONTEMPT

This matter came before the Court for a contempt trial on October 15, 2021 pursuant to M.R.C.P. Rule 65. Plaintiff appeared through counsel. Defendant appeared and represented himself. Town of West Stockbridge's Verified Complaint for Contempt is hereby allowed. The Court hereby finds and orders:

FINDINGS

1. The Court entered an order on August 23, 2021 (the "Order") regarding property Defendant owns at 29 Pixley Hill Road, West Stockbridge, Massachusetts (the "Property");

2. The clear and unequivocal terms of the Order required the Defendant to vacate the Property no later than Friday, August 27, 2021 at 12:00 p.m. and to remove the trailer thereon by September 3, 2021 at 12:00 p.m.

3. The Defendant did not receive a special permit or other written authorization from Plaintiff to allow for the temporary use of the trailer on the Property and did not request relief from this Court to allow for the same.

4. The Defendant has failed to comply with the clear and unequivocal terms of the Order; specifically, the Defendant has failed or refused to vacate the Property and remove the trailer from the Property, in violation of the Town's Zoning Bylaws and the State Sanitary Code, and in clear violation of the Court's Order.

5. Defendant was afforded ample time and opportunity to comply with the Court's Order. His failure and/or refusal to comply demonstrates clear and undoubted disobedience of a clear and unequivocal command. *See Allen v. School Committee of Boston*, 400 Mass. 193, 194 (1987).

6. As a result, the Court finds by clear and convincing evidence that the Defendant is in civil contempt for failure to comply with the terms of the Order.

ORDER

Based on the findings set forth above, the Court ORDERS the Defendant as follows:

(a) The Defendant shall immediately, within forty-eight (48) hours of the date of this Contempt Order, vacate the Property;

(b) The Defendant shall immediately, within forty-eight (48) hours of the date of this Contempt Order, remove the trailer from the Property;

(c) The Defendant shall be assessed daily penalties and fines payable to the Town of West Stockbridge of $50.00/day which shall continue to accrue for each day of continued noncompliance with this Contempt Order until Plaintiff verifies compliance upon notification by the Defendant of the same;

(d) The Defendant shall allow the Town of West Stockbridge's inspection officials and/or their agents, to inspect the Property to determine compliance of this Order; and

(e) The Defendant shall pay all costs and reasonable attorneys' fees incurred by Plaintiff for preparing and prosecuting the instant Complaint for Contempt. Plaintiff may submit, within thirty days of receipt of this Contempt Order, a petition for attorneys' fees and costs, together with supporting documentation.

SO ORDERED this 26th day of October 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT
WESTERN DIVISION

JOSEPHUS GRANT, JR.,

Plaintiff,

v. No. 18-CV-1018

MID-ISLAND MORTGAGE CORP.,

Defendant.

VITALY GLADYSH,

Plaintiff,

v. No. 18-SP-4521

TASIA GRANT, INZANA GRANT, and
JOSEPHUS GRANT,

Defendants.

After hearing on June 18, 2021, on Josephus Grant, Jr.'s ("Grant" or "Mortgagor") Motion for Reconsideration of Order Denying Summary Judgment, where all parties were represented by counsel, the court issued an order dated July 2, 2021. In said order, the parties were granted until July 30, 2021 to supplement the Summary

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Judgment record. After consideration of those supplemental filings, the following Order shall enter:

1. Contrary to its averments and arguments leading up to the filing of supplemental materials in July, 2021, Mid-Island is now urging the court to find that it actually did send a certified HUD Face-to Face letter to the plaintiff, Josephus Grant, on May 11, 2015. In support of its position, Mid-Island submits an affidavit from Raymond Crawford, a Vice President—Document Execution and Senior Litigation Associate at Cenlar FSB ("Cenlar"). By way of this affidavit, Mr. Crawford states that Mid-Island utilized the services of Cenlar to send Mr. Grant said letter and also to go to Mr. Grant's home and attempt to schedule a face-to-face meeting and/or leave materials regarding same at the premises.
2. None of Crawford's attachments include a copy of the HUD Face-to-Face letter with the Certified Mailing tracking number. Instead, Crawford attaches a "daily spreadsheet" which he states identifies a batch of HUD Face-to-Face letters send on May 11, 2015 including for Mr. Grant's mortgage and points out that on the HUD Face-to-Face letter a code, XC849, is printed therein indicating that this is such a letter. Finally, Crawford attaches a print-out from the post office which he states indicates that the batch of such letters, including the one to Mr. Grant, was mailed.
3. If the court were to accept this submission as proof that Mid-Island complied with 24 C.F.R. 203.604's requirement of sending a certified letter to arrange for a face-to-face meeting (and find also that Mid-Island or its agent visited

the mortgaged property to schedule such a meeting), it could dispense with the need to find whether or not Mid-Island can satisfy an exception to the fact-to-face rule---which it had argued was Mr. Grant's clear indication that he will not cooperate in the fact-to-face meeting.

4. Given the manner in which Mid-Island produced Crawford's affidavit and attachments, after years of litigation in which it asserted that the there was no evidence of the HUD Face-to-Face letter being sent by certified mail—and given the indirect manner in which a fact-finder must base a finding that the letter was sent certified (as opposed to, for example, a Certified Mail tracking number printed directly on the HUD Face-to-Face letter), the court is not persuaded that no genuine issues of fact exist for trial.
5. Based on the foregoing, including the analysis contained in the court's July 2, 2021 order, cross-motions for summary judgment are denied and this matter shall be scheduled for trail by the court. At said trial, Mid-Island may attempt to persuade the judge that a HUD Face-to-Face letter was sent certified mail as well as "at least one trip to see the mortgagor at the mortgaged property" or that it can satisfy an exception to the face-to-face rule by showing that "the mortgagor [] clearly indicated that he will not cooperate in the interview." See, 24 C.F.R. 203.604.

So Ordered this 27th day of October, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-CV-24

GORDON H. MANSFIELD VETERANS)
COOPERATIVE CORPORATION,)
)
Plaintiff,)
)
v.) ORDER
)
DANIEL J. MILLER,)
)
Defendant.)
)

After hearing on June 28, 2021, on Plaintiff's motion to alter or amend judgment under Ma. R. Civ. P. 59 (e), the following order shall enter:

1. After summary judgment entered in favor of the defendant, Daniel Miller ("Defendant"), the plaintiff, Gordon H. Mansfield Veterans Cooperative Corporation – Agawam ("Plaintiff"), requests the court reconsider and vacate its judgment for misapplication of federal regulation 24 CFR 982.310(e). The Defendant simply responds "[t]here is no reasonable reading of the word 'prior' that permits the preceding event to happen after the event it precedes."

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2. "A motion brought under rule 59(e) is addressed to the judge's sound discretion." *Gannett v. Shulman*, 74 Mass. App. Ct. 606, 615 (2009), citing *R.W. Granger & Sons, Inc. v. J & S Insulation, Inc.*, 435 Mass. 66, 79 (2001). "Where there has been no change of circumstances, a court or judge is not bound to reconsider a case, an issue, or a question of fact or law, once denied. . . . After the denial of one motion, a second motion based on the same grounds need not be entertained." *Peterson v. Hopson*, 306 Mass. 597, 599-600 (1940). However, "[t]hough there is no duty to reconsider a case, an issue, or a question of fact or law, once decided, the power to do so remains in the court until final judgment or decree." *Id.* at 601. Where the narrow issue presented in this motion appears to be one of first impression, the Court will address the apparent contradiction of federal law, U.S. Department of Housing and Urban Development ("HUD") regulations, the Housing Assistance Provider ("HAP") contract, Massachusetts general laws, and Housing Court caselaw.

3. At summary judgment, the questions before the court included whether the unit at issue, under a tenant-based voucher (as opposed to a project-based voucher), qualified as "assisted" housing eligible to void the Defendant's lease pursuant to G.L. c. 139, § 19; and if so, whether the supremacy clause of the United States Constitution required pre-termination notice be served to the tenant prior to entering the case. See *Rockingham Glen v. O'Flaherty*, Boston Housing Court No. 16-CV-969 (February 24, 2017, Muirhead, F.J.).[1] After hearing, and

[1] "[E]ven if this court were to accept that (1) this Defendant's actions fall within the purview of c. 139 sec. 19 and that (2) a tenant with a mobile voucher is a tenant in federal or state assisted housing or (3) that "Rockingham Glen is state or federally assisted housing, the Plaintiff has failed to comply with the section

upon consideration of the arguments, this Court held that "[i]f the landlord qualifies as a party eligible to act under G.L. c. 139, § 19, then it must comply with federal notice requirements under the Supremacy Clause of the United States Constitution."

4. Without relevant appellate instruction at the state level or in the federal circuits, the Court relied on prevailing Massachusetts Housing Court caselaw considering similar facts: where landlords attempted to void leases that were subject to HUD regulations without prior notice pursuant to G.L. 139, § 19. See *Benchmarck Apartment Management Corp. v. Mercer*, Boston Housing Court No. 96-00949 (Winik, J., January 3, 1997); *Housing Management Resources v. Dennard*, Western Housing Court No. 17-CV-43 (Fields, J. 2017); *Peabody Properties v. Nash*, Eastern Housing Court No. 18-CV-316 (Winik, J., 2018); *Hollywood Associates v. Adams*, Western Housing Court No. 91-SP-778 (Abrashkin, J., 1991); *Chicopee Housing Authority v. Fontanez*, Western Housing Court No. 04-SP-4736 (Fein, J., 2005); *Rockingham Glen v. O'Flaherty*, Boston Housing Court No. 16-CV-969 (Muirhead, J., 2017). The finding on summary judgment in favor of the Defendant reflected the notion that any provision of G.L. c. 139, § 19 which allows for the termination of federally assisted tenancies without adequate pre-termination notice is preempted by federal law.

5. Upon further review, this Court maintains its prior ruling for summary judgment in favor of Defendant and further specifically finds that the Plaintiff is not a "federal or state assisted housing" for the purposes of G.L. c. 139, § 19.

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8 mandates. 42 USC 1437f requires that 'any termination of tenancy shall be preceded by the owner's provision of written notice to the tenant specifying the ground for such action.'" *Id.*

6. The relevant provision of section 19 was enacted by Acts 1995, c. 179, § 13 (the "Act"). The stated legislative intent of the Act, as reflected by the name of the Act, is "to improv[e] the housing opportunities for elders and non-elderly persons with disabilities." [2] Chapter 179 of the Act also amended G.L. c. 121B, § 32C and G.L. c. 151B, § 1. The Supreme Judicial Court ("SJC") has stated that "where two or more statutes relate to the same subject matter, they should be construed together so as to constitute a harmonious whole consistent with the legislative purpose." *Bd. of Ed. v. Assessor of Worcester*, 368 Mass. 511, 513–14, 333 N.E.2d 450, 452 (1975).

7. The definitions relevant to G.L. c. 121B, § 32B and 151B, § 1 provide context to what the legislature intended by the term "federal or state assisted housing" in G.L. c. 139, § 19. Chapter 121B, § 32B provides that:

> "Subsidized housing development", such multi-family developments for housing as: (a) receive the benefit of subsidy in the form of project-based assistance under the section 8 housing assistance program for the disposition of projects owned by the United States Department of Housing and Urban Development; or (b) are owned or held by the United States Department of Housing and Urban Development as mortgagee-in-possession.

8. Chapter 151B, § 1 provides a definition for "publicly assisted housing accommodations" include housing constructed after July 1, 1950,

> which is exempt in whole or in part from taxes levied by the commonwealth or any of its political subdivisions; . . . . constructed on land sold below cost by the commonwealth or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred and forty-nine; . . . . constructed in whole or in part on property acquired or assembled by the commonwealth or any of its

[2] In a letter from then Governor William Weld dated August 16, 1994 addressed to the Senate and House Representatives regarding the legislative proposal that became the Act, the Governor makes it very clear that it was meant to "strengthen the ability of housing authorities to evict troublesome alcohol and drug abusers." Thus, not legislation to assist non-housing authority providers that accept Section 8. (See, attached to the Act.)

> political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction; or for the acquisition, construction, repair or maintenance of which the commonwealth or any of its political subdivisions or any agency thereof supplies funds or other financial assistance.

9. Certain other housing "the acquisition, construction, rehabilitation, repair or maintenance of which is . . . . financed in whole or in party by a loan whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof" is also considered "publicly assisted housing accommodations" during the life of said loan. G.L. c. 151B, § 1.

10. "On its face, c. 139, sec. 19 does not appear to apply to instances where the tenant receives a rent subsidy but is a tenant of a private landlord." *Rockingham Glen v. O'Flaherty*, Boston Housing Court No 16-CV969 (Muirhead, J. February 24, 2017). The Court finds that the tenant-based housing voucher at issue in this case does not fall under "federal or state assisted housing" as required under G.L. c. 139, § 19. Therefore, summary judgment in favor of the Defendant was appropriate and Plaintiff's motion to alter or amend must be denied.

11. Even if Plaintiff could supplement the record so as to satisfy the requirements of G.L. c. 139, § 19, it would still be required to provide the notice contemplated by 42 U.S.C. § 1437(o)(7)(E), despite contradictory regulations.

12. That federal statute states in pertinent part, that "[e]ach housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit – shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to

the tenant specifying the grounds for that action, and any relief shall be consistent with the applicable State and local law." 42 USC § 1437(o)(7)(E). However, 24 CFR 982.310 states:

> (i) The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.
>
> (ii) The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.
> (2) Eviction notice.
> (i) Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.

13. The issue considered by the summary judgment Order and this motion to alter or amend concerns the apparent conflict of appropriate timing of service of the owner eviction notice in the context of a G.L. c. 139, § 19 complaint -- that is whether service of a G.L. c. 139, § 19 complaint, without prior notice, satisfies the federal statute and relevant regulations.

> In assessing the legality of an administrative agency's properly promulgated regulations, we employ sequentially two well-defined principles.
>
> First, we determine, using conventional tools of statutory interpretation, whether the Legislature has spoken with certainty on the topic in question, and if we conclude that the statute is unambiguous, we give effect to the Legislature's intent. Second, if the Legislature has not addressed directly the pertinent issue, we determine whether the agency's resolution of that issue may 'be reconciled with the governing legislation. At the second stage, we afford substantial deference to agency expertise, and will uphold a challenged regulation unless a statute unambiguously bars the agency's approach (citations and quotations omitted).

14. *New England Power Generators Ass'n, Inc. v. Dep't of Env't Prot.*, 480 Mass. 398, 404–05, 105 N.E.3d 1156, 1162 (2018). The Plaintiff asks the Court to yield substantial deference to HUD's administrative regulation 982.310, however, the

controlling statute unambiguously bars the agency's approach where, as Defendant notes, "[t]here is no reasonable reading of the word 'prior' that permits the preceding event to happen after the event it precedes." Although the Court should not supplant the agency's judgment where the agency's statutory interpretation is reasonable, that is not the case here. See *Dowling v. Registrar of Motor Vehicles*, 425 Mass. 523, 525 (1997).

15. Where the Court is considering federal law as interpreted by a federal agency's regulation, it is appropriate to review First Circuit precedent. First Circuit Courts "[f]irst ask whether Congress has directly spoken to the precise question at issue. If so, courts, as well as the agency, must give effect to the unambiguously expressed intent of Congress" (citations and quotations omitted). *Saysana v. Gillen*, 590 F.3d 7, 12 (1st Cir. 2009). Then, if a statute is found to be ambiguous, Federal Courts "turn to the second question, specifically, 'whether the agency's answer is based on a permissible construction of the statute[.]' In applying the second step, [Federal Courts] must defer to an agency's interpretive regulation unless it is arbitrary, capricious, or manifestly contrary to the statute" (citations and quotations omitted). *Id.* at 13.

16. In this case, the federal statute, 42 U.S.C. § 1437(f), is unambiguous where it states "[e]ach housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit – shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with the applicable State and local law." 42

USC § 1437(o)(7)(E). Furthermore, if that language is ambiguous, any interpretation of that section which allows for notice to be sent after filing of an action is found to be manifestly contrary to the statute.

17. The Plaintiff also contends that the HAP contract states "[t]he main regulation for this program is 24 Code of Federal Regulations Part 982,"[3] and that the Housing Court cases discussed *supra* concern other federal regulations not part 982 (e.g., parts 247, 882, and 966). The federal regulations considered in those cases provide for notice of termination of tenancy to be in accordance with state law in certain situations, which, under G.L. c. 139, § 19, would be no notice at all before service of a complaint and order of notice requesting injunctive relief to obtain possession.[4] However, unlike part 982.310, those parts do not explicitly state that notice may be "a complaint or other initial pleading." The distinction is one without a difference under the circumstances of a G.L. c. 139, § 19 complaint.

---

[3] That regulation provides "(g) Regulations not applicable. 24 CFR part 247 (concerning evictions from certain subsidized and HUD-owned projects) does not apply to a tenancy assisted under this part 982." 24 CFR 982.310(g).

[4] Part 247.4(c) states in part that notice of termination of tenancy based on "other good cause" be "in no case earlier than 30 days," or if based on material noncompliance with the rental agreement or state law "shall be in accord with the rental agreement and state law."
Part 882.511(d) provides that notice of termination of tenancy for nonpayment of rent "must be not less than five working days;" "[w]hen termination is based on serious or repeated violation of the terms and conditions of the lease or on violation of applicable Federal, State or local law, the date of termination must be in accordance with State and local law;" and when based on other good cause then "termination must be no earlier than 30 days after the notice is served."
Under part 966.4(3): "The PHA must give written notice of lease termination of: 14 days in the case of failure to pay rent; A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days): (1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or (2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or (3) If any member of the household has been convicted of a felony; (C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply."

18. In *Mercer*, the plaintiff alleged that the defendant engaged in physical violence against her neighbor. *Benchmarck Apartment Management Corp. v. Mercer*, Boston Housing Court No. 96-00949 (Winik, J., January 3, 1997). Under 24 C.F.R. 247.4, such circumstances may have fallen under a "material noncompliance with the rental agreement or state law" and the timing of eviction notice should therefore "be in accord with the rental agreement and state law."[5] The case was brought pursuant to G.L. c. 139, § 19, and the state law was found to be pre-empted by the federal notice requirement of 42 U.S.C. 1437(f). *Id.*

19. The manner of service required under part 247 includes

> (1) Sending a letter by first class mail, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door.

20. If this could be accomplished by serving a G.L. c. 139, § 19 complaint by first class mail and in-hand, then under the Plaintiff's argument, there is no reason the state law would have been pre-empted. Other notice requirements of part 247.4 (i.e., that the notice shall be in writing, state the date the tenancy is to be terminated, and that the landlord may only seek enforcement by judicial action) may also be satisfied by service of a complaint including such necessary detail through attachments to the verified complaint. As was the case here.

21. In *Dennard*, the chapter 139, § 19 complaint followed alleged violent behavior of the defendant towards another resident. *Housing Management*

[5] That regulation does not address the amount of notice required for criminal activity. See 24 C.F.R. § 5.859.

Resources v. Dennard, Western Housing Court No. 17-CV-43 (Fields, J. 2017). Pursuant to 24 C.F.R. 882.511(d), notice for a "serious or repeated violation of the terms and conditions of the lease or on violation of applicable Federal, State or local law, the date of termination must be in accordance with State or local law." Yet, the complaint was brought under state law and chapter 139, § 19 was found to be preempted by the federal statute. Id. The notice of termination under part 882 must:

> (i) State the reasons for such termination with enough specificity to enable the Family to prepare a defense.
> (ii) Advise the Family that if a judicial proceeding for eviction is instituted, the tenant may present a defense in that proceeding.
>
> (iii) Be served on the Family by sending a prepaid first class properly addressed letter (return receipt requested) to the tenant at the dwelling unit or by delivering a copy of the notice to the dwelling unit.

22. Those requirements may likewise be satisfied by serving a complaint under G.L. c. 139, § 19 by first class mail or in-hand. The tenancy in *Adams* was similarly regulated by 24 C.F.R. 882. *Hollywood Associates v. Adams*, Western Housing Court No. 91-SP-778 (Abrashkin, J., 1991). Following a complaint for apparent drug related violations, which sets the termination date "in accordance with State and local law," the State statute (e.g., G.L. c. 139, § 19) was found to be pre-empted by the federal notice requirements of 42 U.S.C. 1437(f). *Id.*

23. Indeed, the Appeals Court has stated that "[n]o relevant notice provisions of the Federal statute or regulations conflict with the Commonwealth's notice provisions." *New Bedford Hous. Auth. v. Olan*, 50 Mass. App. Ct. 188, 205, vacated and remanded, 435 Mass. 364 (2001). The Appeals Court continued, "[t]here is no express statement of preemption in the Federal statute . . . .; nor is

the Federal scheme so comprehensive that we can infer an intent to preempt." *Id.*, n. 32. However, even this holding is not quite what it seems under the circumstances of that case and the timing of the defense raised.

> [D]espite being present for all of the proceedings, Olan failed to raise the issue of notice until after all of the evidence was taken and judgment was rendered. Given that Olan had actual notice, we decline to nullify the judgment on the suggested per se basis. We are satisfied that Olan knew with reasonable particularity of the proposed action so that [she could] reasonably prepare h[er] arguments [quotations omitted]. *Olan*, 50 Mass. App. Ct. at 206.

24. In *Olan*, plaintiff public housing authority brought a G.L. c. 139, § 19 complaint alleging the tenant had used force or violence against New Bedford police officers who were lawfully at her apartment. The focus of the SJC review was whether there is right to a jury trial in such an action. *New Bedford Housing Authority v. Olan*, 435 Mass. 364 (2001). The tenant raised the issue of notice too late to be considered and it was thus waived. The SJC addressed the issue, however, "[b]ecause there is some uncertainty over the question, because it involves a matter of public interest that is likely to arise in the future, and where the issue [was] fully briefed." Id. at 372. Unfortunately, the discussion that followed regarded the requirements of G.L. c. 121B, § 32 rather than interpretation of federal laws and HUD regulations. The SJC did state however, "[t]he Appeals Court did not decide the statutory question, but instead held that, because Olan had actual notice of termination of her tenancy, the requirements of due process had been satisfied," and tacitly agreed with the Appeals Court's decision stating simply "requirements of due process were satisfied." *Id.*

25. The Appeals Court discussion in *Olan*, comes somewhat closer to the issue at hand. The Appeals Court considered the tenant's argument "that the Authority failed to give her notice as required by both State and Federal law, and that, to the extent that State law would allow termination of her tenancy without prior notice, it is preempted by Federal law regarding notice of tenancy terminations in federally-subsidized housing projects." *Olan*, 50 Mass. App. Ct. at 204–05. Where the tenant was served with a complaint which specified the grounds for the proceedings and the relief requested, was able to retain counsel, answer the complaint, file pretrial motions, obtain witness, present a defense, and was given a judicial hearing, the Appeals Court held that "[e]ven assuming without deciding that the Authority's complaint did not technically adhere to all of the Federal and State notice provisions, Olan nonetheless had actual notice of the proceedings against her that comported with due process principles on both the Federal and State levels." Id. 206.

26. This Court finds that the key distinguishing word between 24 C.F.R. 982.310 as interpreting 42 U.S.C. § 1437(f) and G.L. c. 139, § 19 is "void" versus "terminate." The Merriam-Webster dictionary defines the verb "void" as "nullify, annul." The definition for "terminate" is "to form an ending." Voiding denotes a declaration that the lease has no legal or binding force, or that it is invalid; whereas termination recognizes the validity but declares the legal force at an end. In that way, G.L. c. 139, § 19 truly is at conflict with the "termination" requirements of 42 U.S.C 1437(f) and "[i]t is logically impossible to reconcile the pre-termination notice provision set forth in the Section 8 statute and . . . .

regulations with the [voiding] provisions of G.L. c. 139, s. 19." *Benchmarck Apartment Management Corp. v. Mercer*, Boston Housing Court No. 96-00949 (Winik, J., January 3, 1997). Even allowing that owner eviction notice includes a complaint or other initial pleading under part 982.310, a request for injunctive relief under G.L. c. 139, § 19 cannot offer "the grounds for termination of tenancy during the term of the lease," because it is not terminating the lease but rather declares the lease void.

27. It has never been truer than here that "[t]he complexity of a summary process eviction is exacerbated by the web of applicable statutes and rules." *Adjartey v. Cent. Div. of Hous. Ct. Dep't*, 481 Mass. 830, 836 (2019). Importantly, however, "the substance of summary process eviction actions . . . . are governed by G. L. c. 239." *Id.* at 837. The SJC in *Adjartey* took an opportunity to discuss in depth the general timeline and benchmarks of a typical eviction case in the appendix to that decision. In part, the appendix considered the notice to quit and stated "[p]rior to eviction, a landlord must serve the tenant with a 'notice to quit' to inform the tenant that the landlord will be seeking eviction after a specified period of time." *Id.* at 315.[6]

28. It is familiar law that "[s]ummary process is a purely statutory procedure and can be maintained only in the instances specifically provided for in the statute." *Cummings v. Wajda*, 325 Mass. 242, 243 (1950). See G.L. c. 239. That statute provides in relevant part that "if the lessee of land or tenements or a person holding under him holds possession without right after the determination

[6] It is noteworthy that the very detailed and nearly comprehensive *Adjartey* appendix, despite recognizing "the web of applicable statutes and rules" concerning summary process, did not consider G.L. c. 139, § 19.

of a lease by its own limitation or by notice to quit or otherwise ... the person entitled to the land or tenements may recover possession thereof under this chapter." G.L. c. 239, § 1. Therefore, "[t]ermination of a lease, by its own terms or by a notice to quit, is thus a condition precedent to bringing suit." *Cambridge St. Realty, LLC v. Stewart*, 481 Mass. 121, 127–28 (2018), citing *Boston v. Talbot*, 206 Mass. 82, 92, 91 N.E. 1014 (1910) (proper termination is "[o]ne of the conditions" that must be fulfilled before "summary process may be maintained"); *Olan*, 435 Mass. 364, 373, (analyzing termination notice as "prerequisite to filing suit" that may be waived).

29. Other distinguishing features of summary process under Massachusetts law includes the uniform rules of summary process and permissible counterclaims under G.L. c. 239, § 8A. "These rules govern procedure in all summary process actions in the Trial Court of the Commonwealth." MA.R.SUM.PROC. rule 1. "The form of Summary Process Summons and Complaint, ... shall be the only form of summons and complaint used in summary process actions." MA.R.SUM.PROC. rule 2. General Laws c. 239, § 8A, creates a right to file counterclaims in summary process proceedings and states in pertinent part, "[i]n any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent ... the tenant or occupant shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff." And the SJC has held that, "[b]ecause a tenant's right to bring a counterclaim is explicitly limited in § 8A to premises "rented or leased for dwelling purposes," it is clear

that it applies only to summary process actions in residential cases." *Fafard v. Lincoln Pharmacy of Milford, Inc.*, 439 Mass. 512, 515 (2003) (commercial tenant's counterclaims were dismissed as impermissible under statue and must be brought in separate civil matter).

30. It is clear that eviction under Massachusetts law is controlled by intricate and complex procedure which allows for specialized rights and privileges. It is equally clear that this case cannot be considered as seeking summary process despite the fact that, "[i]n all other respects an eviction action under G.L. c. 139, s.19 is similar, but not identical, to a summary process action under G.L. c. 239, s.1." *Mercer*, supra. This is a civil matter seeking injunctive relief following the purported voiding of a HUD regulated tenancy. Therefore, this Court finds that 42 U.S.C. 1437(f) and 24 C.F.R. 982.310 do not provide for the removal of a Section 8 tenant without first terminating the tenancy and commencing an eviction action. Where this case was not brought pursuant to G.L. c. 239 and is not controlled by the rules of uniform summary process, this is not properly termed an eviction action. Under these circumstances, G.L. c. 139, § 19 is preempted by federal law so far as it provides for the removal of a federally assisted tenant without prior notice.

31. It is best practice to follow the procedure set forth in Housing Court cases brought under G.L. c. 139, § 19, and considering tenancies regulated by HUD guidelines, where no federal preemption was found because the landlord generally served some notice before entering the case. See *Wayne Apartments v. Brown*, Boston Housing Court No. 00-008518 (Chaplin, J., September 22,

2000,) (30-day notice provided before application for preliminary and permanent injunction); *Villa Nueva Vista v. Gonzalez*, Western Housing Court No. 09-SP-4028 (Fields, J., May 1, 2010) ("[10 day] notice additionally comports with the governing federal regulation"); *Fall River Housing Authority v. Wholley*, Southeastern Housing Court No. 12-SP-1996 (Chaplin, F.J., January 3, 2013) (10 day notice to quit was insufficient in part because it did not "identify the act or acts the defendant allegedly committed – and against whom, nor does [it] identify where the alleged act or acts occurred"); *Catholic Social Services v. Gomes*, Southeastern Housing Court No. 10-SP-4681 (Edwards, J., December 6, 2010) (10 day notice of termination); *Boston Housing Authority v. Kimble*, Boston Housing Court No. 05-SP-2559 (Pierce, J., August 31, 2005) (two notices voiding the tenancy, on February 11, 2005 and May 2, 2005, served before entering summary process summons and complaint on August 1, 2005). Under such facts, and similarly to the holding in *Olan*, it may then be stated that the requirements of due process were satisfied, the tenancy terminated, and no preemption exists.

32. **Conclusion:** Under the circumstance presented here, the tenancy was subsidized by a tenant-based housing voucher and not subject to G.L. c. 139, § 19; moreover, if the tenancy could be found to be "federal or state assisted housing," Plaintiff did not satisfy federal requirements where it did not provide prior notice terminating the tenancy before filing this action. Therefore, the motion to alter or amend is denied and judgment having entered, the case is dismissed.

So entered this 29th day of October, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO.

STACEY HEALEY,

Plaintiff,

v.

Case No. 20-SP-1606

DANIEL CHAO,

Defendant.

AND

DANIEL CHAO,

Plaintiff,

v.

Case No. 20-CV-324

STACEY HEALEY,

Defendant.

RULING ON ATTORNEY FEE PETITION AND ENTRY OF FINAL JUDGMENT

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These matters came before the court for trial on March 12, 2021. The tenant, Daniel Chao (hereinafter, "tenant"), was a prevailing party on two claims under G.L. c.186, s.14 and a Retaliation claim which have fee-shifting provision and, thus, was afforded the opportunity to petition the court for reasonable attorney's fees. After consideration of the petition for such fees, and also after consideration of the opposition filed by the landlord, Stacey M. Healey (hereinafter, "landlord"), the following order shall enter.

1. Reasonable Attorney's Fees and Costs: The determination of reasonable attorney's fees is within the discretion of the judge. *Fontaine v Ebtec Corp.*, 415 Mass. 309, 324 (1993). In ruling on a petition for statutory attorney's fees, a court "should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). Time spent on unnecessary work, duplicative work, or claims on which the party did not prevail, should be excluded. *Simon v. Solomon*, 385 Mass. 91, 113 (1982).

2. Hourly Rate: Counsel for the tenant, Matthew Mozian, has petitioned for an hourly rate of $295. Given the supporting affidavit from another attorney in the community and given Attorney Mozian's Housing Court and trial experience, the court finds this to be a reasonable hourly rate.

3. Number of Hours: The petition seeks compensation for 55 hours of Attorney Mozian's time (totaling $16,225) and 52.21 hours of a paralegal's time (totaling $5,225).

4. Analysis of Hours: Upon close review of the detailed time records, kept contemporaneously, the court finds that the number off hours expended by counsel and his paralegal are reasonable given the nature of the litigation and the results achieved.

5. The Plaintiff's Opposition: The plaintiff's opposition does not take issue with any particular charge of the attorney or his paralegal. Instated, the plaintiff argues that the award should somehow be diminished due to the fact that a pre-litigation offer of settlement was made of $8,500 which exceeded the monetary value of the tenant's award of damages. Such argument is unpersuasive as the settlement offer did not offer the tenant to retain possession, which was the paramount focus of the tenant's litigation. The plaintiff also makes argues that the award should be diminished by the fact that the tenant did not prevail on all of his claims. Though the tenant prevailed on all of his claims other than his Chapter 93A claim, such was sufficiently interconnected with the prevailing claims.

6. Award of Attorney Fees: Based on the foregoing, counsel for the tenant, Matthew Mozian, shall be awarded $16,225 in attorney's fees for 55 hours and for $5,225 in fees for the paralegal for 52.25 hours.

7. Award for Costs: The costs asserted by the tenant, totaling $445.44, for the court filing fee ($145.00), the civil process fee ($225.44) and for postage and copies ($75) are also reasonable and shall be awarded.

8. Conclusion and Order: In accordance with the above, as well as the court's March 12, 2021 trial decision, and the payment by the tenant of $3,314.38 on July 7, 2021 in accordance with G.L. c.239, 8A, the following final judgment shall enter: Judgment for possession for the tenant, Daniel Chao, and for attorneys fees and costs totaling $21,895.44.

So entered this 29th day of October, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP1189

CHICOPEE HOUSING AUTHORITY,

PLAINTIFF

v.

MICHAEL S. BOUTIN,

DEFENDANT

ORDER ON MOTION FOR ENTRY OF JUDGMENT

This summary process action came before the Court on October 28, 2021 for an in-person hearing on Plaintiff's motion for entry of judgment for possession. Plaintiff appeared through counsel. Defendant appeared and represented himself.

A two-day bench trial took place in this matter on August 12, 2021 and August 16, 2021. The Court found that Defendant's conduct with respect to his neighbor constituted a substantial breach of his lease. The Court stayed entry of judgment to allow Defendant an opportunity to preserve his tenancy by accepting a transfer to a different unit. Pursuant to the Court's ruling dated September 1, 2021, Defendant was required to accept a transfer if offered.

Plaintiff sent a letter to Defendant on September 14, 2021 offering him a transfer to 94 Debra Drive, Unit 4A (the "new unit") when it became ready for occupancy in early October. On October 4, 2021, Plaintiff informed Defendant in writing that the new unit was ready for occupancy and gave him until October 8, 2021 to accept the transfer. Defendant failed to respond and continues to occupy his unit at 100 Debra Drive, Unit 4F.

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Plaintiff is entitled to entry of judgment as a result of Defendant's failure to accept a transfer to the new unit. However, in another attempt to give Defendant the opportunity to avoid eviction, the Court will further stay entry of judgment on the following terms and conditions:

1. Defendant must notify Plaintiff of his intent to accept a transfer to the new unit no later than 4:00 p.m. on November 4, 2021.
2. If Defendant so notifies Plaintiff, he must provide the information required for the transfer (described in the October 4, 2021 letter attached to the motion for entry of judgment) within three business days following his acceptance of the transfer.
3. If Defendant fails to comply with the timeline set forth herein, Plaintiff may file an affidavit to that effect with the Court and final judgment for possession shall enter forthwith in favor of Plaintiff.

SO ORDERED this 1st day of November 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2262

NEIL ROACHE,

PLAINTIFF

v.

MILAGROS BURGOS,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action came before the Court for an in-person bench trial on October 28, 2021. Plaintiff seeks to recover possession of 89 Breckwood Blvd., Springfield, Massachusetts (the "Premises") from Defendant based on a no-fault termination of a tenancy. Both parties appeared and represented themselves. The tenancy having been terminated without fault of Defendant, the Court accepted Defendant's testimony at trial as an oral petition for a stay pursuant to G.L. c. 239, § 9. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following facts: Plaintiff owns the Premises. Defendant has resided there for twelve years. She has a subsidy administered by Way Finders. Her portion of the rent, as last calculated by Way Finders, is $291.00. Defendant attempted to raise the rent but did not do so lawfully and the Court finds that Defendant's rent

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portion remains at $291.00. She paid $398.00 for the month of September 2021 and $291.00 for October 2021, so she currently has a rent credit of $107.00 going into November 2021.

Plaintiff served Defendants with a legally sufficient notice to quit that expired on July 31, 2021. Defendant testified that she received the termination notice. Plaintiff timely served and filed a summons and complaint. Defendant did not file an answer and did not articulate any defenses at trial. She continues to reside in the Premises. Accordingly, Plaintiff is entitled to entry of judgment for possession, subject to the terms of this order.[1]

The Court has discretion in a no fault eviction case to grant a stay on judgment and execution. *See* G.L. c. 239, § 9. The Court finds that (i) the Premises are used for dwelling purposes, (ii) Defendant has been unable to secure suitable housing elsewhere in a neighborhood similar to that in which the Premises are located, (iii) Defendant is using due and reasonable effort to secure other housing, and (iv) Defendant's application for stay is made in good faith and that she will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, § 10. The Court finds sufficient facts to warrant a stay, conditioned upon Defendant paying Plaintiff for use and occupation for the duration of the stay. *See* G.L. c. 239, § 11.

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

1. Judgment for possession shall be stayed pursuant to G.L. c. 239, § 9 and the terms of this order.

[1] The Court finds that Defendant is not entitled to protection from eviction pursuant to Stat. 2020, c. 257 because this case was not brought solely for non-payment of rent.

2. Defendant shall pay $184.00 on or before the 5th of November 2021, which, in conjunction with her rent credit of $109.00, will bring her current through the month of November. Defendant will owe the full rent portion of $291.00 for the month of December 2021 and each month thereafter in which she resides in the Premises.

3. Defendant shall continue to make diligent efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which she has visited or made inquiry, including the address, date and time of contact, method of contact, name of contact person and result of contact.

4. The parties shall return for a status conference in person in the Housing Court session sitting in Springfield, Massachusetts on **December 1, 2021 at 10:00 a.m.**, at which time the Court shall review Defendant's compliance with this order and their housing search log.

SO ORDERED this 2nd day of November 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice