Western Division Housing Court
Unofficial Reporter of Decisions

Volume 22

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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. Currently, this unofficial reporter is known as the "Western Division Housing Court Reporter." Inasmuch as the reader's audience is familiar with this unofficial reporter, the reader is invited to cite from these decisions by using the abbreviated reporter name "W.Div.H.Ct."

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

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*
Hon. Robert Fields, Associate Justice, *Western Division Housing Court*
Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*
Aaron Dulles, Assistant Attorney General, *Massachusetts Attorney General's Office*
Raquel Manzanares, Esq., *Community Legal Aid*
Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

Attorneys Dulles, Manzanares, 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.

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) Decisions made as handwritten endorsements to a party's filing will generally be excluded. (4) Orders detailing or discussing highly sensitive issues relating to minors, disabilities, specific personal financial information, and/or certain criminal activity will be redacted if reasonably possible, or excluded if not. As applied to orders involving guardians ad litem or the Tenancy Preservation Program, redaction or exclusion is not triggered by virtue of such references alone but rather by language revealing or fairly implying specific facts about a disability. (5) Non-public contact information for parties, attorneys, and third-parties are generally redacted. (6) Criminal action docket numbers are redacted. (7) File numbers for non-governmental records associated with a particular individual and likely to contain personal information are redacted.

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

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

PUBLICATION

Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for those who wish to receive new volumes by e-mail when they are released. Those wishing to sign up for the listserv should e-mail Aaron Dulles (dulles@jd11.law.harvard.edu).

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

SECURITY

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

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

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

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[1] The docket number case type designation shown in this decision has been confirmed as a typo.
[2] The docket number case type designation shown in this decision has been confirmed as a typo.

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Hon. Jonathan Kane, First Justice

[3] The docket number case type designation shown in this decision has been confirmed as a typo.

Hon. Robert Fields, Associate Justice

[4] The docket number case type designation shown in this decision has been confirmed as a typo.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-2659

GZS REALTY III,

Plaintiff,

v.

TRISTEN SUTTON,

Defendant.

ORDER

After hearing on March 16, 2023, on the landlord's motion for entry of judgment at which the landlord appeared but for which the tenant did not appear, the following order shall enter:

1. Though this matter was supposed to be referred to the Tenancy Preservation Program (TPP), as indicated in the Agreement of the Parties dated November 29, 2022, a representative from TPP appeared at this hearing and indicated that no such referral was received by them.

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2. A representative from Way Finders, Inc. joined the hearing and reported that a RAFT application "timed out" in January 2023, and that the tenant has not utilized RAFT in the past 12 months.
3. A TPP referral was made during the hearing, with the TPP representative being given the tenant's phone number and email address. TPP will reach out to the tenant and determine if it can provide him with assistance with is RAFT application and in any other manner it determines.
4. The tenant should cooperate with TPP and can reach out to TPP by calling 413-358-5857. The tenant should also immediately apply for RAFT and follow through with its requirements.
5. This matter shall be scheduled for hearing on the landlord's motion and for an update on TPP and the RAFT application on **April 4, 2023, at 9:00 a.m.** Both parties and a representative from TPP shall appear.

So entered this 21st day of March, 2023.

Robert Fields, Associate Justice

CC: Carmen Morales, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-4075

DEAN T. KIBBE, PLAINTIFF v. DAVID HEMMINGS AND SAKAIA HEMMINGS, DEFENDANTS	)	FINDINGS OF FACT, RULINGS OF LAW AND INTERIM ORDER

This no fault summary process case came before the Court for a bench trial on February 16, 2023. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 69 Clayton Street, 2d Floor, Springfield, Massachusetts (the "Premises") from Defendants as well as unpaid rent and use and occupancy.

Defendants stipulated to Plaintiff's prima facie case for possession. They do not dispute Plaintiff's superior right to possession, they agree that they received the notice to quit that ended their tenancy as of November 1, 2022, and they continue to reside in the Premises.

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

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Monthly rent is $850.00. Rent has been unpaid for 15 months through the month of trial, leaving a balance due of $12,750.00 through February 2023.[1] Defendants argue that they are entitled to an abatement of rent due to two conditions of disrepair, a mold-like substance in the bathroom and a broken bathroom sink. With respect to the mold-like substance, Defendants did not have the substance tested and testified only that they are concerned about their health if it is determined to be mold. They did not claim that their family has symptoms of exposure to toxins, and it is not clear if the substance is the result of Defendants' routine use of the bathroom or if it relates to a defective condition in the Premises. Without more, and given the lack of specificity as to the nature, extent and duration of the issue, the Court finds the evidence insufficient to hold Plaintiff liable for damages.

Turning to the bathroom sink, the evidence shows that the pedestal sink was broken in November 2021 at a time that Defendants were not in arrears with the rent. Plaintiff was on notice of the broken sink and took reasonable steps to repair it. The sink was ultimately replaced in late December 2021. The Premises has only one bathroom.[2]

The Court finds that Plaintiff was not negligent in the manner in which he addressed the broken bathroom sink. Under the breach of warranty of habitability,

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[1] Although the summons and complaint seeks only rent through November 2022, the Court allowed Plaintiff's oral motion to amend the complaint to include all amounts due through the date of trial.
[2] Plaintiff contends that Defendants failed to allow a plumber into the Premises, but the evidence shows that the denial of access was isolated and not a significant contributing factor to the delay in making repairs.

however, fault is irrelevant. The warranty of habitability requires that the physical conditions of the premises conform to the requirements of the State Sanitary Code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. A tenant's obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability." *Id.*, citing *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 (1979). Damages for breach of the implied warranty of habitability are measured by 'the difference between the value of the premises as warranted (the rent may be evidence of this value) and the value of the premises as it exists in its defective condition.'" *Id.*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994).[3]

The Court finds that the absence of a working bathroom sink in the only bathroom in the home diminishes the rental value of the Premises by 25%. Defendants are entitled to an abatement of rent for the roughly one-month period of time they were without the sink. As a result, given that rent is $850.00, Defendants are entitled to a rent abatement of $212.50.

Because this case was commenced as a no-fault eviction case, pursuant to G.L. c. 239, § 8A, "there shall be no recovery of possession if the tenant or occupant, within one week after having received written notice from the court of the balance due, pays to the clerk the balance due the landlord, together with interest and costs

[3] Even if bad conditions exist, the tenants remain liable for the reasonable value of their use of the premises. See *Davis*, 483 Mass. at 173, citing *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 462 (2017). Here, Defendants were not excused from paying rent for fifteen months because they were without a bathroom sink for one month.

of suit." Accordingly, based on these findings and in light of the governing law, the following order shall enter:

1. Plaintiff is entitled to unpaid rent and use and occupancy through the date of trial in the amount of $12,750.00.[4] Defendants are entitled to damages in the amount of $212.50. Therefore, the net amount of rent due and owing to Plaintiff through February 2023 is $12,537.50.
2. Pursuant to G.L. c. 239, § 8A, Defendants shall have ten (10) days from the date of this order to deposit with the Court a bank check or money order made out to Plaintiff in the amount of $12,537.50, plus court costs in the amount of $ 308.30 and interest in the amount of $ 540.35, for a total of $ 13,386.15.
3. If such payment is made, judgment shall enter for Defendants for possession and the tenancy shall be reinstated.
4. If such payment is not made, judgment shall enter for Plaintiff for possession and the amount set forth in item 2 above.

SO ORDERED.

DATE: 3·21·23

Jonathan J. Kane, First Justice

[4] To the extent unpaid use and occupancy has accrued since the trial, Plaintiff may file an appropriate motion to add such amounts.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-4357

HANATI LUBEGA,

Plaintiff,

v.

ELAINE BELL,

Defendant.

ORDER OF DISMISSAL

After hearing on March 16, 2023, on the tenant's motion to dismiss due to an insufficient termination notice, the following order shall enter:

1. **Background:** The termination notice, entitled LANDLORD'S NOTICE OF TERMINATION, is dated September 1, 2022, and states as follows:

> This letter serves as notice to you that the lease agreement dated 10.2021 for 42 Humbert St. Springfield MA will terminate immediately. You will have 30 days to vacate the premises. I have notified Way Finders case worker. As such, you and any others still in possession of the premises must vacate the premises by September 30, 2022. Rent is still expected till September 30th 2022 AM on such date. The lease is being terminated

because: (Check one): Lease agreement has expired (you are a month to month) and Owner would like to occupy the unit.

All terms and obligations of the lease shall remain in full force and effect through the termination date including but not limited to, if applicable, your obligation to schedule movers, provide insurance and pay any fees associate with your move-out. State law may provide for your recovery of abandoned property (personal property you leave at the property after termination date), but those rights, if any, are limited and there may be additional costs to recover abandoned property. Also, we reserve the right to advertise and show the premises during reasonable hours.

2. **Equivocation of the Notice to Quit:** Tenants are entitled under state law to unequivocal notices from their landlords. See, *McGuire v. Haddad*, 325 Mass. 590 (1950). The requirement of an unequivocal notice to quit is consistent with the long established principle that equity abhors the forfeiture of a lease. See, *Johnson v. Madigan*, 361 Mass. 454 (1972); *Judkins v. Charette*, 255 Mass. 76 (1926). The standard analysis is not whether in fact a tenant is mislead by the notice but whether the notice is sufficiently clear, accurate and not subject to being reasonably misunderstood. See, *Oakes v. Monroe,* 62 Mass. (8 Cush.) 282 (1851); *U-Dryvit Auto Rental Co. v. Shaw*, 319 Mas. 684 (1946); *Connors v. Wick*, 317 Mass. 628 (1945). The law does not impose this requirement that the notice to quit be unequivocal simply as an exercise in technicalities. Rather, the requirement of clear and consistent notices to quit arises out of a tenant's legitimate interest in knowing the status of her tenancy and what actions she may take, I any, to preserve the tenancy.
3. The termination notice in this case initially states that the termination is effective "immediately". Then it says that the tenant must vacate in 30 days, which is

October 1 (if counted from the September 1, 2022, date of the notice). It then says that the tenant has *until the morning of* September 30, 2022.

4. The notice also states that the reason for the termination is that the lease has expired but then states that this is month to month tenancy. Lastly, the notice states that, if applicable, the tenant would be obligated to schedule movers, provide insurance, and pay any fees associate with your move-out. There is also language in the notice that states that there may be additional costs to recover abandoned property after the tenant vacates the premises. Each of these costs are not allowed to be borne by tenants under Massachusetts law.
5. **Date of the Service of the Notice to Quit:** The notice to quit is dated September 1, 2022. The same date that Way Finders, Inc. received a copy of said notice by email. The notice also states that it was sent by certified mail.
6. The parties provided contradictory testimony about the date it was served upon the tenant; the landlord testifying that she served it in hand on August 31, 2022 and the tenant testifying that it was not served until September 1, 2022.
7. The court finds that the testimony of the parties count one another out and must rely on the date written on the notice to quit, which appears bolstered by the fact that it comports with the date of service to the administering agency.
8. Therefore, with the notice being received on September 1, 2022, the notice period is insufficient to effectively terminate the tenancy as of the end of September 2022.
9. **Conclusion and Order:** Given the equivocal aspects of the notice to quit discussed above, as well as the insufficiency of time between its service and the

date upon which it effectively terminated the tenancy, this action is hereby dismissed.

So entered this 21st day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-2393

NORTHAMPTON HOUSING AUTHORITY,

Plaintiff,

v.

IVELIZ VAZQUEZ,

Defendant.

ORDER

After hearing on March 20, 2023, on the landlord's motion for entry of judgment at which only the landlord appeared, the following order shall enter:

1. The hearing was joined by Lucien Ortega from Way Finders, Inc. at the request of the judge to ascertain the status of the application for RAFT that was pending at the time of the agreement of the parties.
2. Ms. Ortega reported that the RAFT application "timed out" in January 2023 due to failures of both the landlord and the tenant to provide necessary materials.

3. As such, the landlord's motion shall be continued to a date and time noted below.
4. In the meantime, the tenant shall meet with the landlord's staff to re-apply for RAFT and include her "Hardship documentation" and any other required documentation. The landlord shall provide Way Finders, Inc. with a W9 form, a lease, an updated ledger, identification proof, and any other required documentation.
5. This matter shall be scheduled for hearing on the landlord's motion, if still needed, on **April 24, 2023, at 9:00 a.m.** at the Hadley Session of the court. Both parties need appear.

So entered this 21st day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1981

BALTIMORE CITY PROPERTIES,

Plaintiff,

v.

DONALD MULLER,

Defendant.

ORDER

After hearing on January 24, 2023, on the defendant's motion to dismiss, the following order shall enter:

1. The defendant moves this court for dismissal of this matter based on the insufficiency of the December 30, 2021, notice to quit. The defendant's argument is that because there was no rental arrangement between the parties, ever, G.L. c.186, s.12 requires the notice be a "three months' notice"

and not the "30-day notice" utilized. The defendant is correct as a matter of law, and the matter shall be dismissed.

2. **Stipulated Facts:** The plaintiff stipulated to the same facts as were asserted by the defendant. More specifically that the plaintiff and the defendant never had a rental contract in any fashion whatsoever. The parties further agree that the defendant was a paying tenant of the former sublessor, Calvin Wilson. Mr. Wilson rented the entire house from the plaintiff and used same as a "sober housing" establishment in which the defendant was a rent-paying tenant. The plaintiff terminated its tenancy with Mr. Wilson and obtained a judgment against him in this court in February 2020 for possession and unpaid use and occupancy (20-SP-394).
3. The plaintiff sought to evict the defendant based on non-payment of rent in 21-SP-2865, but that matter was dismissed as against the defendant because there was no rental arrangement between the plaintiff and the defendant in that tenancy.
4. On the date of that ruling from the bench, December 30, 2021, the plaintiff served the defendant with the no-fault "30-day notice" that is the subject of this summary process action and this motion.
5. The plaintiff stipulates that there has never been a rental arrangement between the parties in this action nor has the plaintiff ever been assigned the right to collect rent from the defendant from Mr. Calvin Wilson.
6. **Discussion:** G.L. c.186, s.12 makes it clear that:

> "[e]states at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and, if the rent

reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer."

7. Rent not being a part of the occupancy relationship between the parties in this action, the plaintiff may not rely on a "30-day notice" as was utilized herein.
8. **Conclusion and Order:** Accordingly, the motion to dismissed is allowed and this summary process action is dismissed without prejudice to either party's claims to be brought in a different court action.

So entered this 22nd day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-CV-0197
ROBERT CHICHAKLY AND MARIA CHICHAKLY, PLAINTIFFS v. RUSSELL BERGERON AND LINDA BERGERON, TRUSTEES OF MAPLE TERRACE REALTY TRUST, DEFENDANTS	RULING AND ORDER ON PLAINTIFF'S MOTION FOR ATTACHMENT

This case came before the Court on March 13, 2023 on Plaintiffs' motion for prejudgment attachment. Both parties appeared through counsel. For an attachment order to issue, the Court must find that there is a reasonable likelihood that Plaintiffs will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance shown by Defendants to be available to satisfy the judgment. *See* Mass. R. Civ. P. 4.1(c).

Plaintiffs are tenants residing in a two-family house located at 20 Maple Terrace, Three Rivers, Massachusetts (the "Property") owned by Defendants. Plaintiffs seek a prejudgment attachment in the amount of $84,627.06 based on alleged breaches of the covenant quiet enjoyment stemming from a basement flood on July 13, 2021 and a loss of heat from December 28, 2022 to January 11, 2023. Plaintiffs assert actual damages of approximately $40,000.00 as a result of the flood and statutory damages for the loss of heat and for Defendants' failure to address mold

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that grew after the flood, along with attorneys' fees of $25,000.00. They claim that prospective purchasers have recently toured the Property, raising the possibility of an imminent sale.[1] Defendants offered no evidence of liability insurance available to satisfy the judgment.[2]

Due to the water intrusion into their basement, Plaintiffs allege that mold is growing and that they suffered significant loss of property. Plaintiffs, however, fail to establish a reasonable likelihood of success on a claim for actual damages. The Court has no evidence that the Property is contaminated by harmful mold. With respect to the itemized list of possessions purporting to show Defendants' losses, the Court finds that it lacks credibility. The Court doubts that all of these items were in the basement and does not understand how the value of many items is listed down to the penny when there is photographic evidence provided by Defendants showing that the items were not kept in pristine condition. The credibility of the list is further diminished by the inclusion of numerous items that are meant to be used in wet conditions (e.g. 7 pairs of skis for $1,329.65, 4 snow boards for $1,180.00, 5 ski boots $899.95). In light of the foregoing, the Court finds no reasonable likelihood that Plaintiffs will recover judgment for actual damages related to the flood.

Plaintiffs make a stronger case for statutory damages based on the intrusion of water into the basement and the loss of heat for two weeks in the winter of 2022. In order to succeed on claims brought pursuant to G.L. c. 186, § 14, they must show that Defendants were at least negligent or reckless in failing to address a condition of

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[1] At the hearing, without objection of Defendants' counsel, the Court ordered that the Property not be transferred, conveyed or encumbered prior to the Court's decision on this motion.

[2] Defendants' property manager apparently submitted the complaint to the insurance company but did give the Court reason to believe that insurance will be available with respect to Plaintiffs' claims.

disrepair, and that the natural and probable consequences of their conduct resulted in a violation of Plaintiffs' right to quiet enjoyment. The Court concludes that there is a reasonable likelihood that Plaintiffs will recover judgment one at least one of the claims for breach of the covenant of quiet enjoyment and that they will be awarded attorneys' fees on that claim. Accordingly, Plaintiffs' motion for prejudgment attachment is allowed in the amount of $7,500.00.

SO ORDERED.

DATE: 3/22/23

Jonathan J. Kane, First Justice

OR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-495

DLJ MORTGAGE CAPITAL, INC.,

Plaintiff,

v.

BEVERLY BLAKE, a/k/a BEVERLY THOMAS,

Defendant.

ORDER

This matter came before the court on February 14, 2023, on the plaintiff's motion for summary judgment. After hearing, and after consideration of the parties' submissions, the following order for judgment shall enter:

1. **Background:** DLJ Mortgage Capital, Inc. ("plaintiff") brought this action against Beverly Blake, also known as, Beverly Thomas ("defendant") for summary process following its foreclosure on the subject premises for which the defendant

was the former mortgagor. The defendant filed an Answer which asserts that the foreclosure was invalid.

2. On January 20, 2023, the plaintiff filed a motion for summary judgment and a hearing was held on February 14, 2023. The defendant filed an opposition to the plaintiff's motion, asserting that the Right to Cure letter sent by the plaintiffs on April 18, 2016, failed to strictly comply with paragraph 17 of the mortgage agreement, specifically, a failure to provide a proper right to cure after acceleration.
3. The following summarized relevant facts are not contested. The defendant took title to the property at 42 Daytona Street, Springfield, Hampden County, Massachusetts 01108 on August 10, 1999. The defendant granted a mortgage interest in the Property on the same day to EquiCredit Corporation of Ma. (the "Mortgage") securing the amount of $75,760. The mortgage was granted as security for money loaned pursuant to an associated Promissory Note ("the Note"), which was signed by the defendant. The plaintiff retained assignment of the mortgage by and instrument on April 24, 2019. All relevant deeds, mortgages, notes, and assignments were properly recorded with the Registry.
4. The defendant defaulted on her repayment and the plaintiff sought to pursue a foreclosure sale of the property through the power of sale stated within s.17 of the mortgage. The relevant part of s. 17, titled "Acceleration; Remedies" provides that:

> ...upon Borrower's breach of any covenant or agreement of Borrower in this mortgage, including the covenants to pay when due any sums secured by this Mortgage Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach;

> (2) the action required to cure such breach; (3) a date not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of property. The notice shall further inform Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding...

5. Prior to commencing the foreclosure sale of the property, the plaintiff sent the defendant two documents titled "90-Day Right to Cure your Mortgage Default" and "Right to Request a Modified Mortgage Loan" on April 18, 2016. The former notice stated that defendant's loan was in default due to numerous payments not made, demanded payment of the sum of the outstanding amount due by July 17, 2016, and that if the defendant failed to cure the default, foreclosure proceedings would be initiated. The defendant did not cure the default, and the plaintiff proceeded with foreclosure proceedings. A mortgage foreclosure auction sale took place on February 12, 2020, and the plaintiff was the purchaser at the auction sale. A foreclosure deed and affidavit of sale was recorded at the Registry of Deeds on December 18, 2020. A seventy-two Hour Notice to Quit and Vacate Premises was served upon the defendant by the Hampden County Sheriff's Office on January 14, 2022. A summary process summons and complaint were then served upon the residence of the defendant by the Sheriff's Office on February 1, 2022 and the plaintiff's accordingly brought this suit forth.
6. **Standard of Review:** It is appropriate for a court to enter summary judgment when in "viewing the evidence in the light most favorable to the nonmoving party,

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

7. **Strict Compliance:** Judicial authorization is not required within Massachusetts for a mortgagee to foreclose on a mortgaged property. *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 645-646 (2011). The mortgagee may conduct a foreclosure by exercise of the statutory power of sale set out in G.L. c.183 s.21. However, a valid foreclosure sale pursuant to a power of sale must [strictly] comply with the terms of the mortgage and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale due to the lack of judicial oversight. *Ibanez*, 458 Mass at 646.
8. The defendant here contends that the plaintiff's letter titled "90-Day Right to Cure your Mortgage Default" failed to strictly comply to the terms set within s.17 of the mortgage. The defendant cites to *Pinti v. Emigrant Mortgage Co.*, which finds that a court has "no compelling reason to bless a notice of default that fails accurately to notify Massachusetts mortgagors of their right, and need, to initiate a legal action if they seek to challenge the validity of the foreclosure." 472 Mass. 226, 238 (2015). The defendant specifically cites that the language of the complimentary letter to the Right to Cure Notice ("Notice") stating "You have the

right to reinstate after acceleration of your loan and commencement of foreclosure proceedings." as violating her right to cure the default. The defendant asserts that the letter as written states that she has no right to cure the default after the acceleration until foreclosure proceedings begin. She also claims she was not given notice of how she could cure her default.

9. Upon review of the Notice sent by the plaintiff, this court finds that the Notice strictly complied with the terms of the mortgage and with G.L. c.183, s.21. The Notice, after the sentence defendant cites, states "You have the right to bring a court action to assert the non-existences of a default or any other defense you have to acceleration and sale." Further, under the previous section titled "Possible Consequences of Default," the letter states "failure to cure the default on or before July 17, 2016, may result in acceleration of sums secured by the Security Instrument and sale of the Property." Taken all together, the court finds that the plaintiff's letter provided the defendant with proper notice, in strict compliance with the power of sale language in the mortgage.
10. **Conclusion and Order:** Massachusetts law requires that the party with the power of sale strictly comply with the terms of the mortgage for a foreclosure sale to be valid. In this case, the plaintiff did follow the strict compliance standards and the defendant asserts no other genuine issue of fact. Therefore, the plaintiff's motion for summary judgment for possession is allowed.
11. In addition, at the hearing for this motion, the plaintiff dismissed its claim for use and occupancy in their summons if it prevailed on its summary judgment motion.

12. Because the defendant asserted other claims in her Answer, mainly G.L. c.93A claims, no judgment shall enter at this time and the appeal period will not yet run.
13. The trial set for March 28, 2023, at 9:00 a.m. shall not go forward but the parties shall appear at that time for a judicial Case Management Conference to determine what remains of this summary process action, and more specifically the status of the defendant's other claims.
14. This matter shall be scheduled for **March 28, 2023, at 9:00 a.m.** at the Springfield Session of the court for Judicial Case Management.

So entered this 22nd day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-CV-321

KELLIE HOLSBORG,

Plaintiff,

v.

GARY and CLAUDINE BURCHARD,

Defendants.

ORDER

After hearing on January 18, 2023, on the plaintiff's G.L. c.93A claims and after consideration of the facts admitted at trial and findings and rulings of the jury, the following order shall enter[1]:

1. **Background:** The plaintiff, Kellie A. Holsborg ("tenant" or "plaintiff"), and the defendant, Gary A. Burchard ("landlord" or "defendant"), entered into a lease agreement on March 1, 2016. The property, located at 4 Cherry Street, Pittsfield,

[1] The plaintiff filed a motion and memorandum of law in support of her G.L. c.93A claims and the defendants did not file any pleading in opposition but voiced and argued their opposition at hearing on January 18, 2023.

Massachusetts, is a four-unit apartment building with two two-bedroom units located upstairs and two one-bedroom units located downstairs. At all relevant times, all four units were rented out by the landlord. The tenant resided in one of the upstairs two-bedroom units with her daughter, son, son's girlfriend, grandson, and her sister, who resided with her for a substantial portion of the tenancy. From the beginning and throughout the entire tenancy, the tenant had multiple complaints regarding the apartment, including issues with the electrical system, lack of heat, infestations of rodents, wasps, bedbugs, an unsecured front door, and a broken window. The tenant made the majority of these complaints to the landlord through text messages, to which the landlord was often responsive. Despite these communications, the issues within the apartment were never fully cured, including the faulty electricity which eventually led to a house fire on January 16, 2019. The fire was found to be electrical in nature and displaced the tenant and her family from the apartment, which she did not return to following the fire.

2. On February 18, 2020, the tenant sent a Massachusetts Consumer Protection demand letter to the landlord and his wife, requesting relief pursuant to G.L. c.93A, G.L. c.186 s.14, negligence, and breach of the warranty of habitability. The landlord did not respond to the demand letter or make a settlement offer, which led to the plaintiff filing suit on June 23, 2020. The jury trial in the above-captioned matter took place on October 31 and November 1, 2022. The jury found for the plaintiff and awarded damages for four separate areas of breach of warranty in the following sums: $1,100.00 for failing to remedy faulty electrical

service, $10,000.00 for failing to provide safe electrical service thereby causing the fire, $1,600.00 for failing to remedy faulty heat, and $150.00 for failing to provide a safe front door and replace a broken window. The sum of the jury findings for breaches of the warranty of habitability came to a total of $12,850. The plaintiff has requested for this jury award to be trebled, pursuant to c. 93A, s.9, which allows for the multiplication of damages for violations found to be willful and knowing.

3. **Discussion:** Chapter 93A, s.2 prohibits unfair and deceptive acts or practices in the conduct of trade or commerce. The express language found in s.1 of G.L.c.93A defines a person who rents real property is engaged in 'trade' or 'commerce.'" *Linthicum v. Archambault*, 379 Mass. 381, 387 (1979). As owners of a four-unit residential rental property in which neither of the defendants reside, they are clearly engaged in trade and commerce. In landlord-tenant law, this statute is often invoked in cases where breaches of warranty of habitability are found. A plaintiff who proves a violation of Chapter 93A may recover multiple damages if the court finds that the deceptive or unfair act was a willful or knowing violation of the statute. G.L. c. 93A, s.9(3).

4. **Breach of Warranty of Habitability:** In *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973), the Supreme Judicial Court held that "in a rental of any premises for dwelling purposes, under a written or oral lease, for a specified time or at will, there is an implied warranty that the premises are fit for human occupation. "This means that at the inception of the rental there are no latent [or patent] defects in facilities vital to the use of the premises for residential

purposes and that these essential facilities will remain during the entire term in a condition which makes the property livable." *Berman & Sons, Inc. v Cynthia Jefferson*, 379 Mass. 196 (1979), at 203. Some factors the court may consider to determine if a breach of habitability is material are (1) the seriousness of the claimed defects and their effect on the dwelling's habitability; (2) the length of time the defects persist; (3) whether the landlord or his agent received written or oral notice of the defects; (4) the possibility that the residence could be made habitable within a reasonable time; and (5) whether the defects resulted from abnormal conduct or use by the tenant. *Hemingway*, 363 Mass. at 200–201.

5. Here, the landlord's breach of warranty was made clear through the testimony and evidence presented during the trial. First, from the inception of the tenancy, there existed serious defects within the apartment that affected its habitability. The tenant testified credibly, and reported same to the landlord, about various and many conditions of disrepair including but not limited to water leaking through the walls, extended power outages, not having heat for days at a time, a hollowed and broken front door that would not securely lock, a broken window that would not close, and multiple encounters with rats, wasps, and bedbugs. These defects regularly interfered with the tenant's ability to use her apartment as she was unable to use many appliances and fixtures, such as the fridge, stove, laundry washer and dryer, lights, or even space heaters to make up for the lack of heat and broken window. While the landlord did take some steps to correct some of the defective conditions, such as calling 'Catseye', an exterminator service, to rid the apartment of the rodents and bedbugs, many

other conditions remained defective. The tenant credibly testified to receiving an electrical extension cord from the landlord, in an attempt to aid the lack of working outlets in the apartment. She would use this extension cord to plug in items like her fridge or deep freezer so that her groceries would not spoil from the regular electrical interference. The tenant, her son, and her sister, who occupied the residence during the tenancy, all testified credibly to regularly having to unplug bigger appliances to plug and carry around lamps in order to get around and see in the apartment. Additionally, the tenant required the use of a BiPAP machine to help her sleep throughout the night, as she suffers from sleep apnea which causes her to stop breathing throughout the night. The lack of electricity prevented the tenant from using this machine, which threatened her safety.

6. Second, she complained of these issues which endured from the start of her tenancy in 2017 all the way up to the electrical fire that occurred in January 2019.
7. Third, the tenant informed the landlord of these defects, which were documented in over 120 pages of text messages between the tenant and landlord, starting from the beginning of her tenancy in April 2017 to after the fire in March 2019. Within these texts, the tenant reported to the landlord over multiple dates instances where her heat and electricity stopped working, multiple requests for a stronger front door, and other complaints regarding the apartment. The landlord, although responsive to the tenant's texts, was often delayed or unable to get anyone to the apartment to make repairs. The tenant's son, who lived with the tenant for about two years of her tenancy, testified credibly to trying to remedy

electrical issues by resetting the electrical breaker in the basement but did not attempt this further after receiving an electrical shock.

8. In a text exchange on December 29, 2017, the tenant sent the landlord "My heat is not working right now it's on 80 and it's 59 in my house I put blankets in the windows that don't go up all the way or lock like last yr but it's freezing." (Exh. 3, Texts). While she was without heat and unable to secure her windows, the tenant attempted to use space heaters to survive the cold, even offered one by the landlord, since he could not find someone available to come service the problem for some time. The tenant replied to these offers on January 2, 2018, stating "I can't run space heaters cause the circuit breaker keeps popping" and "I have heaters and can only run one at a time or the fuses blow." (Exh. 3, Texts). Because of the concurrent issues with the electrical breaker tripping and many of the outlets in the apartment not working, the tenant suffered additional hindrances in trying to remedy the lack of heat. A plumber was unable to come to the residence and resolve the heat until January 22, 2018, causing the tenant to be without heat for nearly a whole month in the winter. Despite this visit by the plumber, the tenant continued to report issues with the heat and testified to not seeing the plumber return for further service. As issues with the heat arose, and a plumber was unable to come out, the landlord recommended the tenant do remedies such as checking and replacing the batteries or seeing if the pilot light was out. However, the tenant's experience with inconsistent heat lasted throughout her tenancy.

9. The landlord was similarly made aware of the persistent problems with the electricity. On November 21, 2017, the tenant stated in a text to her landlord that "My power in the kitchen, hallway, bathroom, and some in my room has been off since sat...haven't been able to use my CPAP machine for my sleep apnea and need on so I can cook. The landlord responded "I called electrician...waiting.for.him.to.call me back." (Exh. 3, Texts). An electrician was not brought to service the apartment until the end of October 2018, nearly a year after the tenant's initial complaint. The electrician testified to the tenant informing him on arrival that "the power in the kitchen keeps clicking off." He testified to "reducing a dangerous condition" by replacing an oversized circuit breaker on the electrical panel, and a receptacle outlet in the kitchen, where the fire occurred. The electrician did no further work or investigations, besides warning the tenant of the dangers of plugging in too many items in the outlets and noting the use of the extension cord for the freezer as "improper." After this visit, the tenant continued to complain of issues with the electricity however there were no further returns of that electrician, or any other professional for that matter, to the apartment to make repairs before the fire.

10. The tenant also made regular complaints about the security and construction of her front door to the landlord. On May 5, 2018, she texted "I would like a stronger door for the front with all the people that have been around this house[.] The door in the front is Actually a bedroom door not the front door could be kicked in easily[.] And the window in my living room fell on the top and will not go up." (Exh. 3, Texts). The landlord was responsive to the messages, however the door

and the window, like the other defects in the apartment, were never fixed. Under the fourth factor, there was certainly sufficient time for the landlord to make the residence habitable at any time during the two-year tenancy.

11. Finally, in evaluating whether the defects in the apartment were of any abnormal conduct or use of the tenant, the investigation of the apartment after the fire supports the conclusion that the tenant was not at fault. After the fire occurred in January 2019, a Deputy Chief fire investigator was dispatched to the apartment. He testified that through his training and investigation, he could ascertain that the fire started in the kitchen outlet, where he found probable evidence of heavy scorching and burning inside the outlet, which he attributed to electrical arcing. There was no reported evidence of anything being plugged into the outlet when the fire transpired, as there was no heat damage or melting that could be observed on the outlet or any surrounding appliances.

12. **Application of Chapter 93A Consumer Protection Statute:** The breach of warranty of habitability before the court here certainly falls within the policy purpose of Chapter 93A to "ensure an equitable relationship between consumers and persons engaged in business." *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 624 (1978). The Supreme Judicial Court has found that by the express language found in § 1 of G.L. c. 93A, a person who rents real property is engaged in "trade" or "commerce." *Linthicum*, 379 Mass. at 387. While they have upheld that c. 93A, s.2 does not apply to the rental of a dwelling unit in which an owner also occupies part of the unit, it may be applied in some cases where the transaction does not concern the principal business of the defendant. In those

cases, the court should examine whether the transaction is motivated by business or personal reasons. *Billings v. Wilson*, 397 Mass. 614,616 (1986). To determine this, courts may assess the nature of the transaction, the character of the parties involved, and the activities engaged in by the parties. *Begelfer v. Najarian*, 381 Mass. 177, 191 (1980). Here, the parties entered into a rental agreement on March 1, 2016, for one of the upstairs units at the landlord's property at 4 Cherry Street. The landlord rented out all four units within the home he owned and did not live in any of the units, supporting the conclusion that his transactions concerning his property were motivated by business reasons.

13. The Attorney General has enacted several regulations that define conduct that constitutes unfair or deceptive acts or practices in the landlord-tenant context. Regarding conditions and maintenance of a dwelling unit, it is considered unfair or deceptive for a landlord to "rent a dwelling unit which, at the inception of the tenancy, contains a condition which amounts to a violation of law which may endanger or materially impair the health, safety, or well-being of the occupant; or is unfit for human habitation. 940 Mass. Code Regs. 3.17. A "substantial and material breach of the implied warranty of habitability" constitutes a violation of Chapter 93A. *Cruz Management Co. v. Thomas*, 417 Mass. 782, 790 (1994). "Once notice of a defect is given, it is not incumbent upon the tenant to remind the landlord that repairs are necessary." *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 463 (2017). As laid out above, there is no question that the tenancy between the tenant and landlord here materially breached the warranty of habitability, therein violating G.L. c. 93A, s.2.

14. **Multiplication of Damages:** Under G.L. c. 93A, s.9(3), a plaintiff prevailing on a c. 93A claim may be awarded "up to three but not less than two times [the actual damages] if the court finds that the use or employment of the act or practice was a willful or knowing violation ... or that the refusal to grant relief upon demand was made in bad faith." *Cruz*, 417 Mass. at 790. Before a plaintiff can obtain relief from the court, a demand letter must be sent to the defendant thirty days before filing suit in court. "Any person receiving a demand letter may make a written offer of settlement within thirty days, thereby limiting his damages to the relief tendered, if the court finds the tender to have been reasonable." *Heller*, 376 Mass. at 627 (1978). Here, the plaintiff sent a Massachusetts Consumer Protection demand letter to the defendants on February 18, 2020, to which she received no written response or settlement offer. The plaintiff then accordingly filed this suit on June 23, 2020. If no offer of settlement is made by the defendant, "c. 93A, s.9(3) authorizes the judge to award up to three, but not less than two, times the amount of actual damages if he finds a wilful or knowing violation of c. 93A, s.2, or that the refusal to grant relief on demand was made in bad faith with knowledge or reason to know that the practice complained of violated § 2." Id. Accordingly, this grants the court the discretion to double or treble the damages, which is to be "[b]ased on the egregiousness of [the] defendant's conduct." *International Fidelity Insurance Co. v. Wilson*, 387 Mass. 841, 853 (1983).

15. The 'willful or knowing' requirement of s.9 (3), goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of

conditions in a rental unit which, whether the defendant knows it or not, amount to violations of the law. *Heller*, 376 Mass. at 627. In this case, the court finds there was sufficient evidence presented at trial that the defendant was aware of the dangerous conditions that were present in the plaintiff's apartment for the two years of her tenancy and took either no, or insufficient action, to amend them.

16. The plaintiff entered extensive text messages into evidence, recording many instances that she complained to the defendant about various issues within the apartment over a protracted period of time. Though the defendant argued that he was responsive and attentive to every complaint brought by the plaintiff, this does not comport with the facts. The defendant had knowledge and reckless disregard for the ceaseless issues with the electricity he was first notified about in text messages dated November 21, 2017 and though he took some steps to have this issue addressed, they were insufficient and---as found by the jury--- ultimately caused a fire that ended the tenancy.

17. Though the landlord testified that he thought the electric problem was remedied after his electrician visited the property, test messages show the plaintiff informed the defendant that the electricity was still not fixed. On October 31, 2018, she stated "Hey I was just wondering when he's fixing the [electric] I can't pack when I get home it's [too] dark" (The tenant was "packing" to prepare the house for the exterminators). The landlord responded, "run a light from the other room to help." (Exh. 3, Texts). Thus, instead of sending an electrician again to make repairs, he suggests that the tenant use the extension cord that he provided her to run a light from another room. Further repairs on the electricity were not

mentioned until two months later on January 3, 2019, when the tenant requested a new electrician, texting "...it's a pain to take a lamp room to room." (Exh. 3, Texts).

18. The defendant was also willful and knowing in his violations of c. 93A regarding the problems with the heat. In one text exchange on January 18, 2018, when the tenant was without heat for a whole month, the defendant wrote to the plaintiff that he was unable to find an available plumber for the next 2 weeks. The plaintiff responded, suggesting "maybe the health department could call and get someone to come quicker...I'll call them tomorrow and see if they can help." The defendant responded by stating "all the health dept does is call me." Exh. 3, Texts). This response from the defendant is significant towards the willful and knowing element, as it speaks to the defendant's awareness that lack of heat being a condition that the health department would investigate. The State Sanitary Code requires that owners shall provide and maintain the facilities for heating in every habitable room...[and] portable space heaters,...room heaters...shall not be used to meet statutory requirements. 105 Code Mass. Regs. § 410.200.

19. The defendant's efforts and responsiveness are not enough to escape the liability under c. 93A s.9. In *Harold Brown v. David Leclair*, 20 Mass. App. Ct. 976, 980 (1985), the landlord was similarly responsive to the tenant's complaints, however, the court still found that a willful disregard could be found where there are "many continuing violations, some major and some minor, their cumulative effect on habitability can be considered by the trial judge in determining whether behavior

was wilful. *McKenna v. Begin*, 5 Mass. App. Ct. at 308." These messages are substantial evidence of the defendant's knowledge of the conditions the plaintiff was contending with and his disregard to make the repairs.

20. The plaintiff cites *Whelihan v. Markowski*, 37 Mass. App. Ct. 209 (1994) most similar to this case, where damages were trebled due to the defendant's knowledge that the repairs made were in violation of the State Building Code and his willfulness to ignore the risk placed on the plaintiff. The court is inclined to agree with this comparison to this case before it. The defendant was made well aware of multiple breaches of habitability by the plaintiff and failed to make the necessary repairs to correct violations. Although the defendant might not have wished harm upon the plaintiff, the defendant here knowingly allowed for dangerous defects and conditions to go unrepaired throughout the plaintiff's entire tenancy, which is egregious enough to award treble damages.

21. **Application to Jury's Award:** In application of the amount of actual damages to be multiplied, the court shall use the amount of the findings of the jury on the tenant's warranty of habitability claims, regardless of the existence or nonexistence of insurance coverage available in payment of the claim. G.L. c. 93A, s.9. In *Schwartz*, the Supreme Judicial Court concluded that damages suffered by the plaintiff because of the defendant's wrongdoing are the type of damages subject to multiplication under c. 93A. *Schwartz v. Rose*, 418 Mass. 41, 48 (1996). The jury awarded the plaintiff with four separate breach of warranty awards for the defendant's failure to remedy the electrical service, failure to provide safe electrical service thereby causing the fire, failure to remedy faulty

heat, and failure to provide a safe front door and replace the broken window, totaling $12,850.

22. **Conclusion and Order:** Based on the foregoing, the court finds and so rules that the defendants breached G.L. c.93A and awards the plaintiff $38,550 for said violations. This represents the jury's award under the warranty of habitability totaling $12,850 trebled.

23. Accordingly, the plaintiff tenant shall be awarded **$40,724** plus reasonable attorneys fees and costs. This represents $38,550 for the warranty of habitability damages plus $2,175 for the security deposit damages found and awarded by the jury.

24. This award is not yet a final judgment as the plaintiff has the right to file a petition for reasonable attorney's fees and costs. As a prevailing party in her Chapter 93A claim, the plaintiff shall have 20 days from the date of this order noted below to file and serve a petition for reasonable attorney's fees and costs. The defendant shall have 20 days after receipt of same to file and serve their opposition. The court shall make a ruling on said petition, and opposition, without hearing and shall there after enter a final judgment.

So entered this 22nd day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-170

BC PALMER GREEN,

Plaintiff,

v.

THOMAS HERD,

Defendant.

ORDER

After hearing on March 22, 2023, at which the landlord and a representative from the Tenancy Preservation Program (TPP) appeared but for which the tenant failed to appear, the following order shall enter:

1. A Guardian Ad Litem (G.A.L.) shall be appointed for Thomas Herd.
2. The G.A.L. shall immediately meet with the parties and with TPP and shall schedule a Court Clinic evaluation for Mr. Herd.

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3. It is the hope that the G.A.L., working with TPP, will be able to assist Mr. Herd so that he will able to maintain his tenancy and otherwise comply with the agreements of the parties.
4. Once a G.A.L. is appointed, the Clerks Office is requested to schedule this matter for a review hearing for approximately 30 days after said appointment.

So entered this 23rd day of March, 2023.

Robert Fields, Associate Justice

CC: Kara Cunha, Esq., Assistant Clerk Magistrate (re: G.A.L. appointment)
Carmen Morales, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1100

BRIAN PEREZ,

Plaintiff,

v.

CASSANDRA KELLY and DARRICK ROBERTS,

Defendants.

ORDER

This matter came before the court for trial on January 9, 2023, after which the following order shall enter:

1. Background: The plaintiff, Brian Perez (hereinafter, "landlord") owns a three-family building located at 12 Church Street in Ware, Massachusetts. The defendants, Cassandra Kelly and Darrick Roberts (hereinafter, "tenants") are the tenants of Unit 12 at said property (hereinafter, "premises"). The tenants have

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resided at the premises since 2020 and were living there when the plaintiff purchased the premises in June of 2021. The landlord had the tenants served with a February 14, 2022, notice to quit for no-fault and thereafter commenced this eviction matter. The tenants filed an Answer with defenses and counterclaims alleging conditions of disrepair, violations of the retaliation statute, the consumer protection act, and the lead paint laws.

2. **The Landlord's Claim for Possession and for the Account Annexed:** The parties stipulate to the landlord's claim for possession and for $13,000 in use and occupancy through the month of trial (January 2023). What remains for adjudication are the tenants' defenses and counterclaims and their request for additional time to relocated in accordance with G.L. c.239, s.9.
3. **Retaliation:** The tenants complained to the Quabbin Health District and a Health Inspector from that office inspected the premises on January 28, 2022 and issued a Housing Code Inspection Report dated February 1, 2022. On February 14, 2022, the landlord had the tenants served with a 30-Day Notice to Quit for no-fault.
4. Reprisal constitutes a defense, G.L. c.239, s.2A, and counterclaim, G.L. c. 186, s.18, to the landlord's eviction case. The sequence and timing of events which occurred between the parties gives rise to a presumption that the landlord's action was in reprisal against the tenants for her protected activity of complaining to the health district, under G.L. c.239, s. 2A, which provides in pertinent part as follows: "The commencement of such [summary process] action against a tenant, or the sending of a notice to quit upon which the summary process action based..

within six months after the tenant has ...exercised such rights...shall create a rebuttable presumption that such summary process is a reprisal..."

5. The presumption of reprisal may be rebutted only by "clear and convincing" evidence that the landlord had "sufficient independent justification" for taking such action, and "would have in fact taken such action, in the same manner and at the same time," G.L. c.239, s.2A and G.L. c. 186, s.18, irrespective of the tenants' protected activities.
6. Though there was mention during the trial of a notice to quit previously sent to the tenants in mid-January 2022, that notice was not produced at trial and very little information was provided about it. There is an inference that it may have been for non-payment as the tenants testified that they began to withhold rent in January 2022 or perhaps it was for no-fault, as the tenant testified that the landlord told her it was based on his interest on renovating the premises.
7. The court finds that the landlord has not rebutted the presumption of reprisal and is therefore liable for between one and three months' rent. I am exercising my discretion to award two months' rent, or **$2,000**.
8. **The Tenants' Other Claims:** Though there were some violations of the State Sanitary Code, as cited by the health district office, same were repaired promptly. And, though there was lead paint present at the premises, the landlord had same removed professionally, and the tenants did not meet their burden of proof that it was not accomplished within the time required by law. Accordingly, the tenants shall not be awarded damages on of their claims other than for retaliation as describe above.

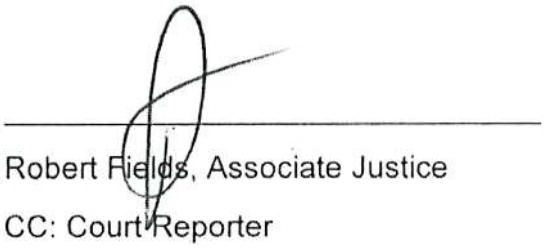
9. **Application of G.L. c.239, s.8A:** Based on the foregoing, and in accordance with G.L. c.239, s.8A, the tenants have ten days after the date of this order noted below to deposit with the court $ 12,424.94. This sum represents the award of $2,000 to the tenants for their retaliation claim offset against the $13,000 in outstanding use and occupancy through January 2023, plus court costs in the amount of $ 198.10 and interest in the amount of $ 1,226.84.[1] If said sums are deposited with the court in full and timely, judgment shall enter for possession for the tenants and the deposited funds will be issued from the court to the landlord by way of his attorney.

10. If the funds described are not deposited with the court, the landlord shall be awarded possession and $11,000 for use and occupancy through January 2023, plus court costs and interest. This will be an "award" of possession to the landlord and not yet a judgment, as the tenants are also seeking relief under G.L. c.239, s.9 and/r s.10. Accordingly, the appeal period from a final judgment shall not yet run (as it not a final judgment).

11. **G.L. c.239, s.9 and/or s.10:** Because the tenants are also seeking time to relocate pursuant to G.L. c.239, s.9 and/or s.10, if judgment does not enter for the tenants in accordance with the above, a hearing shall be scheduled for consideration of the tenants' request under G.L. c.239, s.9 and s.10 **on April 24, 2023, at 9:00 a.m. in the Hadley Session of the court**.

[1] If the outstanding use and occupancy has been reduced by payments since the trial (including RAFT payments), the amount of use and occupancy portion of the deposit due in the court pursuant to this order should reflect such reduction.

So entered this 23rd day of March, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

WESTERN DIVISION HOUSING COURT
Civil Action. No. 21 CV 853

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

v.

JANE A. DZIEKONSKI, as the owner of the property located at 927 Converse Street, Longmeadow, Massachusetts, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, as mortgagee and a party with an interest in the property, and MASSHEALTH, as a party with an interest in the property,

Respondents

INTERIM ORDER

At a hearing on March 24, 2023, the Petitioner and the Receiver, Homes Management, LLC appeared through counsel. After receiving proper notice, the Respondent Owner Jane A. Dziekonski did/ did not appear, mortgagee the United States Department of Housing and Urban Development (HUD) did did not appear; and MassHealth, as a party with an interest in the Property did did not appear. Accordingly, the following Order is to enter:

1. ***Appointment:*** The Receiver **Homes Management, LLC** was appointed by this Court after a hearing on May 26, 2022.

2. ***Subject Property:*** The subject property at **927 Converse Street, Longmeadow** is a vacant single-family dwelling.

3. ***Service:*** The Respondent Jane A. Dziekonski was served personally, in hand via Hampden County Sheriff on December 23, 2021. The mortgagee, HUD was personally, served upon The Honorable Rachael Rollins (Acting U.S. Attorney), certified mail to HUD's principal place of business in Washington DC and also a copy of the Summons and Order of Notice and the Petition to Enforce the State Sanitary Code and for Appointment of a Receiver was served via certified mail return receipt to the Attorney General Merrick B. Garland. The party in interest MassHealth was served via email as per agreement with counsel for MassHealth to accept service via email. Additionally, a Summons and Order of Notice and the Petition to Enforce the State Sanitary Code and for Appointment of a Receiver was sent to MassHealth via certified mail return receipt and

also personally, in hand, served upon MassHealth via Suffolk County Sheriff as previously attested to in Petitioner's Affidavit of Service.

4. ***Insurance:*** The Receiver filed proof of insurance with the Court on July 15, 2022.

5. ***Rehabilitation Plan:***

A. The Receiver filed with the Court a Motion to Approve a Rehabilitation Plan on July 15, 2022, which was approved by the Court on August 31, 2022 after a comprehensive interior and exterior inspection completed by the Town of Longmeadow. The inspection was completed on August 8, 2022. Petitioner filed the Housing Code Inspection Report and served all parties on August 23, 2022.

B. The total estimated cost of the rehabilitation, as set out in the proposed plan is estimated to be about **$639,345.29** including legal costs and overhead. The Receiver expects to complete rehabilitation of this property by **February 2024**. The Receiver's Rehabilitation Plan was Approved.

6. ***Receiver's Reports***: The Receiver's reports are up to date. The Receiver's most recent report was filed with the court and served upon all parties and lienholders on March 10, 2023. The report covers the time period of January 19, 2023 through March 8, 2023. During this time, the Receiver reports expenses in the amount of **$162,453.76**, which brings the amount of the Receiver's asserted lien to date to **$533,060.62**. The report and its receipts have been reviewed for accuracy by the Petitioner and found to be acceptable.

7. ***Receiver's Motion***: The Receiver filed a Motion to Enforce Priority Lien and Obtain Order Authorizing a Sale of the Property on or about March 10, 2023. This Motion is ALLOWED/DENIED.

8. ***Inspection:*** The Town completed an interior and exterior inspection on March 8, 2023, and reports no issues.

9. ***Next report:*** Before final approval of the sale, the Receiver shall file with the Court and serve upon all parties and lienholders a copy of the Receiver's final accounting with a detailed account of funds received and funds expended. However, if the Receiver experiences delays in completion of the Property Receiver shall file a report with a detailed account of funds received and expended, which shall be due by May 5th **, 2023**. Copies shall also be sent to all parties to this action and shall be accompanied by a certificate of service documenting that the accounting has been forwarded as called for in the order appointing the receiver to this property.

10. ***Additionally:*** _____

11. ***Review:*** A review of the receivership shall be heard on May 16 **, 2023 at 9 a.m. in person, in the Springfield Session.**

So Ordered:

Justice - Western Division Housing Court

Dated: 3/24/23

Jonathan J Kane
First Justice

ASSENTED TO BY:

Assistant Attorney General
Maja M. Kazmierczak BBO# 671512

662738

Receiver's Attorney
Katharine Higgins-Shea, BBO# 662738

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22H79SP0004603

Szu-Ming Li)
Plaintiff,)
)
v.)
)
Sylvia Toledo-Cruz)
Defendant.)

ORDER BY AGREEMENT OF THE PARTIES

After a hearing on March 24, 2023, of which the Plaintiff appeared through counsel and the Defendant appeared on her on behalf, the following order is to enter by agreement:

1. The default judgment for money damages is vacated by agreement.
2. The Tenant and all occupants in the household agree to vacate the premises no later than April 30, 2023.
3. The Tenant agrees to forfeit any last month's rent or security deposit held by the landlord.
4. The Tenant agrees to waive all claims, known or unknown, that were or that could have been raised against the landlord and any of her agents in this matter in consideration for the terms set forth in this agreement.
5. If the Tenant vacates as agreed, time being of the essence, then all unpaid rent shall be waived.
6. Vacating includes removing all persons and all personal property from the premises.
7. If the Tenant vacates as agreed, the Plaintiff shall file a voluntary dismissal forthwith.
8. The Execution for Possession shall issue forthwith but shall be stayed in accordance with this Order.

So entered on this 24th day of March 2023:

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0225

ANATOLIY PALIY,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER FOR JUDGMENT
ROBERTO ANGLADA,	)	
	)	
DEFENDANT	)	

This civil case came before the Court for a bench trial on February 2, 2023. Plaintiff represented himself. Defendant was represented by counsel. Plaintiff is Defendant's former landlord at 105 Hampden Street, 1st Floor, West Springfield, Massachusetts (the "Premises") from December 1, 2028 to August 2020. This trial is limited to monetary damages resulting from the landlord-tenant relationship.

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

During the period of tenancy, monthly rent was $1,300.00 per month.[1] Although Defendant was obligated to pay first, last and security upon move-in, he paid only

[1] Plaintiff claims that he raised the rent to $1,400.00 during the tenancy, but provided no evidence that Defendant agreed to the higher amount and Defendant never paid the higher amount, so the Court shall use the last agreed-upon amount of $1,300.00 to calculate the unpaid rent. Also, at trial, Plaintiff sought payment of $800.00 for excess water usage, $3,400.00 for attorney's fees and $125.29 for service of three notices to quit. Plaintiff provided no evidence to support any of these charges, however, and the Court does not credit these expenses.

$1,300.00. The balance of unpaid rent is $21,900.00, plus court costs of $176.76. Defendant raised numerous defenses and counterclaims. The Court will consider each separately.

Security Deposit: Defendant paid $1,300.00 at the outset of the tenancy in December 2018, but did not pay the $1,300.00 security deposit or last month's rent of $1,300.00. He transferred funds by PayPal, but Plaintiff was not aware of the transfer. Because Plaintiff was not aware of the transfer of funds and did not ask Defendant to use PayPal for the payment, the Court will not hold him responsible for failing to comply with the security deposit law.[2] In April 2019, Defendant made a payment of payment of $2,600.00 which he claims was intended to cover the security deposit, but this payment was made after Defendant had failed to pay rent for two months, and the Court finds that Plaintiff appropriately applied this payment to the unpaid rent.[3] Accordingly, the Court rules in favor of Plaintiff on Defendant's claim for a violation of G.L. c. 186, § 15B.

Breach of Warranty of Habitability: Defendant claims that Plaintiff violated the warranty of habitability by keeping refuse and debris in the back yard. The Court finds that, shortly after Defendant moved in, various household items were in the back yard, but these items were removed did not constitute substantial violations of

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[2] Several months later later, Plaintiff learned of the PayPal transfer and accepted the money. The Court will credit this payment against what Defendant owes in unpaid rent.

[3] Defendant relies upon a bank deposit slip upon which he wrote "security deposit and late fee" (after crossing out the work "rent") as evidence that Plaintiff knew the payment was partially for a security deposit, but the Court finds that Plaintiff did not accept this payment as anything other than unpaid rent that was then outstanding.

the State Sanitary Code or a significant defect in the Premises. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (the warranty of habitability applies only to "substantial" violations or "significant" defects). Likewise, although the Court finds that some items were left outside along the back fence for an extended period of time, these items were stored behind the shed and did not materially impair the rental value of the Premises. Therefore, the Court finds in favor of Plaintiff on the claim of breach of warranty.

Breach of the Covenant of Quiet Enjoyment:

Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ... " G. L. c. 186, § 14. This statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The statute does not require that the landlord act intentionally to interfere with a tenant's right to quiet enjoyment. *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997).

In this case, Defendant cites to abusive, discriminatory and rude treatment by Plaintiff that he claims interfered with his tenancy; for example, Defendant testified that Plaintiff harassed him about repairing cars in the driveway, leaving cars on the lawn, using excessive water, having small pool on the deck and keeping a dog without

permission. He was particularly angry that Plaintiff once spoke directly to his 12-year old son and wife (who does not speak English) about the dog at a time that he was away in Puerto Rico and made threats about evicting the family because of the animal.

The Court finds that, even if Defendant's testimony is credited, Plaintiff's conduct does not rise to the level of a serious interference with his tenancy. The Court finds that Plaintiff had reason to ask Defendant not to conduct repair customer cars in the driveway, and not to use excessive water as part of the car repair work he was doing on the property. Defendant himself acknowledged that his repair activity left the property "disorganized and dirty" and that he was using a lot of water. The Court finds that Plaintiff's demands that he stop repairing cars and using excessive water did not cause a serious interference with his tenancy. Although the Court credits Defendant's testimony regarding the incident in which Plaintiff spoke to his family, the Court finds this isolated incident does not constitute a violation of G.L. c. 186, § 14.

The Court finds that Defendant's rental agreement required him to remove snow from sidewalks and porches for both units in the two-family building. The Court finds that the parties specifically negotiated for this term and that the work Defendant did to remove snow was not onerous. The Court further finds that Plaintiff typically removed snow from the driveway (except around the tenants' cars), and that on one occasion, Plaintiff's plow was broken and Defendant cleared the driveway. The Court rules that placing the burden of snow removal to Defendant does not constitute

a substantial interference with the tenancy, and therefore finds in favor of Plaintiff on Defendant's claims for breach of the covenant of quiet enjoyment.[4]

Based on the forgoing findings of fact and rulings of law, and in light of the governing law, judgment shall enter in favor of Plaintiff in the amount of $19,376.01.[5]

SO ORDERED.

DATE: 3/27/23

Jonathan J. Kane, First Justice

[4] To the extent Defendant asserted claims for breach of quiet enjoyment for invasion of privacy, discrimination and retaliation, the Court finds no credible evidence to support the claims and finds in favor of Plaintiff.

[5] This figure is calculated by adding the balance of rent claimed by Plaintiff ($21,900.00), plus court costs ($176.76), less the PayPal payment ($2,700.75) that Plaintiff admits he ultimately received.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-236

KUBURAT AYINDE,

Plaintiff,

v.

MADELYN MILLER, CHRISTINE MILLER,

Defendants.

ORDER

After hearing on March 28, 2023, on the plaintiff landlord's request for injunctive relief at which the landlord and the defendant tenants appeared without counsel, and at which Ms. Cintron from the Tenancy Preservation Program (TPP) joined by Zoom, the following order shall enter:

1. The landlord's request for dispossession of the tenants is denied, as the landlord may only utilize Summary Process for that purpose.

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2. The head of household, David Miller, is the husband of tenant Madelyn Miller and father of tenant Christine Miller and has passed away on February 24, 2023.
3. This matter was referred to TPP to assist the tenants with a referral to Community Legal Aid regarding their being able to have the rental subsidy administered by Way Finders, Inc. switch into Madelyn Miller's name as new head of household (or to Christine Miller's name).
4. TPP shall also assess the tenants for issues such as [redacted]
5. The parties were going to meet with TPP (Ms. Cintron) on Zoom directly after the hearing.
6. This matter shall be scheduled for review on April 13, 2023, at 9:00 a.m. at the Springfield Session of the court.

So entered this 28th day of March, 2023.

Robert Fields, Associate Justice

CC: Ms. Cintron, Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-677

CITIZENS BANK, NA,

Plaintiff,

v.

SHANA V. FERRIGAN a/k/a SHANA V. BOURCIER, et al.,

Defendant.

ORDER

After hearing on March 10, 2023, on the plaintiff's motion for summary judgment, at which the plaintiff appeared through counsel and the defendant, Shana Ferrigan (a/k/a/ Shana Bourcier) appeared *pro se*, the following order shall enter:

1. The plaintiff has met its burden of proof that it has superior right to possession of the subject premises and that there are no material facts in dispute that require trial on the merits.
2. Accordingly, the plaintiff shall be awarded possession of the subject premises.

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3. Because the plaintiff also sought use and occupancy in its account annexed on the summons and complaint, this is an award for possession and not yet a final judgment.
4. This matter shall be scheduled for **April 28, 2023, at 9:00 a.m.** at the Springfield Session of the court for judicial case management to determine if the plaintiff wishes to pursue its claim for use and occupancy in this matter.

So entered this 28th day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-SP-2132
LYNETTE MORENO-PAGAN, PLAINTIFF v. CESAR RODRIGUEZ, KATLEEN RODRIGUEZ AND ZAY RODRIGUEZ, DEFENDANTS	FINDINGS OF FACT, RULINGS OF LAW AND INTERIM ORDER

This summary process case came before the Court for a bench trial on March 20, 2023. Plaintiff and Defendants Cesar Rodriguez and Katleen Rodriguez appeared through counsel. Defendant Zay Rodriguez did not appear. Plaintiff seeks to recover possession of 431 Hillside Ave., 2d Floor, Holyoke, Massachusetts (the "Premises") from Defendants.

Prior to trial, the parties agreed that the trial should be bifurcated in order for the Court to make a preliminary ruling on the validity of a lease extension agreement that purports to extend Defendants rental period through August 1, 2024. If the lease extension is valid, Plaintiff's case for possession (based upon a notice to quit terminating a tenancy at will) would be dismissed. Because Defendants do not otherwise dispute any of the elements of Plaintiff's prima facie case for possession, if

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the Court finds the purported lease extension invalid, the next step would be to take evidence on Defendants' defenses and counterclaims.

With respect to the lease extensions, Defendants produced a series of "Lease Extension Agreements" signed by their former landlord, Krystyna Gasiewski. The lease extensions extend the initial lease term for one year from August 1, 2011 to August 1, 2012, and then for successive three-year extensions to August 1, 2015, to August 1, 2018, to August 1, 2021 and finally to August 1, 2024. Ms. Gasiewski denies ever signing any of these lease extensions. She testified that she does not own or use a computer and, as a Polish speaker, does not to read or write well in English.

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

1. The "Lease Extension Agreement" forms are all typed on identical templates. The typed entries are identically spaced from agreement to agreement. For example, the "Lease End Date" is inserted toward the end of the blank line exactly in the same location each time, as is every other aspect of the form above the signatures.[1] The Court finds it highly unlikely that five separate lease extension agreements executed over an 11-year period would be completely identical in all relevant respects.
2. Although the rent purported to change to $800.00 per month effective on August 2, 2015, the rent receipts show that Defendants began paying

[1] Even when the monthly rent changed from $900.00 to $800.00, the figures are typed in the identical place on the form with the identical formatting.

$800.00 per month in 2013 at a time when the lease extension then in effect (as of August 1, 2012) required monthly rent of $900.00. If Ms. Gasiewski was regularly executing lease extensions, the Court infers that she would have entered into a new lease extension incorporating the rent change and the other changes to the terms of the tenancy.

3. The Lease Extension Agreements have a "notes" section on the bottom which, in addition to being identically formatted, use phraseology that is inconsistent with Ms. Gasiewski's command of the English language. The Court has no evidence that someone other than Ms. Gasiewski wrote these Lease Extension Agreements. The Court therefore infers that these notes were not drafted by Ms. Gasiewski.

4. Although neither party provided a handwriting expert to opine as to the veracity of Ms. Gasiewski's signature on the Lease Extension Agreements, the Court finds that the signatures on the Lease Extension Agreements are different than the signatures Ms. Gasiewski placed on legal documents, such as the deed, purchase and sale agreement, offer letter, notice to quit, and original lease.

5. The most recent Lease Extension Agreement was purportedly signed on July 3, 2021, only a few days before Ms. Gasiewski listed the Premises for sale. In the listing, Ms. Gasiewski represented that Defendants were month-to-month tenants. The purchase and sale transaction required her

to deliver the Premises vacant, which Ms. Gasiewski would not be able to do if she had just signed a lease extension through August 1, 2024.

6. When Defendants filed their Answer in this matter, even though they were self-represented at that time, they made no claim to be tenants under an unexpired lease. They did assert other defenses and counterclaims, however, so the Court infers that they would have alleged the existence of the unexpired lease if one was then in effect.

7. The Court concludes from the foregoing, and therefore finds, that the Lease Extension Agreements are invalid and unenforceable.

Accordingly, the Court rules that Defendants are month-to-month tenants, not tenants under an unexpired lease, and that the no fault notice to quit served upon them properly terminated their tenancy. Upon the resumption of the trial, the Court will take evidence on Defendants' defenses and counterclaims.

SO ORDERED.

DATE: 3.28.23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-2993

ROLF NAZARIO,

Plaintiff,

v.

JAMME ORTONA,

Defendant.

ORDER

After hearing on March 23, 2023, at which the landlord appeared with counsel and the tenant failed to appear, and at which a representative from Way Finders, Inc. joined regarding RAFT, the following order shall enter:

1. The tenant has an open RAFT application pending.
2. The motion before the court was filed by the landlord and not by his attorney and it also unclear as to what it is seeking.
3. Based on the above, the motion is denied without prejudice.

4. If further remedy is needed the parties may file a new motion and same shall be scheduled by the court by Zoom so that the landlord can attend from Puerto Rico.

So entered this 28th day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3203

BARBARA ZABINSKI,

PLAINTIFF

v.

PATRICK DEITNER AND
JENNIFER HERNANDEZ,

DEFENDANTS

ORDER FOR EXECUTION TO ISSUE AND STAY ON ITS USE

This no fault summary process case came before the Court on March 16, 2023 for review following a trial in February 2023 which resulted in judgment entering in favor of Plaintiff. Plaintiff appeared through counsel. Defendants appeared self-represented.

After hearing, the following order shall enter:

1. Execution (the eviction order) shall issue but its use shall be stayed pursuant to the terms of this order.
2. The parties agree that, following a payment from Way Finders, no money is owed at this time. Plaintiff shall provide Defendants with a rent ledger showing that no monies are owed.
3. The six-month statutory stay set forth in G.L. c. 239, § 9 has now expired.
4. Given that no monies are owed and Defendants' diligent housing search, the Court will exercise its equitable powers to extend a stay on the use of the execution through April 30, 2023.

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5. Defendants shall pay the monthly use and occupancy of $1,000.00 for April 2023 by April 5, 2023.

6. The parties shall return for further review on April 27, 2023 at 2:00 p.m.

SO ORDERED.

DATE: 3/28/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 187

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS LP (owner) and
SABRINA SERRANO (tenant)

Defendants

Re: Premises: 87 Elliot Street, Springfield, Massachusetts

ORDER BY PARTIAL ASSENT
(Hampden County Registry of Deeds Book/Page: #23638/217)

After a hearing on March 24, 2023 for which a representative of the Plaintiff appeared, Defendant SPRINGFIELD GARDENS LP appeared by counsel Carolyne Pereira, and Defendant SABRINA SERRANO did not appear, the following order is to enter:

1. Defendant SPRINGFIELD GARDENS LP shall temporarily secure and weathertight the front common hallway window at 87 Elliot Street, Unit 2A, FORTHWITH, and in any event no later than Monday, March 27, 2023 at 5:00 p.m.

2. Defendant SPRINGFIELD GARDENS LP shall correct the following violations in 87 Elliot Street, Unit 2A no later than April 24, 2023 at 9:30 a.m.:
    a. Repair water-damaged ceilings in rear right room,
    b. Repair water-damaged floors in rear right room,
    c. Repair front common hallway window, and
    d. Caulk the bathtub.

3. Defendant SPRINGFIELD GARDENS LP shall complete all work in a workperson like manner, by licensed professionals, with permits opened and closed by law.

4. Defendant SPRINGFIELD GARDENS LP shall provide the Plaintiff with a Springfield Fire Department smoke detector compliance certificate no later than April 3, 2023 at 5:00 p.m.

5. **Defendant SABRINA SERRANO shall allow the Plaintiff interior access to her unit at 87 Elliot, Unit 2A on April 24, 2023 at 9:30 a.m.**

6. **The Plaintiff shall inspect 87 Elliot Street, Unit 2A on April 24, 2023 at 9:30 a.m. verify compliance with this order. The Plaintiff shall contact Sabrina Serrano at 413-252-2645.**

7. **This matter shall be up for review with the Court on April 28, 2023 at 9:00 a.m. Failure of the Defendants to appear on said date may result in the issuance of a capias for their arrest or the filing of a complaint for contempt.**

So entered this 29th **day of** March **, 2023.**

Jonathan J. Kane, First Justice
Western Division Housing Court

Robert G. Fields, Associate Justice
Western Division Housing Court

ASSENTED TO BY

Plaintiff City of Springfield
Julia Glybin, Esq.
BBO # ~~707229~~

Defendant Springfield Gardens LP
Carolyne Pereira. Esq.
BBO# 696499

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1169

BRYAN COTE,

PLAINTIFF

v.

IVELISSE LOPEZ AND JOSE LOPEZ,

DEFENDANTS

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court on March 23, 2023 for a bench trial. Plaintiff appeared through counsel; Defendants appeared and represented themselves. Plaintiff seeks to recover possession of 190 Heywood Avenue, West Springfield, Massachusetts (the "Premises") from Defendants based on a no-fault notice of termination.

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

Defendants occupy the Premises. Monthly rent is $1,350.00 per month. They are current with rent and have paid all use and occupancy through March 2023. They entered into multiple agreements with Plaintiff allowing them time to look for replacement housing. The most recent agreement is date December 7, 2022. They have not found replacement housing. Although Defendants filed an answer, they stated that

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they were not looking to pursue claims to defeat Plaintiff's claim to possession but simply sought more time to find a place to live.

Pursuant to G.L. c. 239, § 9, Defendants are entitled to a stay on the execution for twelve months from the date their tenancy ended (namely, April 1, 2022).[1] The twelve-month stay expires on April 1, 2023. Based on principles of equity, and without objection of Plaintiff, the Court extends the stay for two months to give Defendants additional time to find housing. Given that Defendants are not seeking to pursue their counterclaims at this time, the counterclaims are dismissed without prejudice and Defendants may assert claims against Plaintiff in a separate civil action should they wish.

Accordingly, based on the foregoing findings and rulings, and in light of the governing law, the Court enters the following order:

1. Judgment shall enter in favor of Plaintiff for possession only.
2. Execution shall issue in accordance with Uniform Summary Process Rule 13.
3. Use of the execution shall be stayed through June 1, 2023, provided that Defendants continue to pay $1,350.00 for use and occupancy for April and May by the 5th of the month.
4. Plaintiff shall repair the sink in the bathroom within 14 days. Defendants shall not unreasonably deny access so long as Plaintiff gives at least 48 hours advance notice before entry.

[1] They meet all of the criteria for the 12-month stay, given that they owe no back rent, have been diligently searching for housing and have disabilities.

5. The parties shall have no communication with each other except as necessary for bona fide landlord-tenant issues, such as repairs and surrendering keys.

SO ORDERED.

DATE: 3-29-23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-4531

COUTURE PARTNERS, LLC, PLAINTIFF v. GLENDALYZ RIOS, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court on March 23, 2023 for a bench trial. Plaintiff appeared through counsel; Defendant appeared and represented herself. Plaintiff seeks to recover possession of 21 Worcester Place, Apt. 3, Holyoke, Massachusetts (the "Premises") from Defendant based on non-payment of rent.

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

Defendant occupies the Premises. Monthly rent is $1,000.00 per month. The sum of $7,699.00 is due in unpaid from March 2023. Although Defendant cannot recall whether or not she received the notice to quit, she did not deny receipt. The Court finds that the notice to quit was received. Defendant continues to reside in the Premises. Based on the foregoing the Court finds that Plaintiff has established its prima facie case for possession and damages.

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

1. Judgment shall enter in favor of Plaintiff for possession and $7,699.00 in damages, plus court costs of $197.71.
2. Execution shall issue in accordance with Uniform Summary Process Rule 13.
3. Use of the execution shall be stayed through at least April 10, 2023 in order to allow Defendant a short time to use the execution to apply for emergency shelter housing.

SO ORDERED.

DATE: 3.29.23

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3213

ENOCH JENSEN,

Plaintiff,

v.

JOHANNA WHITNEY,

Defendant.

ORDER

After hearing on March 3, 2023, on the plaintiff landlord's motion for entry of judgment for possession at which both parties appeared, the following order shall enter:

1. For the reasons stated on the record---that the parties have not properly engaged in a reasonable accommodations dialogue and the tenant has shown that she continues to diligently search for housing---the motion is denied, without prejudice.

2. The landlord testified credibly that he plans to renovate the premises and then occupy same with his wife when they come east to Massachusetts in July 2023.
3. The tenant shall continue to diligently search for housing and shall email a copy of her housing search log to the landlord on April 1 and May 1, 2023.
4. The tenant shall also continue to make her monthly use and occupancy payments.
5. Due to the tenant being disabled, the parties shall engage in reasonable accommodations dialogue.
6. This matter shall be scheduled for further hearing to determine the reasonableness of any further continuance after the next hearing date noted below.
7. This matter shall be scheduled for a Zoom hearing on **May 5, 2023, at 9:00 a.m.** The court's Zoom platform can be reached at Meeting ID: 161 638 3742 and Password: 1234.

So entered this 29th day of March, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1768

THAN KOOL,

Plaintiff,

v.

JACQUELINE NAVARRO DANIELS and JAZICA WYCHE,

Defendants.

ORDER

After hearing on March 29, 2023, on the tenants' motion to stop a physical eviction at which all parties appeared, the following order shall enter:

1. **Background:** This tenancy was terminated by the landlord for no-fault with an offer of a new tenancy at a higher rent. With no agreement of the parties for a tenancy at the higher rent, the landlord commenced this eviction matter. The parties reached an agreement with the assistance of a court Housing Specialist

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on September 7, 2022 in which the tenants agreed to vacate the premises by January 1, 2023 (hereinafter, "Agreement").

2. On December 30, 2023, the tenants communicated directly with their landlord and the parties agreed to the higher rent that the landlord was originally seeking ($1,000) and that the landlord would have her attorney send the tenants a new lease. Relying on this new arrangement, the tenants paid the landlord $1,000 January, February, and March 2023.
3. Even though the parties had reached terms for a new tenancy as described above, the landlord filed a motion for entry of judgment because the tenants did not move out by January 1, 2023, and after hearing at which the tenants did not appear the motion was allowed.
4. The landlord then obtained execution and scheduled a physical eviction. Once given notice of the physical eviction, the tenants filed this instant motion.
5. **Discussion:** The landlord testified that after consultation with her attorney she did not cash the tenant's monthly payments of $1,000 in January, February, and March 2023 and also did not issue the tenants a new lease. She also did not communicate to the tenants that their agreement for a new lease at the higher rent was revoked. The tenants made their monthly payments at the higher rate believing, and relying on that belief, that they need not look for alternate housing or move out.
6. The landlord, by these actions and omissions, waived her right to enforce that portion of the Agreement that required the tenant to vacate the premises by January 1, 2023.

7. **Conclusion and Order:** The landlord shall cancel the physical eviction currently scheduled and shall return the execution to the court.
8. The court shall keep this matter under advisement to determine if the landlord's claim for possession in this summary process action shall be dismissed.
9. In the meantime, the parties agreed to mediate with a court Housing Specialist on **April 5, 2023, at 11:00 a.m.** If the parties reach an agreement at that time, the judge will be notified and will not issue any further order. If no agreement is reached, the judge will issue further decision and order.

So entered this 29th day of March, 2023.

Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3772

ASAD MAHMOOD,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER FOR JUDGMENT
HASHIM ADWAN AND LUBNA HAMMOODI,	)	
	)	
DEFENDANTS	)	

This summary process came before the Court for a bench trial on March 9, 2023. Both parties represented themselves. Plaintiff seeks to recover possession of a residential apartment located at 1201 Westfield Street, 1st Floor, West Springfield, Massachusetts (the "Premises") from Defendants for non-payment of rent.

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

Defendants moved into the Premises in 2015 with their children.[1] They signed a new tenancy at will rental agreement effective November 1, 2021 that required monthly rent payments of $1,000.00. Beginning in December 2021, Defendants began paying rent intermittently. Through the date of trial, Plaintiff claims a balance of unpaid rent in the amount of $10,100.00. This figure includes five months at a rental

[1] As of the time of trial, Defendants have four children under the age of 13.

rate of $1,300.00, a rate to which Defendants did not agree and never paid. Accordingly, for purposes of this summary process case, the Court uses the last agreed-upon rental amount, resulting in an amount of $8,600.00.

Plaintiff served Defendants with a notice to quit, which Defendants deny receiving. The Court is satisfied that the notice was properly mailed and Defendants gave the Court no reason to be believe that it did not arrive in the mail. The Court therefore finds that the notice was received. Defendants did not vacate at the expiration of the notice period. Accordingly, the Court finds that Plaintiff has established its prima facie case for possession and damages of $8,600.00.

Defendant Adwan testified that he stopped paying rent due to conditions of disrepair in the Premises, which he claimed rendered the unit uninhabitable.[2] He did not provide any evidence that Plaintiff was aware of the need for repair before Defendants fell behind in the rent in December 2021. He claims that he told the property manager on several occasions when the property manager came to collect rent, but he had no written evidence to support his claim. The evidence shows that Defendants contacted the West Springfield Health Department on or about October 24, 2022, after receipt of the notice to quit. They are not, therefore, entitled to a defense to possession pursuant to G.L. c. 239, § 8A (requires tenants to show that the owner or his agent knew of such conditions before the tenant was in arrears in his rent).

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[2] Defendants were allowed to file a late answer prior to trial, and Plaintiff elected to continue to trial the same day.

Despite not having a defense to possession, Defendants are entitled to an abatement of rent if they can prove that they endured conditions of disrepair about which Plaintiff had notice. See *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 (1979) (a tenant's obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability). The warranty of habitability applies only to "substantial" violations or "significant" defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State Sanitary Code supports a warranty of habitability claim).

Here, despite Defendant's testimony that the unit was uninhabitable, the Health Department cited non-emergency defects but did not find that the unit was uninhabitable. The Health Department report cites a few relatively minor structural issues (a damaged back storm door, a rotting porch roof and damaged porch step, a defective kitchen window ceiling, peeling and damaged flooring in the bathroom, a broken shelf in the tub, a loose bathroom door and a missing storm door latch), the absence of an outlet in the laundry room) and various maintenance issues (for example, missing electrical cover plates, broken cabinet doors, and numerous problems in the bathroom), and missing smoke and carbon monoxide detectors.

The Health inspector reinspected on February 10, 2023, and found that all repairs had been made except for a defective window in the kitchen and the lack of an electrical outlet in the laundry room. Plaintiff's property manager testified credibly that the electrical issue was completed on February 14, 2023.

Using the Health Department report as a guide, the Court concludes that the conditions in the Premises between October 24, 2022, when Plaintiff was clearly on notice of the need for repairs, and February 14, 2022, when the repairs were substantially complete, reduced the fair rental value of the Premises by 10%. The period of time in question is approximately four months, so Defendants are entitled to a rent abatement of $400.00.

Accordingly, based on the forgoing findings of fact and rulings of law, and in light of the governing law, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession and damages in the amount of $8,200.00, plus court costs of $182.76.[3]
2. Execution shall issue ten days from the date that judgment is entered on the docket.

SO ORDERED.

DATE: 3.29.23

Jonathan J. Kane

Jonathan J. Kane, First Justice

[3] The damages figure is calculated by subtracting $400.00 from the rent owed of $8,600.00.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2201

JAMIE SMITH, ANGELA GEWECKE, MOLLY SMITH AND JOHANNAH ROBERTS,	)	
PLAINTIFFS	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT
EVAN SMITH,	)	
DEFENDANT	)	

This no fault summary process case came before the Court for a bench trial conducted over four days between November 28, 2022 and February 13, 2023. Plaintiffs were represented by counsel. Defendant ("Evan")[1] represented himself. Plaintiffs seek to recover to recover possession of a single-family home located at 42R Cape Street, Goshen, Massachusetts (the "Premises") from Evan.

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

The Premises are part of a large parcel of land owned by the Smith family (the "Property"). Evan is the brother of Jamie, Molly and Johannah. Angela is their aunt (the sister of their father, Dana Smith). In addition to the Premises, the Property

[1] In order to avoid confusion, the parties will be identified by their first names.

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contains the "Big House" (with an address of 42 Cape Street), a barn and other structures. As of the date of trial, the Property was owned in equal parts by Angela, on the one hand, and Jamie, Molly and Johannah on the other hand.[2]

Evan moved into the Premises in 2017 after Angela, the prior resident, moved into an assisted living facility. Angela left her possessions behind and allowed Evan to live there to avoid the house being left vacant. It was her intention that Molly take possession when she was ready to move back from New Jersey where she was then living. Evan was permitted to use the Premises and, in exchange, he agreed to pay for all utilities consumed at the Premises. There is no evidence that Evan actually made regular payments for utilities after taking possession of the Premises.

The Court finds that the agreement Evan reached with Angela was not the product of an arms-length negotiation for a tenancy at will but, instead, was an informal family arrangement resulting in a tenancy at sufferance. Evan did not bargain for use of acreage, lake access and barn at the Property; in fact, Evan had use of the Property throughout his entire life and spent time and money improving it well before he ever took possession of the Premises.

Given Evan's status as a tenant at sufferance, Plaintiffs served - and Evan received - a 90-day notice to quit on March 25, 2022. He did not relinquish possession at the expiration of the notice period. Plaintiffs (at the time, Jamie and Angela)

[2] The Property was apparently owned equally by siblings Dana Smith and Angela, and Dana conveyed his interest to his daughter Jamie, who then conveyed her 50% interest to Molly, Johanna and herself.

timely served and filed this summary process action. The Court finds that Plaintiffs have established their prima facie case for possession.

Turning to Evan's defenses and counterclaims, he asserts breach of warranty, three separate breaches of G.L. c. 186, § 14 (interference with quiet enjoyment, failure to furnish utilities and a lock out), and violations of G.L. c. 93A.[3]

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). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State Sanitary Code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. The warranty of habitability applies only to "substantial" violations or "significant" defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim).

Although Evan is a tenant at sufferance, he has the right to defend against Plaintiffs' claim of possession. See *Meikle v. Nurse*, 474 Mass. 207, 209 n.3 (2016) (a tenant or occupant may defend against a landlord's claim of possession). Here, Evan's warranty claims include an infestation of mice and the periodic interruption of water service. With respect to the mice, the Court finds that the presence of mice in the basement of the Premises does not constitute a substantial violation of the State

[3] Evan did not establish that Plaintiffs are engaged in the trade or commerce of renting property; therefore, the Court rules that Plaintiffs are not subject to liability under G.L. c. 93A.

Sanitary Code. The credible evidence fails to show a serious infestation of mice in the Premises, and, particularly given that Evan spent most overnights with his girlfriend during much of the relevant time period and only sporadically resided at the Premises, the Court finds that the presence of the mice did not have a material impact on his use and enjoyment of the Premises.

With respect to the loss of water service, the Court finds that the short period of time during which Evan was without water does not constitute a breach of warranty. The one uncontested water shut-off was accidental and short-lived, and Evan did not demonstrate that it had any significant impact on the rental value of the Premises. The Court rules in favor of Plaintiffs on Evan's claims for breach of warranty.[4]

Breach of Quiet Enjoyment: With regard to Evan's claims under G.L. c. 186, § 14, Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ... " G. L. c. 186, § 14. This statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass.

[4] The Court notes that Evan was the subject of an earlier summary process case that was resolved by an agreement on or about February 20, 2022, at which time the parties agreed to settle all claims relating to conditions of the Premises. To the extent the presence of mice predated February 20, 2022, the warranty claim has been waived.

273, 285 (1994). The statute does not require that the landlord act intentionally to interfere with a tenant's right to quiet enjoyment. *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997). In analyzing whether there is a breach of the covenant, the Court examines the landlord's "conduct and not [its] intentions." *Doe*, 417 Mass. at 285. A tenant must show some negligence by the landlord in order to recover under the statute. *Al-Ziab*, 424 Mass. at 805.

Evan failed to show that Plaintiffs interfered with his right to quiet enjoyment. The Court finds that he did not have exclusive use of the Property, and his allegations about disturbances caused family members and their invitees trespassing on the Property as they walked to and from the lake or woods trails are not actionable. Likewise, the Court rules that Evan's claims about the conduct of Jamie's dog fail to establish a basis for liability under G.L. c. 186, § 14. The Court finds that Evan's unpleasant interactions with the dog were relatively minor and do not rise to the level of a "serious interference" with his tenancy. The Court credits Jamie's testimony that she made reasonable efforts to maintain control over her dog, and thus the Court finds no evidence of negligence, which is a prerequisite to liability under G.L. c. 186, § 14.[5]

Regarding Evan's claim for a separate finding of liability under G.L. c. 186, § 14 for failure to furnish utilities, the Court finds that the water service to the Premises was shut off inadvertently on August 30, 2022, and restored the next day once the

[5] With respect to Evan's claims that Plaintiff illegally entered the Premises, he did not offer credible evidence that Plaintiffs are responsible for such entry or entries.

issue was discovered. The Court finds no intentional or negligent conduct and, thus, no violation of G.L. c. 186, § 14 based on the failure to furnish utilities.

Evan's allegations that Plaintiffs locked him out of and obstructed his use of the barn fail to establish a claim upon which relief can be granted. Evan did not prove with credible evidence that he was entitled to exclusive use of any part of the barn. To the contrary, the evidence shows that the portion of the barn he used was part of a years-long family understanding pursuant to which Evan and his son maintained the barn and used it as a work space. To the extent that Evan was prevented from accessing tools or other personal property over which he claims ownership, the dispute is not a landlord-tenant matter, but it is instead part of a family quarrel that should not be incorporated into a summary process case. With respect to Evan's argument that Plaintiffs served a "no trespass" notice upon him, thereby interfering with his right to access the Property, the Court finds that Plaintiffs' conduct, however misguided, did not cause Evan to remain away from the Property and did not meaningfully interfere with his use of it. It is a further example of the on-going family dysfunction, but not the basis for liability under landlord-tenant laws.

Accordingly, based on these findings of fact and rulings of law and in light of the governing law, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.[6]
2. Execution may issue ten days after the date the judgment enters on the

[6] Although Plaintiffs seek use and occupancy in their complaint, they failed to offer evidence to support Jamie's supposition that a reasonable figure for use and occupancy is $1,500.00 to $2,000.00 per month. The Court will not speculate as to a reasonable figure for use and occupancy.

docket.

SO ORDERED.

DATE: 3·29·23

Jonathan J. Kane

Jonathan J. Kane, First Justice

OR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-240

JASNIA REALTY, LLC,

Plaintiff,

v.

GLADYS ORTIZ,

Defendant.

ORDER

After hearing on March 30, 2023, on the plaintiff landlord's motion for injunctive relief at which the landlord appeared through counsel and the defendant tenant appeared *pro se,* the following order shall enter:

1. The landlord's motion for an order that the tenant immediately restore the electric service to her dwelling and not reside there until same is accomplished is allowed.

2. The tenant was able to meet with the Tenancy Preservation Program (TPP) which reported to the court that they spoke with Eversource and Catholic Charities and anticipate the electric service being restored by the end of business hours tomorrow, March 31, 2023.
3. By agreement of the tenant, the landlord can change the lock to the tenant's unit if the electric is not restored by 5:00 p.m. on March 31, 2023. If the locks are changed, they will either be changed back or a new key will be provided immediately upon verification that the electric utility is restored.

So entered this 30th day of March, 2023.

Robert Fields, Associate Justice

CC: Tenancy Preservation Program (Carmen Morales, Program Director)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-CV-0387

DANIEL OQUENDO and KEYSA COLON,
Plaintiffs,

v.

ARROW PROPERTIES, INC. and STEPHEN BOSCO,
Defendants.

ORDER ON PLAINTIFFS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR NEW TRIAL

This matter is before the Court on Plaintiffs' Motion for Judgment Notwithstanding the Verdict or for a New Trial.

By way of background,[1] Plaintiffs moved into 180 Walnut Street, Apt. 5, Holyoke, Massachusetts (the "Premises") on or about October 1, 2015. Prior to moving into the apartment, they entered into a written Tenancy at Will agreement with Defendants dated September 22, 2015 (the "rental agreement"). The rental agreement prohibits dogs.

On October 6, 2017, Mr. Oquendo adopted a mixed breed dog named Kaiser. Prior to adopting the dog, Mr. Oquendo did not ask Mr. Bosco to waive the no-dogs provision. Toward the end of May 2018, Mr. Oquendo was served with a notice terminating his tenancy because he had violated the no dog policy in the rental agreement. In early July 2018, Mr. Bosco initiated eviction proceedings against Plaintiffs. On or about July 6,

[1] The background facts are drawn from the parties' Joint Pre-Trial Memorandum.

2018, Mr. Oquendo provided Mr. Bosco with a letter from a Physician's Assistant requesting that Mr. Oquendo be permitted to keep Kaiser, noting that Mr. Oquendo suffers from [redacted]

At the first court date in the eviction proceedings on July 19, 2018, Plaintiffs completed an answer form in which they stated that Mr. Oquendo has [redacted] That day in court, the parties entered into an Agreement of the Parties whereby Mr. Oquendo agreed to provide a letter from [redacted] regarding his need for the dog and agreed to allow Mr. Bosco to have Kaiser evaluated, at Mr. Bosco's expense, by a Certified Canine Behavior Consultant of Mr. Bosco's choosing.

On August 7, 2018, Kaiser underwent a full evaluation in Plaintiffs' apartment. On August 21, 2018, the consultant issued a report in which she concluded that Kaiser "is a relaxed, social dog - comfortable with strangers. He did not show any concerning behaviors, abnormal traits or aggression." As per the Agreement of the Parties dated July 19, 2018, Mr. Oquendo provided Mr. Bosco with a letter from his therapist dated August 28, 2018. The therapist opined that "Mr. Oquendo needs his dog for [redacted]"

In October 2018, with Mr. Oquendo's consent, Mr. Bosco's attorney took the deposition of Mr. Oquendo's [redacted]. On November 29, 2018, Mr. Oquendo's attorney was informed by Defendants' attorney that Defendants had denied Plaintiffs' request for a reasonable accommodation. In April 2019, after learning that Kaiser is not a pit-bill mix, Mr. Bosco dismissed Defendants' claim for possession in the eviction proceedings. In

a letter to Plaintiffs' attorney dated June 13, 2019, Defendants' attorney confirmed that Defendants were allowing Mr. Oquendo to keep his dog.

After a three-day trial, the jury returned a verdict for Defendants on Plaintiffs' claims for disability-related discrimination. After judgment entered, Plaintiffs filed a timely motion for judgment notwithstanding the verdict pursuant to M.R.Civ.P., Rule 50(b) or, in the alternative, that the Court grant Plaintiffs a new trial.

Legal Standard. The test applied to an M.R.Civ.P. 50(b) motion for judgment notwithstanding the verdict is the same as that applied to a motion for directed verdict. The court will not grant a motion for a directed verdict or a motion for judgment notwithstanding the verdict if "anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn in favor of the [prevailing party]." *Turnpike Motors, Inc. v. Newbury Group, Inc.*, 413 Mass. 119, 121 (1992), quoting *Dobos v. Driscoll*, 404 Mass. 634, 656 (1978), quoting *Poirier v. Plymouth*, 374 Mass. 206, 212 (1978). The Court shall not weigh the credibility of witnesses or consider the weight of the evidence. "However, a party may not avoid a directed verdict or entry of judgment notwithstanding the verdict against him if any essential element of his case rests upon a 'mere scintilla' of evidence." *Stapleton v. Macchi*, 401 Mass. 725, 728 (1988) citing to *Hartmann v. Boston Herald-Traveler Corp.*, 323 Mass. 56, 59 (1948). The Court is mindful that a judge and a jury viewing the same evidence can make different factual findings and/or draw different inferences from the evidence presented. In those circumstances where the judge and jury view the evidence differently, the jury's verdict should not be overturned if that verdict can be supported by any reasonable and plausible view of the evidence.

See *Alholm v. Wareham*, 371 Mass. 621, 627 (1976) (inferences must be based on 'probabilities rather than possibilities' and not the result of 'mere speculation and conjecture').

A different test is applied when considering a motion for new trial whether it be considered pursuant to M.R.Civ.P. 50(b) or Rule 59. "The grant or denial of a motion for 'a new trial on the ground that the verdict is against the weight of the evidence rests in the discretion of the judge' . . . [T]he judge should only set aside the verdict if satisfied that the jury 'failed to exercise an honest and reasoned judgment in accordance with the controlling principles of law . . .'" *Turnpike Motors, Inc. v. Newbury Group, Inc.*, supra. at 127 (1992), quoting *Robertson v. Gaston Snow & Ely Bartlett*, 404 Mass. 515, 520 (1989), cert. denied, 493 U.S. 894 (1989). "A judge should exercise this discretion only when the verdict 'is so greatly against the weight of the evidence as to induce in his mind the strong belief that it was not due to a careful consideration of the evidence, but that it was the product of bias, misapprehension or prejudice.'" *Turnpike Motors, Inc.*, supra. at 127, quoting *Scannell v. Boston Elevated Ry.*, 208 Mass. 513, 514 (1911). When ruling on a motion for a new trial the court must consider the credibility of witnesses and weigh conflicting evidence. *Robertson v. Gaston Snow & Ely Bartlett*, supra. at 520-521.

Motion for judgment notwithstanding the verdict. First, the Court applies these legal principles to determine whether Plaintiffs are entitled to judgment notwithstanding the verdict rendered by the jury. Plaintiffs contend that Defendants' refusal to grant Mr. Oquendo an accommodation for ten months mandates entry of judgment in favor of Plaintiffs. Plaintiffs rely on HUD's interpretation of the Fair Housing Act, which precludes refusing an accommodation request on mere speculation about the dangerousness of a

breed or possible damage it could cause. HUD's interpretation of the Fair Housing Act commands considerable deference. See *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 107 (1979).

This case presents more than a simple refusal to grant an accommodation based on speculation about the characteristics of a particular breed, however. Mr. Bosco testified at length about the steps he took to have Kaiser evaluated and to ensure that the letters Mr. Oquendo provided from a health professional were legitimate. The jury could reasonably draw the inference that Mr. Bosco was acting in good faith to ensure that allowing Kaiser to remain in the Premises with his permission would not cause undue financial or administrative burdens in the form of increased liability risk, and that under the circumstances, the ten-month period between the request for accommodation to granting the accommodation was not unreasonable.

The jury could also reasonably infer that Mr. Oquendo was not entitled to judgment because he never removed Kaiser from the Premises, even after receiving the notice to quit. Although Mr. Oquendo testified about the emotional distress he suffered at the thought of losing Kaiser or his apartment, he gave the jury a variety or reasons to conclude that his emotional turmoil was the result of other factors in his life, including the dissolution of his relationship with co-Plaintiff Colon.

Had Defendants not ultimately granted Mr. Oquendo's request for accommodation, or had Mr. Oquendo removed Kaiser from the Premises during the period that Defendants were assessing the risk of granting his accommodation request, the outcome of this motion could be different. Given the totality of the circumstances, however, the Court

believes that the jury was able to draw a reasonable inference in favor of Defendants and it is unwilling to disturb the verdict.

Motion for new trial. Next, the Court applies the legal principles cited herein to determine whether Plaintiffs are entitled to a new trial. Although the weight of the evidence might have led this Court to a different result, the jury's verdict does not appear to be the product of bias, misapprehension or prejudice. This judge believes that the jury considered the evidence and, after deliberation, rendered a verdict that was honest and reasoned.

Accordingly, Plaintiffs' motion for judgment notwithstanding the verdict or for a new trial is hereby DENIED.

SO ORDERED.

DATE: 3/31/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-4679

HIPPOLYTE DANTZIE,

Plaintiff,

v.

KIMBERLY GARNER,

Defendant.

ORDER

This matter came before the court on March 31, 2023, for trial, at which the landlord appeared with counsel and the tenant appeared *pro se*. After consideration of the evidence introduced at trial, the following findings of facts, conclusions of law, and order of judgment shall enter:

1. **Background:** The plaintiff, Hippolyte Dantzie (hereinafter "landlord"), owns a two- family house and rents one of the units with an address of 552 Union Street,

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2nd floor, Springfield, Massachusetts (hereinafter, "premises") to the defendant, Kimberly Garner (hereinafter, "tenant").

2. The tenant has lived at the premises since March 2020, with a monthly rent of $1,050. In October 2022, the landlord terminated the tenancy with a rental period for-cause notice to quit and there after entered this summary process action. The tenant filed an Answer with defenses and counterclaims.
3. **The Landlord's Claim for Possession and for Use and Occupancy:** The basis for the eviction is the repeated late-or-non-payment-of rent. The tenant has a history of going for many months at a time of non-payment of rent. With the assistance of RAFT funds, the tenant has ultimately paid the rent but then fallen behind again and again. The most recent period of time includes from May 2022 through the month of trial, March 2022.
4. The landlord credibly testified that the tenant's failures over the duration of her tenancy to pay her rent has caused him financial hardship and significant stress.
5. The tenant's defense to the landlord's claim of repeated non-or-late rent payments is that it's the landlord's fault that he hasn't been paid, alleging the landlord's not participating in another round of RAFT funds. Though this may be a proper defense to assert, the tenant did not meet her burden of proof that the landlord refused to participate in the RAFT funding protocols.
6. Accordingly, the landlord met his burden of proof on his claim for cause and that he properly terminated the tenancy for repeatedly failing to pay rent, use, and occupancy in violation of the lease terms between the parties. The amount of

unpaid rent through the month of the trial (March 2023) totals **$11,550** (representing eleven months @1,050).

7. **The Tenant's Defense that the Landlord Failed to Accompany the Notice to Quit with required Chapter 257 Attestation**: The tenant did not meet her burden of proof that the notice to quit was served without the *Attestation Form to Accompany Residential Notice to Quit* as required by Chapter 257 of the Acts of 2020. The notice to quit in evidence has the attestation attached with a return of service by the sheriff that it was served along with the notice to quit, establishing *prima facia evidence* and the tenant's testimony was not sufficient to move the court to find that it was not so served.
8. **The Tenant's Security Deposit Claim:** The parties agree that the tenant gave the landlord a security deposit in the amount of $1,050 at the commencement of the tenancy. The landlord was frank and honest about what he did with those funds upon receipt: He put them in a piggy bank in his home. As such, the landlord violated the security deposit laws at G.L. c.186, s.15B and forfeited his rights to retain those funds. The landlord also failed to credit the tenant any interest on the deposit for the entirety (three years) of her tenancy.
9. The court treats the tenant's Answer served on February 12, 2023 (and filed on February 13, 2023) as a demand for the return of the security deposit. See, *Castenholdz v. Caira*, 21 Mass. App. Ct. 758 (1985). In accordance with G.L. c.186, s.15B (7), the tenant shall be awarded three times the security deposit plus interest at the rate of 5% totaling **$3,307.50** (representing the deposit of $1050 X 3 plus 5% interest of $52.50 per year for three years).

10. **The Tenant's Claim of Breach of Quiet Enjoyment:** Within a few months of taking occupancy, the tenant complained to the landlord about rodent and cockroach infestation. She informed the landlord that it was particularly bad because her and her children suffering from Asthma. After the landlord failed to properly address this significant problem, and as it became worse, the tenant contacted the City of Springfield Code Enforcement which inspected in July 2020. The city cited the landlord for infestation and other conditions of disrepair. Thereafter, the landlord failed to properly address the infestation and other problems and even though the city reinspected and consistently cited the landlord, he failed to remedy these problems and the city filed a Code Enforcement action in the court in December 2020.

11. The landlord's ultimate compliance with properly exterminating for rodents and cockroaches was the problem remedied. Additionally, it took 15 months after the city first cited the landlord for infestation for the city to dismiss its code enforcement action.

12. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102, 431 N.E.2d 556, 565 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *AlZiab v. Mourgis*, 424 Mass. 847, 851, 679 N.E.2d 528, 530 (1997). The court finds that the landlord's failure to more promptly and adequately remedy the infestation at

the premises violated the tenant's covenant of quiet enjoyment and G.L. c.186, §14 and hereby award the tenant damages equaling three months' rent for this claim of breach of quiet enjoyment, totaling ($1,050 X 3) **$3,150**.

13. **The Tenant's Separate and Distinct Claim of Breach of Quiet Enjoyment:** The landlord also violated G.L. c186, s.14 by failing to furnish heat to the premises, which became part of the city's code enforcement matter in which the landlord was ordered to provide alternate housing of the tenant and her family in a hotel until the heat was restored/repaired. See Order dated December 18, 2020 in Code Enforcement Action No. 20-CV-713.
14. Failure to furnish heat is a separate prong of the quiet enjoyment law at G.L. c.186, s.14 upon which the court shall award a separate damage award of three months' rent totaling **$3,150**.
15. **The Tenant's Consumer Protection Claim:** The tenant's claim that the "late fee" provision of the lease between the parties violates G.L. c.93A, more specifically 940 CMR 3.17 (6)(a) is correct. The lease clause's accrual of late charges starting on the eleventh day after it is due ($25) and then $10 additional for each day it "remains unpaid" violates the law which prohibits the law which only allows late fees for rent that is 30 days overdue. Having not proven any actual damages for this lease clause, the court shall award the tenant **$100** for this violation, and shall enjoin the landlord from using such a clause in his leases in the future or enforcing this clause in any existing lease.
16. **Conclusion and Order:** Based on the foregoing, judgment shall enter for **possession** for the landlord plus **$1,842.50 plus court costs and interest**. This

amount represents the award to the landlord of $11,550 MINUS the amount awarded the tenant totaling $9,707.50.

So entered this 3rd day of April, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0355

ISANDRA CUBA,

PLAINTIFF

v.

KAREENA WILLIAMS,

DEFENDANT

ORDER TO APPEAR

This case came before the Court on April 4, 2023 for a hearing on Plaintiff's motion for repairs. Only Plaintiff appeared. After hearing, the following order shall enter:

1. The motion is continued to **April 12, 2023 at 9:00 a.m.**
2. Defendant Kareena Williams is ORDERED TO APPEAR at the next court date to show cause why she should not have to make further repairs at 109 Wellington Street, 1st Floor, Springfield, Massachusetts (the "Premises").
3. The City of Springfield Code Enforcement Department shall provide to the Court all inspection reports for the Premises from May 1, 2022 to the present.
4. Plaintiff shall have this order served by a constable or sheriff forthwith and shall provide the Court with a return of service at the next hearing.

SO ORDERED.
DATE: 4.4.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

22 W.Div.H.Ct. 114

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2778

CCM PROPERTIES GROUP, LLC,

PLAINTIFF

v.

REBECCA JOSEY AND
CHRISTOPHER JOSEY,

DEFENDANTS

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

This summary process case came before the Court on March 31, 2023 for an in-person bench trial. Plaintiff and Defendant Christopher Josey appeared without counsel. Defendant Rebecca Josey is no longer in possession of the premises. Plaintiff seeks to recover possession of 9 Bradford Drive, Apt. 4, Greenfield, Massachusetts for non-payment of rent.

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

Plaintiff established its prima face case for possession without any objection by Mr. Josey. Mr. Josey did not file an answer, nor did he raise any defenses at trial. He acknowledges that he has to leave but has nowhere to go with his 9-year old daughter. The amount of unpaid rent at the time of trial today is $10,450.00.

22 W.Div.H.Ct. 115

After hearing, the following order shall enter:

1. Judgment shall enter for Plaintiff for damages and $10,450.00 in damages, plus court costs.
2. Execution may issue upon Plaintiff's written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 4/5/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-CV-572

CITY OF SPRINGFIELD CODE ENFORCEMENTT DEPARTMENT,

Plaintiff,

v.

DASHA MILLER, as TRUSTEE OF 197-199 MASSACHUSETTS AVENUE REALTY TRUST (owner),

Defendant.

ORDER

After hearing on February 24, 2023, on the defendant's motion to dismiss the case, the following order shall enter:

1. As a preliminary matter, the parties stipulated that Dasha Miller has replaced Lance Chavin as the Trustee of the trust that owns the subject premises.

22 W.Div.H.Ct. 117

2. The defendant argues that the case should be dismissed because it has completed the work cited but is unable to obtain a permit for said work because it owes property taxes to the city.
3. The city's actions, in not allowing permits to be pulled for properties upon which taxes are outstanding, appears to be in accordance with Chapter 229 Licenses and Permits of its Ordinances.
4. As such, the motion to dismiss is denied without prejudice.

So entered this 5th day of April, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0242

ARACELIS DELGADO,
PLAINTIFF

v.

SPRINGFIELD HOUSING AUTHORITY,
DEFENDANT

ORDER

This case came before the Court on April 4, 2023 for a hearing on Plaintiff's request for a temporary restraining order. Both parties appeared, Defendant through counsel and Plaintiff self-represented.

After taking testimony, the Court finds that the City of Springfield Code Enforcement Department inspected the subject premises and issued a single citation related to the presence of roaches. Defendant is in the process of treating for roaches, and Plaintiff acknowledges that her unit is getting treated. The treatments shall continue until at least the next court date. The Code Enforcement Department has a reinspection for evidence of roaches scheduled for April 25, 2023 and Defendant shall provide a copy of the inspection report at the next hearing.

Plaintiff complains about strong odors related to the plumbing; the City of Springfield's plumbing inspector visited the premises and found no evidence of foul odors or plumbing problems. Plaintiff insists that the odors come and go and that

22 W.Div.H.Ct. 119

more needs to be done to address the problem. The Court orders that the City's plumbing inspector reinspect Plaintiff's unit prior to the next court date, and investigate whether there are defects in the building's plumbing system that could be leading to foul odors emanating into Plaintiff's unit.

Plaintiff asks the Court to order Defendant to transfer her to a different accessible unit. Defendant has already placed her on the wait list for such a unit, so no further Court order is necessary at this time.

The parties shall return for further hearing on **May 5, 2023 at 9:00 a.m.** The legislative fee shall be waived.

SO ORDERED.

DATE: 4.6.23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-CV-0646
GMC PROPERTY MANAGEMENT, LLC, PLAINTIFF v. ERNESTINA WOODARD, DEFENDANT	ORDER ON COMPLAINT FOR CIVIL CONTEMPT

This matter came before the Court on March 5, 2023 on Plaintiff's complaint for contempt. Only Plaintiff appeared.

The Court entered an order on September 20, 2022 granting Plaintiff access to Defendant's unit at 86 Powell Avenue, Springfield, Massachusetts (the "Premises") in order to make repairs required by the City of Springfield Code Enforcement Department. Defendant did not appear at either the previous hearing or the hearing today, and has refused access for repairs. After hearing, the evidence is sufficient to find Defendant in contempt of the September 20, 2022 order. As civil contempt is a proceeding used to compel compliance, the following order will enter:

1. No later than April 6, 2023, Plaintiff shall post the Premises with a notice for access on **Monday, April 10, 2023**. Defendant Woodard shall permit access at the appointed time and thereafter from day to day until the repairs are completed.

2. Plaintiff's agents may make peaceful entrance even if Defendant is not home or fails to answer the door. They shall not commit a breach of peace to gain entry, however, but shall instead seek further order from this Court.
3. Following completion of the repairs required by the City of Springfield, Defendant shall not unreasonably deny access for repairs so long as Plaintiff provides 48 hours' advance notice of its intent to enter.

SO ORDERED.

DATE: 4.6.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1641

INTERNATIONAL IMMOBILIARE, LLC, PLAINTIFF v. YAMILET ORTIZ TORRES, DEFENDANT	AGREED-UPON ORDER

This case came before the Court on April 4, 2023 for a hearing on Plaintiff's motions to amend the execution and to lift the stay on use of the execution. Both motions are continued pursuant to the terms of this order. The purpose of the continuance is to allow Defendant to pay the arrears of $2,085.00 (court costs have been paid).[1] After hearing, the following agreed-upon order shall enter:

1. Defendant will make the following payments:
    a. $500.00 on April 14, 2023;
    b. $500.00 on April 28, 2023;
    c. $1,100.00 (representing April rent) on May 5, 2023;
    d. $1,000.00 on May 26, 2023;
    e. $1,185.00 on June 5, 2023.
2. Upon receipt of the payments described herein, Plaintiff will file a

[1] This figure accounts for a payment of $1,000.00 Defendant made on April 1, 2023.

satisfaction of judgment and a stipulation of dismissal of the case.

3. If one or more of the payments are not made, Plaintiff may move to bring its motions forward for hearing.
4. If the case has not been dismissed and no motion to bring the case forward has been filed, the parties shall return for hearing on Plaintiff's motions on **June 8, 2023 at 9:00 a.m.**

SO ORDERED.

DATE: 4.6.23

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3490

KEVIN MALONE,
PLAINTIFF
v.
LORETTA GRANT,
DEFENDANT

ORDER

This matter came before the Court on March 9, 2023 on Plaintiff's motion for entry of judgment. Both parties appeared without counsel.

By way of background, in a court agreement dated December 19, 2022, the parties agreed that $7,420.00 in back rent and $182.76 in court costs was owed by Defendant. Way Finders paid these amounts in full. In the agreement, Defendant agreed to pay in full no later than the 5th of each month beginning in January 2023, and the case would remain open to ensure payment was made on time for January, February and March 2023.

Defendant made the January 2023 payment. She was late (and did not pay in full) for February 2023, and Plaintiff rejected the payment. Way Finders then sent Plaintiff a check for February 2023, and Plaintiff returned the payment to Way Finders because he simply wanted possession. He now claims that he is entitled to judgment because Defendant was late (and short) with the payment for February 2023.

22 W.Div.H.Ct. 125

Although Plaintiff is correct that, in the agreement, Defendant agreed to pay for February by the 5th of the month, the agreement did not say that Plaintiff could evict Defendant if she was late with a payment, only that he could file a motion asking the Court for permission to move forward with the eviction. Given that neither party anticipated that Way Finders would make the February payment, the Court finds that Defendant is excused from the obligation to pay February on time as she has no control over the timing of the Way Finders' payment.

The Court rules that once Defendant reached a balance of zero, which she did as of January 2023, she was entitled to have this non-payment of rent case dismissed. The only reason the case was not closed is because she agreed to keep it open to ensure timely payments through March 2023. In light of the unusual circumstances presented in this case in which Way Finders provided a stipend for one month after the due date for that month's payment had passed, the following order shall enter:

1. Defendant shall pay March 2023 rent within 24 hours of this hearing and she shall pay April 2023 rent by April 5, 2023.
2. Once rent for February 2023 is paid, either by Defendant or by Way Finders if Defendant reapplies for the assistance, the case shall be dismissed so long as Defendant is current with the rent when the February payment is made.[1]

SO ORDERED.

DATE: 4.6.23

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

[1] Nothing prevents Plaintiff from commencing a separate summary process action.

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0238

ANDREW RUP,	)	
	)	
PLAINTIFF	)	
v.	)	ORDER TO VACATE
	)	
MICHELLE FARIA AND STEPHEN FARR,	)	
	)	
DEFENDANTS	)	

This case came before the Court on March 31, 2023 on Plaintiff's request for an emergency order. Plaintiff appeared without counsel. Defendants did not appear after notice. Plaintiff seeks an order requiring Defendants to vacate his home at 26 King Phillip Ave., South Deerfield, Massachusetts (the "Premises").

Based on an affidavit signed under the pains and penalties and perjury, and upon Plaintiff's testimony today, the Court finds that Defendants are not tenants but merely licensees of Plaintiff. Plaintiff is Ms. Faria's ex-husband and they have a child in common. Plaintiff allowed Defendants to stay in his home temporarily in order to ensure that his daughter had a place to live after they were forced to leave their prior residence. Plaintiff has revoked the license and Defendants have failed to vacate. The Court rules that Plaintiff is entitled to an order requiring Defendants to leave his home now that he has terminated their license to stay there. After hearing, the following order shall enter:

1. Defendants must vacate the Premises no later than 1:00 p.m. on April 14, 2023.[1]
2. If Defendants fail to vacate as ordered, Plaintiff is entitled to consider them to be trespassers pursuant to G.L. c. 266, § 120 and to enlist the assistance of law enforcement to have them removed from the Premises. If Defendants have to be removed with the assistance of law enforcement and are unable to take their personal possessions with them, Plaintiff shall not dispose of said belongings without further order of this Court.

SO ORDERED.

DATE: 4.6.23

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

[1] The Court is providing time to allow Defendants to vacate in an orderly fashion and to seek a further Court order if necessary.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-211

EDITH AGUILAR-SANCHEZ,

Plaintiff,

v.

ABIGAIL LATORRE,

Defendant.

ORDER

After hearing on March 30, 2023, on the landlord complaint for access at which both parties appeared, the following order shall enter:

1. The landlord shall provide the tenant with at least 48-hours advance written notice when she requires access to the tenant's unit for repairs. Said notice shall provide a description of the anticipated work and the date and time for said access.
2. Any and all work that requires a license or a permit shall be effectuate in that manner.

22 W.Div.H.Ct. 129

3. The tenant shall not unreasonably deny access. If the proposed time and date is not convenient for the tenant, she must immediately inform the landlord of such and offer another time for access so that the need for access is not unduly delayed.

So entered this 10th day of April, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-801

HOLYOKE HOUSING AUTHORITY,

Plaintiff,

v.

MARITZA GONZALEZ,

Defendant.

ORDER

After hearing on March 30, 2023, on the landlord's motion for entry of judgment, at which the tenant did not appear, the following order shall enter:

1. The parties filed an Agreement with the court on January 25, 2023, in which the tenant was supposed pay her portion of use and occupancy, provide a copy of her tax returns to the landlord, and apply for RAFT.
2. The basis for the landlord's motion for entry of judgment is the tenant's failure to provide her tax returns.

22 W.Div.H.Ct. 131

3. The tenant having paid her use and occupancy for March 2023 and the court uncertain based on the record before it whether the tenant has filed for her taxes, the court shall continue the landlord's motion for the hearing date noted below.
4. This matter shall be scheduled for **April 13, 2023, at 9:00 a.m.** for hearing on the landlord's motion and for status. NOTE: This order, unfortunately, did not get sent to the parties until April 10, 2023. As such, the tenant may not have received sufficient notice to appear.

So entered this 10th day of April, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0226

PHILOMENAH NJOROGE,
PLAINTIFF

v.

SPRINGFIELD GARDENS,
DEFENDANT

ORDER FOR ACCESS AND REPAIR

After hearing on April 6, 2023, at which Plaintiff appeared and Defendant appeared through counsel, the following order shall enter:

1. Defendant shall substantially complete all repairs at Plaintiff's unit at 92 Woodside Terrace, Apt. 31, Springfield, Massachusetts (the "Premises") within a mutually agreeable three-day period.
2. Defendant shall place Plaintiff in a hotel with cooking facilities (or, in lieu of cooking facilities, Defendant shall pay Plaintiff a per diem of $80.00 for food) for the three days during which repairs will be made.
3. Because Plaintiff will be away from the Premises for the three days of work, Defendant's agents may come and go during that period without advance notice. Defendant must provide at least 48 hours advance notice outside of the three-day window.

SO ORDERED.

DATE: 4/10/2023

Jonathan J. Kane, First Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-2718

PEABODY WESTFIELD, L.P.,

Plaintiff,

v.

YAMILETTE L. MENDEZ,

Defendant.

ORDER

This matter came before the court for a status hearing on March 30, 2023, at which only the landlord appeared along with a representative from the Tenancy Preservation Program (TPP), and afterwards the following order shall enter:

1. This matter came before the court for trial on February 3, 2023, after which the court issued an order in which it ordered the parties to engage in a reasonable accommodations dialogue and to return to court for status.

22 W.Div.H.Ct. 134

2. This matter is referred to TPP and they are asked to reach out to the tenant forthwith. Time is of the essence in this matter as the landlord's counsel reports to the court that the tenant is alleged to have continued to cause new damage at the premises since the trial.
3. TPP is asked to work with the parties to assist them in a reasonable accommodations dialogue. Attorney Farber has agreed to provide TPP with the tenant's contact information.
4. Unfortunately, this order was not issued until April 10, 2023, and the tenant may not have sufficient notice for the hearing date noted below.
5. This matter shall be scheduled for **April 13, 2023, at 2:00 p.m.** at the Springfield Session of the court.

So entered this 10th day of April, 2023.

Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2508

PINE VALLEY PLANATION,
PLAINTIFF
v.
MARK BELL,
DEFENDANT

PRETRIAL ORDER

This cause-based summary process matter came before the Court on April 7, 2023 on various motions in advance of a jury trial scheduled to begin on May 1, 2023. Plaintiff appeared through counsel; Defendant appeared self-represented. By separate order, the Court is ordering the appointment of a temporary Guardian Ad Litem for Defendant. The following order shall enter with respect the various pending motions and other pretrial matters:

1. Both parties have signed and filed a jury waiver. Accordingly, the case will proceed before a judge beginning at 9:00 a.m. on May 1, 2023 in the Springfield session.
2. Because this eviction case was brought for cause, Defendants' counterclaims are hereby dismissed without prejudice.[1] Defendant may file claims against Plaintiff in a separate action in any court of competent

[1] The trial will be limited to Plaintiff's prima facie case for possession and Defendant's defenses to Plaintiff's claim for possession.

22 W.Div.H.Ct. 136

jurisdiction. Because Defendant's counterclaims are dismissed, Plaintiff's motion for summary judgment is denied as moot.

3. Defendant's motion to dismiss is denied. Plaintiff's claim set forth in the complaint is sufficient on its face to withstand a motion to dismiss. Defendant is not precluded challenging the complaint at trial.
4. Defendant's motion to compel Plaintiff to erect a wall on the property is denied without prejudice as it is not part of the Plaintiff's summary process action.
5. Discovery is closed, therefore Defendant's motions related to additional discovery are denied. If at trial Defendant believes he is hampered in his ability to present defenses because he did not receive documents or information in discovery that was requested from Plaintiff, he may request a suspension of the trial to obtain and review such documents or information.
6. Defendant's motion for change of venue is denied given that the jury demand has been waived and the subject matter of this trial streamlined to address only the possession claim.
7. No action will be taken at this time on Plaintiff's request for sanctions as a result of Defendant writing to two different judges (apart from the undersigned) about this case. Until the conclusion of the trial, Defendant is prohibited from communicating with any court or court officials except by motion filed in this court and copied to Plaintiff's counsel. Plaintiff may

renew its request for sanctions at the conclusion of the trial and the Court will at that time allow Defendant the opportunity to oppose the request.

8. The parties shall appear by Zoom at 2:00 p.m. on April 28, 2023 for a final pretrial conference. No pretrial memoranda are required. The purpose of the conference is to determine trial readiness and number of witnesses.

SO ORDERED.

DATE: 4/10/2023

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2508

PINE VALLEY PLANATION,

PLAINTIFF

v.

MARK BELL,

DEFENDANT

ORDER FOR APPOINTMENT OF A TEMPORARY GAL

This cause-based summary process matter came before the Court on April 7, 2023 on various motions, including Defendant's "motion of apology" following letters he wrote to a District Court judge and the Housing Court's Chief Justice discussing this case. Although the Court previously denied a request for the appointment of a Guardian Ad Litem ("GAL") for Defendant, upon further consideration, in light of Defendant's recent conduct, including the letters he sent to other judges, the Court determines that the appointment of a temporary GAL is necessary to secure the full and effective administration of justice. The stakes in this case for Defendant are significant: he is at risk of being evicted from a manufactured home he owns in a manufactured home community cooperative of which he is a shareholder.

Because of the complexity of this case and the potential forfeiture of assets of value, the following order shall enter:

1. A temporary GAL shall be appointed for Defendant. The appointment shall be made as soon as possible and shall expire at the conclusion of the bench trial which is scheduled to begin on May 1, 2023 in the Springfield session.

22 W.Div.H.Ct. 139

2. The GAL is authorized to meet with Defendant to assist him in understanding the practices and procedures of this Court as it relates to conducting a bench trial. The trial is limited to Plaintiff's prima facie case for possession and Defendant's defenses thereto. Accordingly, the GAL should review the Court file only insofar as it includes the notice to quit and the summons and complaint, and Defendant's answer.[1]
3. The GAL is not authorized to assist Defendant with respect to the counterclaims brought in this case, which have been dismissed without prejudice.
4. The GAL is not to act as Defendant's counsel. Although the GAL is invited to attend the trial, the GAL is not required to attend.
5. Defendant may not file any further motions without the GAL acknowledging his or her review of said motion by signing it.

SO ORDERED.

DATE: 4/10/2023

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

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

[1] The Court anticipates that by consulting with the GAL, Defendant will have the opportunity to present his defenses in an organized and efficient manner, which will assist the Court in ruling on the merits of the case.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0264

SPRINGFIELD GARDENS, LP,

PLAINTIFF

v.

JOSEPH RIVERA,

DEFENDANT

ORDER FOR ACCESS

This case came before the Court on April 10, 2023 on Plaintiff's motion for emergency injunctive relief. Plaintiff appeared through counsel and Defendant failed to appear. Based on the facts set forth in the Verified Complaint, the Court finds that Plaintiff is entitled to injunctive relief as follows:

1. Defendant shall not unreasonably deny access to Plaintiff to inspect and make necessary repairs at his residence at 68 Osgood Street, Apt. 2L, Springfield, Massachusetts (the "Premises") provided that Plaintiff gives at least 24 hours' advance written notice.
2. When Plaintiff's agents come to inspect and make necessary repairs, Defendant must ensure that all dogs have been removed from the Premises or, in the alternative, are restrained in an enclosed space (such as a dog crate or a separate room with a closed door.
3. The legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: 4.10.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2546

BILINGUAL VETERANS OUTREACH CENTER OF MA, PLAINTIFF v. ARTHUR SAVOY, DEFENDANT	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This cause-based summary process case came before the Court for a bench trial on February 16, 2023.[1] Both parties appeared through counsel. Plaintiff seeks to recover possession of a residential dwelling unit located at 40 Cass Street, Apt. 203, Springfield, Massachusetts (the "Premises") from Defendant.

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

Plaintiff operates a non-profit housing agency serving military veterans and other low-income individuals. The property has 20 single-occupancy apartments. Defendant is a 65-year old individual with a project-based rental subsidy through the Massachusetts Rental Voucher Program ("MRVP"). He moved into the Premises in

[1] Each party submitted post-trial proposed findings of fact and rulings of law, which delayed the publication of this decision.

22 W.Div.H.Ct. 142

August 2021 pursuant to a MRVP Model Lease (the "Lease") with a term ending on July 31, 2022. The Lease contains a provision for automatic renewal unless, at least 60 days prior to the anniversary date of the Lease, the Lease is terminated by one of the parties. By notice dated May 23, 2022, a date that is more than 60 days prior to the anniversary date of the Lease, Plaintiff informed Defendant that the Lease would not be renewed at the end of the term.

Pursuant to the terms of the Lease, Plaintiff[2] can only terminate (or, in this case, not renew) the Lease for certain enumerated reasons; in relevant part, these reasons are "Interference with the rights of other tenants," "posing a threat to the health or safety of other tenants, the Owner, or Owner's Agents," and "Substantial breach of any material convent or condition of this Lease, including all attachments." In its notice to quit, Plaintiff cited the reason for termination as "ongoing refusal and failure to abide by the rules and regulations at the Cass Street residence ... [s]pecifically, your repeated use of alcohol and your violent and disturbing behavior." The property's rules, which came into evidence without objection, allow "responsible drinking of alcohol ... only in your apartment" and require residents "not [to] make loud noise ... or engage in acts which will disturb the other tenants."

Although neither the notice nor the summons and complaint recite specific instances of misconduct, the Court finds that, given the numerous communications between management and Defendant in the months leading up to the date of the

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[2] The Lease uses the term "Owner" who is defined as Puerto Rican Veterans Association of MA, Inc. Because at trial neither party raised the issue that the name of the Owner is not the same as the name of Plaintiff, the Court declines to raise this issue *sua sponte*.

notice, including Defendant's agreement in September of 2021 to [redacted], Defendant was well aware of the reason for the non-renewal of his Lease. In light of all of the circumstances, the Court rules that the notice of non-renewal of the tenancy is a legally adequate lease termination notice and that Defendant had sufficient notice of Plaintiff's claims to prepare a defense in this case.

In support of its claim for possession, Plaintiff presented evidence of numerous confrontations and certain physical altercations between Defendant and another tenant, Paul Carvalho. Although the two tenants provided conflicting testimony related to their interactions, the Court found Defendant's testimony to lack credibility. [redacted].

Furthermore, the Court finds that Defendant acted aggressively and used profane language in berating Mr. Carter on at least one occasion in November 2021 and that Defendant acted aggressively and belligerently to staff, including the Executive Director of the program, on June 22, 2022. Although many of the allegations upon which Plaintiff rests its case were made by Mr. Carvalho, the Court finds that, even without entirely crediting Mr. Carvalho's testimony, the weight of the evidence supports Plaintiff's allegations that Defendant materially violated provisions of the Lease by interfering with the rights of other tenants, posing a threat to the health or safety of other tenants and management, and violating the rule that limits

tenants to drinking responsibly in their units.[3]

Defendant's defenses and counterclaim rely primarily on his blaming Mr. Carvalho for the incidents in question and accusing Mr. Carvalho of harassing and assaulting him. Because of Defendant's lack of credibility, his redirection of blame and his allegations against Mr. Carvalho are unconvincing, and therefore his defenses and counterclaims fail. To the extent that his consumption of alcohol is the cause of the disruptive behavior, [redacted].

To the extent that Defendant contends that Plaintiff failed to preserve surveillance videos that could show that he was not the instigator with respect to the incidents with Mr. Carvalho, the Court finds the surveillance videos that were introduced into evidence to be of minimal probative value. The Court therefore infers that any other videos that might have been offered into evidence would likewise be of limited relevance. The Court finds sufficient evidence through the testimony of the witnesses to support its conclusion that Defendant's behavior constitutes a material violation of his Lease.

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[3] [redacted].

Accordingly, based on the findings of fact, and in light of the governing law, the Court enters the following order:

1. Judgment for possession shall enter in favor of Plaintiff.
2. In order to allow Defendant time to relocate without losing his rental subsidy, no execution shall issue prior to July 1, 2023 provided that Defendant does not cause any substantial disturbances at the property in the interim. For purpose of this order, a substantial disturbance is any conduct by Defendant, alcohol-related or not, that interferes with the peaceful enjoyment of other tenants, and any verbal or physical abuse, harassment or intimidation of residents, employees or others legally present at the property.
3. If Plaintiff alleges a violation of the conditions of the stay, it may file a motion to lift the stay, providing Defendant's counsel with details of the alleged violation.

SO ORDERED.

DATE: 4.11.23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0044

MANINDER KAUR, PLAINTIFF v. SAMANTHA BAGHDADI A/K/A SAMANTHA MARY BERNIER, DEFENDANT	)	ORDER FOR ISSUANCE OF CAPIAS

This matter came before the Court on April 11, 2023 on Defendant's emergency request for injunctive relief. Defendant's apartment at 704-706 Sumner Avenue, 3rd Floor, Springfield, Massachusetts (the "Premises") has been condemned and she can no longer occupy it. She seeks alternative housing and assurances that her property will be secure in the Premises. Plaintiff did not appear for the hearing today.[1] After hearing, the following order shall enter:

1. A capias for civil arrest shall issue to compel Plaintiff to appear at the Western Division Housing Court in Springfield on **Thursday, April 13, 2023 at 11:00 a.m.** to answer to Defendant's request for an order for alternative housing.
2. Plaintiff may not, without Court order, move any belongings in the Premises nor may he change the locks.

[1] Defendant appeared with another adult occupant who resides in the Premises but who was not named in the summary process summons and complaint.

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3. Defendant is permitted to return to the Premises during daylight hours to retrieve her belongings but she may not reside there until further Court order.

SO ORDERED.

DATE: 4/11/2023

Jonathan J. Kane, First Justice

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-4831

SOUTH MIDDLESEX NON-PROFIT HOUSING CORPORATION, PLAINTIFF v. REBECCA O'CONNOR, DEFENDANT	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This cause-based summary process case came before the Court for a bench trial on March 7, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Prior to the commencement of trial, the Court denied Defendant's oral motion to dismiss for a defective notice to quit and allowed Defendant's oral motion for a late answer. Upon reviewing the answer, Plaintiff elected to proceed with trial the same day. Plaintiff seeks to recover possession of a single-room occupancy apartment located at 1509 North Main Street, #3, Palmer, Massachusetts (the "Premises") from Defendant based on violations of the rental agreement.

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

Defendant participates in a program for formerly homeless individuals operated by Open Pantry (the "Program"). Residents must comply with the Program

Participation Agreement ("PPA"), which is attached to the rental agreement. Residents pay a percentage of their income as an occupancy/program fee. Regardless of the nomenclature, the fee is equivalent to rent, and Defendant's share of the rent is $109.00.

Plaintiff sent Defendant a document entitled "Disciplinary letter to vacate unit" dated October 24, 2022, which the Court interprets as a letter essentially informing Defendant that she has been terminated from the Program, and, therefore, from her housing. Plaintiff then had Defendant served with a "Notice to Quit" dated October 27, 2022, which the Court views as the legal document sent to Defendant as the required first stage of eviction proceedings.

The Court finds that both documents were served upon Defendant and Defendant received them. The October 24, 2022 letter informs Defendant that she was not following up with required meetings, was refusing to complete detox, was failing to remain sober while in the Program, was harassing other residents and was threatening staff members. The October 27, 2022 notice to quit does not give any reasons for the termination of the tenancy and, but for the October 24, 2022 letter, would be insufficient as a matter of law to apprise the Defendant of the basis for the termination. Because these letters were so close in time to one another, however, and because they both cite the same rules violations, the Court finds that these two letters, read together, clearly inform Defendant of the basis of the termination of her tenancy and provide her with a sufficient basis to mount a defense to eviction.

The adequacy of notice is only the first step in determining whether Plaintiff established its prima facie case for possession. Turning to the merits of Plaintiff's case, the Court finds that, in late September 2022, Defendant was acting erratically and disrupting the livability of the property. She had explosive confrontations with other residents regarding the common refrigerator and freezer and her food. On October 18, 2022, Defendant sent a rambling and angry text message to her case manager, accusing her and others of numerous bad acts using aggressive and foul language. In the same time frame, she was antagonizing and harassing the property manager. The Court finds that the behavior in question constitutes a material violation of the rental agreement and the PPA, and that it occurred in close proximity to the letters of termination.[1]

In her defense, Defendant primarily claims that Plaintiff's decision to terminate her from the Program and subsequently terminate her right to tenancy was a reprisal for her filing a lawsuit against Plaintiff and calling the Massachusetts Bureau of Substance Addiction Services ("BSAS"), the state agency that oversees the programs such as the one Plaintiff operates. Regarding the lawsuit,[2] the Court finds that Defendant filed an application for injunctive relief in August 2022 against the property manager, a former high school friend. In her affidavit, she claimed that the

[1] The Court was not persuaded by the parade of witnesses who testified about the various reasons they wanted Defendant to leave the Premises. Their accounts of Defendant's misbehavior took place primarily between February 2022 and July 2022, dates that are too remote to support the allegations in the October 24, 2022 termination letter, and in some instances, the behavior was entirely unrelated to her tenancy.

[2] The Court takes judicial notice of Western Division Housing Court Docket No. 22H79CV000557.

property manager was acting improperly toward her, although she could not articulate the particular relief she sought. Defendant failed to appear in Court for the hearing on her application and the case was dismissed. With respect to the BSAS complaint she claims to have made, Defendant provided no evidence that she contacted BSAS and offered only inadmissible hearsay evidence as to what BSAS did in response to her call.

Throughout the trial, Defendant's testimony was not credible. The Court does not believe that she "just stays in her room and doesn't bother anyone" as she claimed. Nor does the Court believe that the property manager and others in management have a "conflict of interest" because they want to remove her from the Program. There is simply no credible evidence that anyone acting on behalf of Plaintiff seeks to terminate her tenancy for any reasons other than those presented at trial. The Court finds that Defendant failed to establish a defense of retaliation or a claim of reprisal and further finds that she offered no other evidence that could constitute a legal defense to Plaintiff's claim to possession.

Although this case was brought for cause, the Court finds that Defendant has not been paying her rent (fees) of $109.00 per month. As of the date of trial, she owes $1,616.00. Defendant did not dispute this figure or otherwise assert a defense to payment. Accordingly, based on these findings and in light of the governing law, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession and $1,616.00 in damages, plus court costs.

2. Execution shall issue by application ten days after the date the judgment is entered on the docket.
3. Use of the execution shall be stayed through May 15, 2023, provided that Defendant does not cause any substantial disturbances at the property in the interim. For purpose of this order, a substantial disturbance is any conduct by Defendant that significantly interferes with the peaceful enjoyment of the tenancies of other residents or any verbal or physical abuse, harassment or intimidation of employees or others legally present at the property. If Plaintiff alleges a violation of the conditions described herein, it may file and serve a motion to lift the stay, including in the motion all relevant details of the alleged violation.

SO ORDERED.

DATE: 4-11-23

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-190

BANK OF NEW YORK MELLON,

Plaintiff,

v.

ALTON KING, JR.,

Defendant.

ORDER

After hearing on April 4, 2023, on Grace Ross' Motion to Intervene, at which both parties and Ms. Ross appeared by Zoom, the following order shall enter:

1. Ms. Ross' motion seeks intervention on her own behalf and as a representative of "the people" due her concerns regarding the potential limitations on the "peoples'" constitutional rights she believes were created by the court's March 21, 2023, Order (hereinafter, "Order").

2. Ms. Ross highlighted several aspects of the Order that she believes unconstitutionally limits her and "the peoples'" rights to free speech and to assembly.
3. After hearing from Ms. Ross in oral argument in furtherance of her motion to intervene, and after hearing from each of the parties, the court had the parties meet with a Housing Specialist pursuant to the Uniform Rules on Dispute Resolution Rule 6(b).
4. After meeting with the Housing Specialist, the parties and Ms. Ross reported on the record agreed-upon suggested edits to the Order.
5. Specifically:
    a. the word "premises" in the last sentence of Paragraph 3 to say "property" instead;
    b. The word "premises" in Paragraph 6 to say "subject property" instead;
    c. The term "subject premises" in the first sentence of Paragraph 10 be replaced with "building" and that the word "peaceably" be added to the second sentence be inserted prior to the word "present".
    d. That a sentence be added to Paragraph 4 stating: The plaintiff must ensure that the sheriff file with the court a return and any other document required by G.L. c.239, s.3 and s.4.
6. These agreed upon suggested changes shall now be incorporated into the Order.
7. Further, treating the motion to intervene as an opportunity to further edit the Order for clarity, it shall be known that nothing in the Order shall be construed to limit peaceful assembly on any and all public ways near the subject property nor to limit

those present at the property or on a public way from videotaping (including by cell phone) the events unfolding at the property during the levy on the execution.

8. Given these edits and additions to the Order, the motion to intervene is deemed moot and hereby denied.

So entered this 12th day of April, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2932

JJJ17 LLC, PLAINTIFF v. TERRELL BROWN, DEFENDANT	)	SUMMARY PROCESS APPEAL BOND ORDER

This post-foreclosure summary process case came before the Court on April 11, 2023 for a hearing to set or waive the appeal bond pursuant to G.L. c. 239, §§ 5 and 6. Plaintiff appeared with counsel. Defendant failed to appear after notice of the event was sent by the Court. The subject property is located at 52 Stockman Street, Springfield, Massachusetts (the "Premises").

Judgment for possession of the Premises entered in favor of Plaintiff on March 9, 2023. Defendant filed a notice of appeal on March 19, 2023. Defendant did not file a financial affidavit prior to the appeal bond hearing, and, by virtue of his failure to appear, the Court has no evidence from which to determine whether he is entitled to a bond waiver based on indigency as set forth in G.L. c. 261, § 27A. Accordingly, Defendant's motion to waive the appeal bond is denied.[1]

[1] Because the Court does not find Defendant to be indigent, it need not reach the question of whether he has a non-frivolous defense.

At the hearing today, based on the testimony of Plaintiff's witness, who the Court finds competent to testify about comparable rentals in the local area, the Court finds that the fair rental value of a three-bedroom unit in Springfield is between $1,295.00 and $1,550.00.[2] The Court finds it relevant that Defendant has made no payments of use and occupancy since Plaintiff purchased the Premises in May 2022, and given the indeterminable length of an appeal, Plaintiff likely will not regain possession for many months. Plaintiff intends to sell the Premises once it is vacant; the other rental unit in this two-family home is vacant, so Plaintiff will receive no income for this property for so long as Defendant is in possession. Plaintiff has a mortgage on the property and pays insurance and real estate taxes despite receiving no income from Defendant.

In determining an appropriate use and occupancy figure to apply here, the Court applied the factors identified in *Davis v. Comerford*, 483 Mass. 164 (2019), and finds the factors described in the preceding paragraph to the be most relevant. After balancing all of the factors before it, the Court concludes that the appropriate amount of use and occupancy is $1,350.00 per month. Plaintiff is entitled to payment of use and occupancy from May 23, 2022, the day that Plaintiff obtained title to the Premises, until the delivery of possession to Plaintiff. See G.L. c. 239, § 6.

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

1. Defendant's motion to waive the appeal bond is denied.
2. Plaintiff's motion to set the appeal bond is allowed.

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[2] The Court has no information as to the current condition of the Premises. Because Defendant has owned the home for some time, however, the Court expects that it is not in pristine condition and therefore will use the lower end of spectrum in reaching its determination of the fair rental value in this case.

3. Within fifteen days from the date of this order, as a condition for the entry of this action in the Appeals Court, Defendant shall deposit with the Clerk of Court such bond in the amount of $15,198.39.[3]
4. As a further condition of the bond, beginning on May 1, 2023 and on the first of each month thereafter during the pendency of this appeal, Defendant shall pay Plaintiff $1,350.00 for his continued use and occupancy of the Premises. These payments are to be made directly to Plaintiff to offset the carrying costs Plaintiff incurs each month.
5. Plaintiff may move to dismiss the appeal if Defendant fails to make the required payments. See G.L. c. 239, § 5(h); see also *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 137 n. 19 (2018) ("the statute permits dismissal of an appeal ... when a tenant fails to post the ... use and occupancy payment").

SO ORDERED.

DATE: 4/12/23

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

[3] This figure represents 11 months of use and occupancy at $1,350.00 plus a pro-rated amount of $348.39 for the 8 days of May 2022.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-CV-0053
DANIEL P. KELLY, PLAINTIFF v. WESTWOOD COURT APARTMENTS, LLC, AND WESTWOOD COURT VENTURES, LLC DEFENDANTS	ORDER FOR ALTERNATIVE HOUSING

This case came before the Court on April 10, 2023 on Plaintiff ("Tenant")'s application for a temporary restraining order. Both parties appeared through counsel. The Tenant requests an order requiring Defendant Westwood Court Ventures LLC (the "Landlord") to immediately remediate all mold in the Tenant's apartment located at 1583 Riverdale Street, Apt. 41, West Springfield, Massachusetts (the "Premises") using one of four identified mold remediation contractors and to provide alternative accommodations in a local hotel with kitchen facilities until the mold is remediated.

In considering a request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. See *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Based on the affidavits submitted in connection with the motion, the Court finds that potentially harmful fungal types are likely present in the Premises and that the environmental conditions therein likely pose a significant risk to the health of any occupants. Accordingly, the Court rules that, under the *Packaging Industries* standard, the Tenant is entitled to preliminary injunctive relief. The following order shall enter:

1. Pending further Court order, the Landlord shall provide the Tenant with alternative accommodations in a local hotel with kitchen facilities.
2. Based on the Landlord's representation that its own environmental expert is scheduled to inspect and conduct testing at the Premises today, the Court will schedule another Court date at which time it will consider the Landlord's test results in determining next steps.
3. If the parties' respective experts agree that harmful mold exists in the Premises, the Landlord shall take immediate steps to remediate the mold. The Court will not require that the Landlord use one of the four companies identified by Plaintiff's expert, but the remediation contractor selected by the Tenant must be qualified to do the necessary work. If the Landlord contends that remediation is not necessary, the issue will be resolved by the Court at the next hearing.
4. The parties shall return for further hearing, including taking evidence if the parties are not in agreement about the need for remediation, on **April 18, 2023 at 2:00 p.m.**
5. The legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: 4.12.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-0276

NORTHERN ENTERPRISES, LLC,

PLAINTIFF

v.

MICHAEL BOYER AND
ALICIA KAISER,

DEFENDANTS

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

This no fault summary process case came before the Court on March 31, 2023 for an in-person bench trial. Plaintiff appeared through counsel. Defendants appeared without counsel. Plaintiff seeks to recover possession of 357 Greenfield Road, Unit #1, Greenfield, Massachusetts (the "Premises").

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

Plaintiff purchased the property housing the Premises in October 2022. The property has two occupied units. Defendants were residing in the Premises at the time Plaintiff purchased the property. Plaintiff purchased the property in order to renovate it and its agent, Mr. Obear, immediately served notice on both occupants to vacate by the end of November 2022. The prior owner transferred a last month's rent and security deposit to Plaintiff, each in the amount of $800.00. Plaintiff never

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entered into a rental agreement with Defendants.

Defendants acknowledge that they paid $800.00 per month in rent to the prior owner. They have not made any payments to Plaintiff. Defendants do not contest receipt of the notice to quit. At a rate of $800.00 per month, Defendants owe five months (through the date of trial) for a total of $4,000.00.

Although Defendants did not file an answer, they contend that they should be excused from some or all of the back rent based on interference with quiet enjoyment and breach of the warranty of habitability. With respect to the quiet enjoyment defense, Court finds that, after Plaintiff purchased the property, Mr. Obear unilaterally took down a metal garage on the property in which Defendant Boyer stored a motorcycle and other possessions. Mr. Obear removed the metal structure because it was structurally unsafe. Defendant Boyer's motorcycle and other items are now covered by a tarp in the yard. The Court finds that the structure that was taken down was open to the elements when it was standing and therefore the removal of that structure and use of a tarp to cover the items does not constitute substantial interference with Defendants' quiet enjoyment of the Premises.[1]

The Court further finds that Mr. Obear locked the outer basement door at the Premises after purchasing the property to prevent unauthorized access. He did not eliminate Defendants' access to the basement from an interior common hallway. Although Defendants are reluctant to use the basement because the upstairs tenants, with whom they have a poor relationship, allow their dog to roam the common

[1] If Defendants believes Plaintiff caused property damage to the motorcycle, they are not foreclosed from bringing a civil claim against it. The Court limits its adjudication of claims in this case to conditions defenses and defenses related to interference with quiet enjoyment, but does not reach the possible counterclaims for property damage.

hallway. Defendants notified Mr. Obear on at least one occasion that they were being prevented from using the common hallway by the neighbor's dog, and Mr. Obear promptly responded in person to ask the upstairs tenant to stop allowing the dog in the common areas. Plaintiff is in the process of seeking to recover possession from the neighbor. Based on the evidence presented, the Court does not hold Plaintiff responsible for preventing Defendants from being able to access the basement. Accordingly, Plaintiff is not liable for interference with quiet enjoyment based on the neighbors' dog.

With respect to the conditions of the Premises, Defendants contend that the heat is consistently too high and that, on one occasion, the radiators leaked water throughout the Premises.[2] Plaintiff pays for the heat, but Defendants have no control over the temperature. Because the Premises are in a building with radiators and an older heating system, Plaintiff has a hard time balancing the heat to be consistent throughout the building. Since purchasing the property, Plaintiff has sent HVAC contractors to the property on dozens of occasions to try to ensure the proper operation of the heating system. Despite the problems regulating heat in the Premises, the Court finds no evidence that Plaintiff was negligent with respect to his efforts to address the heating issues and radiators.

Even in the absence of negligence, excessive heat, however, can be a violation of the State Sanitary Code if the temperature in the home exceeds 78 degrees. Although Defendant Boyer testified, without any supporting evidence, that the

[2] Because Defendants are not compelled to assert counterclaims in a summary process case, they may assert claims for monetary damages against Plaintiff in a separate civil action.

temperature in the Premises was "90 degrees," the Court finds that testimony to be exaggerated. Mr. Obear testified that he once measured the temperature in the Premises to be 78 degrees. Given the lack of evidence as to what the actual temperature was in the Premises, the Court rules that the temperature in the Premises does not violate the State Sanitary Code.[3]

The Court finds that Plaintiff had notice that a faulty electrical breaker caused the bathroom and part of the kitchen to be without power over one weekend. There is no evidence that the power outage was Plaintiff's fault, but the absence of electricity in part of the house is a material violation of the State Sanitary Code and warrants a finding of liability under a defense premised on breach of warranty of habitability.[4] The Court finds that the loss of electricity for two full days and parts of two others diminished the value of the Premises by 33% during the time the power was out.[5] To account for the partial days, the Court will abate rent for three days, meaning the amount of the rent abatement is $26.40.[6]

The tenancy having been terminated without fault of Defendants, the Court (at the suggestion of Plaintiff's counsel) accepted Defendants' testimony as an oral petition for a stay pursuant to G.L. c. 239, §§ 9-11. In a no fault eviction case, the Court has discretion to stay execution on certain conditions. Defendants must pay the

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[3] Although Mr. Boyer testified that there have been intermitted hot water outages, the testimony was insufficient for the Court to make any findings.

[4] Because Defendants did not file an answer and assert no counterclaims, the warranty violation may only be used as a defense and not a claim entitling them to an award of damages. Therefore, G.L. c. 239, § 8A is inapplicable.

[5] In reaching this percentage, the Court takes into account the power was lost in the only bathroom in the Premises.

[6] This figure is calculated by dividing the monthly rent of $800.00 by 30 days, for a per diem rent of $8.88, multiplied by three days.

rent unpaid prior to the stay, they must pay for their use and occupation of the Premises for the duration of the stay, and they must undertake a diligent housing search to locate replacement housing. Accordingly, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff in the amount of $3,973.60, plus court costs.
2. Issuance of the execution shall be stayed through June 30, 2023 provided that Defendants pay $800.00 each month for their use and occupancy. Payment for April 2023 is due within five days of the date of this order[7] and payment is due thereafter by the 5th of each month.
3. Defendants must pay the unpaid rent of $3,973.00 no later than May 1, 2023, or demonstrate to the satisfaction of Plaintiff's counsel that they have a pending application for rental assistance.
4. Defendants must conduct a diligent housing search to locate replacement housing, and provide a copy of their search log to Plaintiff's counsel on the 5th of each month beginning in May 2023.
5. Plaintiff may file a motion to issue the execution if Defendants do not comply with the terms of this order.

SO ORDERED.

DATE: 4.12.23

Jonathan J. Kane

Jonathan J. Kane, First Justice

[7] At trial, Defendants were informed that they would need to pay $800.00 by April 14, 2023 to be entitled to a stay, so they are aware of the obligation.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0257

SPRINGFIELD HOUSING AUTHORITY,

PLAINTIFF

v.

JESSE WILLIAMS,

DEFENDANT

ORDER FOR INJUNCTIVE RELIEF

This matter came before the Court on March 4, 2023 for a hearing on Plaintiff's request for injunctive relief. Plaintiff appeared through counsel. Defendant was recently admitted to a hospital for psychiatric evaluation and did not appear. His sister, Odell Williams, appeared.

Based on the verified complaint and the testimony at trial, the Court finds that the unsanitary condition of Defendant's unit at 359 Central Street, Apt. #26, Springfield, Massachusetts (the "Premises") poses a significant risk of harm to Defendant and other tenants at the Central Elderly Apartment Complex where Defendant resides. In light of the likelihood of success on the merits of Plaintiff's claims, the Court rules that the risk of irreparable harm to Defendant if such relief is granted outweighs the risk of irreparable harm to Plaintiff if it is denied.

Accordingly, the following order shall enter:

1. Defendant is hereby referred to the Tenancy Preservation Program ("TPP").

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2. If TPP opens a case with him, Defendant will cooperate with TPP and follow its recommendations.
3. Regardless of whether TPP opens a case with him, Defendant shall take all necessary action to clean the Premises and bring it into a safe and sanitary condition.
4. Defendant shall comply with reasonable requests by management regarding cleanliness and maintenance repairs.
5. Immediately after Defendant returns to the Premises, Plaintiff may schedule an evidentiary hearing on short notice to determine whether Defendant should be permitted to continue to live in the Premises if they have not been brought into a safe and sanitary condition.
6. The legislative fee for injunctive relief is waived.

SO ORDERED.
DATE: 4.12.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Odell Williams

CK

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

FRANKLIN, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3052

SZAWLOWSKI REALTY, INC.,

Plaintiff,

v.

GLORIA and STANLEY SZAWLOWSKI,

Defendants.

ORDER

After hearing on March 24, 2023, on the defendants', Stanley and Gloria Szawlowski ("Defendants"), motion to dismiss, and Joseph E. Szawlowski as trustee of the Stand and Mary Ellen Szawlowski Family Trust's ("Trustee") motion to intervene, the following Order shall enter:

1. **Motion to Dismiss:** In their motion to dismiss, Defendants assert this action should be dismissed for failure to serve process in accordance with Mass. R. Civ. P. 4

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(a). Defendants state that Constable Robert K. McKay was not a Franklin County Sheriff, Deputy Sheriff, or special Sheriff or otherwise authorized to serve process in the Town of Whately at the time of serving Defendants with the subject summons and complaint. Attached to Defendants motion is a letter of Amy Schrader, Town Clerk, Town of Whately, certifying that "in the year 2021, Thomas Mahar and Edwin Zaniewski, were the elected Constables for the Town of Whately."

2. Mass. R. Civ. P. 12 (h) (1) ("Rule 12 (h) (1)") states:

> A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, misnomer of a party, pendency of a prior action, or improper amount of damages is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

3. Defendants argued at hearing that their motion should not be deemed waived because they asserted insufficient service of process as a defense in their answer and have also retained new counsel since the denial of their first motion to dismiss for failure to serve a notice to quit.

4. In *Raposo v. Evans*, 71 Mass. App. Ct. 379 (2008), "[t]he issue [was] whether a defendant who challenges service of process in his answer has the obligation to move to dismiss on those grounds within a reasonable time, prior to substantially participating in discovery and litigating the merits of the case, and whether the defense is waived for failure to do so." Following Federal principles, the Appeals Court answered, unequivocally, yes, "[a] defendant who challenges service of process in his answer must

move to dismiss within a reasonable time, prior to substantially participating in discovery and litigating the merits of the case." Id. at 385.

5. In this case, as in *Raposo*, the defense of insufficient service of process is deemed waived, despite being raised in the answer, where Defendants failed to file a motion to dismiss on the issue more than a year after filing the answer, and mere weeks before the scheduled trial date. See *Holmquist v. Starr*, 402 Mass. 92, 95 (1988) ("where the defendant apparently did not join a motion raising this defense with her motion made pursuant to Mass.R.Civ.P. 12(b)(2), such a defense is waived"); *Petition of Dep't of Pub. Welfare*, 8 Mass. App. Ct. 872 (1979) ("[b]y filing a general appearance and by failing to raise the defense of insufficiency of service of process in her answer, she has waived such defense"); *Gahm v. Wallace*, 206 Mass. 39, 44-5 (1910) ("[i]t is a familiar rule that, if one appears generally in a case, or asks the court to do anything which involves the exercise of jurisdiction over the parties, he waives all questions in regard to service and submits himself to the jurisdiction of the court"); *Bateman v. Wood*, 297 Mass. 483, 486 (1937) ("[a] party may lose the right to object to lack of proper service of process by general appearance or by pleading to the merits").

6. Moreover, Defendants' motion did not allege prejudice, and this Court finds there is no prejudice to Defendants in allowing this case to proceed to trial. See *Sch. Comm. of Holyoke v. Duprey*, 8 Mass. App. Ct. 58, 62 (1979) ("[t]he motion to dismiss did not allege prejudice, and the judge found, after a hearing on the motion, that the teachers did not show any prejudice"). Therefore, Defendants' motion to dismiss must be DENIED.

7. **Motion to Intervene:** After hearing Defendants' motion to dismiss, the Court heard Joseph E. Szawloski, as trustee of the Stan and Mary Ellen Szawlowski Family Trust's, motion to intervene. In his motion, the Trustee states that he "should be added as a party because the rights of the Trustee are implicated in the instant matter." In support therefore, the Trustee further asserts that Plaintiff has collateral claims pending in the Superior Court and the Probate and Family Court, and that, specifically, the Plaintiff "has moved to dismiss the Trustee's Superior Court counterclaims due to the pendency of this Housing Court action and has moved the Superior Court to find that the Trustee and Defendant Stanley S. Szawlowski's interests are so aligned that they should be found to be identical, and the Trustees claims in the Superior Court are so similar to the claims in this action that the Trustee's claims in the Superior Court should be dismissed."

8. Rule 24 of the Massachusetts Rules of Civil Procedure provides for intervention of right and/or permissive intervention. Rule 24 states in pertinent part that,

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Commonwealth confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the Commonwealth confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made

> pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

9. In the Superior Court action, Plaintiff is seeking $600,000 from the Trustee, not as "rent", but as a "true up" for Defendants' use and occupancy of the 44 Christian Lane, Whately, MA 01093 (the "Premises"). In the Housing Court action, Plaintiff is seeking simple possession of the Premises as against Defendants, who it regards as mere licensees. It appears from the claims asserted that Trustee may have a claim to intervene as of right, however, as Plaintiff notes in its opposition, Trustee's motion was filed "just a few weeks before jury trial in this matter is scheduled to begin."

10. Whether a party should be allowed to intervene is a matter that is largely left to the discretion of the trial judge below. See *Boston Licensing Bd. v. Alcoholic Beverages Control Comm'n*, 367 Mass. 788, 792–793 (1975). "In considering such a motion, the judge must pass, at the outset, on whether the motion is timely. Timeliness turns in part on: (1) whether the applicant had the opportunity to intervene at an earlier stage of the litigation; (2) whether delay engendered by intervention at the particular stage of litigation will prejudice existing parties; and (3) the applicant's particular need to intervene" (citations and quotations omitted). *Corcoran v. Wigglesworth Mach. Co.*, 389 Mass. 1002, 1003 (1983). "As a general guide, consideration should be given to the interests of the would-be intervener in having a prompt resolution of a problem, to the interests of the initial parties in maintaining a simpler and quicker trial, and to the interests of the court in efficiently managing its docket." *Mayflower Dev. Corp. v. Town of Dennis*, 11 Mass. App. Ct. 630, 635–36 (1981).

11. Based upon the extensive litigation between the parties across three court departments and the impending scheduled trial date, the Court finds Trustee's motion is not timely. Trustee knew or should have known of the collateral litigation in the Housing Court and had opportunity to intervene at an earlier date. To allow Trustee to intervene at this late stage would necessarily postpone trial and prejudice the existing parties. However, as stated supra, the monetary claims at issue in the Superior Court action appear closely related to the question at the heart of the Housing Court matter, i.e. possession of the Premises and whether Defendants are mere licensees or tenants. Trustee's rights in the Superior Court action, therefore, may be greatly impacted by the result of trial in the Housing Court without any recourse or opportunity to be heard on the issue of possession.

12. Taking into account the Trustee's interest in a prompt resolution, the parties' interest in a simpler trial, and the efficient management of the courts' docket, the Court will seek administrative transfer of the Housing Court action into the Superior Court, where the interrelated issues may be heard and considered by a single judge, and all parties have a right to be heard on all issues, thus preserving judicial economy and all parties' rights to due process.

13. In the meantime, Trustee's motion to intervene must be DENIED without prejudice. If the administrative transfer request is allowed, the motion to intervene shall become moot. If it is denied, the Trust's motion may re-filed and remarked for hearing[1].

[1] The prejudice of such a motion being filed so near in time to the scheduled jury trial may become a moot issue if such a motion is re-filed, given the rescheduling of the April 18-19, 2023, jury trial.

14. **Jury Trial Rescheduled:** Additionally, given the time it may take for the processing of the court's request for administrative transfer of this action to the Superior Court (especially given that the parties themselves may wish to address the court's request), the jury trial currently scheduled for April 18 and 19, 2023, shall be postponed.

So entered this 12th day of April, 2023.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-4935

NELSON D. CRUZ, PLAINTIFF v. SHAKIRA ORTIZ, PEDRO CRUZ AND JUAN CRUZ, DEFENDANTS	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This no fault rent summary process case came before the Court on March 16, 2023 for a bench trial. All parties appeared and represented themselves. Plaintiff seeks to recover possession of 168 Pearl Street, 2d Floor, Holyoke, Massachusetts (the "Premises") from Defendants.

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

Plaintiff owns the Premises, which are part of a three-family house. Defendants moved in in October 2021 pursuant to a one-year rental agreement. Monthly rent is $1,600.00 per month. Although Defendant states that he is just seeking possession, the complaint asserts that $21,195.00 is due in unpaid rent. Plaintiff served -- and Defendants received -- a legally adequate notice to quit terminating their tenancy. Defendants did not vacate and continue to reside at the Premises. The Court finds that Plaintiff has established its prima facie case for possession.

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Defendants filed an answer alleging defective conditions, among other things. Defendant Pedro Cruz testified that the Premises has had mice since the inception of the tenancy, although he admits that they did not notify Plaintiff of the issue until August of 2022. Defendant Pedro Cruz also claimed that the hot water runs out quickly, that the showerhead does not produce hot water, and that that Plaintiff fails to keep the backyard clean of trash. None of the Defendants produced any evidence to support their allegations.

Plaintiff testified that he has received no complaints from the first floor tenants who have resided there for eleven years. He also testified that Defendants have refused to allow anyone into the Premises for repairs, and that they have blocked him on their phones so he cannot reach them unless they contact him. When he sent the fire department to the Premises because of an active leak from the Premises into the first floor, they would not allow anyone into the bathroom.

Based on the evidence, the Court finds that Defendants have not sustained their burden as to their defenses. As for their counterclaim, it likewise fails. The Court finds that Way Finders closed Defendants' application for rental assistance because it requires a commitment from the landlord to accept a payment plan for the remaining balance of unpaid rent. Given the large outstanding balance, Plaintiff is not obligated to make a payment plan with Defendants.[1] Therefore, Plaintiff's failure to complete the rental assistance application is not actionable.

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[1] Moreover, Plaintiff provided a letter from Way Finders denying Pedro Cruz's first application for rental assistance for suspected fraud.

Accordingly, based on these findings and in light of the governing law, the following order shall enter:

1. Plaintiff is entitled to judgment for possession and unpaid rent and use and occupancy through the date of trial in the amount of $21,195.00.
2. Execution shall issue by written application ten days after the date that this order enters on the docket.

SO ORDERED.

DATE: 4/13/2023

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-283

MILES MORGAN, LLC,

Plaintiff,

v.

CHRISTOPHER PARENT,

Defendant.

ORDER

After hearing on April 11, 2023, on the landlord's motion for injunctive relief at which both parties and a representative from the Tenancy Preservation Program appeared, the following order shall enter:

1. The court is very concerned with the question of the tenant's competency to understand his housing situation (a lost rental voucher and a refusal to work with a new rental voucher program) and hereby refers the matter to the Tenancy Preservation Program (TPP).

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2. Even though this is not an eviction case, the court is allowing the landlord's motion that a Guardian Ad Litem be appointed to assist the tenant to avoid homelessness.
3. TPP is asked to, among other things, coordinate an evaluation by the Court Clinic for it to determine competency and/or capacity to navigate his housing situation so as to avoid homelessness.
4. A Guardian Ad Litem shall be identified and appointed under a separate order.
5. This matter shall be scheduled for review on **May 30, 2023, at 9:00 a.m.**

So entered this 13th day of April, 2023.

Robert Fields (AM)

Robert Fields, Associate Justice

CC: Kara Cunha, Assistant Clerk Magistrate
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-2993

ROLF NAZARIO,

Plaintiff,

v.

JAMME ORTONA,

Defendant.

ORDER

After hearing on April 13, 2023, on the plaintiff's motion for entry of judgment at which both parties appeared, the following order shall enter:

1. The plaintiff is no longer the owner of the property. He reported on the record that he sold the premises on March 29, 2023.
2. As such, the motion for judgment to enter for possession is DENIED.

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3. The parties agree, however, that $13,680 is outstanding in use and occupancy. As such, a *civil money damage* judgment shall enter for $13,680 for the plaintiff.

So entered this 13th day of April, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1253

WELLS FARGO BANK, N.A. AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2007-4, ASSET-BACKED CERTIFICATES, SERIES 2007-4, PLAINTIFF v. SARAH COULSEY AND BENJAMIN COULSEY, DEFENDANTS	SUMMARY PROCESS APPEAL BOND ORDER

This post-foreclosure summary process case came before the Court on March 24, 2023 for a hearing to set or waive the appeal bond pursuant to G.L. c. 239, §§ 5 and 6. Plaintiff appeared with counsel. Defendants appeared and represented themselves. The subject property is located at 50 Cleveland Street, Greenfield, Massachusetts (the "Premises").

Judgment for possession of the Premises entered in favor of Plaintiff on February 15, 2023. Defendants filed a notice of appeal on February 17, 2023.[1] Plaintiff filed a motion to set the appeal bond, and Sarah Coulsey filed an opposition, which the Court interprets as a motion to waive the appeal bond. Pursuant to G.L. c. 239, § 5, Defendants are required to give bond in such reasonable amount as

[1] Defendants did not file financial statements demonstrating their claim of indigency prior to the appeal bond hearing, and the Court permitted them to be filed late. Only Sarah Coulsey filed a financial statement, which she did on March 31, 2023.

the Court orders. The Court is required to waive the bond if it is satisfied that Defendants are indigent within the meaning of G.L. c. 261, §§ 27A-27G and that they have a defense or issue to present on appeal which is not frivolous.

Here, the affidavit of Sarah Coulsey establishes that she is indigent. Benjamin Coulsey, however, did not file an affidavit of indigency. The Court infers from the bond hearing that, because Benjamin Coulsey is not the debtor (the loan and mortgage were in Sarah Coulsey's name), he believes that he does not need to provide financial information as it relates to the appeal bond. Benjamin Coulsey is an adult in possession of the Premises, however, and a judgment of possession entered against him. He has taken an appeal of the judgment and thus in included in the household for purposes of determining an appeal bond. Because the Court has no evidence from which to determine whether Benjamin Coulsey meets the standards of indigency, the Court cannot find Defendants, collectively, to be indigent.

Although the finding that Defendants are not indigent warrants denial of their motion to waive the appeal bond, even if Benjamin Coulsey is indigent, Defendants have no meritorious claim on appeal. Defendants have sought to invalidate the foreclosure in previous cases[2] and prior to trial in this case, the Court dismissed their affirmative defenses and counterclaims based on the doctrine of res judicata. Given their lack of any viable defenses or counterclaims, the Court finds that their appeal is frivolous. See *Adjartey v. Central Div. of Housing Court*, 481 Mass. 830, 859 (2019) (a "determination that a defense is frivolous requires more than the judge's conclusion

[2] For a recitation of the procedural history relating to Defendants' previous efforts to challenge the foreclosure, see Plaintiff's Memorandum of Law in Support of Motion to Dismiss filed on July 20, 2022.

that the defense is not a winner; frivolousness imports futility -- not 'a prayer of a chance'"). Accordingly, Defendant's motion to waive the appeal bond is denied.

Pursuant to G.L. c. 239, § 6, "If the action is for the possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in [its] favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff." In order to determine the "reasonable amount as rent," the Court accepts HUD's FY2022 Small Area FMRs for Franklin County, Massachusetts to estimate the fair market rental value of a four-bedroom home in Greenfield, Massachusetts; namely $1,640.00 per month.[3] At a rate of $1,640.00 per month, and given that the foreclosure took place in September 2021, the Court sets the appeal bond at $31,160.00.

The Court further orders that Defendants must make use and occupancy payments "as rent" pending the appeal given that they continue to occupy the Premises. In an attempt to achieve a fair balancing of the respective parties' interests, the Court has considered not only the fair rental value of the Premises determined in the previous paragraph, but also Sarah Coulsey's monthly obligation prior to foreclosure, which was (at its lowest point) $1,650.00.[4] The Court further considered Defendants' lack of a meritorious defense, the expected duration of the appeal and the facts that (a) no money has been paid on the mortgage since 2008, (b)

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[3] HUD revised the fair rental estimate for FY2023 to $1,760.00 per month, but Plaintiff seeks use and occupancy at the FY2022 rate. No party presented any comparable rentals or offered expert testimony at the hearing, so the Court has no other evidence as to fair rental value.

[4] The monthly principal and interest payment fell within a range of $1,200.00 to $1,400.00 beginning at the time of default in 2008. Real estate taxes were approximately $312.00 per month, and insurance was $146.50 monthly.

the mortgage occurred in September 2021 and (c) Plaintiff is incurring carrying costs each month, including real estate taxes and insurance. See *Bank of New York Mellon v. King*, 485 Mass. 37, 51 (2020).[5] Accordingly, the Court finds that the reasonable monthly use and occupancy charge moving forward is $1,640.00.

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

1. Defendants' motion to waive the appeal bond is denied.
2. Plaintiff's motion to set the appeal bond is allowed.
3. Within fifteen days from the date of this order, as a condition for the entry of this action in the Appeals Court, Defendants shall deposit with the Clerk of Court such bond in the amount of $31,160.00.
4. As a further condition of the bond, beginning on May 1, 2023 and on the first of each month thereafter during the pendency of this appeal, Defendants shall pay Plaintiff $1,640.00 for their continued use and occupation of the Premises. These payments are to be made directly to Plaintiff to offset the carrying costs Plaintiff incurs each month.

SO ORDERED.

DATE: 4/13/23

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

[5] The Court would have considered the respective financial conditions of the parties had Benjamin Coulsey demonstrated his ability (or inability) to pay monthly use and occupancy.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0044

MANINDER KAUR,

PLAINTIFF

v.

SAMANTHA BAGHDADI A/K/A
SAMANTHA MARY BERNIER,

DEFENDANT

ORDER FOR PAYMENT IN LIEU
IF ALTERNATIVE HOUSING

This matter came before the Court on April 13, 2023 on Defendant's emergency request for injunctive relief following an April 11, 2023 hearing at which Plaintiff did not appear. Both parties appeared self-represented.[1] Defendant's apartment at 704-706 Sumner Avenue, 3rd Floor, Springfield, Massachusetts (the "Premises") has been condemned. After hearing, the following order shall enter:

1. The judgment entered on March 29, 2023 shall be amended to reflect that the judgment is for possession only. Defendant's motion to remove the judgment is denied for lack of good cause.[2]
2. Plaintiff may apply for the execution for possession only but the execution shall not be used before May 1, 2023 in order to allow Defendant time to

[1] Defendant asserts that she resides in the Premises with a co-tenant, Kelly Heise, who was present in Court.
[2] Although Defendant claims she received the notice of hearing late, she admits that she does not reside in the Premises regularly, and given all of the circumstances presented at the hearing, the Court rules that her failure to pick up the mail in a timely manner is not an excuse for failing to appear in Court.

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remove all of her (and Ms. Heise's) belongings. Defendant and Ms. Heise testified that they have replacement housing available.

3. Defendant may enter the Premises during daylight hours only for the purpose of packing and moving.
4. Because of the lack of clarity around whether Defendant actually resides in the Premises on a regular basis, in lieu of alternative housing in a hotel, Plaintiff shall pay $1,400.00 to Defendant. A cash payment of $500.00 was made today. At least $500.00 shall be paid to Defendant tomorrow, April 14, 2023, and the balance of the $1,400.00 shall be paid on April 17, 2023. This payment is intended to represent the cost of alternative housing and upon payment Plaintiff shall be relieved of all obligations to provide housing to Defendant or Ms. Heise.
5. This case addresses possession only. All claims for monetary damages sought by any party are dismissed without prejudice and may be brought in a separate civil action.

SO ORDERED.

DATE: 4/12/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-0256

JODANNE ST. GEORGE,
PLAINTIFF

v.

SHAWN WOOLSEY,
DEFENDANT

ORDER FOR ENTRY OF JUDGMENT AND STAY OF EXECUTION

This no fault summary process case came before the Court on April 13, 2023 for an in-person bench trial. Both parties appeared self-represented. Defendant Glen Burton reached a separate agreement with Plaintiff and was not part of this trial. Plaintiff seeks to recover possession of a bedroom (with common area access) located at 91 Pheland Street, Springfield, Massachusetts (the "Premises").

At the outset of trial, the parties stipulated to Plaintiff's prima facie case for possession, including Defendant's receipt of the notice to quit. The Court finds that monthly rent is $500.00 and that $1,200.00 remains outstanding as of the date of trial. The tenancy was terminated as of December 1, 2022. Defendant testified that he is not asserting claims against Plaintiff but simply needs more time to move.

Pursuant to G.L. c. 239, §§ 9-11, in a no fault eviction case, a tenant is entitled to a stay on the execution provided the tenant pays the unpaid rent through the start of the stay, as well as and use and occupancy (rent) during the period of stay. The tenant must also demonstrate a diligent housing search. The Court finds Defendant is

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a "handicapped person" as that term is defined in § 9, and thus the maximum stay allowed is therefore twelve months from the date his tenancy was terminated.[1]

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

1. Judgment shall enter for Plaintiff for possession and $1,200.00 in damages, plus court costs.
2. The execution (eviction order) will not issue prior to June 30, 2023.
3. Defendant must pay $500.00 for May 2023 use and occupancy by May 5, 2023, and $500.00 for June 2023 use and occupancy by June 5, 2023. If Defendant fails to make a payment, Plaintiff may file a motion to issue the execution.
4. If Defendant seeks a further stay (which may or may not be granted in the Court's discretion), he must demonstrate his efforts to get assistance to pay the $1,200.00 in back rent and $179.00 in court costs, and he must keep a housing search log documenting his diligent efforts to find housing. At the next court date, he must present the housing search log to the Court for review.
5. The parties shall appear in Court for further proceedings consistent with this order on **June 22, 2023 at 2:00 p.m.**

SO ORDERED.

DATE: 4/18/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

[1] The stay is discretionary. The Court must consider the interests of the landlord. Here, Plaintiff owns a 5-bedroom home that she wishes to sell. Once Mr. Burton vacates, which he has agreed to do, the only income Plaintiff will get from this property is the $500.00 paid by Defendant.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0826

HILDA GARCIA MARQUEZ, PLAINTIFF v. MICHAEL RAUCCI AND TAVEE KERMOADE, DEFENDANTS	)	ORDER TO VACATE PENDING SUMMARY PROCESS TRIAL

This matter came before the Court on April 18, 2023 on Plaintiff's emergency motion for an order that all occupants of at 50 Alvord Avenue, 3rd Floor, Chicopee, Massachusetts (the "Premises") vacate. Plaintiff and Defendant Raucci appeared; Defendant Kermoade failed to appear. Attorney David DeBartolo, who has a Limited Representation Appearance for Ms. Kermoade in the related summary process case, 22-SP-1110, appeared to provide information to the Court about Kermoade's possible ill health.

The Court has entered two orders in this case prohibiting Ms. Kermoade from allowing unauthorized individual reside in the Premises, and to respect her guests from entering the Premises after 9:00 p.m. in order to preserve the peaceful enjoyment of Plaintiff, the owner-occupant, and Plaintiff's daughter, who lives on the second floor. The evidence shows that Ms. Kermoade has violated the Court's orders and has not curbed the behavior that brought the parties to Court for the previous hearing on March 24, 2023 and March 31, 2023. Furthermore, Ms. Kermoade provided

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payment for use and occupancy by a months-old cashier's check that was made out to her and not endorsed over to Plaintiff, thereby violating the Court order requiring her to pay for her continued use and occupancy in a way that causes the Court to question her motives.

Due to the severity of the situation and the clear video evidence demonstrating Ms. Kermaode's failure to comply with Court orders, the Court allows Plaintiff's motion as follows:

1. If Ms. Kermoade has not served and filed an emergency motion to be heard by 3:00 p.m. on Friday, April 21, 2023 seeking to be heard on Plaintiff's motion, Ms. Kermaoade, Mr. Raucci[1] and all other persons occupying or visiting the Premises shall be prohibited from remaining in or returning to the Premises pending the earlier of (a) the summary process trial in 22-SP-1110, or (b) further Court order.
2. Subject to any further Court order in the interim, as of 3:00 p.m. on Friday, April 21, 2023, Plaintiff may seek the assistance of law enforcement to have all occupants of the Premises vacate, and law enforcement may treat such occupants as trespassers pursuant to G.L. c. 266, § 120.
3. Because this order does not confer legal possession to Plaintiff, any belongings in the Premises at the time the occupants vacate shall remain in place and not be removed pending the earlier of (a) the summary process trial in 22-SP-1110, or (b) further Court order. If Defendants need access to

[1] Mr. Raucci is subject to a Court order requiring him to stay away from the Premises, but to avoid a situation where Mr. Raucci thinks he can reenter the Premises after Ms. Kermoade vacates, the Court includes him in this order.

their belongings after being required to vacate, they may seek a Court order for access.

4. The legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: 4/19/23

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice