

**Western Division Housing Court**  
***Unofficial Reporter of Decisions***

**Volume 26**

Aug. 10, 2023 — Sep. 24, 2023

## **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:

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

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

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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**

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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.

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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**

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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.

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## **CONTACT US**

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<sup>1</sup> The year stated in the decision has been confirmed as a typo.

<sup>2</sup> The month stated in the decision has been confirmed as a typo.

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<sup>3</sup> The year stated in the decision has been confirmed as a typo.

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<sup>4</sup> The month stated in the decision has been confirmed as a typo.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2262

THEODORE BURRELL, )

PLAINTIFF )

v. )

BRYAN MCHAFFIE AND ALISON KATE MORSE, )

DEFENDANTS )

FINDINGS OF FACT, RULINGS OF  
LAW AND ENTRY OF JUDGMENT

This nonpayment summary process case came before the Court for a bench trial on July 28, 2023. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 41 Union Street, Unit 7, Greenfield, Massachusetts (the "Premises") from Defendants.

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. The parties further stipulated to an unpaid rent in the amount of \$3,600.00. Defendants did not file an answer and raised no defenses at trial.

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

1. Judgment for possession and \$3,600.00 in damages, plus court costs of \$224.58, shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue upon written application after expiration of the appeal period.

3. Use of the execution shall be stayed through August 31, 2023 on the condition that Defendants pay \$900.00 by August 18, 2023.

SO ORDERED.

DATE: August 11, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0574

CENTURY PACIFIC HOUSING PARTNERSHIP X, )

PLAINTIFF )

v. )

ROSALIE POMALES AND RENE POMALES, )

DEFENDANTS )

ORDER FOR  
INJUNCTIVE RELIEF

This matter came before the Court on August 10, 2023 on Plaintiffs' request for an emergency order. Both parties appeared through counsel. Plaintiffs reside at 15 Girard Avenue, Apt. 102, Springfield, Massachusetts (the "Premises"). Plaintiff seeks an injunction requiring Defendants to temporarily relocate from the Premises to a unit one floor above for approximately four weeks so that Plaintiff can complete significant upgrades and repairs in the hallway directly outside of the Premises as part of a multi-million dollar renovation of the apartment building.

In considering a request for injunctive relief, the Court considers 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).

Here, the Court finds that Defendants are not at significant risk of suffering irreparable harm. Although Defendants currently reside in a first floor unit due to accessibility needs, the temporary unit is on the second floor two doors down from a newly constructed and operational elevator. Plaintiff has agreed to move their belongings to the temporary unit at no cost to Defendants. Upon completion of the work, Defendants will be able to return to the Premises and Defendants will move their belongings back into the Premises at no cost to Defendants. Given the lack of a substantial risk of irreparable harm to Defendants if the relief is granted, and given the risk of irreparable harm to Plaintiff if Defendants fail to vacate and thereby prevent completion of renovations to the building, the Court finds that the balance of harms favors granting Plaintiff the injunctive relief requested.

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

1. Defendants shall temporarily relocate from the Premises to the second floor unit being offered by Plaintiff. Defendants shall relocate on August 21, 2023 and Plaintiff shall move their belongings to the temporary unit at no cost to Defendants.



2. Upon completion of the work that requires Defendants to vacate the Premises, Plaintiff shall return Defendants to the Premises and move their belongings back from the temporary unit at no cost to Defendants.
3. Within two business days, Plaintiff shall complete and return the paperwork it received from the Agawam Housing Authority in relation to Defendants' rental application.
4. Within fourteen (14) days, Plaintiff shall pay to the Court the \$90.00 legislative fee for issuance of an injunction (*see* G.L. c. 262, § 4).

SO ORDERED.

DATE: August 12, 2023

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

cc: Court Reporter



5. The parties shall return for further hearing on **September 5, 2023 at 9:00 a.m.** for review on compliance with this order.

SO ORDERED.

DATE: August 11, 2023

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

cc: Palmer Board of Health  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0298

\_\_\_\_\_  
CHERYLIN ROMANOWSKI, )  
 )  
                  PLAINTIFF )  
 )  
v. )  
 )  
MICHAEL WILLIAM ROMANOWSKI, )  
 )  
                  DEFENDANT )  
\_\_\_\_\_ )

AGREED-UPON ORDER

This civil matter came before the Court on August 7, 2023 for a hearing on Defendant’s complaint for civil contempt. Both parties appeared through counsel. The property in question is located at 88 Town Hill Road, Middlefield, Massachusetts (the “Property”). Defendant is Plaintiff’s father. Defendant owns the Property. Plaintiff has possessory rights to space on the second floor of the Property.

On May 8, 2023, this Court (Carvajal, J.) entered an order requiring, among other things, that Plaintiff maintain the Premises in a “clean and sanitary condition free of garbage, debris and/or rubbish.” Defendant alleges that the evidence demonstrates a clear and undoubted disobedience of this provision of the order. Plaintiff contends that she has not cleaned the Property because she has been living elsewhere temporarily and is afraid to return to the Property because of her acrimonious relationship with her father. Plaintiff does not wish to retain possession of the Property, but does want to retrieve her personal belongings.

In lieu of a trial, the parties agreed to the following terms:

1. Upon 48-hours advance notice, Plaintiff may return to the Property for the purpose of retrieving her personal belongings. Scheduling shall be done by counsel to minimize the need for communication between the parties.
2. At such times as Plaintiff is at the Property to retrieve her belongings, Defendant may not be present.
3. Any of Plaintiff's belongings remaining at the Property as of August 31, 2023 shall be deemed abandoned.
4. This order resolves the issue of legal possession only; the parties reserve all claims to monetary damages.

SO ORDERED.

DATE: August 11, 2023

  
Jonathan J. Kane, First Justice

cc: Court Reporter



rental assistance through various agencies. Defendant is a veteran and has requested his military service records to demonstrate his eligibility for veterans' benefits.

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

1. Judgment for possession and \$15,500.00 in damages, plus court costs of \$205.32, shall enter in favor of Plaintiff.
2. Execution (the eviction order) shall issue upon written application after expiration of the appeal period.
3. Use of the execution shall be stayed through the next court date so long as Defendant pays \$650.00 by August 18, 2023 and \$650.00 by September 15, 2023 through Plaintiff's on-line portal.
4. Defendant shall make his best efforts to restore electricity to the Premises forthwith. If Defendant is unable to negotiate a payment plan with the Town of Chester, which provides his electrical service, he may seek further court order regarding restoration of service.
5. The parties shall return for review on **September 19, 2023 at 9:00 a.m.** If Defendant fails to appear, or if it is apparent that the tenancy is unsustainable, Plaintiff may ask to lift the stay on use of the execution.

SO ORDERED.  
DATE: August 11, 2023

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

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 19-CV-1088

_____	)
TOWN OF EAST LONGMEADOW	)
HEALTH DEPARTMENT,	)
	)
PLAINTIFF	)
	)
v.	)
	)
WILLIAM ROGERS, ET AL.,	)
	)
DEFENDANTS	)
_____	)

ORDER

This code enforcement matter came before the Court on July 28, 2023 for a hearing on Plaintiff’s complaint for contempt. Plaintiff and Metropolitan Life Insurance Company appeared through counsel. Defendant William Rogers (“Mr. Rogers”) appeared self-represented.<sup>1</sup> The property in question is located at 37 Thompson Street, East Longmeadow, Massachusetts (the “Property”).

- 1. Mr. Rogers shall coordinate with Plaintiff with respect to restoration of water service.
- 1. Mr. Rogers shall provide Plaintiff with a comprehensive rehabilitation plan for the Property no later than September 12, 2023.

<sup>1</sup> Attorney Johnson’s oral motion to withdraw was allowed without objection at the outset of the hearing.



2. Plaintiff shall conduct an full inspection (internal and external) of the Property on a date mutually acceptable to the parties. Mr. Rogers shall not unreasonably deny access for such inspection.
3. The parties shall return for further review on October 13, 2023 at 9:00 a.m. All parties and counsel may appear by Zoom, provided that if an evidentiary hearing is necessary, the parties and counsel will have to appear in person.

SO ORDERED.

DATE: 8/11/23

  
Jonathan J. Kane, First Justice

cc: Court Reporter



Defendant pay all amounts due prior to the stay. In this case, however, Plaintiff offered to extend a stay through September on the conditions set forth in this order.

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

1. Judgment for possession and \$4,350.00 in damages, plus court costs of \$183.70, shall enter in favor of Plaintiff.
2. Execution (the eviction order) shall issue upon written application after expiration of the appeal period.
3. Use of the execution shall be stayed through September 30, 2023 on the condition that Defendant pay \$725.00 by August 5, 2023. Plaintiff shall apply the last month's rent deposit to the use and occupancy due for September, 2023.
4. Plaintiff shall return Defendant's security deposit no later than August 14, 2023.
5. Defendant will maintain a detailed log of all of his efforts to relocate, including dates and addresses of all inquiries he makes for tenancy.
6. The parties shall return for review on September 26, 2023 at 9:00 a.m.

SO ORDERED.

DATE: August 11, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1470

AGAWAM HOUSING AUTHORITY, )  
 )  
 PLAINTIFF )  
 v. )  
 )  
 JAMES LAFLEUR, )  
 )  
 DEFENDANT )

ORDER FOR  
ENTRY OF JUDGMENT

This summary process case came before the Court on August 12, 2023 on Plaintiff's motion for entry of judgment based on alleged material violations of the Agreement of the Parties dated June 13, 2023 (the "Agreement"). Plaintiff appeared through counsel. Defendant appeared self-represented.

Pursuant to the Agreement, Defendant agreed to vacate on or before October 15, 2023 and to not cause disturbances or disrupt the quiet enjoyment of others at the subject property. Another tenant of the property testified that on June 28, 2023, Defendant confronted her and shouted obscenities outside her building, causing her to be in fear for her safety. Defendant denies the conduct and claims it was the witness who used obscenities. Neither party presented any other witnesses to the incident nor was the Court presented any other evidence to corroborate the testimony.

The Court finds the testimony of the witness to be credible and finds Defendant's testimony not to be credible. The conduct alleged by the witness

constitutes a material violation of the Agreement. However, because of the lack of any corroborating evidence, the Court finds that the incident does not warrant immediate eviction. Accordingly, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of the execution shall be stayed through October 15, 2023 on the condition that Defendant not cause any significant disturbances at the property or act in a harassing, threatening or intimidating manner toward any other resident, management or others legally present at the property.
3. If Plaintiff alleges a material violation of this order, it may file a motion to issue the execution. Such motion must include the dates and nature of the alleged violation, and any witnesses to the incident or incidents. Upon receiving the motion, Defendant shall not have any contact whatsoever with anyone listed as a witness.
4. If Defendant fails to vacate by October 15, 2023, Plaintiff may obtain the execution by written application with a supporting affidavit. Defendant shall not be entitled to any stays beyond October 15, 2023.

SO ORDERED.

DATE: August 12, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0270

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CITY OF HOLYOKE,

Plaintiff

v.

ORDER FOR APPOINTMENT  
OF A GUARDIAN AD LITEM

RICHARD REDFERN,

Defendant

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Re: 160 Pine Street, Holyoke, Massachusetts (the "Property")

This case came before the Court for a hearing on August 7, 2023, at which counsel for the Plaintiff appeared and Defendant failed to appear.

By way of background, Defendant is the record owner of the Property, which formerly contained a single family home that was demolished after a fire in March 2023. Only the garage remains. The garage is not fit for human habitation, but Defendant allegedly has resided in the garage at times.

The Court ordered a court clinic evaluation of Defendant. With the assistance of Holyoke Police Officer River and Public Health Nurse Schaier, Defendant participated in the process willingly. After reviewing the clinician's report, the Court concludes that the appointment of a guardian ad litem ("GAL") for Defendant is necessary to secure the full and effective administration of justice. The GAL is authorized to do the following:

- Investigate the facts of the proceeding and gather information relevant to this Code Enforcement action, including communicating with Defendant<sup>1</sup> and with

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<sup>1</sup> The GAL is invited to contact Nurse Schaier to assist in contacting Defendant.

Attorney Mantolesky from the City of Holyoke Law Department to determine the steps necessary to address all Code violations. The GAL is advised that the Court has appointed a receiver for the limited purpose of securing the Property and proposing a rehabilitation plan.

- Determine if Defendant has any resources (including family) that may be available to pay the receiver's lien and ultimately maintain ownership of (or sell) the Property.
- Identify any other issues the Court should consider prior to converting the limited receivership into a full receivership.
- Report to the Court at the next scheduled hearing on **October 6, 2023 at 9:00 a.m.**

SO ORDERED.

DATE: August 12, 2023

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice

cc: Clerk's Office (for appointment of a GAL)  
Court Reporter





judgment for possession and \$8,100.00 in rent.

In no fault eviction cases, a tenant is entitled to request a stay (postponement) of the eviction pursuant to G.L. c. 239, § 9 et seq. Ordinarily, in order to be eligible for a stay, a tenant has to pay all amounts owed for rent through the day of trial, which in this case would be \$8,100.00. In recognition of the familial relationship, and because Plaintiff indicated that she is not primarily concerned with the money, only possession, the Court enters the following order:

1. Judgment for possession and \$8,100.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Execution (the eviction order) shall not issue prior to October 31, 2023 so long as Defendant pays \$900.00 by September 5, 2023 and \$900.00 by October 5, 2023.
3. Plaintiff may file a motion to issue the execution if Defendant (a) fails to make a payment required hereunder, or (b) fails to vacate the Premises as of October 31, 2023,
4. Defendant shall keep a log of her efforts to find replacement housing, including the address and date of contact for each location she visits or makes inquiry, whether she submitted an application for tenancy and the outcome of any such application.

SO ORDERED.  
DATE: August 14, 2023

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

cc: Court Reporter



with various family members. Defendant purchased the 8-unit building where the Premises are located in March 2022 and sold it in March 2023.

Monthly rent was \$850.00 under the prior owner. Although Defendant apparently wanted to raise the rent to \$1,250.00 after it purchased the property, Plaintiff never agreed to an increase and did not sign a rental agreement with Defendant. Therefore, the Court rules that the monthly rent was \$850.00 throughout the duration of Defendant's ownership of the Premises.

Plaintiff established that she endured numerous conditions of disrepair throughout her tenancy with Defendant, and that Defendant had notice of the conditions. The most significant defect was the heating system. The Premises, despite having three bedrooms, had only two sources of heat. Heat was inadequate throughout the winter. Plaintiff was required to purchase and use space heaters, which caused her anxiety about fires. The space heaters periodically tripped the circuit breakers, and Plaintiff had no access to the basement to reset the breakers. On one occasion, Defendant did not restore electricity to the Premises for two days.

The Court finds that there were other conditions of disrepair in the Premises, including leaks, cracks in walls and ceilings, a broken door, missing or inoperable light fixtures, inadequate outlets, a cracked window and cockroaches. Plaintiff testified credibly about these defects, and provided photographic evidence in support of her testimony.

These findings of fact support an award of damages for breach of the implied warranty. Abatement damages 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.'" *Boston Hous. Auth. v.*

*Hemingway*, 363 Mass. 184, 203 (1973). Here, Plaintiff requests, and the Court awards, a rent abatement of 35% for the twelve months of Defendant's ownership of the Premises. Plaintiff is thus entitled to actual damages of \$3,570.00, plus costs and reasonable attorneys' fees, for the breach of warranty.

The Court finds that Defendant's failure to comply with the State Sanitary Code within a reasonable time after notice, and its reckless disregard of the inadequate heating capacity in the Premises, are unfair and deceptive practices, which practices were willful and knowing within the meaning G.L. c. 93A. After considering the cumulative effect of all of the violations of the State Sanitary Code, the Court awards Plaintiff treble damages in the amount of \$10,710.00.<sup>3</sup>

Apart from conditions of disrepair, the Court finds that Defendant attempted to cancel electrical service to the Premises, despite no written agreement requiring Plaintiff to pay for this utility. In order to maintain service, Plaintiff had to have her daughter's physician intervene to ensure continuous electricity to operate the daughter's breathing machine. Defendant's actions in attempting to disconnect electrical services, and the interruption of service whenever the circuit breaker tripped, caused serious interference with the tenancy and impaired the character and value of the leasehold. *See Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The Court rules that Defendant violated the prongs of G.L. c. 186, § 14 prohibiting a landlord from interfering with the furnishing of utilities by another and from willfully or intentionally failing to furnish power when required to do so.

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<sup>3</sup> To the extent the conditions of disrepair amount to a breach of the covenant of quiet enjoyment, an award under G.L. c. 186, § 14 would be duplicative of the award for breach of warranty. The Court finds that warranty damages provide the largest recovery for Plaintiff relating to conditions.

For these violations of G.L. c. 186, § 14, Plaintiff is entitled to actual and consequential damages or three month's rent, whichever is greater. Here, statutory damages are \$2,550.00. With respect to actual and consequential damages, the Court finds it reasonably foreseeable that Plaintiff would suffer emotional distress if Defendant cancelled her electric account, particularly given Plaintiff's daughter's health conditions. The Court awards Plaintiff \$1,500.00 in emotional distress damages as consequential damages for Defendant's interference with quiet enjoyment. *See Greenfield Gardens, Inc. v. Sanchez*, 70 Mass. App. Ct. 453, 458 (2007) (emotional distress damages, where foreseeable, may be considered as a consequence of interference with quiet enjoyment). Defendant's actions in threatening to cancel electrical service and in depriving Plaintiff of electricity at times during her tenancy were willful and knowing within the meaning of G.L. c. 93A, and therefore the Court trebles the consequential damages to \$4,500.00. Because actual and consequential damages exceed statutory damages, the Court awards Plaintiff \$4,500.00 under G.L. c. 186, § 14.<sup>4</sup>

Accordingly, based on the foregoing, and in light of the governing law, the following award shall enter:

1. Plaintiff is entitled to damages in the amount of \$10,710.00 for breach of warranty and \$4,500.00 for interference with quiet enjoyment for a total of \$15,210.00.<sup>5</sup>

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<sup>4</sup> The Court finds insufficient credible evidence to award Plaintiff any damages for violations of fair housing or civil rights laws.

<sup>5</sup> Although Plaintiff asked for injunctive relief set forth in the answer, the Court finds no basis for injunctive relief given that Plaintiff no longer lives at the Premises and Defendant no longer owns the Premises.

2. Judgment shall not enter at this time. Plaintiff's counsel shall have fifteen (15) days from the date this order is entered on the Court's docket to file a petition for reasonable attorneys' fees and costs, along with supporting documentation. The Court will assess attorneys' fees without need for further hearing. After attorneys' fees have been established, the Court will enter final judgment in favor of Plaintiff.

SO ORDERED.

DATE: August 14, 2023

  
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-CV-0931

TODD RUSSO,

PLAINTIFF

v.

KAYLEIGH SEBASTIAN AND SHAWN LUNDQUIST,

DEFENDANTS

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FINDINGS OF FACT, RULINGS  
OF LAW AND ORDER FOR JUDGMENT

This civil damages case came before the Court for a bench trial on May 5, 2023. The parties appeared self-represented. Plaintiff seeks damages in the nature of unpaid rent and repairs relating to Defendants' tenancy at 122 North Street, 2d Floor, Ware, Massachusetts (the "Premises"). Defendants assert counterclaims arising out of conditions of disrepair and interference with quiet enjoyment. This is the second case in which Defendants have asserted claims against Plaintiff relating to their tenancy. In docket number 22H79CV000601, the Court conducted a bench trial on August 29, 2022 and entered a final order on October 24, 2022.<sup>1</sup> Therefore, the Court rules that any of Defendants' claims arising out of facts and events occurring prior to August 29, 2022 are barred by the doctrine of res judicata.<sup>2</sup>

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<sup>1</sup> The previous case began as a summary process matter (No. 22H79SP001677) and was transferred to the civil docket after Plaintiff's claim for possession was dismissed.

<sup>2</sup> Among the matters previously adjudicated are conditions claims relating to defective stairs and stair railings, defective plumbing, dead birds in the attic and harmful air quality.

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

Defendants resided at the Premises from October 15, 2021 to December 18, 2022. Monthly rent was \$1,600.00 and the amount of unpaid rent through December 2022 is \$14,800.00. Plaintiff also spent \$148.75 to repair a broken window.<sup>3</sup>

Defendants did not establish any viable conditions claims arising after the previous trial date of August 29, 2022.<sup>4</sup> The sole claim based on circumstances that arose after August 29, 2022 is one for interference with quiet enjoyment. Defendants contend that Plaintiff changed the locks to the Premises prior to the date they vacated the Premises. The Court finds that Plaintiff did, in fact, change the locks a prior to December 18, 2022, the date Defendants surrendered possession. However, at the time Plaintiff changed the locks, Defendants were not residing at the Premises and only had certain items, primarily appliances and larger items, inside. When Defendants arrived on December 18, 2022 to remove these items and found the door locked, Plaintiff opened the door and Defendants were able to remove the remainder of their belongings.

Although Plaintiff exercised poor judgment in changing the locks before being certain that Defendants had vacated, Defendants did not suffer any actual harm. The

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<sup>3</sup> Plaintiff testified that he also spent \$20.00 changing the locks, but he did not support his testimony with any evidence.

<sup>4</sup> Defendants attempted to introduce medical records at trial regarding health issues that they believe were caused by the poor air quality in the Premises. Even if Defendants suffered from poor air quality after August 29, 2022, Defendants provided no scientific or medical expert testimony or evidence to prove that the air quality was harmful or that it was the cause of their health issues.



Court finds that they were not residing in the Premises at the time and they were able to enter the unit to retrieve their belongings on the same day that they found the locks had been changed. Under these circumstances, the Court rules that Plaintiff's conduct did not constitute a serious interference with Defendants' tenancy. Accordingly, the Court finds insufficient evidence to conclude that Plaintiff violated G.L. c. 186, § 14.

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

1. Plaintiff is entitled to unpaid rent in the amount of \$14,800.00 and \$148.75 for the window repair. Defendants are not entitled to an offset on account of their claims and defenses.
2. Judgment shall enter in favor of Plaintiff in the amount of \$14,948.75, plus court costs.

SO ORDERED.

DATE: August 14, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0147

TOPHER PROPERTIES LLC,

PLAINTIFF

v.

VANESSA FIGUEROA,

DEFENDANT

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FINDINGS OF FACT, RULINGS  
OF LAW AND ORDER FOR JUDGMENT

This civil damages case came before the Court for a bench trial on May 5, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented.

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

Defendant resided at 86 Wilmont Street, 2d Floor, Springfield, Massachusetts (the "Premises") from July 2021 to December 2022. Plaintiff was her landlord. Plaintiff commenced a summary process case against Defendant on December 16, 2022 (docket number 22H79SP001677). After Defendant vacated, the case was transferred to the civil docket for this trial on damages.

The unpaid rent amount is \$6,500.00. Although Defendant did not file an answer or counterclaim prior to trial, the Court allowed Defendant to present defenses to payment and Plaintiff agreed to proceed with trial rather than seek a

continuance. Defendant's primary defense is that the Premises were infested with cockroaches, an issue she noticed soon after moving in. Plaintiff responded by hiring a licensed exterminator to conduct monthly treatments. Defendant testified credibly and offered documentary evidence that, despite these treatments, the infestation continued through her entire tenancy.

Plaintiff's property manager testified that one reason that the treatments were not successful was Defendant's own conduct; namely, using off-the-shelf sprays and foggers to try to combat the problem herself, failing to allow the exterminator access to her unit, and failing to properly prepare the Premises for treatments. The property manager did not have direct knowledge of Defendant's behavior, however, but instead relied on information given to her by the exterminator. The property manager's testimony about Defendant's role in diminishing the effectiveness of the treatments is therefore inadmissible hearsay.

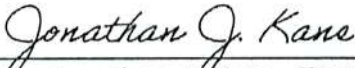
Although Plaintiff acted reasonably in promptly hiring an licensed exterminator and scheduling monthly treatments after being put on notice of the roach infestation, its efforts did not result in eradication of the infestation in a timely manner. The Court finds and rules that Plaintiff's failure to correct the issue over a 17-month period constitutes serious interference with Defendant's quiet enjoyment in violation of G.L. c. 186, § 14. As a result of the violation of § 14, and in the absence of evidence of actual damages, Defendant is entitled to statutory damages in the amount of three months' rent.

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

1. Plaintiff is entitled to \$6,500.00 in unpaid rent. Defendant is entitled to an offset of \$3,600.00 based on her defenses.
2. Judgment shall enter in favor of Plaintiff in the amount of \$2,600.00, plus court costs.

SO ORDERED.

DATE: August 14, 2023

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

cc: Court Reporter



4. The legislative fee for injunctions is waived.

SO ORDERED.

DATE: August 16, 2023

cc: Court Reporter

*Jonathan J. Kane*  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1566

JASNIA REALTY LLC,

PLAINTIFF

v.

GLADYS ORTIZ,

DEFENDANT

ORDER REGARDING STAY  
ON USE OF THE EXECUTION

This nonpayment summary process case came before the Court on August 18, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential premises in question is located at 438 Springfield Street, Unit 5, Agawam, Massachusetts (the "Premises"). Defendant has a pending RAFT application (# [REDACTED]). The balance due is \$2,334.89, inclusive of court costs.

After hearing, the following order shall enter:

1. Defendant must restore electricity to the Premises by August 25, 2023. Failure to do so shall be a material violation of this order. Until the electricity is restored, Defendant may not reside in the Premises.
2. The stay on use of the execution shall remain in effect so long as Defendant pays \$120.00 by August 21, 2023 and pays rent in full and on time beginning in September 2023.<sup>1</sup> Failure to make payment shall be a material violation.

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<sup>1</sup> Defendant has a Section 8 subsidy. Her monthly rent is changing to \$260.00 as of September 1, 2023.

3. All payments shall be made to the office. Members of the maintenance staff are not authorized to accept rent.
4. So long as Defendant is in compliance with this order, use of the execution shall be stayed until the RAFT application is approved or denied.
5. Upon a material violation of this order, Plaintiff may use the execution without further order of the Court; however, if Plaintiff wishes to use the execution as a result of a denial of rental assistance (including the failure of the parties to agree on a payment plan as a condition of accepting such funds), it must file a motion to lift the stay.
6. Defendant is entitled to hold a valid execution at all times that this case remains open.
7. This case will be dismissed at a zero balance.

SO ORDERED.

DATE: August 17, 2023

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

cc: Court Reporter



CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0603

VERONICA PEREZ,  
PLAINTIFF

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)  
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v.

ORDER FOR REPAIRS

SPRINGFIELD GARDENS,  
DEFENDANT

This matter came before the Court on August 17, 2023 on Plaintiff's request for an emergency order. The moving party (Plaintiff) appeared self-represented. Defendant appeared with counsel. The residential premises in question is located at 66 Fort Pleasant Avenue, Apt. 3R, Springfield, Massachusetts (Premises). After hearing, the following order shall enter:

1. Defendant shall correct all violations cited by the Code Enforcement Department within thirty (30) days, or the time period provided by Code Enforcement, whichever is earlier.
2. Notwithstanding the foregoing, Defendant shall begin biweekly exterminations for rodents and roaches. Defendant shall schedule an extermination next week upon at least 48 hour advance notice. The efforts made to date (primarily using baits) have been inadequate to eradicate the infestation; therefore, the exterminator shall use more aggressive means (perhaps referred to as a "clean out" or "bombing" the apartment) to get

2

the infestation of rodents and roaches under control.<sup>1</sup> Treatments shall be conducted throughout the entire building to avoid simply moving the roaches and rodents to untreated units.

3. The exterminator should investigate the source of a foul odor (perhaps a dead animal) behind Plaintiff's stove or elsewhere in the kitchen.
4. The Court requests that Code Enforcement reinspect for evidence of continued roach and rodent infestation prior to the next court date.
5. Defendant shall give 48 hour advance notice before entering to make repairs.
6. The parties shall return for review on August 25, 2023 at 2:00 p.m.
7. The legislative fee for injunctions is waived.

SO ORDERED.

DATE: August 17, 2023

  
Hon. Jonathan J. Kane, First Justice

cc: Springfield Code Enforcement Department  
Court Reporter

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<sup>1</sup> If such treatments require occupants to leave their units outside of daylight hours, Defendant shall place such occupants in a hotel until it is safe for them to return.

CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1537

CENTURY PACIFIC HOUSING PARTNERSHIP X, )

PLAINTIFF )

v. )

NYCHELLE CASSELL, )

DEFENDANT )

FINDINGS OF FACT, RULINGS OF  
LAW AND ORDER FOR JUDGMENT

This nonpayment summary process case came before the Court for a bench trial on August 17, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 151 Girard Avenue, Apt. 502, Springfield, Massachusetts (the "Premises") from Defendant.

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. The parties further stipulated to an unpaid rent in the amount of \$6,116.00.<sup>1</sup> Defendant did not file an answer and raised no defenses at trial. Defendant does not have a pending application for rental assistance. See G.L. c. 239, § 15. S

Monthly rent is \$1,162.00. Defendant has been making substantial payments toward the balance, including a total of approximately \$3,000.00 in the current month. She has resided in the Premises for 32 years.

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<sup>1</sup> The Court subtracts \$24.00 for non-rent charges (late fees) from the balance shown on the ledger.

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

1. Judgment for possession, \$6,116.00 in damages and court costs of \$194.25 shall enter in favor of Plaintiff.
2. Defendant shall pay \$700.00 on or before August 25, 2023.
3. Beginning on September 8, 2023, Defendant shall pay \$984.00 biweekly until the total of \$6,310.25 has been paid, in addition to all monthly use and occupancy (rent) accruing as of September 2023.
4. The execution (eviction order) shall be stayed (not used) so long as Defendant is in compliance with the terms of this order.
5. Plaintiff is entitled to hold a valid execution so long as this case is open.
6. The parties shall appear for review on September 19, 2023 at 9:00 a.m.

SO ORDERED.

DATE: August 18, 2023

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

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss		HOUSING COURT DEPARTMENT
		WESTERN DIVISION
		DOCKET NO. 23-SP-2464
WICKED DEALS, LLC,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
THEODORE SWEENEY, JR., ET AL.,	)	
	)	
DEFENDANTS	)	

This summary process case came before the Court for a bench trial on August 18, 2023. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 759 Millers Falls Road, Northfield, Massachusetts (the "Premises") from Defendants. Plaintiff is a third-party purchaser following foreclosure. Defendant Sweeney is the son of the deceased former owner, Defendant Sciandra is his wife, and Defendant Willard is her daughter.

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. Defendants did not file an answer and raised no defenses at trial. Because the parties do not have a landlord-tenant relationship, no money has been paid by Defendants to Plaintiff, and Plaintiff is not seeking any money from Defendants at this time.

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

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

2. Execution (eviction order) shall issue upon written application after expiration of the appeal period.
3. Use of the execution shall be stayed for 30 days from issuance, or through September 30, whichever is later.

SO ORDERED.

DATE: August 18, 2023

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

cc: Court Reporter



shall enter:

1. Plaintiff is entitled to judgment for possession, \$4,900.00 in damages and court costs of \$222.25. Entry of judgment will be stayed, however, pending Defendant's compliance with this order.
2. Defendant shall pay monthly use and occupancy (rent) plus \$500.00 to be applied to the arrears and court costs by the 5<sup>th</sup> of each month beginning in September 2023 until she achieves a zero balance.
3. Defendant shall diligently seek rental assistance to reduce her balance owed. If such assistance is received but does not pay the entire balance owed, Defendant shall continue to make the \$500.00 payments.
4. If Defendant is in material breach of the payment terms herein, upon motion, Plaintiff shall be entitled to judgment nunc pro tunc (retroactive) to August 17, 2023.
5. The parties shall appear for review on September 19, 2023 at 9:00 a.m.

SO ORDERED.

DATE: August 18, 2023

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

cc: Court Reporter



CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1636

TODD ILLINGSWORTH, )  
 )  
 PLAINTIFF )  
 v. )  
 )  
 CHRISTINE COOLEY AND ROBERT COOLEY, )  
 )  
 DEFENDANT )

AGREED-UPON ORDER

This no fault summary process case came before the Court for a bench trial on August 21, 2023. Plaintiff appeared through counsel. Defendant Robert Cooley appeared self-represented. Defendant Christine Cooley did not appear. Plaintiff seeks to recover possession of 27 Morris Street, Second Floor, Springfield, Massachusetts (the "Premises") from Defendants.

In lieu of a trial, the parties agreed to resolve the case on the following terms, which shall enter as a Court order:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Defendants shall vacate no later than September 11, 2023.
3. Execution (eviction order) shall issue upon written application ten days after the judgment is entered, but its use shall be stayed (not used) before September 12, 2023.

4. Plaintiff's claim for unpaid rent (which it asserts is \$5,950.00) is hereby dismissed without prejudice.

SO ORDERED.

DATE: August 21, 2023

Jonathan J. Kane  
Jonathan J. Kane, First Justice

cc: Court Reporter



2. Plaintiff may apply for issuance of the execution (eviction order) ten days after judgment enters.
3. Plaintiff may not schedule the levy (move-out) prior to September 11, 2023.

SO ORDERED.

DATE: August 21, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-0086

BASSAM YACTEEN,

PLAINTIFF

v.

NEOMI REYES,

DEFENDANT

ORDER TO STOP EVICTION

This matter came before the Court on August 21, 2023 on Defendant's motion to stop a physical move-out. Both parties appeared self-represented. After hearing, the following order shall enter:

1. Defendant shall pay \$3,000.00 today. Plaintiff's property manager shall send someone to the courthouse to pick up the funds from Defendant. A receipt shall be provided.
2. Plaintiff shall cancel the levy (the move-out) eviction scheduled for 12:00 p.m. today. The non-refundable cancellation fees shall be deducted from the \$3,000.00 payment, with the balance applied to rent arrears.
3. A referral to Tenancy Preservation Program ("TPP") was previously made, but Defendant claims she has had no contact with the agency. Another TPP referral shall be made.<sup>1</sup>

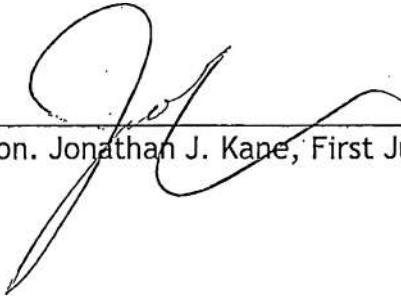
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<sup>1</sup> TPP can meet with Defendant at the next hearing on August 28, 2023 or can call her at [REDACTED].

4. The parties shall appear in the Springfield session on August 28, 2023 at 2:00 p.m. for further proceedings.

SO ORDERED.

DATE: August 21, 2023

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

cc: TPP of Pioneer Valley

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1968

NORTHAMPTON HOUSING AUTHORITY, )

PLAINTIFF )

v. )

TEOFILO IRAOLA, )

DEFENDANT )

FINDINGS OF FACT, RULINGS OF  
LAW AND ENTRY OF JUDGMENT

This summary process matter came before the Court for an in-person bench trial on July 24, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. The property in question is located at 81 Conz Street, Apt. 228, Northampton, Massachusetts (the "Premises"). The Premises are located in the Walter Salvo House (the "Property"), a state-subsidized property with 192 units.

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 parties stipulated to Plaintiff's prima facie case for possession. Defendant acknowledges receipt of the notice to quit and agrees that he has not paid \$1,848.00 in rent.<sup>1</sup> Defendant claims that he has been lawfully withholding rent since February 2023. He asserts that he is not paying because he is dissatisfied with the manner in which Plaintiff, and particularly the former on-site manager, Jose Cruz, has handled

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<sup>1</sup> Defendant has not demonstrated a pending application for rental assistance. In fact, he claims that he has all of the money in escrow and refuses to pay it because of his dissatisfaction with the manner in which the Property is managed.

his complaints about excessive noise and unauthorized people coming to and going from the Property. He says that he has been making similar complaints for three years. He is particularly upset about noise coming from the adjacent apartment.<sup>2</sup> Defendant also makes unsubstantiated allegations of drug activity at the Property. Plaintiff has investigated Defendant's complaints about the neighbor but has been unable to corroborate Defendant's complaints. Nonetheless, Plaintiff offered Defendant a transfer to a different apartment at the Property, which offer Defendant refused.

The Court finds that Defendant has not provided sufficient evidence to establish a defense to payment.<sup>3</sup> The evidence does not support a finding that Plaintiff has ignored his complaints or has knowingly allowed other residents or their guests to interfere with Defendant's quiet enjoyment of the Premises. Defendant has other recourse to address his concerns without withholding rent.

In light of the foregoing findings and rulings, the Court enters the following order:

1. Judgment shall enter for Plaintiff for possession and damages in the amount of \$1,848.00 plus court costs.
2. After expiration of the 10-day appeal period, Plaintiff may request issuance of the execution (eviction order) by written application.

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<sup>2</sup> Mr. Cruz testified that Defendant also complained about the previous two tenants who occupied the neighboring apartment, and both tenants moved out.

<sup>3</sup> Defendant also testified that Plaintiff demands rent before the end of the month it is due. Plaintiff's practice is to send a reminder of unpaid rent after the sixth business day of the month and a notice to quit after rent is ten days' late. The Court finds no reason to find this practice to be wrongful.



3. If Defendant tenders payment of the judgment amount and Plaintiff refuses to accept the money, Defendant may seek a further order from this Court.

SO ORDERED.

DATE: August 23, 2023

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

cc: Court Reporter



November 29, 2022. Plaintiff was the winning bidder. On December 23, 2022, she recorded a foreclosure deed along with an affidavit attesting to notice by publication and compliance with G.L. c. 244, § 14.<sup>1</sup> On December 29, 2022, Plaintiff served a notice to quit upon Defendant. Defendant has not vacated nor has he removed his personal belongings.

At trial, Defendant testified that he uses the Premises as a place of business and that he does not currently reside there (although he refused to disclose where he lives). He further asserted that he is not a proper defendant in this case because he did not sign the loan documents. Factually, these arguments fail. Defendant's testimony regarding his use of the Premises was evasive and lacked credibility. Defendant admitted that he keeps personal belongings in the Premises and the Court infers from the totality of the evidence that even if Defendant is not using the Premises as a full-time residence, he has used them as such in the recent past. With respect to the legal merits of these claims, Defendant appears to be conflating PCI's obligations under the loan documents with his right to possession of the Premises. Because Plaintiff has a superior right to possession, and because the Premises has been used as a residence by Defendant, the Court rules that Defendant is a proper party in this summary process action.

Defendant posited two other defenses at trial. First, he claimed that Plaintiff violated COVID-19 protections afforded mortgagors, but he did not explain how she purportedly violated the law and produced no evidence in support of his claim. Second, he alleged that Plaintiff engaged in unfair and deceptive practices in

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<sup>1</sup> Plaintiff has been the holder of the note throughout and has never assigned it.


purchasing the Premises at auction herself at a below-market price, but again, he provided no explanation or proof of how his allegations constitute a legal defense in this case. Given the lack of evidence, and further given Defendant's evasiveness and general lack of credibility, the Court finds that Defendant has not put forth any cognizable legal claims or defenses to Plaintiff's claim for possession.<sup>2</sup>

In light of the foregoing findings and rulings, the Court enters the following order:

1. Judgment for possession shall enter in favor of Plaintiff.
2. After expiration of the 10-day appeal period, Plaintiff may request issuance of the execution (eviction order) by written application.

SO ORDERED.

DATE: August 23, 2023

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

cc: Court Reporter

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<sup>2</sup> The Court found Defendant to be evasive in answering questions and found that his testimony lacked credibility.



in a no fault case is that Defendants pay all rent due through the date of the stay. Defendants cannot pay the \$2,700.00 in outstanding rent, but said they would apply for RAFT funds to cover the balance. Because RAFT funds are not likely to be paid to Plaintiff if he is not willing to reinstate the tenancy, the Court cannot grant the statutory stay. However, in light of all of the circumstances presented at trial, the Court will provide a short equitable stay on the terms set forth herein.

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

1. Judgment for possession, \$2,700.00 in damages and court costs shall enter in favor of Plaintiff.
2. The execution (eviction order) shall not issue prior to October 1, 2023 provided that Defendants pay \$900.00 by September 5, 2023. If the payment is made and Defendants do not vacate, Plaintiff may request issuance of the execution by written application with an affidavit attesting to Defendants' failure to vacate.
3. If Defendants are able to pay the \$2,700.00 rent balance, with or without rental assistance, they may seek a further stay by providing the Court with evidence that they have been doing a diligent housing search.

SO ORDERED.

DATE: August 23, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23H79CV000676

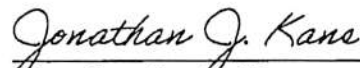
MAGGIE DULEEN,                    )  
*Plaintiff,*                            )  
  )  
v.                                        )  
  )  
VIVIAN SALAS                        )  
*Defendant.*                         )

**ORDER**

After a hearing on August 23, 2023, of which the Plaintiff appeared through counsel, and the Defendant did not appear, the following order is to enter:

1. Given the Plaintiff's belief that Defendant has abandoned the leased premises located at 1992 Northampton Street, 2<sup>nd</sup> Floor, Holyoke, MA 01040 (Premises), the Plaintiff shall be allowed to take the following actions:
  - A. Upon at least twenty-four (24) hours' advance notice, enter the Premises for the purposes of inspection and photographing the contents of the unit.
  - B. Upon at least seven (7) days' advance notice, recover possession of the Premises, change the locks and remove and store any personal property therein for six months.
2. Notice given pursuant to paragraph 1 above shall be posted at the Premises and sent to the Defendant by email or text message if the Plaintiff has contact information.
3. If the Defendant claims to have any rights in the Premises, she may file a motion to appear before this Court to show cause why the Plaintiff should not regain possession. The Plaintiff may not take possession of the Premises while any such motion is pending.
4. A copy of this Order shall be served by the Plaintiff via constable or sheriff's service and posted on the door of the Premises.

So entered on this August 24, 2023:

  
\_\_\_\_\_  
Hon. Jonathan J. Kane  
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-1957

JOSEPH O'MALLEY,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
ARTHUR LIND AND VIRGINIA LIND,	)	
	)	
DEFENDANTS	)	

This post-foreclosure summary process matter came before the Court for an in-person bench trial on July 27, 2023. Plaintiff appeared through counsel. Defendant, the former homeowner, appeared self-represented. The property in question is located at 82 Fieldston Street, Springfield, Massachusetts (the "Premises").

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

Plaintiff acquired title to the Premises by a quitclaim deed from Wells Fargo Bank, N.A. (Wells Fargo) which deed was recorded on March 24, 2023. Defendants, the former owners, occupied the Premises at the time. Plaintiff had them served them with a 72-hour notice to vacate, which the Court finds legally sufficient. When Defendants failed to vacate, Plaintiff timely filed this summary process case.

At trial, Plaintiff introduced certified copies of the recorded foreclosure deed and affidavit of sale that complies with G.L. c. 183, App. Form 12. *See Federal*



*National Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 637 (2012).<sup>1</sup> These documents constitute prima facie evidence that the foreclosure was proper. Plaintiff, a third-party purchaser for value, relied on the affidavit as evidence that the power of sale under the foreclosed mortgage was duly executed and that the sale complied with the law.<sup>2</sup>

Defendants offered no evidence to rebut Plaintiff's prima facie case for possession. Mr. Lind testified that Wells Fargo failed to give him the face-to-face interview required for loans guaranteed by the Department of Veterans Affairs (VA). See 38 C.F.R. § 36.4350(g) and failed to treat him fairly in the loan modification process. A face-to-face interview was not required, however. The federal regulations that impose requirements for loans guaranteed by the VA require lenders to make reasonable efforts to contact borrowers with the goal of establishing mutually satisfactory arrangement for curing the default. 38 C.F.R. § 36.4350(h). A face-to-face interview with the borrower is only required if the lender has not established contact and has not obtained agreement to a repayment plan. 38 C.F.R. § 36.4350(g)(1)(iii). Here, Defendants concede that they entered into a loan modification agreement with Wells Fargo but could not make the required payments

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<sup>1</sup> In advance of trial, the Court denied Defendants' motion to add Wells Fargo as a necessary party because complete relief can be granted in this case without making Wells Fargo a party. Defendants could have sent subpoenas for documents or witnesses if they wanted information about the loan and collection process directly from Wells Fargo.

<sup>2</sup> Although Plaintiff's counsel made only passing reference at trial to G.L. c. 244, § 15(c), it appears that Defendants are not entitled to challenge the validity of the foreclosure. The affidavit of sale was recorded on January 31, 2020 and more than three years passed before Defendants asserted defenses in this case, which was filed on May 1, 2023.

after Mr. Lind became ill. In these circumstances, the Court rejects Mr. Lind's bare allegation that the foreclosure was invalid for lack of a face-to-face meeting.<sup>3</sup>

In light of the foregoing findings and rulings, the Court enters the following order:

1. Judgment for possession shall enter in favor of Plaintiff.
2. After expiration of the 10-day appeal period, Plaintiff may request issuance of the execution (eviction order) by written application.

SO ORDERED.

DATE: August 24, 2023

  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>3</sup> With respect to Defendants' contention that Wells Fargo treated them unfairly, they produced no evidence at trial to support this bare assertion.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2282

SPRINGFIELD GARDENS 41-49, LP, )  
)  
PLAINTIFF )  
v. )  
)  
HECTOR RIOS, )  
)  
DEFENDANT )

FINDINGS OF FACT, RULINGS OF  
LAW AND ORDER FOR JUDGMENT

This no fault summary process case came before the Court for a bench trial on July 27, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 43 School Street, Apt. 6, Springfield, Massachusetts (the “Premises”) from Defendant.

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

Plaintiff established its prima facie case for possession. The Court finds that Plaintiff has a superior right to possession, that it served Defendant with a legally adequate notice to quit which Defendant received, that it timely commenced this summary process action, and that Defendant has not vacated the unit. Further, Plaintiff demonstrated that after receipt of a rental assistance payment in April 2022 in the amount of approximately \$10,000.00, Defendant has made no payments and in arrears on his rent in the amount of \$8,960.00 through the date of trial.

Defendant filed an answer asserting claims and defenses of retaliation, discrimination, conditions of disrepair, violation of G.L. c. 186, § 15B, interference with quiet enjoyment and violation of G.L. c. 93A. The only testimony he provided at trial, however, concerned conditions in the Premises, and thus his claims for retaliation, discrimination and violation of G.L. c. 186, § 15B are dismissed.

With respect to conditions in the Premises, the Court finds that the only material defect was a leak in his bathroom ceiling that allowed urine and feces to enter his unit. Plaintiff was made aware of the leak in February 2023, well after Defendant was in arrears with his rent. Accordingly, Defendant cannot use the presence of the leak as a defense to possession under G.L. c. 239, § 8A.

He is, however, entitled to a rent abatement for the period that the leak existed. The Court finds that Plaintiff knew of the leak as of February 2023 and completed repairs in April 2023.<sup>1</sup> For the three months in which the leak persisted, Defendant is entitled to a 20% abatement of rent. Based on monthly rent of \$595.00, he is entitled to a rent abatement of \$357.00. The Court finds that Plaintiff's failure to remedy the leak promptly is an unfair and deceptive act or practice under the Attorney General's Regulations. *See* 940 C.M.R 3.17(1)(b). The Court therefore doubles the abatement damages to \$714.00.

The Court further finds that the leak interfered with Defendant's right to quiet enjoyment. *See* G.L. c. 186, § 14. Statutory damages for this claim are three times

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<sup>1</sup> Although Defendant testified that the leak has returned, he was unable to provide credible evidence Plaintiff was aware of the recurrence.

the monthly rent, or in this case \$1,785.00. Because in this case the abatement damages and the quiet enjoyment damages arise from the same condition of disrepair, Defendant is only entitled to a single award of damages. Here, damages for interference with quiet enjoyment (\$1,785.00) exceed warranty damages (\$714.00), and thus shall be the amount used to set off the balance of rent arrears.

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

1. Judgment for possession, \$7,175.00 in damages and court costs shall enter in favor of Plaintiff.<sup>2</sup>
2. Execution (eviction order) shall issue by written application ten days after the judgment is entered.

SO ORDERED.

DATE: August 24, 2023

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

cc: Court Reporter

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<sup>2</sup> Because this case was not brought solely for nonpayment of rent, G.L. c. 239, § 15 does not apply.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2550

WEST STREET VILLAGE, LLC,

)

PLAINTIFF

)

v.

)

FINDINGS OF FACT, RULINGS OF  
LAW AND ENTRY OF JUDGMENT

)

KELLY GUERTIN AND LUIS PEREZ,

)

DEFENDANTS

)

)

This summary process case came before the Court for a bench trial on August 9, 2023. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 350 West Street, Unit 37, Ludlow, Massachusetts (the "Premises") from Defendants.

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. Defendants did not file an answer and raised no defenses at trial. The tenancy ended on May 31, 2023. Defendants have not located replacement housing, but Plaintiff is anxious to sell this manufactured home.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue upon written application after expiration of the appeal period.
3. If Defendants pay \$800.00 for use and occupancy for September 2023 by

the 5<sup>th</sup> of the month, use of the execution shall be stayed until  
September 30, 2023.

4. The parties shall return for review on September 22, 2023 at 9:00 a.m.

SO ORDERED.

DATE: August 24, 2023

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

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP--2761

GFE REAL ESTATE, LLC, and FARAI  
HATIDANI

Plaintiffs,

v,

STEPHANIE MARSHALL and TYKIE M.  
GREENE, JR.

Defendants.

ORDER

After hearing on August 24, 2023, at which the plaintiffs appeared through counsel and the defendants appeared with LFD counsel, the following order shall enter:

1. The motion to vacate the default judgment against the defendant Tykie M. Greene, Jr. is allowed.
2. This matter shall be continued to allow for the tenants' applications for rental arrearage from VOC and RAFT to the date noted below, contingent upon compliance with the terms of this order.



3. The tenants shall pay \$1,000 on August 29, 2023, towards the outstanding balance of \$5,000 in use and occupancy through August 2023 plus court costs of \$215.
4. The tenants shall diligently pursue their application with VOC and RAFT and the landlord shall comply with the requirements of each such program.
5. The tenants shall pay their September 2023 use and occupancy (rent) in September 2023, and for October 2023 in full and timely within the first week of October 2023.
6. This matter shall be scheduled for a review hearing (not for trial) on **October 26, 2023, at 2:00 p.m.** Ms. Hatidani has permission to attend this review hearing by Zoom.

So entered this 25<sup>th</sup> day of August, 2023.

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Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate  
David DiBartolo, Esq. (LFD Counsel)  
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4324

PHOENIX SOUTH CITY,  
  
Plaintiff,  
  
v.  
  
TARAH KRAINSKI,  
  
Defendant.

ORDER

After hearing on August 24, 2023, at which the landlord appeared through counsel, the tenant appeared by Zoom, Attorney Raquel Manzanares joined to report on her efforts to have the tenant's Section 8 subsidy restored, and at which a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. The tenant and TPP shall make efforts to reconnect and work together on the tenant's applications for RAFT and for Social Security benefits and for DTA benefits. The tenant's new cell phone number was shared.
2. The tenant shall pursue her RAFT and VOC applications diligently.
3. The tenant shall continue to work with CLA regarding the restoration of her Section 8 voucher.
4. This matter shall be scheduled for hearing on the landlord's motion for entry of judgment and issuance of the execution and for further review on **September 21, 2023, at 2:00 p.m.** Attorney Manzanares agreed to join said hearing to update the court on efforts to have the tenant's Section 8 voucher restored.

So entered this 25<sup>th</sup> day of August, 2023.

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Robert Fields, Associate Justice

CC: Raquel Manzanares, Esq. (CLA)

Taqoya Whitfield, TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2939

STANLEY MYSLIWIEC,  
PLAINTIFF

v.

JUDITH MURPHY,  
DEFENDANT

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FINDINGS OF FACT, RULINGS OF  
LAW AND ORDER FOR JUDGMENT

This no-fault summary process case came before the Court for a bench trial on August 28, 2023. Both parties appeared self-represented. Plaintiff seeks to recover possession of 19D Hadley Village, South Hadley, Massachusetts (the “Premises”) from Defendant.

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

Plaintiff established its prima facie case for possession by demonstrating that it is the proper plaintiff, that it served a legally adequate notice to quit which Defendants received,<sup>1</sup> that it timely filed this eviction case, and that Defendants have not vacated. The parties agree that monthly rent is \$650.00 but disagree as to the amount owed. Plaintiff claims he has not accepted any money since January 2023;

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<sup>1</sup> Although Defendant does not recall receiving the notice of termination, Plaintiff testified credibly that he personally delivered it on November 28, 2022 and that he sent a text message the same day informing Defendant that he was bringing it to the Premises. Based on the totality of the circumstances, the Court is satisfied that Plaintiff met his burden of proving receipt of the notice.

Defendant claims she made payments until July 2023, when Defendant returned her payment.

Defendant did not file a timely answer; the answer on the Court's docket was filed on August 4, 2023 without permission to file it late. Even had the answer been timely, Defendant raised no substantive defenses. She only asserts procedural defenses regarding the notice to quit, and the Court finds no merit to her defenses.

In a no-fault eviction case, pursuant to G.L. c. 239, §§ 9 et seq., Defendant is entitled to seek a stay on issuance of the execution (eviction order) for up to twelve months.<sup>2</sup> Given that her tenancy terminated as of December 31, 2023, she has not exhausted the twelve-month stay period. The Court finds that she has been diligently searching for replacement housing.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of the execution shall be stayed through September 30, 2023 provided that Defendant pay Plaintiff \$1,300.00 (representing two months' rent), and use and occupancy of \$650.00 for September for a total of \$1,950.00 no later than September 5, 2023.
3. The parties shall appear before the Court on **October 2, 2023 at 9:00 a.m.** for further review of Defendant's housing search. At that time, if a

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<sup>2</sup> Defendant uses a wheelchair. The Court finds that she meets the definition of a "handicapped person" as the term is used in G.L. c. 239, § 9.

further extension is requested, the Court will take evidence from the parties as to whether payment was made or received for January 2023 through June 2023 and determine whether a further extension is warranted.

SO ORDERED.

DATE: August 28, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0645

NORTHAMPTON HOUSING AUTHORITY, )  
 )  
 PLAINTIFF )  
 v. )  
 )  
 SHANNON SCOTT, )  
 )  
 DEFENDANT )

ORDER FOR  
INJUNCTIVE RELIEF

This matter came before the Court on August 28, 2023 on Plaintiffs' request for an emergency order. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks an injunction requiring Defendant to temporarily relocate from his current apartment at the 81 Conz Street, Apt. 415, Northampton, Massachusetts (the "Premises") to a unit located in the same building one floor below, namely Apt. 319. Plaintiff seeks this relief because the Northampton Board of Health has issued a correction order requiring that work be done to the Premises to meet State Sanitary Code requirements, and Plaintiff requires the Premises be empty for the work. Defendant objects to having to move, and having his belongings moved, to a temporary unit.

In considering a request for injunctive relief, the Court considers 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).

Here, the Court finds that Defendant is not at significant risk of suffering irreparable harm. Although Defendant currently resides in a fourth floor unit, the temporary unit is only one floor below and has been recently renovated and has been vacant since the renovation. Moreover, pursuant to this Order, Plaintiff will bear the cost of moving Defendant's belongings to Apt. 319. Upon completion of the work, Defendant will be able to return to the Premises and Plaintiff will move his belongings back at no cost to Defendant.

Plaintiff has a high likelihood of success on the merits of its claim for relief. It is obligated to comply with the Board of Health Correction Order and to bring the Premises into compliance with the State Sanitary Code. Based on the facts set forth in the verified complaint, the Court finds that the only bathroom in the Premises will be unusable for periods of time and the flooring throughout the unit will be replaced. At a trial on the merits, Plaintiff is highly likely to demonstrate that Defendant cannot



continue to occupy the Premises during the repairs.<sup>1</sup> With respect to Defendant's argument that, even if he has to relocate, his belongings do not have to be removed, the Court finds that Plaintiff is likely to prove that, in order for the flooring to be replaced, the Premises need to be empty.

Given the lack of a substantial risk of irreparable harm to Defendant if the relief is granted, and given the likelihood of success on the merits of Plaintiff's request for Defendant to temporarily relocate, the Court finds that the balance of the risks and harms favors granting Plaintiff the injunctive relief requested.

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

1. Upon no less than seven days' advance notice, Defendant shall temporarily relocate from the Premises to Apt. 319.
2. Prior to the relocation, Plaintiff shall request that the Northampton Board of Health inspect Apt. 319 by to ensure that it is ready for occupancy.
3. Plaintiff shall use professional, insured movers to move Defendant's belongings to Unit 319 at no cost to Defendant.
4. Upon completion of the work in the Premises, Plaintiff shall use professional, insured movers to move Defendant's belongings back to the Premises at no cost to Defendant. At such time as Defendant's

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<sup>1</sup> Often, the Court orders that tenants be placed in a hotel during renovations; in this case, however, Plaintiff has a similarly-sized apartment in the same building and the Court determines that moving Defendant to this unit rather than a hotel is reasonable.

belongings have been returned to the Premises, Defendant must return to the Premises.

5. Once Defendant has been relocated, Plaintiff shall work diligently to complete the renovation of the Premises within a reasonable time period of time to minimize the time Defendant remains in alternative housing.
6. The parties shall appear for review on the status of the repairs and relocation on **October 2, 2023 at 9:00 a.m.**
7. The \$90.00 legislative fee for issuance of an injunction is waived.

SO ORDERED.

DATE: August 28, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2818

HANATI LUBEGA,

PLAINTIFF

v.

AMELIA ORTIZ,

DEFENDANT

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FINDINGS OF FACT, RULINGS OF  
LAW AND ORDER FOR JUDGMENT

This no-fault summary process case came before the Court for a bench trial on August 29, 2023. Both parties appeared through counsel. Plaintiff seeks to recover possession of 18 Lombard Street, Springfield, Massachusetts (the “Premises”) from Defendant. Defendant did not appear for trial, but her counsel cross-examined Plaintiff in her case-in-chief.<sup>1</sup>

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

Plaintiff established her prima facie case for possession by demonstrating that she is the proper plaintiff, that she served a legally adequate notice to quit which Defendant received, that she timely filed this eviction case, and that Defendant has

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<sup>1</sup> Defendant’s counsel asked for a continuance based on a clerical error by the Court. Although the parties were informed in person that trial was to occur today, the notice form they were handed in the courthouse listed a trial date of September 29, 2023. Before counsel left the courthouse, the error was corrected and counsel were provided a corrected notice with today’s date. The Court finds no reason to conclude that Defendant failed to appear due to this clerical error.

not vacated the Premises. The parties agree that Defendant's portion of the monthly rent is \$157.00. The Court finds that the amount of unpaid rent through trial is \$2,669.99.<sup>2</sup>

Because Defendant was not present to testify and because the Court's docket does not include an answer, Defendant did not rebut Plaintiff's prima facie case. Based upon the foregoing, and in light of the governing law, the following order shall enter:

1. Judgment for possession and damages of \$2,669.00, plus court costs, shall enter in favor of Plaintiff.
2. Execution shall issue by application following the 10-day appeal period.

SO ORDERED.

DATE: August 29, 2023

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

cc: Court Reporter

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<sup>2</sup> Although Defendant's counsel questioned why Defendant was not credited for two money orders, one in April 2022 and one in May 2022, the Court is satisfied based on the evidence presented that these money orders were credited to amounts due for previous months.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0550

TERRILYN PATTEN,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	
	)	ORDER
KENNETH KOWAL, JAMIE KOWAL,	)	
ESTATE OF PATRICIA KOWAL,	)	
	)	
DEFENDANTS	)	

This case came before the Court on August 28, 2023 on Plaintiff's request for an emergency order. Plaintiff and Defendants Kenneth Kowal and Jamie Kowal (the Kowals) appeared self-represented. No one appeared on behalf of the Estate. Plaintiff resides at 234 Middle Street, Hadley, Massachusetts (the Property), in the rear unit.

Based on the previous hearing in this case, the Court learned that Patricia Kowal, who lived in the front unit of the Property, was Plaintiff's landlord until her death in May 2023. Since her passing, the no personal representative has been appointed for the Property and no family member has taken responsibility for it.

After hearing, the following order shall enter:

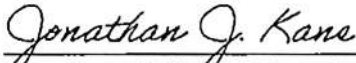
1. The Kowals shall remove any cameras on the Property, including without limitation on the garage.
2. The Kowals shall not enter the Property without permission of Plaintiff and shall not interfere with Plaintiff's use and enjoyment of the Property; for

example, they may not put any locks on any doors that have not historically been locked and they may not interfere with persons coming to the Property to do work.

3. If the parties seek harassment prevention orders, such orders may be obtained from the District Court.
4. The Court's order dated July 17, 2023 shall remain in effect except as modified by this order.

SO ORDERED.

DATE: August 29, 2023

  
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-1534

CENTURY PACIFIC HOUSING PARTNERSHIP  
X, LP,

Plaintiff,

v.

ESTER GONZALEZ,

Defendant.


ORDER

After hearing on August 28, 2023, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se*, the following order shall enter:

1. The landlord's motion to amend the complaint to reflect the correct and current address of the tenant's apartment is allowed and the file shall be updated to Apt. 312 at the same address.

2. That said, the tenant raised issues regarding the fact that she was required to move from her original and preferred apartment due to renovations by the landlord and that she very much wishes to be returned to the original unit.
3. The tenant explained that she has a disabled adult brother and that being required to reside on the third floor is very problematic and that she is requesting being moved back to Apt. 212.
4. This matter shall be referred to the Tenancy Preservation Program (TPP) to assist the parties to engage in a Reasonable Accommodations dialogue and to assist the tenant with RAFT and with outreach to the agencies mentioned in the next paragraph. TPP shall reach out to the tenant but the tenant may also contact TPP at 413-443-7138.
5. The tenant was requested to reach out to the shall be referred to the Fair Housing Center (413-539-9796) and Community Legal Aid (413-781-7814).
6. The landlord reported that no other tenant has taken occupancy in Unit 212 and agrees to not place a tenant there until further order of the court.
7. A Status Hearing shall be scheduled for **October 19, 2023, at 9:00 a.m.**

So entered this 30<sup>th</sup> day of August, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Tenancy Preservation Program  
Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22-SP-3268

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DEUTSCHE BANK NATIONAL TRUST COMPANY,	)	
AS TRUSTEE OF THE HOME EQUITY MORTGAGE	)	
LOAN ASSET BACKED TRUST SERIES INABS 2006-C,	)	
HOME EQUITY MORTGAGE LOAN ASSET-BACKED	)	
CERTIFICATES SERIES INABS 2006-C UNDER	)	
POOLING AND SERVING AGREEMENT DATED	)	
JUNE 1, 2006,	)	SUMMARY PROCESS
	)	APPEAL BOND ORDER
PLAINTIFF	)	
v.	)	
	)	
BRENDA CORBIN, DAVID MARTOWSKI,	)	
MICHAEL MARTOWSKI AND SHERRI MARTOWSKI,	)	
	)	
DEFENDANTS	)	

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This post-foreclosure summary process case came before the Court on August 15, 2023 for a hearing on Plaintiff's motion to set an appeal bond and order use and occupancy pursuant to G.L. c. 239, § 6. Plaintiff appeared through counsel. Defendant Michael Martowski ("Mr. Martowski") appeared self-represented.<sup>1</sup>

By way of background, Defendants are the former owners of property located at 3030 Main Street, Palmer, Massachusetts (the "Property"). Plaintiff became the owner of the Property following a foreclosure sale that took place on June 23, 2021. On July 13, 2023, the Court allowed Plaintiff's motion for summary judgment and

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<sup>1</sup> Although Defendant Sherri Martowski, Mr. Martowski's sister, also appeared, she did not file a notice of appeal and is not included in Mr. Martowski's notice of appeal.

entered judgment for possession in favor of Plaintiff. Mr. Martowski filed a timely notice of appeal on July 20, 2023.

In a post-foreclosure summary process case, the procedure for setting an appeal bond is governed by G.L. c. 239, § 6, which provides for the condition of the bond to be “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. G.L. c. 239, § 6. In support of its motion, Plaintiff contends that the reasonable amount of rent<sup>2</sup> from the date of foreclosure should be \$1,497.00 per month. Although it did not provide an affidavit or witness, Plaintiff cites to the figures calculated by the United States Department of Housing and Urban Development (“HUD”) as to the fair market rent for three-bedroom units in Springfield, Massachusetts for Fiscal Year 2023, which recites the fair rental value as \$1,497.00 per month. Mr. Martowski did not present any evidence or argument that the fair rental value should be different.<sup>3</sup> Accordingly, given that approximately 26 months have passed since the foreclosure, at a monthly rate of \$1,497.00, the appeal bond shall be set at \$38,922.00.<sup>4</sup>

Plaintiff also requests that the bond be conditioned upon Mr. Martowski making periodic payments of use and occupancy during the pendency of the appeal. As the

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<sup>2</sup> Because the parties never had a landlord-tenant relationship, the term “rent” is understood to encompass “use and occupancy” payments. See *Bank of New York Mellon v. King*, 485 Mass. 37, 46 (2020).

<sup>3</sup> In his written opposition to Plaintiff’s motion, Mr. Martowski suggests the need for an evidentiary hearing on the issue of fair rental value; therefore, if he seeks a diminution in fair rental value, he may file a motion and the Court will consider any evidence he or Plaintiff wish to present.

<sup>4</sup> Although a postforeclosure mortgagor may seek a waiver of an appeals bond under G. L. c. 239, § 5(e) if he or she is indigent and has nonfrivolous claims on appeal, Mr. Martowski did not seek such a waiver.

underlying matter is for the possession of land after foreclosure, "the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his 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." G. L. c. 239, § 6. For the same reasons set forth herein as to determination of the bond, the Court determines that the amount of the monthly use and occupancy payments should be \$1,497.00. In adopting this figure, the Court considered not only the HUD fair market rent, but also other important factors, including the fact that Plaintiff has never received money from Defendants since the foreclosure in 2021, yet has been incurring carrying costs (such as real estate taxes) since that time. The Court also considers the time delay expected before final resolution of this case.<sup>5</sup>

Based on the foregoing, the following order shall enter:

1. Plaintiff's motion to set the appeal bond is allowed as follows:
  - a. Within fifteen days from the date of this order, as a condition for the entry of this action in the Appeals Court, Mr. Martowski shall deposit with the Clerk of Court such bond in the amount of \$38,922.00.
  - b. As a further condition of the bond, beginning on September 5, 2023 and on the fifth of each month thereafter during the pendency of this appeal, Mr. Martowski shall pay Plaintiff \$1,497.00 for his continued

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<sup>5</sup> Mr. Martowski did not argue that a monthly payment of \$1,497.00 is unaffordable.

use and occupation of the Property.<sup>6</sup> These payments are to be made directly to Plaintiff.

2. Plaintiff may move to dismiss the appeal if Mr. Martowski 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: August 30, 2023

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

cc: Court Reporter

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<sup>6</sup> To allow for mailing delays, the September 2023 payment shall not be considered late if paid within ten days of the date of this order.

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4313

LACHENAUER, LLC,  
  
Plaintiff,  
  
v.  
  
SHARON ORTIZ,  
  
Defendant.

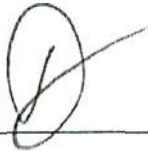
ORDER

After hearing on August 30, 2023, at which both parties appeared through counsel, the following order shall enter:

1. The tenant, through counsel, continues to assert that she suffers from mental health disabilities that caused her to fail to comply with the terms of the parties' agreement and pursue her RAFT application.

2. The tenant shall work with CLA's case worker (Ashley McGill) on her RAFT application and on an application for Catholic Charities funding and has committed to submit an application with RAFT by September 6, 2023.
3. The tenant shall pay \$300 on September 1, 2023, towards use and occupancy (currently \$241, tenant's portion) and same each month thereafter pending further agreement, leave of court, or \$0 balance.
4. A referral shall be made by the court to the Tenancy Preservation Program (TPP) to assist with follow through with RAFT and with investigating if other services in addition to and including those provided by Behavioral Health Network (BHN) are needed.
5. TPP is requested to reach out to the tenant's attorney, Christa Douaihy, when it first gets involved in the case.
6. The parties shall engage in a Reasonable Accommodations dialogue, forthwith.
7. Based on the reasons above and those put forth by the judge at the hearing, the landlord's motion is denied, without prejudice.

So entered this 30<sup>th</sup> day of August, 2023.



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Robert Fields, Associate Justice

CC: Tenancy Preservation Program  
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-709

ALESHA LANIER-GRANT,  
  
Plaintiff,  
  
v.  
  
TAMPATHA EARLY,  
  
Defendant.

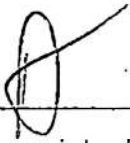
ORDER

After hearing on August 29, 2023, the following order shall enter:

1. The defendant shall put all of the plaintiff's belongings on the porch of the subject premises on Friday, September 8, 2023, by 2:00 p.m.
2. The defendant shall take all steps necessary to inspect her home to determine that none of the plaintiff's personal items (including furniture and jewelry) remain inside her home at that time.

3. The defendant shall also specifically inspect her home to see if the plaintiff's silver necklace is somewhere inside the house.
4. The plaintiff shall arrive at the premises on **September 8, 2023, at 2:00 p.m.** to retrieve her property.

So entered this 30<sup>th</sup> day of August, 2023.



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Robert Fields, Associate Justice

CC: Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0587

RELATED MANAGEMENT COMPANY, L.P. ET AL, )

PLAINTIFF )

v. )

ANGEL SANCHEZ, )

DEFENDANT )

ORDER FOR  
INJUNCTIVE RELIEF

This matter came before the Court on August 29, 2023 on Plaintiffs' motion for injunctive relief. Plaintiff appeared through counsel. Defendant appeared self-represented, accompanied by a Service Coordinator from the Center for Human Development. Defendant resides at 115 Dwight Street, Apt. 812, Springfield, Massachusetts (the "Premises"). Plaintiff seeks an injunction requiring Defendants to refrain from harassing or threatening other residents, employees and others legally on the property.

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

1. Defendant Sanchez shall refrain from engaging in harassing or threatening behavior toward other residents, employees and others legally on the property.
2. If Defendant believes that he is the victim of harassment by another resident, he shall not approach or contact the other resident but instead, depending on the severity of the behavior, he shall file a complaint with the management office, call the police or seek a harassment prevention order from District Court.
3. Within fourteen (14) days, Plaintiff shall pay to the Court the \$90.00 legislative fee for issuance of an injunction (*see* G.L. c. 262, § 4).

SO ORDERED.

DATE: August 30, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0033

WEST VALLEY, LLC,

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)

PLAINTIFF

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v.

)

)

OFEMU ORATOKHAI,

)

)

DEFENDANT

)

ORDER ON MOTION FOR  
SUMMARY JUDGMENT

This matter came before the Court on August 23, 2023 on Defendant’s motion for summary judgment under M.R.Civ.P. 56. Both parties appeared through counsel.

Plaintiff brought this action against Defendant, the manager of Home Equity Assets Realty, LLC (“HEAR”). Plaintiff alleges that it entered into an agreement for property management and maintenance services with Defendant relating to property it owns at 98 Forest Park Avenue, Springfield, Massachusetts (the “Property”).

Defendant contends that the services agreement was with HEAR. Defendant argues that he is shielded from personal liability because he was acting on behalf of his limited liability company, and that summary judgment should enter in his favor.

The standard of review on summary judgment “is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law.” *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). 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). All evidentiary inferences must be resolved in favor of the non-moving party. *See Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999).

Defendant, in his affidavit in support of his motion for summary judgment, states that all of his dealings with Plaintiff were done in his capacity as manager of HEAR, and that the undisputed evidence shows that Plaintiff knew it was dealing with HEAR and not with Defendant individually. In opposition to the motion, Plaintiff's manager states that she thought she had contracted with Defendant, not HEAR, and that, in any event, Defendant personally engaged in wrongful acts related to the Property.

Resolving all evidentiary inferences in favor of the non-moving party, the Court determines that there are genuine issues of material fact regarding, at a minimum, (a) the identity of the party contracted to provide services, and (b) whether Defendant is personally liable solely by reason of being a member or manager of an LLC. *See G.L. c. 156C, § 22* (emphasis added). Accordingly, the Defendant's motion for summary judgment is DENIED.

SO ORDERED.

DATE: August 30, 2023

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

cc: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 21-SP-3213

ENOCH JENSEN,  
  
Plaintiff,  
  
v.  
  
JOHANNA WHITNEY,  
  
Defendant.

AGREED UOPN ORDER

After a Zoom hearing on August 28, 2023, at which both parties appeared, the following agreed upon order shall enter:

1. The tenant shall continue her very diligent search for alternate housing and shall keep a log of such efforts.
2. On the first of each month beginning September 2023, the tenant shall scan and email to the landlord her housing search log and any and all other updates on her efforts to relocate.

3. This matter shall be continued generally to allow additional time for the tenant to relocate.
4. Either party may file a motion to bring this matter before the court.

So entered this 31<sup>st</sup> day of August, 2023.



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Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 21-SC-80

BLANCA MATEO,  
  
Plaintiff,  
  
v.  
  
DOMINIQUE WISE,  
  
Defendant.

ORDER

This matter came before the court on August 29, 2023, for further payment hearing at which only the plaintiff-creditor appeared. After hearing, the following order shall enter:

1. It was reported from the Court Clinic that the defendant, Dominique Wise, has missed and/or reschedule several appointments for evaluation and no evaluation has been conducted.

2. Ms. Wise shall contact the Court Clinic to make a new appointment for her evaluation.
3. This matter shall be scheduled for **September 13, 2023, at 9:00 a.m.** If the defendant Dominique Wise fails to appear at this hearing, a *capias* for her physical apprehension (civil arrest) may issue.

So entered this 31<sup>st</sup> day of August, 2023.

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Robert Fields, Associate Justice

CC: Shelly Sankar, Assistant Clerk Magistrate Springfield District Court  
Court Reporter



CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-4539

SC HAMILTON APARTMENTS,

Plaintiff,

v.

TELISHA DE JESUS,

Defendant.


ORDER FOR ENTRY OF  
JUDGMENT

After hearing on August 30, 2023, at which the tenant failed to appear, the following order shall enter:

1. The landlord's motion shall be treated as one for entry of judgment (as the default judgment was vacated by agreement of the parties in the April 7, 2023, Agreement of the Parties (hereinafter, "Agreement")).

2. Though the tenant has made rent payments and caught up through July 2023 with the extra arrearage payments, she is still outstanding on her extra payment for August 2023.
3. Thus, judgment shall enter for the landlord for possession plus \$530.61 in outstanding rent plus \$209 in court costs but there shall be a stay on the landlord seeking an execution (by motion) if the tenant is able to catch up with the terms of the Agreement in September 2023 or obtains leave of court to amend the Agreement.
4. If the tenant fails to comply with this order or the remainder of the Agreement, the landlord may file a motion for issuance of the execution.

So entered this 31<sup>st</sup> day of August, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-1891

SEARS PROPERTY MANAGEMENT,  
  
Plaintiff,  
  
v.  
  
KRISTINA MARTIN,  
  
Defendant.

ORDER

After hearing on August 29, 2023, at which counsel for the plaintiff appeared and at which the defendant appeared *pro se* and the Guardian Ad Litem (G.A.L.) also appeared, the following order shall enter:

1. The Status Hearing was held.
2. The G.A.L. continues to assist the tenant in securing alternate accommodations.
3. The landlord reports that the tenant's behavior has become increasingly problematic and indicates that the landlord shall soon file a motion for injunctive relief.

4. The G.A.L. shall investigate the landlord's complaints to make his own determination of what steps to take and/or recommend for the tenants regarding same.
5. The G.A.L. shall file a report on his efforts involved in this matter by September 15, 2023.

So entered this 31<sup>st</sup> day of August, 2023.

  
\_\_\_\_\_

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-704

TREMAIN SMITH,

Plaintiff,

v.

JOSE REYES,

Defendant.

ORDER

After hearing on August 29, 2023, the following order shall enter:

1. For the reasons stated on the record, the plaintiff Tremain Smith, failed to provide sufficient evidence to support a finding that he is a tenant of the defendant landlord for which the court could order that the locks be changed and that a key is provided to him.
2. The actual tenant, Richmond Edwards, appeared and testified and the court understands that Mr. Edwards is a defendant in 209A proceedings in the District

Court and must remain away from the premises until further hearing in that matter on September 6, 2023, and there is nothing in this Order that is meant to affect the terms of that Restraining Order.

3. Because Mr. Smith does not have a key to the premises, it is unsecured when he is not present.
4. The court finds that Mr. Smith does not have possessory rights to the premises and must vacate them on August 30, 2023, at noon.
5. Thereafter, Mr. Edwards' mother---who has a key to the premises---shall meet the defendant's Property Manager (Ms. Colon) at her office who will accompany Ms. Edwards to the unit to lock the door. In this manner, Mr. Edwards' home can be secured.

So entered this 31<sup>st</sup> day of August, 2023.

---

Robert Fields, Associate Justice

CC: Court Reporter

of

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-688

ZBYLUT REALTY, LLC,  
  
Plaintiff,  
  
v.  
  
CHERYL COOPER,  
  
Defendant.

ORDER

After hearing on August 29, 2023, the following order shall enter:

1. The defendant tenant shall provide access for an inspection of the subject premises in the manner described by this order to investigate the conditions complained of by the tenant.
2. The landlord shall provide the tenant's attorney with a date and time for said inspection no less than 10 days prior to the proposed date.

3. The tenant's attorney shall respond either by agreeing to the date and time or offering several alternative dates and times.
4. Neither the landlord nor his real estate agent, Mr. Johnson, may be present for the inspection.
5. Instead, the plaintiff landlord must utilize a contractor for the inspection and must provide the tenant's attorney with his or her identity and contact information with the notice described above which schedules the event.
6. The landlord's attorneys may be present for the inspection.

So entered this 31<sup>st</sup> day of August, 2023.



---

Robert Fields, Associate Justice

CC: Court Reporter





1. Judgment shall enter for Plaintiff for possession and unpaid rent in the amount of \$4,375.00, plus court costs.<sup>1</sup>
2. Issuance of the execution shall be stayed through October 31, 2023 provided that Defendant pay \$220.00 each week that he continues to occupy the Premises. He gets paid on Fridays, and payment will be considered timely if received by the following Monday.
3. The parties shall return for review on **October 20, 2023 at 9:00 a.m.** If Defendant is going to seek to extend the stay, he must show the Court a detailed log of his efforts to find housing and a plan to pay the judgment balance.
4. If Defendant fails to make a payment, fails to appear at the next court date or fails to vacate after October 31, 2023 without having obtained a further stay, Plaintiff may move for issuance of the execution.

SO ORDERED.

DATE: September 1, 2023

  
Jonathan J. Kane, First Justice

cc: Court Reporter

---

<sup>1</sup> Defendant does not have a pending application for rental assistance and will not be eligible for funds until March 2024.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23SP2778

CHRISTOPHER MASON, )  
 )  
 PLAINTIFF )  
 )  
 v. )  
 )  
 JOHN HARTLEY AND CYNTHIA WATERS, )  
 )  
 DEFENDANTS )

CASE MANAGEMENT ORDER

The parties came before the Court on September 1, 2023 on Plaintiff's motion to strike and for a case management conference. Plaintiff appeared through counsel. Defendants appeared self-represented.

Plaintiff commenced this case for cause; that is, he alleges that Defendants substantially violated one or more material terms of their rental agreement. In such a case, Defendants cannot defeat Plaintiff's claim for possession by raising counterclaims for conditions of disrepair, security deposit violations or other such allegations. They may raise defenses, however, including the defense of retaliation, which is included in Defendants' answer.

Based on the foregoing, the following order shall enter:

1. Plaintiff's motion to strike is allowed. Defendant's counterclaims shall be dismissed from this summary process case to recover possession, as shall Plaintiff's claim for unpaid rent. Claims for monetary damages can be brought by either party in a separate civil action.

2. Plaintiff shall respond to discovery requests by September 15, 2023. It does not have to respond to questions related to claims that have been severed from this case.
3. Plaintiff shall serve Defendants with discovery requests by September 15, 2023, and Defendants shall provide Plaintiff (but not the Court) with responses no later than October 6, 2023.
4. A bench trial shall be scheduled for **October 20, 2023 at 9:00 a.m.**

SO ORDERED.  
September 1, 2023.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2029

PHILLIPS STREET GREENFIELD REALTY, LLC, )

PLAINTIFF )

v. )

JENNIE BACIGALUPO AND VALERIE  
BACIGALUPO, )

DEFENDANTS )

FINDINGS OF FACT, RULINGS OF  
LAW AND ORDER FOR JUDGMENT  
NUNC PRO TUNC

This no-fault summary process case came before the Court on September 1, 2023 for a hearing for stay on entry of judgment and issuance of execution pursuant to G.L. c. 239, §§ 9 et seq. Both parties appeared through counsel. Plaintiff seeks to recover possession of 66 ½ Phillips Street, Greenfield, Massachusetts (the “Premises”) from Defendants.

On August 18, 2023, the Court found that Plaintiff had established its prima facie case for possession and allowed a two-week continuance for Defendants to prepare for this hearing. At this time, the Premises are condemned due to conditions caused by Defendants and Defendants are unable to live there. They are attempting to correct the code violations to have the condemnation lifted.

Defendants, one of whom over 60 years of age and disabled, seek the maximum stay permitted pursuant to G.L. c. 239, § 9. In order to be eligible for a statutory stay, however, Defendants must pay all rent unpaid prior to the period of the stay.

See G.L. c. 239 § 11. Through August 2023, the unpaid rent balance is \$2,716.00. Defendants do not have funds available to pay the balance due at this time. Nonetheless, the Court shall grant a temporary equitable stay on entry of judgment on the following terms:

1. Entry of judgment shall be stayed through at least the next court date, provided that Defendants pay for their use and occupation of the Premises for September by September 3, 2023. The use and occupancy payment shall be the same as their current rent.
2. Defendants shall continue to work diligently to lift the condemnation, including applying for funding that might be available to assist them; such as cleaning funds that might be available through elder protective services.
3. Defendants shall engage in a diligent housing search and keep a detailed log of their efforts.
4. At such time judgment enters in this case, it shall enter nunc pro tunc (retroactively) to today.
5. The parties shall appear for review of the status of this matter on **October 6, 2023 at 9:00 a.m.**

SO ORDERED.

DATE: September 1, 2023

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

cc: Court Reporter



4. Plaintiff may inspect the Premises at reasonable intervals to ensure that Defendant is maintaining them in a clean, safe and sanitary condition.
5. The parties shall return for review on the status of the cleaning on **September 18, 2023 at 9:00 a.m.**
6. The legislative fee for injunctions is waived.

SO ORDERED.

DATE: 9.5.23

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

cc: Tenancy Preservation Program  
Court Reporter



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN SS:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO.: 22CV558

**CITY OF SPRINGFIELD, CODE ENFORCEMENT DEPARTMENT, HOUSING  
DIVISION**  
Plaintiff<sup>1</sup>

VS.

**SPRINGFIELD GARDENS 41-49 LP, TIANA NIEVES, JUAN TORRES, EBONY  
SINGLETON, DEYSHALIZ ORTIZ, CAROL BERNARDI, JESUS BRACETTY,  
HECTOR RIOS, ALEXIS PEREZ, MADISYN KORASH, ROBERTO RODRIGUEZ,  
JANI D. DESOUSA, DANIEL RODRIGUEZ, ANGEL MERCADO, CAMBRAI  
CUMMINGS, STEPHANIE GARCIA, ROBERTO RODRIGUEZ, ELTON CAUDLE,  
SUSAN WILLIAMS, FEDERAL NATIONAL MORTGAEG COMPANY (mortgagee)<sup>2</sup>**  
Defendants<sup>3</sup>

**ORDER**

The parties came before the Court on Plaintiff's, City of Springfield, Motion for Issuance of Order (Paper #4) seeking the Tenant-Defendants vacate the premises located at 41-49 School Street, pending the installation of fire alarm, approved by the City of Springfield. The Plaintiff also seeks the record owner, Springfield Gardens 41-49 LP (**Springfield Gardens**) pay for alternative housing for the remaining occupants of the premises pending said installation. The Court held a hearing on September 6, 2023. All parties appeared represented by counsel. After hearing, review of the record and filings, the Court orders as follows:

1. Plaintiff's, City of Springfield, Motion for Issuance of Order (Paper #4) is **ALLOWED**.
2. Defendant, Springfield Gardens 41-49 LP shall install a certified working fire alarm system, subject to all City of Springfield applicable permits, inspections, and certification(s) requirements that said fire alarm system operates for its intended use.
3. Tenant-Defendants, Tiana Nieves, Juan Torres, Ebony Singleton, Deyshaliz Ortiz, Carol Bernardi, Jesus Bracetty, Hector Rios, Alexis Perez, Madisyn Korash, Roberto

---

<sup>1</sup> As used herein, the term "Plaintiff" refers to all parties identified in the caption on the line marked "Plaintiff."

<sup>2</sup> With the exception of Springfield Gardens and Federal National Mortgage Company, all other Defendants are either tenants or occupants of the subject premises located at 41-49 School Street, Springfield, MA.

<sup>3</sup> As used herein, the term "Defendants" refers to all persons identified in the caption on the line marked "Defendants."

Rodriguez, Jani D. Desousa, Daniel Rodriguez, Angel Mercado, Cambrai Cummings, Stephanie Garcia, Roberto Rodriguez, Elton Caudle, and Susan Williams (**Tenant-Defendants**) are to vacate their respective units and not reoccupy the property known as 41-49 School Street, Springfield, MA subject to the conditions set forth below.

4. Defendant, Springfield Gardens 41-49 LP shall provide the remaining Tenant-Defendants alternative housing until such time it has installed a certified working fire alarm system, subject to all City of Springfield applicable permits, inspections, and certification(s) requirements that said fire alarm system operates for its intended use.
5. The standard for issuance of a preliminary injunction requires that the Plaintiff show a likelihood of success on the merits, and a substantial risk of irreparable harm in the absence of injunctive relief. The court must then balance the risk of harm to the moving party against any similar risk of harm to the opposing party by the granting of the injunction. See, *Packaging Industrial Group, Inc. v. Cheney*, 380 Mass. 609, 405 N.E.2d 106 (1980). In the present case, the Plaintiff has demonstrated a likelihood of success on the merits that the Defendant tenants need to vacate the premises so that the Defendant record-owner may install a centralized fire alarm.
6. The Court does not credit the testimony of the Springfield Garden's property manager that a fire watch conducted by a private security company, who are untrained professional firefighting professionals, shall suffice to provide adequate notice to any remaining occupant in the event of a catastrophic fire.
7. The Plaintiff previously permitted a fire watch with reluctance, but filed its motion after Springfield Garden terminated a fire watch following the Court's Order of August 31, 2023, that all occupants vacate the premises. The Plaintiff permitted the fire watch on the basis the fire alarm installation proceeds expeditiously. The Plaintiff lost confidence in Springfield Garden's assurances that the fire alarm installation system would not be further delayed. The termination of the fire watch while residents remained on the premises was final straw from the Plaintiff's perspective.
8. Springfield Gardens failed to explain its decision to terminate the fire watch while residents continued to occupy the premises after the Order of August 31, 2023. Given arbitrary nature of its conduct, the Court is not persuaded by assurances of future compliance.

SO ORDERED

September 6, 2023

*Sergio E. Carvajal*  
\_\_\_\_\_  
SERGIO E. CARVAJAL  
JUSTICE, HOUSING COURT

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 21-SP-3391

SERVICENET, INC.,  
  
Plaintiff,  
  
v.  
  
HELEN BERG,  
  
Defendant.

ORDER

After a Status Hearing on Zoom on August 30, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se* and at which the Guardian Ad Litem and a representative from the Tenancy Preservation Program also appeared, the following order shall enter:

1. The tenant, Ms. Berg, has been for some time and is presently a patient in [REDACTED]. As this is a *for cause* eviction based on alleged tenant-caused disturbances, there are no current complaints.

2. That said, the landlord shared concerns that the tenant's rental subsidy has been suspended due to her being hospitalized.
3. The G.A.L. shall investigate the status of the tenant's rental subsidy. In doing so, the G.A.L. may wish to return to Community Legal Aid for legal assistance regarding the subsidy issue.
4. The G.A.L. shall also communicate with the [REDACTED] [REDACTED] to ascertain as best he can regarding Ms. Berg's treatment, prognosis, and other details of her hospitalization as same relates to this legal action.
5. The G.A.L. shall share a copy of this order with said hospital [REDACTED] as it authorizes it to provide Ms. Berg's private health information. [REDACTED]  
[REDACTED]  
[REDACTED].
6. The G.A.L. shall file a report with the court on October 18, 2023.
7. This matter shall be scheduled for further **Status Conference on October 23, 2023, at 9:00 a.m.** This matter shall be held live and in-person if Ms. Berg is able to attend. If she is not able to attend, this matter shall be scheduled for hearing by Zoom.

So entered this 6<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-3654

DANIELLE M. JONES,  
  
Plaintiff,  
  
v.  
  
ETHAN KUCHNER,  
  
Defendant.

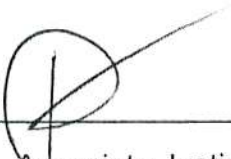
AGREED UPON ORDER

After hearing on August 31, 2023, on the landlord's motion for entry of judgment and the tenant's motion for an extension of time to vacate ,at which the landlord appeared through counsel, the tenant appeared *pro se* but accompanied by two caseworkers form the Center for Human Development (CHD), the following agreed upon order shall enter:

1. Judgment shall enter for the landlord for possession only.

2. Execution may issue upon the timely filing of a Rule 13 Application. The landlord shall serve a copy of same to the tenant and email a copy to the CHD caseworkers who were present (they provided the landlord's counsel with their email addresses).
3. The tenant has until the end of the day on September 28, 2023, to vacate the premises.
4. There shall be a stay on the use of the execution until September 29, 2023, though this does not prohibit the landlord from having the tenant served with a 48-hour notice in compliance with G.L. c.239 prior to that date (as long as the move-out is not scheduled for a date sooner than September 29, 2023).

So entered this 8<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-994

BEACON RESIDENTIAL,

Plaintiff,

v.

JOSEPH ZUCCO,

Defendant.

ORDER

After hearing on September 5, 2023, the following order shall enter:

1. This matter was scheduled for trial and the tenant sought a continuance due to medical issues.
2. That motion was allowed over the objection of the landlord who had several witnesses in the courtroom prepared to testify.



3. This matter shall now be scheduled for trial on **September 26, 2023, at 9:00 a.m.** The tenant has until September 19, 2023, to provide to the landlord's attorney a list of witnesses he anticipates calling at trial.
4. Pending further order of this court, the landlord must ensure that his dog is muzzled at all times when at the premises, other than when it is inside the tenant's unit. Additionally, the tenant shall not allow his dog to be outside of his unit unattended.
5. If the tenant is in violation of these terms, the landlord may have the dog removed by the city dog officer and the dog will remain off the premises until further order of the court.
6. The parties agreed that the tenant shall not communicate with any of the landlord's witnesses.

So entered this 11<sup>th</sup> day of September, 2023.



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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-713

NANCY LORENZI,  
  
Plaintiff,  
  
v.  
  
IVAN LAREANO,  
  
Defendant.

ORDER

After hearing on September 6, 2023, at which the plaintiff tenant and the defendant landlord appeared without counsel, the following order shall enter:

1. In accordance with 105 CMR 410.200 (C), the landlord must provide the tenant (who pays for her electricity) access to "her unit's electrical distribution panel at all times". The landlord explained that they are emptying the basement so as to comply with this order by October 6, 2023, and the tenant agreed to that date for on-going and continuance access to her electric panel.

2. The landlord shall have the common areas of the premises cleaned weekly.
3. The landlord shall provide the tenant with no less than 48 hours advance notice of any scheduled open house at the premises.

So entered this 11<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 22-SP-3783

PRD PROPERTIES, LLC,  
  
Plaintiff,  
  
v.  
  
LATISHA BRANTLEY,  
  
Defendant.

ORDER

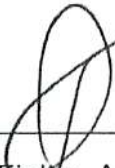
After hearing on September 5, 2023, on the tenant's motion to stop a physical eviction currently scheduled (for September 12, 2023) at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The court is satisfied for the purposes of this order that the tenant's mental health issues or other intellectual limitations may have played a significant role in her failures to appear in these court proceedings.
2. Additionally, given that this tenancy is subsidized and that the tenant has paid her portion of September 2023 rent, that she asserts various claims arising out of alleged conditions of disrepair and lack of heat, that she has begun

filling out an application for RAFT funding, the court shall treat the tenant's motion as one for seeking a vacating of default judgment.

3. The judgment shall be vacated, and this matter shall be scheduled for a Status Hearing on the date noted below.
4. In the meantime, the landlord shall immediately cancel the physical eviction currently scheduled and the tenant shall diligently pursue RAFT fundings for rental arrearage (she stated that she has begun the application process). The landlord shall cooperate with the RAFT application.
5. Additionally, a referral shall be made by the court to the Tenancy Preservation Program.
6. The tenant has until September 29, 2023, to file and serve an Answer with her defenses and counterclaims.
7. The tenant shall also pay her portion of her rent for October 2023, in full and timely.
8. This matter shall be scheduled for a Status Hearing on **October 26, 2023, at 9:00 a.m.**

So entered this 11<sup>th</sup> day of September, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-185

PYNCHON TOWNHOMES, LLC,  
  
Plaintiff,  
  
v.  
  
HECTOR RODRIGUEZ PEREZ,  
  
Defendant.


ORDER

After hearing on August 30, 2023, at which the tenant failed to appear, the following order shall enter:

1. From the report of landlord's counsel, the tenant has paid all of the monies required of him pursuant to the Agreement of the Parties dated May 11, 2023 (Agreement) and has actually paid an extra \$175.
2. As such, the landlord's motion for entry of judgment is denied, without prejudice.

3. That all said, the tenant is making payments on a schedule that is not what was agreed to in the Agreement---which required monthly rent by the 5<sup>th</sup> of each month and \$500 towards the 20<sup>th</sup> of each month.
4. The parties are instructed to communicate with one another to determine the best and agreeable schedule for payments or seek assistance from the court, if necessary.

So entered this 11<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-893

JOHN SCALIA,  
  
Plaintiff,  
  
v.  
  
LISA CATALDO,  
  
Defendant.

RULING ON ATTORNEY FEE  
PETITION AND ENTRY OF  
FINAL JUDGMENT

This matter came before the court for trial on June 16, 2023, and the court issued a written decision on June 20, 2023, in which the defendant tenant was the prevailing party in her two distinct claims for breach of the covenant of quiet enjoyment pursuant to G.L.c. 186, §14 and her security deposit law violation claim. As a prevailing party on said claims, she was afforded the opportunity to petition the court for reasonable attorney's fees. After consideration of the petition for such fees, with no written opposition filed by the plaintiff landlord, the following order shall enter:



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

**2. Hourly Rate:** Counsel for the tenant, Edward Bryant, has petitioned for an hourly rate of \$150. Attorney Bryant provided with her petition an affidavit in support of her hourly rate from Attorney Bernard Cohen, a Springfield attorney who has practiced in the Housing Court for decades. In addition, this court is very aware of the quality of Attorney Bryant's litigation skills as he has litigated extensively in this court. Based on the above considerations, the court finds \$150 to be a reasonable hourly rate.


**3. Number of Hours:** The petition seeks compensation for \$2,730, representing 18.2 hours of work in this matter.

**4. Analysis of Hours:** Although the legal issues were not unusually complex, the factual evidence was considerable and, among several other court appearances and other things, the case required an Answer with Counterclaims, a motion to compel discovery, and a trial.

**5. Award of Attorney Fees and Costs:** Based on the foregoing, counsel for the tenant, Edward Bryant, shall be awarded \$2,730 in attorney's fees.

**6. Conclusion and Order:** In accordance with the above, as well as the court's June 20, 2023, trial decision, the following final judgment shall enter: Judgment for the defendant tenant, Lisa Cataldo, for possession plus \$1,160 in damages, and for \$2,730 for attorney's fees.

So entered this 17<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Court Reporter



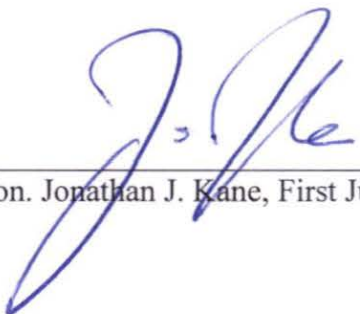
Motion to Dismiss Counterclaim for c. 93A Violation

Plaintiff seeks to dismiss the counterclaim alleging a violation of c. 93A based largely on the Court's denial of Defendant's complaint for contempt in the summary process action based on the same allegedly wrongful conduct. The standard for contempt and the standard for liability under G.L. c. 93A are not the same; however. Moreover, taking as true the allegations of the counterclaims and drawing reasonable inferences therefrom in favor of Defendant, the Court finds that the factual allegations set forth in the answer raise a right to relief against Plaintiff given that its conduct occurred after the January 30, 2023 date of the settlement agreement.

For the foregoing, reasons, Plaintiff's motion to dismiss is DENIED.

SO ORDERED.

September 12, 2023



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Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23SP0677

PJ & J REALTY LLC,

PLAINTIFF

v.

ORDER ON STAY OF  
EXECUTION

SELENA BENEVENTO,

DEFENDANT

The parties came before the Court by Zoom on September 12, 2023 for a hearing with respect to Defendant's request for an extension of a stay. Plaintiff appeared through counsel. Defendant appeared self-represented. Defendant has paid use and occupancy through September 2023 and seeks additional time to find housing. Her tenancy terminated as of January 31, 2023. Accepting for purposes of this hearing that Defendant meets the definition of a "handicapped person" as that term is used in G.L. c. c. 239, § 9, she has a maximum of three months remaining in the stay period. Plaintiff seeks to recover possession as soon as possible. In light of the foregoing, and after hearing, the following order shall enter:

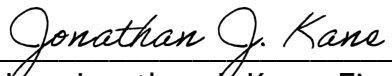
1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of the execution (eviction order) shall be further stayed through November 30, 2023, provided that Defendant pay use and occupancy for October 2023 and November 2023. The use and occupancy amount is

\$800.00 and is due on the first of each month. To account for possible mailing delays, payment shall not be considered late if received by the 5<sup>th</sup> of the month.

3. If Defendant fails to make a full and timely payment of use and occupancy hereunder, or if she fails to vacate on or before the end of the day on November 30, 2023, Plaintiff may apply for the execution in writing, accompanied by an affidavit. No additional hearing shall be necessary.
4. After balancing the equities, the Court determines that Defendant shall not be entitled to any further stays beyond November 30, 2023.

SO ORDERED

September 12, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0487

ZUGEIRI DIAZ,

)

)

PLAINTIFF

)

v.

)

ORDER ON MOTION TO DISMISS

CARLOS PENALBERT AND  
MARILYN PENALBERT,

)

)

DEFENDANTS

)

This matter came before the Court on August 15, 2023 on Defendants' motion to dismiss Plaintiff's complaint for lack of subject matter jurisdiction. The complaint alleges that Plaintiff was injured by Defendants' dog, which was owned and kept by Defendants at their home next door to the home where Plaintiff was allegedly attacked.

In considering Defendants' motion to dismiss, the Court accepts as true the factual allegations in the complaint, as well as any favorable inferences reasonably drawn therefrom, and considers whether the allegations plausibly suggest (and are not merely consistent with) an entitlement to relief. *Lopez v. Comm.*, 463 Mass. 696, 700-701 (2012) (citations omitted). Here, Defendants assert that the Housing Court lacks jurisdiction over the subject matter asserted in the complaint.

The Housing Court is a court of limited jurisdiction. See G.L. c. 185C, § 3. Specifically, the court has:

“jurisdiction under the provisions of common law and of equity and any other general or special law, ordinance, by-law, rule or regulation as is concerned directly or indirectly with the health, safety, or welfare, of any occupant of any place used, or intended for use, as a place of human habitation and the possession, condition, or use of any particular housing accommodations or household goods or services situated therein or furnished in connection there with or the use of any real property and activities conducted there on as such use affects the health, welfare and safety of any resident, occupant, user or member of the general public and which is subject to regulation by local cities and towns under the state building code, state specialized codes, state sanitary code, and other applicable statutes and ordinances.”

G.L. c. 185C, § 3.

Taking the allegations of the complaint as true, the dog in question lived in a home adjacent to where the alleged attack occurred. It was unrestrained and unconfined due to a failing fencing system, and was able to travel freely into the yard of the adjacent property. This case clearly affects the health, welfare and safety of members of the general public. In light of the foregoing, the Court rules that the issues alleged in the complaint are within the subject matter jurisdiction of the Housing Court. Accordingly, Defendants’ motion to dismiss is DENIED.

SO ORDERED.

DATE: September 13, 2023

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

cc: Court Reporter





Plaintiff acquired the Premises in late October 2022. It did not renew Defendants' lease and did not enter into a new rental agreement with Defendants. Defendants have never paid rent or made use and occupancy payments to Plaintiff. Plaintiff served Defendants with a no fault notice to quit on October 31, 2023, terminating their tenancy as of November 30, 2023. Defendants did not contest receipt of the notice, nor have they vacated the Premises. The Court finds that Plaintiff has satisfied its prima facie case for possession.

In response to Plaintiff's summary process summons and complaint, Defendants filed an answer seeking damages for retaliation, breach of the warranty of habitability, breach of the covenant of quiet enjoyment, and for violation of G.L. c. 93A. The Court will address each of Defendants' counterclaims in sequence.

A. Retaliation

The Court dismisses Defendants' retaliation claim for lack of evidence. In their answer, Defendants claim that Plaintiff began eviction proceedings after Defendants complained about other tenants residing at the property and about conditions of disrepair. Plaintiff served Defendants with a notice to quit immediately upon purchasing the Premises, which coincided with the end of Defendants' one-year lease. Plaintiff and Defendants had no relationship when Plaintiff served the notice. The Court finds that Plaintiff took action to terminate Defendants' tenancy prior to any complaints it received from Defendants about conditions or the actions of their neighbors. Accordingly, Defendants' counterclaim for retaliation fails.

## B. Conditions Issues

By their own admissions at trial, Defendants primarily complain about problems with their heat, hot water and electricity.<sup>1</sup> Plaintiff cites to a letter dated September 9, 2022 from the Town of Deerfield Board of Health (the “BOH”) to the previous owner and manager of the Premises indicating that it found no code violation in support of its assertion that the Premises were code complaint at the time it purchased the property.

Despite the letter of compliance, the Court finds that Defendants did suffer from problems with heat, hot water and electricity after Plaintiff purchased the Premises, and that Defendants made Plaintiff aware of the problems shortly after he purchased the Premises (and after he had sent them a notice to quit). It is likely that some or all of the conditions of disrepair relate to the colder temperatures as winter approached, and that such conditions could not be identified as defective in September, when the BOH inspected.

At trial, Plaintiff’s agent, Mr. Obear, acknowledged that the heating system is very old and in need of replacement; in fact, it is one of the reasons why he asked Defendants to vacate after Plaintiff acquired the Premises. Mr. Obear testified that it was his intent was to renovate the building and upgrade its mechanical systems after the purchase. Among other problems with the heating system, the Court finds that Defendants had no control over the heat because the thermostat for the Premises is located in the downstairs apartment and also that the radiators in the Premises were

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<sup>1</sup> Although Defendants’ answer references issues with rodents, windows and screens, among other issues, the Court finds insufficient evidence to warrant a finding that these issues were substantial code violations or significant defects. See *McAllister v Boston Housing Auth.*, 429 Mass. 300, 305 (1999) (not every breach of the State Sanitary Code supports a warranty of habitability claim).

not functioning properly. Mr. Obear admitted calling a heating technician to the Premises 18 to 20 times over a three or four month period over the past winter, which both evidences a diligent effort to address the problem and indicates the severity of the problem.

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. v. Hemingway*, 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). Here, the Court finds that the inadequate heating issues existed as a serious and continuous problem from November 2022 through February 2023, and as a lesser problem from March 2023 through May 2023. The Court further finds that although the hot water and electrical issues (with the circuit breakers repeatedly tripping) were connected to the issues with the heating system and the steps Defendants took to use additional heating sources. The Court finds that the material conditions of disrepair reduced the fair rental value of the Premises by 20% during the four months through February 2023 and 10% for the next three months.

In order to calculate damages, the Court must determine fair rental value of the Premises. General Laws c. 186, § 3, provides that "[t]enants at sufferance in possession of land or tenements shall be liable to pay rent therefor for such time as they may occupy or detain the same." *See Davis v Comerford*, 483 Mass. 164, 169 (2019) (citations omitted). At trial, Defendants acknowledge that the fair rental value

for the Premises without code violations is \$1,500.00 per month. This the rental amount they deemed reasonable when they signed the lease with the prior owner. Due to the conditions of disrepair, Defendants are entitled to an abatement of \$1,650.00.<sup>2</sup>

In addition to diminishing the fair rental value of the Premises, the heating issues were significant and caused a serious interference with the tenancy, thereby constituting breach of the covenant of quiet enjoyment. G.L. c. 186, § 14; *See Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). Despite the fact that the heating issues were neither caused nor ignored Plaintiff, they persisted throughout the winter months. Plaintiff acquired the Property knowing that the heating system was in need of replacement or at least serious improvement, and it had an obligation to ensure that Defendants had adequate heat and hot water throughout the winter, an obligation that it could not fulfill. Accordingly, the Court finds that Defendants are entitled to damages for breach of the covenant of quiet enjoyment. Where the same conditions of disrepair can be recoverable under theories of breach of warranty and quiet enjoyment, a tenant is entitled to recover damages under the theory that results in the greatest award. *See South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 470 (2017) (a “tenant is not entitled to duplicative damages for claims arising out of the same conditions [but] is entitled to rely on whichever theory of damages provides him or her the greatest measure of damages”). Damages for

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<sup>2</sup> This figure is calculated by adding a rent abatement of \$300.00 (20%) for four months and \$150.00 (10%) for three months.

violations of G.L. c. 186, § 14 are three times a month's rent or actual damages, whichever are greater.

Defendants did not establish an entitlement to actual damages. Defendants testified that they and their children suffered significant emotional distress as a result of the bad conditions and conduct of Plaintiff. The evidence, however, does not support their claims. The Court does not dispute that Ms. Young and her children have suffered emotionally and physically over the past months. Ms. Young testified that having to deal with the issues with the Premises interfered with her work and had a significant adverse impact on her health and the health of her children. She testified credibly about her children's recently medical and mental declines, testimony that was bolstered by Mr. Bellows and Ms. Young's father. Nonetheless, for the Court to award damages for such harm Defendants would have to prove by a preponderance of the evidence that these conditions were caused by Plaintiff, and they failed to sustain their burden.

The Court infers that Defendants' stress was caused primarily by having to relocate in a very challenging housing market. They had only lived at the Premises for one year before Plaintiff purchased them and informed Defendants that it would not renew their lease. Plaintiff did not act maliciously or unfairly in its attempt to recover possession of the Premises; it simply exercised its legal right to ask Defendants to vacate at the end of the next rental period. Ms. Young made the situation acrimonious almost immediately upon receiving the notice to quit.<sup>3</sup> She

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<sup>3</sup> Ms. Young's father testified credibly that Ms. Young began to suffer significant stress immediately after Plaintiff initiated the eviction process with a notice to quit. Serving a legally sufficient notice to quit at the end of a lease term is not a wrongful act and Plaintiff is not responsible for its effect on Defendants under the circumstances presented in this case.

stated that she and her family would not vacate until forced to do so by Court order, and filed for an emergency order prohibiting Plaintiff from preventing her access to the basement. Ms. Young acknowledged that her mental health struggles began well before Plaintiff became her landlord. Simply put, the Court finds that the cause of the stress on Ms. Young and her family is multifaceted and not caused in significant part by Plaintiff.

Because Defendants are not entitled to actual damages, they are entitled to statutory damages under G.L. c. 186, § 14 in the amount of \$4,500.00, which is three times the monthly rent. This sum is greater than abatement damages of \$1,650.00, and thus is the proper measure of damages for the defective conditions.

C. Violation of G.L. c. 93A

At trial, Defendants did not argue for the imposition of liability under c. 93A. Based on the evidence presented, the Court finds that Plaintiff acted reasonably and promptly to address conditions of disrepair. Accordingly, the c. 93A counterclaim is dismissed.

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

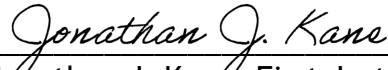
1. Plaintiff is entitled to unpaid use and occupancy from November 2022 through the end of trial in July 2023 in the amount of \$12,000.00.
2. Defendants are entitled to damages in the amount of \$4,500.00 on account of their claims.
3. Pursuant to G.L. c. 239, § 8A, Defendants shall have ten (10) days from the date this order is entered on the docket to deposit with the clerk of Court

the sum of \$7,500.00, plus court costs and interest, for a total amount of \$ 8328.92, by bank check or money order. If such payment is made, judgment for possession shall enter for Defendants.

4. If the deposit is not received within the ten day period, judgment shall enter for Plaintiff for possession and damages in the total amount set forth in the previous paragraph, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: September 13, 2023

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice

cc: Court Reporter





4. By September 29, 2023, Defendant shall:
  - a. Defendant shall replace Plaintiff's shower; and
  - b. Ensure the exhaust vent in the kitchen vent to exterior of the building.
5. Defendant shall provide Plaintiff with all environmental reports from testing done in the Premises between March 2023 and the present, and any reports from testing it does in the future, so long as Plaintiff remains in possession of the Premises.
6. Defendant shall remove from Plaintiff's rent ledger all rent charged for the months of April 2023 through September 2023, and continuing for any month in which Plaintiff cannot reside in the Premises (pro-rated for any partial month).<sup>1</sup>
7. Defendant shall reserve the hotel through the night of October 3, 2023. At the next hearing, the Court will determine whether and for how long alternative housing accommodations must be provided beyond October 3, 2023.
8. If the hotel provided by Defendant is outside of the Springfield city limits, Defendant will pay \$10.00 per day as a gas stipend. By September 15, 2023, Defendant shall pay Plaintiff the gas stipend from September 14, 2023 through September 21, 2023 in a lump sum, by which date it shall pay Plaintiff the balance of the gas stipend (in a lump sum) through October 3, 2023.
9. The parties shall return for review on **October 3, 2023 at 9:00 a.m.**

SO ORDERED.

September 14, 2023

  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>1</sup> In lieu of removing the charges, Defendant may include a credit on the ledger.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-1147

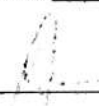
FREEDOM MORTGAGE CORPORATION,  
  
Plaintiff,  
  
v.  
  
HAJI REED,  
  
Defendant.

ORDER

After hearing on September 5, 2023, the following order shall enter:

1. The motion to issue a new execution is allowed, for the reasons stated on the record.
2. The motion to appoint an alternate process server to levy on said execution shall remain under advisement to allow the plaintiff ten days to file and serve a supplemental brief regarding the authority to have Mr. Jeskey appointed to levy on the execution for possession.

So entered this 5<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-3075

PROSPECT VILLAGE, LLC,

Plaintiff,

v.

JAMES KUSHI,

Defendant.

ORDER

After hearing on September 13, 2023, at which the plaintiff appeared through counsel and the tenant appeared with LFD counsel, the following order shall issue:

1. The tenant seeks dismissal of this case due to the use of a rental period notice (in a tenancy allegedly without a date when rent is due) instead of a three month's notice in accordance with G.L. c.186, s.12.

2. Landlord counsel did not have a witness due to his exposure to COVID but proffered that the tenancy was part of the tenant's employment which employment was terminated.
3. LFD counsel agreed to continue her representation through the hearing on the tenant's motion to dismiss. The tenant has until September 22, 2023, to file and serve a motion to dismiss.
4. The landlord shall have until September 29, 2023, to file any opposition thereto.
5. The parties agreed that testimony may need to be taken at the hearing noted below.
6. This matter shall be scheduled for hearing on **October 4, 2023, at 9:00 a.m.**

So entered this 14<sup>th</sup> day of September, 2023.

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Robert Fields, Associate Justice

CC: Angelina Morisi, Community Legal Aid (LFD Counsel)  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-2907

SOUTH STREET ASSOCIATES, LLC,

Plaintiff,

v.

JOHN TRUMPOLT,

Defendant.

ORDER

After hearing on September 13, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared without counsel, the following order shall enter:

1. **Background:** The landlord terminated this tenancy based on a notice to quit dated April 26, 2023, for cause. On August 30, 2023, the parties entered into an Agreement of the Parties (Agreement) that was reviewed on the record by the court.

2. The Agreement included terms that the tenant would not "use force to open the front door." In another term of the Agreement, the tenant agreed to not "have any visitors unaccompanied when he not present."
3. On September 6, 2023, the landlord filed and served a motion for issuance of the execution, alleging violations of the Agreement.
4. **Discussion:** The court finds the landlord's witness, Property Manager Richard Bishop, credible and that the landlord met its burden that on September 1, 2023 (only two days after the Agreement was filed and reviewed by the judge in court), the tenant forced the front door open and damaged it in doing so. The court also found that on September 2, 2023, the tenant had an unaccompanied guest in the hallway who acted in an aggressive manner towards the property manager. There was also evidence that on that same day someone urinated in the elevator and trail of urine led to the tenant's door---at that this is likely from the tenant or his unaccompanied guest.
5. Based on these findings, the court was poised to enter judgment for possession for the landlord due to these violations of the Agreement. Based on the evidence and the tenant's behavior and appearance in court, however, the judge wondered out loud whether the tenant has [REDACTED] and recessed the hearing for the tenant to meet with the Tenancy Preservation Program (TPP).
6. After consulting with TPP, it was also TPP's assessment [REDACTED] [REDACTED] and TPP reported that it would secure [REDACTED] [REDACTED] for the tenant as soon as is practicable. Further the

tenant stated to the judge that he would cooperate with Mr. Peck's efforts and would seek [REDACTED] treatment.

7. The court is sufficiently satisfied at this juncture, and for the purposes of this order, that it is highly likely that the tenant [REDACTED], that the behaviors that violated the Agreement are likely symptoms of his disability, and that he is entitled to a reasonable accommodation under the provisions of the Fair Housing Act, 42 U.S.C. s. 3604.
8. The Fair Housing Act provides that it is unlawful to discriminate, in the sale or rental of a dwelling and in other activities related thereto, against a person because of a handicap. 42 U.S.C. s.3604 (f) (2). Discrimination under that statute includes the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. s.3604 (f) (3) (B). The term "handicap" is defined as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. s.3602 (h)." *Peabody Properties, Inc. v. Sherman*, 418 Mass. 603, 605-606 (1994). "In the public housing context a "qualified" handicapped individual is one who could meet the authority's eligibility requirements for occupancy and who could meet the conditions of a tenancy with a reasonable accommodation or modification in the authority's rules, policies, practices, or services." *Andover Housing Authority v. Shkolnik*, 443 Mass.300, 310 (2005).



9. **Reasonable Accommodation:** The court is a bit surprised that the parties have yet to engage in a discussion about reasonable accommodations given [REDACTED]  
[REDACTED]. Nonetheless, the parties shall now engage in a reasonable accommodations dialogue with the assistance of Jeff Peck of the Tenancy Preservation Program. The tenant shall cooperate with TPP and [REDACTED].
10. It is anticipated that [REDACTED]  
[REDACTED] Mr. Peck with communicate with the landlord and with the tenant's Section 8 Voucher provider regarding the status of any such stay in said program. It is also anticipated that Mr. Peck will be able to have the tenant placed in said program within the week. Pending such placement, the tenant shall abide by the terms of the Agreement.
11. Accordingly, the execution shall not issue at this time and this matter shall be scheduled for review by the court on the date below. In the meantime, it is hopeful that the tenant will not again violate the terms of the Agreement but if the landlord alleges that the tenant has violated the terms of the Agreement it shall immediately contact Mr. Peck to see if Mr. Peck can place the tenant elsewhere and, if not, reach out to the court to see if it may be heard by Zoom for an emergency hearing.
12. **Next Hearing:** This matter shall be scheduled for further review on **September 20, 2023, at 9:00 a.m.** As was discussed at the hearing, if the tenant is already

placed in a program and can not attend the next hearing, Mr. Peck from TPP will so report at said hearing.

So entered this 14<sup>th</sup> day of September, 2023.



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Robert Fields, Associate Justice

CC: Tenancy Preservation Program, Jeff Peck  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2848

AGAWAM PROPERTIES,

PLAINTIFF

v.

ORDER FOR ENTRY OF JUDGMENT  
AND ISSUANCE OF THE EXECUTION

JOSHUA CHOUINARD,

DEFENDANT

This summary process case came before the Court for a bench trial on September 15, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 643 Suffield Street, Agawam, Massachusetts (the “Premises”) from Defendant based on nonpayment of rent.

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

Defendant stipulated to Plaintiff’s prima facie case for possession, including receipt of the notice to quit. He does not dispute that he owes \$2,432.50 in rent. He has exhausted rental assistance from the RAFT program. He said that he filed an application today with Valley Opportunity Council, but provided no evidence of such an application. Therefore, the Court finds that G.L. c. 239, § 15 does not apply. In light of the foregoing, the following order shall enter:

1. Judgment for possession, damages of \$2,432.50 and court costs shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue by written application following expiration of the 10-day appeal period.

SO ORDERED.

DATE: September 15, 2023

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

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-2900**

**ANTHONY ARZA,**

**Plaintiff,**

**v.**

**TALTON PAYNE, CHRIS PAYNE, and BONNIE  
PAYNE,**

**Defendants.**

**ORDER**

After hearing on September 15, 2023, on the tenants' emergency motion to stop a physical eviction at which all parties other than Bonnie Payne (who was in the hospital) appeared, along with a representative from the Tenancy Preservation Program (TPP), the following order entered on the record:

1. The tenants present reported that they have a pending RAFT application.
2. The parties agree that on or about August 24, 2023, the electric utility company removed the electric meter from the premises and the tenants have resided at

the premises since that time without electricity and shortly thereafter the city condemned the premises.

3. The court treated the emergency motion as one for vacating the default judgment. The court finds that the tenants met their burden on such a motion, having gone to the courthouse in North Adams instead of the Housing Court for the First-Tier event (which was scheduled in person in the Pittsfield Session on July 19, 2023). The tenants also detailed viable defenses and counterclaims in this non-payment of rent matter.
4. Accordingly, the parties shall comply with the following:
  - a. The landlord shall immediately notify the sheriffs and the moving company that the currently scheduled physical eviction is cancelled.
  - b. The landlord shall provide hotel accommodations for the tenants until the condemnation is lifted by the city. Such accommodations shall have cooking facilities. If they do not have cooking facilities, the landlord shall provide a daily food stipend in cash of \$75.
  - c. The landlord shall take all necessary steps to make repairs to have the condemnation lifted.
  - d. Once the condemnation is lifted by the city, the obligation to provide hotel accommodations (and food stipend) shall cease.
  - e. The tenants shall diligently pursue the RAFT application.
  - f. The tenants shall file an Answer with the court and serve same to the landlord by September 22, 2023.

- g. TPP shall assist the tenants with a referral to Community Legal Aid for help with the Answer and shall help the tenants follow up with their RAFT application.
  - h. The tenants shall cooperate with TPP.
5. This matter shall be scheduled for trial at the Pittsfield Session of the Housing Court on **September 27, 2023, at 9:00 a.m.**

So entered this 15<sup>th</sup> day of September, 2023.

Robert G Fields by KE Hem  
Robert Fields, Associate Justice 9/15/23

CC: TPP, Berkshire  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2777

HOLYOKE PROPERTY MANAGEMENT LLC, )

PLAINTIFF )

v. )

JOSE OLIVEIRAS, )

DEFENDANT )

ORDER FOR ENTRY OF JUDGMENT  
AND ISSUANCE OF THE EXECUTION

This summary process case came before the Court for a bench trial on September 15, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 330 High Street, 3F, Holyoke, Massachusetts (the "Premises") from Defendant based on nonpayment of rent.

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

Defendant stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. He does not dispute that he owes \$24,836.58 in rent. He has no pending rental assistance applications; therefore, the Court finds that G.L. c. 239, § 15 does not apply. In light of the foregoing, the following order shall enter:

1. Judgment for possession, damages of \$24,836.58 and court costs of \$242.96 shall enter in favor of Plaintiff.



2. Execution (eviction order) shall issue by written application following expiration of the 10-day appeal period.

SO ORDERED.

DATE: September 15, 2023

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

cc: Court Reporter



partner Mr. Boone), renting a single bedroom for \$500.00 per month pursuant to an oral tenancy at will. Mr. Main intended to rent the other bedrooms individually.

On or about August 31, 2023, Mr. Mian arranged to have Defendants served with a no fault notice to quit asking them to vacate by October 1, 2023. Defendants did not contest receipt of the notice and did not vacate at the end of the tenancy. Plaintiff has thus established its prima facie case for possession. With respect to damages,<sup>1</sup> Mr. Mian testified that Defendants made no payments after receiving the notice to quit. Mr. Mian had no ledger or other accounting showing payments made, and the only credible records of payments produced at trial were from Cash App. The Court finds that Mr. Cappas paid through October 2023 and made a final payment of \$250.00 on November 8, 2023, leaving a balance of \$250.00 for November 2022 and \$500.00 owed for the eight subsequent months (through the month trial ended) for a total amount of unpaid use and occupancy of \$4,250.00.<sup>2</sup>

With Plaintiff's affirmative case established, what is left for adjudication are Defendants' defenses and counterclaims. Defendants allege the improper transfer of utilities, retaliation, breach of the implied warranty of habitability, violation of the security deposit law and violation of G.L. c. 93A.<sup>3</sup> Each of these defenses and counterclaims will be addressed separately.

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<sup>1</sup> Although Plaintiff did not seek use and occupancy in the complaint, without objection the Court allowed its oral motion to amend the complaint to add a claim for use and occupancy.

<sup>2</sup> Plaintiff introduced evidence of property in the Premises, but he was unable to prove that the damage was caused by Defendants or that the damages were substantial. The Court awards no damages for the alleged property damage.

<sup>3</sup> Defendants withdrew other counterclaims at the outset of trial.

A. Transfer of Utilities

The State Sanitary Code requires a landlord to pay for electricity (or gas) unless “(1) Such electricity or gas is metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit, except as allowed by 105 C.M.R 410.300(F); and (2) A written rental agreement provides for payment by the occupant. 410 C.M.R. § 200 (rev. 2023). Here, Plaintiff initially paid for the electric service to the Premises, but after he expressed concern about the high usage, Mr. Mian told Mr. Cappas to put the electricity in his name and to pay for it from the money he collected from other occupants.<sup>4</sup> Mr. Cappas agreed so long as Mr. Mian entered into a written lease that gave him the right to rent the other bedrooms himself. Although Mr. Cappas did transfer the electricity into his name, he never received a written lease from Mr. Mian. The first billing cycle paid by Mr. Cappas was in September 2021, and he continued to pay for the electricity through the billing cycle in March 2023 when Mr. Main transferred it back into his name. In total, Mr. Cappas paid \$4,914.46 in electricity charges.

Although Plaintiff contends that the transfer of electricity was agreed upon, even if not in writing, and that Defendants did not suffer any economic harm, it is clear that Mr. Cappas paid for electricity usage in areas outside of his exclusive control. Even if Mr. Cappas used some of the rent money paid by others living in the Premises to pay the electric bill, he and Mr. Boone had exclusive control over only

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<sup>4</sup> Perhaps due to their near familial relationship, Mr. Mian and Mr. Cappas agreed that Mr. Cappas would collect the rent from other tenants and pay it to Mr. Mian at his neighboring convenience store.

one bedroom and there is no evidence that each occupant's particular usage was in any way metered separately. Accordingly, the arrangement is a violation of the State Sanitary Code and constitutes a serious interference with Defendants' tenancy. See G.L. c. 186, § 14.

Damages for violations of G.L. c. 186, § 14 are three times monthly rent or actual damages, whichever is greater. Here, actual damages are \$4,914.46 and are thus the appropriate measure of damages. Pursuant to the Attorney General's regulations, a willful violation of G.L. c. 18, § 14 is an unfair and deceptive act or practice. See 940 C.M.R. § 3.17(1)(i). Mr. Mian's actions were willful and knowing, and the Court therefore imposes double damages under G.L. c. 93A and awards Defendants \$9,828.92 on the electricity metering claim.

B. Breach of Warranty

The Court finds that Defendants did not sustain their burden of proving that the conditions in the Premises made them unfit for human habitation. By Mr. Cappas' own words, the primacy issue about which he complained was water entering the Premises when it rained. However, this condition was not cited by the Chicopee Board of Health. Even though it was not raining at the time of the inspection, significant water intrusion leaves damage, and there is insufficient evidence from which the Court can conclude that the water intrusions constitute substantial violations of the sanitary code or significant defects of disrepair.

C. Retaliation

Mr. Cappas testified that he contacted the Board of Health on August 31, 2022,

which led to an inspection on September 13, 2022. The notice to quit was dated August 29, 2022. Although none of the parties testified extensively or provided clear evidence clarifying the relatively timing of the receipt of the notice to quit and the call to the Board of Health, it is Defendants who carry the burden of proof that Plaintiff took action to terminate their tenancy in response to their call to the Board of Health, and they did not meet their burden. Accordingly, the retaliation claim fails.

D. Security Deposit

Defendants testified that Mr. Cappas paid a \$500.00 security deposit at the outset of the tenancy, but they offered no evidence to support their claim. Mr. Cappas said he paid the deposit in cash, which is why there is no evidence of payment. Mr. Mian said he received no such security deposit. The Court finds that Defendants failed to sustain their burden of proof that a security deposit was actually paid, and thus the counterclaim fails.

Based upon the foregoing, and in accordance with G.L. c. 239, § 8A, the following order shall enter:

1. Plaintiff is entitled to \$4,250.00 in unpaid use and occupancy.
2. Defendants are entitled to \$9,828.92 for the electricity metering violation, plus reasonable attorneys' fees.
3. Pursuant to G.L. c. 239, § 8A, Defendants are entitled to judgment for possession and \$5,578.92 in damages. No judgment shall enter, however,

until attorneys' fees have been assessed.

4. Defendants shall have fifteen (15) days from the date of this order to file a petition for reasonable attorneys' fees and costs, along with supporting documentation. Plaintiff shall then have fifteen (15) days from receipt of the petition to file any opposition, after which time the Court will assess attorneys' fees and enter final judgment without need for further hearing.

SO ORDERED.

DATE: September 15, 2023

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

cc: Court Reporter





- A. OFFER FROM DEFENDANTS (July 31 at 3:05 pm):
1. Waive rent through August 2023 with rent payments resuming in September 2023;
  2. General release of claims;
  3. Dissolution of the real estate attachment;
  4. Access for prospective purchasers to view the unit with reasonable notice.
- B. COUNTEROFFER FROM PLAINTIFF (July 31 at 5:50 pm):
1. Waiver of rent through November 2023, with rent resuming in December 2023;
  2. Mutual release of claims;
  3. Agree to dissolution of attachment and access with reasonable notice.
- C. COUNTEROFFER FROM DEFENDANTS (August 1 at 10:16 am):
1. Waive rent through August 2023, with rent resuming in September 2023;
  2. Payment of \$1,500.00 in lieu of addition rent waiver;
  3. Tenant releases claims and dismisses claims with prejudice;
  4. Dissolve attachment;
  5. Access with reasonable notice and no interference with sale.
- D. COUNTEROFFER FROM PLAINTIFF (August 1 at 10:39 am):  
Payment of \$3,500.
- E. COUNTEROFFER FROM DEFENDANTS (August 1 at 10:40 am):  
Payment of \$2,000.
- F. COUNTEROFFER FROM PLAINTIFF (August 1 at 10:40 am):  
Payment of \$3,000 within 7 days

G. COUNTEROFFER FROM PLAINTIFF (August 1 at 10:46 am):  
\$2500 - payable to Plaintiff

At this point, the parties reported to the Court that the case had been settled. Fifteen minutes later, Plaintiff's counsel sent a draft agreement and offered to have his client execute the agreement the same day. Defendants' counsel mailed a check for \$2,500.00. The draft agreement included a mutual release of claims. Upon receiving the settlement agreement, which had already been signed by Plaintiff, Defendants' counsel asked Plaintiff's counsel to redraft the agreement to match the terms of the emails; namely, to remove the mutual waiver of claims and revert to the release of only Plaintiff's claims.<sup>1</sup> Plaintiff's counsel then informed Defendants' counsel that the deal was off.

A binding agreement is established when (1) the parties manifest the intent, viewed objectively, to be bound at the time of contract formation, notwithstanding either party's subjective intent; (2) the parties agree on the material terms of the contract; and (3) the agreement is supported by mutual consideration. *See Situation Mgmt. Sys., Inc. v. Malouf, Inc.*, 430 Mass. 875, 878 (2000). Even in the absence of a formal signature, emails between the parties may create a binding contract.

The primary point of contention here is the issue of whether the parties agreed upon the manner in which claims would be released. Plaintiff's counsel asserts that

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<sup>1</sup> The Court notes that Defendants asserted no counterclaims in this case, so the inclusion of a mutual release, indicating a global settlement as opposed to a settlement of this particular lawsuit, is a material change to the terms the parties' negotiated.

the parties never reached a final conclusion as to that material term, and therefore the entire settlement fails. Defendants' counsel contends that all material terms had been agreed upon, and that a mutual release was not an agreed-upon term.

With respect to this issue, the Court notes that Defendants' counsel initially proposed a release of Plaintiff's claims, and Defendant countered by demanding a mutual release. In Defendants' next email, counsel rejected the mutual release and reverted to the unilateral release of claims. By not responding with a rejection of that term but instead only countering the amount of the payment, and in light of the previous exchange of terms that narrowed the issues over the course of negotiations, the Court finds that Plaintiff manifested an acceptance of all of terms other than the amount of the payment. Upon agreement on the final material term, the Court finds that the parties manifested an present intent to be bound; such a finding is supported by Defendants' subsequent payment of \$2,500.00 and by the parties' mutual decision to report to the Court that the case had settled.

The course of emails demonstrates that the parties progressed beyond "imperfect negotiation", see *Lafayette Place Assocs. v. Boston Redev. Auth.*, 427 Mass. 509, 517 (1998). The Court finds that the parties had a meeting of the minds at the same time with respect to the same material terms. The Court rules that the email dated August 1, 2023 at 10:16 a.m. from Attorney Herbert to Attorney Shivick, as modified only by the amount of the payment, forms the terms of the binding agreement. Accordingly, Defendants' motion to enforce the terms of the parties'

agreement is ALLOWED. The following shall be considered the enforceable terms of the settlement agreement:

1. Rent is waived through August 2023;
2. Rent payments resume in September 2023;
3. Defendants pay Plaintiff \$2,500.00;
4. Plaintiff releases Defendants from all liability associated with the claims asserted in the Complaint, and dismisses the case with prejudice;
5. Plaintiff dissolves the real estate attachment;
6. Plaintiff provides access to the premises with reasonable notice and does not interfere with a sale.

SO ORDERED.

DATE: September 15, 2023

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

cc: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-617

JENNIFER SMYTH,  
  
Plaintiff,  
  
v.  
  
WALNUT PINE, LLC,  
  
Defendant.

ORDER

After hearing on September 14, 2023, the following order shall enter:

1. The plaintiff tenant reports that in violation of the Agreement of the Parties (Agreement) dated August 7, 2023, the conditions in her home are deplorable, the landlord has not made repairs nor has it properly exterminated for bed bugs. The tenant also reports that the apartment identified for her to move into (per the Agreement) needs window guards, screens, and floor repairs.

2. The landlord shall FORTHWITH make such repairs to the new apartment and otherwise IMMEDIATELY make it available for her occupancy.
3. The landlord shall also IMMEDIATELY professionally treat the tenant's current unit for bed bugs.
4. The landlord may not require the tenant to sign and documents she does not want to sign nor pay any amount of money prior to providing her with occupancy to the new apartment.
5. **This matter shall be scheduled for September 19, 2023, at 9:00 a.m. for a Status Hearing.**
6. The hearing currently scheduled for September 26, 2023, shall be taken off the list.
7. The tenant wishes to amend her complaint in this matter to seek money damages for allegedly residing in her apartment with serious violations of the State Sanitary Code. A Case Management Conference shall be scheduled for October 11, 2023, at 10:30 to discuss same with the clerk.

8. So entered this 15<sup>th</sup> day of September, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Franklin ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-1297

THE COMMUNITY BUILDERS, INC.,  
  
Plaintiff,  
  
v.  
  
NATASHIA SMITH,  
  
Defendant.

ORDER

After a Review Hearing on September 8, 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. The landlord reports that there has been no improvement of the situation from its perspective since the last court hearing on July 14, 2023, but has not filed any motion.

2. The representative from TPP reports that he met with the tenant shortly after the last court hearing and recommends that the following terms be part of a court order.
3. The tenant shall cooperate with TPP's recommendations.
4. The tenant shall not tamper with the smoke detectors in her unit.
5. The tenant shall not use her oven until it is properly and thoroughly cleaned. The tenant shall either clean the oven or the landlord may have access to clean the oven upon proper notice and then to bill the tenant for same.
6. There is serious question of whether the tenant is competent to navigate these proceedings and/or her housing situation. In order to determine if Natasha Smith is an "incapacitated person" as that term is defined in G.L. c.190B, S. 5-101(9), the Court hereby orders that she undergo a forensic psychological evaluation with the Court Clinic. The Court requests that the clinician evaluate Ms. Smith with respect to her decision-making capacity, her ability to comply with Court orders regarding her housing, and her ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the Court should appoint a Guardian Ad Litem (GAL) for Ms. Smith.
7. TPP shall assist the tenant in scheduled a Court Clinic evaluation.
8. Given that there is a project-based subsidy in this matter, TPP is asked to assist the tenant with a referral to Community Legal Aid.
9. This matter shall be scheduled for a **Status Conference with the judge on October 6, 2023, at 9:00 a.m.**



10. A trial shall be scheduled for **October 27, 2023, at 9:00 a.m.**

So entered this 15<sup>th</sup> day of September, 2023.

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Robert Fields, Associate Justice

CC: Court Clinic

Mike Richtell, TPP

Court Reporter



2. Execution (eviction order) may issue by written application after expiration of the 10-day appeal period.
3. Provided that Defendant pay \$1,080.00 by October 5, 2023 for her use and occupation of the Premises, the execution will be stayed (not used) before November 1, 2023.

SO ORDERED.

DATE: September 16, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2119

JASON SPENCER,

)

)

PLAINTIFF

)

v.

)

FINDINGS OF FACT, RULINGS OF  
LAW AND ORDER FOR JUDGMENT

)

CASEY JONES,

)

)

DEFENDANT

)

This no-fault summary process case came before the Court for a bench trial on July 28, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 41 Coolidge Avenue, Turners Falls, Massachusetts (the "Premises") from Defendant.

Prior to trial, the parties stipulated to the following facts which establish Plaintiff's prima facie case for possession. The stipulated facts are as follows:

1. The Premises is a single family home;
2. Defendant resides at the Premises pursuant to an oral tenancy at will;
3. Defendant began occupancy on April 1, 2017;
4. Monthly rent is \$1,100.00 and there is no rental subsidy;
5. Defendant received the notice to quit, which terminated the tenancy as of April 30, 2023;
6. Defendant owes use and occupancy of \$1,100.00 through the month of trial;
7. Defendant continues to reside at the Premises.

Given that Plaintiff has established his prima facie case, the Court turns to Defendant's defenses and counterclaims of retaliation, conditions of disrepair, breach of quiet enjoyment, violation of the security deposit and last month's rent law, and violation of G.L. c. 93A. Based on all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Defendant experienced problems with several appliances, all of which were provided by Plaintiff. On September 3, 2020, her refrigerator stopped working and Defendant had a replacement delivered on September 11, 2020. She also complained about the laundry machines and the microwave. Plaintiff replaced the clothes dryer and the microwave (albeit with a smaller one) and Defendant repaired the clothes washer herself. The evidence presented at trial was inadequate to conclude that the issues with the laundry machines or microwave interfered with her tenancy in a significant manner. With respect to the refrigerator, the replacement appliance provided by Plaintiff was defective, and required at least two visits by repair technicians. Even after repairs were made, the refrigerator did not work properly. Plaintiff apparently told Defendant that she could call the appliance company herself and that he would pay for any additional repairs. The Court finds that Plaintiff failed to adequately resolve the problem with the refrigerator despite knowledge that it was not working properly, and his suggestion that Defendant take over the process is not an adequate resolution to the problem. If an appliance is provided by the landlord, it is the landlord's sole responsibility to ensure that it operates properly.

With respect to damages, Defendant testified that she lost “thousands” of dollars of food, but produced no evidence in support of her claim. It is also not clear how long the problem persisted, given that she did not complain after April of 2022. The Court finds that the defective refrigerator constitutes a breach of the warranty of habitability and that the problem existed from September 2020 to April 2022, during which the value of the apartment was diminished by 10%. At a monthly rental rate of \$1,100.00, Defendant is entitled to a rent abatement of \$2,090.00 ( $\$110.00 \times 19$  months).<sup>1</sup>

Defendant complained about mice in 2020 and Plaintiff said he would send an exterminator. Defendant claims he never did, and Plaintiff did not have a clear memory of whether he did send one. Defendant testified credibly that the mice appeared during cold weather months, but she did not testify or provide evidence as to the extent of the issue or its effect on her tenancy, nor did she produce any evidence that she complained about the more than one time. In order to be entitled to recover damages, Defendant had to demonstrate that the mice problem was a significant code violation or a material defect, or that it seriously interfered with her tenancy, and she failed to do so.

With respect to Defendant’s claim of retaliation, Defendant asserts that Plaintiff served her with a notice to quit on October 1, 2022, almost exactly six months after she sent a text (on March 31, 2022) complaining about the appliances.

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<sup>1</sup> The Court finds that the problem with the refrigerator did not constitute a serious interference with her tenancy and declines to find Plaintiff liable under G.L. c. 186, § 14.

Plaintiff did not act on the notice to quit, and it was likely to be ineffective in any event as Defendant could not have received a letter mailed to her on October 1, 2022 (as indicated in the certificate of service) more than thirty days prior to the tenancy termination date of November 1, 2022. Plaintiff then waited several more months before sending the notice to quit upon which this case is premised. Based on the totality of the circumstances and after considering the weight of the evidence and the credibility of the witnesses, the Court finds that the notice to quit sent on October 1, 2022 did not create a presumption of retaliation and that Plaintiff's termination of Defendant's tenancy was not done in retaliation for any protected act by Defendant.<sup>2</sup>

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

1. Plaintiff is entitled to \$1,100.00 in unpaid use and occupancy (rent) through the date of trial.
2. Defendant is entitled to \$2,090.00 on account of her counterclaims.
3. Pursuant to G.L. c. 239, § 8A, Defendant is entitled to a judgment for possession and damages of \$990.00.

SO ORDERED.

DATE: September 16, 2023

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

cc: Court Reporter

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<sup>2</sup> Defendant did not pursue her claims for security deposit/last month's rent violations and did not show that Plaintiff engaged in any unfair or deceptive acts or practices. Therefore, those counterclaims are dismissed.





In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re Birchall*, 454 Mass. 837, 852-53 (2009). A primary purpose of civil contempt is to induce compliance and “secur[e] for the aggrieved party the benefit of the court’s order.” *See Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). Compensatory orders, however, may be warranted. *See Labor Relations Comm. v. Fall River Educators’ Assn.*, 382 Mass. 465, 475-476 (1981) (both compensatory and coercive orders are appropriate remedies in civil contempt proceedings).

In this case, the Court finds the Order to be a clear and unequivocal command. Based on the evidence presented at the hearings, which included numerous videos from surveillance cameras at the Property as well as eyewitness testimony, the Court finds that Plaintiff demonstrated, by clear and convincing evidence, Defendant’s clear and undoubted disobedience of the order. The Court finds that Mr. Rivera entered the Defendant’s unit on May 11 and May 13, 2023, and that he was also there on May 26, 2023. The Court further finds that on June 29, 2023, he jumped a fence at the rear of the Property and was let into the building containing the Premises by members of Defendant’s family.

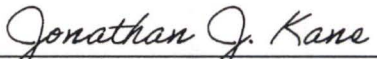
In light of the foregoing, the following order shall enter:

1. Judgment for contempt will enter in favor of Plaintiff.
2. Defendant is enjoined from permitting Mr. Rivera to enter onto the Property.
3. As a sanction for its contempt, and in light of the previous opportunity given to Defendant, Defendant is ordered to vacate the Premises within thirty days following entry of judgment on the Court’s docket.

4. If Defendant fails to vacate as ordered, as a further sanction for contempt, Plaintiff may apply in writing for issuance of an execution for possession.

SO ORDERED.

DATE: September 16, 2023

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2987

BOSTON ROAD MOBILE HOME PARK )  
TENANTS ASSOCIATION, INC., )

PLAINTIFF )

v. )

JAMES THIBAUT AND LORI THIBAUT, )

DEFENDANT )

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

This no fault summary process case came before the Court for a bench trial on August 31, 2023. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of a single-family house located at 1153 Boston Road, Springfield Massachusetts (the "Premises") from Defendants. Defendants stipulated to Plaintiff's prima facie case for possession but for receipt of the notice to quit. Defendants deny receiving the notice to quit.

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

Plaintiff's property manager and maintenance manager delivered the notice to quit to the Premises on March 31 2023. They took a photograph of the notice taped to the house door inside the screen door. Although Defendants claim that they never saw it and someone must have removed it, their testimony is not credible. The evidence shows that the notice to quit was timely and properly delivered to the Premises and

the Court finds that Plaintiff met its burden of proving receipt and, therefore, that it has satisfied its prima facie case for possession.

Defendants raise no legal defenses beyond their claim that they did not receive the notice to quit. Accordingly, Plaintiff is entitled to possession. Based on the provisions of G.L. c. 239, § 9 et seq., Defendants are entitled to a further stay to continue to look for replacement housing. In light of the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. The execution shall not issue prior to September 28, 2023 provided that Defendants pay \$1,040.00 (the amount of their monthly rent) as use and occupancy for September. If payment is not made, Plaintiff may apply for the execution in writing without need for further hearing.
3. If the payment is made, the parties shall return for further review of Defendants' housing search on **September 28, 2023 at 9:00 a.m.** At that time, Plaintiff may request to lift the stay on use of the execution and Defendants may ask for a further stay.

SO ORDERED.

DATE: September 18, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22SP 3604

JARVIS HEIGHTS APARTMENTS, LP, )  
 )  
 PLAINTIFF )  
 v. )  
 )  
 GUILMARY CONCEPCION-SANTIAGO, )  
 )  
 DEFENDANT )

ORDER FOR ISSUANCE  
OF CAPIAS

This matter came before the Court on August 31, 2023 for further review. Plaintiff appeared through counsel. Defendant Concepcion-Santiago appeared self-represented and was accompanied by her guardian ad litem, Edward Bryant, Esq. Ms. Battista from the Tenancy Preservation Program was also present. Defendant Concepcion-Santiago is seeking to remove her adult son, Luis G. Nieves, from her voucher so that she can look for a one-bedroom apartment. Mr. Nieves has not appeared at any of the previous court dates.

After hearing, the following order shall enter:

1. A capias (civil arrest warrant) shall issue for Luis G. Nieves to appear at the next hearing.
2. A new execution shall issue in the amount of \$8,619.38 plus \$245.54 in court costs, but its use shall be stayed pending the next court date.

3. The parties shall appear in Court for further hearing and determination of next steps on **October 3, 2023 at 9:00 a.m.**

SO ORDERED.

DATE: September 18, 2023

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

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-CV-0645

NORTHAMPTON HOUSING AUTHORITY, )  
 )  
 PLAINTIFF )  
 v. )  
 SHANNON SCOTT, )  
 )  
 DEFENDANT )

ORDER FOR FURTHER  
RELIEF

This matter came before the Court on September 18, 2023 on Plaintiff's emergency motion to enforce the Court's September 5, 2023 order ("Temporary Relocation Order"). Plaintiffs appeared through counsel. Defendant did not appear.

The Temporary Relocation Order requires Defendant to move from his current apartment at the 81 Conz Street, Apt. 415, Northampton, Massachusetts (the "Premises") to Apt. 319 in the same building until the repairs required by the Northampton Board of Health have been completed. The Temporary Relocation Order requires Plaintiff to use professional, insured movers to move Defendant's belongings to Apt. 319 and back again to the Premises at no cost to Defendant.

When the movers came to the Premises today after seven days' advance notice had been provided to Defendant, Defendant refused to comply with the Temporary Relocation Order. The movers were not allowed into the Premises. The Court anticipates that Defendant will continue to disregard the Court's orders, particularly

given his conduct at the previous hearing. Accordingly, in order to enforce the terms of the Temporary Relocation Order, the following order shall enter:

1. An execution for possession shall issue forthwith, despite the fact that this is a civil case for injunctive relief. The Court takes this action, which is temporary in nature and does not resolve the issue of possession in the summary process case between the parties (see 23H79SP000510), in the nature of a contempt sanction to ensure compliance with a court order.
2. The Sheriff's Department may levy on the execution upon providing the 48-hour notice required in G.L. c. 239, § 3; however, instead of using a bonded warehouse, Defendant's belongings shall be moved to Apt. 319.
3. Plaintiff may change the locks to the Premises after the levy, and it shall immediately provide keys to Apt. 319 to Defendant. It shall provide Defendant with a key to the Premises once it returns his belongings.
4. All terms of the Temporary Relocation Order not modified by this order shall remain in force and effect, including the review date of **October 2, 2023 at 9:00 a.m.**

SO ORDERED.

DATE: September 18, 2023

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

cc: Court Reporter



CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-3048

PHOENIX DEVELOPMENT, INC.,  
  
Plaintiff,  
  
v.  
  
MICHELLE and DAVID HOWLAND,  
  
Defendants.

ORDER

After hearing on September 14, 2023, the plaintiff appeared through counsel and the defendant David Howland appeared with LFD counsel, and at which Carmen Morales from the Tenancy Preservation Program (TPP) appeared, the following agreed upon order shall enter:

1. Mr. Howland reports that his wife is not present because she is presently hospitalized [REDACTED] and is anticipated to be released on September 18, 2023.
2. Mr. Howland also explained that his wife has access to his bank accounts and he is presently unable to access funds.
3. LFD counsel reports that there is presently a RAFT application pending.
4. All present shared their concern that this matter needs appointment of a Guardian Ad Litem (GAL) for both defendants.
5. In order to determine if Mr. and Mrs. Howland are "incapacitated persons" as that term is defined in G.L. c.190B, S. 5-101(9), the Court hereby orders that they undergo a forensic psychological evaluation with the Court Clinic. The Court requests that the clinician evaluate the Howlands with respect to their decision-making capacity, their ability to comply with Court orders regarding their housing, and their ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the Court should appoint a Guardian Ad Litem (GAL) for either or both of the Howlands.
6. TPP has opened the case and has agreed to assist in the coordination of these clinic evaluations.
7. The tenants shall pay their rent plus \$200 towards the arrearage. This shall start with October 2023 if Mrs. Howland is released from the hospital or Mr. Howland gains access to his bank accounts. This amount may be subject of a subsequent motion to modify said amount of arrearage payments.

8. This matter is scheduled for hearing on **October 26, 2023 at 9:00 a.m.** If the tenants are not going to be appointed a GAL, the hearing may be for trial. Otherwise, the matter shall be a Status Hearing.

So entered this 18<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Clinic

Carmen Morales, TPP

Gordon Shaw, Esq. (LFD counsel)

Court Reporter

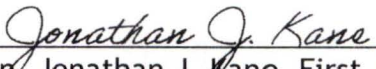


agreement proposed last week, and because Julie Felix failed to appear today, the following order shall enter:

1. Defendants shall vacate on or before November 1, 2023.
2. If Defendants vacate as agreed, Plaintiff will waive the balance of rent owed.
3. If Defendants do not vacate as agreed, judgment for possession shall enter in favor of Plaintiff nunc pro tunc (retroactively), and execution shall issue forthwith.<sup>2</sup>

SO ORDERED

September 18, 2023

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

cc: Court Reporter

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<sup>2</sup> Because a default judgment shall enter against Julie Felix, the execution will include the names of all of the defendants.

OR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-CV-700

LYNN KAUFMAN,  
  
Plaintiff,  
  
v.  
  
JOANNE HOUGHTALIN,  
  
Defendant.

ORDER

After hearing on September 19, 2023, the following order shall enter:

1. The defendant landlord shall hire a licensed technician to repair or replace the stove/oven in the plaintiff tenant's unit forthwith. This technician shall not be the one that went to the tenant's unit on an earlier date.
2. The landlord shall provide at least 24 hours' advance written notice of the date and time that the technician will come. Access shall not be unreasonably denied by the tenant.

3. If the tenant acts in a manner that prevents the technician from effectuating the repair or replacement and the court is convinced of same at a hearing scheduled upon motion, the court shall require the tenant to pay for the bills for both technicians (the earlier one and the new one).

So entered this 10<sup>th</sup> day of September, 2023.



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Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 19-CV-651

IVY AFRA,  
  
Plaintiff,  
  
v.  
  
YAW AGYAPONG, et al.,  
  
Defendants.

ORDER

After hearing on September 19, 2023, on the plaintiff's motion to compel discovery, the following order shall enter:

1. The motion is allowed. The daily sanctions already ordered by the court shall remain in full force and effect.
2. The defendant present, Yaw Agyapong, reported to the court that he will arrange with plaintiff counsel to go to his office by no later than this coming Friday, September 22, 2023, to provide responses to the outstanding discovery demand.



3. There shall be a protective order prohibiting the plaintiff counsel from utilizing any of the defendants' private financial information other than in furtherance of this litigation. Plaintiff may not copy or share any portion of said financial information other than in direct necessary furtherance of collecting the judgment and all outstanding sums owed.
4. The defendant's motion to remove Rose Turpin from this case shall be scheduled for hearing on **October 12, 2023, at 2:00 p.m.**

So entered this 20<sup>th</sup> day of September, 2023.

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Robert Fields Associate Justice  
CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-3606

KING PINE RHF PARTNERS, LP,  
  
Plaintiff,  
  
v.  
  
ROSA BUZZELL,  
  
Defendant.

ORDER

This matter came before the court on September 15, 2023, for a First-Tier event. The tenant did not appear and a representative from the Tenancy Preservation Program appeared and reported that the tenant is currently hospitalized.

No default shall enter today. TPP has agreed to do its best to learn more about the tenant's situation, hopefully meet with her, and also meet with (and invite to the next hearing noted below) the tenant's Power of Attorney (POA), and provide a copy of this order to the tenant and her POA.

This matter shall be scheduled for a Status Hearing on **September 29, 2023, at 9:00 a.m.**

So entered this 20<sup>th</sup> day of September, 2023.

  
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Robert Fields, Associate Justice

CC: Mike Richtell, TPP

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-2042

MACARTHUR TERRACE, LLC,  
  
Plaintiff,  
  
v.  
  
DESIREE BENARD,  
  
Defendant.


ORDER

After status hearing on September 20, 2023, the following order shall enter:

1. The tenant shall pay the landlord \$350 today towards the move-out cancellation fees.
2. The tenant will work with the Tenancy Preservation Program (TPP), for which Carmen Morales appeared and met with the tenant and reported to the court that TPP shall open a case in this matter.

3. TPP and the tenant will work on following up on the tenant's RAFT application, with her subsidy recertification, and sanitary conditions in her unit, and any and all other areas determined by TPP as needing work.
4. The landlord shall coordinate with the tenant and with TPP a date and time for access to the unit for an inspection.
5. The tenant explained that she has [REDACTED] and requests that all communication from the landlord be by certified mail. The landlord suggested that all communications can be in writing but also sent to TPP so that TPP can work with the tenant on reviewing, digesting, and acting on such written communications. Presently, the landlord's suggestion shall be the protocol going forward unless the parties agree otherwise or by leave of court.
6. This matter shall be scheduled for a further status hearing on **October 12, 2023, at 9:00 a.m.**

So entered this 21<sup>st</sup> day of October, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Carmen Morales, TPP  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 23-SP-854

BEACON RESIDENTIAL,

Plaintiff,

v.

CARMEN ALEJANDRO, et al.,

Defendants.


ORDER

After hearing on September 5, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenants appeared *pro se*, the following order shall enter:

1. For the reasons stated on the record, the landlord's motion is denied without prejudice.

2. Additionally, the tenant Carmen Alejandro, testified that she suffers from [REDACTED] and that she finds these proceedings and her efforts to seek SHERA funding extremely stressful.
3. The landlord shall reach out to the tenant regarding SHERA funding and cooperate and support efforts to apply for said funds.
4. The parties shall also engage in a good faith Reasonable Accommodations dialogue.

So entered this 22<sup>nd</sup> day of September, 2023.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

CC: Court Reporter





Plaintiff whether Defendant had actually moved to the second floor or was still residing on the first floor. In any event, Defendant received the notice to quit and was aware of Plaintiff's intent to evict him if he did not vacate.

The second basis for the oral motion to dismiss is based on the notice period. The notice characterizes Defendant as an authorized occupant and provides a period of seven days to vacate. Defendant argued that he is a tenant at will and is thus entitled to a 30-day notice. Because the trial was scheduled for today and the parties and witnesses were present, the Court decided to take evidence as to the issue of Defendant's status before ruling on the other motions.

After hearing, based on the evidence presented and drawing all reasonable inferences therefrom, the Court finds as follows:

1. Plaintiff owns the Premises.
2. For many years, Gilbert Palatino, the president of the corporation that owns the Premises, resided on the second floor of the Premises.
3. Years ago, Julio Ramirez rented and occupied the first floor of the Premises.
4. On November 22, 2022, Defendant came to the area from Florida and began staying with Mr. Ramirez's daughter, who is Defendant's cousin.
5. In January 2023, Mr. Ramirez invited Defendant to move in with him on the first floor of the Premises.
6. By this time, Mr. Palatino had moved out of the second floor unit and it was vacant. Mr. Ramirez asked Mr. Palatino if he could rent the entire house.

Mr. Palatino agreed. The second floor had no electricity and required renovation.

7. Mr. Ramirez did not tell Mr. Palatino that he was allowing Defendant to reside at the house or that he was intending to have Defendant move to the second floor unit.
8. Mr. Palatino came to the Premises regularly to check his mail, and may have seen Defendant there; however, he did not know who Defendant was did not accept him as a tenant or authorize him to reside at the Premises. Defendant's right to occupy the Premises was solely through Mr. Ramirez.<sup>1</sup> Neither Mr. Palatino nor any other person acting on behalf of Plaintiff entered in to any written or oral agreement with Defendant, nor is there any evidence at all that they reached a meeting of the minds as to Defendant's right to reside at the Premises.
9. The Court finds the testimony of Defendant not to be credible with respect to making more than one payment to Mr. Ramirez and entering into a legally binding rental agreement with Mr. Ramirez.

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<sup>1</sup> The Court finds that Defendant, on at least one occasion, paid Mr. Ramirez. Defendant claims it was rent money and Mr. Ramirez said that it was a payment to defray living expenses. Mr. Ramirez also provided some paperwork to Defendant acknowledging that he lived at the Premises so that Mr. Ramirez could put the second floor electricity in his name. The totality of the circumstances; the family relationship, the fact that Defendant initially moved into a bedroom in Mr. Ramirez's first-floor unit and the fact that he made a single payment in January 2023, leads the Court to find that Defendant is a mere licensee of Mr. Ramirez. In any event, Defendant's right to occupancy the Premises runs through Mr. Ramirez and not directly from Plaintiff. Even if Defendant was an actual subtenant of Mr. Ramirez, he cannot have greater rights to occupancy than Mr. Ramirez.

10. Defendant did not reside at the Premises with Mr. Palatino's knowledge or permission, tacit or explicit.

11. Defendant continues to reside at the Premises. Because Defendant took out restraining orders against both Mr. Palatino and Mr. Ramirez, Defendant is the only occupant of the Premises at this time.<sup>2</sup>

Based on the foregoing, the Court rules that Defendant is not a tenant of Plaintiff. He is an unauthorized occupant, particularly now that Mr. Ramirez has been dispossessed of the Premises himself. Defendant was not entitled to a rental period notice as a tenant. The simple notice used in this case is sufficient to terminate Defendant's right to occupancy. Accordingly, the motion to dismiss is DENIED.

With respect to Defendant's motion to file a late answer and discovery, the motion is DENIED. After a hearing on August 30, 2023, an order entered in this case allowing Defendant's motion to remove default and gave him to September 6, 2023 to serve an answer. It also scheduled the trial for today. Defendant did not serve the answer until September 20, 2023, one day prior to trial. It would prejudice Plaintiff to permit the filing of an answer so close to trial in light of the Court's previous order setting a deadline for service. For the same reasons, Defendant's oral motion for a continuance of the trial is DENIED.

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<sup>2</sup> Defendant obtained abuse prevention orders against both Mr. Ramirez and Mr. Palatino, effectively prohibiting both the landlord and the tenant from remaining at the Premises while he continues to reside there.

The evidence presented in the evidentiary hearing regarding Defendant's occupancy status, and the findings made therefrom, provide the Court with the facts sufficient to enter judgment as a matter of law. The Court finds that Plaintiff has a superior right to possession, that the no fault notice to quit was legally sufficient and that Defendant did not vacate in the time provided. Therefore, Plaintiff has established its prima facie case for possession. In light of the fact that Defendant has been precluded from presenting any defenses, Plaintiff is entitled to judgment for possession.<sup>3</sup>

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue pursuant to Uniform Summary Process Rule 13.<sup>4</sup>

SO ORDERED.

DATE: September 22, 2023

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

cc: Court Reporter

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<sup>3</sup> The Court retracts its order from the bench requiring Defendant to vacate by a date certain. This order governs the issue of possession.

<sup>4</sup> The Court acknowledges that this remedy differs from the order articulated from the bench, whereby Defendant was giving a certain amount of time to vacate. After further consideration, the Court determines that entry of judgment for possession with execution to issue thereafter is the appropriate method of returning possession to Plaintiff.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 18-CV-0622

\_\_\_\_\_  
CITY OF CHICOPEE HEALTH AND )  
BUILDING DEPARTMENT, )  
 )  
PLAINTIFF, )  
 )  
v. )  
 )  
THE HEIRS AND ASSIGNS OF )  
GLEN DUDEK, ET AL., )  
 )  
DEFENDANTS )  
\_\_\_\_\_ )

DECISION AND ORDER ON RECEIVER'S MOTION TO DISBURSE UNCLAIMED SURPLUS  
FUNDS TO THE COURT

On June 19, 2023, Saw Construction LLC (the "Receiver") filed a motion to disburse unclaimed surplus funds to the Court. This matter was heard on July 11, 2023. The property in question is located at 65 Frederick Street, Chicopee, Massachusetts (the "Premises"). The Court rules as follows:

On May 10, 2019, as a condition of appointing a Receiver, the Court ordered the Receiver to undertake a title exam in order to establish the chain of title of the Premises. Pursuant to the Court's Order on the Receiver's Motion to Authorize Disbursement of Funds to Receiver and Lienholders Subordinate to Receiver's Priority Lien allowed on December 31, 2020, the Receiver was authorized to distribute the surplus funds to lienholders subordinate to the Receiver's lien. The Receiver now represents that it is uncertain as to who is entitled to the surplus funds.

The Court is not the appropriate repository of the surplus funds. To the extent there remains a question of fact concerning the chain of title or priority lienholders, the Housing Court lacks subject matter jurisdiction over matters to determine proper title to real estate. The Land Court and Superior Court have concurrent jurisdiction over questions of title pursuant to M.G.L. Ch. 185, Section 1 (k). See *Tetrault v. Bruscoe*, 398 Mass. 454 (1986) (“the Land Court shall have original jurisdiction concurrent with the Supreme Judicial Court and the Superior Court of all cases and matters cognizable under the general principles of equity jurisprudence where any right, title or interest in land is involved”).

If, on the other hand, the Receiver has identified the next lienholder in priority but such person or entity cannot be located, the issue is not one of title but of abandoned property. In such case, the surplus funds should be turned over to the Commonwealth of Massachusetts Office of the State Treasury Abandoned Property Division pursuant to M.G.L. Ch. 200A and 960 CMR 4.00.<sup>1</sup>

Based on the foregoing, the Receiver’s motion to pay the surplus funds to the Court is hereby DENIED.

SO ORDERED.

September 23, 2023

cc: Court Reporter

  
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Hon. Jonathan Kane, First Justice

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<sup>1</sup> The Receiver is authorized to file supplemental motions for reimbursement of all fees and costs to be paid out of the remaining escrow.