Western Division Housing Court
Unofficial Reporter of Decisions

Volume 13

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

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

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

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

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

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

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

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

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

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

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

PUBLICATION

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

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

SECURITY

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

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

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

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[2] The 2021 date stated in this decision has been confirmed as a typo.

SECONDARY INDEX — BY JUDGE

Hon. Jonathan Kane, First Justice

Hon. Robert Fields, Associate Justice

Hon. Fairlie Dalton, Associate Justice (Recall)

[3] The 2021 date stated in this decision has been confirmed as a typo.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0690

BESSIE REYNOLDS, ET AL.,	)	
	)	
PLAINTIFFS	)	
	)	
v.	)	ORDER
	)	
	)	
CAVALIER MANAGEMENT,	)	
	)	
DEFENDANT	)	

This case came before the Court for an in-person hearing on October 28, 2021 on Plaintiffs' motion to prevent Defendant from towing their vehicles and removing out-buildings. Plaintiffs appeared and represented themselves. Defendant appeared with counsel.

Plaintiffs concede that they have several vehicles parked at the premises and erected three pop-up structures. Defendant sent a letter to Plaintiffs informing them that it would be towing cars in excess of the one car allowed in the lease, and that it would remove the unauthorized structures. After hearing, the following order shall enter:

1. Because there is no evidence that Defendant advised Plaintiffs in the lease or other property rules agreed upon in writing by Plaintiffs that their vehicles might be towed, Defendant may not tow the vehicles without Court order.[1]
2. Plaintiffs may not erect structures, even temporary pop-up structures in common areas on the property. At the hearing, Plaintiffs testified (and demonstrated with

[1] Defendant may enforce the lease term regarding the number and location of vehicles by a motion for injunctive relief or it may seek to terminate the tenancy for lease violations.

photographs) that only one such structure remains, and it covers a lawn mower and a snow blower. Plaintiffs shall have sixty (60) days to remove the equipment and the pop-up structure covering it.

3. The previous Court order of October 20, 2021 regarding repairs shall remain in effect. As set forth in that order, Plaintiffs shall not obstruct or interfere with the work, which includes filming maintenance workers as they go about their work.

SO ORDERED this 4th day of November 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, SS.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21–SP–1277
FRANKLIN COUNTY REGIONAL HOUSING AND REDEVELOPMENT AUTHORITY, PLAINTIFF v. BRIAN BUKOWSKI, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process case came before the Court for a bench trial on October 8, 2021. Plaintiff appeared through counsel. Defendant appeared and represented himself. Plaintiff seeks possession pursuant to G.L. c. 139, § 19. Defendant filed an answer asserting certain defenses, including a defense based upon an alleged failure of Plaintiff to provide a reasonable accommodation.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following facts: Plaintiff resides at 60 J Street, #7, Turners Falls, Massachusetts (the "Premises"), at the Winslow Wentworth House (the "Property"), a congregate living facility with 17 studio apartments with shared bathrooms, kitchen and other living spaces. To live at the Property, residents must meet certain criteria, including income eligibility. The Franklin County Regional Housing and Redevelopment Authority ("Housing Authority") contracts with LifePath, Inc. ("LifePath") to ensure that residents get appropriate support services. In turn, LifePath gets funding from certain state agencies to provide services at subsidized elder properties. LifePath has staff on-site at the

Property several days each week to assist residents who need services, including completing annual income recertifications.

For the time period relevant to this case, Susan White, an employee of LifePath, was at the Property three to four days each week to assist residents. In March 2021, Ms. White was trying to assist Plaintiff in completing the income verification process. Plaintiff, who suffers from [redacted], became very upset that Ms. White knocked on his door despite the sign he posted instructing visitors not to knock. He sent a long, handwritten letter to Ms. White's supervisor, Jennifer Glover, expressing his extreme displeasure at Ms. White. Ms. Glover shared the letter with Ms. White.

In the letter, Defendant threated to file assault charges against Ms. White based on her unwanted presence near him. He made disparaging remarks about Ms. White's skills and physical attributes. He also wrote: "I cannot control myself. I will NEVER consent to talk to Susan White again and if she forces herself on me again I will go to jail for a long long time.... I don't want to go to jail, so keep Susan White away from me." [sic].

Ms. White found the letter to be extremely disturbing. She testified credibly that she believed Defendant intended to physically harm her if he saw her again. She has not returned to work at the Property since the letter was received by Ms. Glover. She continues to live in fear of Defendant showing up at her house or work and causing her harm.

Defendant claims that his comment about going to jail was misinterpreted. He testified that he intended to convey that Ms. White was driving him insane and that he would end up in a "psych ward" if she continued to approach him. He attributed his behavior to his [redacted] and said that his treats should not be taken literally. He did not, however, express regret for

sending the letter; instead, he reiterated that his comments about Ms. White's behavior and that job performance are accurate.

The Court acknowledges that Defendant's [redacted] is an extremely serious malady and a disability that substantially limits one or more major life activities. Defendant presented no evidence that he is taking steps to address the underlying issues that led to the behavior upon which this case is based, or that the behavior would not be repeated if similar circumstances arose in the future. The Court deems that there is no reasonable exception or change to a rule, policy or procedure at the Property that would allow Defendant to reside there without posing a direct threat to others legally present. Accordingly, Defendant's defense based on Plaintiff's failure to provide a reasonable accommodation fails. None of the other defenses raised in Defendant's answer defeat Plaintiff's claim to possession.

Pursuant to G.L. c. 139, § 19, if a tenant of a housing authority commits an act or acts which would constitute a crime involving the use or threatened use of force or violence against any person while such person is legally present on the premises of a housing authority, the lessor is entitled to possession an order that the tenant vacate the premises. Accordingly, based the foregoing findings and rulings, in light of the governing law, the following order shall enter:

1. Judgment shall enter for possession in favor of Plaintiff.
2. Execution (eviction order) shall issue pursuant to Uniform Summary Process Rule 13.

SO ORDERED this 5th day of November 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1374

JOSEPH TACKIE-YAOBOI,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER FOR ENTRY OF JUDGMENT**
	)	
GEORGE WHEELER,	)	
	)	
DEFENDANT	)	

This summary process action came before the Court for a bench trial by Zoom on October 21, 2021. Plaintiff appeared with 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 the following:

Defendant moved into an apartment at 224 Berkshire Avenue, Springfield, Massachusetts (the "Property") in 2017 pursuant to a written lease. On November 30, 2018, U.S. Bank National Association (the "Bank") became owner of the Property by foreclosure deed. Plaintiff purchased the Property from the Bank on or about April 16, 2021.

Plaintiff testified that after purchasing the Property, he had a process server deliver a notice to quit to Defendant. The notice he claims he had served was a 72-hour notice from the Bank to Defendant dated February 28, 2020. At no time did he serve a notice to quit in his own name after becoming owner of the Property.[1] Moreover, Defendant denies receiving the

[1] Plaintiff testified that he though the Bank's notice to quit was sufficient and that there was no need to serve his own notice.

notice and Plaintiff produced no return of service or other evidence of when or how the notice was served on Defendant.

Based on Plaintiff's admission that he never served Defendant with a notice to quit in his name after becoming owner of the Property, and because Plaintiff did not demonstrate that the notice he did serve was ever received by Defendant, Plaintiff cannot sustain his prima facie case for possession. Accordingly, this case is hereby DISMISSED.

SO ORDERED this 10th day of November 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2170

DELYS TORRES,
PLAINTIFF
v.
LUZ VARGAS AND WILLIAM FRANSECHI.
DEFENDANTS

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action came before the Court on October 20, 2021 for a Zoom bench trial. Plaintiff seeks to recover possession of 361 Oakland Street, Springfield, Massachusetts (the "Premises") from Defendants based on a no-fault termination of a tenancy. Both parties appeared and represented themselves. The tenancy having been terminated without fault of Defendants, the Court accepted Defendants' testimony at trial as an oral petition for a stay pursuant to G.L. c. 239, § 9. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following facts: Plaintiff recently became sole owner of the Premises, a single-family house, as part of divorce proceedings. Rent is $1,100.00.[1] Defendants moved in approximately four years ago when Plaintiff and her then-

[1] Defendant Vargas testified that rent was $1,200.00 at the outset of the tenancy but that Plaintiff's husband reduced the rent to $1,100.00. In her summary process complaint, Plaintiff claimed $1,100.00 in unpaid rent, which supports Ms. Vargas' claim that the most recent agreed-upon rental amount was $1,100.00.

husband owned the Premises. Defendants showed rent receipts showing rent was paid for the months of May through September 2021. Defendants have not paid rent for October 2021. Plaintiff served Defendants with a notice to quit that expired on August 1, 2021. Defendants acknowledge receipt. Plaintiff timely served and filed a summary process summons and complaint. Defendants did not file an answer but testified at trial with respect to potential defenses.

Defendant Vargas testified that, beginning over the summer, Plaintiff repeatedly came to the house without advance notice to make repairs and improvements to the house. She claims that the people Plaintiff brought to the Property regularly blocked the driveway. Moreover, Plaintiff erected a fence that prevents Defendants from removing a car they have parked in the yard. She testified about the stress caused by Plaintiff being at the Property whenever she returned from work. At the conclusion of her testimony, Defendant Vargas said she was willing to relocate, but that she needed additional time to find a place to go.

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

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

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

2. Defendants shall pay $1,100.00 on or before November 3, 2021, which, if paid, shall extend the time they have to vacate the Property to November 30, 2021.

3. Defendants may apply to Way Finders to obtain moving funds.

4. Defendants shall document their efforts to locate and secure replacement housing and keep a log of all locations as to which they have visited or made inquiry, including the address, date and time of contact, method of contact, name of contact person and result of contact.

5. If Defendants have not vacated by December 1, 2021, Plaintiff may file and serve a motion for entry of judgment retroactive to today and immediate issuance of the execution. At that hearing, Defendants can seek an additional stay if they can demonstrate a diligent housing search and have the ability to pay for their use and occupation for December 2021.

6. For so long as Defendants reside at the Property, Plaintiff must provide at least 24 hours' advance written notice before coming to the Property to inspect or make repairs. Plaintiff must also permit Defendants to remove their car from the yard.

SO ORDERED this 10th day of November 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1366

TARA JONES-NUTTING,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**FINDINGS OF FACT, RULINGS**
	)	**OF LAW AND ORDER**
HEATHER MEYER,	)	
	)	
DEFENDANT	)	

This summary process action came before the Court on October 14, 2021 for a bench trial held over Zoom. Plaintiff appeared with 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 the following:

Plaintiff owns a single-family home located at 87 Francis Avenue, Pittsfield, Massachusetts (the "Property"). Defendant, who is Plaintiff's step-daughter, has resided at the Property since December 2017 and continues to reside there today. By agreement in January 2018, the parties and Defendant's then-boyfriend agreed to a purchase and sale agreement whereby Plaintiff would sell the Property to Defendants. Defendants paid a $19,000 down-payment and agreed to pay $600.00 each month beginning in January 2018 to pay the mortgage. The agreement gave Defendants a year to secure a mortgage to pay the balance. Further, Plaintiff reserved the right to sell to another party if Defendants did not obtain financing, in which case

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she would return the down-payment, although not the monthly payments made toward the Plaintiff's mortgage.

Defendants did not secure financing and did not consistently make the monthly payments toward the mortgage. In February 2021, Plaintiff entered into a purchase and sale agreement to sell the Property to a third-party. In March 2021, Plaintiff served Defendant with a legally sufficient no fault notice to quit that expired on April 30, 2021. Defendant acknowledged receipt of the notice. Plaintiff then timely served and filed a summary process summons and complaint. Defendant did not file an answer.

At trial, Defendant offered into evidence photographs showing numerous conditions of disrepair. She testified to water leaking from the roof and causing damage to ceilings and floors, among other damages. Some of the rooms in the Property became unusable due to poor conditions. She claims to have sent notice of the conditions of the home to Plaintiff in late 2018, approximately one year after she had taken possession of the Property. She concluded her testimony by stating that she was simply looking for more time to move and that she did not want to remain in the Property any longer than she needed to.

Laws protecting tenants from residing in substandard housing are not applicable under the circumstances presented here. The parties in this case are family members and their relationship was not that of a landlord and a tenant. They entered into a purchase and sale agreement that included Defendant making a significant down payment toward the purchase price. Defendant had the right to reside in the Property for a year while she attempted to secure financing to complete the purchase, and with this right came the obligation to maintain the Property. It was not until July 2021, when it was clear that she was not going to be able to complete the purchase and that Plaintiff was going to sell the house to a third-party, that

Defendant asserted that she was a tenant and that her step-mother was a landlord responsible for any defective conditions at the Property. Because the relationship was not one of landlord and tenant, and because Defendant did not file an answer asserting counterclaims against Plaintiff, Defendant has not established a legal defense to Plaintiff's claim to possession.

Accordingly, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue in accordance with Uniform Summary Process Rule 13.

SO ORDERED this 12th day of November 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0758

STONY HILL PROPERTY LLC,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**ORDER**
	)	
LANA DOUGLAS,	)	
	)	
DEFENDANT	)	

This matter came before the Court on November 9, 2021 on motions for emergency relief filed by each party relating to possession of 52 Biddle Street, Springfield, Massachusetts (the "Premises"). Plaintiff appeared through counsel. Defendant appeared and represented herself.

The Premises were occupied by Barbara Rankin prior to her death in October 2021. Defendant is Ms. Rankin's daughter. She testified that she began taking care of her mother years ago and has been residing in the Premises since 2017. Plaintiff's agent claims to have been in the Premises several times and saw no evidence that Defendant was living there. Plaintiff points to several documents signed by Ms. Rankin attesting to the fact that no other adult lived in the Premises. There is no evidence that Defendant offered to pay or paid rent using her own funds prior to November 2021.

After weighing the credibility of the witnesses and reviewing the evidence submitted, the Court finds that there was never a meeting of the minds between Plaintiff and Defendant as to the terms of Defendant's occupancy at the Premises and there is no credible evidence that

establishes that Plaintiff was aware that Defendant was using the Premises as her primary residence. Accordingly, the Court finds that Defendant does not have the legal status of a tenant.

It does not follow from this finding that Defendant is on the Premises illegally. Presumably, her mother, who was the sole authorized tenant prior to her death, permitted Defendant to stay at the Premises during her lifetime. Accordingly, as Defendant is not a trespasser, the Court will not enter an order that she vacate immediately. After weighing the equities, the Court enters the following order:

1. Defendant must vacate the Premises no later than November 30, 2021.

2. Defendant shall gain no tenancy rights by virtue of the Court permitting her time to move.

3. The $850.00 payment Defendant recently made to Plaintiff may be accepted by Plaintiff for her use and occupation of the Premises for the month of November, and acceptance of these funds will not establish a tenancy.

4. If Defendant fails to vacate on or before November 30, 2021, Plaintiff may file and serve a complaint for contempt seeking as a sanction the immediate issuance of an execution for possession.

SO ORDERED this 17th day of November 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-827

U.S. BANK, N.A.,

Plaintiff,

v.

KEVIN DOWE,

Defendant.

ORDER

This matter came before the court for trial on November 8, 2021 at which the plaintiff appeared through counsel and the defendant appeared *pro se*. After consideration of the evidence admitted therein, the following order shall enter:

1. The only challenge by the defendant to the plaintiff's superior right to possession and the underlying foreclosure is that the plaintiff failed to comply with the requirements of the mortgage for a "face-to-face" contact in accordance with 24 CFR s.203.604.

2. Though the court finds the defendant credible that he does not recall ever receiving a certified letter from the plaintiff or its servicer regarding a face-to-face meeting nor one taped to his door, the court is persuaded by the evidence that the plaintiff did in fact send (certified) and post (taped to the door) such materials in compliance with 24 CFR s.203.604.
3. Accordingly, the plaintiff shall be awarded possession of the premises. This is an Order and not yet a judgment as the plaintiff has an outstanding claim for use and occupancy. Per the plaintiff's request, it shall have ten days after the date of this Order noted below to inform the defendant and the court if it wishes to have an evidentiary hearing scheduled regarding said claim or whether it will be dismissing said claim.
4. If the court and the defendant are notified that the plaintiff is dismissing its claim for use and occupancy, the court shall immediately thereafter enter a judgment for possession only against the defendant. If the plaintiff does not dismiss said claim, an evidentiary hearing shall be scheduled by the clerk's office to determine how much, if any, use and occupancy is due the plaintiff.

So entered this 16th day of November, 2021.

Robert Fields, Associate Justice

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0304

CITY VIEW COMMONS I,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**FINDINGS OF FACT, RULINGS OF LAW AND ORDER**
	)	
KEITH PETERS,	)	
	)	
DEFENDANT	)	

This summary process action came before the Court for an in-person trial on September 27, 2021. Plaintiff Defendant did not file an answer. The parties appeared for trial represented by counsel.

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

Plaintiff owns an 8-unit property located at 83 Federal Street, Springfield, Massachusetts (the "Property"). Defendant resides at the Property in Apartment 2B (the "Premises"). On October 29, 2020, paramedics were called to the Premises and found Defendant's estranged wife, April Washington, bleeding from a cut on her hand. Plaintiff contends that Defendant caused Ms. Washington's injury and that his conduct constituted a material violation of the lease provision prohibiting unlawful activities at the Property.

The Court was not presented with any direct evidence of what occurred between Defendant and Ms. Washington on the night in question. No one other than Defendant and

Ms. Washington witnessed the incident and neither of them testified at trial. The emergency medical technician who responded to the scene, Taylor Adelson, was Plaintiff's sole witness with any first-hand knowledge.

Mr. Adelson testified that he was dispatched to the Premises on October 29, 2020 on a "priority two" call, meaning the call was emergent but lights and siren were not needed. Upon arriving, he observed that Ms. Washington had a two to three inch cut on her hand. He did not observe any other injuries on Ms. Washington at that time (or, for that matter, at any subsequent time). Ms. Washington initially told Mr. Adelson that she had cut her hand while cooking. The paramedics transported Ms. Washington to the hospital and Mr. Adelson rode in the back of the ambulance with her while Defendant rode up front.

During the ambulance ride, Ms. Washington said nothing to Mr. Adelson about the cause of her injury. After arriving at the hospital, while waiting to be moved to a treatment area, Ms. Washington continued to remain silent about the cause of her injury. Mr. Adelson testified that only after Ms. Washington had been moved to a treatment room, with Defendant remaining back in the waiting area, did Ms. Washington make a statement suggesting that Defendant caused her injury. Mr. Adelson estimated that approximately 30 to 45 minutes had elapsed between the time he first interacted with Ms. Washington at the Premises and her statement in the treatment room implicating Defendant.

Defendant contends that the statement purportedly made to the Mr. Adelson is hearsay, as it is offered to prove the conduct that constitutes the lease violation underlying this eviction case. Plaintiff argues that the statements made by Ms. Washington fall into the "excited utterance" exception to the rule against hearsay evidence. *See* Mass. G. Evid. § 803(2) (2021) ("a judge has broad discretion in determine whether a statement qualifies as a

spontaneous utterance"). A statement qualifies as an excited utterance when "(A) there is an occurrence or event sufficiently startling to render inoperative the normal reflective thought processes of the observer, and (B) the declarant's statement was a spontaneous reaction to the occurrence or event and not the result of reflective thought. *Id. See also Commonwealth v. Santiago*, 437 Mass. 620, 623 (2002). "The statement itself may be taken as proof of the exciting event." *Commonwealth v. Nunes*, 430 Mass. 1, 4 (1999). *See also Commonwealth v. King*, 436 Mass. 252, 255 (2002).

"[T]here can be no definite and fixed limit of time [between the incident and the statement]. Each case must depend upon its own circumstances." *Commonwealth v. McLaughlin*, 364 Mass. 211, 223 (1973), *quoting Rocco v. Boston-Leader, Inc.*, 340 Mass. 195, 196-197 (1960). Statements need not be strictly contemporaneous with the exciting cause. *See Commonwealth v. Crawford*, 417 Mass. 358, 362 (1994) (a child's statement five hours later correctly admitted). *See also Commonwealth v. Grant*, 418 Mass. 76, 81 (1994) (same). "[A] declarant may be under the stress of a startling event without appearing to be frantic or excited." *Commonwealth v. Wilson*, 94 Mass. App. Ct. 416, 422 (2018).

In this case, Mr. Adelson arrived at the Property after some indeterminate amount of time had passed since the incident had occurred. Once Mr. Adelson began attending to Mr. Washington, approximately 30 to 45 minutes elapsed before Ms. Washington made the statement in question. Plaintiff contends that the passage of time can be explained by the fact that Ms. Washington waited to be outside of Defendant's presence to implicate him.[1]

[1] A senior executive from the company that manages the Property stated that Ms. Washington is legally blind. Plaintiff asks the Court to draw an inference that Ms. Washington did not know if Defendant would be able to overhear her (for example, riding in the back of the ambulance while Defendant rode in the front seat). Plaintiff produced no admissible evidence to support the claim that Ms. Washington is legally blind, nor can the Court conclude without additional evidence what the label "legally blind" actually means about her ability to see.

Although the law does not require that the statement be made contemporaneously or in the immediate aftermath of an incident, the declarant must be the spontaneous reaction to the event and not the result of reflective thought. Here, there is insufficient evidence to find that "the event [was] so startling as to render inoperative her normal reflective processes." *See Mass. G. Evid. § 803(2)*. The Court finds that Ms. Washington's statements were not a spontaneous reaction to a shocking incident but instead were the result of reflective thought.[2] Her statements to Mr. Adelson, then, are inadmissible hearsay evidence. Without Ms. Washington's statements as evidence, Plaintiff is not able to establish by a preponderance of the evidence that Defendant committed a serious lease violation.

Accordingly, based on the credible, admissible testimony and the evidence presented at trial, and the reasonable inferences drawn therefrom, it is hereby ORDERED that judgment for possession shall enter for Defendant.

SO ORDERED this 17th day of November 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

[2] Plaintiff's argument that Ms. Washington elected to wait until Defendant was not in earshot to make the statement in question supports the Court's conclusion that her statement was not made spontaneously.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, SS.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21–SP–1727
GZS REALTY III, PLAINTIFF v. AMANDA VAZQUEZ AND HECTOR VAZQUEZ, DEFENDANTS	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process case came before the Court for an in-person trial on November 15, 2021. Plaintiff appeared through counsel. Defendants appeared and represented themselves. Plaintiff seeks possession based on non-payment of rent. Defendants did not file an answer.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following facts: Plaintiff owns the rental unit where Defendants reside at 47 North Main Street, 1A, South Hadley, Massachusetts (the "Premises"). After expiration of a one-year lease agreement commencing in February 2015, Defendants became tenants at will. Defendants concede that the amount of unpaid rent claimed by Plaintiff, namely $6,475.00 (seven months at a rate of $925.00 per month) is accurate.[1] Plaintiff sent a legally sufficient notice to quit, which Defendants acknowledge receiving. Plaintiff has satisfied its prima facie case for possession and damages in the amount of $6,475.00.

[1] Defendants obtained rental assistance through Way Finders in January 2021 which paid the rental arrears and court costs. Defendants report that they were recently deemed ineligible for additional assistance.

Defendants testified that some repairs are needed in the unit, but they admit that "nothing major" is wrong. Plaintiff's property manager testified that he has not received notice of any requests for repairs that were not completed. In essence, Defendants understand that they owe the money but due to various personal circumstances, they have no present ability to pay. Accordingly, based the foregoing findings and rulings, in light of the governing law, the following order shall enter:

1. Judgment for possession and damages in the sum of $6,475.00, inclusive of court costs, shall enter in favor of Plaintiff. [2]
2. Execution (eviction order) shall issue pursuant to Uniform Summary Process Rule 13.

SO ORDERED this 17th day of November 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[2] If Defendants become eligible for additional rental assistance and can demonstrate that they have an application for rental assistance pending, they may file and serve a motion for stay of eviction.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

AJAY PATEL,

Plaintiff,

v.

DOCKET NO. 21SP02291

RONALD WINSTEAD,

Defendant.

ORDER

This matter came before the court on November 18, 2021 for a hearing on the defendant-tenant's motion to stop the levy (use) of the execution to move him out of the apartment today at 1:00 p.m. Both parties appeared at the hearing and were self-represented. A representative of Wayfinders also appeared at the hearing.

A default judgment in this no-fault eviction case entered against the tenant on October 12, 2021 for possession, unpaid rent, and costs. An execution issued on October 29 and the deputy sheriff served the tenant with a forty-eight hour notice. Mr. Winstead testified that the only notice he received in this cases was the forty-eight hour notice. He did not receive the summons and complaint served by the deputy sheriff at his last and usual address and by mail, the notice of the court date sent by the Clerk's Office, or the default judgment also sent by the Clerk's Office. He reported that there had been problems with the mail boxes at the property. The representative of Wayfinders reported that the tenant's rent has been paid to the landlord through November 2021, but there appear to be some discrepancies in the account and the landlord may have been overpaid.

After hearing, the following orders will enter:

1. Levy on the execution is stopped. The plaintiff will notify the deputy sheriff of this order immediately, as he agreed to do.
2. The case is restored to the list for further hearing on December 2, 2021 at noon. The hearing will be conducted virtually on Zoom. The Clerk's Office is asked to send notice to both parties.
3. Both parties will cooperate with Wayfinders' inquiry of this account.

18 November 2021

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP1420

DIPLOMAT PROPERTY MANAGER, LLC,)
)
PLAINTIFF)
)
v.)
)
CARMEN DEJESUS,)
)
DEFENDANT)

FINDINGS OF FACT,
RULINGS OF LAW AND
ORDER FOR JUDGMENT

This summary process case came before the Court for an in-person bench trial on October 8, 2021 and October 21, 2021. Plaintiff appeared through counsel. Defendant appeared and represented herself. Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

In January 2021, following a foreclosure on a receiver's lien, Plaintiff became the owner of a two-family home at 80-82 Silver Street, Springfield, Massachusetts. At the time of Plaintiff's acquisition of the property, Defendant was residing on the first floor, known as 80 Silver Street (the "Premises"). Defendant claims that she paid $794.00 monthly in rent to the previous owner. She has not made any payments to Plaintiff. Defendant is disabled and has multiple chronic health issues.

After Plaintiff acquired the Premises, it served a legally adequate no-fault notice to quit on Defendant and another[1] dated March 22, 2021. The notice purported to terminate Defendant's

[1] Defendant represented that Carmen M. Rosa has not resided in the house for a lengthy period of time and has no intent of living there. Without objection, Ms. Rosa shall be dismissed from this case.

tenancy on May 1, 2021. Defendant does not contest receipt of notice. The Court finds the notice to quit to be legally sufficient.

In its complaint, Plaintiff seeks payment for use and occupation at a rate of $400.00 per month "or an amount to be determined at trial" beginning in the month of March 2021. Defendant concedes that she has not made any rent payments to Plaintiff. She explained that she received a letter from Plaintiff's law firm, signed by a lawyer on the law firm's letterhead, notifying her that the property had been sold and to call him. She called the lawyer and testified credibly that she was confused and though the person to whom she was speaking was the new landlord. She said the person on the other end of the phone never asked her to pay rent and said only that she had to vacate so that the house could be torn down "to its bones" and renovated.

Defendant filed an answer with counterclaims for interference with quiet enjoyment, unfair and deceptive practices and breach of the implied warranty of habitability. She and her sister, Maria Nunnally, testified credibly about significant conditions of disrepair that existed at the Premises at the time Plaintiff acquired it. Plaintiff's sole witness, a licensed real estate broker who specializes in lender-owned properties ("Mr. Kulyak"), testified that his agency was assigned this property through an electronic database. His job was to facilitate maintenance and repairs and then to market and sell the property. He visited the property after Plaintiff became the owner but at that time had no contact with Defendant and did not do an interior inspection. As a consequence, Defendant's testimony regarding the conditions at the Premises when Plaintiff became the owner was not rebutted with reliable evidence.

On April 29, 2021, approximately three months after Plaintiff acquired the Premises, the City of Springfield Code Enforcement Department conducted an inspection of the Premises. The inspector issued a report citing numerous code violations, including:

- Infestation of mice and large amount of mouse feces in kitchen and rear bedroom
- Rear door screwed shut
- Smoke detectors missing or defective
- Kitchen ceiling, water damaged ceiling tiles, walls with broken plaster and incomplete installation of drywall
- Floor coverings
- Windows with defective paint
- Screen door
- Porch paint peeling
- Littered yard
- Unsanitary conditions in one bedroom
- Sagging ceilings
- Excessively hot water

Mr. Kulyak testified that he sent the Code report to a third party vendor who addressed the emergency violations first (smoke detectors and back door) and then made the balance of the repairs. Mr. Kulyak submitted evidence that the emergency work was done on April 31, 2021 [sic] and the other work was invoiced on May 25, 2021.[2] Mr. Kulyak did not directly supervise the work but testified that he assumed the work was done because he received invoices. At no time did Mr. Kulyak or anyone else on behalf of Plaintiff inspect the vendor's work to ensure it was done adequately.

Defendant and her sister testified credibly that, although some of the work was completed, defects remained. They testified that the holes in the floors that allowed mice and other vermin to enter the Premises were never plugged. For example, they testified that although the kitchen floor was replaced, it was done poorly and the contractors never moved the stove but instead installed flooring around it. As a consequence, the hole in the floor behind the stove was never addressed. The hole in the closet floor in the second bedroom likewise was not repaired. Defendant and her sister testified that, as a result, the serious rodent infestation continued

[2] The invoice does not indicate when the work was actually done.

unabated after Plaintiff's contractor made repairs.[3]

Plaintiff contends that the vendor's work must have been adequate because the City did not further cite Plaintiff after the repairs had been made. This argument is specious, however, because there is no evidence that the City returned to do a re-inspection of the Premises to ensure the violations had been corrected. Plaintiff did not produce a compliance letter relating to the April 29, 2021 inspection or any other evidence indicating that the City actually approved of the repairs.

The City returned to the property following a sewage backup in the basement that occurred in July 2021. The house was condemned and Plaintiff placed Defendant in temporary alternative housing. After this incident, Plaintiff made the necessary repairs and, following a reinspection of the basement on August 9, 2021, the City found that the violations relating to the sewage backup had been corrected. At that time, the City did not enter or inspect the first floor that had been the subject of the April 29, 2021 code violation report.

Following the basement repairs in August 2021, Mr. Kulyak entered the Premises for the first time. He did a walk-through with Ms. Nunnally, who pointed out the condition of the back bedroom, the mice infestation, and other issues. Mr. Kulyak testified that some of the remaining issues, such as damaged flooring where a window air conditioner leaked and the bedroom with the nesting rodents, were Defendant's responsibility.

Based on the credible, admissible testimony and the evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds that serious conditions of disrepair

[3] The condition of the back bedroom was deplorable. Mice and perhaps squirrels or other wild animals apparently nested in the room after gaining access through the hole in the closet. Defendant, who is in a wheelchair, simply closed the door and didn't go into the room for months. Although the inspection report cited Defendant for unsanitary conditions in that bedroom, the Court finds that he cause of the conditions was the hole in the closet that went unaddressed even after the City's inspection.

existed when Plaintiff acquired the property. Plaintiff made no effort to address conditions of disrepair until the code violations were discovered upon the City's inspection in April 2021. As a result, the Court infers that the code violations cited by the City were present since the inception of Plaintiff's ownership. From January 2021 through April 2021, then, Defendant was living without functional smoke detectors and a second means of egress. Even after the balance of the violations were reportedly repaired in May 2021, conditions of disrepair remained, particularly the serious rodent infestation. Even though Plaintiff asserts that the rodent infestation is Defendant's responsibility, the Court finds that the rodents entered through holes in the floor that were never repaired. Plaintiff's disregard for its responsibilities as a landlord is particularly egregious given that Defendant is seriously ill and wheelchair bound. No representative of Plaintiff inspected the Premises or even spoke to Defendant directly until after the sewage backup in July 2021.

Defendant is a tenant at sufferance with legal rights to a habitable dwelling. *See Meikle v Nurse*, 474 Mass. 207, 214 (2016), citing *Hodge v. Klug*, 33 Mass App. Ct. 746, 754 (1992) ("the statute would be defanged if a tenant at sufferance could not employ its machinery").[4] Under G.L. c. 239, § 8A, the Court finds that Plaintiff is liable for interfering with Defendant's right to quiet enjoyment. A landlord "that directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant" violates G.L. c. 186, § 14. *See Youghal, LLC v. Entwistle*, 484 Mass. 1019, 1023 (2020), *quoting Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The statute does not require that the landlord act intentionally to interfere with an

[4] Plaintiff erroneously contends that Defendant is collaterally estopped from raising code violations that were cited by the City and repaired. First, there is no evidence that the conditions cited by the City in April 2021 were adequately repaired. Second, even if Defendant was exercising her right to enforce the State Sanitary Code pursuant to G.L. c. 111, she does not relinquish her right to seek compensatory damages for the conditions of disrepair. Defendant was not obligated to bring cross-claims against Plaintiff in the City code case and she is within her legal rights to assert counterclaims in this summary process case.

occupant's right to quiet enjoyment. *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997). Rather, liability under the covenant requires only "a showing of at least negligent conduct by a landlord." *Id.* Here, the Court finds that the conditions of disrepair were pervasive for several months, and, despite Plaintiff's payment of invoices to a contractor to address the issues, the conditions were not adequately addressed. Using the last rental rate at the time Plaintiff acquired the Premises; namely, $794.00, statutory damages for a violation of G.L. c. 186, § 14 are equal to three months' rent, or $2,382.[5] Plaintiff's conduct was willful and knowing as that phrase is used in Chapter 93A. Accordingly, Defendant is entitled to treble damages.

Plaintiff is entitled to offset the damages due Defendant by the unpaid use and occupancy. In its complaint, Plaintiff seeks use and occupation at the rate of $400.00 per month or an amount determined at trial. Because the Court finds that the serious rodent infestation was not corrected until the date of trial, when Ms. Nunnally testified the back room was finally cleaned out, the Court will apply the $400.00 rate for use and occupation from March 2021 through October 2021. Beginning in November 2021, the use and occupancy rate shall be $1,100.00, which is the fair rental value of the Premises in habitable condition as demonstrated at trial.

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

1. Defendant is entitled to damages in the amount of $7,146.00.
2. Plaintiff is entitled to $3,200.00 in use and occupancy through October 2021. Plaintiff is entitled to $1,100.00 beginning in November 2021.

[5] The Court determines that damages for interference with quiet enjoyment yields a greater recovery that the damages available under the warranty claim.

3. Judgment shall enter for Defendant for possession and damages in the amount of $2,846.00.[6] Payment of the judgment amount shall be made to Defendant within thirty (30) days.

SO ORDERED this 30th day of November 2021.

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

cc: Court Reporter

[6] The figure accounts includes unpaid use and occupancy of $1,100.00 for November 2021. Any payments made by Defendant toward use and occupancy since the trial date shall be added to the judgment amount.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

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

VU NGUYEN,

PLAINTIFF

v.

GRISELLE RESTO,

DEFENDANT

RULING ON PETITION FOR ATTORNEYS' FEES AND ORDER FOR FINAL JUDGMENT

This matter is before the Court on Defendant's post-trial petition for an award of attorneys' fees and costs. Following a bench trial, the Court issued a written decision on September 17, 2021 finding that Defendant was entitled to judgment for damages in the amount of $24,953.14, plus costs and reasonable attorneys' fees as a result of Plaintiff's violations of law. After considering Defendant's petition for attorneys' fees and Plaintiff's opposition thereto, the following final judgment shall enter:

In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of

attorneys' fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389. *See Heller*, 376 Mass. at 629 ("the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. Absent specific direction from the Legislature, the crucial factors in making such a determination are: (1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney") (citations omitted).

The Court reviewed the affidavit of Attorney Christa Douaihy and supporting documents and notes that Defendant's counsel does not dispute Attorney Douaihy's hourly rate charged in this case of $275.00. Although the legal issues were not unusually complex, the factual evidence was considerable and the case required numerous court appearances over a number of months, as well as a bench trial that extended over two days. The Court finds that the 75.6 hours she expended on this case are not excessive, nor are the costs of $36.34. Accordingly, after considering all of the factors set forth above, the Court awards Plaintiff a reasonable attorneys' fee and costs in the amount of $20,826.34. The award of attorneys' fees is without interest. *See Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

In light of the foregoing, and the Court's findings, rulings and order entered on September 17, 2021, the Court hereby orders that final judgment shall enter for Defendant in the amount of $24,953.14 plus statutory attorneys' fees and costs in the amount of $20,826.34.

SO ORDERED this 30th day of November 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1781

BRAYTON HILL APARTMENTS MA, LLC,)
)
PLAINTIFF)
)
v.)
)
BRANDON SELSING AND)
SARAH CROCKWELL,)
)
DEFENDANTS)

FINDINGS OF FACT,
RULINGS OF LAW AND
ORDER FOR JUDGMENT

This summary process case came before the Court for a two-day bench trial over Zoom on October 25, 2021 and November 2, 2021. All parties appeared with counsel. Plaintiff seeks to recover possession of Unit 146 at 159 Brayton Hill Terrace, North Adams, Massachusetts (the "Premises") from Defendants based on material non-compliance with terms of their lease.

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

Brayton Hill Apartments (hereinafter referred to as the "property") consists of 12 buildings and 100 units. Defendants have resided in the Premises for approximately two years. They occupy the Premises with their two children, [redacted]. By letter dated October 22, 2020, Plaintiff notified Defendants that their tenancy would be terminated on November 30, 2020 as a result of serious lease violations. Defendants do not contest receipt of the notice.

The evidence in this case shows that Defendants materially violated the terms of their lease by setting off fireworks and using a fire pit on the property. They also confronted and

reacted aggressively toward Plaintiff's maintenance staff when the employees removed items from their patio, including the fire pit. The property's "house rules", which are incorporated into the lease, specifically prohibit explosives and fireworks and fire pits. Defendants do not contest much of what Plaintiff alleges occurred, and they accept responsibility for their actions.

The issue at the heart of this case is whether Plaintiffs should have granted a request by Defendants to make an accommodation for their disabilities. Even if, as Plaintiff contends, Defendants did not disclose their disabilities to management or make a request for an accommodation prior to the filing of this case, Defendants' counsel made such a request by letter dated March 31, 2021. Upon receipt of the request for accommodation, Plaintiff acknowledged its obligation to engage in an interactive dialogue and asked for additional information demonstrating a nexus between the Defendants' alleged disabilities and the conduct at the core of the lease violations. By letter dated July 12, 2021, a family outpatient therapist for Defendants provided a legally adequate response. Plaintiff rejected Defendants' proposed accommodation; namely, dismissing the summary process case after six months without further substantial lease violates, although it did not provide a written explanation for rejecting Defendants' request. At trial, Plaintiff's property manager, Keyla Girard, explained that she believed Defendants' use of fireworks and fire pits, and their physical altercation with staff, jeopardized the health and safety of others on the property. Further, she testified that she did not see the connection between the therapist's letter and the Defendants' conduct.

The issues raised in this case are not novel. In *Boston Housing Authority v. Bridgewaters*, 452 Mass. 833 (2007) the Court addressed the scenario in which a tenant in a public housing development[1] violated his lease by committing a crime that threated the health and safety of

[1] Plaintiff is not a public housing authority but is similarly-situated as an affordable housing complex that administers HUD project-based subsidies.

another resident. The Court held that, given the tenant's disability, before the landlord could conclude that "a disabled tenant poses 'a significant risk to the health or safety of others than cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services,' [it had to] make an individualized must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk." *Id.* at 835 (citations omitted).

In this case, the evidence shows a causal link between Defendants' [redacted] and the lease violations. *See Moretalara v. Boston Housing Authority*, 99 Mass. App. Ct. 1, 11 (2020) (tenant presented facially plausible case that her disabilities were causally related to the lease violations).[2] The Court next considers, given the nature and severity of the risk, what is the probability that injury will actually occur if measures are taken to manage the Defendants' disabilities. Both Defendants testified as to the treatment they are receiving [redacted] and the therapist letter suggests that they are following through with their treatment. In the approximately one year since termination of the tenancy and trial, there is no evidence of additional lease violations. This provides support for Defendants' contention that appropriate treatment can reduce or eliminate the risk of similar lease violations in the future. [3]

The Court concludes that Defendants should be allowed the opportunity to prove that they can abide by the terms of their lease. They have a strong interest in maintaining their

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[2] [redacted]

[3] To be clear, accommodating Defendants does not eliminate or rewrite their legal obligations. If they engage in conduct that constitutes a material lease violation despite the accommodation, Plaintiff is not precluded from making another effort to terminate their tenancy.

tenancy and their Section 8 rental subsidy. [redacted]. Displacing the family would likely have significant adverse impact on the well-being of the child.

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

1. Defendants shall be referred to the Tenancy Preservation Program to conduct an intake.
2. Defendants shall not (a) use or maintain any fire pit on the property, (b) use or store any fireworks on the property, (c) engage in any criminal activity on the property, (d) substantially interfere with the quiet enjoyment of other residents or their guests, or (e) substantially interfere with the management of the property.
3. If Plaintiff alleges a material violation of the terms set forth in the previous paragraph, it may file and serve a motion for entry of judgment, providing Defendants (or their counsel, if his limited appearance has not been withdrawn) with a detailed statement of the alleged violations, a list of witnesses and the substance of the testimony it expects such witnesses to provide.
4. If Plaintiff has not filed a motion for entry of judgment by June 1, 2022, this case shall automatically be dismissed with prejudice and Defendants' tenancy shall be reinstated.

SO ORDERED this 7th day of December 2021.

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

cc: Court Reporter
Tenancy Preservation Program Berkshire County

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0639

ESTATE OF FRANCES E. MCCAFFREY,
PLAINTIFF
v.
MICHAEL WALSH,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court for an in-person bench trial on October 27, 2021. Both parties appeared through counsel. Plaintiff seeks to recover possession of residential premises occupied by Defendant in a two-family house located at 56-58 Madison Avenue, Pittsfield, Massachusetts ("the Property").

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

Prior to 2020, the Property was owned by Ann and Frances McCaffrey. At the time of her death in February 2020, Ann McCaffrey ("Ann") resided at the Property on the 56 Madison Avenue side and Frances McCaffrey ("Frances") resided in an assisted living facility. For a number of years, Ann rented rooms on the 58 Madison Avenue side of the Property. When Ann passed away, Frances became the sole owner of the Property. Frances' son Peter McCaffrey ("Peter") retained counsel to remove all occupants so the Property could be sold.

Defendant Walsh ("Michael") was one of the occupants of 58 Madison Avenue as of February 2020 and he continues to reside at the Property. Approximately 12 years ago, at a time

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when he had no permanent address, he asked Ann, a cousin, if he could stay in one of the apartments at 58 Madison Avenue. Because no rooms were available, she allowed him to stay on the back porch, an unheated three-season room where he continues to reside..

Michael testified that Ann allowed him to occupy the porch in exchange for performing services around the house. He claims that he mowed the lawn, removed snow and maintained the furnace. He said he also drove Ann around to do errands and did light cooking and cleaning. His testimony was contradicted by Thomas Roberts, a former resident on the 56 Madison Avenue side of the Property, who testified that he was essentially Ann's companion and took care of the Property on her behalf, including lawn mowing and snow removal. Michael produced no credible evidence to support his contention that he performed regular or significant services in lieu of paying rent. He likely did some chores around the Property periodically, and he likely drove Ann to do her errands, but the Court concludes that he did these things out of gratitude for the kindness shown him and because Ann was family, not as a bargained-for exchange of value in lieu of rent.

The Court finds that no tenancy existed between Michael and Ann. There is no credible evidence that Ann intended to create a tenancy with Michael, and given the lack of consideration, the Court concludes that no contractual arrangement existed between them. Michael's status is that of a guest.[1] The fact that he moved into the back porch over a decade ago does not change the Court's analysis. A guest does not become a tenant by the mere passage of time without more.

[1] Michael's use of an unheated porch as his bedroom supports the notion that his occupancy was a gratuitous arrangement, much like staying on a couch in the basement or living room. Moreover, in reaching its decision, the Court did not give much weight to any statements Ann McCaffrey made that were admitted as statements of a deceased person pursuant to G.L. c. 233, § 65.

Although Michael acknowledges receipt of notice demanding that he vacate, he correctly points out that Plaintiff's termination letter notifies him that he must vacate the premises he holds "as tenant." The identification of an occupant as a tenant in a notice of termination might be dispositive of the occupant's legal status in some circumstances, but not in this case. The evidence clearly supports the Court's conclusion that Michael was not a tenant, and it would be an injustice to Plaintiff to decide that its lawyer's notice of termination identifying Michael as a tenant outweighs by itself the bulk of the evidence to the contrary.

Because the Court finds that Defendant is a guest with no rights of a tenant, Defendant is not entitled to raise defenses and counterclaims pursuant to G.L. c. 239, § 8A to defeat Plaintiff's claim to possession. Accordingly, because the Court finds that Plaintiff established its prima facie case for possession, the Court hereby orders that judgment for possession shall enter in favor of Plaintiff. An execution may issue upon written application after expiration of the statutory appeal period.

SO ORDERED this 7th day of December 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss	**HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 20-SP-1266**
HAYASTAN INDUSTRIES, INC., PLAINTIFF v. ANGELA GUZ, ET AL., DEFENDANTS	**RULINGS ON MOTIONS TO ALTER OR AMEND**

Both Plaintiff and Defendants asked the Court to reconsider and amend its Findings of Fact, Rulings of Law and Order dated September 13, 2021. The parties appeared before the Court on October 14, 2021 for oral argument on the motions.

First, Plaintiff asks the Court to reconsider its determination that it is a licensee under G.L. c. 140, § 32J and related regulations. It contends that the decision creates anomaly whereby a third party investor would not be able to remove occupants from a manufactured home except for cause. The Court disagrees and reaffirms its ruling that Plaintiff is a "licensee" as that term is defined in the regulations associated with § 32J. The anomaly in this case is that Plaintiff is both the homeowner and the licensee. Had a third-party purchaser the manufactured home, it would not be the "licensee entitled to the manufactured home site" and, thus, would not be prohibited from seeking to obtain possession without cause. Plaintiff's motion to reconsider is denied.

Second, Defendants ask the Court to reconsider its finding that Plaintiff did not violate the Massachusetts law regarding evictions in effect at the time Plaintiff sent a letter to Defendants on April 27, 2020. Plaintiff correctly points out that Chapter 65 of the Acts of 2020 ("Chapter 65") was in effect from April 20, 2020 until October 17, 2020. Therefore, the Court

should have considered whether Plaintiff's letter dated April 27, 2020 constitutes a violation of Chapter 65. Accordingly, Defendants' motion to reconsider is allowed.

Section 3(a) of Chapter 65 recites:

> "Notwithstanding chapter 186 or chapter 239 of the General Laws or any other general or special law, rule, regulation or order to the contrary, a landlord or owner of a property shall not, for the purposes of a non-essential eviction for a residential dwelling unit: (1) terminate a tenancy; or (ii) send any notice, including a notice to quit, requesting or demanding that a tenant of a residential dwelling unit vacate the premises."

The term "non-essential eviction" is defined in Chapter 65, § 1 as "an eviction: (i) for non-payment of rent; (ii) resulting from a foreclosure; (iii) for no fault or no cause...." Here, the Court finds that the letter Plaintiff sent to Defendants on April 27, 2020 constitutes a "notice ... requesting or demanding that a tenant of a residential dwelling unit vacate the premises." Consequently, the Court concludes that the letter violated Chapter 65.[1]

Plaintiff's act of sending a letter asking that Defendants vacate at a time when no fault evictions were prohibited by law constitutes serious interference with quiet enjoyment pursuant to G.L. c. 186, § 14. Damages for a violation of G.L. c. 186, § 14 are the greater of actual and consequential damages or three month's rent. Here, the Court finds that Ms. Guz (who is the only defendant to appear and testify) suffered minimal actual and consequential damages. Although Ms. Guz testified that the April 27, 2020 letter "made her sick" and caused great anxiety, the Court finds that, on balance, the distress about which Ms. Guz testified upon receipt of the letter was caused by various factors, including the breakup of her marriage, her financial challenges, and the recent loss of her home to foreclosure. Plaintiff's letter was not outrageous or

[1] Plaintiff's letter, sent by its president, Stephen Shahabian, recites in part, that "I really don't want the sheriff to come to your door with movers and a moving van. I beg you for the sake of Nessa please find another place to live."

offensive and in fact conveyed concern for the well-being of the family. Accordingly, the Court finds that the evidence does not support an award of damages for emotional distress.

The calculation of statutory damages of "three month's rent" under G.L. c. 186, § 14 is complicated. The parties never agreed upon a rental rate for Defendants' occupation of the home after Plaintiff's purchase. Lot rent is not an appropriate measure of damages in this case because it is the park operator, not the homeowner following foreclosure, that charges and is entitled to collect lot rent.[2] The Court concludes that the proper measure of damages under G.L. c. 186, § 14 is the fair rental value of the home.

In its First Amended Complaint, Plaintiff demanded use and occupation at a rate of $1,000.00 per month. At trial, Plaintiff's president testified that, after conducting further research, he determined that the fair rental value of the home is $1,500.00 per month. He claimed that he spoke to a real estate broker (who was not a witness at trial), scanned the Multiple Listings Service, reviewed advertisements and contacted other manufactured home parks to learn about comparable sales. He admitted that his personal experience renting mobile homes is limited, having only rented one time in the past to a disabled veteran for whom he gave a discounted rent. The Court finds the testimony insufficient to support Plaintiff's contention that the fair rental value of Defendants' home is $1,500.00 per month. Instead, the Court will adopt the rate of $1,000.00 set forth in the First Amended Complaint, which is the figure of which Defendants had notice prior to trial and could have challenged had they elected to do so. Consequently, the statutory damages award shall be three months' rent for a total of $3,000.00. Plaintiff's attempt to have Defendants vacate during the Massachusetts eviction moratorium in effect in April 2020 constitutes an unfair and deceptive practice under G.L. c. 93A. Plaintiff's

[2] Plaintiff implicitly recognized this duality because, after seeking lot rent at the outset of the case, it filed a First Amended Complaint asking instead for payment for Defendants' use and occupation of the home.

conduct was willful and knowing. Accordingly, the damages awarded Defendants shall be doubled.[3]

For the foregoing reasons, the following order shall enter:

1. The Court's Findings of Fact, Rulings of Law and Order dated September 13, 2021 shall be amended to reflect that Defendants are entitled to entry of judgment in the amount of $6,000.00, plus costs and reasonable attorneys' fees.
2. Defendants may submit, within fifteen days of receipt of this order, a petition for attorneys' fees and costs, together with supporting documentation. Plaintiff shall have fifteen days to respond.
3. The Court shall thereafter rule on the pleadings and issue a final order for entry of judgment.

SO ORDERED.

DATE: 12/7/2021

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

cc: Court Reporter

3 Plaintiff's letter is not outrageous or egregious. Although a misapprehension of the law is not a defense to a G.L. c. 93A claim, it is a factor in this Court's determination of whether the Plaintiff's conduct was sufficiently egregious to warrant treble damages. In this case, the Court elects not to award treble damages.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2446

PERVEZ HAI,

PLAINTIFF

v.

JENNIFER O'KEEFE AND DAVID O'KEEFE,

DEFENDANTS

ORDER FOR ENTRY OF JUDGMENT

This summary process action came before the Court on December 3, 2021 for an in-person bench trial. Plaintiff appeared through counsel. Defendants did not appear. Upon filing a Rule 10 affidavit, default judgment shall enter in favor of Plaintiff. Because Plaintiff requests that the Court enter a judgment that includes unpaid use and occupation.[1] Because Plaintiff purchased the subject premises at 24 Pleasant Street, Deerfield, Massachusetts (the "Property") following foreclosure, no use and occupation rate has been established.

Plaintiff called a witness to testify as to the fair rental value of the Property. Donald Mailloux, a licensed realtor, testified that he has been in the business of establishing fair market and fair rental values of residential properties for 31 years. He is familiar with the subject premises because he was the listing agent when Defendants purchased the property in 2009. Based on his credible testimony, the value of a four bedroom single family home rental in

[1] Plaintiff's counsel represents that Defendants are on notice that Plaintiff is seeking damages for unpaid use and occupancy from previous Court appearances at which Defendants appeared.

Deerfield is between $1,600 and $2,200 per month. Because he was not able to do an interior inspection, he is unaware of the conditions inside the Property, but characterized the exterior as "unkempt." Accordingly, the Court determines that $1,600.00 as the fair rental value of the Property.

Defendants have paid no use and occupancy since Plaintiff purchased the Property on February 2, 2021, ten months ago. Judgment will therefore enter for possession and $16,000.00 in use and occupation damages. Defendants shall pay $1,600.00 each month beyond December 2021 that they remain in possession. If Defendants wish to contest the Court's findings as to use and occupation charges, they may file a motion to reconsider this order within ten (10) days.

SO ORDERED this 10th day of December 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1907

POAH COMMUNITIES, LLC, AS LESSOR AND POAH DOM NARODOWY POLSKI LLC,

PLAINTIFFS

v.

TERESA SANTIAGO,

DEFENDANT

ORDER

The parties came before the Court on December 8, 2021 following a failed Housing Specialist Mediation. Plaintiff appeared through counsel. Defendant appeared with her guardian ad litem ("GAL"). Community Legal Aid previously represented Defendant on a limited appearance but withdrew as counsel and did appear today.

Because Defendant's GAL is not authorized to act as her legal counsel, the GAL shall seek counsel for Defendant, whether through Community Legal Aid or otherwise. The Court shall permit any counsel entering an appearance in this matter to file an answer and requests for discovery by December 24, 2021 without further motion.

The parties shall return to Court on January 13, 2021 at 9:00 a.m. for an in-person judicial case management conference.

SO ORDERED this 10th day of December 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21–SP–2227

BLYTHEWOOD PROPERTY MANAGEMENT, LLC,
PLAINTIFF

v.

STACEY NIEVES,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This no-fault summary process case came before the Court for an Zoom bench trial on December 8, 2021. Plaintiff appeared through counsel. Defendant appeared and represented herself. Plaintiff seeks possession of a single family residential property located at 50 Macomber Street, Springfield, Massachusetts (the "Premises").

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following facts: Plaintiff purchased the Premises on March 12, 2021 following a bank foreclosure. Prior to the bank foreclosure, the Premises were owned by Johnny Halluns, the grandfather of Defendant's child. Defendant testified that she rented the Premises from Mr. Halluns beginning in approximately 2005 at a rate of $350.00 per month.

After Plaintiff acquired the Premises, it sent a legally adequate notice dated May 28, 2021 terminating Defendant's tenancy as of June 30, 2021. Defendant does not contest receipt of the notice. The notice offered Defendant a new tenancy at $1,550.00 per month provided that she sign a tenancy at will agreement on or before June 15, 2021. Defendant did not sign the rental

agreement or pay the rent, nor did she vacate after June 30, 2021. Based on the foregoing, Plaintiff has established its prima facie case for possession.

Defendant did not file an answer. She concedes that she has never made a payment for her use and occupation of the Premises to Plaintiff. She testified that although Plaintiff made certain repairs after acquiring the Premises, it did not finish the work. Defendant contends that the windows are drafty, that a mold-like substance remains on the left-hand side of the basement and that there is no door between the basement and the bulkhead doors. She did not offer any documentary or photographic evidence to support her claims that additional repairs are necessary. Based on her testimony alone, the Court finds that the alleged defects are not substantial conditions of disrepair and do not constitute a legal defense to Plaintiff's claim for possession. Accordingly, Plaintiff is entitled to judgment for possession.

Because this is a no-fault eviction case, Defendant has a right to request a stay of execution pursuant to G.L. c. 239, §§ 9-11. In order to be eligible for the statutory stay, Defendant must pay Defendant must pay all outstanding use and occupancy and, in addition, she must pay for her use and occupation for the duration of the stay. In order to establish the appropriate amount of use and occupancy due, the Court accepted the testimony of two witnesses called by Plaintiff to establish the fair rental value of the Premises. Peter Houser, the principal of Plaintiff and an experienced real estate investor, testified that the Premises, a four-bedroom cape with a garage in the Sixteen Acres neighborhood, would rent for at least $1,800.00 per month if fully renovated. Anthony Witman, an experienced property manager with extensive experience leasing residential properties in the Springfield area, showed comparable rentals and testified that the fair rental value of the Premises if newly renovated would be $1,795.00 to $1,995.00 per month. Based on the foregoing, and in light of the monthly rental rate of $1,550.00 offered by

Plaintiff in its May 28, 2021 letter, the Court finds that the appropriate rate of use and occupation payments for the Premises is the $1,550.00.

If Defendant seeks additional time to move, she must file and serve a motion for stay of execution. In order to be eligible for a statutory stay under G.L. c. 239, §§ 9-11, Defendant will need to pay or propose a viable method to pay (through a Way Finders application, for example) the total amount of use and occupation due through trial[1] as well as on-going use and occupancy payments of $1,550.00 per month for the duration of the stay.

Based the foregoing findings and rulings, 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 pursuant to Uniform Summary Process Rule 13; provided, however, that if Defendant files a motion for stay of execution prior to issuance of the execution, no execution shall issue or be used prior to the hearing on Defendant's motion.

SO ORDERED this 13th day of December 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[1] The Court calculates the unpaid use and occupancy as $14,570.00. This figure includes pro-rated use and occupancy for March 2021 in the amount of $620.00 and the full months of April through December 2021.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0908

DIPLOMAT PROPERTY MANAGER, LLC,
PLAINTIFF

v.

JOSE L. SERRANO AND
NANCY SERRANO,
DEFENDANTS

ORDER FOR ISSUANCE OF EXECUTION AND FOR STAY

This post-foreclosure summary process case came before the Court by Zoom on December 9, 2021 on Plaintiff's motion to issue a new execution. Plaintiff appeared through counsel. Defendants, the former homeowners, appeared and represented themselves.

Default judgment entered on July 2, 2021. Execution for possession issued on July 20, 2021. It was not levied upon but instead returned on October 21, 2021 along with Plaintiff's motion to issue a new execution. The motion to issue was scheduled for hearing on November 15, 2021 but Plaintiff did not appear. Plaintiff now seeks issuance of a new execution nearly five months after judgment entered.

Pursuant to G.L. c. 235, § 23, "[e]xecutions for possession of premises rented or leased for dwelling purposes obtained in actions pursuant to chapter two hundred and thirty-nine shall not be issued later than three months following the date of judgment, except that any period during which execution was stayed by order of the court or by an agreement of the parties filed with the court shall be excluded from the computation of the period of limitation." Here, use of the execution was never stayed by agreement of Defendants or by order of the Court.

13 W.Div.H.Ct. 60

It is not clear why Plaintiff did not levy upon the execution within three months following judgment but denying its motion would simply delay the inevitable return of possession of the subject premises to Plaintiff.[1] Plaintiff could simply file a second summary process action and obtain a second judgment for possession, but instead of requiring such duplication of effort, the Court will issue the execution but impose an equitable stay analogous to the statutory stay provided tenants under G.L. c. 239, §§ 9-11 in order to allow Defendants additional time to find replacement housing.[2] The stay shall extend through January 31, 2022. Provided that Defendants can demonstrate a diligent housing search, Defendants can seek further extension of the stay.[3] This case will be scheduled for a review of Defendants' housing search on **February 4, 2002 at 9:00 a.m.** by Zoom. If the Court extends the stay on use of the execution at the next hearing, Plaintiff will be entitled to issuance of a new execution at that time.

SO ORDERED this 14th day of December 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

[1] Defendants readily admit that they do not wish to assert defenses or counterclaims but simply want more time to move.

[2] Defendants testified credibly about the difficulties they have faced in finding replacement housing.

[3] Pursuant to G.L. c. 239, § 11, Defendants would typically be required to pay for their use and occupation during the period of the stay and all "rent" unpaid prior to the period of the stay. If Plaintiff seeks payment from Defendants, it may file and serve a motion to establish a reasonable use and occupation rate.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1383

HURRICANE PROPERTIES, LLC,	)	
	)	
PLAINTIFF	)	
	)	ORDER
v.	)	
	)	
JESSICA C. CONNER,	)	
	)	
DEFENDANT	)	

This matter came before the Court on November 29, 2021 on Plaintiff's motion for entry of judgment based on alleged violations of an Court-approved Agreement dated July 16, 2021 (the "Agreement"). Both parties appeared with counsel.

Defendant resides at 801 Chicopee Street, Unit 3L, Chicopee Massachusetts (the "Premises"). Plaintiff filed a summary process case against Defendant on May 14, 2021, alleging lease violations. On August 18, 2021, the parties, both of which were represented by counsel at the time, negotiated the Agreement in lieu of going to trial. In the Agreement, Defendant agreed, without any admission of liability or wrongdoing, on behalf of herself and her household members and guests, not to "cause excessively loud noises or disturbances in [her] apartment and at the property between the hours from 10 p.m. to 6 a.m." *See* Agreement, ¶ 4. The Agreement recites that, upon an allegation of breach, Plaintiff would provide Defendant with written notice within seven days of the alleged breach, including a description, date and time of the alleged breach and the names of persons involved in or witness to the incident, along with documentation and/or video footage. Plaintiff agreed to offer a Defendant the opportunity to

discuss the matter within fifteen days of the alleged breach in an attempt to "arrive at a mutual understanding to avoid any future breach." *See* Agreement, ¶ 5.

The Agreement further recites that if Plaintiff contends that Defendant committed two breaches, that after the required notice and invitation to meet "for each alleged breach," the landlord could file a motion to request entry of judgment and issuance of execution. *See* Agreement, ¶ 6. The motion was required to include the dates and times of the alleged violations, along with a detailed description of each alleged violation and a list of witnesses and the facts known to each witness. *Id.*

On October 15, 2021, Plaintiff sent a written notice to Defendant regarding alleged violations of the Agreement. The letter identified Breach #1 and Breach #2. Within Breach #1, Defendant cited two noise incidents, one on October 8, 2021 and the other the next day. Breach #2 was described as an altercation in the parking lot of the property on the afternoon of October 13, 2021. Defendant contends that the October 15, 2021 notice did not comply with the requirements of notice set forth in the Agreement in several ways.

First, Defendant argues that Plaintiff's notice is defective because it omits the names of the complaining witness. The Court finds the omission not to be a material violation of the Agreement. Defendant did not articulate any prejudice caused by the omission of the name of the complaining witness in the notice. Moreover, based on the testimony presented at the hearing, the Court is satisfied that Defendant was aware that certain neighbors, including particularly her downstairs neighbor Ms. DeLeon, complained with some frequency about noise coming from the Premises, and it came as no surprise to Defendant when Ms. DeLeon was the party bringing the incidents to the attention of management.

Defendant next argues that the alleged violation listed in the notice as Breach #2 references an incident that occurred during the afternoon of October 13, 2021, not during the hours of hours of 10:00 p.m. and 6:00 a.m. Although true, the Court finds that Plaintiff did in fact cite to two separate violations of the Agreement in its notice; namely, disturbances on both October 8 and October 9. The notice was poorly drafted by combining the two incidents under a single heading called Breach #1, but the manner in which the notice was written does not change the fact that Defendant was given actual notice of two separate violations.

Third, Defendant contends that Plaintiff failed to offer Defendant an opportunity to discuss the issues identified in Breach #1. The evidence on this issue is less than clear. Defendant testified that after receiving the October 15, 2021 letter, she attempted multiple times to contact Zach Goodman, one of the managers and the person with whom she previously dealt with exclusively. Except for one text to Mr. Goodman on October 24, 2021 stating that she "needed" to speak with him, the other texts she offered are undated and appear to reference unrelated matters. With respect to the October 24 text, Defendant makes no reference to the October 15 letter and the context of the text implies that the reason for the text was something other than addressing the alleged disturbances as provided in the Agreement.

On October 25, 2021, Defendant sent a message to the management "app" through which all tenants had been directed to communicate. This text explicitly references the notice letter she received. Matthew Olszewski, another manager, testified credibly that he received her message through the app and called her within five minutes of receiving the message. He testified that he offered to talk about the letter she received but that she did not want to talk to him. He said the call "lasted about eight seconds." There is no evidence that Defendant tried to reach out again or

that she asked anyone else in management to discuss the alleged breaches of the Agreement.[1] The Agreement is ambiguous with respect to which party should initiate the discussion following notice of an incident; given that Mr. Olszewski did return Defendant's text on October 25, 2021, the Court deems the "invitation to discuss" provision of the Agreement to have been satisfied.

With respect to Defendant's position that Defendant should have had the opportunity to discuss "each alleged breach" before a motion for entry of judgment was filed, the Court finds that she was given the opportunity to discuss both incidents when Mr. Olszewski called her in response to her October 25 message. The Court's interpretation of the "each breach" language is that, if Plaintiff alleged a second violation after the parties had discussed the first one, Defendant would be afforded a second opportunity to meet with Plaintiff. Here, given that the events occurred on consecutive days, Defendant had the opportunity to discuss both incidents with Plaintiff in a single meeting. Any other interpretation would allow Defendant to commit as many noise disturbances as she wanted before the first meeting and have it count as a single episode.

The Court acknowledges that the Agreement was very specific in its requirements for notice in the event of alleged violations and that Plaintiff failed to comply precisely with the steps that needed to be taken. Nonetheless, the Curt finds that Plaintiff substantially complied with the terms of the Agreement and satisfied the broader purposes of the Agreement, which was to give Defendant advance notice and an opportunity to meet informally before returning to Court. To the extent that Plaintiff did not strictly comply with the letter of the Agreement, Defendant was afforded due process by virtue of the full evidentiary hearing during which she

[1] Defendant testified that she called Mr. Goodman and left voicemails as well as text messages, but she did not testify that she took any of these actions after October 25, 2021 or that she sent a message through the app again after the single message on October 25, 2021.

had the opportunity to prove to the Court, with assistance of counsel, that she did not engage in the behavior about which the other residents complained.

Turning to the substantive issue of whether Defendant caused the noise disturbances that brough this matter before the court, signing the Agreement, the Court finds the testimony of Plaintiff's witness, Ms. DeLeon, to be credible with respect to her complaints about Defendant. Defendant, on the other hand, was less credible. She blamed everyone else in the building for making noise but never gave the Court a reason to find that she was not the source of the disturbances in question. Accordingly, after weighing the credibility of the witnesses, the Court finds that Defendant violated the Agreement by causing significant noise disturbances on more than one occasion after August 18, 2021.[2] The violations of the Agreement were substantial and warrant entry of judgment for possession.

The Agreement contemplates the possibility that judgment for possession will enter and provides that the Court may give Defendant additional time to relocate for good cause. In this case, Ms. DeLeon and another witness who complained about Defendant's conduct have both moved (or at least they said they were in the process of moving and would be gone by early December). In light of the fact that the parties at the center of the case are no longer living in close proximity at the property, and because Defendant is a recipient of Section 8 rental assistance, judgment shall be stayed and not entered to give Defendant an opportunity to relocate voluntarily. She must vacate and return keys by February 1, 2022. If she fails to vacate on or before that date, Plaintiff shall be entitled to entry of judgment, retroactive to today, and issuance

[2]The Court notes that on November 24, 2021, Plaintiff filed a request for a civil restraining order (Docket No. 21-CV-0814) based on an altercation between Defendant and her friend, Joshua Pikul, on the one hand and Ms. DeLeon on the other. Although the surveillance video produced by Plaintiff does not show a physical exchange, the Court finds that the video lends credence to Ms. DeLeon's testimony that a fight took place just off camera. Although the evidence is not strong enough to allow Plaintiff's motion in 21-CV-0814 that Defendant be immediately barred from the property, it does support Plaintiff's case that Defendant and her visitors have been the source of disturbances at the property.

of an execution for possession. If prior to the vacate date, Plaintiff contends that Defendant is disrupting the livability of the property by creating significant disturbances relating to noise or engages in physical altercations, threats, intimidation or harassment of any other resident, the resident's guests or any agents or employees of Plaintiff, Plaintiff may bring a motion to accelerate the entry of judgment and issuance of the execution.[3]

SO ORDERED this 15th. day of December 2021.

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

cc: Court Reporter

[3] If it intends to file such a motion, it shall serve a copy on not only Defendant, but it shall also send a courtesy copy of the motion to Attorney DeBartolo.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-0628
KIMBERLY JOHNSON, PLAINTIFF v. MOBILEHOME PARKS, INC. DEFENDANT	RULING ON REQUEST FOR EMERGENCY ORDER

This matter came before the Court on November 5, 2021 on Plaintiff's request for an emergency order to allow her back into a mobile home that she claims to have purchased and remodeled. Plaintiff appeared without counsel. Defendant appeared and was represented by counsel.

After an evidentiary hearing, the Court finds that the mobile home in question is located in Harmony Homes Village, Chicopee, Massachusetts (the "Park"), specifically at Lot 67. The lot was originally leased to Jacqueline M. Tisdale on October 30, 2018. The lease indicates that it is not transferrable and is subject to the rules and regulations of the Park. Ms. Tisdale signed a disclosure statement accepting the rules and regulations and giving Defendant the right of first refusal with respect to any prospective sale of the home. Section 31 of the rules requires homeowners who wish to sell their home to notify Defendant at least thirty days prior to the intended sale, and, further, the rules stipulate that potential buyers have to submit residency applications for approval before a sale is transacted.

13 W.Div.H.Ct. 68

Ms. Tisdale passed away at some point after signing the lease and related documents. Veronica Garvin and Cleveland Burgess apparently moved into the home either before or after Ms. Tisdale died. On November 6, 2019, Defendant sent a notice of non-payment of rent to the Estate of Jacqueline Tisdale, Ms. Garvin and Mr. Burgess and subsequently filed a summary process case in this Court (Docket No. 19H79SP005395). On January 2, 2020, Ms. Garvin and Mr. Burgess entered into a Court agreement pursuant to which judgment for possession entered in favor of Defendant. An execution for possession issued in February 2020.

In March 2020, Defendant received a phone call from Mr. Burgess regarding selling the home. Defendant sent a letter to the Estate of Jacqueline Tisdale c/o Ms. Garvin advising her of its right of first refusal to purchase the home at the selling price. Defendant also notified Ms. Garvin that the home needed to be inspected before any sale and that it had to approve the new residents prior to the sale.

Plaintiff claims that she purchased the home from Ms. Garvin on July 14, 2021. She produced a bill of sale purportedly signed by Ms. Garvin. Plaintiff further claims that she subsequently submitted an application for residency for a family named Potter, apparently with the intention of selling the home to the Potters. Defendant's president testified that Defendant did not have advance notice of Plaintiff's purchase of the home and never approved an application for residency from potential residents.

On August 30, 2021, Defendant levied on the execution in the summary process case against Ms. Garvin and Mr. Burgess and took possession of the home. Plaintiff filed the instant motion essentially asking the Court to find that she is the owner of the home and that she has a right to sell it to the Potters or any other person of her choice. The Court cannot make these findings on the record before it.

First, there is no credible evidence before the Court that Ms. Garvin had the right to sell the home to Plaintiff. Plaintiff testified that Ms. Garvin is or was the personal representative of the Estate of Jacqueline Tisdale, but Plaintiff submitted no appointment or other evidence to support this claim. In fact, she provided no evidence at all that Ms. Garvin had the authority to sell the home.[1] Second, there is no credible evidence before the Court that that, prior to selling the home, Ms. Garvin provided notice of her intent to sell to Defendant. Had she given the required notice, Defendant would have had a right of first refusal to purchase it, would have had to undertake an inspection, and would have had to approve Plaintiff's application for residency. Plaintiff cannot correct the defects in the sale process after the fact.

Based on the evidence presented, the Court finds that Plaintiff's purported purchase of the home was not accomplished in accordance with the rules of the Park. Accordingly, Defendant is not obligated to give possession of the home to Plaintiff or to approve an application from potential residents. Plaintiff's request for emergency relief is hereby DENIED. SO ORDERED.

DATE: 12/15/2021

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

cc: Court Reporter

[1] In addition, the bill of sale presented by Plaintiff bears a signature of Ms. Garvin that is different from the signature of Ms. Garvin on Court documents which were signed in the presence of Plaintiff's counsel. This discrepancy raises a question as to the authenticity of the bill of sale.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0566

SOUTH HADLEY HOUSING AUTHORITY,
PLAINTIFF

v.

JAMES CRAY,
DEFENDANT

ORDER ON CONTEMPT

This matter came before the Court by Zoom on December 14, 2021 on Plaintiff's complaint for contempt. Plaintiff appeared through counsel. Defendant appeared and represented himself.

Plaintiff operates a 96-unit property at 69 Lathrop Street, South Hadley, Massachusetts providing housing to low-income elderly and disabled tenants. Defendant lives in unit 19-8. The property prohibits smoking except in two designated smoking areas outdoors. Plaintiff contends that it is entitled to a finding of contempt based on Defendant's violation of an Agreement of the Parties dated October 13, 2021 (the "Agreement"), which Agreement was reviewed and signed by this judge. In relevant part, the Agreement recites that Defendant will not smoke in his unit. The Court deems this to be a material term of the Agreement because Defendant's smoking in his unit seriously jeopardizes the health and safety of other residents.

In order to enter a judgment of contempt against Defendant in this case, the Court must find clear and convincing evidence of disobedience of a clear and unequivocal demand. *See In re Birchall*, 454 Mass. 827, 838-39 (2009). The aim of civil contempt is to coerce performance of a

required act for the benefit of the aggrieved complainant. *Id.* at 848. "Civil contempt is a means of securing for the aggrieved party the benefit of the court's order." *See Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997) (citation omitted).

Here, the Court finds clear and convincing evidence of disobedience of a clear and unequivocal demand, namely the simple provision in the Agreement that Defendant not smoke in his unit. Management inspected Defendant's unit on November 17, 2021 and December 8, 2021. It introduced photographic evidence of cigarette ashes on Defendant's mattress in his bedroom and cigarette butts on his bedside table and balcony. Both the executive director and resident services coordinator smelled the strong odor of tobacco upon entering his unit for the inspections. Defendant offered no credible denials of Plaintiff's allegations.

Although Plaintiff is entitled to a judgment for contempt, the Court will allow Defendant the opportunity to purge the contempt by ceasing all smoking anywhere in his unit, on the balcony or anywhere else on the property but for the designated outdoor smoking areas.[1] Plaintiff may conduct unannounced inspections during daylight hours for the purpose of assessing whether Defendant is complying with this order. It may do no more than one inspection in any two-week period and the first inspection may take place immediately. If Defendant complies with this order for the next ninety (90) days, the contempt will be purged. If Plaintiff concludes that Defendant has violated the terms of this order, it may file and serve a motion for entry of the judgment of contempt, setting forth the sanctions it wants the Court to impose.

SO ORDERED this 16th day of December 2021.

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

cc: Court Reporter

[1] Defendant is also responsible for smoking by any visitors to his unit.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2549

GEORGE ROBARE,

PLAINTIFF

v.

MARK ROBARE,

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 December 14, 2021.[1] Plaintiff George Robare ("George" or "Plaintiff") appeared through counsel. Defendant Mark Robare ("Mark" or "Defendant") appeared self-represented. George seeks to recover possession of residential premises occupied by Mark in a single-family house located at 64 Belmont Street, Chicopee, Massachusetts ("the Property").

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

The parties are brothers. They have two sisters who are not part of this action. The Property had been their father's home. Their father, who passed away in 2017, had conveyed the Property to one of his daughters, Deanna Marie Chelte ("Deanna") in 2011. In 2018, George purchased the Property from his sister Deanna.

Mark has lived in the Property for over a decade. In approximately 2017, George moved into the Property. Until that time, Mark had been residing in the basement, but he moved into one

[1] Plaintiff's counsel and Defendant appeared in-person. Plaintiff appeared via Zoom with leave of Court.

of the first-floor bedrooms around that time. After their father passed, George rented a room in the Property to an individual named Alex. George subsequently moved out and another tenant, Cynthia, moved in. As of the date of trial, Mark, Alex and Cynthia reside at the Property.

George's lawyer served Mark with a rental period notice of termination of tenancy dated July 26, 2021 requesting Mark vacate by midnight on August 31, 2021. Mark stipulates to receipt of the notice. In order to establish his prima facie case for possession, George has the burden of demonstrating that he properly terminated the tenancy. Pursuant to G.L. c. 186, § 12, "[e]states at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and, if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer." In order for the notice given to Mark to be valid under § 12, the Court must find evidence that Mark paid or was required to pay rent every month; otherwise, a three month notice is required.

On this point, Mark denies paying rent at regular intervals. He claims that he paid the electric bill each month and paid the quarterly water bill through June 2021 but that he never paid rent. He concedes that he did pay George $100.00 per month on a regular schedule for a number of months but asserts that the payments were not rental payments but instead repayment of a debt he owed George. George said that the $100.00 monthly payments were for rent, and that the debt repayment was a completely separate issue. George testified that he charged Mark $100.00 per month for rent because, once added to the electric and water bills Mark paid, George figured Mark would be paying approximately $300.00 per month, a number similar to the rent charged the other occupants of the Property. On balance, the Court finds George's testimony on

this point to be credible, and thus the Court finds that the notice to quit in this case is legally adequate to terminate Mark's tenancy.

George had Mark served with a summary process summons and complaint on September 14, 2021 and the case was timely fined in this Court. Based on the sufficiency of notice and pleading, the Court concludes that George has satisfied his prima facie case for possession. He seeks no monetary damages.

Mark filed an answer asserting several affirmative defenses. First, he claims to be a ¼ owner of the Property. He testified that he and his siblings had a verbal agreement to split their father's house equally, with each sibling receiving $35,000.00. Mark said that instead of giving him $35,000.00 in cash, George promised him that he could live in the Property for the rest of his life. Unfortunately for Mark, whatever agreement the family may have reached regarding his right to a life estate in the Property, it was never reduced to writing. Massachusetts law requires that any agreement regarding an interest in real estate must be in writing to be enforceable. *See* G.L. c. 259, § 1. Accordingly, Mark's defense based on his right to live in the Property for the remainder of his life fails.

Second, Mark claims the eviction case was brought in retaliation after he complained about the lack of heat and harassment by his co-tenant, Alex. To prevail on a defense of retaliation, Mark has to prove that George elected to terminate his tenancy because he reported George to some agency (such as a city's code enforcement department) charged with regulating residential tenancies or, at the very least, because he complained to the landlord about substandard conditions. With respect to Mark's allegation that George wants him to vacate because of his interactions with co-tenant Alex, this claim, even if true, would not constitute retaliation under Massachusetts law. Mark's claim that the eviction is in retaliation of his

complaints about lack of heat are not credible. George first heard about the lack of heat in Mark's bedroom only a few weeks ago, long after sending the notice to quit, and had an electrician fix the issue within two days of getting notice of the problem.[2]

Third, Mark asserts a vague discrimination-based defense in his answer. Although Mark appears to be disabled [redacted], he failed to advance an argument at trial that he suffered from any discriminatory acts. Because of the lack of evidence regarding discrimination, the Court finds this defense to be meritless.

Given the Court's determination that Mark has no legal defenses to George's claim to possession, George is entitled to entry of judgment in his favor. However, in a no-fault eviction case such as this, the Court has discretion to grant a stay on judgment and execution. *See* G.L. c. 239, § 9. The Court finds that (i) the subject premises are used for dwelling purposes, (ii) Mark has been unable to secure suitable housing elsewhere, (iii) Mark is using due and reasonable effort to secure other housing, and (iv) Mark's request for stay is made in good faith and that he will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, § 10. The Court finds sufficient facts to warrant a stay.[3] Because of Mark's apparent disability, the Court finds that he has established that the subject premises are occupied by a "handicapped person" as that term is used in G.L. c. 239, § 9.

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

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[2] Mark also testified about lack of heat in other rooms of the house, but Mark concedes that the heat functions properly and it is the co-tenant Alex who shuts off the heat.

[3] A stay ordinarily requires the tenant to pay for his or her use and occupation of the subject premises for the duration of the stay. Because of the lack of evidence as to the fair rental value of Mark's room at the Property, the Court will not enter a payment order at this time. If Plaintiff seeks use and occupancy, he shall file and serve a motion for same.

1. Entry of judgment for possession shall be stayed until further order of the Court pursuant to G.L. c. 239, § 9.
2. Defendant shall continue to make diligent efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which he has applied or made inquiry, including the address, date and time of contact, method of contact and result of contact.
3. The parties shall return to Court on **February 17, 2021 at 11:00 a.m.** for review of Defendant's housing search. The review shall be held by Zoom; however, the parties may come to the Western Division Housing Court sitting in Springfield on the date and time of the hearing and use a public Zoom station if they prefer.

SO ORDERED this 17th day of December 2021.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-CV-214

ROBERT AUTHIER,

Plaintiff,

v.

DANIEL BURACK and CENTER FOR HUMAN DEVELOPMENT, INC.,

Defendant.

ORDER

After hearing on December 13, 2021 on the Plaintiff's motion in limine to preclude all testimony and evidence seeking to challenge the status of 13 Grant Street and 5 Warner Street (the "properties") as 'Lodging Houses' under M.G.L. c. 148 sec. 26h, the following Order shall enter:

1. The motion is denied. Under the specific circumstances of this case, the prior administrative orders have no preclusive effect on the issue of whether the subject properties were properly considered lodging houses under G.L. c. 148, § 26h ("§26h").

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2. In a series of three letters dated November 18, 2019, January 30, 2020, and February 20, 2020, the South Hadley Fire District 1 ordered the installation of automatic sprinklers at the subject properties pursuant to §26h. On June 17, 2020, the Automatic Sprinkler Appeals Board denied Daniel Burack's (Defendant) application of appeal as untimely. Defendant argued that his appeal of the South Hadley order should have been considered timely pursuant to the Supreme Judicial Court's ("SJC") order issued on June 1, 2020, tolling statutes of limitations and certain other deadlines. The Automatic Sprinkler Appeals Board rejected that argument as inapplicable. That decision was essentially affirmed by the Superior Court on March 17, 2021. The Superior Court found that "[a] careful review of the entire SJC Order in question makes clear that the tolling provision of the Order applies to the filing deadlines with the courts that fall under the superintendence of the Supreme Judicial Court." *Burack v. Automatic Sprinkler Appeals Board, et al.*, Superior Court No. 2080CV00069 (March 17, 2021, Carey, J.). The Automatic Sprinkler Appeals Board's cross-motion for judgment on the pleadings was consequently allowed.
3. **Issue Preclusion:** "The judicial doctrine of issue preclusion, also known as collateral estoppel, provides that [w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. The purpose of the doctrine is to conserve judicial resources, to prevent the unnecessary costs associated with multiple litigation, and to ensure the finality of judgments" (quotations and citations omitted). *Martin v.*

Ring, 401 Mass. 59, 60–61 (1987). "The guiding principle in determining whether to allow defensive use of collateral estoppel is whether the party against whom it is asserted 'lacked full and fair opportunity to litigate the issue in the first action or [whether] other circumstances justify affording him an opportunity to relitigate the issue.'" *Id.* at 62, *quoting Fidler v. E.M. Parker Co.*, 394 Mass. 534 (1985). *See* Restatement (Second) of Judgments § 27 (1982).

4. In order for collateral estoppel to apply, "[t]he prior adjudication need not have been before a court. If the conditions for preclusion are otherwise met, [a] final order of an administrative agency in an adjudicatory proceeding ... precludes relitigation of the same issues between the same parties, just as would a final judgment of a court of competent jurisdiction" (quotations omitted). *Tuper v. N. Adams Ambulance Serv., Inc.*, 428 Mass. 132, 135, 697 N.E.2d 983, 985 (1998).
5. This Court finds that the South Hadley Fire District 1 letters ordering the installation of automatic fire sprinkler systems at the subject properties did not provide for a full and fair opportunity to litigate the issue of whether or not the subject properties were properly considered lodging houses under §26h. The rejected attempts to review the South Hadley Fire District 1 orders did not consider that issue but rather focused solely on the timeliness of the appeal and so do not require preclusive effect under *Tuper*.
6. Under analogous, and arguably more drastic, circumstances, the SJC has stated that "generally in the case of a judgment entered by default, none of the issues is actually litigated or decided." *Treglia v. MacDonald*, 430 Mass. 237, 242, 717 N.E.2d 249, 253 (1999). In that case, the plaintiffs obtained a default judgment on a fraud claim against

the defendant in a matter in which the defendant had at times successfully participated. In a later bankruptcy case, the plaintiff argued that money judgment could not be discharged pursuant to 11 U.S.C. § 523(a)(2)(A) and contended that they were entitled to judgment as a matter of law under the doctrine of collateral estoppel. The bankruptcy court proceeded to the merits, found the plaintiffs had failed to sustain their burden of proof on the fraud claim, and entered judgment for defendants dismissing the adversary proceeding. The plaintiffs appealed and the bankruptcy appellate panel moved to certify the question to the SJC. The SJC "reaffirm[ed] that preclusive effect should not be given to issues or claims that were not actually litigated in a prior action." *Treglia*, at 241 (1999).

7. In this action, the Defendant has not yet had the opportunity challenge the assertions of the South Hadley Fire District 1 letters. While there was remedy to appeal the orders, he missed the administrative appellate window. Similar to a default judgment, that failure to timely appeal does not constitute or sufficiently substitute for a full and fair opportunity to litigate the issue. Therefore, this Court will hear the merits of the issue of application of §26(h) to the subject properties at the hearing scheduled on December 28, 2021.

So entered this 20th day of December, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-631

ERIC MORIN,

Plaintiff,

v.

CHRISTY REDMOND,

Defendant.

ORDER

This matter came before the court for trial on September 23, 2021 at which the parties each appeared without counsel. After consideration of the evidence, including testimonial, admitted at trial the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Eric Morin (hereinafter, "landlord") owns a home located at 4 Grandview Terrace in Monson, Massachusetts (hereinafter, "premises"). The defendant, Christy Redmond (hereinafter, "tenant") has rented

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the premises since October 2020 with a monthly rent of $1,000. On December 30, 2020 the landlord terminated the tenancy with a *for cause* termination notice and then commenced an eviction action in the court. The tenant filed an Answer with defenses and counterclaims.

2. **Possession:** Given that the parties agreed that the tenant had vacated the premises by the time of the trial, the basis for the termination was moot but will be addressed below in the discussion of the tenant's Retaliation claim. That said, the landlord is seeking use and occupancy in the Account Annexed and the parties agreed that no rent, use, or occupancy has been paid since February 1, 2021. Thus, the landlord is awarded his claim for use and occupancy through the date of the trial totaling $7,767.
3. **The Tenant's Counterclaims:** The tenant asserted several counterclaims as follows: Retaliation, Sexual Harassment, Breach of the Warranty of Habitability, Breach of the Covenant of Quiet Enjoyment, Security Deposit Law violation, and Violation of M.G.L. c.93A.
4. **Breach of the Covenant of Quiet Enjoyment; Condemnation:** On March 18, 2021 the premises were cited by the Town of Monson for mold, infestation, and lack of a proper heating system and were thereafter condemned. The tenant was forced to stay in a hotel for six weeks at a cost of $2,025.66 until the condemnation was lifted by the town.
5. As a matter of law, a landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his act causes a serious interference with the tenancy or substantially impairs the character and value of

the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

6. The court finds and so rules that the landlord was at least negligent in his conduct which lead to the condemnation as the tenant complained to him from the first month of her tenancy and thereafter about the very conditions upon which he was cited and the premises condemned. As such, the court shall award the tenant the statutory damages of three months' rent, totaling $3,000.
7. **Security Deposit Laws:** The tenant paid the landlord $500 at the commencement of the tenancy as a Security Deposit. Thereafter, the landlord never provided the tenant with a receipt for this deposit nor any information regarding the bank account for same. The landlord admitted as much during the trial, saying that he had the deposit in cash form. As such, the landlord violated the Security Deposit Laws at G. L. c.186, s.15B and must return the deposit plus a statutory 5% on same. As such, the tenant shall be awarded $517 (this represents the return of the $500 deposit plus $17 in interest).
8. **Retaliation:** The tenant testified that she complained to the Health Department prior to her receipt of the December 30, 2020 and asks the court to give her a presumption that the termination was in retaliation to her complaining to the Health Department. The evidence, however, shows that the Town did not issue a citation and condemnation until after the service of the notice to quit (December 31, 2020). The court is also satisfied that the landlord gave the tenant a

termination based on his belief that the tenant had allowed her boyfriend to move into the premises without his permission.

9. **Remaining Counterclaims:** The court finds that the tenant failed to meet her burden of proof on the remainder of her counterclaims.
10. **Conclusion and Order:** Based on the foregoing, and in accordance with G.L. c.239, s..8A, judgment shall enter for the landlord for **$4,250** plus court costs. This represents the award of damages to the landlord for outstanding use and occupancy ($7,767) MINUS the award to the tenant for the breaches of law described above ($3,517).

So entered this 22nd day of December, 2021.

Robert Fields, Associate Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-2317

FEDERAL MANAGEMENT COMPANY,

Plaintiff,

v.

JANET RISATTI,

Defendant.

ORDER

This matter came before the court for trial on November 4, 2021, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se*. After hearing and upon consideration of the evidence admitted at trial, the following order shall enter:

1. The landlord terminated this tenancy based on allegations of lease violations in three categories: (1) That the tenant is allowing unauthorized occupants to reside in her unit; (2) That the tenant is allowing smoking in her unit; and (3) That the

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tenant or her guests have caused disturbances that have breached the quiet enjoyment of other residents.

2. **Unauthorized Occupants:** There is no dispute between the parties that the tenant's daughter, Jessica Martin, and her children reside in the tenant's unit. They have been living there since February 2020 when Ms. Martin was in a car accident.[1] The question before the court is whether the tenant has allowed Ms. Martin and the children to live there without the landlord's permission and in violation of the lease.
3. In February 2020, the landlord was made fully aware that the tenant's daughter, and her daughter's children, was coming to stay with her for a two week post-accident recuperation. During that time or shortly thereafter the tenant requested that her daughter and her grandchildren be allowed to reside in the unit permanently. Since that time, the tenant and the landlord have been engaged in a process of adding Ms. Martin and her kids to the lease. The tenant believes that she has complied with the process, including providing the landlord with proper paperwork and documentation, and that her daughter was permitted to reside in the until pending final approval of her application to be added to the lease.
4. The landlord's position at trial is that the tenant and her daughter have failed to provide necessary documentation, including the daughter's birth certificate, and also that it has made it clear to the tenant that her daughter may not reside at the premises pending the outcome of her application to be added to the lease. The

[1] The landlord's claim that Ms. Martin's boyfriend, " Mr. Gardner", was also residing in the tenant's unit was not substantiated at trial.

landlord, however, failed to provide any proof in support of its position that it made it clear to the tenant that the application to add Ms. Martin was denied for failure to provide documentation and/or that she was not allowed to reside in the unit as a result of the denial or otherwise pending the completion of the application.

5. As such, the landlord has failed to meet its burden of proof that the tenant has knowingly allowed her daughter and her daughter's children to reside at the premises *in violation of her lease* and such shall not be a basis for evicting the tenant at this time.
6. **Violation of the Non-Smoking Policy:** The evidence admitted at trial supports a finding that on one occasion the tenant has allowed smoking inside her apartment. This incident was testified to credibly by the property manager, Donna Wickman-Lawrence, when she smelled smoke in the hallway and knocked on the door and witnessed actual cigarette smoke inside the unit. The remainder of the testimony by the landlord's witnesses does not convince the court that they witnessed actual cigarette smoking inside the unit but rather strongly suggests that this is an apartment full of heavy smokers which results in the unit and the area of the hallway directly outside of the unit smelling of smoke much of the time.
7. **Breaches of Other Residents' Quiet Enjoyment:** The landlord's witnesses focused their testimony on a recent incident in October 2021 when the tenant's daughter, Jessica Martin, was observed yelling at her child. Though the court

credits the description given by the landlord's witnesses of this event as accurate and troubling, it is not by itself a basis for awarding the landlord possession.

8. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the tenant for possession.

So entered this 29th day of December, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-0858
WICKED DEALS, LLC PLAINTIFF	)	
v.	)	ORDER TO VACATE
RALPH LOOMIS ET AL.,[1] DEFENDANTS	)	

This matter came before the Court for in-person hearings on December 28, 2021 and December 29, 2021 on Plaintiff's request for a civil restraining order. Plaintiff and Defendant Loomis appeared with counsel.[2]

In its verified complaint, Plaintiff, which acquired a property located at 48 Main Street, Wales, Massachusetts (the "Property") on or about November 4, 2021 following a foreclosure auction, alleges that Defendant resides in an uninhabitable out-building on the Property. The structure, which will be referred to herein as the "barn," is separate from the main house on the Property, which has been vacant for some years. Plaintiff believes that the barn lacks sufficient or proper heat, electricity and water.

[1] The caption lists a second defendant, Jane Doe, whom Plaintiff believes resides in the subject premises along with Defendant Loomis. On the second day of the hearing, an individual who introduced herself as Eileen Sanderson appeared. When asked by the Court if she wanted to say anything, she indicated "no" by shaking her head and subsequently walked out of the courtroom and did not return.

[2] For the reasons stated on the record at the outset of the hearing, the Court denies Defendant's motion to dismiss for failure to state a claim. It is routine in the Housing Court for parties to seek injunctive relief without a formal complaint; in fact, the Court provides a form for this purpose that requires only an affidavit in support. *See* https://www.mass.gov/doc/temporary-restraining-order/download. If a party seeks a legal remedy, such as monetary damages, the Court requires that the party file or amend its complaint to set forth a cause of action. Here, the Court finds that the verified complaint provides sufficient notice of the basis for the requested relief.

At the initial hearing on December 28, 2021, Defendant testified that he has resided in the barn for approximately five years. He said that his sister owned the Property previously and operated a bed and breakfast business out of the main house. He admitted that the barn does not have a kitchen and said that, until the main house was locked up after his sister died, he had use of its kitchen. He claims to now use a microwave to prepare meals and the bathroom sink in lieu of a kitchen sink. He testified that the first floor living space is heated by electricity, although he concedes that the second floor, which he uses for storage, is unheated.

At the initial hearing, William Cantell, the Building Commissioner for the Town of Wales (the "Town"), testified that he had never been inside the barn and did not know if it complied with the State Building Code. At the Court's request, he inspected the structure on December 29, 2021 and reported his findings on the record when the parties reconvened for further hearing that day. According to Mr. Cantell, the first floor of the barn does in fact have three sections of electric baseboard heat. He testified that the Town has no record of permits being pulled for the installation of the baseboard heating elements, nor any evidence that heating system was ever inspected. He stated that although he could not determine if the walls in the barn were insulated, he did note that the ceiling was not insulated or covered with drywall, and thus was not code-compliant.

Mr. Cantell confirmed that the barn does not have a kitchen but that it has a bathroom with a shower, toilet and sink, although it does not comply with the Building Code regarding ventilation. He testified said the Town has no record of any plumbing permits being pulled or any inspection of the plumbing system being conducted. He said that, given the short time period in which he was given to complete the inspection, he could not determine if the barn is connected to the septic system supplying the main house.

With respect to other life-safety issues, Mr. Cantell testified that the barn is overcrowded with belongings. He found that the second means of egress from the barn is through a basement

filled with excessive clutter, thereby rendering the point of egress inaccessible. He reported that he saw no working smoke or carbon monoxide detectors in the barn other than the one provided by Plaintiff by the previous day,[3] although he said that smoke and/or carbon monoxide detectors were likely once present based on the empty bracket mounts attached to the ceiling.

Mr. Cantell further testified that he reviewed Town records and discovered building plans filed in 2004 showing that the then-owner was planning to construct a 24' by 40' barn without a bathroom or kitchen, and water pipes only for cleaning up and watering plants. He reported that the plans did not include use as a dwelling unit and confirmed that the barn was never issued a certificate of occupancy.

Despite the compelling evidence showing that the barn is not a proper dwelling unit, Defendant argues that he should be allowed to continue to reside there until Plaintiff is awarded possession in a summary process case. He asserts that the Court does not have the authority to order Defendant to vacate the structure in the instant civil case. The Court disagrees. The Housing Court is vested with equitable powers in relation to the "health, safety, or welfare, of any occupant of any place used, or intended for use, as a place of human habitation and ... 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 ...." *See* G.L. c. 185C, § 3.

In this case, the Court finds that the health, safety and welfare of Defendant and any other occupant of the barn are at significant risk. The electricity serving the barn, and the heating and plumbing systems were apparently installed without permits, have not been inspected, and may be

[3] At the December 28, 2021 hearing, after Defendant testified that the barn did not have operable smoke or carbon dioxide detectors, the Court told Defendant that he could not remain in the premises without at least one smoke/carbon monoxide detector. When Defendant expressed concern about his ability to obtain one on short notice, Plaintiff volunteered to have one of his employees deliver the device to Defendant at the courthouse.

materially unsafe. The lack of certificate of compliance certificate from the fire department showing that the smoke and carbon monoxide alarms meet the requirements for the space, particularly in conjunction with excessive clutter throughout the barn and particularly in the basement where the second means of egress is blocked, creates an extreme safety concern for the occupants, as well as for emergency responders and members of the public in the vicinity.

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

In this case, the Court finds that the balance of harms favors the moving party. If an injunction ordering the occupants of the barn to vacate is not issued, Plaintiff (the property owner), as well as the occupants themselves, emergency responders the general public will be at substantial risk of irreparable harm. The potential harm to Defendant is significantly reduced as a result of the active involvement of Michelle Barrett, Director of Veteran Services for the Eastern Hampden District. Ms. Barrett is aware of Defendant's circumstances and, in fact, drove him to the courthouse to attend both hearings. She testified that Defendant will not be homeless if ordered to vacate the barn. She said that her agency has resources to assist Defendant in both the short term

(by providing alternative housing immediately)[4] and the long term (the agency has located a permanent housing option for Defendant that simply requires him to sign some paperwork).[5]

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

1. Effective immediately, the barn may not be used as a dwelling unit. Defendant and all other occupants must immediately vacate the premises and may not return to reside there without further Court order.
2. Because this is a preliminary order addressing issues of health, safety and welfare, this order does not award legal possession to Plaintiff. Plaintiff is authorized to change the locks in order to ensure that the barn is not used as a dwelling unit, but it may not remove any belongings from the barn without further Court order.
3. Defendant may make visit the barn by appointment during daylight hours to retrieve belongings. Plaintiff shall provide Defendant with a means of contact to make such arrangements.
4. If Defendant cannot find a place to house his dog, the dog may to remain at the barn temporarily and Defendant shall be allowed access to feed and walk the dog. This temporary arrangement shall not extend more than seventy-two hours without further Court order.
5. This preliminary injunction shall remain in effect until further Court order. If no further Court orders have entered in the meantime, the parties shall return for an in-person hearing on January 31, 2022 at 2:00 p.m. in the Springfield session to determine if and on what terms the injunctive relief should be extended or modified and for the purpose

[4] When Defendant's counsel expressed concern that Veteran Services could not absolutely guarantee immediate alternative housing, Plaintiff's representative at the hearing, Kevin Shippee, offered to place Defendant in a hotel for a few nights if necessary to avoid homelessness until the agency could place Defendant in alternative housing.

[5] The Court cannot consider the impact on any other occupant of the barn. If Ms. Sanderson does reside there, she did not express any concern about her own housing options and, in fact, walked out of the courtroom in the middle of the hearing after the Court expressed unwillingness to allow the barn to continue to be used as a dwelling unit.

of conducting a judicial case management conference.

6. For good cause shown, Plaintiff shall not have to post security nor pay the fee for injunctive relief set forth in G.L. c. 262, § 4.

SO ORDERED this 30th day of December 2021.

Jonathan J. Kane, First Justice

cc: William Cantell, Building Commissioner, Town of Wales
Michelle Barrett, Director of Veteran Services Eastern Hampden District

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3179

3 CHESTNUT LLC,

Plaintiff,

v.

JAZZMYN ANDERSON,

Defendant.

ORDER FOR REVIEW BY JUDGE

This matter was scheduled for a Tier 1 event on December 27, 2021, at which both parties appeared and met with a court Housing Specialist and reached an agreement. In accordance with the court's protocols, this agreement was sent to the judge for his review and signature. The judge was unable to sign off on the agreement due to concerns around the amounts of rent monies---and possibly non-rent monies---listed in the agreement.

This confusion begins with the notice to quit which lists non-rent monies as well as rent monies due in addition to the agreement listing a monthly rental amount different than the one listed in the notice to quit. Additionally, the notice to quit lists "court filing fees and eviction legal fees" and the agreement accounts for "court costs" suggesting that such costs are potentially being billed twice.

Order: Based on the foregoing this matter shall be scheduled for review on **January 10, 2022 at 2:00 p.m.** on Zoom for a review of the parties' agreement on the record and whether or not the judge will then be able to sign off on its terms. The Zoom meeting number is 161 638 3742 and the password is 1234.

So entered this 3rd day of January, 2022.

Robert Fields, Associate Justice

Cc: Michael Roche, Deputy Chief Housing Specialist
Jenni Pothier, Chief Housing Specialist

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-846

CHRISTINA PELTIER,

Plaintiff,

v.

MICHAEL G. CIEMPA, RITA CIEMPA and MICHEL J. CIEMPA,

Defendants.

ORDER

After hearing on January 5, 2022 on review of this plaintiff-tenant petition for repairs, at which the tenant appeared with Lawyer for the Day counsel, the defendant-landlords appeared pro se, and for which the City Inspector appeared, the following order shall enter:

1. For the reasons stated on the record, the defendants shall FORTHWITH continue to provide alternate housing accommodations to the plaintiff and her

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family in a hotel or motel with cooking facilities until the Town of Adams lifts the condemnation.

2. If said accommodations do not have cooking facilities, the defendants shall provide the plaintiff with a daily food stipend of $100 to be paid in advance of each day until the condemnation is lifted.
3. If the accommodations are located so that the tenant requires to hire transportation (e.g., Uber, Lyft, Taxi, etc.) to bring her child to school and back the landlord shall provide her with a daily stipend for same.
4. The defendants shall take all appropriate action to remedy the conditions cited by the Town of Adams as soon as is practical including the scheduling of lead paint and mold and air quality inspections and reports.
5. The Town inspector, Mark Blaisdell, shall schedule an inspection FORTHWITH and issue an updated report.
6. The landlords shall notify the tenant when they have scheduled the lead paint and mold/air quality inspections so that the tenant or her designee can appear at the inspection to help move belongings out of the way for the inspections to be accomplished. Additionally, the landlords are authorized to move belongings away from the wall to the middle of the room or other safe locations to better allow access to the inspectors.
7. If the Town of Adams seeks to intervene and motion the court for the appointment of a Receiver, it shall do so through counsel and shall file and serve said motion by no later than January 12, 2022 for a hearing on January 26, 2022 at 10:00 a.m.

8. This matter shall be schedule for a review hearing live, in-person at the Pittsfield Session of the Housing Court on **January 12, 2022 at 10:00 a.m.**

So entered this 6th day of January, 2021.

Robert Fields, Associate Justice

Cc: Mark D. Blaisdell, Code Enforcement Officer, Town of Adams Inspectional Services
Adams Town Hall, 8 Park Street, Adams, MA, 01220

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, ss:

Housing Court Department
Western Division
No.: 21H79CV000222

GINA TYK,

Plaintiff,

v.

GREGORY HILL, and
MICHELLE HILL,

Defendants.

ORDER ON DEFENDANTS' SPECIAL MOTION TO DISMISS

After hearing on December 13, 2021, on the defendants' special motion to dismiss, at which each party was represented by counsel, the following order shall enter:

1. **Standard of Review and Statutory Authority:** The motion at issue is brought pursuant to G.L. c. 231, § 59H, generally known as the anti-SLAPP[1] statute. The anti-SLAPP statute provides a remedy for early dismissal of civil actions commenced primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. *Duracraft v. Holmes Products Corp.*, 427 Mass. 156, 161 (1998). The language of the statute allows a party to seek dismissal of claims solely on its exercise of the right of petition. *See* G.L. c. 231, § 59H. To prevail on this motion, the burden falls first on the moving party to make a threshold showing that the claims against it are based on petitioning activities alone and have no substantial basis other than or in addition to petitioning activities. *Blanchard v. Steward Carney Hospital, Inc.*, 477 Mass. 141, 147 (2017). *See Fabre v. Walton*, 436 Mass. 517, 524 (2002) (special movant must demonstrate that "the only conduct complained of is …

[1] "SLAPP" is an acronym for Strategic Lawsuit Against Public Participation.

petitioning activity.") For purposes of the threshold determination whether the conduct concerns only petitioning activities, the Court considers the claims that have been pled. *477 Harrison Ave., LLC v. JACE Boston, LLC*, 483 Mass. 514, n.3 (2019).

2. If the moving party meets its burden, the burden shifts to the nonmoving party to establish that the moving party lacked any reasonable factual support or any arguable basis in law for its petitioning activity, and that the petitioning activity caused the nonmoving party actual injury. G.L. c. 231, § 59H. In determining whether the petitioning activity is devoid of any reasonable factual support or arguable basis in law, the statute directs the judge to consider "the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based." *Id.* If the nonmoving party fails to make this showing, it can attempt to meet its burden by showing that its claim was not brought primarily to chill the moving party's legitimate petitioning activities, but rather to seek damages for personal harm from the actions of the other parties. *Blanchard*, 477 Mass. at 159 quoting *Duracraft v. Holmes Products Corp.*, 427 Mass. at 161.

3. A special motion to dismiss under the anti-SLAPP statute, unlike a motion to dismiss brought under Mass. R. Civ. P. 12(b), does not test the sufficiency of the complaint. *477 Harrison Ave., LLC v. Jace Boston, LLC*, 477 Mass. 162, n. 11 (2017). Instead, a "special movant must take the adverse complaint as it finds it," *see Blanchard*, 477 Mass. at 154, in order to determine whether it concerns only the defendant's petitioning activities. *Id.* Thus, the only relevant inquiry is whether the complained of conduct relevant to the plaintiff's cause of action provides a substantial nonpetitioning basis for the plaintiff's claim. *Id.*

4. **Discussion:** Defendants seek the dismissal of Plaintiff's claim of intentional infliction of emotional distress ("IIED"). In support of their motion, Defendants argue that Plaintiff's IIED

claim is based solely on the Defendants' activity of filing for harassment prevention orders and enforcement of said orders, calling the police, filing for criminal complaints, and commencing summary process actions.

5. Defendants are correct that the right to file police reports and harassment prevention petitions are protected petitioning activity. *See Polay v. McMahon*, 468 Mass. 379 (2014). However, the focus at the threshold burden stage is on whether the conduct complained of consists *solely* of the Defendants' petitioning activity; here, the Plaintiff's IIED claim contains allegations that do not solely consist of the defendant's petitioning activity. Plaintiff alleges that the relationship between the Tenant and the Landlords became adversarial and eventually broke down. *See Plaintiff's Complaint*, ¶ 8, 10. Plaintiff also alleges that the heat in her unit routinely went out. *See Plaintiff's Complaint*, ¶ 21. Additionally, Plaintiff alleges that "the relationship between the parties effectively caused the Plaintiff to be unable to access the kitchen and laundry area, all of which were within her leased usage." *See Plaintiff's Complaint*, ¶ 28. Based on the Plaintiff's allegations in her IIED claim, the Court finds that the IIED claim is not based solely on the Defendants' exercise of their constitutional right to petition.

6. Accordingly, the Court finds that the Defendants' have failed to meet their burden by showing that the claims against it are based on petitioning activity alone and have no substantial basis other than or in addition petitioning activities. *See Blanchard v. Steward Carney Hospital, Inc.*, 477 Mass. 141, 147 (2017).

7. Because the Court finds that the Plaintiff's IIED claim is not solely based on Defendants' petitioning activity, the Court does not address the issue of whether commencing a summary process action is protected petitioning activity under G.L. c. 231, § 59H.

8. **Conclusion and Order:** For these reasons, the defendants are not entitled to dismissal of Plaintiff's Count III, intentional infliction of emotional distress, upon special motion to dismiss pursuant to G.L. c. 231, § 59H and the motion is DENIED.

So entered this 10th day of ~~December, 2021~~ January 2022 (MP)

Robert G. Fields, Associate Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV0551

EDGEWATER TOWER, LLC,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	ORDER
	)	
LYANNE DEJESUS,	)	
	)	
DEFENDANT	)	

This case came before the Court by Zoom on January 11, 2022 on Plaintiff's complaint for contempt. Plaintiff appeared through counsel and Defendant failed to appear despite service of the summons in advance of the hearing. Jake Hogue of the Tenancy Preservation Program – Pioneer Valley ("TPP") was also present.

Based on the verified complaint and the testimony of property manager Gideon, the Court finds that Defendant's unit, located at 101 Lowell Street, Apt. 53-0410, Springfield, Massachusetts (the "Premises") is uninhabitable. The unit has no working electricity (Defendant is responsible for paying for electricity) and when Ms. Gideon entered the unit yesterday, she witnessed a large number of cockroaches pouring out of a closet. Her observations are consistent with an exterminator who reported over a thousand cockroaches vacuumed up at the last visit. Defendant has two dogs and Ms. Gideon observed and smelled dog waste in the Premises. She testified that the foul odors throughout the unit were so strong that they were noticeable outside of the Premises.

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At a hearing on September 16, 2021, the Court ordered Defendant to clean the Premises and to bring them into a safe, clean and sanitary condition within five (5) days. Plaintiff has demonstrated, by clear and convincing evidence, the Defendant clearly and undoubtedly disobeyed the Court's clear and unequivocal order. Moreover, in the same order, the Court required Defendant to cooperate with TPP, which she failed to do. Mr. Hogue reports that TPP has made numerous efforts to contact Defendant, including phone calls and several attempts at an in-person meeting, and yet TPP has not been able to be in contact with Defendant. Defendant's failure to cooperate with TPP establishes an independent basis for a finding of contempt.

In light of the forgoing, as a sanction for contempt and given the Court's determination that the Premises are unsafe for human habitation, the following order shall enter:

1. Effective at 4:00 p.m. on the day following service of this order on Defendant, Defendant must vacate the Premises. Plaintiff may enlist the assistance of law enforcement if necessary to remove Defendant from the Premises. If Defendant does not remove the dogs from the Premises, they may be removed by the animal control officer but shall be returned to Defendant if and when she reoccupies the Premises or otherwise has a place for the dogs.
2. Upon Defendant vacating the Premises, Plaintiff may change the locks to prevent unauthorized access to the Premises.
3. Because this order does not transfer legal possession of the Premises to Plaintiff, Plaintiff may not remove Defendant's possessions from the Premises without further order of the Court. Defendant may, however, remove any rotting food and treat for cockroaches as necessary to try to prevent the cockroach infestation from spreading to

other units.

4. Defendant shall be permitted to enter the Premises during daytime hours by appointment with management for the purposes of cleaning the unit.
5. Defendant shall be permitted to reoccupy the Premises once they are in clean, safe and habitable condition. If Defendant believes she should be permitted to reoccupy the Premises and Plaintiff refuses, Defendant may seek a Court order.
6. Defendant is encouraged to contact TPP at (413) 358-5654 immediately for information about services that may be available to assist her in maintaining her tenancy.
7. This order shall remain in effect until further Court order. Either party may schedule a hearing on three days' notice to modify or terminate this order.

SO ORDERED this 12th day of January 2022.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV0571

MICHAEL S. BOUTIN,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	ORDER
	)	
CHICOPEE HOUSING AUTHORITY,	)	
	)	
DEFENDANT	)	

In this civil action for damages brought by a tenant against his landlord, Plaintiff moves for recusal. This action involves claims that were severed from a for-cause summary process action brought against Plaintiff by Defendant (Western Division Housing Court Docket No. 21H79SP001189) pursuant to which judgment for possession entered in favor of Defendant (the "SP action"). Plaintiff has filed a notice of appeal in the SP action. A trial date in the instant civil case has not been scheduled; however, a case management conference is on the calendar for January 20, 2022. The grounds for Plaintiff's recusal motion involve his dissatisfaction with the manner in which I managed the SP action.

In ruling on a motion seeking recusal, a judge must "consult first his own emotions and conscience. If he pass[es] the internal test of freedom from disabling prejudice, he must next attempt an objective appraisal of whether this [is] a proceeding in which his impartiality might reasonably be questioned." *Commonwealth v. Eddington*, 71 Mass. App. Ct. 138, 143 (2008) (*quoting Lena v. Commonwealth*, 369 Mass. 571, 575 (1976)).

With respect to the subjective standard, I have consulted my own emotions and conscience and I am confident that I have been and will continue to be impartial in this matter.[1] Moreover, I harbor no disqualifying bias or prejudice in this matter. I had no personal knowledge of Mr. Boutin prior to his appearance in this court and I have no relationship Defendant or its counsel outside of appearances before me in this court. I am unaware of any reason that my impartiality might reasonably be questioned based on any of the disqualifying circumstances set forth in Rule 2.11 of Supreme Judicial Court Rule 3:09 ("Rule 2.11") or otherwise.[2]

Accordingly, having satisfied both the subjective and objective standard under Rule 2.11, I hereby deny Plaintiff's motion for recusal.

SO ORDERED this 19th day of January 2022.

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

cc: Court Reporter

[1] I am aware that Plaintiff filed a complaint with the Administrative Office of the Housing Court regarding his treatment in our court, but his decision to do so does not alter my ability to remain impartial.

[2] As a practical matter, the Western Division Housing Court has only two full-time judges and, unless requested by a judge or warranted by the circumstances (for example, a motion to reconsider), cases are not assigned to a particular judge. I have not taken personal jurisdiction over Mr. Boutin's cases.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0189

TEHRAN JOHNSON AND MANDY LANZA,
PLAINTIFFS
v.
JU LING-YI,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This civil matter came before the Court for a two-day bench trial on September 29, 2021 and October 7, 2021. Plaintiffs appeared with counsel, Defendant appeared and represented herself. The Court takes judicial notice of two related cases between these parties.[1]

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 owns a two-family property at 32-34 Vermont Street, Springfield Massachusetts (the "Property"). Defendants reside on the first floor, which is identified as 34 Vermont Street (the "Premises"). Defendants moved into the Premises in 2016. Defendant purchased the Property on November 27, 2019. She did not do a pre-purchase inspection, stating (naively) in a pleading that she assumed everything at the Property was fine because it was occupied.

[1] The City of Springfield Code Enforcement Department Housing Division filed an action against Ms. Ju, as owner, and Mr. Johnson and Ms. Lanza, as tenants, in Docket No. 20H79CV000689. Mr. Johnson and Ms. Lanza asserted cross-claims against Ms. Ju, which claims were severed from the code enforcement action and entered in the instant case. A summary process case for non-payment of rent brought by Ms. Ju against Mr. Johnson and Ms. Lanza (21H79SP001071) was dismissed after Ms. Ju accepted rental assistance funds through the Federal Emergence Rental Assistance Program.

When she purchased the Property, Defendant informed Plaintiffs that she intended to increase the rent from the $800.00 they were paying to the previous owner to $1,200.00 per month. She offered to increase the rent gradually and to charge only $1,000.00 per month if Plaintiffs would take on maintenance responsibilities. Plaintiffs accepted the lower rent but never agreed in writing to accept any duties to maintain the Property. Defendant presented Plaintiffs with a proposal for a month to month rental agreement that set rent for January 2020 at $900.00, with an increase to $1,000.00 beginning in February 2020 with no further increase until January 2021. Plaintiffs did not sign this document but do not dispute that they agreed to the terms. The writing did not mention who was responsible for utilities.[2] The rental agreement indicated that rent was due on the first, although Defendant testified that she accommodated Plaintiffs and gave them to the third to pay. The rental agreement recited that there would be a $50.00 late fee if rent was not paid by the fifth.[3]

In April 2020, the heating system serving the Premises failed. Defendant did not immediately repair the system. She offered two reasons for the delay: first, she testified that she was trying to use a warranty company to get the work done and that process was time-consuming. Second, she said that, because the system failed outside of heating season, she was not in a rush to get the work done. The first documented attempt to repair the heating system took place in mid-October 2020, at which time a heating contractor visited the Property and informed Defendant that the job was too big for him because the work would require asbestos removal and break-down of the old boiler.[4]

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[2] Under Massachusetts law, a landlord must provide electricity and gas used in each dwelling unit unless a written agreement provides for payment by the occupants. *See* 105 Code Mass. Regs. § 410.354(A).

[3] This is an illegal provision in Massachusetts. A landlord cannot charge a late fee until rent is more than thirty days past due. *See* Attorney General Regulations, 940 Code Mass. Regs. § 3.17(6)(a).

[4] The Court cites this piece of evidence because it shows that as of October 2020, Defendant was aware of the extent of work that would be required to repair or replace the heating system. Even if Defendant sent other contractors to

At or around this time, Defendant told Plaintiffs that she could not afford to replace the heating unit and would instead find a less expensive alternative, such as baseboard heating or a pellet stove. Defendant sent a contractor to the Property on November 1, 2020 to provide a quote to install electrical baseboard heat. She claims that the poor sanitary conditions in the Premises prevented the contractor from being able to quote the job, but one the exhibit she presented regarding the installation of baseboard heaters shows that the contractor only indicated that the start date for the work was contingent upon receipt of permits and the occupants cooperation with removal of items from the walls. Around this time, Plaintiffs claim that Defendant told them that the new heating system she planned to install would be more efficient and would reduce the Plaintiffs' utility bills and that, therefore, she would be increasing their rent despite her previous promise not to raise the rent prior to January 2021.

On November 4, 2020, Defendant sent Plaintiffs a notice to quit for failing to pay November rent. That same day, still without heat, Plaintiffs contacted the City of Springfield Code Enforcement Department ("Code Enforcement").[5] On November 10, 2020, Code Enforcement conducted an inspection at the Property. The inspection resulted in numerous Sanitary Code citations, including among others, no heat, a defective stove, damaged ceilings and walls, improper wiring, defective roof and gutters and trash and overgrowth in the yard. Code Enforcement condemned the Premises due to lack of heat and ordered Plaintiffs to vacate immediately. Defendant was notified of her right to appeal the condemnation order but she did

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the Property before October 2020, it does not change the fact that Defendant knew the scope of the work to be done in October 2020. The heating season begins on September 15. *See* 105 Code Mass. Regs. § 410.201.

[5] Defendant claims that Plaintiffs' call to Code Enforcement was in "retaliation" for her sending a notice to quit. She misunderstands Massachusetts law. Tenants are entitled to habitable conditions and can seek to enforce the State Sanitary Code at any time before or after receiving a notice to quit. The fact that here Plaintiffs contacted Code Enforcement after getting a notice to quit simply means that they cannot establish that Defendant retaliated against them by sending a notice to quit after they contacted Code Enforcement.

not do so.[6]

On December 4, 2020, despite the condemnation order, Defendant texted Plaintiff Johnson regarding payment of December rent, which according to Defendant was due the prior day. Plaintiff Johnson informed Defendant that Plaintiffs were withholding rent.[7] On December 6, 2020, Defendant notified Plaintiffs by text message that a contractor would be arriving the next day to begin asbestos removal and that Plaintiffs should "get your Dec. rent tomorrow morning & give that cash to him when he arrives so he can start the job smoothly." The asbestos contractor did not, in fact, begin work the next day.[8]

The City of Springfield, through its law department (the "City"), served a summons on Defendant to appear at a Court hearing on December 14, 2020, at which time the Court ordered Defendant to restore heat in the Premises "forthwith and in any event no later than December 18, 2020 at 9:00 a.m." Although the City had requested an order for Defendant to provide alternative housing to Plaintiffs, Plaintiffs declined alternative housing accommodations at that time. The heat was not restored by December 18, 2020. Defendant asserts that she should not be found fault for the delay because she was working extremely hard to coordinate between an asbestos abatement company, a heating contractor, a plumber and an electrician, and, because of a snowstorm, the various contractors could not all arrive at the Property as planned.

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[6] Subsequent to the condemnation, on November 25, 2020, the plumbing and electrical divisions of the City's Building Department Inspectional Services conducted inspections of the Property and notified Defendant of additional violations having to do with the absence of a working heating system.

[7] Defendant argues that Plaintiffs did not legally withhold rent because they did not place money in an escrow account, "as law requires." Once again, Defendant misunderstands Massachusetts law, which imposes no obligation on tenants to escrow withheld rent.

[8] Despite Defendant using this example as one of several that she claims show Plaintiffs lack of cooperation with her efforts to fix the heat, the Court places no blame on Plaintiffs in this instance. A landlord does not have the right to demand tenants pay a contractor to commence work, especially here when Plaintiffs had informed her that they were withholding rent until the heat was repaired.

Still without heat despite the Court's order that it be restored by December 18, 2020, Plaintiffs filed an emergency motion seeking alternative housing. At the hearing on Plaintiffs' motion held on December 22, 2020, Defendant represented to the Court that the asbestos contractor had completed the abatement and that the heating contractor was working that very day to install the new heating system. According to the City, however, as of the time of the hearing, none of the required permits had been pulled to replace the boiler. Defendant expressed frustration because she said she was "working so hard" to get the heat restored and argued that it was unfair that she should have to pay for a hotel when Plaintiffs had not paid rent for November or December. Over her objections, the Court ordered Defendant to "provide and pay for accommodations at a motel located within a reasonable distance of the subject rental premises as alternative living arrangements" for Plaintiffs "beginning today, December 22, 2020 and continuing until the heat is restored to the subject rental premises with permits pulled and closed as required."

Despite the Court order, Defendant did not provide alternative accommodations. At trial, she testified that the outside temperature "really wasn't that cold" during that time period and that Plaintiffs were "a super high risk group for COVID-19." She claims that "ethical concerns" prevented her from sending Plaintiffs and their children to a hotel. As a result, Plaintiffs remained at the condemned Premises without heat through December 28, 2020 when the heat was finally restored.[9]

Code Enforcement reinspected the Premises on January 8, 2021. At that time, the plumbing inspector confirmed that the heating system was properly installed and operating, and

[9] The Court notes that as a result of Defendant's failure to comply with the Court's order, Plaintiffs filed a complaint for contempt. Because by the time the summons on the contempt complaint issued the heat had been restored, the Court ordered that any sanction for contempt would be addressed as part of the instant civil case for monetary damages.

the condemnation order was lifted. Code Enforcement noted at that time that the non-emergency violations cited on November 10, 2020 had not yet been addressed. Upon reinspection on March 19, 2021, Code Enforcement found the non-emergency violations still existed and cited additional violations. On April 20, 2021, the City filed a motion to amend its petition to enforce the State Sanitary Code to add additional Sanitary Code violations. At a hearing on May 3, 2021, the Court allowed the City's motion and ordered that all remaining violations be corrected by May 28, 2021.

On June 4, 2021, Code Enforcement's electrical inspector confirmed that Defendant had corrected the remaining electrical wiring violations he had cited on November 25, 2020. Other non-emergency violations remained uncorrected. At the next Court date on June 16, 2021, the City further extended the deadline for Defendant to correct the remaining issues at the Property to August 30, 2021. On August 4, 2021, being satisfied that all cited violations had been corrected, the City dismissed its code enforcement case against Defendant.

At trial, Defendant repeated deflected responsibility for failing to correct all of the housing violations in a timely manner. She repeatedly blamed Plaintiffs for refusing access for repairs; however, she produced little or no admissible evidence to support her claims. In a document submitted to the Court following trial summarizing incidents of alleged tenant obstruction, Defendant cites one incident on November 1, 2020 (involving, by her account, the cluttered condition of the Premises), refusal of access once on January 18, 2021, Plaintiffs displaying a "bad attitude" on May 6, 2021, and several incidents in which Plaintiffs did not let contractors to enter the Premises in June 2021. The evidence is insufficient to show a pattern of obstruction that prevented Defendant from completing the work, particularly in the critical

period from April 2020 when the heating system failed to December 28, 2020 when the heat was restored.

To the extent Defendant demonstrated instances in which Plaintiffs refused to allow contractors to enter the Premises, the Court finds that such refusals did not occur frequently (outside of a brief period in June 2021, at least) and that Plaintiffs were generally justified in refusing access because Defendant did not always give adequate advance notice and contractors failed to arrive on time for scheduled appointments. The Court acknowledges Defendant's frustration that she could not always control the exact time of arrival for contractors coming from out of town, but it was her choice to select contractors that had to drive a long distance, and she did not take steps to mitigate the inconvenience to Plaintiffs. Defendant expected Plaintiffs to accommodate a significant amount of disruption to their lives; in fact, in her own words, Defendant arranged for "30-50-60 contractor visits … across 9 months' time."[10] Defendant could have voluntarily placed Plaintiffs in alternative housing for a couple of weeks and had the house empty for contractors to come and go at their convenience.

Defendant clearly sees herself as a victim. She repeatedly testified about how "the City was all over me" to make repairs and about much money she spent replacing the heating system and making other repairs at the Property. She blames Plaintiffs' lawyer for turning her tenants against her and making demands for better living conditions. She testified that she has been "mentally tormented" and that Plaintiffs caused her to suffer "mental distress and emotional stress" by their actions.[11] She expressed anger over the expense and complication of having to schedule all of the repairs, and by the "endless perpetual variations of all kinds of legal papers

[10] This quote is drawn from a document entitled "Landlord/Defendant's Amended Counterclaims" submitted by Defendant at trial.
[11] To the extent Defendant articulated counterclaims against Plaintiffs, the Court finds no credible evidence to support them.

and motions."[12] She also seems to believe that, because the rent is set below market value, Plaintiffs should not be complaining about conditions of disrepair. In sum, she does not fully appreciate the complex laws and regulations governing the rental of residential property in Massachusetts. Had Defendant hired a professional property manager or taken advantage of the many resources available to small landlords, she could have avoided much of the stress and anxiety about which she complains.

Turning now to Plaintiffs' legal claims, Plaintiffs allege (a) negligence, (b) breach of the implied warranty of habitability, (c) breach of the covenant of quiet enjoyment, (d) retaliation, and (e) violation of the Massachusetts consumer protection law, G.L. c. 93A. Also, Plaintiffs seek an order that Defendant assume responsibility of the utilities serving the Premises given the lack of a written rental agreement transferring the burden to Plaintiffs. The Court will address each claim separately:

Negligence and Breach of Quiet Enjoyment

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

[12] Again, the Court is quoting from the document entitled "Landlord/Defendant's Amended Counterclaims".

"conduct and not [its] intentions." *Doe*, 417 Mass. at 285. A tenant must show some negligence by the landlord in order to recover under the statute. *See Al-Ziab*, 424 Mass. at 805. [13]

Here, the Court finds that Defendant willfully failed to furnish heat at a time when heat was required to be provided under the State Sanitary Code. Although she made efforts to address the problem, she did not do so for several months after being made aware of the problem in April 2020. She did not have the system repaired by the beginning on heating season on September 15. The lack of a functional heating system during the heating season constitutes a serious interference with Plaintiff's quiet enjoyment and substantially impairs the character of the Premises. Defendant's conduct is a clear violation of the prong of G.L. c. 186, § 14.

The Court finds that Defendant is liable for a separate breach of the covenant of quiet enjoyment in the manner in which she treated Plaintiffs, independent from the issues regarding the heating system. Among other transgressions, she demanded that they make payment directly to a contractor at a time when she had been informed that they were withholding rent. She informed them that she was going to charge a higher rent because she was putting in a new heating system. She raised the rent without first terminating their month to month tenancy as required by G.L c. 186, § 12. She repeatedly demanded that they allow contractors into the Premises without first having given appropriate advance notice or at different times than she had scheduled with notice. She claims she arranged between 30 and 60 contractor visits, which is an excessive number for any tenant to have to endures. She consistently blamed the tenants for having to do so much work at the Premises; in fact, in her responsive pleading in this chase, she

[13] The Court addresses Defendant's negligence in conjunction with Plaintiffs' claim for breach of the covenant of quiet enjoyment. Because Plaintiffs scope of available damages includes actual and consequential damages where the landlord knew or had reason to know of conditions of disrepair interfering with the tenants' quiet enjoyment and failed to take appropriate corrective measures, any recovery for negligence would be duplicative of Plaintiffs' recovery under G.L. c. 186, § 14.

demands payment from Plaintiffs for damages in excess of $17,000.00 for such claims as recommending a contractor that did not work out, removing asbestos and installing a new heating system.

For each violation of G.L. c. 186, § 14, damages are the greater of three times monthly rent or actual and consequential damages, as well as costs and reasonable attorney's fees. Here, monthly rent has been established as $1,000.00. Plaintiffs did not produce credible evidence of actual and consequential damages in excess of statutory damages,[14] and thus they are entitled to an amount equal to three months' rent for each of the two separate violations of law. Accordingly, under the legal theory of violation of the covenant of quiet enjoyment, Plaintiffs are entitled to $6,000.00, plus reasonable costs and attorney's fees.

Breach of the Implied Warranty of Habitability.

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

With respect to heat, the Court finds that the defective heating system diminished the rental value of the Premises in different respects depending on the time of year. From the initial notice given to Defendant of the need to repair the heating system in April 2020 through the

[14] Emotional distress, where foreseeable, can be a component of actual and consequential damages under G.L. c. 186, § 14. *See Homesavers Council of Greenfield Gardens, Inc. v. Sanchez*, 70 Mass. App. Ct. 453, 458 (2007). To the extent Plaintiffs testified about the emotional distress caused by Defendant's actions, the Court did not find the testimony compelling and finds insufficient evidence to warrant an award for emotional distress damages.

following summer, the Court finds that the lack of heat did not substantially impair the character and value of the Premises. From the beginning of the heating season on September 15, 2020 to the date of condemnation on November 10, 2020, the Court finds a 33% rent abatement appropriate. This abatement figure for this time period is $663.00 based on a per diem calculation. On November 10, 2020, the City condemned the Premises as unfit for human habitation. Although Plaintiffs continued to reside in the Premises after the condemnation, the method for calculating damages under the breach of warranty theory is based on fair rental value, and a condemned property has no rental value. The Court, therefore, finds the fair rental value of the Premises was reduced by 100% from November 10, 2020 through December 28, 2020 when the heating system became operational. This abatement amount equals $1,633.00. Together, the total rent abatement due to lack of heat is $2,296.00. Because these damages derive from the same facts as the breach of the covenant of quiet enjoyment relating to lack of heat, the quiet enjoyment damages offer a greater recovery and thus the warranty damages will not be assessed.

The non-emergency code violations cited by Code Enforcement on November 10, 2020 include damages to the ceilings and walls, mold like substances in the bathroom, defective stove burner, dangerous wiring, defective roof shingles and gutters and trash and overgrowth in the yard. Code Enforcement did not confirm that these conditions had been addressed until August 4, 2021. For the period from November 10, 2020 through August 4, 2020, the Court finds that the conditions cited warrant a 10% diminution in fair rental value of the Premises. Although Defendant testified and provided texts demonstrating that from the period between June 9, 2020 to June 24, 2020 she was unable to obtain access to the Premises to make repairs, the Court finds that Plaintiffs were not at fault and that Defendant was making unreasonable demands to have her contractors enter the Premises without proper notice. Moreover, some of the conditions cited

by Code Enforcement at the Property did not require Defendant to gain access to the Premises. The total abatement amount for the non-emergency code violations for the relevant time period is $879.60. These warranty damages are separate from the quiet enjoyment damages relating to lack of heat and are therefore not duplicative. Accordingly, Plaintiffs are entitled to a separate recovery of $879.60, plus reasonable attorney's fees, under this legal theory.

Retaliation

Pursuant to Massachusetts law, a landlord who threatens to or takes reprisals against a tenant for the tenant's act of "commencing, proceeding with, or obtaining relief in any judicial or administration action" shall be liable for damages which shall not be less than one month's rent or more than three month's rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including a reasonable attorney's fee. G.L. c. 186, § 18. Because the notice to quit in this case was for non-payment of rent, the statutory presumption of retaliation is not applicable. *See id.* The issue presented in this case is whether Defendant served a notice to quit on Plaintiffs after they contacted Code Enforcement. The Court finds that Defendant serviced the notice of termination of their tenancy on the same day, but prior to the time Plaintiffs contacted Code Enforcement. Accordingly, Defendant is not liable for violation of G.L. c. 186, § 18.[15]

Unfair and Deceptive Business Practices under G.L. c. 93A

The Court finds that Defendant, who purchased the Premises as an investment property and rents at least two dwelling units, is in the business of owning and managing residential units for purposes of G.L. c. 93A. She engaged in unfair and deceptive practices within the meaning of

[15] Plaintiffs argue that Defendant refused to fill out forms so that they could obtain fuel assistance in retaliation of their complaints about conditions. The Court does not find sufficient evidence to find that such action, if it occurred as described, constitutes retaliation.

G.L. c. 93A and the Attorney General regulations thereunder for, among other acts, failing after notice to remedy a violation of law in a dwelling unit which may endanger or materially impair the health, safety or well-being of the occupant (940 C.M.R. § 3.17(1)(b)) and failing to comply with the State Sanitary Code (940 C.M.R. § 3.17(1)(i)).

Defendant also violated G.L. c. 93A by imposing a penalty for late payment of rent before such payment was 30 days overdue, 940 C.M.R. § 3.17(6)(a). Plaintiffs did not necessarily pay the late fee, but the threat of an illegal late fee satisfies the requirement of legal harm. The Court finds that the G.L. c. 93A violation entitled Plaintiffs to statutory damages of $25.00.

In addition to the foregoing violations of G.L. c. 93A, Defendant committed an unfair and deceptive business practice when, in connection to Plaintiffs' application for emergency housing payment assistance programs, she reported an inflated rental amount to Way Finders. The Court finds that rent remains at $1,000.00 per month unless and until Defendant increases the rent in accordance with G.L. c. 186, § 12, yet her contract with Way Finders shows that Way Finders paid her a monthly stipend in the amount of $1,250.00. She claimed at trial that Way Finders, not she, decided the amount of the stipend, but her testimony on this point is not credible. Way Finders relies on the information it is given, and, in any event, Defendant accepted the funds without returning the excess payment. Defendant's acceptance of excessive rental assistance funds causes legal harm to Plaintiffs because such funds are limited, and Plaintiffs could be ineligible in the future for all of the funds they would otherwise been entitled. It is impossible at this time to determine if and in what amount Plaintiffs may be harmed by Defendant's action, so for purposes of this decision, the Court awards statutory damages of $25.00 to Plaintiffs.[16]

[16] The Housing Specialist Department shall inform Way Finders of the Court's finding and Way Finders may take whatever remedial actions against Defendant that it deems appropriate.

Pursuant to G.L. c. 93A, Plaintiffs are entitled to an award of multiple damages (not less than double nor more than treble) if the Court finds that Defendant's violation of the statute were willful or knowing. "The 'willful or knowing' requirement of [G.L. c. 93A,] § 9(3), goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the [landlord] knows it or not, amount to violations of the law." *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956, (1987). In this case, the Court finds that Defendant's acts and omissions with respect to allowing for defective conditions and failing to take appropriate corrective measures, as well as her imposition of late fees and misrepresentations to Way Finders, to be willful or knowing as that concept is applied under G.L. c. 93A. Therefore, the Court will double the damages awarded hereunder pursuant to G.L. c. 93A, § 9.[17]

Contempt Sanction

In order to establish 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). Here, Plaintiffs met their burden. Despite a clear and unequivocal order from the Court on December 22, 2020 to provide Plaintiffs with temporary alternative housing, Defendant clearly and undoubtedly disobeyed the order. She tries to justify her disobedience by citing to "ethical" concerns, but a litigant cannot simply ignore a Court's order because she disagrees with it.

Had Defendant complied with the Court order, she would have had to pay for six nights in a hotel. Assuming a hotel with kitchen facilities would have cost $200 per night (the Court ordinarily orders a daily food stipend per person if the hotel does not have kitchen facilities

[17] The Court declines to impose treble damages because Defendant's malfeasance stems primarily from her ignorance of the law and her lack of experience as a landlord.

which is likely to result in a greater daily expenditure), Defendant would have paid at least $1,200.00 out of pocket to house Plaintiffs. She will get an unwarranted windfall if the Court overlooks the fact that she disregarded its order. Accordingly, the Court orders Defendant to pay Plaintiffs the $1,200.00 she would have otherwise paid to the hotel.[18] In addition, Defendant shall pay the attorneys' fees of Plaintiffs' counsel for filing and serving a complaint for contempt on in the related code enforcement case, Docket No. 20H79CV000689.

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

1. Plaintiffs are entitled to single damages in the amount of $6,929.60. This figure is calculated by adding together damages for breach of the covenant of quiet enjoyment ($6,000.00), breach of warranty ($879.60) and G.L., c. 93A ($50.00).
2. The single damages amount shall be doubled to $13,859.20 pursuant to G.L. c. 93A.
3. Defendant shall pay $1,200.00 to Plaintiffs as a sanction for contempt.
4. Within ten business days of receipt of this decision, Defendant shall transfer the utilities to her name forthwith and pay for same until such time as the utilities are lawfully transferred into Plaintiffs' names.[19]
5. Judgment shall enter in favor of Plaintiffs on Defendant's counterclaims.
6. Plaintiffs may submit, within fifteen days of receipt of this order, a petition for reasonable attorneys' fees and costs, together with supporting documentation. Defendant shall have fifteen days to file an opposition to the petition.

[18] This is a separate award from the landlord tenant claims and is thus not multiplied under 93A.
[19] The Court notes that Plaintiffs did not seek reimbursement of past payments for utilities, only damages for any period of time in which Defendant fails to do so after it is determined that she is responsible for same.

7. The Court shall thereafter rule on the pleadings and issue a final order for entry of judgment.

SO ORDERED this 19th day of January 2022.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: HSD (for reporting to Way Finders)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP1189

CHICOPEE HOUSING AUTHORITY,

PLAINTIFF

v.

MICHAEL S. BOUTIN,

DEFENDANT

ORDER ON APPEAL BOND

The parties appeared before this Court on December 21, 2021 for an in-person hearing to set or waive the appeal bond. Plaintiff appeared through counsel. Defendant appeared and represented himself.

Plaintiff owns and manages the residential premises occupied by Defendant at 100 Debra Drive, Apt. 4-F, Chicopee, MA (the "Premises"). Plaintiff terminated Defendant's tenancy based on lease violations. A final judgment for possession entered in favor of Plaintiff on December 6, 2021. Defendant filed a timely notice of appeal on December 13, 2021, along with an affidavit of indigency. Notice of a hearing to set or waive the appeal bond was sent to the parties on December 15, 2021. Plaintiff filed a motion for an order that Defendant pay use and occupancy during the pendency of the appeal. Defendant filed an opposition to Plaintiff's motion.[1]

By virtue of his receipt of public assistance under both the MassHealth and Supplement Security Income programs, the Court finds that Defendant is indigent as that term is defined in

[1] Defendant did not formally move to waive the appeal bond under G.L. c. 239, § 5; nonetheless, the Court treats Defendant's opposition to Plaintiff's motion to pay use and occupancy during the pendency of the appeal as a motion to waive the appeal bond.

G.L. c. 261, § 27A. The Court further finds that Defendant has a defense which is not frivolous. Accordingly, Defendant shall not be required to post bond pursuant to G.L. c. 239, § 5(c).

The Court turns next to the question of payment for use and occupation during the pendency of the appeal. According to G.L. c. 239, § 5(e), even if the requirement of an appeal bond is waived, the Court "shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver."

Defendant resides in subsidized housing. His rent is $312.00 per month. He contends that he should be excused from paying use and occupancy pending appeal because the Premises do not meet the minimum standards of fitness for human habitation as a result of defective plumbing, hot water that exceeds the maximum allowable temperature, windows and doors that are not airtight, and a broken intercom system. He did not offer evidence of defective conditions beyond his testimony.

Moreover, these complaints have been raised in previous court hearings. On August 12, 2021, Angel Quinones, a code enforcement officer for the City of Chicopee, testified that he inspected the plumbing, water temperature and drafty windows and doors and issued a letter of compliance on July 14, 2021 confirming that all of the issues had been addressed. Based on Mr. Quinones' testimony, the Court is satisfied that Plaintiff took appropriate remedial action and that the conditions about which Defendant complains do not diminish the fair rental value of the Premises.

With respect to the allegation that the entry buzzer system is malfunctioning, the Court orders Plaintiff to inspect it and make any necessary repairs.[2] Even if the entry buzzer system is

[2] This order was made orally during the hearing on December 21, 2021.

not functioning properly, the Court does not find it to be a substantial condition of disrepair that materially diminishes the rental value of the Premises.

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

1. The requirement for an appeal bond is waived.
2. Defendant shall pay $312.00 for his use and occupation of the Premises pending appeal by the 7th of each month. Given the timing of this order, the initial installment of use and occupancy shall be due by February 7, 2022.

SO ORDERED.

DATE: 1.20.22

Jonathan J. Kane

Hon. Jonathan Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3114

VINCENT NASTASI AND JEFFREY MYRA,

PLAINTIFFS

v.

RAYMOND SOTO,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This for-cause summary process action came before the Court for an in-person bench trial on January 10, 2022. Plaintiffs seek to recover possession of certain residential premises from Defendant. Plaintiffs appeared through counsel. Defendant appeared and represented himself.

Plaintiffs owns a residential building known as 11-13 Dale Street, Ware, Massachusetts (the "property"). Defendant resides at 13 Dale Street on the second floor (the "Premises"). Defendant has resided in the Premises for five or six years. He is a month-to-month tenant and rent is $700.00 each month.[1] On September 24, 2021, Defendant was served with a notice terminating his tenancy as of October 31, 2021. Plaintiffs allege that Defendant has caused significant disturbances at the property, including harassment of other tenants. A summary process summons and complaint was served upon Defendant on November 5, 2021 and filed timely with this Court.

[1] Although the complaint does not seek the recovery of rent arrears, the Court finds that Defendant has not paid rent for the months of September 2021 through January 2022.

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Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules that Plaintiffs are entitled to a judgment for possession. The tenant who lives directly below the Premises testified credibly that Defendant's angry outbursts toward her have caused her to live in fear of him. She testified that when he gets upset he plays music very loudly, preventing her from sleeping. She's contacted the police on two occasions, but Defendant continues to lose his temper from time to time.

Another neighbor living at the property testified that although she and her family have befriended Defendant, including providing him with food and assisting him around the house, she is also concerned about his outbursts. Although she does not believe Defendant would harm her, she described an incident in which he became upset about where she parked her car and began shouting obscenities at her in front of her four-year old child and the child's friend. In his fit of rage, he pushed a ceramic planter in her direction, and it smashed on the ground. On another occasion recently, she delivered a bag of smoke detectors to him at the landlord's request, and he became so enraged that the landlord did not bring the smoke detectors himself that he grabbed the bag and threw it into the street.

Defendant acknowledges that he can lose his temper at times and, in fact, his temper flared in the courtroom on multiple occasions. He did not hide his anger toward Mr. Nastasi and noted that he and Mr. Nastasi are parties to a mutual stay-away order. Based on the foregoing, the Court finds that Plaintiffs have established their prima facie case for possession.

Defendant filed an answer but did not assert counterclaims. His affirmative defenses relating to retaliation and discrimination are without merit. The retaliation defense fails because the Court finds that he did not contact the Board of Health until after receiving the notice to quit.

His affirmative defense of discrimination based on national origin was wholly unsupported by the evidence. Accordingly, Defendant has no legal defenses to Plaintiffs' claim for possession.

Defendant testified that he applied for senior housing for veterans and that his application was accepted. He said that he intends to move into the new housing in April 2022.[2] In light of the potential for a move to new housing in the near future, and to give Defendant the opportunity to move without a judgment entering against him, the following order shall enter:

1. Enter of judgment in favor of Plaintiffs shall be stayed provided that Defendant complies with the conditions set forth herein. If Defendant does not comply with the conditions, Plaintiffs may file motion for entry of judgment *nunc pro tunc* (retroactive) to today.
2. Defendant shall have no direct contact with Mr. Nastasi except in the case of bona fide emergency. He may contact Plaintiffs' counsel by text for non-emergency landlord tenant matters, including issues around payment of rent and scheduling a walk-through before he vacates.
3. Although Plaintiffs did not seek unpaid rent in their complaint, because the Court is exercising its power of equity to stay entry of judgment, it is appropriate to order that Defendant to pay the rent arrears. The Court hereby orders Defendant to pay rent for September 2021 through January 2022 in the amount of $3,500.00 by Friday, January 14, 2022.[3]

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[2] The Court requested that Defendant meet with Mr. Hogue from the Tenancy Preservation Program – Pioneer Valley ("TPP") before leaving the courthouse to provide him with pertinent information regarding the pending move, including the name veteran's organization and contact person with whom he is working, so that TPP might be able to share this information with Plaintiff's counsel.

[3] Defendant stated on the record that he had the money available to pay this amount immediately. He stated that the unpaid rent should be offset by approximately $3,700.00 that he had to pay for utilities in 2018 because the landlord

4. Defendant shall pay $700.00 by the 5th day of each month for his use and occupation of the Premises beginning in February 2022 and continuing for so long as he resides in the Premises.

5. Defendant shall cause no significant disturbances on the property, nor shall he threaten, intimidate, harass or abuse any other resident of the property or their visitors. Moreover, he shall not engage in any retribution against any witness who testified at the trial.

6. If Plaintiffs move for entry of judgment based on Defendant's violation of the terms of this order, their motion shall include the date, time and nature of the alleged violation and any witnesses they intend to call. A hearing on such a motion shall be held in-person in the Hadley session of this Court.

SO ORDERED this 20th day of January 2022.

Jonathan J. Kane
Jonathan J. Kane, First Justice

Cc: Court Reporter
Jake Hogue, Tenancy Preservation Program – Pioneer Valley

would not cooperate with his application for fuel assistance. The Court informed Defendant on the record that his recourse if he believes he is entitled to recover money from the landlord is to file a small claims case, and that he would not be permitted to withhold the back rent given this order.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-0636

STEPHEN BOSCO,

PLAINTIFF

V.

ROSALIZ GONZALEZ,

DEFENDANT

RULING ON DEFENDANT'S PETITION FOR ATTORNEY'S FEES AND ENTRY OF FINAL JUDGMENT

This matter is before the Court on Defendant's post-trail petition for an award of attorneys' fees. After consideration of the memoranda in support and in opposition of Defendant's petition, the following order shall enter:

Background

Plaintiff, who is Defendant's former landlord, commenced a small claims action against Defendant in January 2020 seeking unpaid rent and property damages. In March 2020, Defendant filed an answer with counterclaims based on breach of warranty, breach of the covenant of quiet enjoyment, unfair and deceptive business practices and violation of the security deposit statute. In October 2020, Defendant moved to transfer the case to the civil docket in order to "allow for discovery, case management and the benefit of motion practice." *See* Defendant's Motion to Transfer to the Civil Docket in Docket No. 20-SC-0023. Plaintiff then demanded a trial by jury on Defendant's counterclaims.

A one-day jury trial took place on November 4, 2021. The jury found that Plaintiff was entitled to unpaid rent in the amount of $1,219.00 but found that Defendant was not liable for

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damages to the apartment. With respect to Defendant's counterclaims, the jury found that Plaintiff held a security deposit in the amount of $750.00 and failed to return it to Defendant in compliance with the law. The jury found that Plaintiff did not interfere with Defendant's quiet enjoyment or breach the warranty of habitability.

Legal Standard

In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). In determining an award of attorneys' fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Id.* at 388-389. "Absent specific direction from the Legislature, the crucial factors in making such a determination are (1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney." *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 629 (1978). The prevailing party is entitled to recover fees and costs for the claims on which he or she was successful and claims on which the party did not prevail should be excluded. *Simon v. Solomon*, 385 Mass. 91, 113 (1982).

Findings and Rulings on Attorney's Fees

Defendant seeks $10,492.50 in attorney's fees, based on 41.97 hours at a rate of $250.00. Defendant's counsel is experienced and very competent, and the Court finds his hourly rate of $250.00 is reasonable in this matter. With respect to the number of hours expended, the Court notes that this case did not involve complex legal issues. It was commenced as a small claims case and Defendant's counterclaims are those commonly asserted in landlord-tenant disputes. The trial involved few witnesses (and no experts), few documents and, including the selection and seating of a jury, started and ended in one day.

Much of the work in this case was involved conditions claims upon which Defendant did not prevail. Nonetheless, the Court is mindful that preparation for a jury trial takes more time and effort than preparing for a bench trial, and it was Plaintiff who demanded a trial by jury. A significant number of hours were spent on jury-specific work, such as motions in limine and jury instructions, which work was necessary regardless of the outcome at trial.

Accordingly, using the "lodestar" method, and after consideration of the relevant factors set forth herein, the Court awards Defendant reasonable attorney's fees in the amount of $5,000.00. Defendant did not petition for an award of costs.

Calculation of Final Judgment

Pursuant to G.L. c. 186, § 7, because the jury found a violation of G.L. c. 186, § 15B(6)(e), Defendant "shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof to which [she] is entitled plus interest at the rate of five per cent from the date when such payment became due, together with court costs and reasonable attorney's fees." The jury found that the amount of the security deposit was $750.00. Defendant is therefore entitled to three times this amount, or $2,250.00. The parties agree that

Defendant vacated in early December 2019, so in calculating the interest, the Court determines that twenty-two months elapsed between early January 2020 and the trial date. Interest on the security deposit through trial therefore amounts to $825.00. In sum, the total award for violation of the security deposit statute is $3,075.00. This amount is offset by the amount of rent that the jury found was due Plaintiff, namely $1,219.00. After such offset, and after adding the award of attorneys' fees herein, final judgment shall enter in favor of Defendant in the amount of $6,856.00.[1]

SO ORDERED, this 24th day of January 2022.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[1] Defendant's counterclaim for unfair and deceptive practices under G.L. c. 93A was reserved to the judge. Because Defendant did not prevail on her claims for breach of warranty and the covenant of quiet enjoyment, the Court rules that Plaintiff is not liable under c. 93A. Any damages that could be awarded under c. 93A related to Plaintiff's mishandling of the security deposit are duplicative of the damages under G.L. c. 186, § 15B.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-827

U.S. BANK, N.A.,

Plaintiff,

v.

KEVIN DOWE,

Defendant.

ORDER

After hearing on December 30, 2021, regarding establishing use and occupancy for the subject premises, at which the plaintiff appeared through counsel and the defendant appeared *pro se*, the following order shall enter:

1. After a November 8, 2021 trial, the court issued a decision and order dated November 16, 2021 which awarded possession to the plaintiff. What remained for adjudication by the court was the establishment for an amount for use and occupancy.

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2. **Discussion:** A hearing on same was scheduled and conducted on December 30, 2021. The plaintiff's witness was Giovanni Amaya (Amaya), Second Assistant Vice President of Default Management for Specialized Loan Servicing, the current servicer for the mortgagee.
3. Amaya works in the servicer's Default Administration offices, working for the Colorado-based company remotely from Florida. The majority of his work over the past decade involves loans for South Florida properties and he has never been to the subject premises. The majority of his duties involves review of business records on loans that are in default and as a records custodian.
4. Amaya is also trained in "evaluating properties" and explained that he knows how to read Broker Price Opinions and that he utilizes Zillow and Realtor.com as a means to reaching his conclusion of how much the use and occupancy should be for the subject premises. Amaya says that he does not use MLS, which is commonly used by realtors testifying in the court about such matters.
5. Amaya viewed a half-dozen listings for properties within a two-mile radius of the subject premises of comparable size and viewed photographs of the premises.
6. Amaya's opinion is that the use and occupancy should be set at "between $1,600 to $1,800 per month depending on inside conditions."
7. The defendant stated to the court that the premises are adjacent (within much less than two miles) to parts of Springfield in which the property values are much higher than in his neighborhood.
8. The defendant stated that he believes that the use and occupancy for the premises should be between $1,000 and $1,200 per month.

9. **Conclusion and Order:** The court finds that Amaya is not sufficiently knowledgeable about the location of the subject premises nor the condition of same to provide a basis for the court to set a use and occupancy amount. He has never been to the premises, outside or inside, and is not sufficiently knowledgeable about the variance in property values between the different neighborhoods in which the premises are located and in which the "comparables" he listed are located. As such, the court is unable to reach such an assessment based on Amaya's testimony.

10. Accordingly, if the plaintiff wishes to seek its claim for use and occupancy, it shall either file a written stipulation signed by the parties as to an agreed-upon amount for monthly use and occupancy from the date of the foreclosure to the present or file a motion for another evidentiary hearing on said issue. If the plaintiff chooses, however, to forego its claim for use and occupancy and files a written notice to that effect, the court will enter a final judgment for possession to the plaintiff.

So entered this 25th day of January, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1948

GORDON H. MANSFIELD VETERANS COOPERATIVE CORP. – CHICOPEE,	)	
PLAINTIFF	)	
v.	)	ORDER ON PLAINTIFF'S MOTION TO SEVER COUNTERCLAIMS
RAYMOND VOIDE,	)	
DEFENDANT	)	

This matter came before the Court on January 24, 2022 for Zoom hearing on Plaintiff's Amended Motion to Sever Defendant's Counterclaims. Plaintiff appeared through counsel. Defendant appeared self-represented. After hearing, Plaintiff's motion is allowed in part and denied in part, as follows:

1. Plaintiff's motion to sever the counterclaims set forth in paragraphs 33 and 34 of Defendant's answer is DENIED. Although the counterclaims articulated in these paragraphs are not conditions of disrepair, the Court recognizes that Defendant is a self-represented litigant using a pre-printed court form. The substance of the allegations, in the nature of breach of the rental agreement (§ 33) and interference with quiet enjoyment (§ 34), may relate to or arise out of his tenancy and may be brought as counterclaims in this summary process case. *See* G.L. c. 239, § 8A.
2. Plaintiff's motion to sever the counterclaims for defamation and copyright infringement set forth in paragraph 54 of the answer is ALLOWED. Defendant

claims that he performed certain work for Soldier On for which he has not been paid, work which he asserts the agency is using in marketing materials without his permission. The Court finds that these claims are unrelated to any law enacted to protect a tenant's right in the landlord-tenant relationship. *See Meikle v Nurse*, 474 Mass. 207, 212-213 (2016).[1]

3. With respect to the counterclaim for fraud set forth in paragraph 54 of the answer, the Court finds that it is not plead with particularity. Defendant shall have ten days from receipt of this order to amend the counterclaim to state the basis of the fraud counterclaim with particularity. *See* Mass. R. Civ. P. 9 (the circumstances constituting fraud must be stated with particularity). If no such amendment is served and filed within the time allotted, or if Plaintiff contends that the counterclaim for fraud, as amended, does not relate to or arise from the tenancy, Plaintiff may move to strike the counterclaim at the pretrial conference scheduled for February 24, 2022.
4. Plaintiff's motion to sever the counterclaims based on G.L. c. 93A ("Chapter 93A") is DENIED without prejudice. The Court does not have an adequate factual basis to determine if Chapter 93A applies to Plaintiff. Although Plaintiff cites to cases in which courts have refrained from imposing liability on parties "motivated by legislative mandate," the inquiry is whether the acts complained of were committed within a business context. *See Planned Parenthood Federation of America, Inc. v Problem Pregnancy of Worcester, Inc.*, 398 Mass. 480, 492-493 (1986). A party's status as a nonprofit operation is influential, but not dispositive. *See Boston Housing Authority v Howard,* 427 Mass. 537, 539 (1998).

[1] Because counterclaims in summary process are not compulsory, Defendant may seek relief for his defamation and copyright infringement claims in a different forum.

Rather than immediately schedule an evidentiary hearing to develop a record as to whether the acts Defendant complains of were committed within a business context, the Court will defer such a hearing until after the conclusion of the jury trial. The question of whether conduct violates Chapter 93A is a legal question for the judge, not a factual determination for the jury. *See Casvant v. Norwegian Cruise Line Ltd.*, 460 Mass. 500, 503 (2011). Accordingly, if a jury finds in favor of Defendant on his counterclaims, the Court will schedule a hearing on the applicability of Chapter 93A to Plaintiff. If a jury finds in favor of Plaintiff on Defendant's counterclaims, the issue will be moot.

SO ORDERED this 24th day of January 2022.

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0512

TOWN OF WEST STOCKBRIDGE,)
)
PLAINTIFF)
)
v.)
)
KEVIN P. SULLIVAN,)
)
DEFENDANT)

ORDER ON PLAINTIFF'S PETITION FOR FINES AND ATTORNEYS' FEES

This matter came before the Court on December 29, 2021 on Plaintiff's motion for fines and attorneys' fees and costs. Plaintiff appeared through counsel. Defendant did not appear.

Plaintiff initiated this civil case seeking injunctive relief after Defendant failed to comply with a cease and desist order it issued in May. Following a hearing on August 23, 2021, the Court entered an order requiring Defendant to correct certain violations[1] at property he owns in West Stockbridge, Massachusetts by August 27, 2021.[2] When Defendant did not comply with the Court's order, Plaintiff served a civil contempt summons and a hearing on the complaint for civil contempt was held on October 15, 2021.

The Court found Defendant in contempt and gave him the opportunity to purge the contempt by taking the corrective actions ordered by the Court order within forty-eight hours. Defendant was put on notice that, if he did not obey the order, he would be subject to fines of $50.00 per day until he complied. thereafter. The Court further ordered that, if he did not purge

[1] Defendant was living in a trailer on his property without a permit from Plaintiff and without proper water, sewage and wastewater disposal facilities.
[2] The Court made its ruling on the record at the hearing on August 23, 2021 but notes that the written order that was subsequently mailed to Defendant by the Court was returned as undeliverable.

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the contempt, Defendant would be responsible for the reasonable costs and attorneys' fees associated with the contempt proceeding.

Although Defendant did not appear for the hearing on Plaintiff's petition for the assessment of fines and attorneys' fees, Plaintiff reported that Defendant had corrected the violations underlying the contempt proceeding. Given that the purpose of civil contempt is to coerce compliance, and in light of the fact that the copy of the order that the Court sent to Defendant apparently was not delivered, the Court will waive the daily fines. The Court is satisfied that payment of costs and reasonable attorneys' fees associated with the contempt proceeding is an adequate and appropriate sanction.

In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979).

Here, the Court finds that the hourly rate charged by Plaintiff's counsel, $195.00, is reasonable. After carefully reviewing the billing records attached as an exhibit to the affidavit of Nicole Costanzo, the Court further finds that the number of hours expended and the costs incurred are reasonable for the tasks undertaken and result achieved. Accordingly, the following order shall enter:

1. Plaintiff's petition for attorneys' fees and costs is allowed in the amount of $2,250.26.
2. Judgment shall enter in favor of Plaintiff in the amount of $2,250.26.
3. Defendant shall pay the judgment amount to Plaintiff within thirty (30) days.

4. Plaintiff's request to attach property owned by Defendant is denied without prejudice to allow Defendant time to make the required payment.

SO ORDERED, this 26th day of January 2022.

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3161

EAVON VAUGHAN, PLAINTIFF v. RA DAIS DEAPOCALYPSE BEY,[1] DEFENDANT	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no fault summary process action was before the Court for a Zoom bench trial on January 14, 2022. Plaintiff seeks to recover possession of 41 Alvord Avenue, 2d Floor, Chicopee, Massachusetts 01020 (the "Premises") from Defendant. Plaintiff appeared at trial with counsel. Defendant appeared at trial and represented himself.

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 owns the Premises. Defendant moved into the Premises in 2018 or 2019 to care for his mother. After his mother passed away, he entered into a rental agreement with Plaintiff that expired as of September 1, 2021. He did not vacate at the end of the lease term. By letter

[1] The complaint is captioned Eddie Long Jr. a/k/a Ra Dais Deapocalyplse Bey. At trial, however, Defendant stated that he no longer responds to his former name and would not open any mail that came to him addressed in that manner. Accordingly, the caption shall be amended to reflect Defendant's desire to only be referenced as Ra Dais Deapocalyplse Bey.

dated September 22, 2021, Plaintiff had Defendant served with a notice to quit terminating his tenancy as of November 1, 2021.

Defendant acknowledges that a constable came to the Premises to serve him but testified that the constable simply threw the paperwork on the ground and did not hand it to him. He said that he did not touch it or read it. The Court finds the notice to quit to be legally adequate and is satisfied that it was served on Defendant.[2] The law does not require that a notice to quit be delivered in hand to a tenant and a tenant can simply ignore the notice and claim lack of service. Plaintiff had a summons and complaint timely served on Defendant at his last and usual address and sent it by first class mail. Accordingly, Plaintiff has satisfied his prima facie case for possession,

Defendant did not file an answer. At trial, Defendant asserts that this Court is without jurisdiction because he is not subject to the laws of the United States. He asserts that he is a sovereign member of the Choctaw tribe and, as an indigenous person, rejects the notion of private property ownership. In essence, he argues that because he is not subject to U.S. law and because no property can be privately owned, this case should be dismissed. In support of his position, he cites to the United States Constitution, the United Nations Declaration of the Rights of Indigenous Peoples, an American Bar Association resolution regarding the rights of indigenous peoples, and various common law cases and federal regulations.

The Court is no persuaded by Defendant's argument that it does not have jurisdiction in this matter. Further the Court finds that Plaintiff has a superior right to possession of the

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[2] The Court infers from Defendant's testimony that he understood what the constable was there for but that he refused to accept it either because it was addressed to him using his former name or because he does not accept the concept of private property ownership.

Premises and is entitled to recover possession using the remedy of summary process. *See* G.L. c. 239, § 1. Despite being given several opportunities to do so, Defendant failed to assert a legal defense to eviction, resting instead on his argument regarding jurisdiction. Accordingly, given that Defendant has no legal defense to Plaintiff's claim for possession, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.[3]
2. Execution may issue by application after expiration of the 10-day appeal period.

SO ORDERED this 26th day of January 2022.

Jonathan J. Kane, First Justice

[3] This tenancy in this case having been terminated without fault of the tenant, Defendant may seek a stay of judgment and execution pursuant to G.L. c. 239, §§ 9-11.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1608

STOCKBRIDGE COURT, LLC,

PLAINTIFF

v.

LAURA MCMORDIE,[1]

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This for-cause summary process action came before the Court for a hybrid in-person/Zoom bench trial on January 26, 2022. Plaintiff seeks to recover possession of certain residential premises from Defendant. Plaintiff's property manager and counsel appeared in person; Plaintiff's witnesses appeared by Zoom. Defendant, who is self-represented, had technical difficulties connecting by Zoom and participated by telephone. At the outset of the hearing, the Court obtained the consent of both parties to proceed despite Defendant not being on screen or in the courtroom.

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 owns a 233-unit residential apartment complex known as Stockbridge Court located at 45 Willow Street, Springfield, Massachusetts. In 2020, Stockbridge Court received an on-line

[1] The summary process summons and complaint named the defendant as "Leigh Litz" AKA Laura McMordie. Because Laura McMordie is the actual occupant and because Leigh Litz never applied for tenancy nor resided in the subject premises, the Court allowed an oral motion at trial to change the caption to reflect the name of the defendant as Laura McMordie. Laura McMordie did not object.

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rental application from Leigh Litz. The applicant supplied an expired driver's license and paystubs, among other information. The application provided a contact email address of "lauramcm." When the applicant picked up the keys to Apartment 134 (the "Premises"), she signed forms as Leigh Litz. After she moved into the Premises, packages arrived at the property addressed to Laura McMordie. Suspecting possible identity theft, the property manager investigated further, including contacting the Springfield Police Department, and concluded that Laura McMordie had falsified her rental application by claiming to be Leigh Litz.

Leigh Litz testified and confirmed that she does not know Laura McMordie and never applied for occupancy at the property. She did not give permission to Defendant to use her identification to apply for tenancy. She testified that she had no idea how her expired driver's license was used to apply for tenancy at Stockbridge Court. Officer Daniele, a 25-year veteran of the Springfield Police Department, testified that she learned that the paystubs provided as part of the application for tenancy were falsified and that the business listed on the payroll records did not exist. She said that she is aware that criminal charges are pending against Ms. McMordie.

Defendant was advised of her privilege against self-incrimination. The Court asked Defendant if she wished to testify despite the risk that statements she made could be used against her in her criminal case or cases. She declined to testify.

The Court finds that the application for tenancy submitted to Stockbridge Court was falsified and that Defendant moved into the Premises under false pretenses.[2] The electronic signature of Leigh Litz appears on the lease, but the Court finds that Leigh Litz was unaware of the

[2] Because Defendant did not file an answer and did not testify in her own defense, the Court's findings are uncontroverted.

lease and did not give permission for her signature to be inserted. Because Defendant pretended to be someone else in order to rent the Premises, she is not party to a valid lease with Defendant and does not have rights of a tenant.[3] Nonetheless, Plaintiff satisfied principles of due process by providing Defendant with a legally sufficient seven-day notice of its intent to recover possession, which notice Defendant acknowledges receiving.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution may issue by application in accordance with Uniform Summary Process Rule 13.

SO ORDERED this 27th day of January 2022.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[3] Although the notice to quit terminates a *tenancy* pursuant to the lease, the Court does not consider Laura McMordie a tenant. However, even if she is deemed a tenant subject to the terms of the lease, the lease provides for seven-day notice in the event of default. One basis for default set forth in § 29 is providing incorrect or false information on the rental application.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-2843

ROBIN and AVREY LAVALLEY,

Plaintiffs,

v.

ANTHONY MEDEIROS,

Defendant.

ORDER OF DISMISSAL

After hearing on December 13, 2021, on Anthony Medeiros' ("Defendant") motion to dismiss, where all parties appeared represented by counsel, the following order shall enter:

1. Robin and Avrey Lavalley ("Plaintiffs) entered this summary process action on October 18, 2021, seeking to recover possession of 4 Wilton Road, Easthampton, Massachusetts, from Defendant for hold over after notice to quit served on August 18, 2021. In addition to possession, their summons and complaint the Plaintiffs claim use and occupancy payments at a rate of $41.67 per diem and attorneys' fees and costs.

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2. The notice to quit states in part that "I am your Landlord and this is the Tenant's official notice that their lease shall be terminated on the 30th day of September, 2021. Termination must be at least thirty days from the next payment date." Defendant argues that the notice does not satisfy G.L. c. 186, § 12, because the stated termination date does not provide for a full rental period and is not a rent day. At oral argument, Plaintiffs argue that the notice to quit provides for more than 30 days' notice and terminates the tenancy at the expiration of the 30th of September (i.e. October 1 – a rent day.

3. In order to terminate a tenancy at will for reasons other than nonpayment of rent, G.L. c. 186, § 12 states in part that "if the rent reserved is payable at periods of less than three months, the time of such notice [of termination of tenancy] shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer." See *Adjartey v. Cent. Div. of Hous. Ct. Dep't*, 481 Mass. 830, 851 (2019). "This statute has been construed as requiring that the notice must be given at least a rent period prior to the time stated therein for the termination of the tenancy and that the time specified in the notice for the termination must be a rent day." *Connors v. Wick*, 317 Mass. 628, 630–31 (1945).

> It is by no means necessary to name the precise day and date on which a tenancy is to expire, in a notice to quit, but it may be designated in general terms, if stated correctly. . . . If, for instance, in the present case, the notice to the landlord had been that the tenant would quit the premises and terminate his tenancy in one month from the day when the rent should next become due and payable, that would have been a good notice to terminate the tenancy, because it designated a day with sufficient certainty equally within the knowledge of the tenant and landlord.

Sanford v. Harvey, 65 Mass. 93, 96 (1853). However, this Court finds that Plaintiffs did not correctly state the general term of the notice, as described in *Stanford.* Rather, they provided an exact date which was not a rent day and does not provide explicitly that the tenancy would terminate at the expiration of that date. See *U-Dryvit Auto Rental Co. v. Shaw*, 319 Mass. 684, 685–86 (1946) ("A notice given on September 26, 1945, calling for the termination of the tenancy at the end of October, fixed November 1, 1945, a rent day, as the date for termination and, ... was sufficient to terminate the tenancy").

4. Accordingly, the time of termination of a tenancy as stated in a notice to quit must fall on "the day upon which rent is payable (or the expiration of that month immediately preceding the rent day)." *Dudley v. Grushkin*, Boston Housing Court No. 02-SP-03695 (September 10, 2002, Kyriakakis, C.J.). This is well settled law in the Massachusetts Housing Court. See *Marak v. Richardson*, Boston Housing Court, (September 17, 1998, Daher, CJ.); *Graham v. Staszewski*, Boston Housing Court NO 01-SP-00643 (March 26, 2001, Daher, C.J.); *Nieves v. Aldrich*, Southeastern Division No. 08-SP-02108 (July 8, 2008, Chaplin, F.J.); *Njoku v. McCra*, Southeast Housing Court No 19-SP-2903TA; *Dowell v. Boseman*, Boston Housing Court No. 00-SP-03971 (September 9, 2009, Daher, C.J.); *Mayflower Village Associates v. Smith*, Southeastern Housing Court No. 09SP03797 (December 16, 2009, Chaplin, F.J.); (October 9, 2019, Michaud, J.); *Simmons v. Fisher*, Southeastern Housing Court No. 19SP4284TA (January 14, 2020, Salvidio, F.J.).

5. In *Marak*, the Housing Court judge found that the notice to quit in question was invalid. "Though it gave thirty (30) days, if the rent day was on the first, then termination on the 31st was premature." *Marak v. Richardson*, Boston Housing Court, (September

17, 1998, Daher, CJ.). In *Mayflower Village Associates*, a notice served on August 27, terminating a tenancy effective September 30, was invalid because it failed to terminate the tenancy on a rent day. *Mayflower Village Associates v. Smith,* Southeastern Housing Court No. 09SP03797 (December 16, 2009, Chaplin, F.J.). Under similar circumstances, where rent was due on the first of the month, a notice to quit terminating the tenancy on the last of the month was found invalid because May 31 was "not a rent day." *Nieves v. Aldrich*, Southeastern Division No. 08-SP-02108 (July 8, 2008, Chaplin, F.J.).

6. Contrast instances where the notice to quit allows for the expiration of the next month of the tenancy beginning after the receipt of notice. In *Graham*, a notice to quit was found valid, if superfluous, that terminated the tenancy at the "expiration of that month of your tenancy which shall begin next after your receipt of this Notice . . . . which expiration it states as January 31,2001." *Graham v. Staszewski*, Boston Housing Court NO 01-SP-00643 (March 26, 2001, Daher, C.J.). The Housing Court stated "[t]he tenancy has been terminated at the expiration of January 2001; as the Kehoe court held, such a notice 'to take effect, implicitly, at the end of [the month]' is effective notice under s. 12." Id., quoting *Kehoe v. Schneider*, 6 Mass. App. Ct. 909, 909 (1978) ("The record indicates that the rent day was the first day of the month . . . . and that the notice of termination was received on August 1, 1975, to take effect, implicitly, at the end of August").

7. Likewise, a notice which terminated a tenancy "at the expiration of October 31, 2019," was valid and enforceable because "[t]he word 'expiration' means upon the end or cessation of October 31, which necessarily is November 1, the rent day." *Simmons*

v. Fisher, Southeastern Housing Court No. 19SP4284TA (January 14, 2020, Salvidio, F.J.). However, in that case, the Housing Court judge noted "[h]ad the [notice] stated that the tenancy terminated on or before October 31, 2019, that would have created a factual inconsistency as to the termination date." Id.

8. This may seem a trivial distinction upon which to determine the dismissal of a summary process action, however, it is equally well settled that, in order to be effective, a notice to quit must be timely, definite, and unequivocal. See *Maguire v. Haddad*, 325 Mass. 590, 594 (1950).

> Technical accuracy in the wording of such a notice is not required, but it must be so certain that it cannot reasonably be misunderstood, and if a particular day is named therein for the termination of the tenancy, that day must be the one corresponding to the conclusion of the tenancy, or the notice will be treated as a nullity.

Torrey v. Adams, 254 Mass. 22, 25–26 (1925). Where the Plaintiffs gave a particular date for termination of the Defendant's tenancy, they were required to provide the day of termination or make clear the termination was to be effective as of the expiration of the preceding month. Neither was the case here and the Court has no alternative but to dismiss the case without prejudice[1].

So entered this 1st day of February, 2022.

Robert Fields

Robert Fields, Associate Justice

Cc: Court Reporter

[1] The Court need not reach the Defendant's motion for dismissal of the Plaintiffs' claim for attorneys fees, as the case is being dismissed based on the insufficiency of the termination notice.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 20-SP-1266
HAYASTAN INDUSTRIES, INC., PLAINTIFF v. ANGELA GUZ, ET AL., DEFENDANTS	RULING ON PETITION FOR ATTORNEYS' FEES AND ORDER FOR ENTRY OF FINAL JUDGMENT

This matter is before the Court on Defendant's post-trial petition for an award of attorneys' fees and costs. Following a bench trial and after reconsideration and amendment of its initial rulings of law, I found that Defendants were entitled to judgment for damages in the amount of $6,000.00, plus costs and reasonable attorneys' fees. Defendants submitted a petition for such fees and costs, and Plaintiff filed an opposition.[1]

In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorneys' fees, the Court must consider "the nature of the case and the issues presented, the time

[1] Defendants filed a motion for leave to reply to Plaintiff's opposition, which the Court allowed on the papers. The Court considered Defendants' reply and supplemental affidavit in reaching the decision set forth herein.

and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389. The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. *See Heller*, 376 Mass. at 629.

In this matter, Defendants prevailed on their counterclaims under two fee-shifting statutes, G.L. c. 186, § 14 and G.L. c. 93A. Defendants did not prevail on their counterclaim for violation of G.L. c. 186, § 18. Counsel's time spent litigating an unsuccessful claim or counterclaim should be excluded from the calculation of an attorneys' fees award. Such a calculation is inherently imprecise, however, as often all claims arise from the same set of facts. I have carefully reviewed the billing history submitted by Defendants' counsel as part of his affidavit in support of this petition and conclude that counsel worked on this matter with efficiency and restraint. Nonetheless, I must take into account the fact that Defendants did not prevail on one of the fee-shifting claims. After weighing the various considerations, I will reduce the number of hours by 10% on account of the unsuccessful counterclaim for violation of G.L. c. 186, § 18.

With respect to the hourly rate, the standard of reasonableness depends not on what Defendants' counsel has been awarded in other matters but on the fair market value of his services. A judge may discern, from his own experience as a judge and expertise as a lawyer, the rate for which an attorney should be paid. *Heller*, 376 Mass. at 629. In over 25 years in private practice, the last 18 of which were spent practicing in the Western Division Housing Court, I am knowledgeable about the hourly rates charged by private practitioners in this area.[2] In my experience, hourly rates range from less than $200.00 per hour to a maximum of $250.00 per hour in this Court. Defendants'

[2] The fact that Defendants' counsel may have not charged his clients by the hour does not alter the analysis as to the fair market value of his services.

counsel is among the most experienced and distinguished in the field, however, and I determine that a reasonable hourly rate for his services in this case is $300.00.

Accordingly, multiplying 29.3 hours worked by the rate of $300.00, the Court awards Defendants reasonable attorneys' fees in the amount of $8,802.00. The award of attorneys' fees is without interest. *See Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985). In light of the foregoing, and the Court's rulings and order entered on December 7, 2021, the Court hereby orders that final judgment shall enter for Defendants in the amount of $6,000.00 in damages and $8,802.00 in attorneys' fees and costs.

SO ORDERED this 7th day of February 2022.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0093

CHICOPEE HOUSING AUTHORITY,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	
	)	**ORDER**
MARIA CRUZ,	)	
	)	
DEFENDANT	)	

This case came before the Court on February 8, 2022 by Zoom for review. Plaintiff appeared through counsel. Defendant appeared self-represented. Carmen Morales from Tenancy Preservation Program ("TPP") also participated.

Ms. Morales reports that Defendant was discharged from the AdCare Hospital program last week, well short of the expected two-week in-patient stay. After being discharged, Defendant stayed with her sister for some period of time and then moved into the Friends of the Homeless shelter in Springfield where she currently resides. Ms. Morales is assisting Defendant with a housing search. Defendant said that she hopes to be able to move back in with her sister. She said that she has already rented a storage unit for her things and is the process of renting a truck to remove her belongings from her unit 165 East Main Street, Apt. 403, Chicopee, Massachusetts (the "Premises"). She has plans to go to the unit with the truck at 1:00 p.m. today.

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

1. Plaintiff will give Defendant access to the Premises at 1:00 p.m. today to begin the process of moving out her belongings. If the removal of items is not completed today,

Defendant may reasonably request additional access to complete the move out. Defendant shall have all of her belongings removed no later than February 14, 2022 and shall leave the Premises in broom-clean condition. Once all of her belongings have been removed, Defendant shall return all keys to the management office.

2. Defendant has agreed to sign a notice of intent to vacate at the management office in order to enhance her chances of obtaining replacement housing.
3. Plaintiff shall allow Defendant access to check her mailbox when she is on the property to move out her belongings. Defendant will provide Plaintiff and TPP with her post office box number.
4. Once Defendant has returned her keys, legal possession of the Premises shall vest in Plaintiff.

SO ORDERED, this 8th day of February 2022.

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

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-SP-2461
SPRINGFIELD HOUSING AUTHORITY, PLAINTIFF v. DONZEL STEWART, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This for-cause summary process action came before the Court an in-person bench trial. The trial began on February 1, 2022 by Zoom and concluded in-person on February 3, 2022.[1] Plaintiff appeared with 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 the following facts:

1. Plaintiff manages residential property located at 363 Central Street, Springfield, Massachusetts. Defendant resides in Unit 35 (the "Premises"), which is one of four units in one of the buildings on the property (the "Building").
2. Defendant, who is 21 years old, is the only authorized occupant of the Premises.
3. Based on his most recent annual income certification, his rent is $433.00 per month.
4. Defendant moved into the Premises in November 2020.
5. Defendant lost his keys to the Premises and the Building in or about August 2021. After losing his keys, Defendant did not obtain a replacement set. In order to enter the

[1] The Court ordered the parties to appear in-person for the second day of trial without objection of the parties. The Court took this action in part because Defendant indicated that he had evidence that he wanted the Court to see, and he did not have the capacity to submit the evidence electronically.

Building, he either knocked on the door to be allowed in by another resident or he stuffed items in the door mechanisms so that it would not lock. He left the back door of the Premises unlocked so he could come and go without the keys. Defendant has called Plaintiff on numerous occasions when locked out of the building and/or the Premises.

6. Defendant did not have permission to have a pet and did not seek a reasonable accommodation for an emotional support animal. Nonetheless, Defendant kept two separate dogs and a cat in the Premises at various times. He has not had an animal in the Premises since approximately December 2021.
7. The animals in the Premises disturbed neighbors by barking and howling, defecated in the Premises and in common areas of the Building and created significant unpleasant odors as a result. One or both of the dogs has been allowed to run without a leash on the property. When dogs were in the Premises, they caused Plaintiff's employees not to enter.
8. At various times during Defendant's tenancy, the sanitary condition of the Premises has been deplorable.
9. Defendant and his guests have caused noise that has significantly disturbed his neighbors. As of the date of trial, there have been no significant noise disturbances since December 2021.
10. Defendant has allowed trash and excrement to remain in common areas and has disposed of trash out of the windows of the Premises.
11. Defendant is not in compliance with Plaintiff's income certification requirements.
12. Defendant has covered smoke detectors in the Premises with plastic, creating a grave safety risk for all occupants of the Building.

13. Defendant's guest kicked and destroyed a door in the Premises.

14. Defendant's guests allowed a toilet to overflow when he was not home, causing damages to the unit below the Premises.

15. Plaintiff charged Defendant for the damages (broken doors, water damage) but Defendant has not made payment for same.

16. Plaintiff served Defendant with a legally sufficient notice to quit which Defendant received. Plaintiff terminated Defendant's tenancy for lease violations based on the unauthorized dogs, the disturbances caused by Defendant and/or his guests, trash and feces in hallways and thrown out his windows.

17. Plaintiff timely served and filed a summary process summons and complaint.

18. Default judgment entered in favor of Plaintiff and an execution for possession issued. A physical eviction was scheduled for December 2, 2021.

19. Defendant filed a motion to stop the eviction on December 2, 2021, which was treated by the Court as a motion to vacate the default and allowed. A referral was made to the Tenancy Preservation Program ("TPP").

20. Defendant did not file an answer but was permitted to testify as to defenses to Plaintiff's claims at trial.

Defendant testified credibly about various disabilities. He has services through [redacted] and testified that he is going to be getting additional services, [redacted]. He claims [redacted], who is

apparently the person who kicked and destroyed the door. He admits he often leaves his door unlocked and allows people to be in the Premises when he was not present.[2]

Plaintiff established its prima facie case for judgment. For several reasons, however, judgment shall not enter immediately. First, Defendant may be entitled to a reasonable accommodation on account of his disabilities. He has not made any such request, however, and should be given the opportunity to do so before losing his housing. Second, some of the most serious conduct described in the notice to quit has apparently ended. He no longer has a pet and he has not cause noise disturbances for over a month. Although Defendant continues to plug the Building's door mechanisms with items to prevent it from locking, this conduct should end if he obtains a new set of keys. He claims to have improved his housekeeping, but Plaintiff has not conducted an inspection in several months to verify his claims..

Based on the foregoing, the following order shall enter;

1. Plaintiff shall provide the set of keys to Defendant, who shall pick up the keys on February 4, 2022. Defendant will pay the charge for new keys ($32.00 for a set including the building, apartment and mailbox keys) on or before February 11, 2022.
2. Defendant shall not cause any outer door to his building to remain open or unlocked, and specifically shall not put any items in the latch or other mechanisms to prevent the doors from locking.
3. Defendant shall not have any animals in his unit without the permission of Plaintiff. To be clear, this prohibition includes temporary visits by pets belonging to family or friends.

[2] He claims that Plaintiff's employees removed personal security cameras from inside his unit. He has no evidence to support the allegation, however, and because he leaves his door unlocked and allows others to use his apartment when he is not present, it is not clear who may have removed his cameras.

4. Defendant shall respect the right of other tenants to their peaceful enjoyment of the property and shall not cause or allow guests to cause excessive noise. He may not have more than three visitors at any time.
5. Defendant shall promptly provide all necessary documents required by management to complete the process of implementing a rent change.
6. If eligible, Defendant shall seek rental assistance to pay an rent arrears and the damages charges.
7. Defendant's referral to TPP shall be renewed. If Defendant does not hear from a TPP representative within a few days, he shall call TPP at (413) 358-5654 and make reference to this Court order. If it has not already done so, TPP is requested to conduct an intake with Defendant and, if he qualifies for services, to assist him in seeking financial assistance for the rent arrears and damages charges, completing his income recertification, and coordinating with his service providers to ensure he has the supports needed to preserve his tenancy.
8. Defendant shall maintain the Premises in a clean and sanitary condition. Plaintiff may conduct a reasonable number of housekeeping inspections on at least 24-hours' advance written notice. Defendant shall not unreasonably deny access for such inspections.
9. Defendant shall not place trash or other items in the hallways or other common areas, and he may not through anything out of his windows.
10. Defendant shall not cause damages to the Premises or the Building. Defendant shall be responsible for the conduct of his guests.

11. Defendant may not tamper with any smoke or carbon monoxide detectors in the Premises or the Building.

The equitable stay on entry of judgment shall remain in effect until further Court order. Plaintiff may serve and file a motion to lift the stay on entry of judgment if Defendant materially violates a substantial term of this order. Should judgment enter, it will enter retroactively to February 3, 2022. The parties shall return for an in-person review of Defendant's compliance with this order on **March 16, 2022 at** 2:00p.m.

SO ORDERED this 8th day of February 2022.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Tenancy Preservation Program Pioneer Valley
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0014

JAMES WILLIAMSON AND PAMELA WILLIAMSON,

PLAINTIFFS

v.

ANNA M. RICE,

DEFENDANT

ORDER

This case came before the Court on January 19, 2022 for a Zoom hearing on Plaintiff's emergency motion to be allowed to reoccupy residential property located at 16 West Lake Street, Easthampton, Massachusetts (the "Premises"). The parties appeared self-represented.

Defendant's parents owned and occupied the Premises. Plaintiffs also occupied the Premises (Ms. Williamson's brother was one of the owners). Both of the owners passed away and Plaintiffs claim Defendant, the sole child of the deceased, demanded that they leave. Ms. Williamson claims she has text messages to this effect. Defendant claims Plaintiffs voluntarily left and that she has text messages demonstrating same.[1] Plaintiffs left and have been staying in a hotel for the past two weeks. Defendant has changed the locks. Plaintiffs now move for an order permitting them to reoccupy the Premises.

On the preliminary information provided by way of testimony at the emergency hearing, the Court cannot conclude that Plaintiffs abandoned the Premises. Accordingly, Defendant must return

[1] No text messages were presented to the Court.

Plaintiffs to possession of the Premises forthwith and provide a key to Plaintiffs by 7:00 p.m. tonight (January 19, 2022). Plaintiffs shall have a right to reside in the Premises on the same terms and under the same conditions that were in place prior to the death of Defendant's parents until Defendant obtains a court order conveying legal possession to her or Plaintiffs surrender possession in writing, whichever occurs first.

SO ORDERED this 24th day of ~~January~~ February 2022.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice