Western Division Housing Court
Unofficial Reporter of Decisions

Volume 15

May 16, 2022 — Jul. 25, 2022

Released Aug. 29, 2022
High Quality Version

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

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

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*
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Attorneys Dulles, Manzanares, and Vickery serve as co-editors for coordination and execution of this project.

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

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

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

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment and taking the Court's views into consideration. Our current redaction and exclusion criteria are as follows: (1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) 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 disability. (6) Non-public contact information for parties, attorneys, and third-parties are generally redacted. (7) Criminal action docket numbers are redacted. (8) File numbers for non-governmental records associated with a particular individual and likely to contain personal information are redacted.

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

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

PUBLICATION

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

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

SECURITY

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0245

FOH, LLC,

PLAINTIFF

v.

AUGUSTINE COLON,

DEFENDANT

TEMPORARY VACATE ORDER

This case came before the Court on May 16, 2022 for hearing on Plaintiff's emergency motion for Defendant Colon to vacate the property. Plaintiff appeared with counsel and witnesses; Mr. Colon did not appear after notice.

Plaintiff has brought several emergency motions in this case based on suspected drug activity and weapons on the property. At the first hearing, held on April 15, 2022, Mr. Colon was ordered not to have any visitors in his unit and not to bring visitors to the property pending an evidentiary hearing scheduled for April 21, 2022.

On April 21, 2022, the parties entered into an agreement that allowed Mr.Colon one visitor between the hours of 12:00 p.m. and 1:00 p.m. daily to assist with daily activities and required the visitor to sign in at the front desk. He agreed not to have any visitors in his room and not to invite visitors to the property outside the permitted hour each day.

The parties were back before the Court on May 4, 2022, at which hearing the Court found that Mr. Colon had violated the terms of the agreement. The Court ordered that, pending permission from Plaintiff in writing or order of the Court, he could not have visitors in his apartment. It did not specifically lift the prohibition about inviting others to the property, so that

particular prohibition remained in effect.

Plaintiff filed the emergency motion that is the subject of this motion on May 11, 2022, after Mr. Colon brought two individuals into the building and to his apartment door. Plaintiff provided security camera footage supporting its assertion. Although the visitors did not enter Mr. Colon's apartment, they loitered outside of his apartment door until Mr. Colon came back out and handed something to one of the visitors. Plaintiff's witness testified that both visitors had been issued no trespass notices and that one was arrested only days earlier following a shooting wherein he was charged with carrying a loaded firearm without a license.

The evidence demonstrates Mr. Colon's inability to comply with the Court's orders regarding bringing visitors to the property. Given the significant risk his behavior causes the other occupants of and employees working in the building, the Court finds that the risk of irreparable harm to Plaintiff and the other residents and employees if Mr. Colon continues to bring individuals to the property outweighs the harm to Defendant in light of his demonstrated inability to modify his conduct. Accordingly, after hearing, the following order shall enter:

1. Mr. Colon must vacate the property forthwith. This is a temporary order and does not return legal possession of Mr. Colon's unit to Plaintiff. Legal possession shall revert to Plaintiff only upon further Court in a summary process case.
2. The parties shall return for review and further proceedings on May 19, 2022, which is the review date selected at the earlier hearing on May 4, 2022.

SO ORDERED.

DATE: May 16, 2022.

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3465

NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER, PLAINTIFF v. DONNA SANTANIELLO, DEFENDANT	))))))))))	FINDINGS, RULINGS AND ENTRY OF JUDGMENT

This post-foreclosure summary process matter came before the Court for an in-person bench trial on April 4, 2022. Plaintiff appeared through counsel. Defendant appeared self-represented. The trials was continued from March 17, 2022 because Defendant represented that she was ill. The Court ordered that any pre-trial motion (such as a motion to file late answer) had to be filed and served by March 30, 2022. No motion was filed or served.

At trial, Plaintiff presented a prima facie case for possession by providing a certified copy of the foreclosure deed and an affidavit of sale made by an attorney for Plaintiff. See *Federal National Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 637 (2012). Despite Defendant not filing an answer, the Court allowed Defendant to testify as to why she believed the foreclosure was defective. Defendant's sole articulated defense was that Plaintiff failed to conduct a face-to-face meeting with her as detailed in 24 C.F.R. § 203.604. This regulation states, in relevant part, that "the mortgagee must have a face-to-face interview with the mortgagor or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are

unpaid." 24 C.F.R. § 203.604(b). The regulation codifies an exception to the face-to-face interview; namely, if "the mortgaged property is more than 200 miles from the mortgagee, its servicer, or a branch office of either." [1] See 24 C.F.R. § 203.604(d).

Because this defense was not raised prior to trial and Plaintiff was therefore not prepared to provide any evidence of whether such a meeting occurred or whether Plaintiff was exempt from the requirement, the Court could have prohibited Defendant from raising this defense for the first time at trial when she had been given explicit instructions about filing a motion for late answer just weeks earlier. However, Plaintiff's counsel asserted that her client was exempt from the requirement of a face-to-face meeting based on 24 C.F.R. § 203.604(d), and therefore the Court permitted Plaintiff to file an affidavit to that effect. Based on the affidavit submitted, the Court is satisfied that Plaintiff did not have its offices or any branch office within 200 miles of the subject property and, therefore, finds that Plaintiff was exempt from conducting a face-to-face meeting.

Accordingly, judgment for possession shall enter for Plaintiff. Execution shall issue upon application following the ten-day appeal period.

SO ORDERED.

May 18, 2022.

Hon. Jonathan J. Kane, First Justice

[1] The regulations also require "a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched," see 24 C.F.R. § 203.604(d), but Defendant did not argue that Plaintiff failed to send the letter, only that it did not conduct the face-to-face interview.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0245

FOH, LLC,

PLAINTIFF

v.

AUGUSTINE COLON,

DEFENDANT

ORDER EXTENDING VACATE ORDER

This case came before the Court on May 19, 2022 for review and further proceedings stemming from previous orders on April 15, 2022, April 21, 2022, May 4, 2022 and May 16, 2022. Plaintiff appeared with counsel and witnesses; Mr. Colon appeared and sought to lift the temporary vacate order now in place.

With Mr. Colon present, the Court again viewed the security camera footage it viewed on May 16, 2022 when Defendant was not present. Mr. Colon's only explanation for allowing visitors into the building was that he did not know that they had been given no trespass notices and that all he did was hand one of them a bottle of water in the hallway outside of his apartment door. He claims that he complied with the Court order by not allowing these individuals into his unit.

The Court does not find Mr. Colon's testimony to be credible. He is aware from several previous orders that he is not permitted to invite people to the property. The security camera footage clearly shows him allowing two visitors to accompany him into the building, through the hallways and to his apartment door. Although Mr. Colon claims he just handed one of the visitors a bottle of water, the video does not support his claim and, in any event, he had no

credible explanation of why he thought it was acceptable to bring them into the building and up to his apartment door. Mr. Colon did not convince the Court that its order should be modified. Accordingly, the following order shall enter:

1. Mr. Colon must vacate the property forthwith. This order does not transfer legal possession to Plaintiff; it must proceed with an eviction case to obtain possession. Therefore, Plaintiff may not remove Mr. Colon's personal possessions or re-rent the unit without an execution in a summary process action, unless Mr. Colon surrenders possession in the meantime.
2. Mr. Colon may enter the property today to retrieve necessities from his unit. After today, he may only enter by appointment for the purpose of retrieving belongings.
3. Plaintiff may change the locks to prevent Mr. Colon from accessing the property without permission.
4. If Mr. Colon believes he has good cause to seek a modification of this order, he may file and serve a motion upon at least three business days' notice.

SO ORDERED.

DATE: May 19, 2022.

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-440

JUAN RODRIGUEZ,

Plaintiff,

v.

JENNIFER SANCHEZ,

Defendant.

ORDER OF DISMISSAL

This matter came before the court for trial on May 18, 2022, at which both parties appeared without counsel. As a preliminary matter, the tenant raised the issue that the reasons asserted by the landlord for the eviction are different in the notice to quit and the summons. After hearing, the following order shall enter:

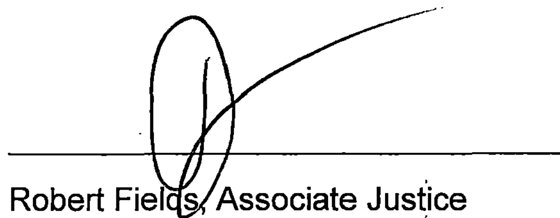
1. The parties agree that Ashley Rodriguez is dismissed from this case as she no longer resides at the premises.

2. The Notice to Quit is for no-fault, indicating that the landlord required the premises vacant for renovations.
3. The summons and compliant, however, states a cause reason for the eviction to wit: Late Payments.
4. For the reasons stated on the record, and due to the landlord utilizing a "no fault" Notice to Quit but inserting "fault" reasons on the summons, the landlord's claim for possession is dismissed, without prejudice.
5. A landlord is assigned the grounds for termination stated in the notice to quit. *Tuttle v Bean*, 13 Met. 275 (1847); *Stiycharski v. Spillane*, 320 Mass. 382 (1946).
6. Additionally, the Uniform Summary Process Rules requires that the landlord state the reason(s) for the eviction "in concise, untechnical form and with sufficient particularity and completeness to enable a defendant to understand the reasons for the requested eviction and the fact underlying those reasons." Because the reasons stated on the summons do not comport with the notice to quit, and the law requires that it does, the landlord failed to comply with U.S.P.R. 2(d).
7. Statutory requirements governing both summary process proceedings and termination notices "must be sufficient and perfect of [themselves] without reference to any subsequent proceedings." *Oakes v. Monroe*, 62 Mass. (8 Cush.) 282 (1851). In ruling so, the Oakes court measured the language against the statutory requirements and contains no suggestion that the tenant was actually misled or prejudiced by the deficiencies in the language of the notices.
8. The relevant cases share a "purposeful reluctance to look beyond the four corners of the notice in question" and not whether or not the tenant is misled in a

given matter. See, *Springfield 11 Investors v. Amite Marchena*, Hampden County Housing Court Docket No. 89-SP-1342-S (Abrashkin, J.), citing *Stiycharski v.Spillane*, 320 Mass. 282, 69 N.E.2d 589 (1946*) U-Dryvit Auto Rental Co. v. Shaw*, 319 Mass. 684, 67 N.E.2d 225 (1946); *Connors v. Wick*, 317 Mass. 628, 59 N.E.2d 277 (1945); and Hall, Massachusetts Law of Landlord and Tenant (4th ed. 1949), s.s.173, 174.

9. Based on the foregoing, the landlord has failed to commence this summary process matter in accordance with the law and the matter is hereby dismissed without prejudice. See also, *Christopher Barber v Lyna Maguire*, Southeast Housing Court Docket No. 03-SP-5962 (Edwards, J.); *Haile g. Aberaha v. Erica Hues*, Boston Housing Court Docket No. 07-Sp-3556 (Muirhead, J.).

So entered this 10th day of May, 2022.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0845

CHRISTOPHER VIALE AND AMY VIALE,

PLAINTIFFS

v.

JESUS LIM AND HIGH POINT HOLDINGS, LLC,

DEFENDANTS

RULING ON DEFENDANTS' MOTION TO DISMISS

This civil action came before the Court on April 1, 2022 for argument on Defendants' motion to dismiss. All parties appeared through counsel.

First, Defendants contend that Plaintiffs' complaint should be dismissed pursuant to Mass. R. Civ. P. Rule 12(b)(1) for lack of subject matter jurisdiction. Taken in the light most favorable to Plaintiffs, the allegations of the complaint show that Plaintiffs reside in a home that they formerly owned located at 15 Brimfield Way, Westfield, Massachusetts (the "Property"). To avoid possible foreclosure, they sold the Property to Safeguard Credit Counseling Services, Inc. ("Safeguard") and executed a lease with an option to repurchase the Property in the future. Safeguard Credit Counseling Services, Inc. subsequently conveyed the Property to Defendant High Point Holdings, LLC ("High Point"), along with an assignment of rights under the lease and option contract.

At the core of this dispute is Plaintiffs' right to continued possession of the Property based on the terms of the lease and option contract. In their complaint, Plaintiffs assert that they paid rent

to High Point from February 2019 through October 2021. The legal rights of landlords and tenants and the enforcement of the terms of a residential lease with an option to purchase are squarely within the jurisdiction of this Court.[1]

Second, Defendants seek to dismiss the complaint under Mass. R. Civ. P. 12(b)(6). Taking as true the allegations of the complaint, as well as such inferences as may be drawn therefrom in Plaintiffs' favor, the Court finds factual allegations plausibly suggesting an entitlement to relief. See *Iannacchino v. Ford Motor Co.*, 451 Mass. 623 (2008), quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 557 (2007). Plaintiffs aver that the lease and option contract was assigned to High Point by Safeguard, that they paid rent directly to High Point for approximately 20 months and, further, that they communicated directly with Defendant Lim throughout the option period. Accordingly, the Court finds that Plaintiffs have met their burden at this stage of the proceeding that they have a plausible claim against Defendants.

With respect to Defendants' argument that Plaintiffs' claims for negligent misrepresentation, intentional misrepresentation and fraud should be dismissed because they are not stated with particularly as required under Mass. R. Civ. P. 9(b), the Court finds that the complaint is adequate to survive a motion to dismiss. Although the allegations of fraud could be stated with more particularity, the complaint alleges that Defendants told Plaintiffs that they had to "wait three years after the date of the short sale in order to exercise their rights to purchase the property" and that Defendants represented to Plaintiffs that they had to make additional payments and sign an operating agreement to avoid eviction. The Court finds that the complaint puts Defendants on notice as to the bases of Plaintiffs' fraud and misrepresentation claims.

[1] Had this case come to the Court as a summary process case, there can be little question that the Court would have jurisdiction over counterclaims based on the same facts, much in the same way a defendant in a post-foreclosure summary process case can challenge title to residential property. This Court's jurisdiction should not depend on whether these claims were brought as affirmative claims or counterclaims.

Accordingly, for the foregoing reasons, Defendants' motion to dismiss is DENIED.

SO ORDERED this 14th day of May 2022.

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. 18-SP-4521

VITALY GLADYSH,
Plaintiff,
v.
JOSEPHUS GRANT, et al.,
Defendants.

BOND ORDER

After hearing on March 29, 2022, on the defendant's motion to waive the appeal bond, at which the plaintiff property owner appeared through counsel and the defendant former-mortgagor occupant appeared *pro se,* the following order shall enter:

1. The court determines that the defendant has non-frivolous defenses and that he is indigent.

2. In accordance with G.L. c.239, s.5 and s.6, the court shall therefore waive the appeal bond other than the periodic payments that shall become due each month pending appeal.[1]
3. The plaintiff is seeking $2,000 per month for use and occupancy, having presented a real estate broker's testimony that said sum is a reasonable fair market rental value.
4. The defendant argues that due to his financial hardship, living solely on monthly disability benefits, the court should not require him to pay more than $900 per month.
5. **Discussion**: Pursuant to G.L.c.239, s.5(e):

> 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 rent* which shall become due after the date of the waiver. (emphasis added) A court shall not require the person to make any other payments or deposits.

6. The statute provides for the exercise of discretion by the judge in setting use and occupancy payments and in exercising such discretion, the court should attempt to achieve a fair balancing of both parties' interests. *Bank of N.Y. Mellon v. King,* 485 Mass. 37, 51 (2020). While a similar balancing test is applied when determining a use and occupancy order pending trial [See, *Davis v. Comerford*, 483 Mass. 164 (2019)], *King* provides that where a former owner remains in possession post-foreclosure, the factors the court may consider include, "the fair rental value of the property, the merits of the defense, the amount per month on

[1] The landlord did not challenge the defendant's indigency nor the waiver of the bond, but as discussed herein focused his attention on the periodic payments due each month pending appeal.

the mortgage, the number of months that no money has been paid on the mortgage, the real estate taxes on the property, the expected duration of the litigation, and the respective financial conditions of the parties." 485 Mass. At 51.

7. In considering the respective financial conditions of the parties, the Supreme Judicial Court stated, "[w]hile courts seek to avoid creating a monetary barrier to an impecunious defendant with a potentially meritorious defense, a defendant who remains in possession after foreclosure is not entitled to remain on the property for nothing ,even if he or she is indigent and even if he or she has a nonfrivolous defense; such a defendant is neither paying his or her mortgage and property taxes, nor the fair rental value of the property, but he or she is continuing to receive the benefit of the property while the cost of the mortgage, real estate taxes, and the loss of fair rental value are being imposed on the plaintiff still seeking to recover possession, which is not the fair balancing of interest contemplated by the Legislature." *Id.* At 52.
8. Plaintiff's counsel reported that the property was purchased with cash and, as such, the plaintiff does not have mortgage payments. Plaintiff did not provide evidence, testimonial or otherwise, as to the costs of property taxes or any other *carrying costs.*
9. The plaintiff did provide the testimony of a local real estate broker whose opinion is that the fair rental value of the property supports the demand being made by the plaintiff of $2,000.
10. After *King,* the Appeals Court has heard several cases in which the financial hardship of the defendant was the basis for the court's denial of a higher monthly

rate being sought by the plaintiff when setting of the periodic payments in accordance with G.L. c.239, s.5. In *Duran v. Rivera*, No. 2021-J-0037, 2021 WL 3701800 (Mass. App. Ct. July 30, 2021) the court lowered the use and occupancy from the fair market rent value of $900 to $400. The judge in that case stated that [w]hile I am sympathetic to the plaintiff's position, including having to accept less than half of the fair market value for the premises for an indeterminate time while the defendant's appeal is decided…" [the periodic payments should not be set at the higher fair market value] "in light of the defendant's precarious financial position." In *21st Mortgage Corp. v.DeMustchine,* 100 Mass. App. Ct. 792 (2022), the court held in a review of a use and occupancy order issued pursuant to G.L. c.239, s.5, that the "determination of [the] appropriate amount of use and occupancy payments [is] to be made on 'case-by-case' basis, considering nonexclusive list of factors including circumstances calling for payment of less than full rental value of property, citing *Davis v. Comerford,* 483 Mass. 164 (2019).

11. Although factually diverse from the instant matter, these cases, along with the holding in *Bank of N.Y. Mellon v. King*, 485 Mass. 37, make it clear that the "financial condition" of the defendant is a factor for the court's consideration when establishing a periodic use and occupancy amount pursuant to G. L. c.239, s.5.
12. **Conclusion and Order:** Based on the defendant's financial condition of having a sole income from disability benefits[2] and given the lack of evidence of any actual

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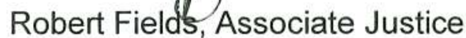
[2] The defendant filed a Financial Statement with the court that reports his income and expenses and their actual amounts.

carrying costs for the plaintiff, the court shall set the periodic payments at $900 and not at the fair market rent value of $2,000 asserted by the plaintiff.

13. **The defendant shall pay $900 each month beginning on June 1, 2022, for use and occupancy as periodic payments in accordance with G.L. c.239, s.5 pending appeal. Said payments shall be paid to the plaintiff's counsel.**

14. The defendant reported to the court that he is hopeful to being able to return to work as he recovers from his injuries. If his income changes from that which he reported in his Financial Statement filed on March 29, 2022, due to employment or for any other reasons, he is obligated to update his Financial Statement with the court and with plaintiff's counsel.[3]

So entered this 20th day of May, 2022.



Robert Fields, Associate Justice

Cc: Laura Fenn, Esq. (Assistant Clerk Magistrate in charge of Appeals)
Court Reporter

[3] There shall be a protective order placed on any subsequent Financial Statements that may be provided by the defendant to the plaintiff's counsel. The plaintiff and his counsel are barred from sharing, copying, cutting and pasting, or otherwise publishing in any manner the contents of said Financial Statements.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-434

JUDITH and DAN NEWBERRY,

Plaintiffs,

v.

STEPHEN FARR and MICHELLE FARIA,

Defendants.

ORDER

After hearing on May 17, 2022, at which the plaintiff landlord appeared with counsel and the tenants appeared *pro se*, the following order shall enter:

1. The parties stipulated to the landlord's claim for possession for no-fault and agree that the amount of outstanding use and occupancy through May 31, 2022, is $3,462.40.

2. The tenants are requesting time to secure alternate housing and in accordance with G.L. c.239, s.9 the court shall stay entry of judgment to afford the tenants time to relocate.
3. The tenants shall meet immediately following the hearing with Way Finders, Inc.to apply for rental funds. All parties shall cooperate with such efforts and the landlord shall also include the court costs with the ledger it supplies to Way Finders, Inc.
4. The tenants shall maintain a Housing Search Log and list each and every inquiry into alternate housing with the date, entity, address, contact information, and result. If any applications for housing are filed by the tenants, copies of same shall be kept by the tenants.
5. The tenants shall provide a copy of the Housing Search Log with the landlords' attorney and with the court by June 13, 2022.
6. This matter shall be scheduled for further review in accordance with G.L. c.239, s.9 on **June 16, 2022, at 11:00 a.m.** in-person at the Springfield Session.

So entered this 20th day of May, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-530

RIVER MILLS ASSISTED LIVING, LLC,

Plaintiff,

v.

ELIMINIA FALCON,

Defendant.

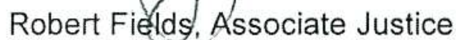
ORDER

After hearing on May 17, 2022, on review of this matter at which the landlord appeared through counsel and the defendant appeared *pro se*, and also at which the Guardian Ad Litem (G.A.L.) and a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. The G.A.L. gave his report on the record.
2. The landlord reported that there have not been any new problems arising out of the tenant's occupancy.

3. TPP reported that it has not yet been able to meet with the tenant or the GAL and landlord but was planning to meet with all directly after the hearing.
4. As a reasonable accommodation, a trial on the merits in this matter shall be continued as time is provided to allow the tenant to work with the GAL and TPP, follow their recommendations.
5. In the meantime, the tenant shall not cause any disturbances at the property and shall not [redacted].
6. If the landlord believes that the tenant has violated the preceding term above, it shall so inform the GAL and TPP immediately so that they may engage with the tenant and make additional recommendations and/or actions.
7. The landlord may also choose, after reaching out to the GAL and TPP, to file a motion for further relief. If it does so, it shall list each violation it alleges and include for each the date, time, name(s) of witness(es) and shall provide a copy of said motion to the GAL and TPP.
8. The GAL shall file his next report by no later than August 4, 2022.
9. This matter shall be scheduled for review on **August 9, 2022, at 2:00 p.m.** in-person at the Springfield Session.

So entered this 20th day of May, 2022.



Robert Fields, Associate Justice

Cc: [redacted]
[redacted]

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3496

LAMONTAGNE PROPERTY GROUP, LLC,

Plaintiff,

v.

KRISTY REIN and EDDIE FIGUEROA,

Defendants.

ORDER

After hearing on May 17, 2022, on the tenants' motion to reinstate the counterclaims from another case involving these same parties, at which the landlord appeared through counsel and the tenants appeared *pro se*, the following order shall enter:

1. The tenants' motion is to reinstate the counterclaims that were asserted in *Kristy Rein and Eddie Figueroa v. Lamontagne Property Group, LLC*, 21-CV-712. That case was commenced by the plaintiff (LaMontagne) as an eviction case against

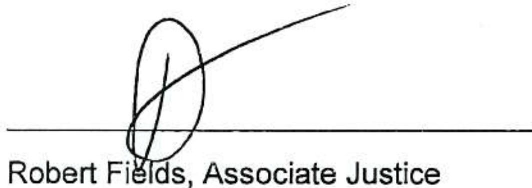
the defendants (Rein and Figueroa) Case No. 20-SP-1305. LaMontagne's claim for possession was dismissed due to a deficient notice to quit and the tenants' counterclaims were transferred to the Civil Docket into Kristy Rein and Eddie Figueroa v. LaMontagne Property Group, LLC, Case No. 21-CV-712.

2. Due to the tenants' failures to appear for case management conferences in that civil action, 21-CV-712, the case was dismissed by the Clerks' Office.
3. This instant action is the landlord's subsequent eviction case against the tenants and the tenants are asking that their counterclaims from the first eviction matter be reinstated in this case. Thus, the civil action would remain dismissed, but their claims would be reinstated herein.
4. The tenants testified credibly that they have had issues regarding receipt of their mail and suggest that this contributed to their not knowing to appear at the case management conferences in 21-CV-712.
5. Though the court can appreciate the prejudice to the landlord caused by the potential delay in adjudicating this matter, given that the counterclaims arise out of this tenancy and given the effect on possession that same may have in accordance with G.L. c.239, s.8A, the motion is allowed, and the claims asserted in the tenants' Answer with Counterclaims filed in 21-CV-712 shall be transferred from matter to this instant summary process action (21-SP-3496)[1].
6. The Clerks' Office is requested to consolidate the contents of 21-CV-712 into this instant file in 21-SP-3496.

[1] Because this is a no-fault eviction and the tenants' indicated that if the motion was not allowed they would be requesting additional time to relocate, there is the potential that this matter might require delay and further court appearance in accordance with G.L. c.239, s.9 even if the motion to reinstitute counterclaims was denied.

7. The additional issue raised at the hearing regarding the applicability of a Rental Agreement dated August 3, 2021, shall be heard further, after the benefit of discovery.
8. The parties shall have until June 3, 2022, to propound discovery upon one another and until June 20, 2022, to respond to same.
9. A Case Management Conference with the judge shall be scheduled for **June 24, 2022, at 3:00 p.m. by Zoom**. The court's Zoom Platform can be reached at Meeting ID: 161 638 3742 and Password: 1234.

So entered this 24th day of May, 2022.



Robert Fields, Associate Justice

Cc: Dianne Turner, Office Manager for Consolidation of Case Files
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-539

EDWIN ALVARADO,

Plaintiff,

v.

CANDICE SUTTON,

Defendant.

ORDER

After hearing on the defendant's motion to dismiss, at which the plaintiff appeared *pro se* and the defendant appeared with counsel, the following order shall enter:

1. **Background:** The parties in this case include Landlord Edwin Alvarado and Tenant Candice Sutton. Alvarado purchased the subject property on June 6, 2021. Alvarado sent Sutton a 30-day no-fault notice to quit on or about November 1, 2021. Sutton possesses a Section 8 voucher, administered

through the U.S. Department of Housing and Urban Development (HUD). Sutton filed a Motion to Dismiss based upon the fact that Sutton's participation in the Section 8 voucher program which can only be terminated based on just cause, as set forth in HUD's regulations.

2. At the hearing, Alvarado asserted that he was unaware of any Section 8 lease when he purchased the property. According to Alvarado, the parties did not have a written lease either. Alvarado further noted that he never received any payments from the Springfield Housing Authority. In response, Sutton's attorney explained that the property failed a Section 8 inspection on May 7, 2021. Because the property failed inspection, the payments have since been terminated until all conditions are repaired. No additional inspection has yet been scheduled.

3. **Discussion:** The Section 8 subsidy program is governed by 42 U.S.C. § 1437f (2012) and provides eligible low-income families with assistance to rent from private property owners. *Burbank Apartments Tenant Ass'n v. Kargman*, 474 Mass. 107, 108 n.4 (2016). A landlord must enter into a HAP contract with a public housing agency or authority to receive rent assistance payments for a tenant with a Section 8 voucher. *Scott Realty Group Trust v. Charland*, 98 Mass. App. Ct. 706, 707 (2020). The HAP contract terminates if: (1) the lease is terminated by the owner or tenant, (2) the PHA terminates the contract, or (3) the PHA terminates assistance. 24 C.F.R. § 982.309. Further, an owner cannot terminate the tenancy absent: (1) a serious violation of the terms and conditions of the lease, (2) a violation based on federal, state, or local law, (3) or for other

good cause. 24 C.F.R. § 982.310. An owner is in violation of the HAP contract if the owner breaches their duty to maintain the dwelling unit in accordance with the Housing Quality Standards. 24 C.F.R. § 982.453(1) (referring to standards set forth in 24 C.F.R. § 982.401).

4. The Housing Court has focused on the question of whether a purchaser of a rental property in which there is a Section 8 voucher tenant is subject the termination requirements of that program. For instance, in *EMC Mortgage Corp. v. Smith*, Boston Division No. 9504794 * 1-2, 9 (Jan. 4, 1996) (Winik, J.), a housing court found that the common law rule providing that tenancies automatically terminate upon foreclosure was not grounds for termination of a Section 8 lease. In that case, the defendant asserted that the plaintiff did not allege any good cause for the termination of the Section 8 lease under the Notice to Quit. Id. at 1-2. The court did not answer whether foreclosure sufficiently constituted "good cause," but emphasized that this question did not need to be answered because the plaintiff had not asserted any reason for its decision to terminate the defendant's tenancy. Id. at 16.

5. The pertinent aspect of *EMC Mortgage Corp.* that applies to this instant matter is how the court interpreted "owner" as provided in 42. U.S.C. § 1437(f). Id. 7-8. The court noted that the statute defines an "owner" to be "...any private person or entity...having the legal right to lease or sublease dwelling units." Id. citing (42. U.S.C. § 1437(f)(1)). The court interpreted this provision to suggest that the word "owner" "is not restricted to those persons who owned the premises at the time the HAP contract and lease were executed." Id. at 7. The court further noted that

it would be reasonable to assume that Congress did not intend to exclude individuals who acquired title to residential property after the creation of Section 8 tenancy from the definition of "owner." Id. Further, the court noted that "[t]he Section 8 statute does not provide for the automatic termination of a Section 8 tenancy or for the automatic termination of the owner's HAP contract upon the conveyance or transfer of the premises." Id.

6. While the court in *EMC Mortgage* explained that the HAP contract does not terminate when the ownership of the property changes, the court noted that an owner can terminate the contract if they desire. However, the court specifically emphasized that a new owner must terminate the tenancy solely through the procedures established in the pertinent statutes and regulations. Because the plaintiff did not follow the procedures stated in the law, the plaintiff had to end the tenancy based on "good cause." Id. at 14-15. Ultimately, the court found that "[a]pplication of the state common law foreclosure rule would effectively deprive Section 8 tenants of these specific notice and termination protections that Congress determined were necessary to accomplish the full purposes and objectives of the Section 8 Existing Housing Program." Id. at 18-19.
7. While *EMC Mortgage Corp.* involves a foreclosure proceeding, the statute and policy justifications underpinning the decision suggest that the holding should be applicable to situations involving general transfer of ownership to a new owner. As mentioned, a lease may only be terminated for serious violations of the lease, violations of federal, state or local laws, and for other good cause. The federal regulations define "other good cause" as the tenant's failure to accept a new

lease or changes to the lease, a history of disturbances or damage to the property, the owner's desire to use the unit for personal or family use or for another use other than as a residential rental unit, or for a business or economic reason for termination. 24 C.F.R. § 982.310 (d). It is also important to note that the owner may not terminate the tenancy for good cause during the initial one-year lease term unless the owner is "terminating the tenancy because of something the family did or failed to do." 24 C.F.R. § 982.310 (d)(2). The owner must then comply with the notice provisions, as *EMC Mortgage Corp.* emphasized in the foreclosure context, which requires that the owner give written notice to the tenant regarding the grounds for termination and provide a notice to quit to the tenant and the PHA. 24 C.F.R. § 982.310 (e).

8. In the case at hand, Alvarado could otherwise claim that he is rightfully terminating the tenancy for good cause because he has indicated at the hearing that he will be using the unit for "family use." However, Alvarado failed to meet the notice requirements as the grounds for termination were not specified in the termination notice. Additionally, even if the grounds for termination were specified, then Alvarado would still have had to supply the PHA with a copy of said notice and he did not do so.

9. There are additional Housing Court cases that support the notion that a new owner is subject to a Section 8 lease. In *Waldhole v. Wilshire Credit Corp.*, Boston Division Housing Court No. 09H84CV000162 at *3 (Jan. 8, 2010) (Muirhead, J.), the court denied the foreclosing entity's motion to dismiss which was predicated on the fact that there was no landlord-tenant relationship

between it and the plaintiffs. The rent in that case was subsidized by a Section 8 housing choice voucher. Id. The court denied the motion to dismiss based on the fact that:

> "[t]he rights and obligations of property owners under the Section 8 program are governed by federal law, 42 U.S.C., 1437f, which does not provide for the automatic termination of the tenancy or for the automatic termination of the owner's HAP contract upon the conveyance or transfer of the premise (whether it be voluntarily or pursuant to a power of sale contained in a mortgage)." Id at 5.

10. The court further emphasized in *Waldhole,* that a new owner may only terminate the Section 8 contract and lease based on the procedures set forth in the pertinent federal statute and regulations. Id. citing 24 C.F.R. 892.455. Thus, the Section 8 lease survived, and the case stands for the proposition that the transfer of ownership does not automatically terminate a Section 8 lease. Id. at 6.
11. Additionally, in *White v. James*, Boston Division Housing Court No. 16H84SP003095 at *1 (Oct. 17, 2016) (Muirhead, J.), the court found for the defendant tenant on their claim that the tenancy was not properly terminated. In that case, the defendant participated in the Section 8 housing choice voucher program and was occupying the property pursuant to a written "Model Lease." Id. at 2. The term of the lease initially lasted for a year, but thereafter continued month-to-month. Id. Thus, the termination of the defendant's tenancy had to comply with the provisions of the Model Lease. Id. The court asserted that the new owner was subject to the requirements set forth in the Model Lease because the term "owner" as provided in the Section 8 statute includes "any private person...having the legal right to lease or sublease dwelling units." Therefore, the

court emphasized that the plaintiff (the new owner) and the former owner had to comply with the Model Lease. Id. Because the plaintiff did not comply with the notice requirements as set forth in the Model Lease, the court found for the defendant regarding possession. Id. Thus, illustrating that a new owner must abide by the Section 8 lease in place.

12. In *Alexopoulos v. Maloney*, Hampden Division Housing Court No. SP1825-S87 at *1 (Mar. 18, 1987) (Abrashkin, J.), the court dismissed the case because the pertinent notice to quit did not meet the requirements for Section 8 leases. The court in that case stated that "properties are frequently sold subject to residential tenancies" and that "[a] good faith desire on the part of the new owner to occupy the unit for personal or family use would be such a reason [to terminate the tenancy], provided that it is sufficiently alleged and proved." Id. The court iterated that this standard for asserting good cause is not an "overly restrictive standard" and that there is a need to "protect the stability of Section 8 tenancies." Thus, the court in *Alexopoulos* is found that a new owner is subject to a Section 8 lease the need to protect Section 8 tenancies is well-founded when the property is purchased by a new landlord. Id.

13. Other courts have also emphasized the necessity of complying with notice provisions if an owner intends to terminate a Section 8 lease. In *Dejan v. Storms*, Boston Division Housing Court No. 12H84SP0001030 at *2 (Apr. 13, 2012) (Winik, J.), the court addressed the required form of notice needed to terminate a Section 8 lease. In this case, the plaintiff sent the defendant a notice to quit alleging that the new owner was going to occupy the unit. Id. The tenant was a

participant in the Section 8 housing choice voucher program, and the tenancy was subject to a Section 8 Model Lease that converted the tenancy to a month-to-month tenancy. Id. This Section 8 lease contained the specific required language for termination set forth by HUD regulations. Based on HUD's regulations and the terms of the lease, the court emphasized that the plaintiff had to provide the defendant with a written notice that included "1) at least 30 days advance notice, 2) that her tenancy is being terminated, 3) at the end of the month, 4) for a specific reason (that constitutes 'other good cause')." Id. at 3. Ultimately, the court granted the defendant's motion for summary judgment because the plaintiff failed to comply with the required notice provisions. Id. at 4.

14. **Conclusion and Order:** Based on the foregoing, the requirements of the Section 8 voucher program survived the transfer of ownership of the property and the plaintiff landlord has failed to terminate the tenancy in compliance with such requirements. Accordingly, the defendant's motion to dismiss is allowed and the landlord's claim for possession is dismissed without prejudice.

15. The defendant's counterclaims shall be severed and transferred to the Civil Docket in a new case entitled, *Candice Sutton v. Edwin Alvarado* and the Clerks Office shall schedule a Case Management Conference in the new case.

So entered this 25 day of May, 2022.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3246

TWOMARKS NOMINEE REALTY TRUST,

Plaintiff,

v.

RICHARD ROTHENBERG,

Defendant.

ORDER

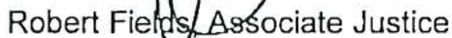
After hearing on May 24, 2022, on the plaintiff's motion at which the plaintiff appeared through counsel and the defendant appeared *pro se*, the following order shall enter:

1. The plaintiff explained to the court that the levy on the execution for possession is scheduled for later in the day of this hearing, on May 24, 2022.
2. By motion the plaintiff is seeking leave to technically levy on the premises this day but without removing items to a storage facility and allow the defendant

several additional days to remove his personal belongings and then at 3:00 p.m. on May 27, 2022, the defendant will be deemed a trespasser and any items remaining at the premises shall be deemed abandoned.

3. The motion was denied for the reasons stated on the record and so as to not disturb the clarity of G.L. c.239, s.3 and its functionality.
4. The statute provides clear guidance to sheriffs and constables and even police departments, who would lack clarity of how to enforce the terms of such an agreement. This judge is doubtful that sheriffs or constables would enforce a lock change on May 27, 2022, nor escort the defendant out of the premises at that time. It is also doubtful that the police department would treat the defendant as a trespasser from a home he has lived in for more than two decades.
5. Accordingly, the motion is denied.

So entered this 25th day of May, 2022.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0097

PETER ALDRICH,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER
	)	
WALESKA ORTIZ AND CHRIS RODRIGUEZ,[1]	)	
	)	
DEFENDANTS	)	

This summary process case for non-payment of rent came before the Court on April 12, 2022 for a bench trial. Plaintiff was represented by counsel. Defendants (the "tenants") appeared self-represented. The tenants served Plaintiff with an undated answer and counterclaim, but the answer was never filed with the Court. In order to file the answer at this time, the tenants would need leave of Court, which has never been sought. Nonetheless, Plaintiff's counsel acknowledged receipt of the answer and said he was prepared to defend the counterclaims. In order to allow the self-represented tenants an opportunity to present their counterclaims in one trial, thereby benefitting from the provisions of G.L. c. 239, § 8A, the Court allowed them to testify regarding the allegedly defective conditions in the subject premises.

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

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[1] At trial, Defendant Ortiz stated that Mr. Rodriguez's first name is Chris, not Christopher.

Plaintiff, in his capacity as trustee of a trust, owns a residential property located at 79 Franklin Street, Westfield, Massachusetts. Chase Management Service, Inc. (the "landlord") manages the property. The tenants have resided in unit 1 (the "Premises") since 2019 and continue in possession today. The Premises is partially below grade. Monthly rent is $925.00 as of the trial date. The tenants fell behind in their rent in July 2021. The landlord served the tenants with a notice to quit dated November 17, 2021. The Court finds the notice to be legally sufficient and the tenants acknowledge receipt. No payments have been tendered by the tenants since receipt of the notice to quit, and the current balance of rent owed through trial is $7,399.15 (which includes deductions for annual interest on the tenants' security deposit). With court costs of $240.00, the total due the landlord through trial is $7,639.15.

The tenants claim they began withholding rent beginning in July 2021 due to the presence of a mold-like substance in the Premises.[2] Ms. Ortiz claims that she notified Plaintiff of the issue by email on June 11, 2021. The landlord entered the unit on June 24, 2021 to address the issue. The landlord took humidity measurements and checked for leaks or other sources of significant moisture. When the humidity issues continued to produce a mold-like substance after the landlord's visit, the landlord placed a dehumidifier in the Premises on or about August 23, 2021. Approximately one week later, after noting that the humidity level had dropped significantly into the "normal" range, the landlord removed the dehumidifier.

The Westfield Board of Health inspector inspected the Premises in mid-September 2021. He testified at trial that he found the unit "stuffy" and humid and noted that all of the windows

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[2] The tenants did not establish that the substance in question was harmful mold. They did not call an expert witness or attempt to introduce any test results identifying the substances found in the Premises.

were closed. He found no source of chronic dampness (such as plumbing leaks) and did not cite the landlord for any violations of the State Sanitary Code. The inspector suggested to Ms. Ortiz that, because the unit is partially below grade, and because it had been a very humid summer, she should run the air conditioning on hot and humid days and leave windows open on dry days for air flow. He recommended that the carpet be removed because it was a subgrade living space but did not require it.

The evidence supports Ms. Ortiz's testimony that a mold-like substance appeared throughout her apartment in and around June 2021, including on ceilings, furniture, carpets and clothing. The evidence points to the tenants themselves being the primary source of the problem, however.[3] Ms. Ortiz candidly admitted that she and Mr. Rodriguez always keep the bathroom door closed, even after showering, in order to prevent their small children from entering unsupervised. This would explain mold-like growth on the bathroom ceilings and walls. As for the furniture and carpets, Ms. Ortiz testified that she used a steam-cleaner on her carpets once per week in the early part of 2021, which is most likely the cause of the excessive humidity in the Premises. The health inspector found no source of chronic dampness and did not cite the landlord for any violations of the sanitary code. The evidence compels the Court to find that the growth of the mold-like substance in the Premises is not the fault of the landlord.[4]

When the landlord provided a dehumidifier on August 23, 2021, it removed much of the humidity from the air and brought the humidity levels into the "normal" range. Given that the

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[3] The evidence shows that Defendants moved into the Premises in 2019 but did not complain about the mold-like substance until 2021, which is around the same time Ms. Ortiz began weekly steam-cleaning of the carpets. If the humidity was a permanent characteristic of the Premises, it is fair to infer that she would have noticed the issue prior to 2021.

[4] Because the tenants were the cause of the excessive humidity, the Court finds no basis for an abatement of rent under the theory of breach of the implied warranty of habitability.

tenant continued to experience high humidity, as evidenced by her contacting the Board of Health in September 2021, it is not clear why the landlord did not leave the dehumidifier in place to ensure that the below-grade Premises would not become overly humid. Nonetheless, the tenants purchased their own dehumidifier at a cost of $264.56. Ms. Ortiz testified that the dehumidifier she purchased improved the humidity levels in the Premises.[5]

The evidence establishes that the landlord took reasonable steps to remedy the high humidity levels in the Premises. It sent its maintenance employees to the Premises promptly upon notice of the problem and thoroughly inspected for chronic sources of dampness. It provided a dehumidifier for a period of time. Accordingly, the landlord is not liable for damages, including without limitation the $3,000.00 of property damages claimed by the tenants (which was not properly documented in any event).

Although it will not mandate that the landlord remove the carpeting in the Premises, such action is strongly recommended. Given that the Premises are partially below grade, Plaintiff has it within his control to reduce the likelihood of an on-going issue with mold-like substances growing in the Premises. Furthermore, because the tenants acted in good faith in withholding rent in June 2021 thinking that the mold-like substances and resulting damages were the fault of the landlord, the Court will give the tenants an opportunity to cure the rental arrears by applying for rental assistance from Way Finders or another agency. Given the foregoing, and in light of the governing law, the Court enters the following order:

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[5] Given that the landlord could have left the dehumidifier in place for a longer time period, the Court considered requiring the landlord to reimburse the tenants for the dehumidifier they purchased. However, given that the humidity was caused by the tenants, the landlord's failure to provide a dehumidifier is not evidence of negligence (which is required to find liability under G.L. c. 186, § 14) and the Court chooses not to require reimbursement.

1. Plaintiff is entitled to judgment in the amount of $7,399.15, plus court costs of $240.00 and interest. Judgment will enter nunc pro tunc (retroactively) to the date this order is entered on the Court docket if Defendants do not provide the landlord or its counsel evidence of a pending application for rental assistance within ten (10) days of receipt of this order.
2. If an application for rental assistance is filed within the ten-day period, judgment will not enter until the application is either approved or denied. Plaintiff shall include court costs and any amounts due for use and occupancy accruing since trial on the ledger it provides to the rental assistance agency.
3. If the landlord or counsel is not provided evidence of a pending application with the ten-day period, or if an application is filed and then denied, Plaintiff may file and serve a motion to issue the execution.
4. If an application for rental assistance is approved but a balance of rental arrears exists thereafter, the tenants shall have ten (10) days to pay any balance.

SO ORDERED.

DATE: 5.26.22

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

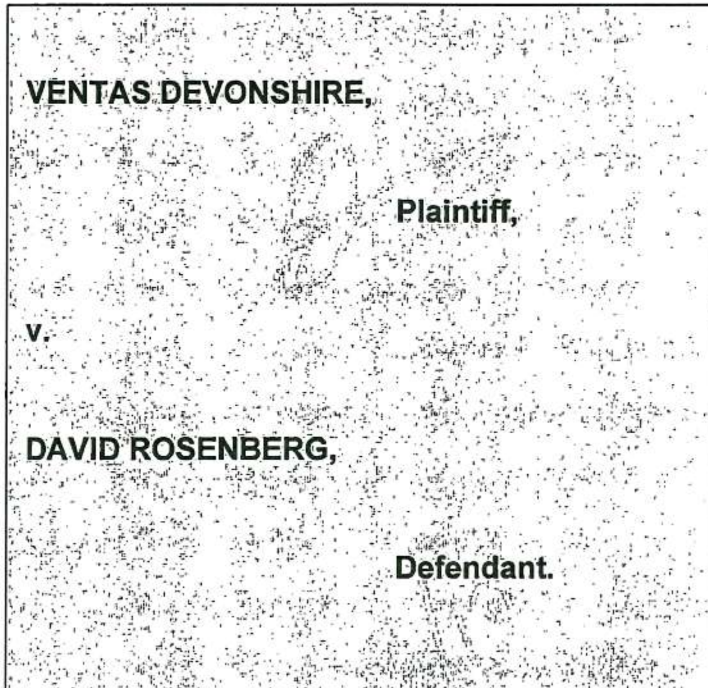
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1198



VENTAS DEVONSHIRE,

Plaintiff,

v.

DAVID ROSENBERG,

Defendant.

ORDER

After hearing on May 25, 2022, on the defendant's motion for late filing of his Answer and Discover Demand, at which both parties appeared through counsel, the following order shall enter:

1. The plaintiff does not oppose the late filling of the Answer and Discovery Demand but opposes the Jury Demand as being untimely[1].

[1] The filing of the Answer and Discovery, with Jury Demand, was served timely but it was learned by the defendant's counsel after its filing due date that something malfunctioned regarding the e-filing of the pleadings and today's motion was for the court to deem said pleadings to be timely filed. As noted herein, the plaintiff is not opposing the timing of the filings of the pleadings but argues that the Jury Demand was due beforehand, at the time of the Notice of Transfer filing.

2. The Jury Demand was made as part of the Answer filed by the defendant. The plaintiff argues that the Jury Demand was due at the time of filing the Transfer Request from District Court to Housing Court, filed on March 14, 2022, per Rule 4 of the Uniform Summary Process Rules.

3. Rule 4 **Transfer** states in pertinent part, "A demand for jury trial, if any, pursuant to Rule 8 of these rules, shall be made with the request for transfer." Rule 8 **Jury Trial** states:

4. The provisions of Mass.R.Civ.P. 38 [**Jury Trial of Right**] shall apply insofar as jury trial is available in the court where the action is pending provided that:

   (1) In cases commenced in a court where jury trial is available, a demand for jury trial shall be filed with the court no later than the date on which the defendant's answer is due;

   (2) In cases transferred from a court in which jury trial is not available to one in which jury trial is available, such demand shall be filed with the transfer form pursuant to Rule 4 of these rules.

5. Given that jury trials are available in summary process matters in District Court, Rule 8 (1) above applies, and the jury demand is due at the time of filing the Answer. Pursuant to the current Standing Order of the Housing Court (6-20), the Answer is due three days prior to the Tier 1 event.

6. Accordingly, the Jury Demand is timely as being filed with the Answer and the defendant's motion for late filing of his Answer, Discovery Demand, and Jury Demand is allowed.

7. The Clerks Office shall schedule a Case Management Conference in this matter on a Jury Trial track.

So entered this 26 day of May, 2022.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Paul Schack, Esq., LAR Counsel
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

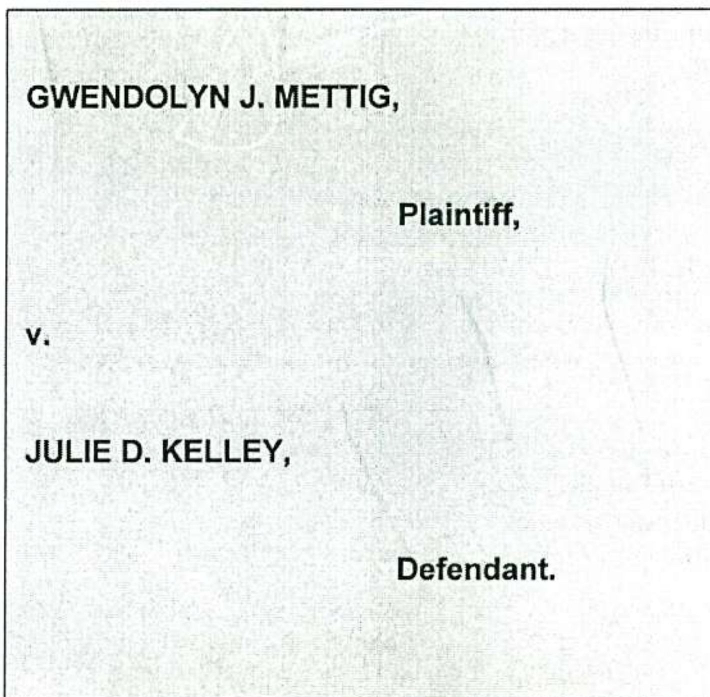
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-356



GWENDOLYN J. METTIG,

Plaintiff,

v.

JULIE D. KELLEY,

Defendant.

ORDER

After hearing on May 25, 2022, on the plaintiff's motion for an order requiring the return of her personal belongings from the defendant, at which the plaintiff appeared with counsel and the defendant appeared *pro se*, the following order shall enter:

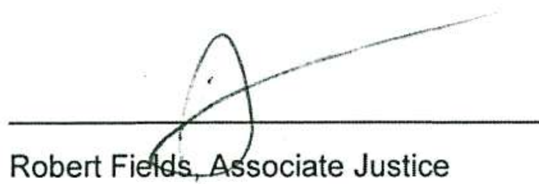
1. The plaintiff is seeking the return of several of her personal items including two (2) air-conditioners, two (2) deck boxes, and one (1) bin of clothes and towels.
2. The defendant explained that she does not have the bind of clothes and towels and believes that it was part of the move that occurred in May 2021. She does

have the other items and believes that they are either hers or part of the marital assets subject to the divorce proceedings between her and the plaintiff's son, Shawn G. Kelley. She further explained that said items are the subject of an upcoming hearing in that divorce matter, *Julie D. Kelley v. Shawn G. Kelley,* Hampshire Probate and Family Court, Docket No. HS21D0090DR.

3. Given that those items are the subject of the proceedings in another court and given that the Probate Court is in a better position to adjudicate whether or not these items are marital assets and make a ruling on their distribution, these proceedings shall be stayed until the Probate and Family Court makes a final adjudication on same.
4. In the meantime, Ms. Kelley shall return any items that are personally owned by Ms. Mettig that she has in her possession or control or become in her possession or control.
5. Ms. Kelley has agreed to provide one of the air-conditioners to Ms. Mettig immediately for Ms. Mettig's use. In doing so Ms. Kelley is not relinquishing any ownership of same nor waiving her rights to assert that the air-conditioner belongs to her and not Ms. Mettig.
6. Ms. Mettig shall not damage, sell, loan, give away, hide, or destroy said air-conditioner and shall return same to Ms. Kelley if it is determined by the Probate and Family Court to be property of Ms. Kelley.
7. The parties arranged for Attorney Harris, Ms. Mettig's attorney, to retrieve the air-conditioner from Ms. Kelly this Friday, May 27, 2022, at 5:00 p.m. from the end of

Ms. Kelley's driveway. Ms. Kelley and Attorney Harris may also make other mutually acceptable arrangements for the hand-off of the air-conditioner unit.

So entered this 31st day of May, 2022.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3433

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

LUZ CARDENAS,

Defendant.

ORDER

After hearing on May 23, 2022, on her motion to remove the default judgment and to stop a physical eviction, at which the plaintiff appeared through counsel and the defendant appeared with Lawyer for the Day Counsel, the following order shall enter:

1. The parties reported that the tenant has already paid all rental arrearage through April 2022 totaling $1,568 and now owes rent for May 2022, plus court costs of $199.25.

2. Additionally, the tenant is applying to Way Finders, Inc. for May 2022 rent of $779, for court costs of $199.25, and for the $600 costs associated with the cancellation of the physical eviction.
3. The currently scheduled physical eviction for May 25, 2022, shall be cancelled by the landlord.
4. The default judgment shall be vacated based on the averment that the tenant was overwhelmed by these proceedings and did not participate because she did not understand how to by Zoom in addition to the current state of the law relative to Chapter 257 of the Acts of 2020 and that she is potentially eligible for funds from Way Finders, Inc. and is currently applying for same.
5. The Lawyer for the Day agreed to meet with the tenant and with Way Finders, Inc. in a breakout room directly after the hearing regarding her application for funds described above.
6. This matter shall be scheduled by the Clerks Office for another Tier 1 event. Hopefully, even before the next Tier 1 event, Way Finders, Inc. will have paid the outstanding balance and the matter will be dismissed.

So entered this 31st day of May, 2022.

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Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate (for scheduling of a Tier 1 event)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3384

DIEGO BONILLA,	)	
	)	
PLAINTIFF	)	
	)	FINDINGS OF FACT, RULINGS
v.	)	OF LAW AND ORDER
	)	
JASMINETTE DIAZ,	)	
	)	
DEFENDANT	)	

This no-fault summary process action came before the Court for a bench trial held over four days: February 23, 2022, March 9, 2022, March 22, 2022 and April 6, 2022. Plaintiff Diego Bonilla ("Mr. Bonilla") seeks to recover possession of 184 Northampton Ave., 2d Floor, Springfield, Massachusetts (the "Premises") from his tenant, Defendant Jasminette Diaz ("Ms. Diaz"). Both parties were represented by counsel.

The parties stipulated to Plaintiff's prima facie case for possession; namely, Mr. Bonilla's ownership of the Premises, Ms. Diaz's receipt of a legally sufficient notice to quit dated July 26, 2021, Ms. Diaz's failure to vacate at the expiration of the notice period, and Mr. Bonilla's timely service and filing of a summary process summons and complaint. The parties' agree that no rent has been paid by Ms. Diaz since her last payment in July 2021. Mr. Bonilla asked for only $858.00 in his complaint and did not ask for use and occupancy accruing after the commencement of this action. The Court, however, finds that $10,350.00 is due up to the last day of trial on April 6, 2022. See *Davis v. Comerford*, 483 Mass. 164, 171 (2019) (a "court should include all rent that has become due up to the time of the hearing if the tenant is still in

possession").

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

Mr. Bonilla purchased the two-family house containing the Premises in late 2018. He had never before been a landlord. His then-girlfriend and now-wife, Marta Pinero ("Ms. Pinero"), managed the property on his behalf. Almost all of Ms. Diaz's communications regarding her tenancy were with Ms. Pinero. For purposes of this decision, when not identified specifically by name, Mr. Bonilla and Ms. Pinero together will be referred to as the "landlord."

Ms. Diaz has a mobile Section 8 voucher administered by the Springfield Housing Authority. At the time Ms. Diaz moved into the Premises, pursuant to the HAP contract dated March 1, 2019, the contract rent was $1,195.00 and the owner was responsible for the electricity. Ms. Diaz's share of the rent was $230.00. A request for tenancy approval commencing on March 1, 2020 was submitted, indicating a negotiated rent of $1,150.00 and the electricity became the responsibility of the tenant. Although neither party offered evidence of written approval of the changes, Matthew Rogers, a program manager at Springfield Housing Authority testified that the changes in the terms of the tenancy were approved effective as of March 1, 2020.[1]

At trial, Ms. Diaz raised several affirmative defenses and counterclaims.[2] The Court will address each separately.

Billing for Electricity

It is undisputed that from March 1, 2019 through February 28, 2020, Mr. Bonilla was

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[1] The witness actually testified that the effective date was March 1, 2021 without objection, but the context and the totality of circumstances over the course of the trial leads the Court to find the effective date was in fact March 1, 2020 as referenced in the request for tenancy approval.

[2] The answer seeks dismissal based on a defective notice to quit, but the Court considers the defense waived as Defendant stipulated to Plaintiff's prima facie case.

responsible for electricity charges pursuant to the HAP contract. Nonetheless, Ms. Pinero demanded reimbursement for all electricity charges from Ms. Diaz. In his answer to Defendant's counterclaims, Plaintiff writes that "Mr. Bonilla, and through his agent, his wife, Martha Pinero admits that although the electricity was his responsibility, in order to accommodate Ms. Diaz as the tenant, he asked her to pay for electricity when the electrical bill became prohibitive. She was conducting business as a hair salon in the apartment. An arrangement was made that Ms. Diaz would be responsible for her electric bill although it remained in Mr. Bonilla's name. Mr. Bonilla agreed to pay Ms. Diaz $100.00 per bill." Such an arrangement is contrary to law; the State Sanitary Code requires the owner to provide electricity unless a "written letting agreement provides for payment by the occupant." See 410 C.M.R. § 354(A).

The evidence shows that Ms. Pinero sent Ms. Diaz screen shots of the electric bills and demanded payment. Regardless of whether the electric bill was unusually high because Ms. Diaz was performing salon services in the unit or if she was forced to use space heaters due to inadequate heat in the Premises, the contract between the parties placed the burden of paying for electricity on Mr. Bonilla. Mr. Bonilla had serval legal options if he believed Ms. Diaz was using excessive amounts of electricity, but he did not have the right to threaten to shut off the electricity unless Ms. Diaz paid him. The evidence shows that Ms. Diaz paid several invoices, including payments of $387.50, $414.95, $247.13, $1,044.73 and $464.73 that were Mr. Bonilla's responsibility.[3] Based on the forgoing, the Court determines that she paid $2,559.04 for electricity despite a written agreement for the landlord to pay electric bills.

The landlord's threats to shut off the electricity if Ms. Diaz did not pay for the electricity

[3] Ms. Diaz claims she paid $3,139.49 during the first year of her tenancy, but the evidence seems to show that she might be double-counting certain months. This may have occurred because she paid certain invoices that include past unpaid amounts. The payments listed in the body of the order are the only payments the Court definitively finds were made by Ms. Diaz based on the evidence at trial.

constitutes a serious interference with Ms. Diaz's tenancy, entitled her to actual damages or three months' rent, whichever results in a larger award. See G.L. c. 186, § 14. Here, Ms. Pinero's actual damages of $2,559.04 are less than three months' rent of $3,585.00 (using the rate of $1,195.00 in effect during the first year of the tenancy when the electricity issue arose); thus, the Court will award statutory damages for this violation in the amount of three times the monthly rent; namely, $3,585.00, plus reasonable attorneys' fees.

Squirrel infestation

The evidence establishes that Ms. Diaz was repeatedly awakened from sleep due to loud animal noises within walls or the attic of the house. She sent numerous notices to Ms. Pinero, including multiple complaints in writing from March 2019 through January 2020. Ms. Pinero sent at least two contractors to repair holes in the building envelope that allowed access and had Ms. Diaz accompany her outside to see the work that was done, and she cut down trees that could have contributed to the problem. Nevertheless, despite the landlord's efforts, the animal noises persisted and substantially interfered with Ms. Diaz's tenancy for an extended period of time.[4]

Because the animal intrusion constitutes a condition of disrepair, the landlord violated the implied warranty of habitability implicit in every residential tenancy. See *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). Ms. Diaz is entitled to an abatement of rent for the period of time in question. Although Defendant testified that the noises continued through the date of trial, the evidence shows consistent complaints only from March 2019 through November 2019.[5] The Court finds that the

[4] To the extent there were other conditions of disrepair in the Premises, any recovery would be duplicative of the award with respect to this claim.

[5] The evidence shows another complaint about animal noises in July 2021.The Court infers from the absence of complaints from November 2019 through July 2021 that the issue was substantially addressed by November 2019.

fair rental value of the Premises was reduced by 15% over this nine month period in the amount of $1,613.25.

Given the significance of the animal noises (as demonstrated by an audio recording) and the repeated complaints about the issue over many months, the Court concludes that the disturbances also constitute a substantial interference with Ms. Diaz's quiet enjoyment, entitling Ms. Diaz to statutory damages equal to three months' rent. See G.L. c. 186, § 14. Because the period of interference occurred during the first year of tenancy[6] when rent was $1,195.00, statutory damages are $3,585.00, plus reasonable attorneys' fees. A party may not recover multiple awards of damages for the same injury based on different theories of recovery -- such awards are said to be cumulative or duplicative. *Clark v Leisure Woods Estates*, LLC, 89 Mass. 87, 91 (2016). Accordingly, as to the infestation, Ms. Diaz will be entitled to recover damages under the legal theory that results in the greater amount, which here is $3,585 for breach of the covenant of quiet enjoyment. Because the violation of G.L. c. 186, § 14 arising from the infestation is unrelated to the facts giving rise to the violation of G.L. c. 186, § 14 arising from improper utility charges, Ms. Diaz is entitled to two separate awards for breach of quiet enjoyment.

Security Deposit

Ms. Diaz claims she paid $3,500.00 at the outset of the tenancy for first and last months' rent and a security deposit. She testified that she received a receipt for only $1,400.00 but that she didn't really look at it at the time and did not notice that the receipt was for a sum less than she paid. The Court finds her testimony on this issue not to be credible and concludes that Ms.

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[6] Liability for interference with quiet enjoyment requires some degree of negligence. The Court determines that the landlord's failure to remedy the squirrel noises over a 9-month period constitutes negligence, even though the landlord did take steps to remedy the problem.

Diaz did not in fact pay $3,500.00 at the outset of the tenancy.[7]

Likewise, the Court finds Ms. Pinero's testimony that Ms. Diaz never paid a security deposit not to be not credible. Ms. Pinero testified that she prepared a $1,400.00 receipt in advance of Ms. Diaz's arrival and crumpled it up when Ms. Diaz paid only $200.00. Given the frequency of the messages that Ms. Pinero sent Ms. Diaz when electricity charges or rent were not paid, the Court does not believe that Ms. Pinero would have remained silent about a missing security deposit if one had not been paid.[8]

The Court concludes that the receipt provided to Ms. Diaz is the best evidence of what was actually paid at the time. The receipt indicates that Ms. Diaz paid $1,400.00 for "security deposit + rent," which is consistent with Ms. Pinero's testimony that Ms. Diaz paid only $200.00 for rent at the outset of the tenancy. Accordingly, the Court finds that Ms. Diaz did pay a security deposit of $1,195.00 at the outset of the tenancy.[9] The landlord provided no evidence of compliance with G.L. c. 186, § 15B, such as providing a receipt with the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit. Accordingly, Mr. Bonilla is liable for three times the security deposit, or $3,585.00, plus reasonable attorneys' fees and interest at 5% per year in the amount of $188.35.

Unfair and Deceptive Practices

Pursuant to 940 C.M.R. 3.17(6)(a), a landlord may not impose a penalty for late payment of rent unless such payment is 30 days overdue; here, there are texts (such as from April 10,

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[7] Accordingly, the Court finds that Defendant did not pay a last month's rent deposit and, therefore, Plaintiff's claim for interest on the deposit must fail.

[8] The Court notes that when Plaintiff sought to adjust the HAP contract to have the electricity become the tenant's obligation, he indicated that Defendant had paid a security deposit of $1,200.00, which supports the Court's finding that such a deposit was in fact made at the outset of the tenancy and that this deposit, in addition to the $200.00 to be applied to rent, constitutes the $1,400.00 reflected on the receipt.

[9] The Court acknowledges that the landlord may have considered the security deposit to be $1,200.00 instead of $1,195.00, but the difference is inconsequential.

2021) in which Ms. Pinero unilaterally imposed a late payment penalty of $50.00 for any rent paid after the 5th of the month. Because there is no evidence that the late fees were ever paid, however, Ms. Diaz is entitled to only nominal damages in the amount of $25.00.

Retaliation

In a no fault case, a tenant is entitled to a defense to possession under G.L. c. 239, § 2A and may recover damages under G.L. c. 186, § 18 if the landlord's act of commencing a summary process action or serving the tenant with a notice of termination was in retaliation for, among other things, making a written complaint to the landlord of a violation or suspected violation of a health code. *Manzaro v. McCann*, 401 Mass. 880 (1988). The sending of a notice to quit within six months after the tenant has engaged in such protected activity creates a rebuttable presumption that the termination notice was served as an act of reprisal against the tenant for engaging in such protected activity. The burden then shifts to the landlord to rebut the presumption of retaliation by presenting clear and convincing evidence that such actions were not taken in reprisal for the tenant's protected activities, that the landlord had sufficient independent justification for taking such action, and that the landlord would have taken such action in any event, even if the tenant had not taken the actions protected by the statute. *Jablonski*, 60 Mass. App. Ct. at 477.[10]

In this case, the notice to quit was dated July 26, 2021. Ms. Diaz points out that this notice was dated less than a week after a Facebook message from Ms. Diaz to the landlord that the noisy animals in the walls or attic remained a problem. The Court finds that Ms. Diaz's complaints at least contributed to the landlord's decision to terminate the tenancy. Based on a

[10]"Clear and convincing" proof means evidence which "induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." *Callahan v. Westinghouse Broadcasting Co., Inc.*, 372 Mass. 582 (1977).

lengthy message written by Ms. Diaz in early July 2019 and read into the record, apparently in response to Ms. Pinero's angry reaction to a phone call from Ms. Diaz, Ms. Diaz apologized profusely for causing Ms. Pinero to be upset, stating "I called you about animals but you didn't allow me to tell you about other things on the property that need attention," and "I won't have a party in backyard [and] I won't make any more complaints." The Court infers from Ms. Diaz's text that she made Ms. Pinero upset by complaining about the animals (among other reasons).

Moreover, in the notice terminating Ms. Diaz's tenancy and in the complaint, Mr. Bonilla writes that he wanted the Premises empty for a family member. During trial, however, he provided no testimony or evidence relating a family member moving into the Premises. Accordingly, given that a presumption of retaliation arises given the timing of the notice to quit, the Court finds that Mr. Bonilla did not rebut the presumption of retaliation with clear and convincing evidence of an independent basis for termination.

With respect to damages for a violation of G.L. c. 186, § 18,[11] the law provides for the greater of actual and consequential damages and statutory damages equal to one to three months' rent, costs, and reasonable attorneys' fees. Here, the Court finds that the complaints about animal noises was but one of a number of factors that lead the landlord to terminate the tenancy. It appears to the Court that the breakdown of the landlord-tenant relationship can be attributed to the dissolution of the friendship between Ms. Diaz and Ms. Pinero. Ms. Pinero apparently felt slighted, perhaps because Ms. Diaz did not attend her wedding, or because Ms. Diaz pressed too hard to have the grass cut for her planned birthday party, or because of various other interpersonal issues. Because the complaints about animal noises were not the primary reason for the termination of the tenancy, the Court determines that the appropriate measure of damages for

[11] Because retaliation was plead as a counterclaim in the answer, the Court will focus on the damages that can be awarded under G.L. c. 186, § 18.

this claim is one months' rent, or $1,150.00 (the amount of rent at the time the tenancy was terminated), plus reasonable attorneys' fees.

Discrimination

Ms. Diaz asserts a claim of discrimination based on Ms. Diaz's religion in violation of federal and state anti-discrimination laws. The basis of the claim is allegedly disparaging remarks made to Ms. Diaz by Ms. Pinero on July 6, 2021 regarding her religion, followed by a no-fault notice terminating her tenancy dated July 26, 2021. The Court finds that the evidence is insufficient to warrant a finding of discrimination. Despite the allegedly corroborating testimony of her friend, the Court does not credit Defendant's description of the events regarding a discussion about her religion. Given the voluminous amount of messages between Ms. Diaz and Ms. Pinero, and in particular the lengthy message (read into the record) that preceded the termination notice, the Court believes Ms. Diaz would have written about the incident had it happened as she described.

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

1. Plaintiff is entitled to $13,800.00 in unpaid rent through June 2022.[12]
2. On her counterclaims, Defendant is entitled to $12,048.35 in damages.[13]
3. The amount due Plaintiff exceeds the amount due Defendant; therefore, pursuant to G.L. c. 239, § 8A, there shall be no recovery of possession if Defendant, within ten days of the date of this order, tenders to Plaintiff the sum of $1,751.65, plus court

[12] It is undisputed that Ms. Diaz made no rent payments from July 2021 through the end of the trial in April 2022, a period of ten months. The aggregate amount of unpaid rent through trial, therefore, is $11,500.00. For purposes of efficiency, the Court includes the rent that accrued after the trial; namely, rent for the months of May and June 2022. If Defendant made any payments since trial, she should immediately file a motion to amend the judgment.

[13] This figure is comprised of two separate awards of statutory damages of $3,585.00 for violation of G.L. c. 186, § 14 (electricity and animals), $3,585.00 for violation of the security deposit statute plus $118.35 in interest, $25.00 for late fees, and $1,150 for retaliation.

costs in the amount of $ 179.76 and interest in the amount of $ 136.58, for a total of $ 2,067.99.

4. If Defendant tenders this payment on time and in full, judgment for possession shall enter in favor of Defendant. If Defendant does not make the tender, judgment for possession and damages in the amount of $1,751.65, plus court costs and interest, shall enter in favor of Plaintiff.

5. Defendant may submit, within fifteen days of receipt of this order, a petition for reasonable attorneys' fees and costs, together with supporting documentation. Plaintiff shall have fifteen days to file an opposition to the petition. The Court shall thereafter rule on the pleadings and issue a final order for entry of judgment.

SO ORDERED.

DATE: 6-13-22

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. 22-SP-0085

URAYOAN SANTIAGO,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
GEOVANNI MORALES AND	)	
MARISOL MONTANEZ,	)	
	)	
DEFENDANTS	)	

This summary process action came before the Court for an in-person bench trial on June 7, 2022. Plaintiff and Defendant Morales appeared and represented themselves; Defendant Montanez did not appear.

Based on the credible testimony presented at trial and the reasonable inferences drawn therefrom, the Court finds that Defendants are not tenants but instead are licensees. Mr. Santiago owns a two-family home at 59 Palmer Avenue, Springfield, Massachusetts. Mr. Morales is Mr. Santiago's cousin. As a favor to a family member, Mr. Santiago allowed Mr. Morales and his significant other, Ms. Montanez, to temporarily reside in his basement when Mr. Santiago was living on the first floor. Soon thereafter, Mr. Santiago moved to the second floor unit, at which point he allowed Mr. Morales and Ms. Montanez to temporarily stay on the third floor (which is connected to the second floor unit). The parties never entered into a rental agreement, no formal rent was charged or paid, and Mr. Santiago never agreed to allow Defendants to reside at the property as tenants.

Because the Court finds that Defendants are licensees and not tenants, they are not entitled to the stays of execution set forth in G.L. c. 239, §§ 9-11. To avoid undue hardship on Defendants, however, Mr. Santiago agreed to allow Defendants to remain at the property until July 7, 2022 (which is the vacate date requested by Mr. Morales). Accordingly, based on the foregoing and in light of the applicable law, the following order shall enter:

1. Defendants shall vacate on or before July 7, 2022.
2. If Defendants do not vacate on or before July 7, 2022, Plaintiff may file a motion for judgment retroactive to the trial date and immediate issuance of the execution.
3. For the duration of Defendants' occupancy, they must have keys to come and go from Mr. Santiago's second floor unit (including the exterior entry doors to the building) and they must have access to use the bathroom and kitchen facilities.

SO ORDERED.

DATE: 6/14/22

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0571

MICHAEL S. BOUTIN, PLAINTIFF	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER
v.	)	
CHICOPEE HOUSING AUTHORITY, DEFENDANT	)	

This civil damages action came before the Court for a two-day in-person bench trial on March 24, 2022 and May 2, 2022. Plaintiff seeks to recover damages due to conditions of disrepair in his unit at 100 Debra Drive, Apt. 4-F, Chicopee, MA (the "Premises") and for interference with his quiet enjoyment.[1] Plaintiff appeared for trial self-represented; Defendant appeared with counsel.

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

Plaintiff claims can be separated into two categories: claims for interference with quiet enjoyment and claims for breach of the implied warranty of habitability. The Court will treat each category individually.

[1] Plaintiff's claims for damages based on conditions of disrepair were severed from the cause-based summary process case brought by Chicopee Housing Authority in 21H79SP001189. *See* Findings of Fact, Rulings of Law and Order entered on September 1, 2021. *See* G.L. c. 239, § 8A. The Court considered Plaintiff's claims relating to retaliation and discrimination in the summary process case as those claims go to the underlying reasons for the eviction. In addition to conditions-based claims, the Court will consider Plaintiff's claims of interference with quiet enjoyment in this civil action.

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

Plaintiff asserts that Defendant has interfered with his health care providers, including doctors and therapists. He further claims that HUD and the Chicopee Police have stopped responding to his correspondence and calls, which he blames on Defendant conspiring with these agencies to ignore his concerns. Plaintiff provided no credible evidence to support the allegation that Defendant is interfering with Plaintiff's health care providers, HUD, the Chicopee Police or any other agency or body.

Regarding Plaintiff's assertion that Defendant repeatedly sends maintenance employees to his apartment unnecessarily, the evidence does not bear him out. From the time he moved into the Premises, he has made dozens of requests for repairs. His assertion that the maintenance employees

are incompetent and often show up early or late to scheduled appointments does not change the fact that he is primarily responsible for the number of times maintenance has visited his unit. Although he expressed frustration that maintenance staff have refused to complete certain tasks until he has cleaned his unit, the Court does not find it to be an unreasonable request. The totality of the evidence shows that Defendant did nothing more than respond to Plaintiff's requests for repairs and conduct general building-wide work that affected all residents equally. The Court finds that Defendant did not target Plaintiff for mistreatment and did not enter the Premises unnecessarily.

With respect to Plaintiff's testimony that he feels constantly harassed by Defendant's management personnel, again the evidence does not support his allegations. For example, Plaintiff points to an instance in which his car windshield was broken by staff mowing the lawn as evidence of mistreatment, but he provided no reason for the Court to think the incident was intentional and Plaintiff concedes that Defendant offered to and did pay for all of the damages. The evidence shows that much of the communication between the parties, and particularly the insistent and disrespectful communications, comes from Plaintiff. To the extent that he does not like the way certain people speak to him, the Court finds that Plaintiff's style of communicating contributes significantly to any sense of disrespect Plaintiff feels. Defendant's maintenance clerk described her interactions with Plaintiff's as "very hostile." In sum, the Court finds insufficient evidence to hold Defendant responsible for interference with quiet enjoyment under G.L. c. 186, § 14.[2]

[2] The Court finds no merit to Plaintiff's contention that Defendant should bear responsibility for the conduct of other residents of the development, nor to his claim that Defendant acted inappropriately when they changed their mind about evicting or transferring one of his neighbors to a different unit.

Breach of Warranty

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); see *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). Substantial violations of the State Sanitary Code generally make a dwelling uninhabitable or reduce the dwelling's rental value. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) ("Not every breach of the State sanitary code supports a claim under the implied warranty of habitability"). The emphasis is on whether the premises are fit for human habitation, not whether the dwelling unit is in pristine condition. *Id.* 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. Plaintiff's allegations regarding each category of conditions of disrepair shall be analyzed separately.

Plumbing

Plaintiff complains of (a) fluctuating hot water temperatures, including temperatures exceeding the legal limit, (b) water draining from his bathroom sink and slightly percolating up through his bathtub drain, (c) malodorous emissions from the drains that made the bathroom smell of excrement, and (d) water not draining from his bathroom sink as quickly as water was coming out of the faucet, causing the sink to partially fill with water. He claims, despite no training or experience as a plumber, that the building in which he lives has a plugged vent pipe and improperly connected plumbing inside the walls.

Plaintiff asserts that the plumbing conditions of which he complains have existed for a long time. The Chicopee code enforcement department issued a letter of compliance on July 14, 2021, however, confirming that the plumbing had been inspected and complied with the State Sanitary Code. On multiple occasions thereafter, Defendant sent licensed contractors to inspect Plaintiff's plumbing and none found any significant issues. On March 16, 2022, just days prior to the start of trial, Defendant hired Joseph Cataldo, a housing inspector with 40 years of experience in Massachusetts, with 20 of those years in the role of a Section 8 housing inspector, to conduct a thorough inspection of the Premises. Mr. Cataldo inspected every room and checked every component in the unit and found only minor items in disrepair.[3] He found the water temperature throughout the Premises to be within the legal range of 110°F to 130°F set forth in the State Sanitary Code.[4] Upon being made aware of Mr. Cataldo's report, Defendant promptly addressed all of the items for which it was responsible.[5]

Even crediting Plaintiff's testimony that the hot water temperature fluctuates and has, at times, exceeded 130°F (which he supported with a video of him holding a temperature gun purchased at Home Depot to the metal ring around the drain in the sink that showed temperatures reaching above 150°F), there is no evidence showing that the hot water regularly exceeds 130°F or that it remains above the threshold for any period of time. Plaintiff also said that the temperature sometimes drops as well, but the Court finds that the intermittent fluctuation of water temperature is

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[3] The inspector cited Defendant for a missing anti-tip device on the stove, an inoperable refrigerator light, a loose kitchen sink faucet, a broken drain stopper in bathroom sink and a restricted bathtub drain. He also noted that Plaintiff had excessive clutter and that certain outlets were overloaded.

[4] Plaintiff repeatedly testified that the outside contractors hired by Defendant did not do their jobs properly, but the Court finds his bare statements insufficient to contradict the findings of licensed and experienced tradespeople.

[5] In addition to the cited items, Defendant's agents testified that they completed work that Plaintiff had complained about at prior hearings, including fixing the door jamb and adding insulation in the wall behind the intercom.

not a material defect as to warrant damages under a warranty theory. The Court finds that none of the plumbing-related issues complained of, particularly in light of the multiple inspections by the City of Chicopee's code enforcement officer, licensed plumbers and drain contractors, as well as Mr. Cataldo, are not material conditions of disrepair and do not reduce the rental value of the Premises.[6]

Air Temperature

Plaintiff testified that he feels cold drafts coming through his windows, the walls (particularly behind his entry buzzer system) and under or around the doors. Again, the various inspectors and contractors who investigated these complaints in the past found no material defects in the unit. Although Plaintiff showed videos of his measuring device showing temperatures approximately 10° lower in places around his windows and one or two degrees lower around the doors and along the junction where ethe floor and walls meet, the evidence does not support a finding that the Premises contain defects significant enough to warrant an abatement of rent or damages. Air drafts can be caused by many issues, however, including tenant-caused factors such as open windows and insecurely closed doors. The Premises do not need to be perfectly air-tight to be considered free of material defects; only if the Premises had significant problems with its windows, doors or insulation would the Court be justified in awarding damages for the breach of warranty of habitability. The Court finds that the conditions complained of are relatively minor and not supported by the evidence and thus do not warrant an award of damages.

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[6] The Court might have considered ordering Defendant to do further investigation into the fluctuating hot water issue, but after the trial, Defendant hired a licensed plumber to change the mixing valve for the entire building at a cost of nearly $7,000.00 in an attempt to address Plaintiff's concerns. Accordingly, no further orders for repair will be made at this time.

Smoke detector

Plaintiff contends (based on his reading of a user's manual) that his hard-wired smoke detector is overly sensitive or is otherwise "polling" too frequently. He complained that its small flashing green light bothers him. He testified that he has heard alarms going off in other apartments in his building, which he believes supports his contention that there is a malfunction in the system. The Plaintiff's claim regarding the smoke detector does not rise to the level of a material condition of disrepair. Based on the foregoing findings, Defendant is not liable for damages for breach of the warranty of habitability.

Conclusion

After multiple hearings over many months, including two days of trial in this civil matter, the Court concludes that upon receiving complaints about conditions in Plaintiff's unit, Defendant has responded appropriately. On many occasions, especially over the past year, they have hired outside licensed professionals, including general contractors, plumbers, electricians and sewer and drain technicians, to work in Plaintiff's unit. They made expensive upgrades to mechanical systems in the building in which Plaintiff resides in an effort to ensure all possible sources of his complaints had been addressed. The Court finds that Defendant's efforts to address all of Plaintiff's complaints about the conditions in his apartment and the building to be more than adequate, particularly given that Plaintiff is a harsh critic and makes their jobs more difficult by trying to participate in the process.[7]

[7] Plaintiff testified that he usually observes maintenance staff and outside contractors as they work in his unit, and the evidence shows that he is often critical of their performance and asks them to do work that they do not deem to be necessary.

Accordingly, based on all of the evidence and in light of the governing law, the Court finds that judgment shall enter for the Defendant on all of Plaintiff's claims.

SO ORDERED.

DATE: 6·15·22

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. 22-SP-784

SHANNON and TYRON AUSTIN,

Plaintiffs,

v.

JOSIAH KASTNER and TATYANA CLAUDIO,

Defendants.

ORDER

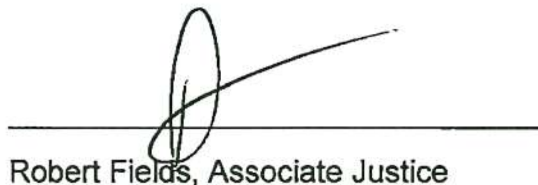
(No judgment entering at this time per G.L c.239,s.9)

This matter came before the court for trial on June 14, 2022, at which the plaintiff landlords appeared *pro se* and the tenants appeared with Lawyer of the Day Counsel. After consideration of the evidence admitted at trial, the following order shall enter:

1. This is a no-fault eviction matter in which the tenants asserted counterclaims and defenses including a claim of Retaliation, Breach of Warranty of Habitability, Breach of the Covenant of Quiet Enjoyment, and a request that the apply G.L. c.239, s.9 and grant the tenants time to move so that they may secure alternate and safe housing.
2. For the reasons stated at length by the judge at the conclusion of the trial, the court finds and so rules that the tenants failed to meet their burden of proof on their counterclaims and defenses (other than G.L. c.239, s.9).

3. As such, possession shall be awarded to the landlords and no reduction of use an occupancy shall be ordered. Entry of judgment for possession, however, shall be stayed in accordance with G.L. c.239, s.9 as this is a no-fault eviction matter.
4. The parties stipulated that $6,500 is outstanding in use and occupancy through June 30, 2022. The tenants shall apply for RAFT and/or Catholic Charities funds (and/or any other rental arrearage funds that may be available to them) forthwith. This application is to pay the arrearage and will not reinstate a tenancy (unless the parties agree to do so in writing). The parties shall cooperate with said application(s) for rental arrearage funds.
5. The tenants shall pay their use and occupancy (rent) for July 2022 on time and in full.
6. This matter shall be scheduled for a review hearing on **July 13, 2022, at 10:00 a.m.** live and in-person at the Springfield Session. The tenants shall bring documentation of their diligent housing search and verification of their daughter's disability. All parties shall be prepared to provide information to the court of their respective situation and need for occupancy of the subject premises.

So entered this 16th day of June, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0255

BANK OF AMERICA, N.A.,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER
	)	
ALICE A. PARTRIDGE, ET AL.,	)	
	)	
DEFENDANT	)	

This post-foreclosure summary process matter came before the Court for an in-person bench trial on May 9, 2022. Plaintiff appeared through counsel. Defendant appeared self-represented. Defendant filed an answer alleging as her only defense that her tenants stopped paying rent causing her to fail to make her mortgage payments.

At trial, Plaintiff presented a prima facie case for possession by providing the Court with a certified copy of the foreclosure deed and an affidavit of sale made by an attorney for Plaintiff that complies with G.L. c. 183, App. Form 12. See *Federal National Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 637 (2012). These documents, together with the notice to quit served upon and received by Defendant, and the summary process summons and complaint, which was timely served and filed, entitle Plaintiff to a judgment for possession of the subject premises. See *Adjartey v. Central Div. of Housing Court*, 481 Mass. 830, 834-835 (2019).

After Plaintiff rested, Defendant presented no witness and offered no evidence to defeat Plaintiff's prima facie case for possession. Instead, she read a statement regarding predatory lending and argued that the foreclosure in this case was possibly defective. She asked for time to

conduct discovery and to present her case to a jury. The Court interpreted her statements as a request for a continuance and, presumably a motion to amend her answer and for leave to conduct discovery. She subsequently filed a "motion to suspend judgment in trial and to reopen the time for discovery."

Plaintiff objected on the record and filed an opposition to Defendant's motion and any attempt to amend her answer to assert new defenses and counterclaim and to conduct discovery. It contends that despite the latitude often afforded self-represented litigants, Defendant cannot be permitted to simply ignore court rules. Moreover, Plaintiff asserts that because no motion was made prior to trial, and because she had filed an answer, the trial should be considered concluded and that judgment should enter in its favor.

Plaintiff is correct in its assertion that Defendant's status as a self-represented litigant does not excuse her altogether from following relevant rules of court. However, had Defendant been slightly more sophisticated and asked for a continuance prior to trial based on her lack of comprehension that she had a right to challenge the foreclosure, the Court likely would have allowed it. Moreover, the potential of harm to Defendant if the foreclosure was defective far outweighs the prejudice to Plaintiff caused by a delay in the trial. Moreover, the Court notes Plaintiff's entire case in chief consisted of submitting a few documents; it did not appear for trial with any witnesses and established its prima facie case for possession in a matter of minutes. Moreover, Plaintiff has an avenue to minimize the prejudice by seeking an order that Plaintiff pay for her use and occupancy of the Premises pending trial.

Accordingly, based on the forgoing, the Court shall suspend the trial and permit Defendant the opportunity to conduct discovery pursuant to the schedule set forth herein. If, after the discovery responses are received, Defendant wishes to amend her answer, she must seek

leave of Court. Because a bench trial is already underway, the Court will not entertain a jury demand. Upon the continuation of trial, the Court will permit Plaintiff to continue with its case in chief if it so desires prior to taking evidence from Defendant.

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

1. Defendant shall propound discovery requests on Plaintiff's counsel by June 30, 2022.
2. Plaintiff shall respond to discovery by July 22, 2022.
3. If Defendant intends to file a motion to amend her answer, she must do so by August 5, 2022.
4. The Court will send notice of a Zoom case management conference (non-judicial) for a date after August 5, 2022.

SO ORDERED.

DATE: 6·16·22

Hon. Jonathan J. Kane, First Justice

cc: ACM Castillo (to schedule CMC)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0179

CONCORD HEIGHTS,

PLAINTIFF

v.

DENNIS J. BROWN,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This cause-based summary process case came before the Court on May 25, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 25 Oswego Street, #4B, Springfield, Massachusetts (the "Premises") from Defendant.

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

Defendant has been incarcerated since approximately August 2020. He has not resided in the Premises since that time and the Premises have remained vacant ever since, but for a short visit by Defendant's mother in July 2021. Defendant's mother continued to pay his rent for a period of time, but Plaintiff has not received a payment since December 2021. Through the date of trial, $975.00 of unpaid rent is outstanding.

Plaintiff served Defendant with a legally sufficient notice to quit, both at the Premises and at the jail where he is held. Defendant acknowledges receipt of the notice to quit. He contests Plaintiff's right to evict him because he says he plans to file for a bail reduction at some indeterminate time in the future and, if that motion is allowed, he would want to return to the Premises to live. He also contends that he is the victim of an illegal lockout, despite being incarcerated. He claims Plaintiff changed the locks to the Premises without his permission. To the extent he asserts this claim as a defense or counterclaim, it is without merit. The Court finds that Plaintiff acted reasonably and lawfully when it changed the locks to secure the Premises against unlawful entry, given that the unit is vacant and had been vandalized. If Defendant is able to return to the Premises prior to the eviction, Plaintiff would be obligated to provide him with keys; likewise, if Defendant wishes to authorize someone to remove his belongings, that person may make an appointment with management to have access to the unit.

In order to establish its right to possession, Plaintiff must demonstrate that Defendant has materially violated terms of his lease. Section 15 of the lease recites that "The Tenant must live in the unit and the unit must be the Tenant's only place of residence." Defendant has not resided in the Premises for nearly two years, which the Court finds constitutes a material lease violation. His ability to return to the Premises is entirely speculative. Moreover, by holding the Premises vacant for so long, Plaintiff has been unable to rent the unit to another family during a time when housing has been hard to find.

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

1. Judgment for possession and $975.00 in unpaid rent through May 2022 shall enter in favor of Plaintiff.

2. Execution may issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 6/16/2022

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-3516

LISA HOUGHTLING)
)
PLAINTIFF)
v.)
)
SHAWN MCKNIGHT AND)
ASHLEE MCKNIGHT,)
)
DEFENDANTS)

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER

This no fault summary process case came before the Court on March 30, 2022 and April 8, 2022 for an in-person bench trial. Plaintiff (the "landlord") was represented by counsel. Defendants (the "tenants") appeared self-represented. Plaintiff seeks to recover possession of 285 Columbus Avenue, Apt. 1, Pittsfield, Massachusetts (the "Premises").

Defendants did not dispute the basic elements of Plaintiff's prima facie case for possession; namely, that Plaintiff was the landlord and that they received the rental period notice to quit ending their tenancy as of December 1, 2021. Defendants did not vacate at that time and continue to reside in the Premises today.

Rent is $850.00 per month. Although the case is not about rent, Plaintiff claims that $2570.00 was owed through December 2021 when the complaint was filed, and that no rent has been paid since trial, leaving $5,120.00 owed through April 2022.

The tenants filed an answer, which was allowed upon oral motion at the outset of trial.[1] They have resided in the Premises for approximately 11 years and have two children. Ms. McKnight testified that she paid rent in cash and has no receipts to show the Court. She disputed the amount she owes but was not specific about any payments she made that were not reflected in the rent ledger. She claims that she paid a security deposit in the amount of $850.00 in 2010 or 2011 when she moved in but has no evidence that she did so. Plaintiff denies taking a security deposit and testified that she doesn't take security deposits from any tenant because she didn't want to run afoul of the security deposit law. The Court finds insufficient evidence that a security deposit was in fact paid or that Defendants made any payments for which they were not given credit.

With respect to the conditions in the Premises, 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. Damages accrue from the time the landlord knew or received notice of the defective condition, whichever occurs first, and the typical measure of damages is the difference between the rental value of the premises as warranted less the fair value of the premises in their defective condition. *Id.*

If the conditions of disrepair seriously interfere with the tenancy, the landlord can be liable for breach of the covenant of quiet enjoyment, in which case the landlord can be liable for

[1] Defendants elected not to go forward with certain counterclaims identified in her answer; namely, retaliation, discrimination and G.L. c. 93A. With those claims waived, Plaintiff did not object to allowing the late answer.

actual and consequential damages, or three month's rent, whichever is greater. See *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). In analyzing whether there is a breach of the covenant, the Court examines the landlord's "conduct and not [its] intentions." *Doe*, 417 Mass. at 285. Nonetheless, the tenant must show some negligence by the landlord in order to recover under the statute. *Al-Ziab v. Mourgis, 424 Mass. 847, 850 (1997)*. A party may not recover multiple awards of damages for the same injury based on both breach of warranty and quiet enjoyment -- such awards are said to be cumulative or duplicative. *Clark v Leisure Woods Estates, LLC*, 89 Mass. 87, 91 (2016).

Here, Ms. McKnight testified that gushing water has entered the back room and kitchen area on several occasions since 2015, and that at one point parts of the ceiling came down on the bed in the rear room. Plaintiff testified that she had the plumbing inspected and that there is nothing defective about the pipes. The water that entered the Premises appears to be the result of water overflowing from the tub or shower in the apartment above. Plaintiff is not responsible for the negligent acts of other tenants, but Defendants' testimony was credible regarding Plaintiff's failure to promptly and completely repair the damage that was caused by the water intrusion. Ceilings remained stained and a hole left in at least one panel of the ceiling for an extended time period.

Regarding the claim of insufficient heat, Defendants testified credibly that every year there were days when the unit was extremely cold and that they were asked to use space heaters to ensure pipes did not freeze. Although insufficient heat can sometimes be the fault of tenants by, for example, leaving windows open, in this case the thermostat was locked so that only Plaintiff could control it. The combination of intermittent complaints about insufficient heat and

the inability to regulate the heat leads the Court to infer that Defendants did in fact suffer from intermittent heat deficiencies each heating season.

With respect to Defendants' claim about the loss of hot water, the Court finds that Plaintiff acted responsibly in fixing it promptly. Defendants admit that they were never without hot water for more than a day. The Court finds no fault in Plaintiff's actions regarding the water issues. Likewise, although the Court finds Defendants' testimony about excessive flies to be credible, there is insufficient evidence to hold Plaintiff responsible.

On balance, the Court believes Plaintiff tries to be a responsible landlord who fixes problems when they arise. However, she did allow water-damaged ceilings and walls to remain in disrepair for an extended period, and she did not provide a properly working heating system despite being aware of on-going problems. The combination of these factors constitutes an interference with Defendants' quiet enjoyment of the Premises. Because Defendants' testimony was insufficiently clear to allow the Court to assess warranty damages, the Court shall assess statutory damages pursuant to G.L. c. 186, § 14; namely, three months' rent, which in this case amounts to $2,550.00.

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

1. Defendants are entitled to damages in the amount of $2,550.00 for Plaintiff's violation of G.L. c. 186, § 14.
2. Although this is a no-fault eviction case, pursuant to G.L. c. 239, § 8A, Plaintiff established that she is entitled to $5,120.00 in unpaid rent through March 2022. The Court presumes that no payments have been made since trial, so an additional $2,550.00 in rent has accrued for April, May and June 2022, for a total of $7,670.00

through June 2022.[2]

3. The amount due Plaintiff exceeds the amount due Defendants; therefore, pursuant to G.L. c. 239, § 8A, there shall be no recovery of possession if Defendants, within ten days of the date of this order, pay Plaintiff the sum of $5,120.00, plus court costs in the amount of $229.95 and interest in the amount of $299.84, for a total of $5,649.79

4. If Defendants make payment on time and in full, judgment for possession shall enter in favor of Defendants. If Defendants do not make the payment, judgment for possession and damages in the amount set forth in the preceding paragraph shall enter in favor of Plaintiff.

SO ORDERED.

DATE: 6.16.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

[2] If Defendants have made any payments for their use and occupancy of the Premises for April, May or June 2022, they should immediately file a motion with the Court to amend the judgment amount.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-CV-0139

KATHLEEN JACKSON, PLAINTIFF v. CYNTHIA MCALLISTER, DEFENDANT	)))))))))	ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This summary process case came before the Court on May 11, 2022 for hearing on Plaintiff's motion for partial summary judgment. Both parties appeared through counsel. Plaintiff seeks summary judgment on liability only, contending that the undisputed evidence establishes that Defendant's actions violated various statutes. Specifically, Plaintiff contends that Defendant violated the security deposit statute, interfered with Plaintiff's quiet enjoyment by aiming cameras at her apartment with the sound recording and violated the warranty of habitability, G.L. c. 186 § 14 and G.L. c. 93A by refusing to repair substandard conditions for months. The Court will consider each argument separately.

The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleading depositions, answers to interrogatories, admissions documents, and affidavits, that there are no genuine issues as to any material facts,

and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). All evidentiary inferences must be resolved in favor of the non-moving party. See *Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999).

Violation of Security Deposit Statute

With respect to the claim under G.L. c. 186, § 15B, the material facts are not in dispute. Plaintiff paid $800.00 as a security deposit to a prior owner of the property. After she purchased the property in September 2021, Defendant's lawyer notified Plaintiff that her security deposit had been transferred to Defendant. The lawyer informed Plaintiff that the deposit would be placed in a separate interest-bearing bank account once she provided a W-9. Plaintiff refused to disclose her social security number and the security deposit continued to be held in her counsel's IOLTA client security account.

Defendant filed a summary process action on October 14, 2021. On November 23, 2021 Plaintiff timely filed an answer with counterclaims. Among the counterclaims, Plaintiff alleged that Defendant had failed to provide her with all of the documents required under G.L. c. 186, § 15B and, as a result, had violated the security deposit statute. Defendant returned the security deposit with interest on March 18, 2022

Because Defendant did not hold the security deposit in a bank located in Massachusetts but instead held the security deposit in her lawyer's IOLTA account, she violated the provisions of G.L. c. 186, § 15B(3)(a). Defendant's contention that she should be excused from compliance with this provision of the statute because of Plaintiff's failure to provide a W-9 is rejected. Although it may be true that Defendant could not establish a bank account in Plaintiff's name without a W-9, the statute does not require that a security deposit be held in an account under a

tenant's name. See *Karaa v. Yim*, 86 Mass. App. Ct. 714, 720 (2014) ("The failure of the tenants to provide a Social Security number did not preclude the [landlord] from establishing a separate account in compliance with § 15B"). Defendant's failure to establish a separate, interest-bearing account or to provide Plaintiff with an appropriate receipt represents a failure to comply with the subsection, and entitled Plaintiff to the immediate return of the security deposit. G.L. c. 186, § 15B(3)(a),

Defendant held the security deposit in a non-compliant manner from September 2021 until March 2022. Defendant contends that it was acting under the good faith understanding that it could not deposit the security deposit in a separate account without a W-9 and that Plaintiff did not make a formal demand for its return for several months thereafter. Pursuant to established law in Massachusetts, however, commencing an action to recover a security deposit that had been mishandled acts as a demand for return of the deposit. See *Castenholz v Caira*, 21 Mass. App. Ct. 758, 764 (1986) ("commencement of the action itself" operates as a demand for return). Defendant argues that assertion of a defensive counterclaim is not the same as commencing an action for the return of the deposit, but the Court does not draw any such distinction. See *Young v Patukonis*, 24 Mass. App. Ct. 907, 909 (1987) (demand for return of security deposit in counterclaim). The question is whether Defendant understood that Plaintiff was asserting that she was in violation of the security deposit law, not whether Plaintiff explicitly sought the return of the deposit. Once the assertion is made, the burden falls on Defendant to "tender promptly thereafter" to avoid liability for multiple damages and attorneys' fees. *Id*. By not acknowledging her error and returning the deposit, Plaintiff was forced to purse the return of her security deposit over an extended time period, thereby exposing Defendant to multiple damages under G.L. c. 186, §15B(7).

In this case, Defendant returned the security deposit with interest on March 18, 2022, approximately four months after the counterclaim alleging a violation of law was filed. The fact that she may have been acting with a good faith belief that does not allow the Court to modify the statutory treble damages award for violation of subsection (3)(a). See *Mellor v. Berman*, 390 Mass. 275, 279 (1983). Accordingly, Plaintiff is entitled to summary judgment on the security deposit claim in the amount of three times the $800.00 security deposit, or $2,400.00, less the $800.00 that was returned, for a total of $1,600.00. Plaintiff is also entitled to reasonable attorneys' fees and costs.

<u>Breach of Warranty of Habitability</u>

Plaintiff cites to *Lezberg v. Rogers*, 27 Mass. App. Ct. 1158, 1159 (1989) for the premise that Defendant may not collaterally attack the Board of Health findings in this case because she did not pursue any administrative appeals. The issue here, however, is not whether the conditions cited by the Board of Health actually existed, but whether the conditions constitute a finding that the landlord violated the warranty of habitability. Habitability is measured by minimum community standards, which are generally, though not exclusively, reflected in the State sanitary and building codes. See *Crowell v. McCaffrey*, 377 Mass. 443, 451 (1979). Although violations of the codes may provide compelling evidence that a dwelling is not habitable, they do not establish per se breaches of the warranty of habitability. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) ("Not every breach of the State sanitary code supports a claim under the implied warranty of habitability"). The emphasis is on whether the premises are fit for human habitation, not merely on whether the landlord committed a code violation.

In order to find Defendant liable for breach of the implied warranty of habitability, the Court must find that the defects are substantial violations of the State Sanitary Code or that the

defective conditions are significant. The analysis is necessarily fact dependent, and the Court therefore reserves for trial the issue of liability under the theory of breach of warranty of habitability.

Interference with Quiet Enjoyment and G.L. c. 93A

After review of the memoranda of law together with the supporting affidavits and documentation, the Court concludes that there exist genuine issues of material fact, such as the placement and operation of the cameras and their field of vision and Plaintiff's knowledge of the cameras. Likewise, the Court finds that genuine issues of material fact exist with respect to whether Plaintiff is in the trade or business of renting or leasing residential property. The disputed facts preclude entry of summary judgment on these causes of action.

Accordingly, Plaintiff's motion for summary judgment is ALLOWED with respect to the security deposit claim and DENIED in all other respects. Plaintiff's counsel shall be entitled to submit a petition for attorneys' fees after trial.

SO ORDERED.

DATE: 6/16/2022

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

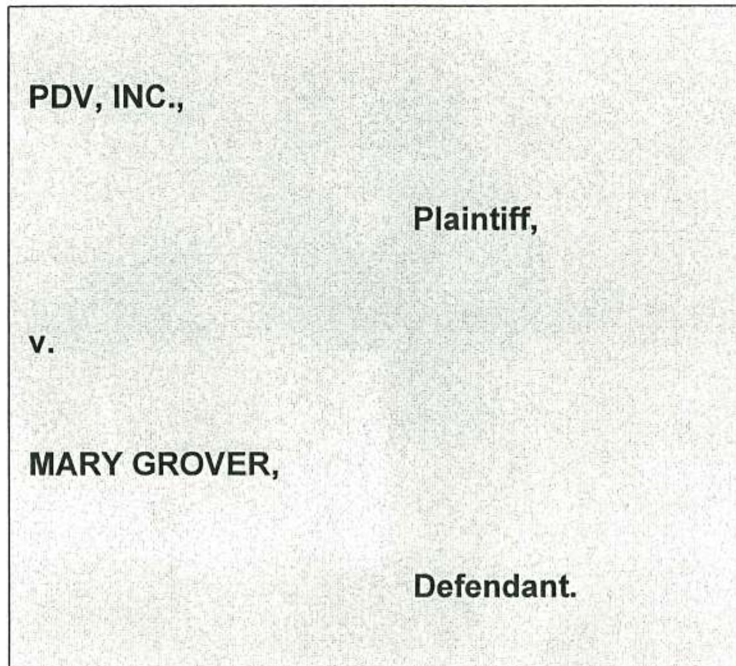
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-678



ORDER

(NO JUDGMENT ENTERING AT THIS TIME)

This matter came before the court on May 27, 2022, for trial, at which the plaintiff appeared through counsel and the defendant appeared *pro se*, and after hearing the following order shall enter:

1. The parties stipulated to the landlord's prima facia case for possession for non-payment of rent. The parties further stipulated that $5,700 is outstanding in rent, use, and occupancy through May 2022.

2. For the reasons stated at length at the end of the trial by the judge, the court finds that the tenant failed to meet her burden of proof that her covenant of quiet enjoyment was breached by virtual of an alleged failure to have a second means of egress or that the landlord's eviction was retaliatory.
3. As such, the court rules that $5,700 is outstanding in rental arrearage through May 2022.
4. Because this eviction matter is for non-payment of rent, the tenant is protected by Chapter 257 of the Acts of 2020 as she has stated that she will be applying for RAFT funds. The tenant shall notify landlord's counsel and the court by June 3, 2022, if she has an application pending for RAFT. The parties shall both cooperate with said RAFT application.
5. Additionally, by agreement of the parties stated on the record, if the tenant pays the landlord $5,700 by June 3, 2022, the parties shall so notify the court and the case shall be dismissed and use and occupancy through May 2022 shall be deemed satisfied.
6. If the tenant fails to either pay the outstanding balance or apply for RAFT by June 3, 2022, the landlord may file a motion for entry of judgment.

So entered this 16th day of June, 2022.

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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0577

TOWN OF GRANVILLE, PLAINTIFF v. SHELLY A. HAWLEY AND ARTHUR W. TATRO DEFENDANTS	))))))))))	RULING ON DEFENDANTS' MOTION TO DISMISS

This civil action came before the Court on June _, 2022 on the defendants' motion to dismiss and for sanctions. All parties appeared through counsel.

The defendants reside at 232 Sodom Street in Granville, Massachusetts (the "Property") in separate units.[1] Plaintiff (the "Town") obtained title to the Property by virtue of a tax taking foreclosure. The defendants are occupants of the Property but are not the former owners. The defendants contend that the Town's complaint should be dismissed pursuant to Mass. R. Civ. P. Rule 12(b)(6). Because a summary process complaint requires use of a pre-printed court form, the complaint alleges a bare minimum of facts. It does, however, incorporate by reference the notice to quit.

The notice to quit recites that the Town is the owner of the property by virtue of a Land Court judgment on August 19, 2021. The notice informs the defendants that they must vacate the

[1] The premises in question are a multifamily property with at least four separate units. In this order, the Court will refer to the notice to quit in the singular, even though the Town served separate (but substantially identical) notices upon the occupants of each unit.

Property by November 1, 2021 or else the Town will commence legal action to remove them from the Property.[2]

The defendants raise several potential defects in notice and pleading, summarized as follows:

1. The summons and complaint is defective because it states an inconsistent reason for the eviction; namely, the summons and complaint does not reference any alleged unlawful occupation of the Property whereas the notice to quit alleges that the defendants are unlawful occupants of the Property.
2. The summons and complaint does not list the defendants' respective unit numbers, rendering the pleading defective.
3. By claiming that the defendants are unlawful occupants, the Town has brought a "for cause" eviction (as opposed to a "no fault" eviction) and is therefore required to provide sufficient facts to permit the defendants to present a defense at trial, which it failed to do.
4. The notice to quit is deliberately misleading in that it implies that the defendants' right to occupation has already been deemed unlawful and that they have no choice but to vacate on or before November 1, 2021. Further, the notice fails to notify the defendants that they have the right to present a defense in court.

---

[2] In relevant part, the notice to quit recites: "This is a formal notice to quit your unlawful use and occupancy of Town-owned property located at 232 Sodom Street, Granville, MA ("Property"). As you know, title to the Property vested in the Town of Granville upon the entry of a Final Judgment of the Land court in Tax Lien Case No. 19TL000416 on August 19, 2021, as a result of the failure to pay real estate taxes to the Town. You are hereby notified that your use and occupancy of the Property must cease. You have until November 1, 2021 to vacate the premises. If you fail to vacate the Property within this time, the Town will commence legal action to remove you from the premises and recover all costs incurred in this process."

The Court first disposes of the contention that the notice to quit and the summons and complaint recite inconsistent reasons for eviction. The summons and complaint incorporates the notice to quit and does not state a contrary reason (such as stating that the eviction is based on non-payment of rent when the notice to quit states a cause basis for eviction). Accordingly, this argument is not a basis to dismiss the complaint.

Next, the Court addresses the argument that the case should be dismissed because summons and complaint does not identify the particular unit where the defendants reside. The return of service from the deputy sheriff also fails to identify a unit number. The notice to quit incorporated by reference in the complaint does, however, include the unit number in the address block and in the returns of service. The Court reserves for trial the question of whether missing unit number in the summons and complaint form had any meaningful practice effect in this matter.

The defendants' other two arguments go to the sufficiency of the notice to quit. A legally effective notice to quit is a condition precedent to a summary process action and part of the landlord's prima facie case, but it is not jurisdictional. See *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 127 (2019). "To be defective such that it fails to terminate a lease, a notice to quit must involve a material error or omission, i.e., a defect that has some meaningful practical effect." *Id.* at 130.

The Court rules that use of the phrase "unlawful use and occupancy" neither renders the notice to quit defective as a matter of law nor does it necessarily transform a no-fault eviction into a for-cause eviction. Whether that terminology had any meaningful practical effect on the defendants' understanding of the termination letter can be explored at trial. It does not, however warrant dismissal at this stage of the proceeding.

Likewise, although the notice to quit does not explicitly inform the recipients that they have

a right to present defenses at trial, the letter does state that the Town would have to take legal action if the defendants failed to vacate. Again, whether the precise language used by the Town caused confusion in the defendants' minds or otherwise had a meaningful practical effect on their understanding of their rights is left for the fact-finder, who has to determine whether the Town has established its prima facie case for possession.

Accordingly, for the foregoing reasons, the motion to dismiss is hereby DENIED. The Clerk's office is instructed to schedule this matter for a Housing Specialist Status Conference.

SO ORDERED.

DATE: 6-14-22

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. 22-SP-0590

ADRIANA VAZQUEZ,	)	
	)	
PLAINTIFF	)	
	)	FINDINGS OF FACT, RULINGS
v.	)	OF LAW AND ORDER
	)	
MALISSA PEREZ,	)	
	)	
DEFENDANT	)	

This summary process action came before the Court for an in-person bench trial on June 14, 2022. Plaintiff seeks to recover possession of 47 Linden Street, Chicopee, Massachusetts (the "Premises") from Defendant based on a no-fault termination of a tenancy. Plaintiff appeared through counsel; Defendant appeared and represented herself.

Although Defendant filed an answer with counterclaims, at the outset of trial she stated that she was waiving all defenses and counterclaims and was simply seeking additional time to move. Without objection, the Court accepted Defendant's testimony at trial as an oral petition for a stay pursuant to G.L. c. 239, § 9. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following facts: Plaintiff owns the Premises. Plaintiff served Defendant with a legally adequate notice to quit that expired on February 1, 2022. Defendant acknowledges receipt. Plaintiff timely served and filed a summons

and complaint. Defendant continue to reside in the Premises. Rent is $1,100.00 per month, due on the 1st of each month with a grace period to the 5th. She is current through the month of June 2022. Plaintiff has established its prima facie case for possession and, given that Defendant waived her defenses and counterclaims, Plaintiff is entitled to entry of judgment for possession.

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 her use and occupation for the duration of the stay. *See* G.L. c. 239, § 11.

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

1. Plaintiff is entitled to judgment for possession, but entry of the judgment shall be stayed through August 31, 2022 pursuant to G.L. c. 239, § 9 and the terms of this order.[1]

2. Defendant shall pay $1,100.00 each month by the 5th for the duration of the stay.

3. Defendant shall make diligent efforts to locate and secure replacement housing

[1] The Court finds that Defendant is not entitled to protection from eviction pursuant to St. 2020, c. 257, as amended by St. 2022, § 42 because this case was not brought solely for non-payment of rent and, in any event, there was no evidence presented of a pending application for rental assistance.

and shall keep a log of her efforts.[2] The log shall be provided to Plaintiff's counsel and the Court at least 48 hours in advance of the next Court date.

4. The parties shall appear by Zoom on **August 24, 2022 at 2:00 p.m.** The Zoom Meeting ID is 161 638 3742 and the Password is 1234. At this time, if Defendant seeks an extension of the stay, the Court will review her compliance with this order and her housing search log and decide whether and on what conditions to extend the stay.

5. Any judgment that enters in this case shall enter nunc pro tunc (retroactive) to today's date.

SO ORDERED.

DATE: 6/17/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

[2] The Court provided her with a sample housing search log form during the trial.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0352

MEG REALTY, LLC,

PLAINTIFF

v.

MARICELIZ LOPEZ,[1]

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This cause-based summary process case came before the Court on May 4, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 199 Broadway Street, Unit 3R, Chicopee, Massachusetts (the "Premises") from Defendant.

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

Defendant owns the Premises, which is part of an 8-family building with four floors. Defendant resides at the Premises pursuant to a written lease. The building housing the Premises was the site of a fire over a year ago. Of the 8 units in the building, the Premises is the only occupied unit (and has been for the past 14-16 months). In November 2021, Defendant requested certain repairs. When Plaintiff's maintenance employee entered the unit on November 12, 2021

[1] According to Ms. Lopez, the other named defendant, Victor Gonzalez, has not resided in the home for the past two years. The Court's mail to Mr. Gonzalez was returned as undeliverable. Plaintiff agrees to dismiss Mr. Gonzalez from this case based on Ms. Lopez's representation that he has no possessory rights in the premises.

and December 6, 2021 to make repairs, he noted a number of significant sanitary and housekeeping issues, including broken screens, broken kitchen tiles, a broken oven door, holes in various walls and doors, filthy carpets, chipping paint and a broken door. He also found animal excrement and trash throughout the Premises and in common areas around it.

The lease prohibits pets without permission of the landlord, which was not given in this case. It also requires Defendant to maintain the Premises in a clean condition. Alleging lease violations, Plaintiff served a notice dated December 21, 2021 terminating Defendant's tenancy. Plaintiff timely served and filed a summons and complaint on January 31, 2022.

Defendant did not file an answer but testified in her own defense at trial.[2] She stated that she removed her dog in the past couple of months and that she no longer has any animals in the Premises. She claims that damage to the window screens and glass occurred when she was not home and that she should not be held responsible. She testified that many of the conditions cited by Plaintiff are the result of being a single mother with three children who has lived in the unit since 2018.

The Court finds, based on the photographs and testimony, that Defendant violated the terms of her lease by keeping a dog and by failing to maintain the Premises in a sanitary condition. The question for the Court is whether the conditions of the unit constitute <u>material</u> lease violations justifying eviction when considered in light of all of the circumstances. First, the Court finds that Defendant removed the dog from the Premises permanently. Second, there is no evidence of the state of the carpets, paint and tile at the outset of the tenancy. Third, given that

[2] Because this case was brought for "cause," the Court did not consider Defendant's testimony regarding conditions in the Premises affirmative counterclaims. See G.L. c. 239, § 8A.

Defendant is a single mother with young children, certain of the broken items (the broken room door and broken oven door) could have been the result of unintentional behavior. To be sure, Defendant must be held responsible for excessive holes in walls and doors, but for these issues to rise to the level warranting eviction, the damages must be the result of something more than carelessness.

In light of the forgoing, the Court will give Defendant the opportunity to demonstrate that she is able to comply with the terms of her lease and retain her tenancy. The following order shall enter:

1. Plaintiff has demonstrated that it is entitle to judgment for possession; however, judgment shall be deferred pursuant to the terms of this order.
2. Defendant shall maintain the Premises in a sanitary condition and shall maintain the Premises free from significant damage. If damage does occur in the Premises, Defendant shall promptly notify Plaintiff.
3. Defendant may not have a dog (or, for that matter, any other pet) without the consent of Plaintiff.
4. The Court refers Defendant to the Tenancy Preservation Program ("TPP") for assistance with housekeeping issues. Given that she testified about at least one child in the household with disabilities, she may qualify for services that will help her maintain sanitary conditions in the home. If TPP opens a case with Defendant, she shall follow any recommendations made by TPP.
5. Plaintiff may conduct housekeeping inspections once per month beginning no sooner than July 20, 2022. The purpose of these housekeeping inspections is to ensure that,

once the Premises are brought into a sanitary condition, they remain so.

6. If, based upon a housekeeping inspection, Plaintiff believes that Defendant has not brought the Premises into a sanitary condition or is not maintaining reasonable cleanliness, it may mark up a motion for entry of judgment. If TPP has an open case with Defendant, Plaintiff shall first reach out to TPP prior to filing the motion.
7. This case shall remain open until December 31, 2022.
8. The parties shall return for an in-person review of Defendant's compliance with this order on September 20, 2022 at 2:00 p.m.

SO ORDERED.

DATE: 6/21/2022

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Tenancy Preservation Program – Pioneer Valley

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-434

JUDITH and DAN NEWBERRY,

Plaintiffs,

v.

STEPHEN FARR and MICHELLE FARIA,

Defendants.

ORDER

After hearing on June 16, 2022, at which the plaintiff landlords appeared with counsel and the tenants appeared *pro se*, and at which a representative from Way Finders, Inc. joined, the following order shall enter:

1. This is a no-fault eviction action.
2. The tenants have an application pending with Way Finders, Inc. ( ). It is anticipated that Way Finders, Inc. will be able to pay for all arrearage through June 2022, and perhaps a stipend for July 2022.

3. The tenants provided a housing search log, and the court is satisfied that they are diligently searching for housing.
4. The tenants are requesting time to secure alternate housing and in accordance with G.L. c.239, s.9 the court shall stay entry of judgment to afford the tenants time to relocate.
5. The tenants shall continue to maintain a Housing Search Log and list each and every inquiry into alternate housing with the date, entity, address, contact information, and result. If any applications for housing are filed by the tenants, copies of same shall be kept by the tenants.
6. The tenants shall provide a copy of the Housing Search Log with the landlords' attorney and with the court by July 21, 2022.
7. This matter shall be scheduled for further review in accordance with G.L. c.239, s.9 on **July 25, 2022, at 2:00 p.m.** by Zoom. The court's Zoom platform can be reached with Meeting ID: 131 638 3742 and Password: 1234.

So entered this 21st day of June, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1864

POAH COMMUNITIES,

Plaintiff,

v.

CHAUNTELLE PAQUETTE,

Defendant.

ORDER

After hearing on a Final Case Management Conference with the below signed judge on June 17, 2022, at which both parties appeared through counsel, the following order shall enter:

1. The parties shall engage in a Reasonable Accommodations dialogue.
2. The tenant's attorney asserted that he will send a written reasonable accommodations request to the lnaldord's counsel by no later than June 24, 2022.

3. This matter shall be scheduled for a review by Zoom on **July 6, 2022, at 12:00 p.m.**

So entered this 21st day of June, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

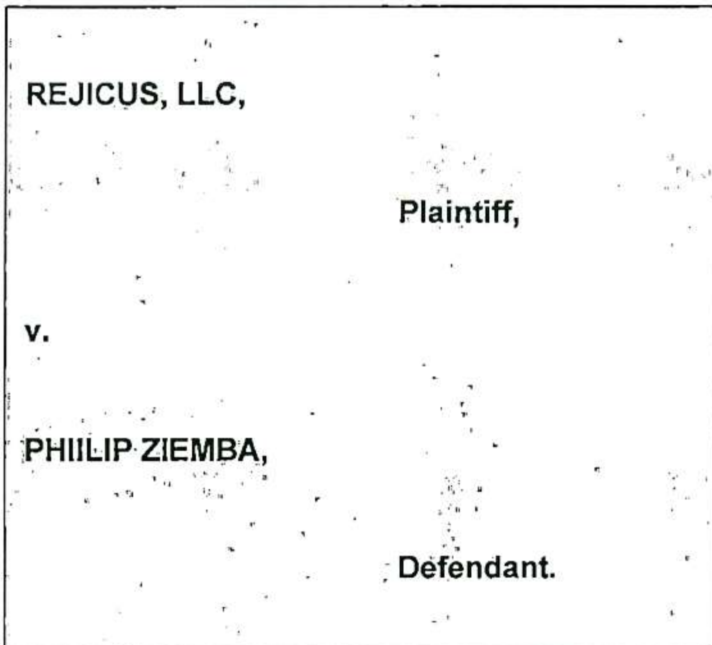
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-2457



REJICUS, LLC,

Plaintiff,

v.

PHIILIP ZIEMBA,

Defendant.

ORDER

After hearing on June 17, 2022, on the tenant's motion for an extension of time, at which the tenant appeared *pro se* and the landlord appeared through counsel, the following order shall enter:

1. The tenant's occupancy is extended one last time until August 1, 2022.
2. Upon the landlord's return of the Execution to the Clerks' Office, a new execution for possession only shall issue to the landlord and stayed in accordance with the terms of this order.

3. The tenant shall pay the landlord use and occupancy for June 2022, by no later than July 15, 2022, and then after his anticipated vacating of the unit shall pay use and occupancy for July 2022, by August 15, 2022.
4. If the tenant fails to make the payment noted above for June 2022 by July 15, 2022, or if the tenant fails to vacate the premises by August 1, 2022, the landlord may levy on the Execution without further leave of court.
5. No further extensions shall be granted in this matter by the court, but the parties are free to agree in writing to further extensions.

So entered this 21st day of June, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-4114

SPRINGFIELD HOUSING AUTHORITY, PLAINTIFF	)	
v.	)	RULING ON DEFENDANTS' MOTION TO DISMISS
TAFFY RIVERA, DEFENDANT	)	

This for cause summary process action came before the Court on May 16, 2022 on Defendants' motion to dismiss and for sanctions.[1] All parties appeared through counsel.

The procedural history of this case is important in order to put Defendant's motion in context. Plaintiff field this eviction case on September 30, 2019, following expiration of a notice to quit dated July15, 2019. Among the reasons for terminating Defendant's tenancy was Plaintiff's belief that Defendant was permitting an unauthorized occupant, Orlando Ayala, to reside in the unit.

On October 11, 2019, the parties entered into a Court agreement at a time that Defendant was not represented by counsel. Apparently, Defendant requested to add Mr. Ayala to her lease because the agreement contemplated Plaintiff issuing a decision on whether to add him to the lease within sixty days. Plaintiff required Defendant to provide it with proof of his address in the interim.

On February 18, 2020, Plaintiff filed a motion for judgment based on series of complaints it received about Defendant and/or Mr. Ayala. The motion noted that Defendant had not provided

[1] Defendant filed two separate motions, which will be considered together herein.

proof of Mr. Ayala's address. On March 3, 2020, pursuant to an agreement Defendant signed with advice of an attorney acting as Lawyer for the Day, Defendant agreed to entry of judgment and a stay of execution. The agreement referenced that Mr. Ayala's add-on application had not been approved or denied. Although not written into the agreement, the Court infers that the proof of address had still not been provided to Plaintiff. If it had, the Court presumes that Defendant and her counsel would have pressed for a decision on the add-on application at this time.

Apparently as a result of the COVID pandemic, nothing entered on the docket in this case until September 28, 2021, when Plaintiff file a motion to bring the case forward. As a result of the motion, the parties entered into another Court agreement (at which Defendant was represented by her current lawyer) on or about November 1, 2021. Defendant asked for a continuance until December 8, 2021 and agreed not to invite Mr. Ayala to the property in the meantime. At the next court date on December 8, 2021, the parties agreed to further continue the case to January 13, 2022. Again, Defendant agreed not to invite Mr. Ayala to the property and agreed to provide proof of his address to Plaintiff by January 3, 2022.

Prior to the January 13, 2022 review date, Defendant filed her first motion to dismiss, and before that motion was heard, Defendant filed her second motion to dismiss. Defendant seeks dismissal based on her belief that Plaintiff acted in bad faith by inducing her into signing an agreement for judgment in March 2020 with a promise of considering Mr. Ayala's add-on application when it knew it was going to deny it due to his past behavior.

The Court is not convinced that Plaintiff acted in bad faith. Defendant shares some responsibility for the manner in which this case proceeded through the Court system. She was asked to provide proof of Mr. Ayala's address in the first Court agreement, and yet by the time of the December 8, 2021 agreement, had not done so. It appears that she had it within her control to push

Plaintiff to make a decision on the add-on application much sooner had she simply provided the necessary paperwork.

In an organization as large as the Springfield Housing Authority, the Court is not surprised to hear the property managers at an individual property would need to ask a different department to look into whether an applicant for housing has a past history that would disqualify him or her from tenancy. A property manager may not have all of the resources to delve into an applicant's background, and policies regarding disqualifying conduct changes from time to time. It also comes as no surprise that the COVID pandemic, which intervened between the March 2020 agreement and Plaintiff's September 2021 motion to bring the case forward, might have interrupted the process of seeking input from a different department at the agency.

Although the Court finds no evidence of bad faith, the Court is troubled by the length of time that has passed without the case either being dismissed or execution issuing. Judgment (purportedly) entered in March 2020,[2] more than two years ago. At some point, a tenant against whom an eviction is sought for alleged misconduct should be reinstated as a tenant if he or she complies with the terms of a Court agreement (and if he or she does not comply, Plaintiff cannot sit on its hands for many months before filing a motion to issue the execution).

As a matter of equity, Defendant should not have to live under the threat of imminent eviction indefinitely. Because no judgment has entered on the docket, the Court does not need to vacate it, but the Court will dismiss this case and order that Defendant's tenancy be reinstated if it has not already been reinstated. If Plaintiff believes Defendant continues to violate her lease, it must send a new notice to quit and start a new proceeding. Accordingly, in light of the foregoing,

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[2] The Court notes that although the parties agreed to the entry of judgment, judgment has never entered on the Court's docket.

Defendant's motion to dismiss is ALLOWED as to possession and DENIED as to the imposition of damages or sanctions.

SO ORDERED.

DATE: 6/21/2022

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-CV-0856

TOWN OF AGAWAM HEALTH DEPT.,)
PLAINTIFF)
v.)
ESTATE OF JANIS GRAY-BERKOWITZ,)
TIANA NIEVES AND CITIZEN BANK,)
DEFENDANTS)

ORDER REGARDING
ALTERNATIVE HOUSING

This civil matter Came before the Court for a Zoom hearing on June 15, 2022 on motions related to the rehabilitation work underway at 17 Cambridge Street, Agawam, Massachusetts (the "Premises"). A receiver, Campagnari Construction, LLC, has been appointed to complete the work necessary to make it habitable. Counsel for the receiver, Plaintiff, Defendant Citizen's Bank and the son of the former owner all appeared through counsel. Defendant Nieves ("Ms. Nieves") appeared self-represented.

Most recently on May 12, 2022, the Court denied Ms. Nieves' motion for alternative housing. At that time, the receiver had just been selected and it was apparent that the Defendant Estate had neither assets nor a duly appointed personal administrator to take responsibility for the Premises. Moreover, it was not clear to the Court whether Ms. Nieves was a bona fide tenant of the former owner or lessor.

The circumstances have now changed. The receiver has been working to renovate the Premises and has had a rehabilitation plan approved by the Court. By now, it no doubt has a good sense of the value of the property. Typically, this judge is reluctant to order a receiver to provide alternative housing unless it appears very likely that the receiver's lien (inclusive of

alternative housing costs) will be fully satisfied from the proceeds of the sale of the property. In this case, the rehabilitation plan lists a total cost of approximately $92,000.00. Without knowing the fair market value of the Premises after the renovations are completed, the Court cannot assess the likelihood of the alternative housing costs being paid from the proceeds of the sale. Nonetheless, given that the home is a single-family home in a residential neighborhood in Agawam, the Court will assume that its selling price will be adequate to pay off a receiver's lien in excess of $100,000.00.

Accordingly, giving Ms. Nieves the benefit of the doubt as to her tenancy rights in the Premises in the absence of a contrary assertion by anyone with a superior right to possession, the Court enters the following order:

1. Beginning as of July 1, 2022, the receiver shall provide alternative housing to Ms. Nieves. If the alternative accommodations do not have cooking facilities, the receiver shall provide Ms. Nieves with a weekly food stipend of $250.00 (prorated for any partial week). The receiver is authorized to add all expenses associated with providing alternative accommodations (including the stiped) to its lien.
2. The order for alternative housing shall end at such time as Ms. Nieves can reoccupy the Premises.
3. If the receiver wishes to contest this ruling, it shall contact the Clerk's office to schedule a hearing prior to July 1, 2022.

SO ORDERED

DATE: 6/21/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-317

TOWN OF CUMMINGTON,

Plaintiff,

v.

SAUL CASDIN,

Defendant.

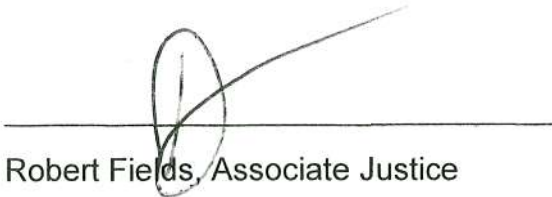
ORDER

After hearing on June 17, 2022, at which the plaintiff town appeared through counsel and the defendant property owner appeared without counsel, the following order shall enter:

1. The defendant is interested in appealing the town's citation at the town's administrative level. Because the underlying citation failed to notify him of his right to appeal, he shall have until June 24, 2022, at 4:00 p.m. to file his appeal by email to plaintiff's counsel Michael Siddall.

2. Either party may mark this matter for further hearing after the administrative remedies are exhausted.

So entered this 21st day of June, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2925

DONALD E. WYSOCKI, AS TRUSTEE OF THE DONALD WYSOCKI AND PAULA WYSOCKI JOINT REVOCABLE TRUST, PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER
JONATHAN BAKER-MCGEE, DEFENDANT	)	

This summary process case brought for non-payment of rent came before the Court on April 25, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of Unit 3 (the "Premises") at 95 Plumtree Road, Sunderland, Massachusetts (the "Property").

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 is a trustee of the Donald Wysocki and Paula Wysocki Joint Revocable Trust, which owns the Property. The Property is a single family house with several bedrooms and shared common areas, such as the kitchen and dining room. Plaintiff resides in an separate home which is adjacent to the Property.

The Premises are a furnished bedroom which Defendant rented in approximately May 2019 pursuant to a written rental agreement. The lease term extended to August 31, after which it

could be renewed for successive one-year terms. Rent was $685.00 per month, inclusive of heat and all other utilities. Although Defendant indicated a willingness to renew the lease in 2021, the Court finds that there was no meeting of the minds as to the lease renewal and, therefore, the lease expired by its own terms on August 31, 2021. When Defendant failed to vacate, Plaintiff served him with a legally sufficient notice to quit on September 28, 2021. Plaintiff subsequently timely served and filed a summary process summons and complaint, seeking $2,740.00 for unpaid rent from July 2021 to October 2021 plus all amounts due for use and occupancy thereafter.

Defendant did not file an answer. He failed to fully respond to Plaintiff's discovery requests and Plaintiff objected to the Court permitting Defendant to assert any affirmative defenses or counterclaims at trial, given his failure to adequately respond to discovery. After reviewing Defendant's discovery responses, the Court determined that he had put Plaintiff on notice of his affirmative defenses. Because he did not file an answer (nor did he seek leave to do so), the Court ordered that he would be prohibited from asserting counterclaims at trial.[1]

With respect to the unpaid rent, Defendant contends that he paid July, August and September of 2021, but concedes that he has not made payments after September 2021. Prior to the commencement of trial, in a concession made to avoid the need to present evidence regarding the contested payments from July to September 2021, Plaintiff agreed not to seek recovery of rent for those months. Accordingly, the Court finds that the amount of unpaid rent through trial is

[1] As a practical matter, the difference may be insignificant because, pursuant to G.L. c. 239, § 8A, a tenant or occupant can defeat a landlord's claim to possession if the amount found to be due the tenant or occupant "by reason of any counterclaim or defense" exceeds the amount found to be due the landlord.

$4,795.00. Defendant testified that he should be excused from paying rent because of conditions of disrepair at the Property and because of Mr. Wysocki's interference with his quiet enjoyment.

With respect to Defendant's claims of bad conditions, the question for the court is whether the conditions rise to the level of material defects that impair the value of the Premises. 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. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) ("Not every breach of the State sanitary code supports a claim under the implied warranty of habitability"). The emphasis is on whether the premises are fit for human habitation, not whether the dwelling unit is in pristine condition. *Id.* 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.

Defendant contends that he never had heat in his bedroom from the outset of his tenancy, although he did not know about the absence of heat until the weather turned cold. Defendant provided a text message from November 2019 telling Mr. Wysocki that he was without heat. Defendant testified that Mr. Wysocki provided him with a space heater for his room, and he showed a picture of Mr. Wysocki purportedly showing him how to use it. According to Defendant, the space heater failed soon thereafter and Defendant had to buy his own space heaters. Defendant claims that the forced hot air vent into his room is not connected to any ductwork.

Mr. Wysocki testified that the Property is heated by oil and has a single zone, which he controls with a thermostat that he keeps in a lock box. He disputes there is insufficient heat in Defendant's bedroom although he did not address the issue of the lack of heating ducts leading to Defendant's bedroom. He claims that, at least since service of the notice to quit in the summer of 2021, Defendant refused to let him enter the bedroom to inspect or make repairs, and thus he is not aware of any current problem. He implied that Defendant likely is the cause of the inadequate heat given that he still had his air conditioner in the window in December 2021.

The Court infers from the photograph of Mr. Wysocki showing Defendant the space heater that heat was in fact a problem in Defendant's bedroom, and the text from November 2019 confirms that he informed Mr. Wysocki. The evidence is not clear as to when the problem was resolved, if ever.[2] Therefore, the Court concludes that Defendant suffered from inadequate heat from November 2019 (when he moved in) through May 2020 (the end of heating season) and from September 2020 (the beginning of the heating season) to May 2021, for a total of 16 months. During these months, the Court deems the insufficient heat, which Defendant could not control due to the locked thermostat, warrants a rent abatement of 5%.[3] The total dollar amount of the abatement is $548.00.[4]

Defendant testified that the Property was infested with mice. He claims he complained of mice around Easter 2021 and showed a text to Mr. Wysocki in this time frame the mice issue had not been resolved. The evidence supports Defendant's testimony that there were mice in the

[2] Although Mr. Wysocki testified that Defendant refused access as of the summer of 2021, there is no evidence that Defendant refused access for the heating seasons of 2019-2020 or 2020-2021.
[3] The Court takes into account that Defendant was not without heat, but that he had to supply his own space heaters. He did not incur additional costs for electricity, however, given that Plaintiff pays all utilities.
[4] To the extent Defendant testified about other conditions of disrepair, the Court finds the conditions insubstantial.

Property in 2021, that Mr. Wysocki placed traps and took other steps to remedy the problem, but did not remove one dead mouse and left mice droppings in various cabinets and drawers in the common areas of the Property. Based on the evidence presented, the Court deems that there was not a severe infestation that materially impaired the fair rental value of the Property.

Defendant also asserts claims that, if proven, would constitute breach of the covenant of quiet enjoyment. Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ... " G. L. c. 186, § 14. This statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The statute does not require that the landlord act intentionally to interfere with a tenant's right to quiet enjoyment. *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997). In analyzing whether there is a breach of the covenant, the Court examines the landlord's "conduct and not [its] intentions." *Doe*, 417 Mass. at 285. A tenant must show some negligence by the landlord in order to recover under the statute. *Al-Ziab*, 424 Mass. at 805.

The Court finds that Mr. Wysocki interfered with Defendant's mail delivery. Defendant showed videos from which the Court infers that Mr. Wysocki was rifling through his tenants' mail, and Mr. Wysocki admits that he removed Defendant's name from the mailbox upon the lease expiration in August 2021, despite Defendant continuing to reside at the Property. Mr. Wysocki claims that he or the letter carrier promptly added Defendant's name back on the

mailbox, but the Court does not credit his testimony. The evidence establishes that Defendant wrote his own name on the mailbox after Mr. Wysocki removed it.

The evidence further shows that Mr. Wysocki made no effort to alert his tenants when he intended to enter the house. Defendant regularly found Mr. Wysocki in the house, doing some work in the house or banging on bedroom doors to collect rent from the tenants. It interrupted his sleep and surprised him when he would come out of the bedroom or bathroom and see Mr. Wysocki standing there.

Mr. Wysocki testified that he tries to be a good landlord and likes to check on his properties regularly. He believes that he has the right to enter the common areas whenever he pleases without the knowledge or permission of the tenants, and that he is only prohibited from entering individual rooms without permission.. He stated that he goes into the Property two or three times per week to keep an eye on tings. He sometimes enters to clean (particularly when he plans to show a room to a potential tenant) and to collect rents. Mr. Wysocki told the story of one instance, in July 2021, when he found the kitchen to be filthy, with the sink overflowing and the counters covered with food. He was dissatisfied at the manner in which the tenants were maintaining the kitchen, so he simply threw the dishes out the window. He claims they were dishes that he had provided for the house, and not the property of the tenants. After this incident, he said he no longer provides dishes for the Property.

The acts described by Mr. Wysocki are troubling. He does not have the right to simply enter the Property as he pleases without advance notice. His tenants have the right to exclusive possession of the house, subject to his right to enter for emergencies without notice or, for any

other reason, with notice. He also may not destroy items in the Property, even if they are his, that were provided to the tenants when they moved in.

The Court finds that Mr. Wysocki's interference with Defendant's mail and his unannounced entrance into the Property on a regular basis constitutes interference with quiet enjoyment under G.L. c. 186, § 14. Defendant did not offer any evidence of actual damages; accordingly, he is entitled to statutory damages of three months' rent on account of this affirmative defense. Given the foregoing, and in light of the governing law, the following order shall enter:

1. Plaintiff established that he is owed $4,795.00 in unpaid rent through April 2022. The Court presumes that no payments have been made since trial, and therefore an additional $1,370.00 in use and occupancy has accrued for May and June 2022, for a total of $6,165.00 through June 2022.[5]
2. Defendant is entitled to an offset in the amount of $2,603.00 on account of his affirmative defenses.[6]
3. The amount due Plaintiff exceeds the amount due Defendant; therefore, pursuant to G.L. c. 239, § 8A, there shall be no recovery of possession if Defendant, within ten days of the date of this order, pays Plaintiff the sum of $3,562.00, plus court costs in

[5] If Defendant made any payments for his use and occupancy of the Premises for May or June 2022, he should immediately file a motion with the Court to amend the judgment amount.
[6] This figure is the sum of the warranty damages and the quiet enjoyment damages.

the amount of $ 212.82 and interest in the amount of $ 280.08, for a total of $ 4,054.90

4. If Defendant makes this payment on time and in full, his tenancy shall be reinstated and judgment for possession shall enter in his favor. If Defendant does not make the payment, judgment for possession and damages in the amount set forth in item 3 above shall enter in favor of Plaintiff.

SO ORDERED.

DATE: 6/21/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0818

ANA AND RICHARD BUDZYNA,	)	
	)	
PLAINTIFFS	)	
	)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
KELLY NICHOLSON,	)	
	)	
DEFENDANT	)	

This non-payment summary process case came before the Court for an in-person bench trial on June 17, 2022. Plaintiff appeared through counsel. Defendant appeared self-represented.

Based on the testimony and evidence presented at trial, the Court finds that Plaintiffs own a four-unit residential property located on Greenwich Street in Ludlow, Massachusetts. Defendant resides at 37B Greenwich Street (the "Premises") with her adult daughter and grandson. Defendant moved into the Premises approximately 12 years ago. Plaintiffs purchased the building in January, 2019. Monthly rent is $680.00. Ana Budzyna ("Ms. Budzyna") testified that Defendant has never paid rent since she and her husband purchased the property. The parties agree that Plaintiff received two rental assistance grants through Way Finders, one in the amount of $13,460.21 and one in the amount of $6,920.00, which allowed Defendant to reach a zero balance as of January 2022.[1]

[1] Included in these sums was a rental stipend that paid Defendant's rent through January 2022.

When Defendant did not pay rent for February 2022, Plaintiffs had her served with a legally sufficient notice to quit on February 10, 2022.[2] Defendant did not cure the non-payment, and Plaintiff timely served and filed a summary process summons and complaint seeking unpaid rent in the amount of $1,360.00. Ms. Budzyna testified that no monies had been received from Defendant since the service of the notice to quit, and that through the date of trial, $3,400.00 is due.[3] The Court finds that Plaintiffs have established their prima facie case for possession and unpaid rent in the amount of $3,400.00.

Defendant did not file an answer and does not deny that she has failed to pay the rent amount claimed by Plaintiffs. She claims that she is entitled to an abatement in the amount of rent owed due to conditions of disrepair in the Premises, and the Court permitted her to testify as to said conditions.[4] She testified about two issues which she deemed to be the primary issues: a defective stove and water leaks in her ceiling.[5]

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); see *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State sanitary code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. A tenant's obligation to pay the full rent abates when the landlord has notice that the

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[2] Defendant denies receipt of the notice, but the deputy sheriff's return of service indicating it was served in hand is prima facie evidence that the notice was delivered to Defendant. Defendant did not present a credible evidence to defeat Plaintiff's prima facie evidence that service was made.

[3] The landlord is generally limited to recover the amounts listed in the "account annexed" on its summons and complaint. Here, however, because the tenant is still in possession and does not dispute the amount, the Court includes all use and occupancy (at the same rate as the monthly rent) accrued through trial. See *Davis v. Comerford*, 483 Mass. 164, 171 (2019) (citation omitted).

[4] Before doing so, the Court allowed Plaintiff the opportunity for a continuance to respond to the allegations of bad conditions, but Plaintiff elected to proceed with trial.

[5] She also testified about an accumulation of garbage outside of the house, but acknowledged that Plaintiffs resolved the problem. The Court finds insufficient evidence to warrant any award of damages as a result of the garbage.

premises failed to comply with the requirements of the warranty of habitability." *Id.*, citing *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 (1979). The warranty of habitability applies only to "substantial" violations or "significant" defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim).

Even if significant conditions of disrepair exist in the premises, tenants remain liable for the reasonable value of their use of the premises for so long as they remain in possession. See *Davis*, 483 v. at 173, citing *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 462 (2017). Damages for breach of the implied warranty of habitability are measured by 'the difference between the value of the premises as warranted (the rent agreed on may be evidence of this value) and the value of the premises as it exists in its defective condition.'" *Id.*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994).

In this case, the evidence shows that Plaintiff notified Defendant Richard Budzyna ("Mr. Budzyna") in writing in late April 2022 that her stove was defective. She testified that she informed Mr. Budzyna "months earlier", but she could not be specific and had no writing to support her claim. More specifically, Defendant did not convince the Court that she gave notice to Plaintiffs prior to February 10, 2022, when she was served with the notice to quit for non-payment of rent. See G.L. c. 239, § 8A (tenant not entitled to the relief in this section unless landlord knew of conditions before tenant was in arrears in rent). Although Defendant did not give notice before being arrears, she is entitled to have a working stove. Plaintiffs are required to provide a working stove forthwith.[6]

[6] Ms. Budzyna testified that Plaintiffs purchased a new stove last month, but it has yet to be delivered due to delivery delays beyond their control.

With respect to the bedroom ceiling, Defendant provided photographs she took within the past few weeks showing that the textured drywall finish has peeled away and some has fallen to the floor. She testified that the cause of the damage is water that leaks into the house when it rains. She claims that this issue has been going on since Plaintiffs purchased the property in 2019. She said that Mr. Budzyna came to the Premises to look the issue after Plaintiffs purchased the property, but she could not recall when this meeting occurred. The Court finds it difficult to believe that if her ceiling was leaking since January 2019 that she would not have complained by text or contacted the code enforcement inspector. She texted Plaintiffs regarding the stove, so she knew how to communicate with Plaintiffs when necessary. Because Defendant has not paid any rent to Plaintiffs since they purchased the Premises, if the condition was not present at the outset of the tenancy, it is logical to assume that by the time Defendant brought the issue to Plaintiffs' attention, she was already in arrears with her rent. Nonetheless, Plaintiffs are ordered to investigate the source of any leak in Defendant's ceiling and take appropriate remedial measures.

Given the Court's findings, and in light of the governing law, Defendant is not entitled to a rent abatement because, with respect to the two issues about which she testified, she was already in arrears with the rent prior to giving Plaintiffs notice of the defects. Therefore, the following order shall enter:

1. Judgment for possession and damages in the amount of $3,400.00 shall enter in favor of Plaintiffs.[7]
2. Execution shall issue pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 6/23/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

[7] Defendant is not protected by Stat. 2020, c. 257, as amended by Stat. 2022, c. 42 because she has no pending application for rental assistance.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-545

WILLIAM GLENN, Plaintiff, v. MEGAN DYER BOYCE, Defendant.	ORDER

After hearing on June 21, 2022, on the tenant's motion to stop a physical eviction, at which both parties appeared and at which a representative from Way Finders, Inc. joined the hearing, the following order shall enter:

1. The tenant has an application pending with Way Finders, Inc. [ ].
2. In accordance with St. 2020, c.257, as amended by St. 2022, c.42, the physical eviction currently scheduled shall be cancelled. The landlord shall immediately contact the constable and moving company and cancel the physical eviction.

The landlord shall provide the tenant with a copy of the bill for costs incurred by scheduling and cancelling the eviction. Copies of same shall be provided to Way Finders, Inc. as well for its consideration as part of the application.

3. Lucien Ortega from Way Finders, Inc. also agreed to reach out to Carmen Torres, the tenant's MRVP point person at Way Finders, Inc. regarding the tenant's status as a participant in the MRVP program and report back to the court at the next hearing scheduled below.
4. The tenant is referred to Community Legal Aid, particularly regarding her MRVP voucher, as the landlord reported to the court that the tenant's voucher was terminated.
5. This matter shall be scheduled for further hearing and review by Zoom on **June 27, 2022, at 9:00 a.m.** The court's Zoom platform can be reached at Meeting ID: 161 638 3742 with a Password of: 1234.

So entered this 23rd day of June, 2022.

Robert Fields, Associate Justice

CC: Jane Edmonstone, Esq., Community Legal Aid
Lucien Ortega, Way Finders, Inc.
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0246

HOUDINI REALTY LLC, PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER
MISHALE RODRIGUEZ, DEFENDANT	)	

This no-fault summary process case came before the Court on May 17, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 162 Fort Pleasant Avenue, #3L, Springfield, Massachusetts (the "Premises") from Defendant.

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

Plaintiff owns the Premises. Defendant resided there prior to Plaintiff's ownership. On September 30, 2021, Plaintiff served Defendant with a notice pursuant to G.L. c. 186, § 12 terminating her month-to-month tenancy as of November 1, 2021 and offering her a new tenancy commencing on that date at a new rental rate.[1] Defendant acknowledges receipt of the notice.

[1] The rent in place at the time of the notice was $1,200.00 per month, and the proposed rent increase would have changed the rent to $1,600.00.

Defendant neither vacated at the termination of her tenancy nor paid the increased rental rate.[2] Plaintiff timely filed a summons and complaint. Even though this is a no-fault case, Plaintiff asked for use and occupancy accruing through judgment at a rate of $1,200.00 per month, the last agreed-upon rental rate. Through the date of trial, the amount of $9,600.00 is due Plaintiff.[3]

Defendant did not file an answer. Despite not filing an answer, Defendant asserted affirmative defenses at trial relating to bad conditions in the Premises.[4] Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); *see Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State sanitary code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. A tenant's obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability." *Id.*, citing *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 (1979). The warranty of habitability applies only to "substantial" violations or "significant" defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim).

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[2] Defendant stopped paying rent altogether upon receipt of the notice. She did not pay any amounts for October 2021 and has not paid for her use and occupancy of any month thereafter.

[3] The landlord is generally limited to recover the amounts listed in the "account annexed" on its summons and complaint. Here, however, because the tenant is still in possession and does not dispute the unpaid amount, the Court includes all use and occupancy (at the same rate as the last agreed-upon monthly rent amount) accrued through trial. See *Davis v. Comerford*, 483 Mass. 164, 171 (2019) (citation omitted).

[4] In the absence of an answer, the Court does not consider Defendant's testimony to constitute a counterclaim. Nonetheless, even without filing an answer, Defendant is entitled to assert defenses at trial. See *Morse v. Ortiz-Vazquez*, 99 Mass. App. Ct. 474, 485 (2021).

Even if bad conditions not caused by the tenants exist in the premises, tenants remain liable for the reasonable value of their use of the premises for so long as they remain in possession. See *Davis*, 483 Mass. at 173, citing *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 462 (2017). Damages for breach of the implied warranty of habitability are measured by 'the difference between the value of the premises as warranted (the rent may be evidence of this value) and the value of the premises as it exists in its defective condition.'" *Id.*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994).

Here, Defendant testified about several defects in the Premises. She described an extreme mice infestation that she says she reported over the phone to the manager of the LLC, Jada Miller. She testified that, because of the mice, she had to throw out food regularly and that she found mouse droppings all over the home. Defendant also testified about the presence of wasps getting into the window frame during warm months and entering the home. She said she suffered multiple wasp stings.

Defendant asserted that she also reported water damage to her ceilings and walls. Although she admitted that Plaintiff made repairs after getting notice, she believes that the repairs were incomplete and said that the drywall is again cracking. She also testified that she believes the water may have caused mold growth in her son's closet, although she provided no photographic or scientific evidence to support the claim. She further asserted that Plaintiff was slow to repair a large hole in her door that she had to cover it up with cereal boxes. The door was fixed prior to trial.[5] The only photographs presented to the Court show that the Premises appear

[5] Defendant said that she called the Board of Health to report certain conditions that she believed need repair, but claims that she never got a return call.

to be in good condition, except for some water stains on the ceilings.

In order to be entitled to a rent abatement, Defendant would have had to establish that significant conditions of disrepair existed in the Premises after she provided notice to Plaintiff. The evidence presented in this case is insufficient to demonstrate when Defendant gave notice to Plaintiff, the severity of the issues and the length of time these issues went unaddressed. Given the lack of evidence, and Defendant's honest admission that she did not stop paying rent because of the condition of the Premises but instead because she lost her job, the Court finds that the conditions she described at trial do not warrant a finding that she is entitled to an abatement of rent.[6]

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

1. Judgment for possession and $9,600.00 shall enter in favor of Plaintiff.
2. Execution shall issue upon written application in accordance with Uniform Rules of Summary Process Rule 13.

SO ORDERED.

DATE: 6.23.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

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[6] Defendant testified about a problem tenant in the building who damaged her door and otherwise interfered with her quiet enjoyment of the Premise. The Court finds insufficient evidence to find that Plaintiff should be held responsible for the conduct of the other tenant and accepts Plaintiff's representation that the problem tenant has been (or is imminently being) evicted.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3245

TFO PROPERTIES, LLC,

Plaintiff,

v.

LYNN WHATELEY,

Defendant.

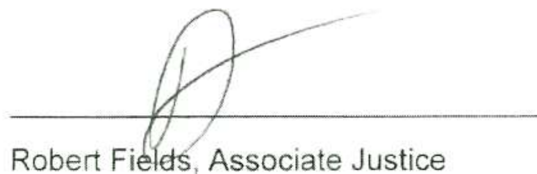
ORDER

After hearing on June 16, 2022, on the tenant's motion for additional time to vacate the unit, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. This is a no-fault eviction and the parties entered into an agreement on January 11, 2022, to vacate the unit by April 30, 2022. On April 19, 2022, the tenant filed a motion for an extension of time as she has not been able to secure alternate housing.

2. The tenant is currently behind in rent in the amount of $826 through June 2022, and has a pending application with Way Finders, Inc. for said sums as well as for a rent stipend.
3. The tenant's motion is allowed contingent upon her following up with the Way Finders, Inc. application for rental arrearage and stipend. The tenant shall also diligently search for housing and maintain a "log" of her housing search efforts.
4. The landlord explained that it purchased the subject premises in 2019 which is part of a 28-unit development and has been able to renovate all the units except the "block" of three units in which the tenant's unit is located. It agreed that it could work with a schedule that has a date certain for September 1, 2022.
5. Accordingly, the tenant shall have until September 1, 2022, to relocate. In the meantime, she shall work with Way Finders, Inc. regarding outstanding rent and rent moving forward and to diligently search for housing and pay her rent/use/occupancy going forward.
6. If the tenant fails to comply with the terms of this order, the landlord may file a motion for judgment for possession.

So entered this 23rd day of June, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-4428

CITY OF SPRINGFIELD, **Plaintiff,** **v.** **CAROL BAILEY, et al.,** **Defendants.**

ORDER DISMISSING APPEAL and for ISSUANCE OF THE EXECUTION FOR POSSESSION

After hearing on February 8, 2022, at which the plaintiff appeared through counsel and the defendant, Carol Bailey, appeared *pro se*, the following order shall enter:

1. Given the court's October 28, 2021 bond order and in accordance with the Appeals Court December 3, 2022 Notice of Docket Entry, and the defendants having not paid any use and occupancy since the entry of either order, the plaintiff's motion to dismiss the appeal is hereby allowed.

2. As such, an execution shall issue to the plaintiff for possession.
3. Any and all motions filed by the defendants for relief from judgment and for reconsideration that may currently be pending in this court are hereby denied.

So entered this 24th day of June, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV0707

TONY ZEBROWSKI, PLAINTIFF v. HAYASTAN INDUSTRIES, INC., ET AL., DEFENDANTS	ORDER ON MOTION TO DISMISS

This matter came before the Court on February 15, 2022 on a motion to dismiss claims against Defendant Stephen Shahabian ("Shahabian") on the grounds of failure to state a claim upon which relief can be granted. Both parties appeared through counsel.

To defeat a motion to dismiss, "a plaintiff's obligation [is] to provide the 'grounds' of his 'entitle[ment] to relief' [beyond] labels and conclusions; Factual allegations must be enough to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (internal citations omitted).

Here, Plaintiff alleges that in 2016, Shahabian, as manager of Bircham Bend Mobile Home Park (the "Park"), submitted a petition for a rent increase at the Park, which increase was approved by the rent control board in 2017. This Court vacated the rent control board's decision in 2020. Plaintiff alleges that, despite the approval of a rent increase having been vacated by the Court, Shahabian has not refunded any of the excess rent payments collected pursuant to the rent

increase approved in 2017.[1]

It is settled law that corporate officers may be held liable under Chapter 93A for their personal participation in conduct invoking its sanctions. *Community Builders, Inc. v. Indian Motorcycle Assoc. Inc.,* 44 Mass. App. Ct. 537, 560 (1998). See also *Nader v. Citron*, 372 Mass. 96, 102-103 (1977), and *LaClair v. Silberline Manufacturing Co., Inc.* 379 Mass. 21, 29 (1979). If Shahabian personally participated in the wrongful conduct, he could be found liable under G.L. c. 93A.

Taken as true, the allegations in the complaint plausibly suggest that Plaintiff could be entitled to relief under Chapter 93A against Shahabian personally as the operator or manager of the Park. Accordingly, the motion to dismiss is denied.

SO ORDERED.

DATE: 6/27/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

[1] In related litigation involving the Park and the same parties, Shahabian held himself out as the Park operator, and the Court found him personally liable for his participation unfair and deceptive practices under G.L. c. 93A. See *Zebrowski v. Hayastan Industries, et al.,* 18H79CV000228.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV0707

TONY ZEBROWSKI, PLAINTIFF	)	
v.	)	ORDER ON MOTION TO STAY LITIGATION
HAYASTAN INDUSTRIES, INC., ET AL., DEFENDANTS	)	

In this civil action arises out of a rent increase Defendants received from the Springfield Mobile Home Rent Control Board (the "Board") in 2017 relating to Bircham Bend Mobile Home Park (the "Park"). Certain tenants of the Park filed an action for judicial review in this Court under G.L. c. 30A, § 14. On or about August 7, 2020, this Court allowed the tenants' motion for judgment on the pleadings and vacated the Board's decision (Docket No. 17H79CV001221). On September 2, 2020, Defendant Hayastan filed a notice of appeal. The appeal is pending in the Appeals Court (Docket No. 21-P-0668).

Defendants seek a stay of this litigation based until their appeals have been exhausted. They assert that a stay would be in the interest of judicial economy and would save them time and expense. Plaintiff contends that a stay is not warranted and that he should be able to engage in pretrial discovery, including written discovery and depositions, without the delays associated with the appellate process.

The Court does not find a compelling reason to stay the litigation at this time. The Court might reach a different conclusion at a different stage of the litigation if at such time proceeding

with the case could result in unfair prejudice to Defendants; however, given that trial in this case is months away, Defendants will not suffer any meaningful prejudice if Plaintiff is permitted to engage in pretrial discovery. The motion to stay litigation is hereby DENIED. Plaintiff be permitted to engage in discovery in order to prepare for trial.[1]

SO ORDERED.

DATE: 6/27/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

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[1] In reaching this decision, the Court takes into account the unlikelihood of success that Defendants will succeed on appeal. As noted by this Court in 17H79SP001221, because the Board is comprised of all new members, and in the absence of recordings or substantial notes from the proceeding, it would be impractical to remand the matter to the Board.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 18CV0228

TONY ZEBROWSKI, PLAINTIFF v. HAYASTAN INDUSTRIES, INC., ET AL., DEFENDANTS	ORDER ON CROSS MOTIONS FOR RECONSIDERATION

Plaintiff moves pursuant to Mass. R. Civ. P. 59 and 60 to alter, amend, reconsider or grant relief from its September 2, 2021 Order on Assessment of Damages (the "Order"). Defendants opposes the motion and Defendant Stephen Shahabian ("Shahabian") moves for partial reconsideration of the same Order. The Court treats both as motions for reconsideration. A motion for reconsideration calls upon the discretion of the motion judge. See *Audubon Hill S. Condominium Assn. v. Community Assn. Underwriters of America, Inc.*, 82 Mass. App. Ct. 461, 470 (2012). The motion should be based on changed circumstances or a particular and demonstrable error in the original ruling or decision. *Id.* (citations omitted). In this case, both parties cite to particular and demonstrable errors in the Order: Plaintiff asserts that the Order erroneously awarded multiple damages against Defendants jointly and severally instead of each of the Defendants separately; Shahabian contends that the Court's determination that he be held personally liable under G.L. c. 93A was erroneous and that the award of single damages against him should be vacated.

The Court first addresses the question of whether this judge's conclusion that Shahabian is personally liable for single damages was erroneous. In reaching its conclusion, this judge considered himself to be bound by the previous findings and rulings in this case made by a different judge.[1] Accordingly, this judge accepted as the law of the case that Defendants were liable under G.L. c. 93A ("Chapter 93A") because they unlawfully imposed rent increases at Bircham Bend Mobile Home Park (the "Park") and failed to refund the excess rent after demand by Plaintiff. See *Rulings and Order on Cross-Motions for Reconsideration and Revised Ruling and Order on Plaintiffs' Motion for Partial Summary Judgment* (Aug. 7, 2020) (Fein, J.). The question left for this judge was to determine whether the damages were subject to doubling or trebling under Chapter 93A. At the request of the parties, the Court did not hold a separate evidentiary hearing with respect to the question of Chapter 93A liability, but instead adopted the facts to which the parties had stipulated. See *Amended Stipulation of Facts for Trial on Multiple Damages* ("Stipulation"). Among the stipulated facts is the amount of single damages, namely $222,238.00.

The issue of Shahabian's personal liability for the unlawful rent increases was the subject of a motion to dismiss in April 2018. Judge Fein denied the motion, citing *Nader v. Citron*, 372 Mass. 96, 102-103 (1977) for the proposition that a corporate officer may be liable under Chapter 93A for the officer's individual conduct. It is now settled law that corporate officers may be held liable under Chapter 93A for their personal participation in conduct invoking its sanctions. *Community Builders, Inc. v. Indian Motorcycle Assoc. Inc.,* 44 Mass. App. Ct. 537, 560 (1998). In her ruling, the judge noted that, in an affidavit filed on February 25, 2019 in support of Defendants' opposition to Plaintiffs' motion for partial summary, Shahabian identified

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[11] From the inception of this case in 2018 through her retirement in 2020, Judge Fein entered numerous rulings that this judge considers to be the law of the case.

himself as the "owner/operator" of the Park,[2] which subjects him to the Attorney General's Manufactured Housing Community Regulations set forth in 940 CMR 10.01. She concluded that Shahabian' s individual liability depended on his individual conduct, which could not be determined on the pleadings alone.

Because the parties agreed to submit this case to the Court through the Stipulation, the Court draws inferences and conclusions from the facts and documents included therein. Shahabian sent newsletters to Park residents announcing rent increases, signing his name to each. *See, e.g.,* Stipulation, Ex. 1. He identified himself as the "Park Owner" in correspondence seeking unpaid lot rent. *Id.*, Ex. 3. He identifies himself as the principal of Hayastan Industries, Inc. and manager of the park. ¶ 17. He identifies as "the principal of Hayastan Industries, Inc. and manager of the park," signifying that his role as manager of the Park is distinct from his position as principal of Hayastan. *Id.* at ¶ 41. Based on the foregoing, this judge concluded that Shahabian acted as the Park's operator and thus participated in the wrongful acts for purposes of Chapter 93A liability. The Court discerns no error in its ruling, and thus declines to reconsider its decision that Shahabian is personally liable.

The Court turns now to Plaintiff's request that the Court reconsider its decision not to assess separate double damages against each of Hayastan and Shahabian. Plaintiff argues that the Court has no discretion to award less than two times the single damages against each defendant when it determines that each defendant engaged in behavior requiring multiple damages. The Court disagrees. In this case, Hayastan and Shahabian are one actor. Shahabian is the sole stockholder and officer of Hayastan, and thus all actions by Hayastan are done by Shahabian.

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[2] His affidavit is replete with references to his active role in managing the Park. For example, he writes "I am the owner/operator of Bircham Bend Mobile Home Park and have owned it since May 1, 2000"; "I have sought approximately 8 rent increases"; "as owner/operator, I was not required to provide information", and "I personally on behalf of the owner/operator…."

This scenario is different from that in *International Fidelity Ins. Co. v. Wilson*, 387 Mass 841 (1983), in which the judge entered two separate judgments against different defendants, and *Gates v. Mountain View MHC, LLC*, 99 Mass. App. Ct. 112 (2021)(Rule 23.0), in which the park owner contracted with a third-party operator to manage the park.

The Court's determination that Shahabian is personally liable as the operator of the Park and thus not insulated from liability under Chapter 93A does not mean that Plaintiff is entitled to separate judgments against Hayastan and Shahabian. The Court found that Hayastan and Shahabian are jointly and severally liable for the single damages, not severally liable.

Awarding separate double damages awards against each of Hayastan and Shahabian would provide a windfall to the tenants. The purpose of compensatory damages is to make the injured party whole, see *Kattar v. Demoulas,* 433 Mass 1, 15 (2000), and the twin goals of multiple damages under Chapter 93A are punishment and deterrence. See *H1 Lincoln, Inc. v. South Washington Street, LLC*, 489 Mass. 1, 25 (2022). The award of single damages of $222,238.00 here achieves the purpose of the compensatory damages, and the doubling of the damages serves the purposes of Chapter 93A. The Court finds no reason to enter two separate awards of double damages for the same conduct.

Based on the foregoing, the cross-motions for reconsideration are DENIED.

SO ORDERED.

DATE: 6/27/2022

Jonathan J. Kane
Jonathan Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-438

ARIANNA KETHAKEU, PANELOPE HOSLEY, and KALYANI KORTRIGHT, **Plaintiffs,** **v.** **XIAN DOLE and 7Q59 AMHERST, LLC,** **Defendants.**	**ORDER**

After hearing on June 27, 2022, on the plaintiffs' motion for injunctive relief at which the plaintiffs appeared through counsel and the defendant Xian Dole (property manager of the premises) appeared *pro se,* and at which the defendant 7Q59 Amherst, LLC did not appear, the parties presented the following terms as an agreed-upon court order which shall enter:

I). Repairs:

a. Defendant Xian Dole shall forthwith make repairs of all dangerous conditions at

the apartment at 19 Eastern Avenue in Northampton, Massachusetts, as indicated by an "X" on the Northampton Public Health Department report of June 2, 2022. These conditions are:

i. Faulty piping or connection to water heaters in basement and to gas stoves;

ii. Stove does not work. Gas locked out by gas company;

iii. Stairs loose and moving; Possible defective deck posts;

iv. Railing and blasts outside of bedroom and at top of stairs loose/in disrepair;

v. Outside rear exit over bulk head – lighting not working;

vi. Electric outlets in upstairs right bedroom missing face plate;

vii. No Smoke or carbon monoxide alarms in basement at water/gas heaters.

2) Alternative accommodations

a. Defendant Xian Dole shall provide alternative accommodations for each of the Plaintiffs in a hotel in Hampshire County as follows:

i. For Plaintiff Arianna Ketchakeu: from June 27, 2022 until July 5, 2022;

ii. For Plaintiff Kalyani Kortright: from July 1, 2022 until July 5, 2022;

iii. For Plaintiff Penelope Holsey: from June 27, 2022 until July 3, 2022

b. Such alternative accommodations will include a bedroom for each Plaintiff.

c. If repairs are not completed by July 5, 2022, Defendant Xian Dole shall continue to provide such alternative accommodations on a weekly basis until the repairs are completed.

3) Food stipend

a. Defendant Xian Dole shall provide a food stipend of $350 per week per Plaintiff as follows: separate checks made out to Arianna Ketchakeu, Penelope Hosley, and Kalyani Kortright, with first payments to be paid on June 27, 2022.

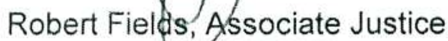
b. Defendant Xian Dole shall provide such stipend on a weekly basis until the repairs are completed.

4) Mail

a. Defendant Xian Dole shall allow the Tenants to place their names on their mailbox and to report to the Northampton Post Office that the apartment is not vacant and that they continue to live there.

5) Review: The parties shall return to court for review of this order on: July 8, 2022 at 11:00 a.m. by Zoom. The court's Zoom platform Meeting ID is: 161 638 3742 and the Password is: 1234. The defendant, 7Q59 Amherst, LLC shall appear hereinafter through counsel. A Mandarin language interpreter is requested for all hearings going forward.

So entered this 28th day of June, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-651

DEGAULLE LITOMA,

Plaintiff,

v.

LU GAUTHIER, JUSTIN TORRES, and PATRICIA MYRICK,

Defendants.

ORDER

After hearing on June 27, 2022, on the landlord's motion for entry of judgment at which the landlord appeared with counsel and the defendants appeared without counsel and at which representatives from Way Finders, Inc. joined, the following order shall enter:

1. This is a non-payment of rent eviction matter, and this order shall enter in accordance with St. 2020, c. 257, as amended by St. 2022, c. 42.

2. The parties entered into an agreement on May 2, 2022, in which they agreed to make certain payments towards rent and arrearage and apply for RAFT through Way Finders, Inc.
3. There was partial compliance with the payments and the tenants applied to Way Finders, Inc. but the application was placed on "temporary hold" due to the landlord's failure to provide a rent ledger.
4. The landlord shall provide a rent ledger, which includes all monies outstanding including the court costs forthwith. The application is now (as of the hearing) re-opened and will likely result in a payment of $7,000.
5. The outstanding arrearage is $15,825 in use and occupancy and $217.50 in court costs. If Way Finders, Inc. is able to provide $7,000 in rental arrearage benefits, the remaining balance will be $8,825 plus $217.50 in court costs.
6. The tenants shall make a payment of $1,350 (from Patricia Myrick) by July 5, 2022, and $3,200 (from Justin Torres and Lu Gauthier) by July 15, 2022.
7. This matter shall be scheduled for further hearing by Zoom on **July 28, 2022, at 10:00 a.m.** At this hearing, the parties will proffer a payment plan for the outstanding monies owed.

So entered this 28th day of June, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-CV-1171

KIARA PEREIRA and ALEX LOPEZ,

Plaintiffs,

v.

MANUEL GOMES and MANUELPEREIRA,

Defendants.

ORDER FOR ENTRY OF DEFAULT ON LIABILITY and AGAINST THE DEFENDANTS ON THEIR COUNTERLCAIM

After hearing on May 26, 2022, on the plaintiffs' motion for discovery sanctions, at which all parties appeared through counsel, the following order shall enter:

1. Plaintiffs' attorney painstakingly laid out in her motion, and in several previous motions, the lengths she has gone in attempting to obtain proper discovery responses from the defendants who are both represented by Attorney Joaquim F. Silva.
2. After multiple discovery motions and an equal number of orders for discovery compliance dating back to June 2019---and on many occasions since that time---

the defendants have still failed to properly respond to the plaintiffs' discovery demand. Examples of such non-compliance include failures by the defendants to sign what responses they have provided and a total failure to respond to requests for production of documents as required by the Civil Rules of Court.

3. Plaintiffs' counsel indicated that she does not take lightly the filing a motion for sanctions and the court, similarly, does not take the responsibility lightly when considering the appropriate remedy for years of recalcitrant behavior on the part of the defendants and/or their counsel.
4. The court has the inherent authority to exercise its powers as necessary to secure the full and effective administration of justice. *Beit v. Prob. & Fam. Ct. Dep't.*, 385 Mass. 854 (1982). Here it sees no choice at this point in this litigation (complaint filed in November, 2018) to believe that given all the time in the world that the defendants will comply to any greater extent with the requirements of discovery and a default shall enter against the defendants for liability and against the defendants on their counterclaim of Unjust Enrichment. The court shall schedule this matter for a Case Management Conference with the judge so that a Damages Hearing may be scheduled.

So entered this 29th day of June, 2022.

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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

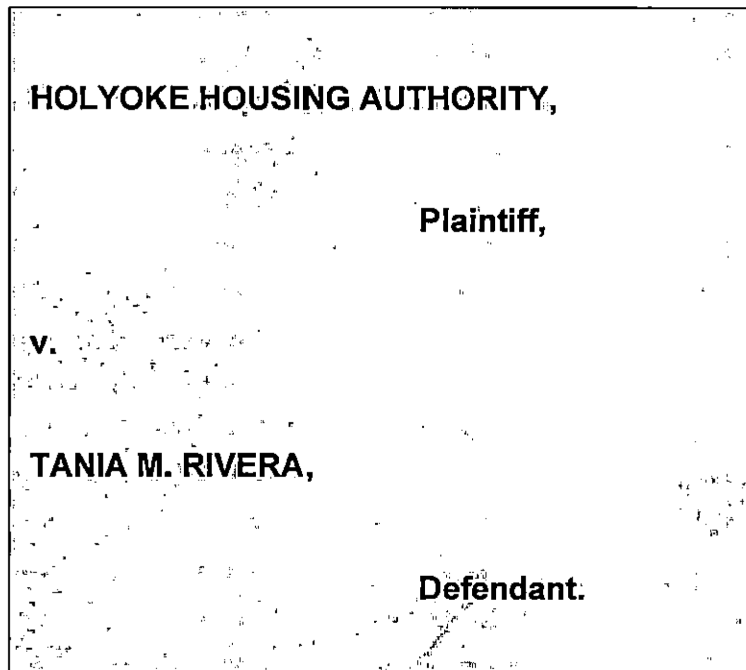
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-2436



HOLYOKE HOUSING AUTHORITY,

Plaintiff,

v.

TANIA M. RIVERA,

Defendant.

ORDER

After hearing on June 27, 2022, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant failed to appear, and at which a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. **Background:** This matter was commenced as a *fault* eviction, alleging that the tenant has failed to comply with requirements of the recertification process. By the time the parties appeared for the Tier 1 event on October 22, 2021, the

tenant had cured the *fault,* having successfully recertified. The parties entered into an agreement for payment of $7.00 in outstanding rent and $201.25 in court costs (hereinafter, "Agreement"). Upon his review of said Agreement, the judge added language to the agreement making it clear that non-compliance with the payment terms of the agreement would not result in entry of judgment for possession.

2. The matter was brought back to court by the landlord on its motion for review on January 13, 2022, and at that time the parties agreed to further payment terms for rent plus $201.25 in court costs and $10.00 in rent. The agreement also contained terms regarding needed repairs at the premises.
3. On March 18, 2022, the landlord filed a motion for entry of judgment for possession for outstanding court fees ($107.25) and for an order for access to the premises to effectuate repairs. The defendant did not appear at the April 8, 2022, zoom hearing on said motion and the judge made a referral to the TPP, ordered the tenant to allow access for repairs, and for payment of rent plus $40 towards court costs.
4. On May 17, 2022, the return date of said order, the landlord appeared, and the tenant did not appear, and the landlord continued the matter generally under the terms of the court's March 18, 2022, order and on the same day filed a motion for entry of judgment for possession for failure to pay outstanding rent ($368.00) and court costs ($107.25). Said motion was scheduled for zoom hearing on June 27, 2022.

5. **Discussion:** Given that this matter is based on a *fault* eviction which has been cured (to wit: recertification)---and based on the that and the language added by the judge in the original Agreement that no judgment for possession would enter for failure to comply with payment terms---a motion for entry of judgment for possession in not appropriate and hereby denied.
6. It was the court's hope throughout these proceedings, and one can assume the landlord's hope as well, that the agreed upon terms and orders of the court for payment of rent and court costs and for access and repairs would have met with success. They apparently have not, despite the referral to TPP which reported an inability to make contact with the tenant.
7. As this matter is in the Summary Process docket and entry of possession for the landlord is not available in this action (for the reasons stated above and made clear by the judge's amendment to the first Agreement), the landlord shall be given a choice to either move the court to transfer the supplemental terms regarding access for repairs and for payments to the Civil Docket and seek injunctive relief[1] or pursue compliance with same through a new Summary Process matter (with new notice and compliance with all other applicable pre-eviction requirements prior to filing said new action).
8. Accordingly, the landlord has thirty (30) days from the date of this order noted below to file a motion to transfer to the Civil Docket or the matter will be dismissed without prejudice.

[1] If the landlord files said motion for transfer to the Civil Docket, said motion shall be brought to the attention of the undersigned judge for allowance without hearing.

9. Finally, it is the court's understanding that TPP may be in a position to continue to work with the parties even if this matter is dismissed as part of its *upstream* resources. A copy of this order is being sent to TPP.

So entered this 6th day of July, 2022.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-615

MATTHEW PRZBYLOWICZ, Plaintiff, v. MEGAN FORCIER, Defendant.	ORDER VACATING THE DEFAULT JUDGMENT

After hearing on July 6, 2022, on motions by both parties and at which both parties appeared without counsel, the following order shall enter:

1. The tenant's motion to vacate the default judgment is allowed. The landlord has brought this no-fault eviction matter and the tenant defaulted at the Tier 1 event. The tenant explained that she did not have a telephone and no way to get to the courthouse and that is why she defaulted. Additionally, the tenant asserts defenses in accordance with G.L. c.239, s.8A which include allegations of breaches of the warranty of habitability such as mold, ant infestation, and lack of

heat. The tenant also asserts claims in accordance with G.L. c.239, s.9, asking for more time to move out.

2. Based on the foregoing, the tenant's motion to vacate the default judgment is allowed. The judgment shall be vacated, the landlord shall return the execution to the court, and the matter shall be scheduled by the Clerk's Office for another Tier 1 event.
3. Given this ruling, the landlord's motion for issuance of another execution is denied.

So entered this 13th day of July, 2022.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-SP-4324

BANK OF NEW YORK MELLON,

Plaintiff,

v.

GARY YARD, et al.,

Defendants.

ORDER

After hearing on July 14, 2022, on the defendant's motions at which the plaintiff appeared through counsel and the defendant Gary Yard appeared with LAR counsel, the following order shall enter:

1. The motion to cancel the physical eviction currently scheduled is allowed for the reasons stated on the record and memorialized herein. The plaintiff shall immediately cancel the physical eviction.
2. The basis for this ruling is that the warehouse chosen by the constable for the storage of the defendants' personal property is located in Worcester, Massachusetts, some 60 miles from the subject premises.
3. The court finds that this does not comply with the statute at G.L. c.239, s.3. More specifically, s.3 requires that the officer select a public warehouse "in a manner calculated to ensure that the defendant's personal property will be stored within a reasonable distance of the premises at issue in the summary process action."
4. There are currently public warehouses (approved by the Commonwealth of Massachusetts Office of Public Safety and Inspections) located closer to the subject premises.
5. When the court inquired with the plaintiff's counsel as to why a facility in Worcester was chosen, he indicated that he was informed by the constable that having the personal property stored at the local warehouse (less than 10 miles away form the premises) would have delayed the move-out to August 2022. Even though this information was by way of proffer by the plaintiff's counsel (and not through a witness), the court still finds the choice of a Worcester warehouse some 60 miles away as an "unreasonable distance", even if there would be a delay of two or more weeks to store it more locally. See G.L. c.239, s.3, 4th paragraph.

6. The defendant's other motions, entitled Motion to Emergency Schedule Hearing in Compliance with Exiting Jurisprudence and Motion to Request Emergency Stay of the Eviction and Hearing, are denied.
7. The plaintiff may reschedule, without leave of court, a physical levy on the execution and must serve a new notice required by G.L. c.239, s.3 & 4.

So entered this 19th day of July, 2022.

Robert Fields, Associate Justice

CC: David F. Kiah, Esq., LAR Counsel for the Defendant
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-467

TONYA OLSEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER OLSEN,

Plaintiff,

v.

ANDREW CIFELLI,

Defendant.

ORDER

After hearing on July 11, 2022, on the plaintiff's motion for injunctive relief at which each party appeared without counsel, the following order shall enter:

1. The plaintiff's request that the court order the defendant to immediately vacate the premises and denied and it was explained to the plaintiff that she must use the Summary Process (eviction proceedings) in order to dispossess a tenant.
2. That said, the following injunctive orders shall enter.

3. The plaintiff shall either provide the defendant with a working lawn mower so that he can mow the lawn, or she shall hire a company to do so. If the plaintiff is going to have someone other than the defendant to mow the lawn, she must give the defendant at least 48 hours advance written notice.
4. The plaintiff may have reasonable access to the premises to inspect and to make any necessary repairs after providing the defendant with at least 48 hours advance written notice. The defendant shall not unreasonably deny access upon such request but if a specified time is not going to work for him, he should immediately so notify the plaintiff and offer a new time and date for said access.
5. The plaintiff may take photographs when inspecting the premises but shall focus such photographs on conditions in need of repair and shall take efforts to avoid photographing the defendant's personal items.
6. The defendant shall clean up his belongings inside and outside of the premises, to the extent that he has already done so, forthwith.

So entered this 19th day of July, 2022.

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Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3501

TRI-CITY MANAGEMENT, INC.,

Plaintiff,

v.

CHRISTINE CLARK,

Defendant.

ORDER

After hearing on July 14, 2022, on the plaintiff landlord's motion for reissuance of the execution, at which the landlord appeared through counsel and the defendant tenant appeared *pro se*, and also at which Kathleen Lindenberg (Director of Community Development for the City of Chicopee) joined by phone, the following order shall enter:

1. The outstanding balance in this non-payment of rent matter is $4,774.19 through July 31, 2022.
2. The tenant, Christine Clark, is working with the City of Chicopee and applying for funding through the office of Community Development. If she is found eligible for the full amount of funds, the City would pay the landlord $3,000, leaving a

balance of $1,774.19. Said application is to be filed by Clark forthwith and both parties shall cooperate with the City with said application.

3. Ms. Clark is also working towards reuniting with her child through legal proceedings pending in the Juvenile Court in Hadley, MA. The court is aware that the Department of Children and Families may have funds or rental subsidies through its family reunification programming. As such, the Housing Specialist Department of the court shall reach out to Clark's attorney in those proceedings, Christine Palkoski, Esq. and urge her to join the next hearing of this matter noted below for an update and because Clark's housing matter may be impactful on her Juvenile Court matter. Attorney Palkoski may appear by telephone or Zoom for said hearing.
4. The landlord's motion shall be continued for hearing on **July 22, 2022, at 2:00 p.m.** for a live, in-person hearing at the Springfield Courthouse located at 37 Elm Street. Both Attorney Palkoski and Ms. Lindenberg may appear by telephone or Zoom.

So entered this 19th day of July, 2022.

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Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0700

JAMES TURNBERG, PLAINTIFF V. MICHAEL FILAMONTE AND DEBRA OLSEN, DEFENDANTS	))))))))))	ORDER FOR DISMISSAL OF PLAINTIFF'S CLAIM TO POSSESSION

This matter came before the Court for an in-person bench trial on July 12, 2022. All parties appeared self-represented. After reviewing the notice to quit in this case, the Court finds it to be defective.

Before a landlord may commence an eviction action, the tenancy must be property terminated by service and receipt of a legally sufficient notice to quit. See *Cambridge St. Realty, LLC v. Stewart*, 481 Mass. 121, 122 (2021) ("a legally effective notice to quit is a condition precedent to a summary process action and part of the landlord's prima facie case"). The duration of the notice period varies depending on the basis for the termination and the type of tenancy. Here, given that Defendants remained in possession after their lease expired and continued to pay rent, which Plaintiff accepted without reservation, the Court finds that Defendants are tenants at will.

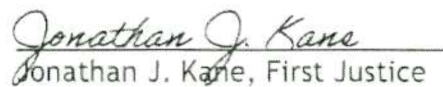
Pursuant to G.L. c. 186, § 12, the required notice period for a tenancy at will is 30 days or a full rental period, whichever is longer. The notice must specify a termination date that ends on a rent day. See *Conners v. Wick*, 317 Mass. 682. 630-31 (1945). The

notice in this case is dated February 2, 2022 and was served on February 3, 2022. Plaintiff purported to terminate the tenancy on March 4, 2022, which is less than a full rental period. A notice received on February 3, 2022 would need to expire at the end of March 2022 to encompass a full rental period.

Accordingly, Plaintiff's case for possession is dismissed. Defendant's counterclaims shall be transferred to the civil docket with Mr. Filamonte and Ms. Olsen as plaintiffs and Mr. Turnberg as the defendant. The civil case shall be scheduled for an in-person pretrial conference with a clerk on August 11, 2022 at 11:00 a.m., at which time the parties shall stipulate to agreed-upon facts and mark trial exhibits. An in-person bench trial shall commence at 11:00 a.m. on September 9, 2022.

SO ORDERED.

DATE: 7/19/22



Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-259

YASMENE BURTON, Plaintiff, v. **NODIA WRIGHT,** Defendant.	**ORDER**

After hearing on July 19, 2022, on review of this matter at which both parties appeared without counsel, the following order shall enter:

1. The plaintiff tenant shall allow a professional exterminator to enter her apartment for an extermination treatment on July 21, 2022, at 4:00 p.m. The landlord has informed the tenant that no particular preparation is necessary. The landlord shall inform the exterminator that she or he must wear a face mask during his or her time inside the premises as a COVID safety protocol.

2. The tenant shall also allow access to the landlord's realtor on July 22, 2022, from 4:00 to 5:00 p.m. The realtor and anyone entering the premises with her shall wear masks as a COVID safety protocol.
3. The landlord shall instruct her repairperson Bert Wright to have no direct communication with the tenant.

So entered this 20th day of July, 2022.

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Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-491

BEVERLY F. SHOWELL, **Plaintiff,** **v.** **RONALD SHOWELL,** **Defendant.**

ORDER

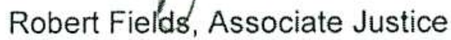
After hearings on July 18 and 20, 2022, at which the above-captioned parties appeared without counsel, the following order shall enter:

1. The court finds the record sufficient upon which to find that the plaintiff is a co-owner of the subject premises located at 961 Roosevelt Avenue in Springfield, Massachusetts, along with her son Tyrell J. Adeyemi.

2. This finding, for purposes of this injunctive relief, is based on the certified copy of the Warranty Deed Bk 24493 Pg10 #21735 (Exh. 1) and on the testimony of the plaintiff regarding how the deed was signed.
3. As the court explained on the record, it is understood that the defendant wishes to challenge ownership of the subject premises, arguing that his father was not competent when he deeded the property to the plaintiff and her son. His and his witnesses' testimony was insufficient to move the court from its position that his father deeded the property over to the plaintiff and her son. The defendant indicated that he will be filing a case in the Probate Court to challenge title of the premises, as the Housing Court does not have jurisdiction over quieting title outside of an eviction proceeding or without an administrative transfer. Nothing in the court's determination today shall bar the Probate Court from ruling *de novo* on the title of the premises.
4. Until otherwise ordered by the Probate Court, or by this court after hearing in the future, the plaintiff and her son (Tyrell Adeyemi) have the right to have access to the premises for assessing its condition and for repairs and for assessing what property is present therein. Such access is to be reasonable and after sufficient notice to the occupant, defendant Ronald Showell. The defendant shall not unreasonably deny said access.
5. The plaintiff may have a key to the premises (and if that entails changing the locks she may do so with the provision of the key(s) to the defendant).
6. The plaintiff has indicated her understanding that she is to utilize Summary Process if she wishes to dispossess the defendant from the premises.

7. The defendant shall not remove, sell, transfer ownership, or gift any items from the premises, inside or outside or located in any garage or shed.
8. The defendant agrees, and same shall become an order of this court, that he will keep all utilities in his name and maintain them by paying the bills for same unless otherwise agreed in writing with the plaintiff or with Mr. Adeyemi or by leave of court.

So entered this 20th day of July, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

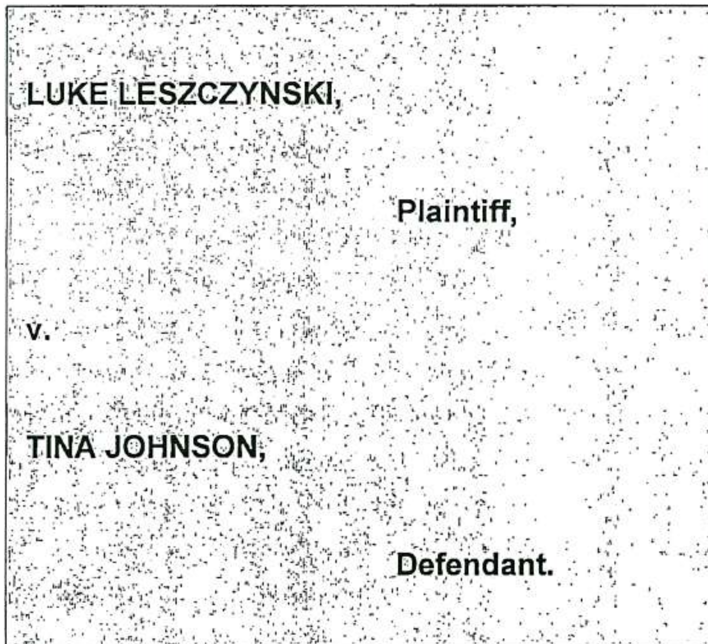
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1176



LUKE LESZCZYNSKI,

Plaintiff,

v.

TINA JOHNSON,

Defendant.

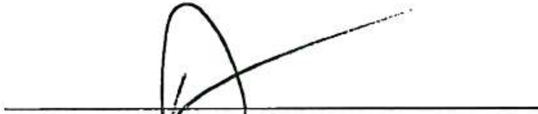
ORDER

After hearing on July 20, 2022, on the plaintiff's motion for alternate service, at which both parties appeared, the following order shall enter:

1. The plaintiff's request that he be able to serve his Demand on Execution upon the defendant at her place of employment is denied, without prejudice.
2. However, by agreement of the parties on the record, the plaintiff may serve his Demand on Execution by sheriff or constable delivered to the defendant's home

located at 100 Roanoke Road, Springfield, Massachusetts 01118 and also simultaneously mailed by first class mail.

So entered this 21st day of July, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-161

MICHAEL BEN-CHIAM,

Plaintiff,

v.

JOSEPH HAYNES,

Defendant.

ORDER

After conducting a Contempt Trial on July 14, 2022, at which only the plaintiff appeared after proper service upon the defendant, the following order shall enter:

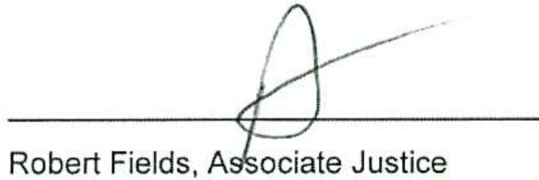
1. The plaintiff's contempt complaint asserts that the defendant has failed to comply with the paragraph #2 of the April 28, 2022, court order which states:

> If the tenant has changed any locks, he must provide a key or keys to the landlord forthwith or immediately seek leave of court if he believes he has a basis to not provide such key(s).

2. The plaintiff testified credibly that the tenant did not provide him with a key to the tenant's bedroom and that the landlord does not have a key that works on that lock.
3. The plaintiff provided an email chain of communications between him and the defendant from May 2, 2022. In that exchange, the defendant repeatedly states that he has not changed any locks at the premises. This is consistent with the defendant's statements in court as well when he appeared at earlier hearings.
4. The court understands from earlier hearings and upon review of Judge Kane's order in two related cases (21-CV-790 and 21-CV-193) that these premises are rented out as a single dwelling with several different men who are otherwise do not know each other, akin but perhaps not necessarily technically (as the court has not been asked to reach such a conclusion in this matter), like a rooming house. With so many unrelated tenants in the same dwelling, it is even less clear if someone other than the defendant may have changed the locks.
5. Thus, the record is insufficient upon which the court can find a knowing and willing non-compliance with an unequivocal court order.
6. The plaintiff's request that the defendant either provide him with a key to his bedroom or allow the landlord access to replace the lock and provide the tenant with a new key is denied without prejudice to be sought again from the court at another time.
7. This matter, 22-CV-161, shall be consolidated for hearing with the related matters of 21-CV-790 and 22-CV-193. Those matters are presently under advisement with Judge Kane. The Clerk's Office is requested to schedule this

matter with the others for hearing once the judge makes a ruling and sets a new date in those related matters.

So entered this 22nd day of July, 2022.



Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3501

TRI-CITY MANAGEMENT, INC.,

Plaintiff,

v.

CHRISTINE CLARK,

Defendant.

ORDER

After hearing on July 22, 2022, on further review at which the landlord appeared through counsel and the defendant tenant appeared *pro se* along with her DCR worker (Ms. Rivera) and at which her attorney in her Juvenile Court proceedings (Atty. Palkoski) appeared as did her son's Juvenile Court counsel (Atty. Gulmi), the following order shall enter:

1. The defendant tenant (hereinafter, "tenant") fell behind in her rent due to a reduction in her work hours and her housemate moving out, leaving her responsible for her full contract rent.

2. By the time of the last hearing, there was an outstanding balance of $4,774.19 (including court costs). Landlord counsel reported today that the defendant tenant was found eligible for the $3,000 grant from the City of Chicopee's Community Development office, thus reducing the outstanding balance to $1,774.19.
3. Attorney Palkoski reported to the court that she was able to secure an additional $1,000 from One Can Help, reducing the outstanding balance to $774.19.
4. The tenant reported to the court that she has a secured a second job and anticipates working 32 hours per week in addition to her hours in food service.[1] This income appears sufficient to not fall behind her rent again and the case shall remain open until November 15, 2022, to ensure that the tenant is paying her rent in full and timely.
5. Ms. Rivera from DCF agreed to work with the tenant in applying for funds from other entities such as Valley Opportunity Council (VOC) and Catholic Charities and report back at the next hearing. Ms. Rivera has also agreed to work with the tenant to apply for family reunification housing resources from DCF (such as a FUP Voucher).
6. The landlord agrees to accept $64.51 each month in addition to the tenant's regular $1,000 rent each month to pay off the balance if no agencies are able to provide further grants.[2]

[1] The tenant explained that her work hours will not interfere with her childcare should she be reunited with her son as they are from 8:00 to 4:00 p.m.

[2] The amount of $64.51 is the total arrearage divided by 12 months.

7. The tenant shall pay her rent for August 2022, in full and timely. The additional payment of $64.51 shall not be due until after the next hearing noted below when the parties shall report on the status of other funding sources.
8. The appearance of Attorneys Palkowksi and Gulmi was extremely helpful and ultimately necessary in these proceedings, and they are requested to return to the next hearing noted below. Such appearance should be viewed by the Committee for Public Counsel Services as necessary and vital collateral representation to the Juvenile Court proceedings.
9. This matter shall be scheduled for further hearing by Zoom on **August 23, 2022, at 11:00 a.m.** The court's Zoom platform can be reached at Meeting ID: 161 638 3742 with a password of: 1234. The tenant may come to the courthouse and utilize the court's Zoom Room.

So entered this 22nd day of July, 2022.

Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist
Christine Palkowski, Esq.
Wheatly Gulmi, Esq.

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-3592

THOMAS MENSAH, Plaintiff, v. ROSITA VAZQUEZ, Defendant.

ORDER

After hearing on July 18, 2022, at which both parties appeared, the following order shall enter:

1. This matter was commenced by a prior owner of the property (Nexius, LLC) as a no-fault eviction of a Section 8 Voucher tenant based on "other good cause". Specifically, because the then landlord wanted to increase the rent beyond the tenant's one-bedroom voucher would pay.

2. The property was sold on or about April 29, 2022, to the current plaintiff/landlord who entered into a Section 8 contract for this tenancy and was assigned the rights from Nexius, LLC to step into this case as the plaintiff. As such, he is restricted to the "cause" asserted in this case.
3. The tenant is currently seeking to add he son to her voucher and the result, if he is added, may be the increase being sought in the Notice to Quit in this matter; to wit $1,250 per month.
4. This matter shall be scheduled for a review hearing on **August 31, 2022, at 2:0 p.m. live and in-person at the Springfield Session**. The parties shall update the court on the status of the tenant's subsidy. Also, the parties shall bring a copy of any and all leases and Section 8 contracts regarding this tenancy.

So entered this 25th day of July, 2022.

Robert Fields, Associate Justice

CC: Court Reporter