Western Division Housing Court
Unofficial Reporter of Decisions

Volume 16

Jul. 26, 2022 — Sep. 13, 2022
(*and certain older decisions*)

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

Attorneys Dulles, Manzanares, and Vickery serve as co-editors for coordination and execution of this project.

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

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

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

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment and taking the Court's views into consideration. Our current redaction and exclusion criteria are as follows: (1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) 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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0C7A FBA2 099C 5300 3A25  9754 89A1 4D6A 4C45 AE3D
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CONTACT US

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

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[1] Document mistakenly identifies case as "CV" matter.

[2] Document mistakenly identifies case as "21-CV" matter.

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Hon. Jonathan Kane, First Justice

[3] Document mistakenly identifies case as "CV" matter.
[4] Document mistakenly identifies case as "21-CV" matter.

Hon. Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-2338

LAVOIE PROPERTIES, et al.,

Plaintiffs,

v.

MEDALIA ASIA,

Defendant.

ORDER OF DISMISSAL

After hearing on June 24, 2022, at which only the plaintiffs appeared and at which a representative from Way Finders, Inc. joined, the following order shall enter:

1. This matter began as a *fault* eviction for the tenant's failure to put the gas and electric utilities in her name.
2. As of today's hearing, the tenant has put both utilities in her name. The sole outstanding issue reported by the landlords is that after Way Finders, Inc. paid all the monies requested of them for outstanding utility bills, the landlords later

received a gas bill indicating that $109 continues to be outstanding from when the utility was not yet in the tenant's name. At the time of the hearing, the landlords had not yet informed the tenant of this outstanding balance.

3. Given the time it has been since the termination notice more than one year ago for the tenant's failure to have the utility bills in her name, and the current compliance with the utility bills being placed in the tenant's name, the court finds and so rules that there has been substantial compliance with the terms of the tenancy and this matter is hereby dismissed.
4. This dismissal in no way bars the landlords from seeking payment of monies they believe stem from use of utilities, but they will have to do so outside of the confines of this litigation.

So entered this 27th 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.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-CV-651

IVY AFRA,

Plaintiff,

v.

YAW AGYAPONG, et al.,

Defendants.

ORDER

This matter came before the court for trial on November 22, 2021, at which all parties appeared through counsel. After consideration of the evidence admitted at trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The defendants, Yaw Agyapong and Rose Turpin (hereinafter "landlords") own a single-family home located at 41 Prouty Street in Springfield, Massachusetts (hereinafter, "premises" or "property"). The plaintiff, Ivy Afra (hereinafter, "tenant") was a tenant of the premises from 2010 through October

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2019. This civil action began as a Code Enforcement matter filed by the City of Springfield and the claims to be adjudicated herein are the tenant's crossclaims against the landlord, which consist of alleged breaches of quiet enjoyment, warranty of habitability, and the commonwealth's consumer protection statute.[1]

2. **Tenant's Claim of Breach of the Warranty of Habitability:** The premises contained conditions of disrepair throughout the nine-year tenancy. The tenant brought many conditions of disrepair to the landlords' attention throughout the tenancy. The most common areas of concern arose out of water penetration into the property from a leaky roof. From at least 2016 until the premises were condemned by the city after a massive flood through the roof in July 2019, the tenant complained to the landlord about water saturation. The result of the water penetration for much of that time was mold on the bathroom walls and ceiling, damaged bathroom and kitchen floor tiles, tub caulking malfunctions, and constant leaks throughout the house---into the bedrooms and other living areas.
3. The tenant complained throughout those years to the landlord that the moisture and water was creating mold on much of her personal property including her couch, dining room chairs, box springs, and dressers.
4. The court finds the tenant's testimony very credible.
5. The landlord, Agyapong, testified that the tenant never complained to him about any conditions of disrepair whatsoever[2]. The court does not find the landlord to be a credible or accurate reporter of facts. Though the landlord testified that

[1] The landlords did not assert any crossclaims against the tenant.

[2] Defendant Rose Turpin, though represented by counsel at the trial, did not appear nor testify at the trial.

the tenant did not complain about anything, he also stated that he personally painted over the ceiling on numerous occasions---which is consistent with the tenant's testimony that when she complained to the landlord about water penetration into the bathroom through the ceiling after it would rain, the landlord would eventually come and paint over the water stains.

6. The landlord also testified that on his own initiative, he had all of the sheetrock in the bathroom replaced with water resistant sheetrock in 2017. The court finds it much more likely that he did so due to the tenant's notifying him of water saturation through the leaks in the roof. Similarly, the landlord hired someone (without obtaining any permits from the city) to replace the roof at the property in May 2019. The landlord's testimony that he did so not based on any complaints by the tenant nor based on an independent knowledge that the roof needed replacement, but simply because he wanted to keep the house in good shape for his grandchildren someday, is not deemed credible by the court.
7. The city's condemnation order and citation in July 2019 listed some twenty items that violate the State Sanitary Code. Several of those support a finding that they existed prior to the July 2019 flood, some even from the inception of the tenancy. Such include, missing/defective smoke detectors, insufficient electrical outlets, cellar not weathertight, temporary wiring in the home, unauthorized wiring, improper plumbing in the kitchen and bathroom, and insufficient illumination and lighting switches.
8. All of these conditions constitute a violation of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code, 105

C.M.R. 410.00 et seq. "At a minimum this warranty of habitability imposes upon the landlord a duty to keep the dwelling in conformity with the State Sanitary Code. A landlord's breach of this duty abates the tenant's obligation to pay rent, even when the landlord is not a fault and has no reasonable opportunity to make repairs." *Simon v. Solomon*, 385 Mass. 91, 96 (1982).

9. In this instance, the landlord was either knowledgeable about the conditions of disrepair that existed at the inception of the tenancy or was informed about conditions as they came to exist over the course of the tenancy by the tenant.
10. It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).
11. The court finds that the fair rental value of the premises was reduced by 25% for an aggregate of 43 months from 2016 through June 2019, resulting in an abatement of $9,137.50. [This represents a monthly rent of $850 times 25% abatement ($212.50) times 43 months.[3]]

[3]Though there is basis for finding that some conditions of disrepair existed prior to 2016, the record is clear that the tenant began notifying the landlord about the leaks from the roof in 2016 and the court shall begin its abatement for calculation purposes from that time.

12. **Tenant's Claim for Breach of the Covenant of Quiet Enjoyment:** On or about July 7, 2019, there was a flood at the premises and the city condemned it. The flood was caused by a rainstorm penetrating the roof, which had a significant area open to the elements other than being covered by a tarp put in place by a worker who was at that time replacing the roof---a tarp that blew off the house during the storm. The city did not lift the condemnation for approximately three months, during which time the tenant and her family stayed with their friends.

13. The court credits the tenant and her husband's testimony that this was a very stressful time for the tenant and her family that included being doubled up with friends and losing a great deal of their personal belongings to destruction by the flood.

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

15. Deliberate or malicious intent is not required in order for a landlord to be liable for breach of the covenant of quiet enjoyment. If the natural and probable consequence of what the landlord did, or failed to do, was an interference with the full use and enjoyment of the rental premises, then the landlord is liable for

the damages to the tenant resulting from the interference. See, *Blackett v. Olanoff*, 371 Mass. 714, (1977); *Simon v. Solomon,* 385 Mass. 91 (1982).

16. The court finds that the landlords were at least negligent by their failure to exercise reasonable care in maintaining the premises, particularly the porous roof over an extended number of years leading up to the flood.

17. Under G.L. c. 186, s. 14, the landlords' interference with the tenant's right to quiet enjoyment entitles her to the greater of three months' rent ($2,550) or actual damages.

18. The tenant sought to introduce sufficient evidence upon which a finding could be made by the court that the tenant suffered actual damages either through property damage or emotional distress. The court. however, finds the record insufficient upon which to make such a finding of actual damages and the tenant shall be awarded damages for the breach of quiet enjoyment equal to three months' rent plus reasonable attorney's fees and costs.

19. **The Consumer Protection Act, G.L. c.93A:** The landlord, Yaw Agyapong, is engaged in business or commerce within the Commonwealth. Mr. Agyapong owns four properties[4], one of which is a two-family dwelling and has rented to tenants in four of them.

20. The Massachusetts Consumer Protection Statute, G.L. c.93A, prohibits a landlord from engaging in unfair or deceptive acts or practices in the rental housing business. It is an unfair or deceptive trade or practice, and violation of

[4] The single-family dwelling located at 41 Prouty (the subject premises); 23 Princess Road (which he rented out to tenants for years until he took residence after separating from his wife; 210-212 Nottingham Street, which he rents out to two separate families; and 54 Prouty (which he does not rent out but in which his ex-wife lives).

Chapter 93A, for an owner to fail, after notice of a State Sanitary Code violation, to remedy a violation which may endanger or materially impair the health, safety, or well-being of the occupant and/or fail to maintain the unit in a condition fit for human habitation. 940 CMR 3.17 (1)(b)1 and 2.

21. A tenant is entitled to an award of multiple damages (not less than double nor more than treble if the court finds that the landlord's violation of Chapter 93A was knowing and willful. "The 'willful or knowing' requirements of s.9(3) goes not to the actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which whether the [landlord] knows it or not, amount to violations of the law." *Montanez v. Bagg*, 24 Mass.App.Ct. 954 (1987). The court may consider the "egregiousness" of the landlord's conduct in determining whether to double or treble damages. *Brown v. LeClair*, 20 Mass.App.Ct. 976, 980 (1985).

22. As stated above, the court finds that a number of the conditions of disrepair that existed on the premises and formed the bases for the breach of warranty of habitability pre-existed the tenancy and, therefore, the landlords were, or should have been fully, aware of their existence. Additionally, many conditions of disrepair that occurred after the tenancy began were brought to the landlords' attention by repeated complaints by the tenant and then, ultimately, cited by the city.

23. The court finds and so rules that the landlords were willful and knowing in their failure to address these conditions of disrepair throughout the tenancy and, as

such, the tenant's warranty of habitability damages are hereby doubled in accordance with G.L. c.93A, totaling $18,275.

24. **Conclusion:** Based on the foregoing, an order awarding the plaintiff **$20,825** [5] plus reasonable attorney's fees and costs.

25. Plaintiff's counsel has 20 days to file and serve a petition for reasonable attorney's fees and costs. The defendants shall have 20 days after receipt of same to file and serve their opposition thereto. The court shall make a ruling on the petition for fees and costs (if filed) and enter a final judgment thereafter without need for hearing.

So entered this 26th day of July, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

[5] Defendant Yaw Agyapong is liable for all of this award, $20,825 plus reasonable attorney's fees and costs. Co-defendant, Rose Turpin, is liable jointly and severely for 11,687.50 plus reasonable attorney's fees and costs. This is because the trial record supports a finding that Yaw Agyapong is liable on the G.L. c.93A claim but not Ms. Turpin. Thus, the doubling of the warranty of habitability damages does not apply to Ms. Turpin.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-410

CITY OF SPRINGFIELD, CODE ENFORCEMENT DEPARTMENT,

Plaintiff,

v.

NEW MAN VENTURES, LLC and CARLINA CARTER,

Defendant.

ORDER

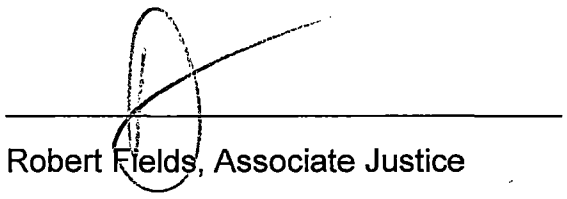
After hearing on July 22, 2022, at which all the parties appeared, the following order shall enter:

1. The court is satisfied that given the level of water saturation in the wall(s) located inside the subject unit, the landlord must have a mold-remediation specialist dispatched the unit forthwith.
2. If said specialist is able to inspect the unit and does not find that there is a need for the tenant and her family to temporarily vacate, and the tenant agrees that

there is no need for her and her family to vacate to a hotel, the landlord shall not be required to provide hotel accommodations to the tenant and her family. If the tenant does not agree, the landlord shall be required to seek leave of court to seek relief from the court's hotel order.

3. If a mold-remediation specialist is either unable to be at the unit before 5:00 p.m. this day (July 22, 2022), or the specialist is able to view the unit and determines that a temporary vacating of the unit is necessary, the landlord shall provide hotel accommodations for the tenant's family beginning today and for each day and night until further court order or by written agreement between the parties. Given the nature of the tenant's family (the tenant, her adult son, and his children), they will require two hotel rooms or a suite.
4. This matter shall be scheduled for further hearing on **July 29, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 26th day of July, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-2669

OCEAN PROPERTY MANAGEMENT,

Plaintiff,

v.

GREG MYERS,

Defendant.

ORDER

After hearing on July 12, 2022, on further review of this matter at which the landlord appeared through counsel and the tenant appeared *pro se*, and at which the G.A.L. appeared and representatives from the Center of Human Development (CHD) and the Tenancy Preservation Program (TPP) joined, the following order shall enter:

1. The landlord's counsel proffered that it is the landlord's position that there continue to be noise and disturbances stemming from the tenant's unit.

2. Aroura Flynn and David Dennon of CHD reported that Mr. Dennon is the tenant's new outreach worker and plans to visit with the tenant several times per week at the premises. CHD also reported that it is assisting the tenant searching for alternate housing.
3. TPP did not have much to report other than it has conducted an intake with the tenant, and he has signed releases. TPP has not met with the tenant other than its initial meeting [redacted].
4. The G.A.L.'s motion to dismiss the case due to a failure to name the tenant's son, [redacted], in these proceedings is denied. The parties' interest in adding [redacted] to these proceedings for purposes of injunctive relief shall be further considered by the parties and, if interested, they shall file a motion for same.
5. The G.A.L. shared his thoughts that he may be filing a motion for substitution of costs for a private investigator to ascertain the names and addresses of those individuals who are present at the premises as guests of the tenant and cause problems. The court indicated on the record that it would be very happy to entertain a motion to that effect which includes estimates of those anticipated costs.
6. The G.A.L. also indicated his interest in filing a motion for substituted judgment.
7. Any and all motions to be filed in this action, including those noted above, shall be filed by July 29, 2022. Any such motion filed by the G.A.L. may be by filed by mail or hand-delivery instead of e-filing as he reports to the court that because he is not the attorney of record in this matter, his e-filed documents are being

rejected by the e-filing system. Additionally, the G.A.L. was asked to speak with Clerk Magistrate Doherty regarding this issue.

8. Further hearing in this matter shall be scheduled for **August 3, 2022, at 2:00 p.m. live, and in-person**. The representatives from TPP and CHD agreed that they will appear at this next hearing.

So entered this 26th day of July, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0272

TOWN OF ERVING HEALTH DEPT.,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER
	)	
CINDY HOWARD (tenant) and JAMES AND JULIE STANLEY (owners)	)	
	)	
DEFENDANTS	)	

This case came before the Court (in-person) for a review hearing on July 22, 2022. All parties were represented by counsel. The case relates to condemned property located at 168 North Street, Erving, Massachusetts (the "Property"). Ms. Howard seeks an extension of the Court's order that the owners provide alternative housing and pay food and laundry stipends, and Mr. Stanley seeks an order terminating his obligation to provide alternative housing and stipends.

In balancing the equities, the Court considers various factors. The Property was condemned on or about June 3, 2022, largely because the Town found that it was not structurally sound. The Court infers that Ms. Howard is not responsible for the structural problems at the Property. Mr. Stanley testified that the Property will be demolished and not rehabilitated. The Property cannot be demolished until Ms. Howard's pets and belongings are removed.[1]

[1] Pursuant to a previous Court order, Ms. Howard is permitted to keep her pets at the Property where she feeds and cares for them.

Ms. Howard has been conducting a diligent housing search but has not located replacement housing. Pursuant to a Court order, the owners have been providing alternative housing at a motel in Orange, Massachusetts, along with food and laundry stipends, for Ms. Stanley and her five children for approximately five weeks. Mr. Stanley represented that the alternative housing and stipends costs approximately $10,000.00 per month.

Prior to the condemnation, Ms. Howard was a month-to-month tenant paying $1,000.00 per month for rent. Pursuant to a written agreement between the owners and Ms. Howard in February 2022, Ms. Howard agreed to vacate by the end of May 2022.[2]

After considering the foregoing and balancing the equities, the Court enters the following order:

1. The Court's order entered on the docket on June 28, 2022 shall continue until the earlier of (a) Ms. Howard locating replacement housing and removing her family's belongings and pets from the Property, and (b) August 31, 2022. The owners shall have no further obligation to provide alternative housing or the monetary stipends after August 31, 2022.
2. Ms. Howard will pay $1,000.00 to the owner by August 3, 2022 if she has not removed her pets and belongings from the Property by that date.

[2] The Court makes no finding about the enforceability of this agreement, but makes note of it because Ms. Howard was aware for several months prior to the condemnation that she was going to need to find other housing after May 2022.

3. If Ms. Howard is dissatisfied with the current motel in which she is staying, she can propose a similarly-priced alternative to the owners and the owners shall not unreasonably reject the request.
4. If Ms. Howard does not remove her pets and belongings by September 1, 2022, the owners may file and serve a motion for further relief.

SO ORDERED.

DATE: 7/26/22

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. 22-SP-1126

JONATHAN RYAN-GUIEL,

Plaintiff,

v.

JENNIFER PARADIS and DANA DORE,

Defendants.

ORDER

After hearing on July 27, 2022, on review of this matter in accordance with G.L. c.239, s.9, at which all the parties appeared, the following order shall enter:

1. The tenants have a cashier's check in the amount of $2,000 for June and July 2022 use and occupancy. The landlord was going to pick it up from the tenants directly after the hearing.

2. The tenants are diligently looking for a place to move to in this no-fault eviction matter, but they failed to document their efforts in a way that can be shared with the landlord.
3. The tenants shall keep a log, written out on paper or generated on a computer able to be printed out or emailed, which list each and every rental unit they identify and what occurred after identifying said unit; such as the date, a description of the unit, (price, location, etc.), whether called or emailed or texted and what happened thereafter (denied by the landlord, looked at the unit, follow up, etc.).
4. The tenants shall provide the landlord with a copy of said log by no later than August 26, 2022 and bring a copy of same to show the court at the next hearing noted below.
5. The tenants shall pay their August 2022 use and occupancy in full to the landlord.
6. This matter shall be scheduled for further hearing on **August 31, 2022, at 9:00 a.m., live and in-person at the Springfield Session of the court.**

So entered this 27th 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-SP-523

FERNANDO SANTANA,

Plaintiff,

v.

YARDIRYS GONZALEZ and ANDRES BETANCOURT,

Defendant.

ORDER

After hearing on July 18, 2022, on the landlord's motion for entry of judgment at which the landlord and the tenant, Yardirys Gonzalez, appeared, the following order shall enter:

1. The tenant has missed rent payments she had agreed to in a May 10, 2022, agreement of the parties. More specifically, the tenant failed to make $1,100 payments on May 23, May 30, and June 22, 2022. Additionally, the next payment is due on July 27, 2022. Thereafter, rent for August 2022, will come due.

2. The tenant has agreed to the following payment schedule: $1,100 on July 22, $1,100 on August 5, $1,100 by August 19, and then a final payment of $1,100 on September 2, 2022, either from her own funds or through Way Finders, Inc.
3. The court recessed the hearing to allow for the tenant to meet with Way Finders, Inc. on the court's Zoom platform. The hearing was joined by a representative from Way Finders, Inc. after their meeting. The tenant shall apply for RAFT funds and both the landlord and tenant shall cooperate with this application.
4. The parties agree that the electricity has been shut off for the tenant's failure to pay her electric bill. The tenant is staying elsewhere until the utility is restored. The tenant shall include a request for paying her electric bill. Until the utility is restored, the tenant shall only be present at the premises during daylight hours and shall not use candles at any time while there.
5. The tenant shall cooperate with the landlord to allow him access to inspect a possible leak coming from her unit to the downstairs unit.
6. The tenant shall not communicate with the landlord at his workplace.
7. The obligation that the tenant vacate by August 31, 2022, that the parties agreed to in their May 1, 2022, agreement of the parties shall remain in full force and effect.

So entered this 27th 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-2499

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

ADRIENNE BURTON,

Defendant.

ORDER

After hearing on July 18, 2022, on the tenant's emergency motion to stop a physical eviction, at which the tenant appeared *pro se* and the landlord appeared through counsel, the following order shall enter:

1. This eviction matter was brought by the landlord against the tenant, who resides in a low-income tax credit unit, for failure to complete her recertification.
2. The tenant is self-employed and has simply not been able to get her taxes done which is a prerequisite to completing her recertification with the landlord.

16 W.Div.H.Ct. 35

3. The tenant has already lost her subsidy for her apartment due to her failure to recertify. Currently, her rent is set by the "tax credit" program at the landlord housing complex in the amount of $1,303, and the landlord explained that it is at risk of losing its tax credit status if the tenant does not recertify or be evicted.
4. The landlord stated that the current rent owed by the tenant is $5,679.
5. The tenant shall meet with Way Finders, Inc. directly after the hearing and the tenant shall begin her rental assistance application immediately.
6. The tenant explained that she is "overwhelmed" and not able to address getting her taxes completed. [redacted].
7. A referral is hereby being made by the court to the Tenancy Preservation Program (TPP) to assist the tenant with [redacted]. TPP shall also assist the tenant with her RAFT application and seeking assistance with her taxes---perhaps inquiring with the Western New England University School of Law which may assist small business such as the tenant's restaurant with her taxes. TPP can reach the tenant at 413-364-8760.
8. By agreement of the landlord, the physical eviction currently scheduled shall be cancelled by the landlord.
9. The tenant shall work with Way Finders, Inc. and with TPP and the landlord shall also cooperate with the RAFT application process.
10. This matter shall be heard for further hearing on **August 31, 2022, at 10:00 a.m. live and in-person at the Springfield Session**.

So entered this 28th day of July, 2022.

Robert Fields, Associate Justice

CC: Jake Hogue, TPP Coordinator

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1046

BELCHERTOWN HEIGHTS ALF LTD D/B/A CHRISTOPHER HEIGHTS OF BELCHERTOWN,	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER
KENNETH BRAICA,	)	
DEFENDANT	)	

This cause-based summary process case came before the Court on July 18, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of Apartment 315 (the "Premises") within the assisted living facility known as Christopher Heights of Belchertown ("the Property") 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 took possession of the Premises pursuant to a written residency agreement dated December 1, 2020. Soon thereafter, Defendant became the source of numerous complaints from other residents and staff. On March 15, 2022, Plaintiff had Defendant served with a legally sufficient notice to quit for lease violations,

which Defendant acknowledges receiving. Defendant subsequently timely served and filed a summary process summons and complaint.

The Court finds that Plaintiff satisfied its burden of proof that Defendant committed substantial lease violations; namely, disrupting the rights of other residents to the quiet enjoyment of their apartments and common areas and interfering with the management of the Property. Plaintiff provided that, among other misconduct, Defendant verbally abused staff, expressed disrespectful and hateful comments about their race, sexual preferences and personal relationships, threatened and intimidated staff and made sexually suggestive comments to other residents. Defendant admits to the veracity of Plaintiff's allegations. He offered no legal defenses and requested only that the Court allow him time to find another place to live.

Accordingly, based on the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue by written application pursuant to Uniform Summary Process Rule 13.
3. Use of the execution shall be stayed through August 15, 2022.
4. Defendant shall not have any contact with other residents, their visitors or staff at the Property except in the case of a bona fide emergency. He shall interact respectfully with others at the Property, including without limitation staff members, residents, visitors and anyone else lawfully on the Property. He shall refrain from making any disrespectful, derogatory or

demeaning comments, shall not act in a manner which is aggressive, intimidating or threatening, and shall not leave any voicemails for staff members. He shall ask his social worker to communicate on his behalf with management to address routine matters relating to his residency at the Property and his impending move.

5. The parties shall return for status on **August 15, 2022 at 9:00 a.m.** in-person in the Hadley session. At that time, Defendant may ask to extend the stay on use of the execution and Plaintiff may request that the Court lift the stay on use of the execution. In determining whether to extend or lift the stay, the Court will take into consideration Defendant's conduct between the trial date and the return date. He should anticipate that the stay will be lifted if Plaintiff demonstrates that he has violated any terms of this order or has otherwise caused any significant disturbances or disruptions at the Property. Defendant is invited to have his social worker participate in the hearing to report on his housing search efforts.

SO ORDERED.

DATE: 7-28-22

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-CV-0492
TAMARA CHEVEYO, PLAINTIFF v. LYNDON BAGG AND KEVIN REID, DEFENDANTS	)	ORDER

This motion for injunctive relief came before this Court on July 25, 2022.[1] Plaintiff appeared in person and represented herself. Defendants appeared in person through counsel. Two witnesses appeared in person and several others appeared via Zoom.

Ms. Cheveyo alleges various unsatisfactory conditions in her home at 29 Berwyn Street, Apt. 1, South Hadley, Massachusetts (the "Premises"). Given the emergency nature of her request for injunctive relief, at this time the Court will only address the significant conditions of disrepair which Ms. Cheveyo contends renders the home uninhabitable. The Court took testimony from each of the parties, the South Hadley Health Department (Ms. Jernigan), a technician from ServPro (Mr. Riley), two

[1] This case first came before the Court on July 20, 2022 by Zoom, but due to the nature of the case, the judge ordered the parties to return in-person the following day. When the parties appeared on July 21, 2022, each asked for a short continuance so that they could have witnesses appear and, in the case of Ms. Cheveyo, so the lawyer she retained could appear. The hearing that is the subject of this order was the third in a week.

adjacent neighbors (Mr. Parker and Mr. Walker), and Defendant's case worker from the Center for Human Development (Ms. Ruiz). After considering the testimony and the evidence, the Court finds that, except with respect to the possible presence of mold, which will be addressed separately, none of the conditions of disrepair alleged by Ms. Cheveyo render the home uninhabitable.[2]

With respect to allegations of mold, the Town's inspector testified that she is not qualified to determine whether mold is present in the Premises. Ms. Cheveyo produced a mold inspection report from air sampling done on June 13, 2022 that shows elevated levels of certain spores, but the report is inadmissible as evidence without an expert witness to explain the process used in collecting samples and to interpret the results.

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

1. Based on the evidence presented at the hearing today, the Court denies Ms. Cheveyo's request for alternative housing. She may renew her request at the next hearing.
2. Defendants shall diligently repair all outstanding code violations cited by the Town's inspector.

---

[2] The Town of South Hadley Health Department inspected the Premises last month and issued a correction order on June 14, 2022. The inspector did not cite any health and safety violations that warranted immediate correction. She found evidence of past water damage but no active leaks. She also found various other code violations, none of which rendered the Premises uninhabitable. The Town's inspector is scheduled to re-inspect the Premises on July 26, 2022.

Ms. Cheveyo also testified that she has no stove and refrigerator; however, she admits that was provided with these appliances through Homebase at the outset of the tenancy. She testified that she traded them away because the lease requires the landlord (not Homebase) to provide the appliances. The Court finds that the landlord has met his obligation by proving working appliances at the commencement of the tenancy. He cannot be held responsible if the tenant decides to remove them.

3. Defendants shall engage the services of qualified professional to conduct indoor air quality testing at the Premises (including the basement) prior to the next Court date.
4. Ms. Cheveyo and Defendants, respectively, may offer expert testimony regarding indoor air quality at the next hearing.
5. The parties shall return for further hearing in-person in the Springfield session on **August 18, 2022 at 2:00 p.m.** Expert witnesses shall be permitted to testify over Zoom.

SO ORDERED.
DATE: 7.28.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

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 July 25, 2022, on review of this matter in accordance with G.L. c.239, s.9 and earlier court orders, at which all the parties appeared and at which a representative from Way Finders, Inc. joined, the following order shall enter:

1. The court is satisfied that the tenants are diligently searching for alternate housing.

16 W.Div.H.Ct. 44

2. The court understands from the parties and from Way Finders, Inc. that use and occupancy is paid through July 2022, and that there are sufficient funds---upon a new application to RAFT---to pay for August and September 2022.
3. Given the length of time since the tenants were served with a notice to quit, given the stay in place since the May 2022 trial, and given the landlords' difficult financial circumstances, the stay on the entry of judgment shall continue to October 1, 2022.
4. The tenants are responsible for use and occupancy for August and September 2022 and shall apply for RAFT forthwith for such funds.
5. Thereafter, if the tenants have not vacated the premises, the landlords may file a motion for entry of judgment.

So entered this 28th day of July, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 22-SP-0632
RANSFORD PROPERTIES, PLAINTIFF v. ALBERT SINGER, DEFENDANT	ORDER ON DEFENDANT'S MOTION TO DISMISS

This summary process case came before the Court in-person on July 21, 2022 on Defendant's motion to dismiss. Both parties appeared through counsel.

The thrust of Defendant's motion is that the Court does not have subject matter jurisdiction under G.L. c. 239, § 1 because Ransford Properties is neither the owner nor lessor of the subject premises. See *Rental Property Management Services v. Hatcher*, 479 Mass. 542 (2108) (where the plaintiff is neither the owner nor the lessor of the property, the plaintiff has no standing to bring a summary process action and the court must dismiss the action). Moreover, Defendant asserts that Ransford Properties is not a legal entity and cannot sue or be sued, and moreover is not a "person" within in the meaning of G.L. c. 239, § 1.

The facts of *Hatcher* differ from those of this case. The plaintiff in *Hatcher* was an outside party with no connection to the tenancy retained by the landlord to terminate tenancies and pursue evictions. By contrast, in this case, it appears that "Ransford Properties" is simply the alter ego of Charles R. Ransford. Mr. Ransford signed the notice to quit and the lease and is identified as the landlord. Mr. Ransford would have been the proper party to bring a summary process case had it been filed in his name instead of "Ransford Properties." The *Hatcher* decision does not divest the

Court of the remedies available by statute or court rule to amend the pleadings and substitute the real party in interest. See G.L. c. 231, § 51; Mass. R. Civ. P. 17(a). See also *Labor v. Sun Hill Industries, Inc.*, 48 Mass. App. Ct. 369, 371 (1999) (the judge permitted the plaintiffs to substitute their individual names to more accurate describe who from the outset had been trying to enforce the claim).

Accordingly, the following order shall enter:

1. Defendant's motion to dismiss is hereby DENIED.
2. The Court allows Plaintiff's oral motion to substitute Charles R. Ransford as the plaintiff in this matter. The caption of this case shall be so amended.
3. To avoid any undue prejudice, Defendant will be allowed two weeks to amend its answer and counterclaims.
4. The parties shall appear for an in-person bench trial on **August 24, 2022 at 9:00 a.m.** in the Pittsfield session.

SO ORDERED.

DATE: 7.28.22

Jonathan J. Kane

Jonathan J. Kane, First Justice

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1034

JASON BROOKS,

Plaintiff,

v.

SHELLY PECOR and ANDREW THOMPSON,

Defendants.

ORDER

After hearing on July 15, 2022, on the tenants' motion for late filing of Answer and Discovery Demand, at which the landlord appeared through counsel and the tenants appeared with LAR counsel, the following order shall enter:

1. The motion is allowed.
2. The tenants' Answer and Discovery Demand is deemed filed and served. After a discussion on the record, the tenants' motion to allow for counterclaims to be asserted in this *cause* eviction is allowed.

3. The landlord shall have until July 22, 2022, to propound discovery.
4. The landlord shall respond to discovery by no later than July 26, 2022.
5. The tenants shall respond to discovery, if filed timely, by no later than August 4, 2022.
6. LAR counsel's appearance is through this hearing but the parties agreed---until further appearance is filed for the tenants---that any pleading or communication directed by the landlord to the tenants shall also be copied by email to Attorney Manzanares.
7. The parties reported to the court that they reached an agreement that the tenants will remove their pets from their unit within two weeks from the hearing, by no later than August 1, 2022.
8. A trial shall be scheduled for **August 26, 2022, at 9:00 a.m. live and in-person at the Greenfield Courthouse**.

So entered this 1st day of August, 2022.

Robert Fields, Associate Justice

CC: Raquel Manzanares, Esq., LAR counsel
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0527

GANDARA HOUSE D/B/A SUMMER HOUSE,
PLAINTIFF

v.

KUKOLJ FAHRUDIN,
DEFENDANT

ORDER

This case came before the Court on July 29, 2022 on Plaintiff's motion for a temporary restraining order and preliminary injunction. After a hearing at which only Plaintiff appeared (through counsel) after notice to Defendant, it clearly appears from the specific facts set out in the verified complaint filed with the Clerk's Office that immediate and irreparable injury, loss or damage will result to the Plaintiff and the other residents of the sobor house if a temporary restraining order and preliminary injunction is not granted.

Accordingly, the following order shall enter:

1. Defendant, who has not been seen at the premises at 18 Summer Street, Northampton, Massachusetts (the "Premises") for over a week, is ordered not to return to the Premises and to stay away from the Premises.
2. Plaintiff may change the locks to prevent Defendant from returning to the Premises. Defendant shall be permitted to retrieve his personal belongings (with an escort) if he so requests, provided that he is not exhibiting signs of intoxication or engaging in in conduct that could jeopardize the sobriety of other residents during his visit.

3. If Defendant seeks to reenter the Premises and is denied by Plaintiff, or if he wishes to amend this order, he may serve and file a motion with the Court, which motion will be heard on short notice.

4. This order does not award legal possession of Defendant's unit to Plaintiff.

For good cause shown, Plaintiff shall not be required to give security for the issuance of this order, and the $90.00 fee set forth in G.L. c. 262, § 4 for the issuance of an injunction is waived.

SO ORDERED.

DATE: 8/1/2022

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP1733

LAWRENCE MICHON, PLAINTIFF v. SUZANNE BATEMAN, MICHAEL GUERTIN AND SARAH MILES, DEFENDANTS	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no-fault summary process case came before the Court on May 31, 2022 for an in-person bench trial.[1] Plaintiff was represented by counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 84 West Main Street, North Adams, Massachusetts (the "Premises") from Defendant.

The matter was initially filed in Northern Berkshire District Court in May 2021. The summons and complaint did not include a claim for back rent nor for use and occupancy through trial. Defendants transferred the case to Housing Court and filed an answer which asserts numerous defenses and counterclaims alleging (a) violation of G.L. c. 186, § 15B regarding last month's rent, (b) retaliation, (c) breach of warranty under G.L. c. 239, § 8A relating to conditions of disrepair, (d) breach of the covenant

[1] Although Defendants initially made a demand for trial by jury, the jury demand was waived in writing by all parties.

of quiet enjoyment pursuant to G.L. c. 186 § 14, and (d) violation of G.L. c. 93A.[2]

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, which consist of a single-family house. Defendants moved into the Premises in March 2016. They did not have a written rental agreement but agreed to pay $850.00 per month for rent. They paid a last month's rent deposit of $800.00 on March 11, 2016, for which they have never received interest. Plaintiff served Defendants with an undated notice to vacate effective as of April 1, 2021. Defendants do not dispute receipt of the notice nor do they contest its validity. They did not vacate after their tenancy was terminated.

With respect to Defendants' defenses and counterclaims, the Court will examine each separately.[3]

A. Last Month's Rent

Pursuant to G.L. c. 186, § 15B, "any lessor or his agent who receives said rent in advance for the last month of tenancy shall, beginning with the first day of tenancy, pay interest at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held." § 15B(2)(a). A violation of this statute entitles a tenant to three times the amount of

[2] The answer pleads discrimination, but neither the answer nor the testimony at trial support a finding that anti-discrimination laws were violated. Likewise, although the answer asserts a violation of G.L. c. 186, § 22 regarding charging tenants for water, Defendants presented no evidence to support this allegation. Both counterclaims are hereby dismissed.

[3] The Court finds insufficient evidence to support a finding that Plaintiff is liable under any defense or counterclaim asserted in the answer but not addressed in this decision; for example, bring a counterclaim alleging discrimination but presented no testimony or evidence to support the claim.

interest to which the tenant is entitled.

The Court finds that that Defendants paid $800.00 for last month's rent on March 11, 2016, as evidenced by a receipt signed by Plaintiff. At 5% interest, Defendants were entitled to $40.00 interest on the anniversary of the deposit each year from 2017 through 2022, a total of six years. The resulting sum, $240.00, is trebled pursuant to the statute, for a total of $720.00.

B. Retaliation

Pursuant to G.L. c. 186, § 18, a landlord who takes reprisals against a tenant for the tenant's complaint to a code enforcement agency is liable for damages of not less than one month's rent or more than three month's rent. § 18, first para. "The receipt of notice of termination of tenancy, except for nonpayment of rent, or, of increase in rent, ... within six months after the tenant has ... made such report or complaint ... shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant for engaging in such activities." § 18, second para.

Here, the North Adams Department of Inspection Services inspected the property on September 11, 2020 after a complaint from Defendants. The code enforcement official ordered Plaintiff to correct various violations and scheduled a reinspection for October 26, 2020. On October 28, 2020, Plaintiff sent a notice increasing the rent from $850.00 per month to $1200.00 per month as of November 1, 2020. Plaintiff gave no explanation in the notice of rent increase and did not justify the increase at trial. The Court finds this to be an act of reprisal, despite the fact that Defendants did not pay the increase. Given the clear connection between the

significant rent hike (over 40%) and the fact that the rent increase was supposed to take place only three days later, the Court determines that the appropriate measure of damages is three month's rent, or $2,400.00.

C. Breach of Implied Warranty of Habitability

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); *see Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). 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).

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). In this case, Defendants carried their burden of establishing certain conditions of disrepair.

Plaintiff claims that the refrigerator stopped working in October 2016 and had to be replaced. The replacement refrigerator was not installed until December 2016, only after one of Defendants' family member made some renovations to allow it to fit into the house. The stove in the Premises stove stopped working in July 2019. Defendants requested a new stove, but rejected the one offered by Plaintiff, contending that it was too old. Defendants purchased their own stove.

The bathroom tiles were a consistent source of problems for Defendants. Beginning in 2017, Defendants testified that tiles installed in the bathroom began falling off the wall. Despite efforts by Plaintiff to repair the problem, Defendants ultimately made the repairs themselves. In April 2019, Defendants complained in writing to Plaintiff about the bathroom walls and flooring requiring repair. As of September 21, 2020, when the North Adams code enforcement officer inspected the Premises, he cited the bathroom floor as in poor repair. Plaintiff did make repairs thereafter, but Defendants claim that the work was never completed, particularly the lack of any base molding where the floor and wall meet. The floor in the bathroom also required repair, which the landlord did in February 2019 but left the baseboard unfinished.

Defendants testified about various light switches not working and sockets coming out of the walls. The code enforcement report in September 2020 cited

electrical code violations related to inoperable light switches and outlets, and outlets that were not GFCI protected. Defendants also testified about that they notified Plaintiff in January 2022 that the front door to the porch was rotting and allowing snow to enter and that he work was not completed until March 2022.[4]

Based on the foregoing, the Court finds that Defendants are entitled to damages for breach of warranty. With respect to a calculation of damages, damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) ("While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference."). Collectively, the conditions of disrepair entitle Defendants to a rent abatement of 15% for two months in 2016 due to the refrigerator in the amount of $240.00 and 10% from April 2019, when Defendants provided a list of items that required repair, through trial, for a total of 39 months at $80.00 per month, or of $3,120.00.[5]

D. Breach of Quiet Enjoyment

Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be

[4] Perhaps as a result of rotting wood, in October 2021, a part of the house where the walls meet the roof fell off and has not been repaired. The Court requires Plaintiff to address this issue forthwith to avoid causing other conditions of disrepair in the Premises.

[5] Defendants made other claims involving injuries that they claim occurred on the Premises. For example, they say that, around Thanksgiving of 2020, a family member fell through a wooden board that Plaintiff was using to cover a basement window well. In December of the same year, ice slid off of the roof of the house, damaged a car, and bounced off and landed on the foot of one of Defendants' family members. The Court declines to find Plaintiff responsible for these issues on a warranty theory due to lack of evidence as to Plaintiff's prior knowledge.

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.

In this case, Defendant interfered with Defendant's quiet enjoyment in several ways. After the tenancy commenced, Plaintiff transferred the responsibility for trash removal to Defendants. The undisputed testimony supports that Plaintiff paid for trash removal from 2016 through September 2019, and then stopped paying. Because the parties' course of conduct set a condition of the tenancy, Plaintiff cannot unilaterally change it without Defendants' consent. The Court finds that Defendants have paid $1,139.00 for trash removal through trial. Plaintiff is required to pay for trash removal for as long as Defendants remain in the Premises or until he enters into a written agreement with them in which they agree to pay for that service.

Defendants are entitled to statutory damages for violations of G.L. c. 186, § 14 in the amount of three month's rent, or actual damages, whichever is greater. In this

case, Defendant's actual damages for purchasing a new stove and paying for garbage are less than statutory damages; accordingly, Defendants are entitled to an award of statutory damages of $2,400.00.

E. G.L. c. 93A

The Court finds that any damages awarded under G.L. c. 93A would be duplicative of the damages awarded under the other legal theories recited herein. Accordingly, the Court declines to award damages under c. 93A.

Pursuant to G.L. c. 239, § 8A, any counterclaim upon which Defendants prevail must be offset against the rent owed. If Defendants are owed more than Plaintiff is owed, Defendants defeat Plaintiff's claim for possession and are entitled to remain in occupation until another summary process action runs its course.

The total amount of damages to which Defendants are entitled is $8,640.00. Although this case was commenced as a no-fault eviction case, pursuant to G.L. c. 239, § 8A, "[t]here shall be no recovery of possession under this chapter if the amount found by the court to be due the landlord equals or is less than the amount found to be due the tenant or occupant by reason of any counterclaim or defense under this section." Therefore, in order to apply the provisions of § 8A, the Court must determine the amount due Plaintiff. Here, the evidence shows that Defendants owe $13.00 from December 2021 (by Defendants' admission). Although Plaintiff initially claimed that he had not received any rent in 2022, Defendants provided money orders showing various payments were made and that Defendant Guertin's portion is paid

directly by his representative payee. Defendants claim they owe nothing more than $13.00. Plaintiff did not provide credible evidence to the contrary.

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

1. Judgment for possession and $8,627.00 shall enter in favor of Defendants.[6]
2. If any unpaid use and occupancy (calculated at a rate of $850.00 per month) has accrued since trial, Plaintiff may move to amend the judgment amount accordingly.

SO ORDERED.

DATE: 8.1.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

[6] This figure is derived from offsetting the $13.00 owed to Plaintiff from the amount owed to Defendants.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3564

613 LLC,	)	
	)	
PLAINTIFF,	)	
v.	)	RULINGS ON PLAINTIFF'S MOTION FOR JUDGMENT AND DEFENDANT'S MOTION TO ADD NECESSARY PARTY
	)	
JOAN R. CLARK, ET AL.,	)	
	)	
DEFENDANTS,[1]	)	

This summary process action came before the Court for an in-person bench trial on June 14, 2022. Plaintiff seeks to recover possession of 147 Rosemary Drive, Springfield, Massachusetts (the "Premises") from Defendant Joan R. Clark ("Ms. Clark"). Plaintiff was represented by counsel and Ms. Clark appeared self-represented.

The day before trial, Plaintiff filed a motion entitled "Motion to Strike and/or Dismiss Joan R. Clark's Counterclaims and Defenses and Plaintiff's Request to Entry Judgment Against Defendants for Possession and Use and Occupancy." On the day of trial, Ms. Clark field a motion to add a necessary party; namely, Wells Fargo Bank, N.A., as Trustee for MLMI Trust Series 2006-WMC1 ("Wells Fargo"). The Court will

[1] Defendant Jamal W. Clark is Defendant Joan R. Clark's son and represented to the Court that he claims no rights to occupy the Premises separate from his mother. He may be dismissed from this case to protect his rental history from a judgment, but any execution issued in this case will include "all other occupants" to protect Plaintiff from a subsequent claim by Mr. Clark that he cannot be evicted because he was not a defendant in this case.

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address each motion separately.

Plaintiff's motion will treated as a motion for entry of judgment. Based on the exhibits submitted with the motion and Defendant's admissions,[2] it is undisputed that Ms. Clark is the former owner of the Premises. Wells Fargo foreclosed on the Premises pursuant to the statutory power of sale and, on November 14, 2016, took title pursuant to a foreclosure deed. The foreclosure deed was recorded on December 23, 2016. Plaintiff provided the Court with an attested copy of the recorded foreclosure deed and an uncontroverted affidavit of sale under G.L. c. 244, § 15 showing the mortgagor's compliance with the statutory power of sale. Plaintiff established Wells Fargo Bank's prima facie case as to ownership of the Premises. *See Federal Nat'l Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 642 (2012).

Plaintiff purchased the Premises from Wells Fargo Bank on or about December 31, 2020. Plaintiff served a legally sufficient 90-day notice to quit upon Defendants on or about September 10, 2021 and entered is summary process summons and complaint on December 27, 2021. Ms. Clark failed to vacate and continue to reside in the Premises.

The exhibits show that that Plaintiff is an arm's length purchaser for value as defined in G.L. c. 244, § 15(a). Because an affidavit of sale was recorded in the registry of deeds showing that the requirements of the statutory power of sale and

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[2] Defendants did not answer admissions despite a court order compelling them to do so and an extension of time. Upon motion by Plaintiff, the admissions were deemed admitted for trial. Defendants did not challenge the ruling nor did they attempt to provide any evidence contrary to the admissions.

the law have been complied with in all respects, and because the recording of the deed occurred more than three years prior to Plaintiff's purchase of the Premises, pursuant to G.L. c. 244, § 15(c), Plaintiff's title cannot be set aside.[3]

In light of the foregoing, Plaintiff is entitled to entry of judgment for possession. Ordinarily the Court would require an evidentiary hearing to determine the fair rental value of the Premises in their current condition and the rate of use and occupancy. See *Davis v. Comerford*, 483 Mass. 164 (2019). Here, Plaintiff takes the position that, because Ms. Clark failed to answer the requests for admissions, she is deemed to have agreed to the use and occupancy rate unilaterally set by Plaintiff. None of the requests for admissions, however, explicitly ask Ms. Clark to admit the fair rental value of the Premises. Accordingly, if Plaintiff seeks to collect use and occupancy from Ms. Clark, it must file a motion and the Court will hold a *Comerford* hearing to establish the rate of use and occupancy.

Turning to Defendant's motion to add a necessary party, namely Wells Fargo, the motion is denied as moot based on the Court's ruling that, pursuant to G.L. c. 244, § 15(c), Plaintiff's title cannot be set aside. The Court's ruling is not a declaration that Wells Fargo is immune from liability for the manner in which it conducted business with Ms. Clark. Ms. Clark is free to bring a claim for monetary damages in a separate action against Wells Fargo if she believes that Wells Fargo acted wrongfully; however, the summary process case before the Court is about who

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[3] The Court has no evidence of a pending action to challenge the validity of the foreclosure sale has been commenced and is now pending in a court of competent jurisdiction.

has the legal right to possession, and the exhibits offered by Plaintiff without objection demonstrate that it has a superior right to possession to Ms. Clark.

Given the foregoing, the following order shall enter:

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

SO ORDERED.

DATE: 8/2/2022

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-0895

ISABEL CRUZ,
PLAINTIFF
v.
JOSE A. RAMOS,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This civil damages action came before the Court for an in-person bench trial on May 10, 2022. Both parties appeared with counsel. 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. Ramos owns residential property located at 95-97 Congress Avenue, Holyoke, Massachusetts (the "property"). Ms. Cruz resides at 95 Congress Avenue, the first-floor apartment (the "Premises"). Mr. Ramos has owned the property since 2017 and has been a landlord since 2014. Ms. Cruz moved into the Premises in May 2018. Her rent is $1,250.00 per month.

Mr. Ramos served a no-fault notice to quit on August 31, 2021. He did not demand any rental arrears or use and occupancy in his complaint. Ms. Cruz filed an answer with counterclaims. Subsequently, Mr. Ramos' case for possession was dismissed and Ms. Cruz's counterclaims were transferred to this civil docket case. She

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alleges that the Premises suffered from problems with heat and water intrusion, that her electricity was cross-metered with a common hallway light, and that Mr. Ramos terminated her tenancy in retaliation for her complaints.[1]

Before evaluating Ms. Cruz's claims, the Court will address Plaintiff's notion that Ms. Cruz is precluded from bringing certain claims because of an earlier summary process case between the parties (Docket No. 18-SP-4420). In that case, Ms. Cruz filed an answer with defenses and counterclaims relating to conditions of disrepair. The parties entered into a court agreement on November 1, 2018. The agreement noted that "minor" repairs were needed and that Mr. Ramos would have 60 days to complete the work. Rent was not abated, however, and Ms. Cruz agreed to pay all of the rent arrears over time. The parties entered into a subsequent court agreement on December 24, 2018, at which time Ms. Cruz agreed to allow access to the Premises for Mr. Ramos to make repairs listed on the October 18, 2018 code report. No further agreements or motions were filed.

Despite Mr. Ramos' contention that Ms. Cruz is precluded from relitigating matters that she could have raised in the earlier case, the Court finds that Ms. Cruz's claims were not litigated in the prior case, given that there was no explicit or implicit release nor any consideration given. However, the Court can infer from the court agreements that, if Ms. Cruz was suffering from any material defective conditions not

[1] Before trial, Ms. Cruz dismissed her counterclaim for conversion, and at the outset of trial she represented that she would not proceed with counterclaims involving disturbances caused by neighbors and the lack of running water. Accordingly, any claims asserted by Ms. Cruz that are not addressed in this order are either waived or fail due to insufficient evidence at trial.

cited in the correction order, she would have identified them in one of the two court agreements.

Turning to Ms. Cruz's claims, starting with her allegation that the heating system was defective, the Court credits Ms. Cruz testimony that the Premises lost heat whenever the water in the steam boiler dropped below a certain level. The type of steam boiler used to heat the Premises requires water to be manually added to the boiler periodically. The evidence shows that Ms. Cruz notified Mr. Ramos on numerous occasions, particularly in the winters of 2018-2019 and 2020-2021, that the heat had stopped working.[2] Mr. Ramos testified that he or his brother-in-law always responded immediately upon notice to fill the boiler with water; in fact, Ms. Cruz acknowledges that Mr. Ramos typically responded promptly, although on one occasion it took him a "couple of days" to restore the heat. Despite his reasonable response time, the Court finds that Mr. Ramos should have taken steps to ensure the problem did not repeatedly recur. For example, he could have installed an automatic water feeder that adds water to the boiler as necessary. It is incumbent upon a landlord to take reasonable steps to ensure that its tenants have continuous heat, and by relying at times on Ms. Cruz to notify him when the boiler required water, the Court finds that Mr. Ramos failed to fulfill his legal obligation.

Ms. Cruz also complained about inadequate heat in the Premises even when the boiler was operating properly. Her high electric bills support her testimony that she

[2] Although some of Ms. Cruz's complaints were sent during the pendency of the earlier summary process case and not mentioned in the code report or the court agreements, the evidence supports the fact that the intermittent loss of heat began the first heating season after Ms. Cruz moved into the Premises.

used electric space heaters to maintain sufficient warmth in the unit. However, the Premises could have been cold for reasons outside of Mr. Ramos' control, such as the use of electric heaters close to the thermostat, low thermostat settings or open windows. Despite at least three code enforcement inspections during heating season, none of the reports admitted into evidence reference inadequate heat or the absence of a heating source in every room. Moreover, Ms. Cruz did not claim inadequate heat in the 2018 court agreements even though one of them was made in winter (December 24, 2018). Ms. Cruz produced no evidence demonstrating the temperature in her home at any given time. The Court concludes that Ms. Cruz did not carry her burden of proving that Mr. Ramos should be held liable for failing to furnish adequate heat when the boiler was operating properly.

Turning to Ms. Cruz's complaints about water damage in the Premises, the evidence clearly shows repeated water intrusion into Ms. Cruz' bathroom. The initial code enforcement report from 2018 cites ceilings and walls in the bathroom with stains and an odor of chronic dampness, and stained ceiling tiles in the kitchen. The November 2021 inspection cited water damage to the ceiling in the bathroom. Ms. Cruz introduced numerous photographs of water damage in the bathroom, including growing ceiling stains and moisture-related bubbles on the wall.

Mr. Ramos testified that the plumbing did not leak[3] and that the water entered the Premises as a result of careless conduct by the tenants living in the unit above the Premises. He conceded, however, that a (since-repaired) loose drain in the upstairs

[3] The Court notes that Mr. Ramos did not provide any evidence from a qualified plumber as to the state of the plumbing.

unit likely contributed to the problem. He claimed that the repeated water intrusion caused only cosmetic damage prior to an incident in April 2022 around Easter when a more significant flood occurred due to the sink in the upstairs unit being pulled from the wall.

Even if the Court accepts Mr. Ramos' testimony that the plumbing did not leak and that the water entered the Premises due to the actions of the upstairs tenants, the water intrusion was not an isolated event. The evidence clearly shows that water entered the Premises over an extended period of time and that the stains, sagging ceiling tiles and wall bubbling increased over time. Evidence of water entry was noted at the time of the October 18, 2018 code enforcement inspection and, based on repeated text messages, persisted through approximately January 27, 2022 when Mr. Ramos received a compliance letter from the code inspection department. The Court finds that Mr. Ramos failed to take reasonable steps to protect Ms. Cruz and her family from water entering into her bathroom.

The separate and more calamitous water incident occurred around Easter in April 2022 when water flooded through the ceiling and caused extensive damage. This event may have been caused by an unanticipated catastrophic event in the upstairs unit (the sink being pulled from the wall), but the damage to the Premises was substantial and significantly reduced the rental value of the Premises until it was repaired. Although Mr. Ramos could not have known that the sink would be pulled from the wall in the upstairs unit, his failure to implement a solution to the chronic water intrusion for several years likely contributed to the damage.

The Court finds that both the repeated absence of heat and the intrusion of water into the Premises are substantial conditions of disrepair that reduced the value of the Premises. See *Boston Housing Authority v. Hemingway*, 363 Mass. 184 (1973). A landlord who violates the warranty is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). 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. *Id.*, 363 Mass. at 203. Damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) ("While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference.").

Here, the Court recognizes that the heating problems did not exist for entire duration of the tenancy. Defendant testified about the loss of heat at times in 2019 and sent a number of text messages in the winter of 2020. The Court finds that Mr. Ramos was on notice of periodic heat loss for three winters (2019-20, 2020-21 and 2021-22).[4] Using the winter of 2021-2022 as an exemplar, when the evidence shows four incidents of the heat shutting down, the Court determines that Ms. Cruz experienced approximately twelve instances when the heat failed and needed water to be added to the boiler (four days in each of three winters). The Court finds that the value of the Premises without heat was reduced by 60% during the period without

[4] The Court discounts the first winter (2018-19) because she did not raise it as a problem in the earlier court agreements.

heat (she was, by her own admission, producing heat with electric heaters). Using a per diem of approximately $42.00 per day, the warranty damages amount to $302.00.

Regarding the water, the Easter flood reduced the value of the Premises by 90% from the day it happened (a Friday) through the day it was repaired (the following Tuesday). For this event, the abatement is $189.00. The water staining the ceiling and walls was not substantial condition of disrepair until the stains expanded, the walls bubbled, and water dripped into the shower, which defects became evident in January 2020. The Court finds that the issue was rectified by November 2021 (a period of 23 months) when the Board of Health inspected an issued a compliance letter. The Court determines that the Premises' value was reduced by 10% for the 23 months in question, for rent abatement damages in the amount of $2,875.00. In total, the warranty damages amount to $3,366.00.

Pursuant to the Attorney General's regulations, 940 C.M.R. § 3.17, it is an unfair or deceptive act or practice for an owner to fail, during the term of the tenancy, after notice, to maintain the dwelling unit in a condition fit for human habitation. See § 3.17(1). Because Mr. Ramos conducts trade or commerce in renting residential apartment, pursuant to G.L. c. 93A, the warranty damages must be at least doubled, if not trebled, if the Court finds that the use or employment of the act or practice was a willful or knowing violation of G.L. c. 93A's prohibition on unfair or deceptive practices in the conduct of trade or commerce. See G.L. c. 93A § 9(3). The "willful or knowing" requirement of § 9(3) goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions that amount to violations of the law. See *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956

(1987). In this case, Mr. Ramos' failure to maintain the Premises in compliance with the State Sanitary Code throughout Ms. Cruz's tenancy, and because he knew of the conditions that amount to violations of the law, the Court doubles the warranty damages to $6,732.00.

The Court finds that the nature, duration and seriousness of the water intrusion warrants a finding that Mr. Ramos breached the covenant of quiet enjoyment codified in G.L. c. 186, § 14. *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). (the 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."). Pursuant to the statute, a landlord who interferes with the quiet enjoyment of any residential premises by the occupant shall be liable for actual and consequential damages, or three months' rent, whichever is greater, and the costs of the action, including reasonable attorneys' fees. G. L. c. 186, § 14.[5] Accordingly, the Court finds that Ms. Cruz is entitled to the statutory award of three months' rent in the sum of $3,750.00.[6]

Ms. Cruz cannot have duplicate cumulative recoveries on separate legal theories for the same defective conditions. Because the habitability and quiet enjoyment claims are duplicative in this case, Ms. Crus is entitled to the greater recovery, which in this case is the abatement damages of $6,732.00.

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[5] Although emotional distress damages can be a component of quiet enjoyment damages, the Court finds that such damages are not warranted in this case. The evidence is insufficient to demonstrate that Mr. Ramos knew or should have known that emotional distress was the likely result of his conduct, or that his conduct was extreme and outrageous, or that Mr. Ramos' conduct was the cause of Ms. Cruz's emotional distress.

[6] In order to be liable under G.L. c. 186, § 14, a landlord's conduct must be at least negligent. The Court finds that Mr. Ramos' failure to take reasonable steps to mitigate both the heat and water issues constitutes negligence.

Turning from conditions to disrepair to Ms. Cruz's claim that Mr. Ramos violated G.L. c. 186, § 18 by taking reprisals against her for contacting the Board of Health, the Court finds that the operative notice to quit was dated August 31, 2021. Ms. Cruz could not recall when she contacted the Board of Health, but testified that it was before she received the notice to quit. The Court does not credit her testimony on this point. The Board of Health's notice of violation cites the date of the complaint as November 3, 2021. Even if the inspector did not immediately go to the Premises after her initial complaint, as she claims, the Court finds it highly unlikely that she complained in August and that more than two months passed before the inspection occurred. Accordingly, the Court finds that Mr. Ramos terminated the tenancy before Ms. Cruz complained to the Board of Health in 2021.

Nonetheless, the evidence shows that Ms. Cruz complained to Mr. Ramos about the on-going water intrusions in June 2021, which creates a rebuttable presumption that the notice to quit from August 2021 was a reprisal against Ms. Cruz. The Court finds that Mr. Ramos rebutted the presumption, however. He testified credibly that his marriage ended and that he needed a place to live. Despite numerous complaints from Ms. Cruz over the preceding several years and her call to the Board of Health in 2018, Mr. Ramos did not attempt to evict her after the 2018 case, which he brought for non-payment of rent. The Court infers from the past conduct that it was not Ms. Cruz's complaints that caused him to serve the notice to quit and that he would have done so at that time even if she had not complained about water intrusion. The Court finds in favor or Mr. Ramos on the reprisal claim.

Lastly, regarding Ms. Cruz's claim regarding cross-metering, the Court finds a lack of evidence to support her claim. Based on a video introduced by Mr. Ramos, the Court is satisfied that the common hallway light is not connected to her electrical panel. Ms. Cruz's witness did not test the operation of the light before shutting off Ms. Cruz's power; he only confirmed that the light did not work when her electricity was off. Accordingly, the Court also finds in favor of Mr. Ramos on the cross-metering claim.

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

1. Ms. Cruz is entitled to judgment in the amount of $6,732.00. Judgment shall not enter immediately, however.
2. Within fifteen days of receipt of this order, Ms. Cruz may file a petition for reasonable attorneys' fees and costs, together with supporting documentation. Mr. Ramos shall have fifteen days to file an opposition to the petition.
3. The Court shall thereafter rule on the petition without hearing and issue a final order for entry of judgment.

SO ORDERED.

DATE: 8.2.22

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. 21-SP-0637
GRAHAM'S CONSTRUCTION, INC. ET AL., PLAINTIFFS v. ENA SALOME GRAHAM, DEFENDANT	ORDER ON PLAINTIFF'S MOTION FOR USE AND OCCUPANCY

This summary process case came before the Court on June 10, 2022 for hearing on Plaintiffs' motion to require Defendant to pay for her use and occupancy of a single-family dwelling located at 79 Elaine Circle, Springfield, Massachusetts (the "Premises") currently occupied by Defendant. Both parties appeared through counsel.

The Court previously ruled that the parties had entered into a written lease in June 2020. The lease requires Defendant to pay for her utilities, real estate taxes and water and sewer charges in lieu of monthly rent payments. There is no dispute that Defendant has not been making any of the required payments. The Court has authority to issue orders for interim payments during the pendency of a summary process action, see *Davis v. Comerford,* 483 Mass. 164 (2019).

Although Defendant objects to an order for interim payments, the parties agree that, if the Court orders interim payments, the monthly payment will be $1260.00, which roughly equates to the monthly carrying costs for the Premises, plus all water and sewer charges. The Court finds the following factors weight in favor of interim payments pending trial: (a) the delay expected

before final resolution of the case (a jury trial is currently scheduled to begin on December 19, 2022), (b) Plaintiffs' monthly obligations for the Premises, and (c) the absence of any payments to Plaintiffs since the inception of the action.[1] Accordingly, the following order shall enter:

1. Beginning on June 15, 2022, and on the 15th of each month thereafter through final resolution of this case, Defendant shall pay $1,260.00 to Plaintiffs' counsel. Upon receipt, Plaintiffs' counsel may forward the funds to Plaintiffs to pay the monthly obligations for the Premises.
2. Defendant shall pay the water and sewer charges for the Premises directly to the Springfield Water and Sewer Commission beginning with the invoice that is scheduled to arrive in mid-June 2022. Upon receipt of the bill, Plaintiffs will forthwith send it to Defendant's counsel for payment by Defendant.

SO ORDERED.

DATE: 8.2.22

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

[1] Defendant has it within her control to minimize her monthly obligation. She could waive her demand for a jury, which would allow the Court to schedule a bench trial on relatively short notice. Plaintiffs have already indicated their willingness to waive their right to a jury.

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-2669

OCEAN PROPERTY MANAGEMENT,

Plaintiff,

v.

GREG MYERS,

Defendant.

ORDER

After hearing on August 3, 2022, on the Guardian Ad Litem's (G.A.L.'s) motions, at which both parties appeared along with the G.A.L., a representative from the Tenancy Preservation Program (TPP), and two representatives from CHD, the following order shall enter:

1. The G.A.L.'s motion for substitution of costs for a private investigator for up to 10 hours @$55, is allowed. The tenant is indigent within the meaning of G.L. c.261,

s.27A-G and this cost is necessary to defend his tenancy as the investigator is needed to ascertain the identities of problematic intruders at the tenant's unit.

2. The G.A.L.'s motion for substituted judgment is taken under advisement.
3. This matter shall be scheduled for review on **August 23, 2022, at 2:00 p.m.** live and in-person at the Springfield Session.

So entered this 5th day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter AR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-SP-3972

PENNYMAC LOAN SERVICES, LLC,

Plaintiff,

v.

ERIN-LYNN ROBINSON, et al.,

Defendant.

ORDER

After hearing on June 22, 2022 on the PennyMac Loan Services, LLC's (Plaintiff's) motion to supplement the summary judgment record in this post-foreclosure summary process action, the following Order shall enter:

1. The Plaintiff's motion is considered as a motion to reconsider the March 25, 2020 order denying summary judgment. Pursuant to the Court's inherent discretion and in the interest of judicial economy, the motion to reconsider is allowed. Furthermore, based

upon the supplemented summary judgment record and relevant law, and following hearing on the matter, Plaintiff's motion for summary judgment is allowed.

2. Plaintiff has sufficiently supplemented the record from the first motion for summary judgment to include an affidavit stating specific reference to personal knowledge of the procedures of the Plaintiff and admissible evidence that shows the paragraph 22 default letter was sent pursuant to that section of the mortgage contract.
3. Plaintiff initially moved for summary judgment on August 7, 2019. Attached to the motion was an affidavit of Steven M. Stoehr, Esq., which stated in part that "I am familiar with the record keeping practices of Harmon, which includes keeping a file for each foreclosure handled by the firm. Each file includes client instructions and communications, copies of the note (if available) and mortgage, a title report and abstract, copies of pleadings and/or correspondence, and all communications sent to or received from any of the parties. In addition, the firm utilizes an electronic case management system in which attorneys and legal assistants acting under the direction of the Firm's attorneys, enter case-related activity simultaneously or nearly simultaneously with the occurrence of such activity. The firm's case management system also allows the staff to monitor and assign each task in a particular case, create standardized templates and keep a chronological record of each action or communication that has taken place in each individual case." *See* **Stoehr Affidavit.**
4. Attorney Stoehr stated that his "review of Harmon's foreclosure file and entries in Harmon's case management system concerning the Property reveals" in pertinent part that on July 30, 2015, Erin-Lynn Robinson ("Defendant") acquired title to the property

pursuant to deed recorded with Berkshire County Registry of Deeds at Book 5598, and Page 271; on the same date, Defendant executed a promissory noted for $127,448.00; and as security for the note Defendant granted a mortgage in the amount of the note to Mortgage Electronic Registration Systems, Inc ("MERS").

5. Attorney Stoehr attached several exhibits to his affidavit which he stated were "true and accurate copies of records maintained by Harmon regarding the Property at issue." The attachments included copies of the deed to Defendant; the promissory note; the mortgage contract between Defendant and MERS; an affidavit pursuant to M.G.L. c. 244, §§ 35B and 35C; Land Court judgment on complaint to determine military status; power of attorney to Bonnie Baer-Green for the limited and specified purposes of making entry upon the premises located at 38 Pease Avenue, Dalton MA 01226 ("Premises"); certificate of entry; foreclosure deed and affidavit of sale; affidavit of continuing noteholder status; *Pinti* affidavit; assignment of mortgage from MERS to PennyMac Loan Services, LLC; 72 hour notice to quit from PennyMac's counsel to Steven Robinson; 72 hour notice to quit to Defendant; summary process summons and complaint; Defendant's Answer; Defendant's answers to interrogatories; and Plaintiff's interrogatories.

6. After hearing on September 11, 2019, the Court ordered that the Plaintiff provide additional material regarding compliance with paragraph 22 of the mortgage. On September 25, 2019, John McDermott, Esq. filed a supplemental affidavit pursuant to the Court's September 11 Order.

7. Attorney McDermott's affidavit stated in pertinent part that his "review of Harmon's foreclosure file and entries in Harmon's case management system concerning the Property reveals the following:

    a. On date June 23, 2016, PennyMac Loan Services, LLC sent a **Notice of Default and Intent to Accelerate** by certified mail. . . .

    b. Said Notice was given by the then holder of the note secured by the mortgage or its duly authorized agent in strict compliance with the terms and conditions precedent in the Mortgage to acceleration and sale contained in the Mortgage at Paragraph 22."

8. Attached as Exhibit 1 of the McDermott affidavit was a copy of the notice of default and intent to accelerate.

9. On March 25, 2020, the Court denied Plaintiff's motion for summary judgment stating that Plaintiff had satisfied its burden to prove its prima facie case for possession but that it was "satisfied that Robinson's direct statement that she did not receive a certified letter suffice[d] to raise a genuine dispute concerning the narrow material question of whether PennyMac complied strictly with paragraph 22 of the mortgage, as required under *Pinti v. Emigrant Mortgage Company, Inc*, 472 Mass. 226 (2015)."

10. The case was suspended for Covid-19 and no further action was taken until a case management conference was scheduled for April 26, 2022.[1] After hearing, a summary process case management conference order was issued setting a trial date for June 22,

[1] Neither party entered any filings into the record during this time.

2022, on the limited issue of whether the Plaintiff complied strictly with paragraph 22 of the mortgage.

11. On May 25, 2022, Plaintiff filed a motion for leave to supplement summary judgment motion.[2] The Plaintiff's supplemental memorandum in support of summary judgment states that "[t]he notices of acceleration PennyMac gave to the defendant complied strictly with the terms of the mortgage."

12. Along with its supplemental memorandum, the Plaintiff also filed a new affidavit of Francis J. Nolan in support of summary judgment. In his affidavit, Mr. Nolan states in part that he is "familiar with the record keeping practices of Harmon, which includes keeping a file for each foreclosure handled by the firm. Each file includes client instructions and communications, copies of the note (if available) and mortgage, a title report and abstract, copies of pleadings and/or correspondence, and all communications sent to or received from any of the parties. Harmon uses an electronic case management system in which attorneys and legal assistants acting under the direction of the firm's attorneys, enter case-related activity simultaneously or nearly simultaneously with the occurrence of such activity. The firm's case management system also allows the staff to monitor and assign each task in a particular case, create standardized templates and keep a chronological record of each action or communication that has taken place in each individual case."

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[2] The Court recognizes the unusual procedural posture of this case: after more than three years since bringing the action, more than two years since first moving for summary judgment, and more than one year since the expiration of the Chapter 60 of the Acts of 2020 eviction moratorium, the Plaintiff chose less than one month before trial was scheduled to request this reconsideration of the Court's order denying summary judgment. Under different circumstances, the timing of the motion alone may have been enough cause to deny the motion to reconsider.

13. Attached to the Nolan affidavit are several exhibits, including multiple letters sent by first-class mail titled "Notice of Default and Intent to Accelerate," transaction information, and the certified first-class letter returned as "unclaimed." *See* **Nolan Affidavit Exhibits B, C, D, and E**.

14. The June 23, 2016 notice states in pertinent part that "This letter is a formal demand to pay $1,819.30. If the default, together with additional payments that subsequently become due, is not cured by 7/28/2016, the sums secured by the Security Instrument may be accelerated, and PennyMac may invoke any remedies provided for in the Note and Security Instrument, including but not limited to the foreclosure sale of the property." The notice further states that "[t]he default above can be cured by payment of the total delinquency and reinstatement amount plus any additional payments and fees that become due by 7/28/2016." Finally, the notice also provides that "[y]ou have the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default of any other defense to acceleration and sale." *See* **Nolan Affidavit Exhibits B**.[3]

15. With the letter, the supplemental Nolan affidavit includes a copy of the return receipt of the certified letter marked "RETURN TO SENDER," "UNCLAIMED," "UNABLE TO FORWARD." The certified first-class mail receipt is marked with a digital code 9314-8100-1770-0872-1925-54. The same number appears on the copy of the notice and correlates with the certified mail tracking information included with exhibit B.

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[3] The later default notices include identical language regarding the purpose of the letter, and the rights associated with acceleration, reinstatement, and foreclosure, updated only to account for the amount due to cure the default and acceleration date. **Nolan Affidavit Exhibits C, D, and E**.

16. **Motion to Reconsider:** If there is no material change in circumstances, a judge is not obliged to reconsider a case, issue, or question of law after it has been decided. See *Chase Precast Corp. v John J. Paonessa Co.*, 409 Mass. 371, 379 (1991); *Clamp-All Corp. v Foresta*, 53 Mass. App. Ct. 795, 806-807 (2002); *Littles v Commissioner of Correction, 444 Mass. 871*, 878 (2005). However, "Massachusetts courts have held that it is within the inherent authority of a trial judge to 'reconsider decisions made on the road to final judgment. Though there is no duty to reconsider a case, an issue, or a question of fact or law, once decided, the power to do so remains in the court until final judgment or decree.... Even without rehearing, a judge may modify a decision already announced, so long as the case has not passed beyond the power of the court. A decision on a motion for reconsideration is reviewed for abuse of discretion" (citations and quotations omitted). *Johnson v. Maynard*, 68 Mass. App. Ct. 1117, 864 N.E.2d 42 (2007).

17. Based on the Court's inherent discretion, and in the interest of judicial economy, the Plaintiff's motion to reconsider the March 25, 2020 order denying the summary judgment is allowed.

18. **Standard of Review**: 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 pleadings, depositions, answers to interrogatories, admissions, documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving

party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976).

19. The party opposing summary judgment "cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." *LaLonde v. Eissner*, 405 Mass. 207, 209 (1976). To defeat summary judgment the non-moving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Korouvacilis v. General Motors Corp.*, 410 Mass. 706, 714 (1991). "Conclusory statements, general denials, and factual allegations not based on personal knowledge [are] insufficient to avoid summary judgment." *Madsen v. Erwin*, 395 Mass. 715, 721 (1985), *quoting Olympic Junior, Inc. v. David Crystal, Inc.*, 463 F.2d 1141, 1146 (3d Cir. 1972).

20. To prevail in a summary process action involving foreclosed property where the validity of the foreclosure is challenged, the plaintiff claiming to be the post-foreclosure owner of the property must prove that it has a superior right of possession to that property over the claimed ownership right asserted by the defendant who was the pre-foreclosure owner/occupant. To prove this element of its claim for possession, the post-foreclosure plaintiff must show "that the title was acquired strictly according to the power of sale provided in the mortgage." *Wayne Inv. Corp. v. Abbott*, 350 Mass. 775, 775 (1966). See *Pinti v. Emigrant Mortg. Co., Inc.*, 472 Mass. 226 (2012); *Bank of New York v. Bailey*, 460 Mass. 327 (2011). A foreclosure deed and affidavit that meets the requirements of G.L. c. 244, §15 is evidence that the power of sale was duly executed

and constitutes prima facie evidence of the plaintiff's case in chief. *See Federal National Mortgage Association v. Hendricks*, 463 Mass. 635, 641-642 (2012).

21. Once a plaintiff makes a prima facie case, the burden shifts to the opposing party to demonstrate, through the use of evidence that would be admissible at trial, specific facts showing that there exists a genuine issue for trial. If a defendant fails to show the existence of a genuine issue of material fact in response to a motion for summary judgment by contesting factually a prima facie case of compliance with G.L. c. 244, §14, such failure generally should result in judgment for the plaintiff. *Federal National Mortgage Association v. Hendricks*, 463 Mass. at 642.

22. **Discussion:** In its order denying Plaintiffs initial motion for summary judgment on March 25, 2020, the Court found that Plaintiff had established the prima facie elements of its claim for possession by producing a copy of the foreclosure deed and affidavit of sale. *See* **Stoehr Affdivait, Exhibit A**. However, the Court was "satisfied that Robinson's direct statement that she did not receive a certified letter suffice[d] to raise a genuine dispute concerning the narrow material question of whether PennyMac complied strictly with paragraph 22 of the mortgage."

23. "[S]trict compliance with the notice of default provisions in paragraph 22 of the mortgage [is] required as a condition of a valid foreclosure sale. *Pinti*, 472 Mass. at 227. Paragraph 22 of the Defendant's mortgage states in pertinent part that "Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument. . . . The notice shall specify (a) the default; (b) the action required to cure the default; (c) a date not less than 30 days from

the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified to the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale." *See* **Stoehr Affidavit, Exhibit A.**

24. The mortgage contract also states that "[a]ny notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when delivered to Borrower's notice address if sent by other means." *See* **Stoehr Affidavit, Exhibit A.**

25. The Court finds that notices complying with paragraph 22 of the mortgage were sent to Defendant by certified first class mail in compliance with paragraph 15 of the mortgage on June 23, 2016; August 25, 2016; September 22, 2016; and November 17, 2016. There is no remaining genuine of issue of material fact. The Defendant has not supplemented the record with countervailing admissible evidence to defeat summary judgment. Accordingly, the Plaintiff's motion for summary judgment is **ALLOWED.**

26. **Conclusion and Order:** Accordingly, possession shall be awarded to the plaintiff. Because the plaintiff also sought use and occupancy in the Account Annexed portion of the Complaint, no judgment shall enter at this time. If the plaintiff wishes to dismiss its claim for use and occupancy it may file and serve a pleading to that effect within 20 days from the date of this order. If so filed, judgment shall enter for plaintiff for possession upon receipt of said dismissal of the claim for use and occupancy. If the plaintiff does

not dismiss said claim for use and occupancy it shall so notify the court by pleading within 20 days of this order noted below and a hearing on use and occupancy shall be scheduled by the clerks' office.

So entered this 5th day of August, 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-1542

PATRICK TEMPLE,

Plaintiff,

v.

JUSTIN CHEVEREZ, SHANTEL HAYES, KYLE CHEVEREZ, TIFFANY CACCIOLFI, and JAMIE BUNKER,

Defendants.

ORDER

After hearing on July 28, 2022, on the plaintiff landlord's motion to add parties to the case, at which only the moving party appeared, the following order shall enter:

1. The plaintiff landlord assets that his only tenants are Justin Cheverez and Shantel Hayes and that several other people are occupying the premises that are not his tenants. These include Kyle Cheverez, Tiffany Cacciolfi, and Jamie Bunker.

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2. The landlord is seeking to add these individuals to the case so that their names will appear on the execution, upon which he plans to levy for possession.
3. The landlord indicated that all or some of these individuals have occupied the premises for an extended period of time---for a year or so.
4. Given the length of time these individuals have occupied the premises and given the court's due process concerns---whereby they have never been part of this case nor received notices to quit or summonses or court notices---and also given no assertion by the landlord that would indicate that if he levies on the execution that they would not leave with the named tenants, the motion is denied without prejudice.
5. Additionally, in accordance with the court's February 22, 2022, order, a new execution for possession and for court costs can issue upon the return of the current execution by the landlord.
6. Nothing in this order bars the plaintiff from returning to court to seek further remedy should he levy on the execution for possession and the additional individuals do not leave with the named tenants.

So entered this 5th day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1850

SARAH A. CASTRO,

Plaintiff,

v.

RUTH KENNEDY,

Defendant.

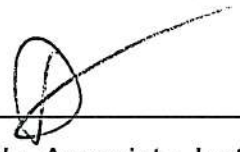
ORDER

After hearing on July 18, 2022, on the defendant's motion to compel discovery, at which both parties appeared through counsel, the following order shall enter:

1. The plaintiff shall respond to the defendant's written discovery demand by no later than August 1, 2022. Failure to comply with this term shall result in a dismissal of the plaintiff's claim for possession and judgment for the defendant on her counterclaims.
2. The parties shall complete depositions by no later than October 1, 2022.

3. The defendant shall have until October 10, 2022 to file a motion for summary judgment and the plaintiff shall have until October 24, 2022 to file her opposition.
4. A hearing on summary judgment by Zoom shall be scheduled for **November 2, 2022, at 9:00 a.m.**
5. The defendant shall serve (not file) a motion to amend the Answer, with a copy of the amended Answer to the plaintiff by no later than August 31, 2022. The plaintiff shall either assent to filing of said amended Answer (and same shall be filed with the court or, if not, the defendant shall work with the clerks' office to mark-up said motion.

So entered this 8th day of August, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-403

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

v.

TINA CORMIER,

Defendant.

ORDER

After hearing on July 26, 2022, on the plaintiff's motion for an increase in rent pursuant to G.L. c.186A, s.5, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se*, the following order shall enter:

1. **Background:** The plaintiff, Federal National Mortgage Associations (hereinafter, "FNMA") foreclosed on the subject premises and is seeking to establish a rent for the subject rental unit in accordance with G.L. c.186A, s.5. The defendant, Tina

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Cormier (hereinafter, "tenant") was the tenant of the former owners and paid a monthly rental amount of $500 to the former owner(s).

2. **FNMA's Witness:** The sole witness for the plaintiff in support of its motion was Oleg Kulyak (hereinafter, "Kulyak"), a real estate broker for Gallagher Real Estate in Springfield, Massachusetts. Though Kulyak has been a broker for the past 19 years in the area, he has focused mainly on "REO" (bank-owned) properties for the past dozen years, maintaining and selling said units. When asked by plaintiff's counsel if he was familiar with Palmer, Massachusetts, he stated that his office has sold properties in Palmer and the surrounding areas. It appears from his testimony that he is not involved in the rental of properties—focusing as noted above on REO properties and sales. Additionally, he has never been inside the subject premises and that the "research upon which he bases his opinion of fair rental value consisted of three "comparables" listed in MLS and on "public documents" (Kulyak's quote) with no further explanation of which public documents. Lastly, Kulyak provided very little information about the three "comparables" he reviewed to reach his conclusion.

3. **Discussion:** Cormier stated that she reviewed the three comparables (though there were not put into evidence) and stated that they were all newly renovated and that the subject premises have not been upgraded during the last ten years that she has resided there. She also testified without objection that the square footage of the three comparables were greater than the subject premises and that the basement is not a fully finished basement.

4. Given that the statute (G.L. c.186A, s.5) presumes that the rental amount between the tenant and the former landlords is a reasonable rent, and given the court not being persuaded by the plaintiff's witness that he was knowledgeable enough about rentals in Palmer and the surrounding towns to offer a valuable opinion on the fair market rent of the subject premises, the court finds and so rules that the plaintiff failed to meet its burden of rebutting the presumed reasonableness of the monthly rent of $500.
5. **Conclusion and Order:** Based on the foregoing, FNMA's motion to set the rent at $1,200 is denied. Additionally, FNMA shall notify Courmier within 24 hours of the name and contact information of a property manager in charge of the subject premises.

So entered this 8th day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-692

ESTHER SANCHEZ,

Plaintiff,

v.

ALBA CASTRO,

Defendant.

ORDER

This matter came before the court for trial on August 4, 2022, at which both parties appeared without counsel. After hearing the following order shall enter:

1. The tenant stipulated to the landlord's claim for possession.
2. In this no-cause eviction matter, the tenant has asked for more time to relocate. The tenant has a 17-year-old child with special needs and the tenant suffers from health issues. The tenant has been diligently searching for housing.

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3. The landlord's own home has become overcrowded, and she needs to either move into the premises herself or have others from her household do so.
4. The tenant shall continue to diligently search for housing and shall keep a log of all the places she identifies and reaches out to and the specifics of each place and what happened. The tenant shall also keep copies of each application she files for housing. The tenant shall bring her log and any attached applications to the next court hearing.
5. This matter shall be scheduled for review in accordance with G.L. c.239, s.9 on **September 6, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 8th day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0388

SHANNON MESSER,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER
	)	
WOODROW WITTER,	)	
	)	
DEFENDANT,	)	

This case came before the Court on August 10, 2022 for an in-person hearing on Plaintiff's emergency motion for alternative housing. All parties appeared self-represented.

Pursuant to the Court's order dated June 1, 2022, Defendant was obligated to provide a hotel room and a daily food stipend of $60.00 until the condemnation was lifted at 312 Waconah Street, Pittsfield, Massachusetts (the "property"). Defendant reports that the condemnation has lifted but that the property is not habitable due to a lack of hot water and perhaps other issues. Based on this information, the Court enters the following order:

1. Ms. Messer shall be provided keys and permitted to reoccupy the property as soon as it becomes habitable. She shall be permitted to reside at the property until she voluntarily vacates or is removed by a Court order. Because the parties do not have a written agreement to transfer the

responsibility for utilities to Ms. Messer, Defendant must provide all utilities.

2. Defendant's obligation to provide a hotel room and a daily $60.00 food stipend shall end only when Ms. Messer is able to reoccupy the property.
3. Ms. Messer shall be housed at the Holiday Inn at One West Street, Pittsfield, provided that there are rooms available. If no rooms are available, a similarly situated hotel shall be provided.

SO ORDERED.

DATE: 8-11-22

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-3414
SPRINGFIELD PORTFOLIO HOLDINGS, PLAINTIFF	))))	
v.	)	ORDER
ALIDA CRUZ, DEFENDANT	))))	

This matter came before the Court for a hearing on August 23, 2022 on Defendant's motion to stop an eviction. After hearing, the following order shall enter:

1. Although Plaintiff (landlord) filed this case based on allegations that Defendant (tenant) violated her lease, the Court took no evidence and made no findings that Defendant violated her lease. In fact, after trial, she may have successfully defended herself against Plaintiff's allegations. As is common in this Court, however, instead of proceeding to trial, Defendant resolved the case by agreement. In the agreement, she agreed to vacate voluntarily after three months, namely June 30, 2022.
2. In late June 2022, Defendant asked for additional time to move. The Court extended her deadline to move until August 31, 2022, but indicated that she would not be entitled to any further stays on the execution.
3. Accordingly, despite there being no finding that Defendant violated her lease, her agreement to leave voluntarily, in combination with the extension the Court previously granted, Defendant's motion is denied.

Plaintiff may move forward with scheduling the eviction after August 31, 2022.

SO ORDERED.

DATE: 8/24/22

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.	)	RULING ON APPEAL BOND
	)	
SHAWN MCKNIGHT AND	)	
ASHLEE MCKNIGHT,	)	
	)	
DEFENDANTS	)	

This case came before the Court on August 10, 2022 on Plaintiff's motion to set the appeal bond. Plaintiff (the "landlord") was represented by counsel. Defendants (the "tenants") appeared self-represented. The Court finds the following:

1. After a bench trial, the Court entered a so-called "8A order" on June 16, 2022.[1]
2. Defendants did not pay any monies into the Court and judgment entered on July 8, 2022.
3. On June 24, 2022, within ten days of the 8A order but prior to judgment entering, Defendants filed a notice of appeal. With the assent of

[1] Pursuant to G.L. c. 239, § 8A, "there shall be no recovery of possession if the tenant or occupant, within one week after having received written notice from the court of the balance due, pays to the clerk the balance due the landlord, together with interest and costs of suit .... In such event, no judgment shall enter until after the expiration of the time for such payment and the tenant has failed to make such payment." G.L. c. 239, § 8A, 5th para.

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Plaintiff, the Court deems the notice of appeal timely and, therefore, the motion to set or waive the appeal bond ripe for adjudication.

4. Defendants demonstrated that they are indigent as defined in G. L. c. 261, § 27A by virtue of receiving Social Security Insurance benefits.

5. The Court finds that Defendants have a non-frivolous defense. See *Adjartey v Central Div. of Housing Court*, 481 Mass. 830, 859 (2019) (the judge's "determination that a defense is frivolous requires more than the judge's conclusion that the defense is not a winner; frivolousness imports futility -- not 'a prayer of a chance'").

6. The Court hereby waives the requirement that Defendants post an appeal bond.

7. The Court hereby waives the cost of ordering transcripts of the relevant proceedings in this matter.

8. The Court orders that Defendants pay $850.00 each month during the pendency of the appeal for their use and occupancy of the subject premises. Payments shall be made directly to Plaintiff by the 3rd of each month beginning in September 2022.

9. Plaintiff may move to dismiss the appeal if Defendants fail to pay the installments of use and occupancy as required herein. See G.L. c. 239, § 5(h); see also *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 137 n. 19 (2018) ("the statute permits dismissal of an appeal ... when a tenant fails to post the ... use and occupancy payment").

10. Plaintiff shall diligently complete the repairs cited by the City of Pittsfield Board of Health.

11. Defendants shall allow unobstructed access for repairs so long as they are provided at least 24 hours' advance notice.

SO ORDERED.

DATE: 8/16/22

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1237

JILLSON FAMILY IRREVOCABLE TRUST,[1]
PLAINTIFF
v.
MICHAEL JEROLD,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no fault summary process action came before the Court on August 8, 2022 for an in-person bench trial. Jillson Family Irrevocable Trust (the "Trust"), by and through its trustee, Alan A. Dion, and the Estate of Alfredo Gomes, Jr. (the "Estate"), by and through its duly appointed personal representative, Lena Gomes Dion-Jillson, appeared through counsel. The Court will refer to the Trust and the Estate collectively as "Plaintiff." Defendant Michael Jerold appeared self-represented. A representative of the Tenancy Preservation Program ("TPP") also participated.

Plaintiff seeks to recover possession of a residential dwelling unit located at 106 Front Street, 2nd Floor, Chicopee, Massachusetts (the "Premises") from Mr.

[1] The complaint lists the plaintiff as "Jillson Family Irrevocable Trust et al." For the reasons set forth in this decision, the Court deems the plaintiff to be properly identified as "Jillson Family Irrevocable Trust and Estate of Alfredo Gomes, Jr." which, collectively, appear to hold title to the subject premises.

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

Plaintiff has a superior right to Mr. Jerold to possession of the Premises. Ms. Dion-Jillson is the landlord and, pursuant to certified copies of deeds provided by Plaintiff, the Premises are owned by the Trust and the Estate collectively. Mr. Jerold is a month-to-month tenant whose monthly rent is $400.00. Plaintiff served him with a legally adequate notice to quit terminating the tenancy as of April 1, 2022. Mr. Jerold acknowledges receipt of the notice to quit. He did not vacate upon the termination of the tenancy and continues to reside in the Premises. Plaintiff timely served and filed a summons and complaint, which entered on the docket on May 2, 2022. Plaintiff has established its prima facie case for possession.

Mr. Jerold did not file an answer. At trial, he implied that Plaintiff may have served him with a notice to quit after he fell behind in the rent and sought rental assistance from Way Finders, but he did not articulate a legal defense sufficient to overcome Plaintiff's prima facie case for possession. However, in a no-fault eviction case, the Court has discretion to allow a tenant up to twelve months to find replacement housing if tenant or household member is sixty years or older or meets the statutory definition of a "handicapped person." See G.L. c. 239, § 9. The Court finds that Mr. Jerold qualifies for the 12-month stay (from the end of his tenancy on April 1, 2022) based on a physical or mental impairment which limits his ability to seek new housing.

Moreover, the principles of equity warrant a lengthy stay for Mr. Jerold to find new housing. He moved into the Premises with his mother in 1963 as a one-year old,

and but for a brief period of time after getting married, he has lived in the Premises for 59 years. He became head of household in 2011, after his mother passed away.

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

1. Plaintiff is entitled to judgment for possession. Entry of judgment shall be stayed until further Court order pursuant to G.L. c. 239, § 9.
2. Mr. Jerold may apply to Way Finders for financial assistance in order to pay Plaintiff any past due amounts for rent in order to be eligible for a continuing stay. If he makes such an application, the landlord, Ms. Dion-Jillson, shall provide a copy of this Court order along with any other documents requested by Way Finders, including without limitation a rent ledger showing all monies owed by Mr. Jerold at a rate of $400.00 per month, plus court costs.
3. Mr. Jerold shall pay $400.00 on or before the 5th of each month during the stay period, beginning in September 2022.
4. Mr. Jerold must work with TPP, Behavioral Health Network and any other service providers willing to assist his housing search, and he must demonstrate to the Court at the next hearing that he has been making diligent efforts to secure replacement housing.
5. The parties shall return in-person on **November 1, 2022 at 11:00 a.m.** for review of Mr. Jerold's housing court search, his compliance with the terms of this order, and the terms of a further stay.

SO ORDERED.

DATE: 8/16/22

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Tenancy Preservation Program Pioneer Valley
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0466

MAHMOUD SARRAGE, PLAINTIFF V. SHANNON LAWLESS, DEBRA HOLBEN CHRISTOPHER AFONSO AND JOSEPH LAMONTAGNE, DEFENDANTS	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no fault summary process case came before the Court for an in-person trial on August 11, 2022. Plaintiff appeared with counsel; all Defendants except Mr. LaMontagne, who did not appear, were self-represented.

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

Defendants reside at 21 Ozark Street, 2d Floor, Springfield Massachusetts (the "Premises"). Plaintiff served Defendants served with a rental period notice to quit that expired on February 1, 2022. Defendants did not vacate. Plaintiff timely filed a summons and complaint.

Defendants filed an answer with numerous defenses at counterclaims. At trial, however, they waived all defenses and counterclaims and asked for an execution so that they could seek entry to shelter housing. They acknowledge that they have not

paid rent for 10 months preceding trial and only dispute whether Plaintiff is holding any deposits. The parties ultimately agreed that $10,800.00 is owed in rent arrears.

Given that Defendants waived their defenses and counterclaims, the following order shall enter:

1. Judgment for possession and $10,800.00 shall enter in favor of Plaintiff.
2. Execution shall issue pursuant to Uniform Summary Process Rule 13.
3. Use of the execution shall be stayed through September 9, 2022 in order to allow Defendants time to apply for shelter.

SO ORDERED.

DATE: 8/16/22

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

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

CARTER ROBINSON AND JUSTINA SMITH,

PLAINTIFFS

v.

CHRISTINE MAZZOLINI,

DEFENDANT

ORDER

This no cause summary process case came before the Court on August 10, 2022 for a virtual hearing on Defendant's motion to cancel a scheduled eviction. Plaintiff appeared through counsel. Ms. Mazzolini appeared and represented herself.

Defendant resides at 167 Wells Street, 1st floor, Greenfield, Massachusetts (the "Premises"). The Premises are part of a duplex and Plaintiffs reside in the other unit. Plaintiffs claim that Defendant and her boyfriend, along with their guests, have engaged in illegal activities at the Premises, resulting in numerous arrests.

Defendant claims that she is a disabled person and has been unable to locate replacement housing despite her best efforts. She also claims to be facing imminent hip surgery, which will further inhibit her ability to find housing. She said her daughter's boyfriend is no longer present at the Premises and that her daughter is her personal care attendant for overnight hours.

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After hearing, the following order shall enter:

1. The eviction scheduled for August 17, 2022 shall be cancelled. Defendant shall be responsible for the cancellation fees.
2. Defendant shall complete her application for RAFT funds to pay the unpaid rent and court costs.[1] Plaintiff claims that $4,410.00 of unpaid rent (representing 7 months) is outstanding and that the movers charge $300.00 for cancelling the eviction. Plaintiff also is entitled to recover the costs of service of the 48-hour notice.
3. Defendant's daughter may not reside in the subject premises and she may not bring any guests to the premises.
4. Defendant shall not engage in nor allow any illegal activities at the subject premises.
5. If Defendant's claim that she has impending hip surgery that will limit her ability to search for replacement housing, she shall provide the Court will evidence from a medical professional of her surgery date and anticipated recovery time. Any medical records provided to the Court shall be sealed.
6. Defendant is hereby referred to Tenancy Preservation Program of Pioneer Valley for purposes of ensuring that Defendant is connected to the housing search resources available in Franklin County.

[1] Although this case was not brought for non-payment of rent, in order to be eligible for a stay under G.L. c. 239, § 9, the tenant must pay all unpaid rent as well as use and occupancy during the period of the stay.

7. The parties will return for review on September 12, 2022 at 12:00 p.m. by Zoom. The eviction will not be rescheduled prior to this date.

SO ORDERED.

DATE: 8/17/22

Jonathan J. Kane, First Justice

cc: TPP - Pioneer Valley

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0050

SPRINGFIELD GARDENS, LP, PLAINTIFF v. WILLIAM BRYANT, DEFENDANT	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process case came before the Court on June 9, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 52 Pearl Street, Unit 2B, Springfield, Massachusetts (the "Premises") from Defendant based on non-payment of rent.[1]

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

Plaintiff owns the Premises, which is part of a 16-unit building. Defendant was a tenant at the time Plaintiff took over management of the building in December 2020. Defendant's rent is $850.00 per month. On October 25, 2021, Plaintiff had Defendant served with a 14-day notice to quit, which Defendant acknowledges

[1] Defendant is not protected from eviction pursuant to St. 2020, c. 257, as amended, because he does not qualify for emergency rental assistance because his income level exceeds the maximum allowed for eligibility.

receiving. Plaintiff claims that Defendant owed $5,985.00 in rent arrears at that time. Defendant neither paid the outstanding amounts nor vacated at the termination of the tenancy. Plaintiff timely filed a summons and complaint. As of trial, the balance of rent and use and occupancy owed (less late fees and court costs) is $12,750.00.

Defendant filed an answer asserting that Plaintiff failed to credit a payment of $850.00 he made for the month of April 2021. At trial, however, he submitted no evidence to support his claim that he had made a payment that was not accounted for on the rent ledger offered into evidence by Plaintiff. Accordingly, without evidence to the contrary, the Court finds that $12,750.00 is the balance of rent arrears through trial.

In his answer, Defendant also claimed that he was withholding rent as set forth in letters sent to Plaintiff dated June 7, 2021, July 9, 2021, September 15, 2021 and November 10, 2021. The genesis of Defendant's complaint was a bad experience he had on April 28, 2021, when he returned from doing errands with groceries in his arms and found the exterior building door locked. He testified that for his entire tenancy previous to Plaintiff's management, the door was unlocked. When he could not enter his building, he walked to the management office across the street, where they provided him with a key. He returned to the door but the key he was given did not work. By the time he returned to the management office for another key, it was closed, leaving him locked out of the building. When he was able to enter the vestibule after someone exited, he discovered that the lock to the inner door had also been changed. He then waited a lengthy period of time until a neighbor was able to

let him in.

Defendant contends that Plaintiff's unilateral decision to install new locks on the exterior building door has had a significant impact on his tenancy. Until the exterior door was locked, his visitors could enter the vestibule between the exterior door and the locked interior door. Once in the vestibule, a person could press the doorbell to his apartment, announce themselves over the intercom, and he could release the door lock from his apartment to allow them to enter. In addition, packages could be left in the vestibule, where they were relatively safe when compared to being placed on the street outside the building.

With the locked exterior door locked, Defendant testified that visitors had no way to get into the building unless they had his cellphone number or happened to be let into the vestibule by a tenant. He said that he receives one or packages each week, and has to make arrangements for specific delivery times when he is available or has to pick up packages at a store or other off-site delivery location. He expressed great frustration that management had done nothing to address his concerns.[2]

Plaintiff's property manager explained that a working lock was placed on the exterior building door for the tenants' safety, and she acknowledged that, as a result, visitors could not access the doorbells to individual units in the vestibule. She said that the company had not found a way to provide doorbells to individual apartments

[2] Although not referenced in his answer, Defendant testified about mice in the building; however, he testified that it was a "minor issue" and the issue has improved. Because Defendant had no advance notice of this claim, and given Defendant's testimony, the Court declines to award damages with respect to this issue.

on the exterior of the building and had no immediate plans to do so. She did not offer any solution to address Defendant's concerns.

The Court finds that Plaintiff's elimination of access to the vestibule without offering an alternative option resulted in a serious interference with Defendant's tenancy and impaired the character and value of the Premises. See, e.g., *Ianello v Court Management Corp.*, 400 Mass. 321, 323-324 (1987) (locking tenant out of common area room he had been using to lift weights constituted a serious interference with the tenancy). Pursuant to Massachusetts law, a "lessor or 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 months' rent, whichever is greater ...." G.L. c. 186, § 14. In this case, because Defendant did not offer evidence as to any actual or consequential damages, the Court shall award statutory damages in the amount of three times the monthly rent, or $2,550.00.[3]

Accordingly, based on the foregoing findings and rulings, the following order shall enter:

1. Plaintiff is entitled to unpaid rent through the date of trial in the amount of $12,750.00.
2. Defendant is entitled to damages in the amount of $2,550.00 for Plaintiff's interference with quiet enjoyment.

[3] Defendant also claims that Plaintiff retaliated against him by increasing the rent and giving him an extremely short time to accept the increase. By the time Plaintiff took this action, this case was already well underway and Defendant did not show that the rent increase was directly only at him.

3. 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 into the Court the sum of $10,200.00, plus court costs in the amount of $ 202.01 and interest in the amount of $ 761.77, for a total of $ 11,163.78.
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 shall enter in favor of Plaintiff.

SO ORDERED.

DATE: 8/18/22

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-0177

SPRINGFIELD HOLDINGS, LLC, PLAINTIFF v. ALICE MARTINEZ-BALSECA, DEFENDANT	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no-fault summary process case came before the Court on June 1, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 163 Maynard Street, Unit 1, 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, which is a two-family building. Defendant has resided in the Premises since 2006 or 2007, years before the current ownership acquired the Premises. On November 29, 2021, Plaintiff served Defendant with a notice pursuant to G.L. c. 186, § 12 terminating her month-to-month tenancy as of January 1, 2022 and offering her a new tenancy commencing on that date at a new

rental rate.[1] Defendant acknowledges receipt of the notice. 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 $800.00 per month, the last agreed-upon rental rate. Through the date of trial, the amount of unpaid rent due Plaintiff is $4,800.00.[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

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[1] The rent in place at the time of the notice was $800.00 per month, and the proposed rent increase would have changed the rent to $1,150.00.

[2] Defendant stopped paying rent altogether upon receipt of the notice. She did not pay any amounts for October 2021 and 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). Here, Way Finders paid through December 2021, leaving six months unpaid from January 2022 through June 2022.

[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).

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).

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 testified that a representative of management was in her apartment "three or four years ago" when the floor was being repaired and that he acknowledged at that time that the bathroom needed work. She claims the bathroom work was never done. She took photos of the bathroom just prior to the Housing Specialist Status Conference in March 2022 showing that the flooring in the bathroom was lifting. She also showed photos of a small gap around the threshold, a cracking tub stall, cracking paint, and a dark substance in the corners around tub.

She testified that a contractor came into her home in early 2022 and said he would report the conditions to management. The contractor returned with some paint and ceiling tiles, but declined to do any additional repairs because he was not authorized to do so. An inspection conducted by the Springfield Code Enforcement Department on May 25, 2022 confirms that the repairs about which Defendant complained remained as of the inspection date.[5]

Despite Defendant's admission that did not stop paying rent because of the condition of the Premises but instead because she lost her job, the Court finds that the bathroom conditions of disrepair warrant a finding that she is entitled to an abatement of rent.[6] Damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) ("While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference."). Based on the totality of the evidence, the conditions of disrepair in the unit reduce the value of the Premises by 10%. Although Defendant could not identify a specific date that she gave notice to management, she testified credibly that management was aware of the issues "three or four years ago" when Plaintiff acquired the Premises. Using a period of 36 months, a 10% abatement

[5] Although Defendant did not offer a certified copy of the report, the Court finds it to be reliable evidence for the purpose of confirming Defendant's complaints about the conditions described therein.
[6] With respect to the other conditions of disrepair about which Defendant testified, the Court finds insufficient evidence of when she gave notice to management of the condition, or that the conditions complained of do not materially impair the rental value of the Premises.

($80.00 per month) amounts to $2,880.00.[7]

Accordingly, based on the foregoing findings and rulings, the following order shall enter:

1. Plaintiff is entitled to unpaid rent through trial in the sum of $4,800.00.
2. Defendant is entitled to a rent abatement of $2,800.00 on account of her affirmative defenses.
3. 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 into the Court the sum of $2,000.00, plus court costs in the amount of $ 192.25 and interest in the amount of $ 139.50, for a total of $ 2331.75.
4. If Defendant makes this payment on time and in full, her tenancy shall be reinstated and judgment for possession shall enter in her 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: 8/18/22

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[7] Even if the conditions rose to the level of a breach of quiet enjoyment, the statutory damages of three months' rent would be less than the amount of the rent abatement, so the rent abatement damages shall be used.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1656

WESTFIELD HOUSING AUTHORITY, PLAINTIFF v. CATHY NOYES, DEFENDANT	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This for-cause summary process case came before the Court for an in-person bench trial on June 10, 2022. Both parties appeared through counsel.

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 is a disabled individual who resides in a 60-unit elderly disabled public housing complex. She lives in a first floor unit of an 8-unit building located at 74A Danek Drive, Westfield, Massachusetts (the "Premises") managed by Plaintiff. On April 12, 2021, Defendant was served with a notice to quit dated April 8, 2021, terminating her tenancy as of May 31, 2021. The notice cited "over fifty complaints of [redacted] occurring at [the Premises]." It also cites a March 5, 2021 arrest on [redacted] of an individual [redacted].

In support of Plaintiff's allegations in the notice to quit, a detective from the Westfield Police Departed testified that [redacted]

[redacted] It is the same name of the individual who was arrested on March 5, 2021 after leaving the Premises. The detective also testified that over weeks of surveillance of the Premises, he observed an unusual amount of foot traffic going to the Premises, staying for a few minutes, and then exiting the property.

Based on the evidence, Plaintiff has demonstrated to the Court's satisfaction that [redacted]. There is no evidence that Defendant herself is engaging in [redacted], however. She claims that she has not control over the activities of her visitors and that she is unable to prevent them from entering or from engaging in illegal conduct once inside. She claims that her disabilities not only prevent her from excluding unwanted visitors, but they also preclude her from being able to call the police department when people enter the unit.

The Court is not convinced that Defendant is being entirely truthful when she says she cannot call the police, either when unwelcome persons enter the Premises or after they leave. Nonetheless, the Court is satisfied that Defendant's disabilities significantly inhibit her ability to refuse entry or force people to leave once they have entered. Given the foregoing, and given the hardship that would befall this disabled tenant if she was evicted from public housing, the Court believes that she is entitled to a reasonable accommodation for her disabilities that might allow her to retain her tenancy.

In her reasonable accommodation request, Defendant requests that Plaintiff install locking mechanisms on the exterior building doors to prevent unauthorized

access. Plaintiff resists this request because of the potential cost and safety concerns for the other residents. The Court will not order that such locks be installed, but Plaintiff is required to investigate options for improving building security, such as installing self-locking doors with a lock-box for emergency personnel and key fobs for residents to use to enter. If the cost of an entirely new security system is prohibitive, Plaintiff shall thoroughly consider alternatives that would prevent unwelcome visitors from reaching individual apartments within Defendant's building.

With respect to Defendant's request that Plaintiff ban individuals that appear at the Premises without Defendant's invitation or permission, the parties shall work cooperatively to identify the names of such individuals. If personal service is not possible due to the lack of addresses, the police can serve the trespass notices if any of the individuals are located on the property. If Plaintiff has evidence that specific individuals on the list are entering the Premises at Defendant's invitation or permission, it may seek to enforce the terms of this order.[1]

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

1. No judgment shall enter at this time.
2. The case will remain open for 12 months, during which time Defendant must comply with the following conditions:
    a. She may not invite anyone to visit other than family, approved PCAs and agencies providing assistance with Defendant's activities of daily living;

[1] With respect to the other requests in Defendant's reasonable accommodation letter, the Court will not address the request for a ramp as it is not related to this case. The parties should engage in the interactive process regarding the need for a ramp. The Court understands that keys have already been provided to Defendant's PCA.

b. She may not willingly permit illegal activity to occur in the Premises;

c. To the extent Plaintiff or her family members or PCAs know the names of individuals who have been entering her unit without permission, Defendant must provide management with a list of names in order for management to prepare trespass notices;

d. Defendant shall inform management within 24 hours if unwanted visitors have entered the Premises and provide them with the names of such individuals, if known; and

e. Defendant shall cooperate with any police investigation related to unwelcome individuals entering her unit.

3. If Plaintiff has evidence that Defendant has substantially violated the terms of this order during the period of time the case remains open, it may file a motion for entry of judgment, providing a copy of the motion to Defendant with a courtesy copy provided to Community Legal Aid. The motion shall include the nature of the alleged violations, the dates of the alleged violations, and the witnesses Plaintiff intends to call to testify at the hearing.

SO ORDERED.

DATE: 8/18/22

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-0541

ANNA RODRIGO,

PLAINTIFF

v.

MARCELL BURTON,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process case came before the Court on June 10, 2022 for an in-person bench trial. Plaintiff appeared self-represented. Defendant appeared with counsel. Plaintiff seeks to recover possession of 150 Rood Street, 1st Floor, Ludlow Massachusetts (the "Premises") from Defendant based on non-payment of rent.[1]

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

Plaintiff owns the Premises, which is part of a four-unit building.[2] Defendant has resided in the property since October 2016 with his wife, Tashayla Miller ("Ms. Miller")[3] and two children (hereafter, Defendant and Ms. Miller will be referred to collectively as the "tenants"). Plaintiff did not offer a rental ledger into evidence,

[1] Defendant, who received rental assistance from Way Finders in the past, did not present evidence of a pending application and thus is not protected from eviction pursuant to St. 2020, c. 257, as amended.
[2] The property housing the Premises is not owner-occupied.
[3] Ms. Miller was not named as a defendant by name. The complaint names "Darcell Burton & family."

but claims that monthly rent was $1,150.00 through March 2022, and that she increased the monthly rent by $100.00 as of April 2022. She did not, however, demonstrate that she raised the rent in compliance with G.L. c. 186, § 12 or that the tenants agreed to (or paid) the increase; therefore, the Court deems monthly rent to be $1,150.00 at all relevant times. Plaintiff testified that the tenants owe a balance of $950.00 for December 2021 and did not pay rent for January 2022 or thereafter. She served a notice to quit dated January 30, 2022 seeking unpaid rent for December 2021, January 2022 and February 2022, even though February rent was not then due.

The "account annexed" in the Summary Process Summons and Complaint seeks $3,250.00 (through February 2022) and does not include a claim for use and occupancy arising thereafter. Although a landlord is generally limited to recover the amounts listed, because the tenant is still in possession and does not dispute the absence of payments, the Court includes all use and occupancy (at the monthly rate of $1,150.00) accrued through trial. See *Davis v. Comerford*, 483 Mass. 164, 171 (2019), citing *Residential Landlord-Tenant Benchbook* 71 (W.E. Hartwell ed., 3d ed. 2013) ("court should include all rent that has become due up to the time of the hearing if the tenant is still in possession"). Accordingly, the Court finds that the tenants owe $7,850.00 in rent arrears and use and occupancy through the date of trial.

Defendant filed an answer with counterclaims. Defendant claims that he and Ms. Miller notified Plaintiff about mice in the Premises approximately three years ago, but offered no evidence of written notice. The tenants did not offer evidence about

notice of any other defective condition prior to May 28, 2021, when they filed counterclaims in a previous summary process case between these parties (21H79SP000231). In that case, the parties entered into a Court agreement on June 3, 2021 in which the tenants asked Plaintiff to address their concerns about the heating system, mice and a possible animal living in the chimney, a leak in the kitchen sink, poor water pressure, insufficient hot water, and a bathroom ceiling that was "caving/flaking/falling."[4] The tenants claim that Plaintiff has made minimal effort to make repairs.[5] Plaintiff contends that she tried to gain access on several occasions after the Court agreement but was refused access, and ultimately told the tenants to contact her when they were ready for her to enter the Premises.

The Court finds sufficient evidence that the tenants have suffered from a signficant infestation of mice for several years and that Plaintiff had actual notice that the problem remained unresolved as of approximately June 2021. Ms. Miller claims that the tenants have spent several hundred dollars treating the infestation, but provided no evidence to support the expenses. She testified that her children are afraid of mice and that she and her husband are embarrassed to have visitors due to the infestation.

With respect to other conditions of disrepair, the Court finds that the tenants

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[4] The parties agreed to contact the Ludlow Board of Health but neither party provided any evidence of the results of any such inspection. Ms. Miller testified that the Board of Health declined to visit due to COVID.

[5] Ms. Miller testified that Plaintiff came to the Premises in January when she had COVID, and she did not allow Plaintiff to enter. Ms. Miller claims that Plaintiff only returned thereafter seeking to collect rent.

paid $170.75 to restore the heat in March 2022, but there is no evidence that they notified Plaintiff of the problem prior to getting the issue fixed. Nonetheless, they are entitled to reimbursement for this expense.

The tenants did not provide sufficient testimony or evidence to support the claim that the sink leak, low water pressure and insufficient hot water substantially impair the rental value of the Premises. With respect to their claim that the windows do not have screens, the Court credits Plaintiff's testimony that the windows did have screens when the tenants moved in. The ceiling in the bathroom referenced in the Court agreement appears to have been repaired within a reasonable time, and the tenants' complaint that the repairs were inadequate are not supported by the evidence.

After considering all of the evidence, the Court rules that Plaintiff violated the implied warranty of habitability. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16 (the warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State sanitary code). The Court finds that the continued presence of the mice reduced the rental value of the Premises by 10% from June 2021, when Plaintiff had actual knowledge of the issue, and trial, a period of twelve months. As a result, the tenants are entitled to a rent abatement of $1,380.00.[6] The Court rules

[6] 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.' *Davis at 173*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994).

that Plaintiff is subject to G.L. c. 93A because she is in the business of renting residential properties. Her failure to make repairs within a reasonable time is an unfair and deceptive act in violation of G.L. c. 93A and 940 C.M.R. 3.17(6)(f), and her conduct was willful and knowing as defined under G.L. c. 93A. See *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956 (1987). Accordingly, the Court rules that the tenants are entitled to double warranty damages in the amount of $2,760.00 and reasonable attorneys' fees.

The Court finds that the failure of Plaintiff to promptly address the infestation of mice seriously interfered with the tenants' tenancy and impaired the character and value of the Premises, and thus constitutes a violation of G.L. c. 186, § 14. Although Plaintiff blames the tenants for refusing her allow her into the Premises to make repairs, the evidence does not support her defense. The tenants admit that they refused Plaintiff entry on one occasion in January 2022 due to COVID concerns, but Plaintiff provided no evidence of her attempts to gain access and despite her familiarity with the Court process, she did not seek a Court order to gain access to make repairs. Instead, her attitude toward making repairs can be summed up by her rhetorical question during trial: "why would they stay if it is so bad in there?" Statutory damages for violation of G.L. c. 186, § 14 are three times the monthly rent, which in this case amounts to $3,450.00, plus reasonable attorneys' fees.

The damages under claims of habitability and quiet enjoyment are duplicative. The wrongful conduct and injuries suffered arise from the same set of facts, and the tenants are entitled to only the higher amount. See *South Boston Elderly Residences,*

Inc. v. Moynahan, 91 Mass. App. Ct. 455, 470 (2017) (a "tenant is not entitled to duplicative damages for claims arising out of the same conditions [but] is entitled to rely on whichever theory of damages provides him or her the greatest measure of damages"). In this case, the statutory damages of $3,450.00 are greater than the actual and consequential damages of $2,760.00 and will therefore be awarded.

Accordingly, based on the foregoing findings and rulings, the following order shall enter:

1. Plaintiff is entitled to unpaid rent through the date of trial in the amount of $7,850.00.
2. Defendant is entitled to damages in the amount of $3,450.00, plus reimbursement in the amount of $170.75, for a total of $3,620.75.
3. Setting off the $3,620.75 that Plaintiff owes Defendant against the $7,850.00 that Defendant owes Landlord, the Court finds that Defendant owes a balance of $4,229.25 to Plaintiff.
4. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date of this order to pay to Plaintiff the sum of $4,229.25, plus court costs in the amount of $182.58 and interest in the amount of $247.67, for a total of $4659.50 by bank check or money order and to file a receipt with the Court. If such receipt is then on file with the Court, judgment shall enter for Defendant for possession. If such receipt is not then on file with the Court, judgment shall enter for Plaintiff for possession and unpaid rent of $4,229.25 plus court costs and interest.

5. Plaintiff shall hire a licensed pest control company to treat for the mice infestation if the tenants notify her that mice continue to be seen in the Premises.
6. 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 petition without need for further hearing.

SO ORDERED.

DATE: 8/19/22

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. 22-SP-1662

KEN BEAGLE and KATIE BEAGLE,

Plaintiff,

v.

MARIA MELENDEZ,

Defendant.

ORDER

This matter came before the court for trial on August 17, 2022, at which both parties appeared without counsel. After trial, the following order shall enter:

1. The landlords brought the eviction case for no-fault and also seek in their account annexed outstanding use and occupancy.

2. The parties stipulated to the notice to quit but disagreed on the amount of the monthly rent after the landlords attempted to increase the rent from $1,250 to $1,325 as of April 2022.
3. For the reasons stated on the record, the court finds that the tenant never agreed to the rent increase and the rent remained at $1,250 form April through August 2022. Accordingly, the amount of outstanding use and occupancy totals $4,925 through August 2022.
4. The tenant is seeking, as a defense, additional time to relocate in accordance with G.L. c.239, s.9 and has been diligently search for housing.
5. The tenant shall continue her diligent search for housing and shall maintain a log of such efforts along with copies of any and all rental applications she may submit.
6. The tenant shall share a copy of said log (with copies of her applications) to the landlord by no later than September 26, 2022.
7. The tenant was scheduled to meet with Way Finders, Inc. directly following the trial to begin her RAFT application with that agency.
8. If the landlords receive paperwork from Way Finders, Inc. as part of that application, they shall include all rent, use, and occupancy outstanding in addition to court costs. The parties shall cooperate with said application process.
9. The tenant testified that her daughter, [redacted], is no longer a tenant at the premises. As such, [redacted] shall be dismissed form this matter without prejudice to the landlords should they require to have added back in as a party defendant in the future of this litigation, by motion.

10. This matter shall be scheduled for review in accordance with G.L. c.239, s.9 on **September 28, 2022, at 10:00 a.m. live and in-person at the Springfield Session of the court**.

So entered this 22nd day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0459

CHRISTIAN CENTER HOUSING CORP.,
PLAINTIFF

v.

LAURENCE HEBERT,
DEFENDANT

FURTHER ORDER REGARDING ALTERNATIVE HOUSING

This case came before the Court by Zoom on August 18, 2022 on Defendant's motion for injunctive relief seeking an order for alternative housing. Both parties appeared through counsel.

Mr. Hebert is a resident in a project based Section 8 unit at Epworth Arms, Unit 101, Pittsfield, Massachusetts (the "Premises"). Following a fire at the Premises on May 31, 2022, Plaintiff voluntarily provided alternative accommodations for Mr. Hebert in a local motel. On July 12, 2022, after a hearing at which Mr. Hebert did not appear after notice, and based on the facts alleged in Plaintiff's verified complaint, the Court released Plaintiff from any obligation to provide alternative housing.

Mr. Hebert now seeks an order that Plaintiff provide alternative housing until he can reoccupy the Premises (likely a few months from now) or until Plaintiff obtains a court order in a summary process case. He asserts that he is a lawful tenant whose tenancy has not been terminated and, therefore, Plaintiff is obligated to provide housing. The Court considers Mr. Hebert's request to be equitable in nature, and the Court deems it necessary to determine if, as

Plaintiff contends, the fire was caused by Mr. Hebert's careless use of smoking materials in a non-smoking apartment. Accordingly, the following order shall enter:

1. The parties shall appear on **August 31, 2022 at 11:00 a.m**. in the Pittsfield session for an in-person evidentiary hearing.
2. Pending that hearing, Plaintiff shall provide alternative housing for Mr. Hebert in a local motel.
3. Mr. Hebert shall pay his share of the August rent, $301.00, on or before August 24, 2022.

SO ORDERED.

DATE: 8/22/2022

Jonathan J. Kane

Jonathan J. Kane, First Justice

16 W.Div.H.Ct. 140

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0812

FARMIN CHOUDHURY, PLAINTIFF v. KARINA RAMOS, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This cause-based summary process case came before the Court on June 15, 2022 for an in-person bench trial. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 21 Waverly Street, 1st Floor, 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 resides in a three-bedroom apartment on the first floor of a three-family house. Defendant leased the Premises pursuant to a written agreement commencing in March 2020 and became a month to month tenant in March 2021 after the initial term expired. Defendant was the only occupant listed on the lease. On January 28, 2022 Plaintiff served Defendant with a notice to quit for cause that expired on March 1, 2022. Plaintiff alleges that (a) Defendant

permitted six individuals to reside in the Premises, (b) Defendant and her guests caused excessive noise and scattered trash around common areas, and (c) Defendant caused significant damage to the Premises. Plaintiff timely filed a summary process summons and complaint. Defendant did not file an answer.

At trial, Mr. Mathew, who works for the company that manages the Premises, testified that the tenants on the second and third floor complained about Ms. Ramos' trash being scattered around the property. Photos introduced into evidence shows excessive trash in the yard, including a mattress, bags of garbage and other miscellaneous refuse. Defendant defended against the claim by asserting that not all of the items depicted belong to her, and, further, that she subsequently cleaned up and removed the items that were scattered around the yard. Although the evidence shows unacceptable conditions around the exterior of the Premises, Plaintiff did not carry her burden of proving that Defendant was solely responsible for the conditions and that the conditions remained for a sufficient period of time to constitute a material lease violation.

Regarding Plaintiff's claim that six individuals live in the Premises, the evidence shows that Defendant has three children between the ages of 2 and 6, and that Defendant allowed her cousin to live with her at the beginning of the tenancy. She also allowed her brother and mother to visit for one or more periods of time but testified that they do not live in the Premises. The lease includes a provision that guests staying for more than 14 days in a calendar year are considered unauthorized occupants. Without ruling on whether such a lease provision is reasonable in a non-

subsidized tenancy, the Court finds that even if Defendant's family have stayed more than 14 days in a calendar year, this does not constitute a material lease violation without evidence of some adverse consequence to the landlord.

The only evidence adduced at trial is that numerous people have been in the Premises when Plaintiff's contractors have gone there to make repairs. Plaintiff did not contend that the people in the Premises prevented its contractors from completing repairs or obstructed access. The fact that multiple people who are not Defendant have been present on the handful of occasions that contractors entered the unit is not in itself proof of unauthorized occupants.

With respect to the damages in the Premises, it is clear that the various conditions of disrepair have been present since at least May 2022 when the code enforcement department did an inspection, and likely for some time before the inspection. It is not clear, however, whether the conditions were caused by Defendants and her visitors. Defendant admits that some of the damage was done by her children, which may mean she will be held financially responsible for certain repairs, but unintentional damage caused by children is not a sufficient basis for eviction. Plaintiff did not prove by a preponderance of the evidence that the damaged flooring was Defendant's fault, nor is the evidence sufficient to prove that Defendant and her guests are solely responsible for damage to the door. The shower valve, which Defendant had to operate with a screwdriver, clearly failed but the evidence did not show it failed or broke due to misuse. With respect to the broken kitchen cabinets, there is no evidence of the condition of the cabinets when

Defendant moved in. Plaintiff did not produce a statement of conditions or photographic evidence of the actual condition of the Premises at the outset of the tenancy, only the testimony of two witnesses who said that the Premises were put into "good condition" after the prior tenant vacated.

In sum, although the evidence shows that Defendant did contribute to the trash strewn in the yard and porch, that she has had numerous visitors, including family who likely stayed more than 14 days, and that she and her family caused damages in the Premises, based on the totality of the evidence, the Court concludes that Plaintiff has not demonstrated that Defendant is in material breach of her rental agreement. Nonetheless, the circumstances warrant an order regarding conduct and repairs going forward. Accordingly, based on these findings and in light of the governing law, the following order shall enter:

1. No judgment for possession shall enter.
2. Plaintiff shall forthwith complete all repairs cited by code enforcement that have not yet been addressed.
3. Defendant shall maintain the Premises in good condition, reasonable wear and tear excepted, and shall properly dispose of all trash. She shall not place trash in the yard.
4. Plaintiff shall be permitted to conduct inspections on 48 hours' advance notice on a monthly basis to ensure that Defendant is complying with this order. Defendant shall not unreasonably deny access.
5. Defendant shall not have anyone reside in the unit without permission of

Plaintiff. Temporary visits by family members shall not constitute residency in the Premises.

6. If Plaintiff contends that Defendant has materially violated the terms of this order, it may file a motion to enforce this order.
7. The case will dismiss in six months if it is not brought forward.

SO ORDERED.

DATE: 8.25.22

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-0879

STAN GRINTER, PLAINTIFF v. JOSEPH SAVAGEAU AND JENNIFER HOLMES, DEFENDANTS	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This cause-based summary process case came before the Court on June 24, 2022 for an in-person bench trial. Both parties appeared self-represented. Plaintiff seeks to recover possession of 44 Riverview Avenue, Agawam, Massachusetts (the "Premises") from Defendants.

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

Plaintiff owns the Premises. The parties executed a one-year lease commencing on January 1, 2021 with monthly rent set at $1,400.00. Defendants fell behind with the rent in late 2021, and on February 22, 2022, Plaintiff served Defendants with a notice to quit for non-payment of rent, which Defendants received. When Defendants did not cure the arrearage or vacate at the end of the 14-day period, Plaintiff served and filed a summary process summons and complaint. As of the trial date, $8,400.00 is due in unpaid rent.

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Defendants filed an answer with a counterclaim seeking $8,500.00 as a result of a flood in the basement in July 2021, damages to their belongings as a result of the water, and defective stairs that caused someone to fall. At trial, Defendants did not testify about the damaged possessions or fall down the stairs, only about the water flooding due to the broken sump pump.

The Court finds that Defendants provided notice to Plaintiff about the pump on or about July 5, 2021. Plaintiff was out of town but had a relative come to the house to investigate. The relative installed new pumps on or about July 7, 2021. Although the evidence is not clear, it appears that the flooding issue may have reoccurred, because on or about July 21, 2021, Plaintiff had an outside contractor install a new drainage pipe and discharge pump at a cost of nearly $5,000.00. Notably, Defendants did not seek any abatement of rent or other concession at the time, and continued to pay rent through November 2021. In December 2021, when they fell behind in the rent, Defendant Savageau was clear that the problem was due to financial struggles and not because he felt he was entitled to withhold rent due to the past problem with the sump pump.

Although the flooding in the basement may have been significant, Defendants did not offer sufficient evidence for the Court to determine whether the water entering the basement substantially impaired the character or rental value of the Premises or seriously interfered with the tenancy.[1] Defendant provided no evidence

[1] Not every breach of the State sanitary code supports a claim under the implied warranty of habitability. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999). The emphasis is on whether the Premises are fit for human habitation, not merely on whether the landlord committed a code violation.

that Plaintiff knew or should have known that the sump pump would fail, and Plaintiff demonstrated that he acted reasonably and promptly to address the problem, first in a temporary fashion and then with an expensive permanent solution. Given that Defendants had no complaints about the matter until months later when Plaintiff filed an eviction case against them, the Court declines to award any abatement damages or quiet enjoyment damages against Plaintiff.

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

1. Judgment for possession and $8,400.00 shall enter in favor of Plaintiff.[2]
2. Execution (eviction order) may issue upon written application of Plaintiff following expiration of the 10-day appeal period.

SO ORDERED.

DATE: 9-25-22

Jonathan J. Kane

Jonathan J. Kane, First Justice

[2] Although this case was brought for non-payment of rent, Defendants did not claim that they had a pending application for rental assistance and therefore they do not qualify for the protections of St. 2020, c. 257, as amended.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-400

EMILEE IGNATIADIS,

Plaintiff,

v.

DOMINIQUE WISE,

Defendant.

ORDER

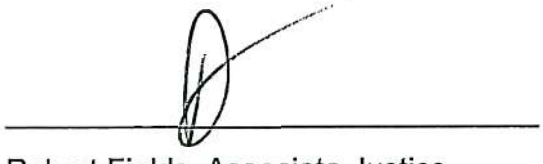
After hearing on August 16, 2022, on the plaintiff's motion for access to her belongings, at which the plaintiff appeared but for which the defendant failed to appear—even after the court reached her by phone and she refused to attend, the following order shall enter:

1. After the plaintiff testified that she has been unable to coordinate her retrieval of her personal items at the home of the defendant, she was informed by the judge that because the court has already ordered the defendant to cooperate with the

plaintiff's efforts to all said retrieval the next thing for the plaintiff to do is to file a contempt complaint.

2. Pending said contempt complaint, should one be filed, the court shall make it abundantly clear that the defendant is ordered to allow the plaintiff to remove her belongings from the subject property FORTHWITH. Such an order also requires the defendant to respond reasonably to any and all communications from the plaintiff attempting to coordinate same.

So entered this 25th day of August, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1993

TARA BEAULIEU,

Plaintiff,

v.

SEAN DAUBER,

Defendant.

ORDER

This matter came before the court for trial on October 14, 2021, at which the landlord appeared with counsel and the defendant appeared *pro se*. After said hearing, the court issued an order that the landlord failed to meet her burden of proof on her *for cause* eviction. The landlord argued that the notice to quit also allowed for the landlord to pursue a *no fault* eviction if she failed to meet her burden on her *cause* case. The court does not agree with this position as a matter of law and this matter is dismissed for the reasons stated herein:

1. **Discussion:** The notice to quit in this matter states as follows:

> Although no grounds need be stated to terminate your tenancy at will, your tenancy is being terminated because you have had a dog at your premises without the permission of the landlord...Moreover, you have allowed water to drip from your bathroom into the new bathroom below causing damage to the ceiling. In addition, you have kept your unit in an unsanitary condition at times. Even if the Landlord did not have grounds to terminate your tenancy, she would be terminating your tenancy at will with this notice just the same, as is her right.

2. In Massachusetts, a tenant is entitled to a clear, unequivocal and unambiguous termination of tenancy. *See, Adjartey v. Central Div. Housing Court,* 481 Mass. 830, 851 (2019). To be "unequivocal" the notice "must be so certain that it cannot be reasonably misunderstood." *Cambridge St. Realty, LLC v. Stewart,* 481 Mass. 121, 130 (2018).
3. In the notice to quit in this instant matter, there is no way of knowing if the landlord is basing the termination for *cause* or for *no cause*, and there are different procedural consequences for the parties depending on which bases the landlord is asserting. For example, in a case involving fault the landlord has the burden of proof on each allegation of fault, the tenant may wish to bring witnesses in her defense or file discovery regarding those allegations, and the tenant is not allowed to raise counterclaims. *See,* G.L. c.239, s.8A. and also *Bartos v. Long,* Western Housing Court, Docket Number 17SP4118 (Fields, J., December 24, 2018). Whereas in a no fault termination, the tenant may bring counterclaims, which may act as defenses to possession, may also wish to propound discovery regarding her claims and defenses, and may wish to bring witnesses that support her claims and defenses.

4. Additionally, the requirement for such clarity is not "simply [ ] an exercise in technicalities. Rather, the requirement of clear and consistent notices to quit arises out of a tenant's legitimate interest in knowing the status of her tenancy wand what actions she may take, if any, to preserve the tenancy." *Schulze v. Collazo*, Western Housing Court, Docket no. 01-SP-1115 (Fein, J., April 1, 2001).
5. The Commonwealth's "termination notice cases share a purposeful reluctance to look beyond the four corners of the notice in question. See, e.g., *Strucharski v. Spillane,* 320 Mass. 282; *U-Dryvit Auto Rental Co. v. Shaw,* 319 Mass. 684; *Connors v. Wick,* 317 Mass. 628. The standard applied in these older cases is not whether the tenant was misled to his prejudice, but whether the notice conforms with the statute and is sufficiently clear, accurate, and certain so that it can not reasonably be misunderstood." Citing from *Springfield II Investors, v. Anita Marchena,* Western Housing Court, Docket No. 89-SP-1342 (Abrashkin, J., January 4, 1999). Furthermore, termination notices should no have a "tendency to deceive" and no reliance upon, or even knowledge of, the deceptive language or effect must be shown." *Leardi v. Brown,* 394 Mss. 151, 156 (1985).
6. **Conclusion and Order:** Based on the foregoing, this matter is dismissed due to the equivocal nature of the termination notice.

So entered this 30th day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-971

MICHAEL BEN-CHIAM,

Plaintiff,

v.

JOSEPH HAYNES, EKPEN IDUOZE, and ALEJANDRO MOSELY,

Defendants.

ORDER

After hearing on August 2, 2022, on the landlord's motion for rent, use, and occupancy pending trial at which the plaintiff appeared *pro se* and the tenants Iduozo and Mosely appeared through counsel[1] and the tenant Haynes did not appear, the following order shall enter:

1. The landlord failed to meet his burden of proof under *Davis v. Comerford*, 483 Mass. 164 (2019) relative to his financial position and the impact of the lack of

[1]Attorney Manzanarez stated on the record that her LAR representation of Iduoze and Mosely shall extend until trial and that she anticipated filing an appearance on their behalf for trial.

payment of use and occupation pending trial, other than a bald statement that the rental income from the premises represents 40% of his income.

2. The court is without a record relative to the carrying costs of the subject premises nor that they are at risk of foreclosure.
3. This lack such of record in the face of the very significant counterclaims and defenses asserted by two of the three defendant tenants which include race discrimination, breach of the covenant of quiet enjoyment, failure to furnish utilities, cross-metering, breach of the warranty of habitability, retaliation, violation of the security deposit and last month's rent laws, and violations of Chapter 93A, will result in the court's denial, without prejudice, of the landlord's motion for an order requiring use and occupancy payments pending trial.

So entered this 30th day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-SP-1610

BARRY GOLDSTEIN,

Plaintiff,

v.

DANIELLE HASKELL and TRISTAN ALIE,

Defendants.

ORDER

This matter came before the court for trial on December 17, 2021, at which the landlord appeared with counsel and the defendants appeared *pro se*. The landlord withdrew his two motions to compel discovery and to dismiss the tenants' counterclaims. The tenants made an oral motion to dismiss the case based on the equivocalness of the notice to quit which asserts *cause* bases as well as *no-fault basis*. After hearing, the following order shall enter:

1. **Discussion:** The notice to quit in this matter states as follows:

> This Notice is to terminate your tenancy at will. Even though no reason must be specified for terminating a tenancy at will, your tenancy is being

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terminated because you have six or seven cats in the apartment. You admitted to this during a recent court hearing. Your lease (which expired on 8/31/18) specifically states that you were allowed to have only two cats. In addition, your communications with the landlord have been discourteous and insulting. Even if these violations did not exist, the landlord is terminating your tenancy as is his right.

2. In Massachusetts, a tenant is entitled to a clear, unequivocal and unambiguous termination of tenancy. *See, Adjartey v. Central Div. Housing Court,* 481 Mass. 830, 851 (2019). To be "unequivocal" the notice "must be so certain that it cannot be reasonably misunderstood." *Cambridge St. Realty, LLC v. Stewart,* 481 Mass. 121, 130 (2018).
3. In the notice to quit in this instant matter, there is no way of knowing if the landlord is basing the termination for *cause* or for *no cause*, and there are different procedural consequences for the parties depending on which bases the landlord is asserting. For example, in a case involving fault the landlord has the burden of proof on each allegation of fault, the tenant may wish to bring witnesses in her defense or file discovery regarding those allegations, and the tenant is not allowed to raise counterclaims. *See,* G.L. c.239, s.8A. and also *Bartos v. Long,* Western Housing Court, Docket Number 17SP4118 (Fields, J., December 24, 2018). Whereas in a no-fault termination, the tenant may bring counterclaims, which may act as defenses to possession, may also wish to propound discovery regarding her claims and defenses, and may wish to bring witnesses that support her claims and defenses.
4. Additionally, the requirement for such clarity is not "simply [ ] an exercise in technicalities. Rather, the requirement of clear and consistent notices to quit

arises out of a tenant's legitimate interest in knowing the status of her tenancy wand what actions she may take, if any, to preserve the tenancy." *Schulze v. Collazo*, Western Housing Court, Docket no. 01-SP-1115 (Fein, J., April 1, 2001).

5. The Commonwealth's "termination notice cases share a purposeful reluctance to look beyond the four corners of the notice in question. See, e.g., *Strucharski v. Spillane*, 320 Mass. 282; *U-Dryvit Auto Rental Co. v. Shaw*, 319 Mass. 684; *Connors v. Wick*, 317 Mass. 628. The standard applied in these older cases is not whether the tenant was misled to his prejudice, but whether the notice conforms with the statute and is sufficiently clear, accurate, and certain so that it can not reasonably be misunderstood." Citing from *Springfield II Investors, v. Anita Marchena*, Western Housing Court, Docket No. 89-SP-1342 (Abrashkin, J., January 4, 1999). Furthermore, termination notices should not have a "tendency to deceive" and no reliance upon, or even knowledge of, the deceptive language or effect must be shown." *Leardi v. Brown*, 394 Mss. 151, 156 (1985).
6. **Conclusion and Order:** Based on the foregoing, this matter is dismissed due to the equivocal nature of the termination notice which indicated both no-fault and fault bases.

So entered this 30th day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0605

BRIARWOOD SEVENTEEN, LLC,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	PRELIMINARY INJUNCTION
	)	
JOHN DOE,	)	
	)	
DEFENDANT	)	

This matter came before the Court on August 30, 2022 on Plaintiff's verified complaint and motion for injunctive relief to recover possession of 17 Highland Avenue, Studio F7, West Springfield, Massachusetts (the "Premises") from an unknown individual who appears to be residing there. Service of the complaint was made at the Premises by Deputy Sheriff on August 27, 2022, but the occupant did not appear. Based on the verified and uncontroverted allegations in the Complaint that Defendant entered the Premises without the permission or knowledge of Plaintiff or the prior tenant, who informed Plaintiff that he had not given permission for anyone else to reside at the Premises when he vacated, the Court finds that Plaintiff is entitled to the injunctive relief it seeks.

Accordingly, the following order shall enter:

1. All occupants of 17 Highland Avenue, Studio F7, West Springfield, Massachusetts must vacate the Premises by September 3, 2022.

2. Plaintiff shall serve a copy of this order at the Premises and retain proof of service.
3. If the occupants fail to vacate the Premises as ordered, Plaintiff may treat them as trespassers in accordance with G.L. c. 266, § 120 and have them removed from the Premises by a deputy sheriff or other law enforcement officer as of September 6, 2022. Any belongings remaining in the Premises at the time the occupants are removed shall be stored in a manner consistent with the requirements of G.L. c. 239, § 4.
4. After the occupants have been removed from the Premises, Plaintiff may change the locks and retake possession of the Premises.
5. For good cause shown, the $90.00 fee for injunctive relief set forth in G.L. c. 262, § 4 shall be waived.

SO ORDERED.

DATE: 8.31.22 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-CV-609

MASON SQUARE APARTMENTS,

Plaintiff,

v.

REGINALD CRAPPS,

Defendant.

ORDER

After hearing on August 30, 2022, on the plaintiff landlord's emergency complaint for injunctive relief, at which the landlord appeared but the defendant tenant failed to appear after short notice was served at the premises, and at which a representative from the Tenancy Preservation Program joined, the following order shall enter:

1. This tenancy is also subject of an eviction matter in this court in which the defendant and his mother and co-tenant, Geneva Singleton, are the defendants and for which an Execution for possession has already issued by the court.

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2. In the meantime, the landlord commenced this emergency action seeking a restraining order against Mr. Crapps due to his unsafe and threatening behavior at the premises.
3. After the hearing, the court is satisfied that the landlord has met its burden for the issuance of the following temporary restraining order against Mr. Crapps.
    a. He shall not enter any floor at the premises other than his own, the first floor;
    b. He shall not have any contact with minors (17-year-olds or younger) at the premises;
    c. He shall not have any direct communication with the landlord's staff nor enter its offices;
    d. He shall not threaten or act aggressively towards any resident at the premises.
4. This matter shall be scheduled for review on **September 8, 2022, at 11:00 a.m.** live and in-person at the Springfield Session of the Housing Court located at 37 Elm Street. The landlord may be heard in support of extending this order and the tenant may be heard as to amending or suspending this order.

So entered this 31st day of August, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1627

ROBERT BENOIT,

Plaintiff,

v.

CHERIE E. PERUSSE,

Defendant.

ORDER OF DISMISSAL

After hearing on August 29, 2022, at which both parties appeared without counsel, the following order shall enter:

1. For the reasons stated on the record, this matter is dismissed. As explained by the judge at the hearing, the landlord's non-payment of rent eviction is based solely on an amount of money that represents the difference between the agreed upon rent (which the tenant paid) and the amount of increased rent desired by the landlord.

16 W.Div.H.Ct. 163

2. Such a termination cannot stand, as the tenant never agreed to the increased rent.
3. Because the case is being dismissed, the tenant's motion for a late filing of an Answer is moot.

So entered this 1st day of September, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-3038

BLUE DIAMOND HOUSING, LLC,

Plaintiff,

v.

WILLIAM and HEIDI LEASURE,

Defendants.

ORDER

This matter came before the court on September 1, 2022, for a Final Pretrial Conference, at which the landlord appeared through counsel in the Springfield Session as instructed and the tenants (appeared after being contacted by the court) by telephone patched into the courtroom. After conducting the conference, the following order shall enter:

1. As a preliminary matter, the issue of whether the tenants were eligible to apply for RAFT funds but such efforts were somehow thwarted by the landlord came to

the court's attention. Without any findings of fact, the court has scheduled a review by Zoom on September 7, 2022, at 9:00 a.m. for a status hearing on the RAFT application and for the extension of the Final Pretrial Conference relative to the tenants' witness Paul Fitzgerald.

2. The parties shall file, jointly if possible, a description of the case to be read to the jury *venire* by September 9, 2022. If filed separately, same shall be served to the parties.
3. The parties shall file and serve any *voir dire* questions for the jury *venire* they wish to be asked in addition to the statutory questions by September 9, 2022.
4. The parties shall file and serve proposed jury instructions and proposed verdict forms by no later than September 9, 2022.
5. The parties shall share copies of all documents, videos, photographs, etc. that they plan to introduce at trial with one another, and as much as possible stipulate to their admissibility, by no later than September 9, 2022.
6. The tenants have added to their list of potential witnesses their two adult children Amelia and Ian without opposition.

So entered this 1st day of September, 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-0733

RALPH COCCHI,

PLAINTIFF

v.

TIFFANY WILLIAMS,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This cause-based summary process case came before the Court on July 13, 2022 for an in-person bench trial. Plaintiff appeared self-represented. Defendant appeared through counsel. Plaintiff seeks to recover possession of 84 Woodlawn Street, Springfield, Massachusetts (the "Premises"). Because this is an eviction case brought for cause, counterclaims asserted by Defendant cannot defeat Plaintiff's claim for possession. See G.L c. 239, § 8A (applicable to non-payment and no-fault cases).[1] Plaintiff did not object to Defendant pursuing her counterclaims at trial, however, so in lieu of putting the parties through a second trial when both sides were ready to

[1] Section 8A recites: "In any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant, the tenant or occupant shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff relating to or arising out of such property, rental, tenancy, or occupancy for breach of warranty, for a breach of any material provision of the rental agreement, or for a violation of any other law."

litigate the tenant's claims, the Court took evidence on Defendant's counterclaims for purposes of awarding money damages only.

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

Plaintiff has owned the Premises since 2014. Defendant moved in in 2018. Defendant stipulates to receipt of the notice to quit that is being relied upon in this case, a letter dated January 22, 2022. The notice gives the following reasons for termination: a "pitbull that is not allowed by insurance company," installation of an above-ground pool, and building a bedroom in the basement. Plaintiff served and filed a summary process summons and complaint.

In support of its case, Plaintiff argued that, although the lease does not specifically prohibit dogs,[2] Defendant did not have a dog when she moved in and the particular dog owned by Defendant was on a list of prohibited breeds provided by the property insurer. Plaintiff did not provide the list in evidence, however, and did not demonstrate that he was at risk of having his insurance cancelled as a result of the dog. Without evidence that her dog constitutes a lease violation, the Court declines to find the dog to be a material lease violation warranting eviction.

Next, Plaintiff argued that Defendant violated her lease by installing an above-ground pool (and, although not mentioned in the notice to quit, a trampoline). Although the Court infers that Plaintiff's major concern about the pool and

[2] Plaintiff suggested Defendant was provided with rules and regulations separate from the lease at the time of move-in, but she denied having seen the document and Plaintiff could not demonstrate that she had in fact been given the document or agreed to its terms.

trampoline is insurance-related, at trial Plaintiff asserted that the pool constitutes an "alteration" prohibited in the lease. The lease provision in question reads:

> Lessee shall not alter the buildings on the demised premises, construct any building, or make any other improvements on the demised premises without the prior written consent of the Lessor. All alterations, changes and improvement built, constructed or placed on the demised premises by Lessee, with the exception of fixtures removable without damage to the premises and movable personal property, shall unless otherwise provided by written agreement between Lessor and Lessee, be the property of the Lessor and remain on the demised property at the expiration or sooner [sic] of this lease.

Although an above-ground pool could, depending on how and where it is placed, could constitute an improvement, Defendant's testimony that the pool could easily be removed was not challenged by Plaintiff. Accordingly, under the circumstances presented in this case, the Court finds that the above-ground pool is not an "alteration" as that term is defined in the least and thus its presence cannot be a material lease violation.[3]

Plaintiff's third basis for terminating the tenancy is a room that Defendant purportedly built in the basement. The evidence is clear that Defendant did in fact build a room, including building a dividing wall presumably with studs and drywall, adding baseboard heating and doing electrical work to add an overhead light. There is no question that this activity is an alteration and an improvement prohibited by the lease provision cited above. Tenants cannot and should not undertake construction at the landlord's property without the explicit permission of the landlord. If the

[3] Defendant said that she pays the water bill. Plaintiff did not raise the question of whether Plaintiff complied with G.L. c. 186, § 22, which prohibits landlords from charging tenants for water unless the lessor has complied with the statute, and thus the Court will not address it.

plumbing and electrical work is done incorrectly, the other tenants in the house could be placed at serious risk. If permits are not pulled, the landlord can be held responsible by the city. The Court finds Defendant's construction of a room, whether or not a bedroom and whether or not rented to a third party, to be a material lease violation.

Defendant's first counterclaim asserts a violation of G.L. c. 186, § 15B, the security deposit statute. The evidence shows that Defendant paid a security deposit of $1,300.00 at the outset of the tenancy.[4] Pursuant to Section 15B(1)(e), "a security deposit shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the lessor, and shall not be subject to the claims of any creditor of the lessor." Moreover, a landlord must give a receipt to the tenant "within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit." G.L. c. 186, § 15B(3)(a). A violation of these provisions entitles the tenant to damages in an amount equal to three times the amount of such security deposit. G.L. c. 186, § 15B(7).

Here, the evidence shows that the money was held in an account under Plaintiff's name. As a result, the money was not beyond the reach of Plaintiff's creditors. Moreover, Plaintiff did not show that they provided a receipt of the security deposit with the account number and other required information within thirty days of receipt. Accordingly, the Court finds that Plaintiff violated the statute. Pursuant to

[4] Even if the funds came from Section 8 as Plaintiff contends, it does not change the legal analysis.

Massachusetts law, damages for such violations are three times the amount of the security deposit, namely $3,900.00, plus reasonable attorneys' fees.

Because there is no evidence that Plaintiff paid interest on the security deposit, Defendant is to the interest she should have been paid on the security deposit. At 5% interest, the default rate set forth in G.L. c. 186, § 15B, Defendant was entitled to receive $260.00 in interest through trial ($65.00 each year at the anniversary of the tenancy, namely February of 2109, 2020, 2021 and 2022), which will be trebled for a total amount of $780.00.[5]

Defendant's next counterclaim involves problems with hot water. On September 27, 2021, Defendant notified Plaintiff that she had no hot water and that she had paid $100.00 to a contractor to assess the problem.[6] Because the repairs would be expensive, she notified her landlord that repairs were needed. The hot water was ultimately restored, but the problem persisted where the Premises would sometimes have hot water and sometimes not. In March, Defendant called the City's Code Enforcement Department, who inspected on several occasions and found no hot water on its first visits and in later visits found that the hot water would stop after running for ten to fifteen minutes. Plaintiff testified that when the tankless water heater would shut down, it could easily be reset with the push of a button. Requiring a tenant to regularly reset the hot water tank is only a temporary solution, however,

[5] Because Plaintiff did not properly deposit the security deposit funds, the Court uses the default interest rate set forth in the statute rather than the actual interest rate of the account holding the funds.

[6] At trial, Defendant offered evidence that the landlord charged her $100.00 in February 2019 to come out and repair a leak because he decided that she had caused the problem. This issue was not fully developed at trial, but if in fact this is the case, Plaintiff must stop the practice.

and it was not until May 2022, many months after the problem began, that Plaintiff had the computer board replaced, which fixed the problem.

The evidence shows that Plaintiff knew in the Fall of 2021 that the tankless hot water heater was not operating properly, and yet it took many months to solve the problem so that it would not repeatedly recur. A responsible and responsive landlord would have implemented a permanent fix more quickly. Accordingly, the Court finds that the repeated loss of heat interfered with Defendant's quiet enjoyment of the Premises.[7] Pursuant to G.L. c. 186, § 14, Defendant is entitled to the greater of her actual damages or statutory damages in the amount of three months' rent plus reasonable attorneys' fees. The Court finds that statutory damages of $3,900.00 provide the greatest recovery.

Next, Defendant testified that Plaintiff required monthly rent of $1,300.00 but her Section 8 administrator would only approve $1,100.00 per month because Defendant was responsible for paying the utilities. Defendant had already given a vacate notice to her previous landlord and was desperate to move into the Premises, so she asked if she could make up the difference herself. Plaintiff's property manager and Defendant then entered into a written agreement on January 30, 2018 whereby Defendant would pay $2,400.00 up front to cover the gap. Defendant testified that she paid $2,400.00 in 2018 and 2019, but began paying $200.00 extra each month at some point. Based on the evidence, which shows additional payments of $200.00

[7] The Court foregoes finding liability under the implied warranty of habitability given that the problems were intermittent and often for a short duration of time. Assessing damages in this scenario would be guesswork. The Court determines that intermittent hot water problems interfered with Defendant's quiet enjoyment and thus assesses damages under that legal theory.

beginning in June 2020, the Court finds that she only made the $2,400.00 lump sum payment twice.

Plaintiff's agreement to accept the side payments is illegal. The HAP contract that Plaintiff accepted in order to receive $853.00 each month from SHA recites that "I understand that the tenant's portion of the contract rent is determined by the Housing Authority, and that it is illegal to charge any additional amounts for rent or any other item not specified in the lease which have not been specifically approved by the Housing Authority." When Defendant approached him with the offer to make side payments, Plaintiff had to reject the offer and either accept the amount of $1,100.00 or turn Defendant away. Even if Plaintiff operated from good intentions, he broke the law.

As damages for these side payments, the Court awards the amounts paid by Defendant in excess of the approved rent. She testified that she paid $2,400.00 in advance in both 2018 and 2019 and 13 additional payments of $200.00 each in 2020 and 2021. The total of all of these excess payments is $7,400.00. Because she is the one who asked to be able to make the excess payments in order to move in, the Court will not award multiple damages under G.L. c. 93A or any other legal theory. The recovery is based only on restitution for the amounts that the law prohibited her from paying.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Defendant is entitled to judgment for monetary damages in the amount of

$15,980.00 on her counterclaims, plus interest and reasonable attorneys' fees, but no judgment shall enter at this time.

3. 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 petition without need for further hearing and shall issue an order for entry of final judgment for damages in favor of Defendant.[8]

SO ORDERED.

DATE: 9.1.22

Jonathan J. Kane, First Justice

[8] Because G.L. c. 8A does not apply in for-cause cases, the monetary judgment for Defendant is not offset by unpaid rent. The parties are encouraged, however, to discuss an agreement to offset unpaid rent against the judgment amount to avoid additional litigation.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-124

LORD JEFFREY APARTMENTS,

Plaintiff,

v.

BRUCE WATCHTA,

Defendant.

ORDER

After hearing on August 31, 2022, at which the plaintiff landlord appeared through counsel, the Guardian Ad Litem, and representatives from the Tenancy Preservation Program (TPP) appeared, but for which the defendant tenant did not appear, the following order shall enter:

1. Due to the tenant's failure to appear and engage in these proceedings and due to his failure to cooperate with the landlord's efforts to access his unit to make repairs cited by the Quabbin Health District, the following order shall enter:
    a. The landlord shall provide notice to the tenant in writing with at least 24 hours in advance of their scheduled access and repairs at the premises.

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b. At the time indicated in said notice, the tenant and any other person present (and any dog) at the unit at the scheduled time must vacate the unit until the repair workers are completed for that day.

c. If the tenant and or his guest fails to vacate during repairs, the landlord shall have authority to have the county sheriffs and/or local police remove said individuals form the premises during said repairs and shall have the local animal control person present to remove and keep the dog during the duration of that day's repairs (and charge the tenant if there are costs incurred);

d. The local police shall have authority to treat the occupants as trespassers for this purpose in accordance with G.L. c.266, s.120—during the duration of that day's repairs.

e. The sheriff shall have the authority to treat the occupants as persons to be removed from a premises as if they were levying on an execution for possession---during the duration of that day's repairs.

2. The landlord shall coordinate such efforts with TPP and the GAL, who shall be present at the time of access by the landlord as described above.

So entered this 1st day of September, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-141

TENZIN SONAM,

Plaintiff,

v.

MARYBETH GUILLEMETTE, CHAD GUILLEMETTE and ZACHARY GUILLEMETTE,

Defendants.

ORDER

After hearing on August 30, 2022, on the plaintiff landlord's motion for entry of judgment and issuance of the execution, at which all parties appeared, the following order shall enter:

1. The motion is denied, contingent upon compliance by the tenants with the terms of this order.

2. In addition to the $5,500 in outstanding rent, use, and occupancy agreed to by the parties in their March22, 2022 agreement, the tenant now also owe for June, July, and August 2022.
3. The tenants shall make a payment to the landlord in the amount of $1,100 today, August 30, 2022 (if by mail, then post-marked today).
4. The tenants shall also make a payment to the landlord in the amount to f$1,700 by September 9, 2022 (if by mail, then post-marked by no later than September 9, 2022).
5. The tenants shall meet with Way Finders, Inc. directly after the hearing on the court's Zoom platform and pursue an application for rental arrearage for the anticipated $500 remaining for the non-payment in June through August 2022 plus the underlying $5,500 discussed in the March 2022 agreement.
6. The tenant shall maintain a Housing Search Log and may utilize the attached form in that regard and share same with the landlord each month beginning in September 2022.

So entered this 1st day of September, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

Housing Search Log

Name of housing agency/subsidized landlord: _____
Address: _____
Phone: _____

Program	Date Application Requested	Date Application Submitted	Control Number
☐ Federal public housing			
☐ State public housing			
☐ Emergency application			
☐ Section 8 voucher			
☐ Other			

Date	Whom Spoke To	Letter, Call or Visit?	What Happened/ Was Said	Next Steps

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0027

CHRISTOPHER GATES,

PLAINTIFF

v.

COLLEEN STONE,

DEFENDANT

JUDGMENT OF CONTEMPT AND ORDER TO REMOVE DEFENDANT FROM PREMISES

This matter came before the Court on September 1, 2022 for an in-person hearing on Plaintiff's complaint for contempt. Plaintiff appeared through counsel. Defendant did not appear despite in-hand service by a deputy sheriff and testimony on personal knowledge that Ms. Stone was aware of this proceeding today.

Based on the facts alleged in Plaintiff's verified complaint for contempt, Defendant did not vacate the subject premises at 51 Pilgrim Road in East Longmeadow, Massachusetts (the "Premises") by March 31, 2022, as required by a Court agreement dated February 14, 2022. The agreement in question stemmed from a civil (not summary process) action in which Plaintiff sought to remove Defendant, who apparently moved into the Premises after beginning a romantic relationship with Plaintiff.

When Defendant failed to vacate the Premises, Plaintiff filed a motion to enforce the Court agreement. The Court, by order dated June 28, 2022, entered an order that Defendant vacate and remove all of her personal property no later than

June 30, 2022. When Defendant failed to comply with the Court order, Plaintiff filed the instant complaint for contempt.

In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re: Birchall*, 454 Mass. 837, 852-53 (2009). Here, Plaintiff has established both. The Court order is unambiguous and Defendant's failure to comply is clear. Accordingly, Plaintiff is entitled to entry of judgment for contempt. As a sanction for Defendant's contempt, the Court hereby enters the following order:

1. Plaintiff may treat Defendant as a trespasser and unlawful occupant and have her and anyone claiming possession under her removed from the Premises by a deputy sheriff or other law enforcement officer.
2. Before she can be removed from the Premises, Plaintiff must serve this notice at least 48 hours before the law enforcement officials intend to remove her from the Premises. If the law enforcement officials arrive after the 48 hours' notice and Defendant is not home, or if she is home and the law enforcement officials remove her, Plaintiff may change the locks.
3. If Defendant requires access to remove personal belongings after the locks have been changes, she may only do so by making arrangements with Plaintiff or by Court order.

SO ORDERED.

DATE: 9/2/22 Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. **21H79CV000459**

CHRISTIAN CENTER HOUSING CORP. and BERKSHIRE HOUSIG SERVICES, INC.,

Plaintiff

VS

LAURENCE HEBERT,

Defendant

Order on Defendant's Motion for Injunctive Relief

This matter came before the court for an evidentiary hearing on the defendant/tenant's *Motion for Injunctive Relief*.[1] The hearing was conducted over portions of two days, August 31 and September 6, 2022. All parties were represented by counsel.

Based upon all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court concludes that the defendant has failed to show a reasonable likelihood that he will prevail on the merits of his claim that the plaintiff/landlord is legally obligated to provide him with alternative housing until his fire damaged apartment is repaired.

The plaintiffs own and manage a federally subsidized apartment building in Pittsfield, Massachusetts (known as Epworth Arms). The building contains 39 efficiency and one-bedroom apartments subsidized under the project-based HUD Section 202 program. Tenants eligible for

[1] The plaintiff/landlord commenced this civil action seeking injunctive relief against the defendant/tenant arising from the same apartment fire that is the subject matter of the defendant's motion for injunctive relief. The plaintiff's complaint alleges that the fire was caused by the defendant's reckless, negligent and proscribed conduct (smoking in the apartment) and seeks an order that the defendant vacate his apartment, remain away from the building and relinquish his tenancy rights. Even if the facts are true, to support its claim for injunctive relief the plaintiff will have the burden to show that there is no adequate remedy at law, such as summary process.

The plaintiff further seeks what appears to be a declaratory judgment that it has no duty or obligation to house or provide the defendant with alternative housing. That legal issue is addressed in this order, but only in a preliminary manner in the context of the defendant's request for injunctive relief.

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these units must be elderly (age 62 or older) or disabled. As a matter of fire safety, smoking cigarettes of any kind is prohibited in the apartments or common areas of the building. Each tenant is notified of this smoking prohibition which is incorporated as a specific condition of each tenancy.

Until May 30, 2022 the defendant, Laurence Hebert, resided at Epworth Arms, in Unit 101, a first-floor apartment. The defendant is 65 years old and lives alone.

On the evening of May 30, 2022 members of the Pittsfield Fire Department were dispatched to Epworth Arms in response to a fire alarm. Upon arriving at the building, the fire fighters found that fire was burning in the defendant's apartment. The fire fighters came upon the defendant who was trying to enter his apartment.

Lieutenant Robert Leary and Captain Robert Stevens from the Pittsfield Fire Department testified at the hearing. Captain Robert Stevens testified that he arrived at the building he saw the defendant in the hallway by the door to Apartment 101. When he told the defendant not to enter the apartment the defendant became belligerent. He appeared to Captain Stevens to be intoxicated. Captain Stevens testified that his deputy chief had to physically move the defendant away from the apartment door. When the fire fighters entered the defendant's apartment, they observed that a couch in the living room was burning and there was smoke and heat damage to the apartment. The fire fighters extinguished the fire using water from hoses.[2] After the fire was extinguished, Captain Stevens and Lieutenant Leary observed the condition of the apartment and furniture. They observed a burnt couch and a coffee table in front of the couch. They observed cigarette packs, cigarette filters, lighters and rolling paper on the coffee table and on the floor near couch.

Captain Stevens and Lieutenant Leary spoke with the defendant separately in the hallway after the fire was extinguished. They each testified that the defendant appeared to be visibly upset, and that the defendant's speech was slurred. In separate conversations the defendant told Captain Stevens and then Lieutenant Leary that he had been smoking on the couch and fell asleep. The defendant told them that he did not intentionally start the fire.

Lieutenant Leary, who was the fire investigator, determined that the cause of the fire was the unintentional careless disposal of a lighted cigarette on the couch in the defendant's apartment.

[2] The fire did not cause damage to any of the other 38 apartments at Epworth Arms. All of these apartments remain occupied by tenants.

The building manager, Greg Wrobel, arrived at the building shortly after the fire fighters extinguished the fire. He spoke with the defendant after Captain Stevens and Lieutenant Leary had spoken with the defendant. The defendant told Wrobel that he had accidentally dropped his cigarette onto the couch and the couch caught fire. Wrobel observed that the defendant's words were slurred, and that the defendant threatened him, saying "I'll kick your butt." Nonetheless, Wrobel assisted the defendant in securing temporary emergency housing for a limited period.

After the fire was contained Lieutenant Leary conducted an investigation at the apartment to determine the the point of origin and ignition source of the fire. He ruled out the kitchen stove, electrical appliances, the electrical box, wires or cords as the origin of the fire. He determined that the likely point of origin was the couch, and that the ignition source of the fire was a lighted cigarette that fell into the couch igniting the fabric and lining.

The defendant testified that he kept cigarettes in his apartment; however, he denied that he ever smoked in the apartment. He denied he told Captain Stevens, Lieutenant Leary or Wrobel that he was smoking in his apartment at the time of the fire.

I credit the testimony of Captain Stevens, Lieutenant Leary and Greg Wrobel. I conclude that a fact finder is likely to find that (1) the apartment fire was caused by the defendant's own careless conduct, specifically smoking a cigarette that fell and ignited the couch, and (2) the defendant was smoking a cigarette in his apartment with knowledge that such conduct violated his landlord's no smoking policy.

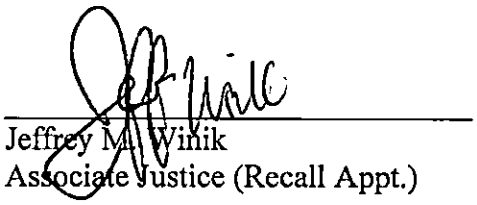
The defendant argues that the plaintiff/landlord has a legal obligation to provide the defendant/tenant with temporary housing or lodging when an apartment becomes uninhabitable without regard to whether the apartment became uninhabitable due to the defendant's negligent, reckless or intentional conduct. Alternatively, the defendant/tenant argues that here is insufficient evidence to prove that the defendant/tenant engaged in negligent or reckless conduct that caused the fire in his apartment.

A landlord may be obligated to provide a tenant with alternative housing as an injunctive remedy where the apartment has been rendered uninhabitable due to the landlord's breach of warranty or negligence. See, G.L. c. 186, § 14. A landlord of a multi-unit dwelling is required to carry fire insurance that provides limited financial assistance ($750.00) to a tenant displaced by a fire. G.L. c. 175, § 15A, clause 15. However, the defendant has pointed to no statute or appellate decision (and the court is not aware of any) that supports the more expansive legal proposition that

a landlord is legally obligated to provide a tenant with alternative housing where the tenant's apartment is rendered uninhabitable due to the tenant's negligence, carelessness or intentional misconduct (such as falling asleep on a couch with a lighted cigarette). Even if the court, for purposes of argument, were to assume that a landlord may be obligated to provide a tenant with alternative housing as an equitable remedy after a fire renders the tenant's apartment uninhabitable, *where the fire was not caused by the landlord's breach of warranty or duty of care*, it is not likely the defendant would prevail on that theory. This is so because the specific facts point to the defendant's carelessness (falling asleep while on the couch holding a lighted cigarette) rather than some other cause (such as negligent or intentional conduct by another tenant or person, or a fire started in another building, or street gas line explosion, or lightening striking the building) as the likely cause of the fire.

Accordingly, the defendant's *Motion for Injunctive Relief* is **DENIED**. The court's interim injunctive order pertaining to temporary housing, entered on August 22, 2022, is **VACATED**.

SO ORDERED this 7th day of September, 2022.



Jeffrey M. Winik
Associate Justice (Recall Appt.)

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

This matter came before the court for trial on August 25, 2022, at which the landlord appeared through counsel and the tenants appeared without counsel. After hearing, the following order shall enter:

1. As a preliminary matter, the landlord was heard on its motion for sanction due to the tenants' failure to respond to discovery. For the reasons stated on the record, the motion is allowed. The court does not credit the tenants' testimony

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that they served their discovery responses to the landlord as required to do so by the court's earlier orders.

2. Given this failure, the tenants' counterclaims are dismissed without prejudice to be brought against the landlord in a different proceeding. Additionally, the tenants' claim that there is a second lease that was in effect at the time of the notice to quit is also dismissed, without prejudice.
3. With no other counterclaims to assert in this proceeding, the tenants assert a defense in in this no-fault eviction under G.L. c.239, s.9 seeking additional time to relocate.
4. The tenants' request to have until November 1, 2022, to vacate was agreed to by the landlord and is hereby granted.
5. The tenants shall meet with Way Finders, Inc. directly after the hearing in one of the court's Zoom Room. A representative from Way Finders, Inc. joined the hearing and agreed to meet directly after the hearing with the tenants.
6. The landlord states that the amount of outstanding arrearage through August 31, 2022, is $14,000. Though the tenants do not dispute this amount, they are not prepared to assent to that amount today. The parties do agree that at least two months' rent @$1,400 (totaling $2,800) are outstanding for July and August 2022. With such funds, if granted by Way Finders, Inc. paid, that will allow the tenant to continue to reside at the premises until November 1, 2022.
7. The landlord may have access to the garage upon 24 hours advance notice to the tenants. The landlord may also have access to the entire premises for inspection and repair purposes upon 48 hours advance notice

8. If the tenants do not vacate by November 1, 2022, the landlord may file a motion for entry of judgment and issuance of the execution.
9. At that time, if the parties have not reached agreement on all rent issues, they may mark up the appropriate motion for the court to make a determination of how much rent, use, and occupancy is outstanding.

So entered this 7th day of September, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-683

STEPHEN BOKUN OGBEBOR,

Plaintiff,

v.

ELBAMARIE RIVERA,

Defendant.

ORDER FOR ENTRY OF JUDGMENT AFTER TRIAL

This matter came before the court on July 7, 2022, for trial at which both parties appeared without counsel. After hearing and after consideration of the evidence admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Stephen Bokun Ogbebor (hereinafter, "landlord") owns a three-family non-owner-occupied building located at 159 Tyler Street in Springfield, Massachusetts. The defendant, Elbamarie Rivera (hereinafter,

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"tenant") resides in Apt. 2R (hereinafter, "premises" or "property") and has been residing therein since August 2018. The monthly rent is $950 and the landlord terminated the tenancy with a February 11, 2022 Notice to Vacate for Non-Payment of Rent. Thereafter, the landlord commenced this eviction action for non-payment of rent and the tenant filed an Answer with defenses and counterclaims which allege breach of the warranty of habitability, breach of the covenant of quiet enjoyment, retaliation, and breach of the consumer protection statute.

2. **The Landlord's Claims for Possession and for Rent:** The parties stipulated to the landlord's *prima facia* case; receipt of the notice to quit, service of the summons, and for outstanding rent through July 2022 totaling **$6,650**. What remains for the court's adjudication are the tenant's defenses and counterclaims which will be addressed in turn below.
3. **The Tenant's Claim of Breach of the Warranty of Habitability:** The tenant presented many photographs and a video which clearly depict a rodent infestation at the premises. This infestation began in earnest in the tenant's unit in December 2021, after having been present in other units at the premises. The tenant credibly testified that she is inundated and overwhelmed by the rodent infestation and that the mice run through her apartment day and night. Mice feces and even dead mice were on her kitchen table and countertop. The tenant complained to the landlord beginning in December 2021 and the landlord and the parties stipulated to admission of text messages between the parties, many of which pertained to infestation. Additionally, the City of Springfield Code

Enforcement Housing Division cited the "infestation of mice throughout entire dwelling" in its March 29, 2022 inspection report. In that same month, March 2022, the tenant started renting a commercial storage unit to avoid the soiling and destruction of her clothes and belongings due to rodent urine and feces.

4. Though the landlord provided mice traps (and the tenant informed the landlord by text that the traps immediately caught 8 mice) and though the landlord hired an extermination company, the landlord felt compelled to inform the tenant in texts that the mice were "beyond his control". The court is impressed that a landlord as experienced as Mr. Ogbebor would lack a sufficient understanding of the State Sanitary Code and his *strict* obligation to remedy violations of same.
5. Despite any efforts made by the landlord including the provision of traps and the hiring of an exterminator, the record before the court supports a finding that the infestation existed from December 2021 to May 19, 2022 when the City code enforcement found the premises in compliance.
6. The rodent infestation as described above constituted violations of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code, 105 C.M.R. 410.00 et seq. Said infestation at the premises also constitutes a claim based upon breach of the implied warranty of habitability, for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196, 396 N.E.2d 981 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at

trial. *Young v. Patukonis*, 24 Mass.App.0 907, 506 N.E.2d 1164 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855, 576 N.E.2d 658 (1991).

7. Based on the severity of the mice infestation as described above and made evident by the tenant's credible and graphic descriptions, as well as the photographs and video admitted at trial, there shall be a 50% abatement of rent from the period of December 2021 through May 2022 (5 months). Thus, a damage award of **$2,375** [representing the monthly rent of $950 X 50% X 5 (months)].
8. **The Tenant's Consumer Protection Act Claim:** The landlord's violation of the warranty of habitability was an unfair and deceptive practice and a violation of G.L. c. 93A. Though the landlord provided some traps and at least one extermination, the court is not persuaded that his actions were prompt nor sufficiently thorough given the severity of the infestation problem. Accordingly, the court finds and so rules that the landlord's inaction was *willful and knowing* and doubles the tenant's Warranty of Habitability damages. Accordingly, the damages for the landlord failures relative to eliminating the intense rodent infestation totals **$4,750.**
9. **Tenant's Claim of Breach of the Covenant of Quiet Enjoyment:** The rugs throughout the premises were in horrible shape from the commencement of the tenancy, described by the tenant as "disgusting" and covered in "cat piss" from a

prior tenant. She complained to the landlord about them for 2.5 years and explained that they were particularly problematic and dangerous because her young son is autistic and spends a great deal of time on the floor. There does not appear to be a dispute about the condition of the rugs and the landlord replaced them (after 2.5 years in occupancy). The tenant credibly testified how she stopped using the upstairs bedroom due to the condition of the rugs and chose instead to reside in the living room and provided the landlord letters from her son's teacher to support what she was telling the landlord: that her son would lose services if the rugs were not replaced. Only after rugs were replaced 1.5 years ago did the tenant begin to use the upstairs bedroom for something more than storage.

10. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). The landlord's failure to replace the rugs for a protracted period of time, (2.5 years) seriously affected the tenant's use of the premise and is a violation of the tenant's covenant of quiet enjoyment in accordance with G.L. c.186, s.14. Accordingly, the tenant shall be awarded three months rent as a statutory award totaling **$2,850**.

11. **Conclusion and Order:** Based on the foregoing, and in accordance with G.L. c.239, s.8A, judgment shall enter for the tenant for possession plus **$950**.
12. This represents the total amount of the tenant's damages of $7,600 MINUS the amount of outstanding rent through the month of trial $6,650.

So entered this 9th day of September, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-599

WINDSOR REALTY,

Plaintiff,

v.

OLGA AYALA-IRENE, NEREIDA CABRERA, and ORLANDO RIVERA-LOPEZ,

Defendants.

ORDER

After hearing on September 7, 2022, on the plaintiff landlord's emergency complaint for injunctive relief at which the landlord appeared through counsel and the defendants Ayala-Irene and Orlando Rivera-Lopez appeared without counsel and for which the defendant tenant Nereida Cabrera did not appear, the following order shall enter:

1. Without admission of any wrongdoing by any party and without any evidence admitted, Orlando Rivera-Lopez has agreed to remain away from the subject

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premises located at 173 Elm Street, Apt. 2LR in Holyoke, Massachusetts (premises). This will become an order of the court and Mr. Orlando Rivera-Lopez shall not enter said premises without leave of court.

2. Olga Ayala-Irene, who claims to have been living at the premises for the past 8 years, is permitted to reside at the premises until further order of the court so that she may be present in the home for Ms. Cabrera's 12-year-old son. Without admission of any wrongdoing by any party and without any evidence admitted, Ms. Ayala-Irene shall not have any visitors nor allow the 12-year-old to have any visitors until further order of the court. Additionally, if arrangements are made that the 12-year-old will be staying *elsewhere* (e.g., with his family), Ms. Ayala-Irene shall also temporarily leave the premises and not return until order of the court.
3. Nereida Cabrera, who the landlord asserts is the leased tenant, is presently hospitalized at Holyoke Medical Center and not present at today's hearing. Given the seriousness of the allegations in the Verified Complaint the court shall prohibit Ms. Cabrera from being at the subject premises until further order of the court.
4. In addition to mailing out this order, the Clerk's Office shall email a copy to landlord's counsel and to Ms. Ayala-Irene. The landlord shall make its best efforts to have Ms. Cabrera served at the hospital.
5. The Clerk's Office shall also send a copy to Mr. Rivera-Lopez' criminal defense attorney, Peter Murphy. Attorney Murphy is urged to appear at the next hearing in this matter noted below---for which a *habeas corpus* will issue for Mr. Rivera-

Lopez' appearance---so as to provide Mr. Rivera-Lopez with advice relative to his constitutional rights against self-incrimination. It is the court's understanding that if Attorney Murphy is billing the Committee for Public Counsel Services (CPCS) in the criminal matter, CPCS will allow him to bill it for his appearance at the next hearing in this court as part of his representation of Mr. Rivera-Lopez in the criminal matter.

6. If Ms. Cabrera is still hospitalized and thus not able to appear at the courthouse for the next hearing noted below, but wishes to be present by Zoom, she may contact the Clerk's Office at 413-748-7838 or by Zoom at Meeting ID: 161 638 3742 with Password: 1234, and make arrangements to do so.
7. The defendants may wish to seek legal assistance from Community Legal Aid which can be reached at 855-252-5342.
8. This matter shall be scheduled for further hearing on **September 12, 2022, at 2:00 p.m.** live and in-person at the Springfield Session of the Housing Court.

So entered this 9th day of September, 2022.

Robert Fields, Associate Justice

CC: Attorney Peter Murphy (Rivera-Lopez' criminal defense counsel)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

CASE NO. 22-CV-524

CHRISTINE BOYER and SCOTT BREWSTER,

Plaintiffs,

v.

NBM MANAGEMENT,

Defendant.

ORDER

After hearing on September 2, 2022, on the plaintiff tenants' complaint for an injunctive order at which the tenants appeared at court and the defendant landlord's attorney appeared by Zoom[1], the following order shall enter:

1. The court finds the tenants credible in their testimony that there are several conditions of disrepair that continue to exist in their unit. The landlord, through counsel, did not have any witnesses and did not request a continuance in order for him to have a witness.

[1] Landlord's counsel stated on the record that the reason for his Zoom appearance was that he did not realize that the matter was scheduled for a live hearing. Given the nature of the matter, the court proceeded with the hearing.

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2. The repairs include the installation of wall-to-wall carpeting, repair to the "bulge" in the ceiling, and to inspect and treat above the drop-down bathroom ceiling for mold.
3. More specifically, the wall-to-wall carpeting was removed and was to be replaced but instead the landlord replaced it with linoleum flooring. Given that the tenancy included wall to wall carpeting for the entirety of the two-year tenancy and given the order of the Sunderland Board of Health to "remove and replace" the carpet, the landlord shall install new wall to wall carpeting at the premises.
4. Additionally, the repair work to the living room ceiling has resulted in a "bulge" or "blob" which is unseemly, and the landlord shall inspect and make necessary repairs.
5. The landlord shall also have a licensed professional mold remediation person inspect above the suspended ceiling in the bathroom for mold and then thereafter have any mold therein removed in accordance with the recommendations of the remediation specialist.
6. The parties may also wish to have the Board of Health inspector return to inspect the bathroom ceiling and compliance with the other repairs noted above.
7. All such repairs shall be completed forthwith.

So entered this 12th day of September, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-599

WINDSOR REALTY,

Plaintiff,

v.

OLGA AYALA-IRENE, NEREIDA CABRERA, and ORLANDO RIVERA-LOPEZ,

Defendants.

ORDER

After hearing on September 12, 2022, on the plaintiff landlord's emergency complaint for injunctive relief at which the landlord appeared through counsel and the defendants Ayala-Irene and Orlando Rivera-Lopez appeared without counsel and for which the defendant tenant Nereida Cabrera did not appear, the following order shall enter:

1. The landlord did not report any new problems involving the parties since the last court order.

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6. In addition to mailing out this order, the Clerk's Office shall email a copy to landlord's counsel and to Ms. Ayala-Irene. The landlord shall make its best efforts to have Ms. Cabrera served at the hospital.
7. The Clerk's Office shall also send a copy to Mr. Rivera-Lopez' criminal defense attorney, Peter Murphy. Attorney Murphy is urged to appear at the next hearing in this matter noted below---for which a *habeas corpus* will issue for Mr. Rivera-Lopez' appearance---so as to provide Mr. Rivera-Lopez with advice relative to his constitutional rights against self-incrimination. It is the court's understanding that if Attorney Murphy is billing the Committee for Public Counsel Services (CPCS) in the criminal matter, CPCS will allow him to bill it for his appearance at the next hearing in this court as part of his representation of Mr. Rivera-Lopez in the criminal matter.
8. If Ms. Cabrera is still hospitalized and thus not able to appear at the courthouse for the next hearing noted below, but wishes to be present by Zoom, she may contact the Clerk's Office at 413-748-7838 or by Zoom at Meeting ID: 161 638 3742 with Password: 1234, and make arrangements to do so.
9. The defendants may wish to seek legal assistance from Community Legal Aid which can be reached at 855-252-5342.
10. This matter shall be scheduled for a Status Hearing on September 28, 2022, at 2:00 p.m. live and in-person at the Springfield Session of the Housing Court.
11. This matter is also scheduled for an evidentiary hearing on the plaintiff's complaint for injunctive relief on **October 6, 2022, at 2:00 p.m.** live and in-person at the Springfield Session of the Housing Court.

2. Without admission of any wrongdoing by any party and without any evidence admitted, Orlando Rivera-Lopez has agreed to remain away from the subject premises located at 173 Elm Street, Apt. 2LR in Holyoke, Massachusetts (premises). This will become an order of the court and Mr. Orlando Rivera-Lopez shall not enter said premises without leave of court.
3. Olga Ayala-Irene, who claims to have been living at the premises for the past 8 years, is permitted to reside at the premises until further order of the court so that she may be present in the home for Ms. Cabrera's 12-year-old son. Without admission of any wrongdoing by any party and without any evidence admitted, Ms. Ayala-Irene shall not have any visitors nor allow the 12-year-old to have any visitors until further order of the court. The earlier order is hereby amended to allow Ms. Ayala to have her two children reside with her in the subject apartment until further order of the court.
4. Ms. Ayala gave the landlord $754 in certified funds at the hearing to show good faith and in response to the landlord's report that there is over $3,000 in outstanding rent. Acceptance of said payment shall not be construed as an admission off Ms. Ayala's allegedly prolonged occupancy nor that she is a tenant.
5. Nereida Cabrera, who the landlord asserts is the leased tenant, is presently hospitalized at Holyoke Medical Center and not present at today's hearing. Given the seriousness of the allegations in the Verified Complaint the court shall prohibit Ms. Cabrera from being at the subject premises until further order of the court.

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So entered this 13th day of September, 2022.

Robert Fields, Associate Justice

CC: Attorney Peter Murphy (Rivera-Lopez' criminal defense counsel)
Court Reporter