

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 17

Sep. 14, 2022 — Oct. 17, 2022
(and certain older decisions)

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*

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

OUR PROCESS

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

EDITORIAL STANDARDS

In General. By default, decisions are *included* unless specific exclusion criteria are met.

Exclusion criteria are intentionally limited, and the editors have designed them to minimize any suggestion of bias for or against any particular litigant, type of litigant, attorney, firm, type of case, judge, witness, *etc.* In certain circumstances, redactions may be used in lieu of exclusions.

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

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment and taking the Court’s views into consideration. Our current redaction and exclusion criteria are as follows: (1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) Stipulated or agreed-upon orders will generally be excluded. (4) Decisions made as handwritten endorsements to a party’s filing will generally be excluded. (5) Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, specific personal financial information, and/or certain criminal activity will be redacted if reasonably possible, or excluded if not. As applied to orders involving guardians ad litem or the Tenancy Preservation Program, redaction or exclusion is not triggered by virtue of such references alone but rather by language revealing or fairly implying specific facts about a disability. (6) Non-public contact information for parties, attorneys, and third-parties are generally redacted. (7) Criminal action docket numbers are redacted. (8) File numbers for non-governmental records associated with a particular individual and likely to contain personal information are redacted.

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

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

PUBLICATION

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

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

SECURITY

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

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CONTACT US

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

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the couch. Although the fire alarms were sounding in her unit, and although he banged on the window, Defendant remained asleep until the fire department arrived.

The current West Springfield Deputy Fire Chief responded to both incidents at the Premises (he was not deputy chief at the time). Upon arriving at the Premises in December 2018, he discovered evidence of a fire that had burned the kitchen cabinets and the hood fan and damaged the ceiling. He said he and the other firefighters had to use fire extinguishers to cool hotspots and ventilate the Premises in order to eject the smoke. He testified that Defendant appeared to be intoxicated and was disoriented. In December 2021, the firefighters found that the source of the smoke was the oven, which was heating with items left inside. Again, the witness testified that Defendant, who had slept through the fire alarms sounding, appeared to be intoxicated and smelled of alcohol.

Plaintiff concedes that the fires were unintended, but contends that her negligence places the entire building and its residents at serious risk of harm, and that the repeated fires in her unit violates the lease provision prohibiting tenants from creating any “substantial interference with the rights, comfort, safety or enjoyment of the Lessor or other occupants of the same or any other apartment.”

The Court finds that Plaintiff established its prima facie case for possession. Because she failed to appear for trial, the Court heard no evidence or rebuttal from Defendant.¹ The fact that Defendant caused two fires in a multi-family unit over a

¹ The Court denied Defendant counsel’s oral motion to continue. Plaintiff had several witnesses present and opposed any continuance. Defendant did not appear at any time during the course of the trial.

three-year period constitutes a material lease violation. Defendant's neighbor testified credibly that Defendant's conduct has substantially interfered with his comfort, safety and enjoyment of his unit. The Court cannot allow Defendant to continue to jeopardize the health, safety and welfare of the other residents at the property.

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. Execution (eviction order) shall issue in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: _____

9/6/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-566

HONG QIAN,

Plaintiff,

v.

**SERENNA J. VAZQUEZ (a.k.a. SERENNA
PROUX),**

Defendant.

ORDER

After hearing on September 6, 2022, at which both parties appeared without counsel, the following order shall enter:

1. The landlord shall text the tenant no less than 48 hours in advance when she requires access for repairs. The tenant shall respond as soon as is practicable with either agreement or the offer of a new (and prompt) alternative time and date.

2. The landlord's notice shall also include a description of the anticipated work and any preparation requirements necessary for the tenant.
3. All repair work is to be performed by professionals with proper licenses and proper permits from the city.
4. The tenant may ask for any worker entering her apartment to show his or her license.
5. All such work is to be performed in a workmanlike fashion, with workers cleaning up their work area after completing work for the day.
6. The parties agree that the gas for the third-floor unit is attached to the defendant's second floor service and being paid for by the defendant tenant. The landlord shall forthwith switch the gas service into her name until the gas for the units are separated.
7. The landlord shall have the entire building exterminated by a professional exterminated for cockroaches, rodents, and fleas.
8. The landlord shall have the entire dwelling tested for lead by a licensed lead inspection company and shall thereafter address any issues regarding lead paint.
9. Unless otherwise agreed to by the parties or after leave of court, the landlord shall not schedule repair work for periods of more than 4 hours.

So entered this 6th day of September, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-455

MISSY STODDARD,

Plaintiff,

v.

MAOXIONG DAVID ZHENG,

Defendant.

ORDER

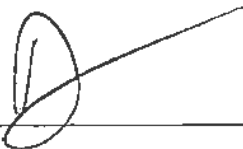
After hearing on September 1, 2022, on the plaintiff tenant's motion for further injunctive relief, at which the tenant appeared *pro se* and the defendant landlord appeared through counsel, the following order shall enter:

1. The landlord shall FORTHWITH have any and all mold present at the premises removed from a licensed mold remediator.
2. If said remediator's position is that the tenants need to not be present at the premises during/after remediation for 5 hours or longer, the landlord will provide them hotel accommodations for that time period.
3. If said remediator's position is that the tenant's belongings shall not be present during the remediation, the landlord shall provide the tenant with funds equal to

the cost the landlord would have incurred if he had to have said belongings stored outside of the house.

4. The landlord shall text the tenant with the date(s) and time(s) for the remediation and the tenant shall ensure complete access to the premises for said remediation and the tenant shall not interfere with the remediation in any way.

So entered this 6th 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-752

VA7 AMHERST, LLC,
Plaintiff,
v.
JORGE CASTILLO,
Defendant.

ORDER

After hearing on August 24, 2022, on the tenant's motion to stop a physical eviction at which the tenant appeared with L.A.R. counsel and the landlord appeared through counsel of record, the following order shall enter:

1. L.A.R. counsel asserted several bases for the cancellation of the physical eviction scheduled for August 25, 2022, including that the tenant was applying for RAFT funds and that pursuant to St. 2020, c.257, as amended by St. 2022, c.42 (Chapter 257), the eviction should be postponed.

2. The judge recessed the proceedings to allow for the tenant to meet with a representative from Way Finders, Inc. regarding a RAFT application.
3. The parties were joined by a representative from Way Finders, Inc. with the hearing resumed who verified that she had met with the tenant who appears eligible for RAFT funds and that an appointment was set for the following day to further pursue and complete the RAFT application.
4. The court considers the RAFT application "pending" for purposes of Chapter 257 and hereby cancels the physical eviction currently scheduled and stay the rescheduling of same until further order of the court.
5. The parties shall diligently cooperate with the completion of the RAFT application.
6. A status hearing shall be scheduled by Zoom on **September 21, 2022, at 12:00 p.m.** All parties must appear by Zoom and be able to be visual and able to share and view shared documents on Zoom for said hearing. If any party wishes they may appear at the Springfield Session of the court for said hearing and use the court's Zoom Room. The parties should communicate in the interim regarding the RAFT application and the other assertions regarding household composition and past rental payments prior to the status hearing.

So entered this 6th day of September, 2022.



Robert Fields, Associate Justice

CC: Lucien Ortega, Way Finders, Inc.

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

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

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

ORDER FOR ENTRY OF
JUDGMENT

This summary process case came before the Court on August 10, 2022 for an in-person hearing on Plaintiff's motion for entry of judgment for possession. All parties appeared through counsel. Plaintiff seeks to recover possession of Unit 146 at 159 Brayton Hill Terrace, North Adams, Massachusetts (the "Premises") from Defendants based on a material violation of the terms set forth in the Court's December 7, 2021 order ("trial order"). In pertinent part, the trial order prohibited Defendants from engaging in any criminal activity on the property, substantially interfering with the quiet enjoyment of the other residents or their guests, or substantially interfering with the management of the property. The case was to be dismissed on June 1, 2022 if Defendants had complied with the terms of the order in the interim. Plaintiff alleges that the conduct in question occurred on May 13, 2022.

Based on all the credible testimony, the other evidence presented at the evidentiary hearing, and the reasonable inferences drawn therefrom, the Court finds that the events described by the North Adams patrolman, Officer Barrett, warrant

entry of judgment. On the date in question, Officer Barrett reported to the Premises to assist the Department of Children and Families remove a child. Mr. Selsing became very upset and aggressive, locking the unit door to prevent entry and, over the course of an hour, cursing, acting aggressively toward law enforcement and making threats. Other residents gathered to watch the spectacle.

Although Defendant was arrested for disorderly conduct, the charge was dropped. The Court need not find that Defendant committed a crime, however, to conclude that he violated the trial order. Based on the evidence, the Court finds that Mr. Selsing's conduct was a significant disturbance that took place in the middle of the day in front of numerous other residents. This case was commenced because of Defendants' behavior at and around the Premises, and Mr. Selsing's public outburst on May 13, 2022 was not a minor breach of the peace. Based on the credible testimony of the police officer, the Court finds that Mr. Selsing's conduct substantially interfered with, or was highly likely to substantially interfere with, the quiet enjoyment of the other residents at the property and the management of the property. As difficult as it is for the Court to enter judgment for possession in a case involving tenants with a rental subsidy and a child with serious health issues, the Court gave Defendants a chance to retain their tenancy and they could not comply with the Court's order. The Court must enforce its orders and take appropriate action to protect the health, safety and welfare of other tenants at the property.

Given the foregoing, the following order shall enter:

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

2. Execution (the eviction order) shall issue following the 10-day appear period.

SO ORDERED.

DATE: 9/7/2022

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

cc: Court Reporter

The lease recites that the tenant's portion of the rent is due on the first day of the month. Plaintiff produced a rent ledger that purportedly shows that Ms. LaPointe has repeatedly paid rent late. However, as the property manager acknowledged, the ledger is confusing, and she conceded that the ledger does not show the actual dates of Ms. LaPointe's rent payment, only the dates she deposited the rent check. She testified that she remembers that Ms. LaPointe's payments were not made on the first of the month (and Ms. LaPointe admitted that she did not always pay on the first) but in order to prove its case, the burden is on Plaintiff to demonstrate a consistent pattern of late payments.

The ledger shows that in the six months prior to service of the notice to quit in March 2022, Ms. LaPointe failed to pay rent in November 2021 (it appears she made a double payment in December) and in February 2022 (again, it appears she made a double payment in March). She may have also made payments late in other months leading up to the service of the notice to quit, but the evidence is insufficiently clear. The Court is unwilling to infer that the imposition of late fees proves consistent late payment of rent without knowing the actual date of payment. Moreover, it is not obvious from a review of the ledger whether certain rent payments were applied first to unpaid late fees, leaving a balance of rent due.¹

In addition to Plaintiff having to demonstrate that Ms. LaPointe's rent payments were consistently late, it has the burden of proving that such late payments constitute a material breach of the lease. The property manager testified that,

¹ This practice is particularly troublesome given that the lease recites: "*The landlord will accept rental payments regardless of other charges that the tenant owes, and management will seek legal remedy if needed to collect other charges assessed.*"

despite Ms. LaPointe's long history of sporadic rent payments, she renewed Ms. LaPointe's lease twice. Moreover, the property manager only minimally addressed the hardship caused by Ms. LaPointe's late payments. Beyond a couple of conclusory statements that the management office has to send late notices every month which adds to the administrative burden, Plaintiff offered little or no evidence demonstrating the adverse effect the late payments had on the operation of the business. Particularly where, as here, Plaintiff receives most of the monthly rent from a subsidy provider, Plaintiff has to demonstrate that Ms. LaPointe's late payments were more than a minor inconvenience. It did not do so.

Given the foregoing, and in light of the governing law, the Court enters the following order:

1. Judgment for possession shall enter in favor of Defendant.
2. Because the amount of use and occupancy outstanding (separate from late fees) is unclear, and given that a RAFT application has been filed, the Court cannot enter an order at this time that Ms. LaPointe make payment to Plaintiff for unpaid use and occupancy.

SO ORDERED.

DATE: 9.7.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0517

FOH, LLC,

PLAINTIFF

v.

LAWRENCE STEFANIK,

DEFENDANT

ORDER

This case came before the Court by Zoom on September 2, 2022 for review of Defendant's compliance with a Court order dated August 18, 2022. Plaintiff appeared through counsel. Mr. Stefanik did not appear. Ms. Morales from Tenancy Preservation Program ("TPP") also participated.

Plaintiff's witness testified that Mr. Stefanik is not complying with part of the order requiring him not to spend time in the common areas of the property to avoid the spread of bed bugs from his wheelchair. Mr. Stefanik is apparently spending excessive time in the TV viewing area and kitchen. The bed bug treatments have not been able to begin because TPP has not been able to fund the services of Lady Bugs.

The Court hereby orders Mr. Stefanik to comply with the August 18, 2022 Court order. He must not spend any unnecessary time in common areas of the property and he must fully cooperate with TPP regarding the acceptance of services.

SO ORDERED.

DATE: 9/7/22


Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-600

VENORA GILL, et al.,

Plaintiffs,

v.

SPRINGFIELD GARDENS,

Defendant.

ORDER

After hearing on September 7, 2022, on review of the tenants' application for injunctive relief at which the tenants appeared *pro se* and the landlord appeared through counsel, the following order shall enter:

1. The landlord shall continue to pay for the tenants' hotel stay until further order of the court. The tenants' request that they be provided two separate bedrooms at the hotel is allowed. They explained to the court that they are not romantically involved and live in a two-bedroom apartment. As such, the landlord shall either

provide a hotel suite with two bedrooms or two separate hotel rooms until further order of the court.

2. The landlord shall provide the tenants and the court with a copy of the mold specialist's report and a copy of a contract with the mold remediation company/professional by no later than September 14, 2022, at noon.
3. This matter shall be scheduled for further review on **September 15, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 7th day of September, 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-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

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-1657

HONG QIAN,

Plaintiff,

v.

SERENNA J. VAZQUEZ (a.k.a. SERENNA
PROUX),

Defendant.

ORDER OF DISMISSAL

After hearing on September 6, 2022, at which both parties appeared without counsel, the following order shall enter:

- 1 For the reasons stated on the record which included the improper notice to quit and summons which sought non-rent amounts in this non-payment of rent case, the case is dismissed.
- 2 More specifically, the plaintiff recently purchased the property in which the tenant had been residing as a tenant of a former landlord for four years. The new

landlord wished for a higher rent than the tenant had been paying (seeking to increase the rent by hundreds of dollars) and also sought a security deposit (which was not previously required of the tenant who moved in four years prior).

3. Additionally, the landlord was seeking to impose never-before required lease terms of a "late fee" of \$300 plus \$10 per day after thirty days of outstanding rent
4. None of these terms had been agreed to by the tenant but were part of the notice to quit.
5. Accordingly, this matter is dismissed.

So entered this 7th day of September 2022.

Robert Fields, Associate Justice
CC. Court Reporter

G.L. c. 239, § 5 (“ the defendant shall, before any appeal under this section is allowed from a judgment of the ... housing court ... rendered for the plaintiff for the possession of the land or tenements demanded in a case in which the plaintiff continues at the time of establishment of bond to seek to recover possession, give bond...”).

3. In order to dispose of the need for additional hearing, the Court hereby denies Plaintiff’s motion to dismiss the appeal on the papers. The Court rules that Defendant’s appeal is non-frivolous, particularly given the Court’s rulings on Plaintiff’s pre-trial motions relating to Defendant’s failure to respond to discovery.
4. Because the Court has deemed Defendant’s notice of appeal timely by this order, Defendant has 14 days to request the audio recording of the trial court proceedings and order a transcription to file with this Court or certify that no such request will be made so that the record may be assembled.

SO ORDERED.

DATE: 9.7.21

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22CV576

KENDRA EDWARDS,

Plaintiff,

v.

WITMAN PROPERTIES INC et al,

Defendants.

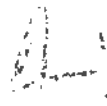
AGREED UPON ORDER

After hearing on August 31, 2022, on the plaintiff's (tenant's) request for a temporary restraining order for which all parties appeared, the following order shall enter:

1. The landlord shall hire a licensed and professional mold remediation company to complete a full inspection of the subject premises. Access for said inspection and/or repairs shall be granted on Friday September 2, 2022, between the hours of 8:30 a.m. to 11:00 a.m. Thereafter, the landlord shall comply with instructions/recommendations by the mold remediation company. Any such work that requires performance by a licensed person and/or with permits pulled from the City, shall be done in that manner.

2. Going forward, the landlord and/or its workmen shall text the tenant with no less than 24 hours advance when they require access to complete repairs. The tenant shall respond as soon as is practicable with either agreement or the offer of a new (and prompt) alternative time and date.

So entered this 8th day of September 2022.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1058

_____)	
FRANKLIN COUNTY REGIONAL HOUSING)	
AND REDEVELOPMENT AUTHORITY,)	
)	
PLAINTIFF)	
v.)	FINDINGS OF FACT, RULINGS
)	OF LAW AND ORDER
GENE JILES,)	
)	
DEFENDANT)	
_____)	

This cause-based summary process case came before the Court on August 19, 2022 for an in-person bench trial. Both parties were represented by counsel. Plaintiff seeks to recover possession of 60 J Street, # 8, Turners Falls, Massachusetts (the "Premises").

Prior to trial, the parties stipulated to the following facts:

- a. the Premises are part of a multifamily property;
- b. Defendant moved into the Premises on April 5, 2021 pursuant to a lease;
- c. Defendant has a rental subsidy administered by Plaintiff;
- d. Defendant received the notice to quit, and
- e. Monthly rent is \$720.00, Defendant's share is \$280.00 per month and, through July 2022 when the stipulation was signed, Defendant owed \$949.00 in unpaid rent.

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

Defendant resides at Winslow Wentworth House, a congregate living facility in Turners Falls, Massachusetts (the "Property"). The Property offers independent living for elderly and disabled people with support offered through LifePath, an agency that offers on-site and off-site services for residents.

Plaintiff terminated Defendant's tenancy pursuant to a 30-day notice to quit dated February 1, 2022. Plaintiff cited violations of the guest policy as the reason for terminating Defendant's tenancy. In relevant part, the lease limits overnight guests to twenty-one nights in any twelve-month period without written approval of Plaintiff. See Lease, § V (B). The same lease section makes the tenant responsible for the conduct of any guest while at the Property. The lease also requires the tenant and any guest of the tenant "to conduct themselves in a peaceful manner and in a manner which will not injure, endanger, harass or disturb other residents, employees or others lawfully on the [P]roperty. See Lease, § IX (D).

The evidence shows that Defendant had numerous guests at the Premises over the twelve months preceding trial. Although no witness counted the exact number of nights in a year that Defendant had overnight guests, the Court infers from witness testimony that it likely exceeded the 21 night. Even if the number of overnight visits was less than 21, the evidence shows that Defendant and his guests conducted themselves in a manner that caused significant disturbances at the Property and that could have endangered the safety and welfare of other residents, employees and others lawfully on the Property.

On four separate occasions, Defendant had to call the police to get assistance in removing an unwanted female guest from the Premises. The same officer responded on each occasion and testified credibly that Defendant and his guests appeared intoxicated each time. In the winter of 2021-2022, a female passed away in the Premises. A service provider from LifePath who was regularly at the property often witnessed Defendant with women guests at the Property and fielded complaints from elderly residents about all of the strangers Defendant brought into the facility. Once she witnessed Defendant in his room with the door open engaging in a heated argument with a woman in his room and another on speaker phone and observed the various parties yelling at one another, shouting vulgarities and creating a significant disturbance for the other residents.

The Court finds that Defendant's conduct constitutes a material lease violation. His behavior is entirely inappropriate for a congregate living facility housing elderly and disabled occupants. Although Defendant correctly points out that no other residents of the Property appeared at trial to testify, the Court finds that the credible testimony of the property manager, Plaintiff's Director of Property and Asset Management, two social services providers and a police officer establishes Plaintiff's claim for possession.

Plaintiff included in its complaint a demand for unpaid rent and use and occupancy (presumably use and occupancy arising after the filing of the complaint). The parties stipulated that \$949.00 was unpaid through July 2022, and the

uncontroverted testimony of Plaintiff's property manager establishes that \$1,229.00 is due in unpaid rent and use and occupancy through the trail date.¹

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

1. Judgment for possession and \$1,229.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Execution may issue after expiration of the appeal period in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 9/8/2024

Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ This figure is the sum of the stipulated amount of unpaid rent plus Defendant's rent share of \$280.00 for August 2022.



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-494

ANGEL TORRES,

Plaintiff,

v.

EUNICE DOCKERY,

Defendant.

ORDER

After conducting a review hearing on September 7, 2022, at which both parties appeared without counsel and at which the G.A.L. (Attorney Shawn Mansfield) joined along with a representative from the Tenancy Preservation Program (TPP), as well as the tenant's son and daughter-in-law, the following order shall enter:

1. TPP will meet with the tenant at the courthouse following the hearing to conduct an intake.

2. The tenant shall also meet with Way Finders, Inc. directly after the hearing to apply for rental arrearage funds and for utility costs so that she may have the gas service at the premises restored.
3. The tenant may not reside at the premises until the gas is restored.
4. TPP and the G.A.L. shall assist the tenant in a more effective housing search, seeking assistance from various agencies such as Greater Springfield Senior Services.
5. The G.A.L. shall file his next report with the court by September 20, 2022.
6. This matter shall be scheduled for further review and an update from the parties and from TPP and the G.A.L. at an in-person hearing on **September 22, 2022, at 2:00 p.m.** at the Springfield Session of the Housing Court.

So entered this 9th day of September, 2022.



Robert Fields, Associate Justice

CC: G.A.L. Shaw Mansfield, Esq.

TPP

Court Reporter

12

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-628

CRYSTAL VARGAS,

Plaintiff,

v.

**LUIS MIGUEL ROSADO and BRENDA
CASTRO,**

Defendants.

ORDER

After hearing on September 8, 2022, on the plaintiff tenant's emergency motion for alternate housing, at which all the parties appeared without counsel the following order shall enter:

1. The tenant has been residing in the third floor until located at 57 Commonwealth Avenue in Springfield (premises) under a lease for the past year. On or about September 6, 2022, the City of Springfield Code Enforcement Housing Division condemned the unit and ordered the tenant to vacate.

2. Though the tenant filed this action seeking an order that the landlord provide her with hotel accommodations and a food stipend, at the hearing it was reported by Attorney Shaw from Community Legal Aid that the State's emergency shelter system will provide the tenant with hotel accommodations until it can secure her an apartment.
3. As such, the tenant's request is for a food stipend due to the lack of cooking facilities at the hotel. The tenant is seven months pregnant and has health issues and has her 9-year-old son living with her.
4. The landlord shall provide the tenant with a daily food stipend of \$75 and has agreed in court to provide the tenant with \$525 this afternoon when they meet at the premises at 12:30 to also allow for access for the electrician.
5. This matter shall be scheduled for further review and hearing on **September 15, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the Housing Court.

So entered this 14th day of September, 2022.

Robert Fields, Associate Justice

CC: Gordon Shaw, Esq., Community Legal Aid
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
) COMPLAINT FOR CONTEMPT
)
)
)

This summary process case came before the Court on September 8, 2022 for hearing on Plaintiffs' complaint for contempt. Both parties appeared with counsel. The Court finds as follows:

1. At a hearing on June 10, 2022, the Court ordered Defendant to pay use and occupancy in the amount of \$1,260.00 to Plaintiff's counsel each month on the 15th. The amount was intended to approximate the carrying costs for the subject property and is a number to which Defendant's predecessor counsel agreed.
2. Due to an oversight on the part of the Court, the order was not docketed and sent to the parties until August 2, 2022.
3. Defendant has not made any use and occupancy payments since the June 10, 2022 hearing.
4. The case is scheduled for a jury trial in December 2022.

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: “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 Plaintiff’s counsel.” Defendant concedes that she made no payments. Even if the Court accepts Defendant’s contention that the Court should not hold her in contempt for failing to make payments in June and July, which were due prior to receiving the Court order,¹ she disobeyed the Court order by not making a payment in August.

After the July 10, 2022 hearing, Defendant retained new counsel. Her new lawyers seek to revisit the amount of the use and occupancy payments because it is unaffordable. The payment amount, however, was an agreed-upon amount between Defendant’s prior counsel and Plaintiff’s counsel. As stated in the August 2, 2022 order, “... the parties agree that, if the Court orders interim payments, the monthly payment will be \$1,260.00, which roughly equates to the monthly carrying costs for the Premises, plus all water and sewer charges.” Defendant has not posited any changed circumstances that warrant changing the agreed-upon amount.

The Court rules that the facts warrant a finding of contempt. The purpose of civil contempt is to induce compliance and “secur[e] for the aggrieved party the

¹ The Court put on the record at the June 10, 2022 hearing that the use and occupancy payments were to begin on June 15, 2022, so it is a stretch to conclude that Defendant should be excused from paying anything until she received the written order.

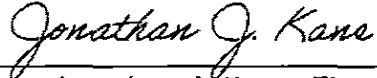
benefit of the court's order." See *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). Therefore, during the September 8, 2022 hearing, the Court suggested that even if it found Defendant in contempt, it would allow her the opportunity to purge the contempt by making the August 2022 payment and the monthly payments going forward. Defendant's counsel informed the Court that his client would not be able to make the payments if so ordered, however. To minimize the prejudice to Plaintiff that would occur if it had to wait for a jury trial in December without any interim payments from Defendant, the Court concludes that the appropriate sanction for Defendant's disobedience of the Court order is to strike her demand for a jury trial and schedule a bench trial at the Court's earliest available time slot.

Accordingly, the following order shall enter:

1. The Court finds sufficient evidence to enter a judgment of contempt against Defendant; however, the Court will defer entering judgment until after the trial on the merits. So long as the trial takes place as scheduled without further delay attributable to Defendant, no judgment for contempt shall enter. Otherwise, Plaintiff may ask that the judgment enter.
2. An in-person bench trial shall take place in the Springfield session on **October 14, 2022 at 10:00 a.m.** in front of the undersigned judge.

SO ORDERED.

DATE: 9.13.22



Hon. Jonathan J. Kane, First Justice

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-542

HOLYOKE HOUSING AUTHORITY,

Plaintiff,

v.

LUZ RIVERA,

Defendant.


ORDER

After hearing on September 2, 2022, on the tenant's motion to remove default and the landlord's motion for issuance of the execution, at which the plaintiff appeared through counsel and the defendant appeared *pro se*, and also at which a representative from the Tenancy Preservation Program (TPP) joined, the following order shall enter:

1. The tenant's motion to vacate the default is allowed. As such, the landlord's motion for issuance of the execution is moot.
2. The tenant shall work with TPP and follow its recommendations.

3. The court has concerns about the tenant's capacity to fully comprehend and navigate these proceedings. Accordingly, the court shall appoint a Guardian Ad Litem (G.A.L.) to provide assistance to the tenant. The Clerk's Office shall send out a separate order of appointment with contact information.
4. Once the G.A.L. is appointed, s/he shall communicate with the parties and TPP, investigate the landlord's complaints that form the basis of this eviction action, review the related Civil matter between these same parties (21CV322), and make arrangements for an evaluation by the Court Clinic for the tenant and have a copy of the Court Clinic's report sent to the attention of undersigned judge.
5. The G.A.L. shall file a report with the court by no later than October 31, 2022.
6. This matter shall be scheduled for review, and for any properly scheduled motions, live and in-person on **November 3, 2022, at 9:00 a.m.**

So entered this 13th day of September, 2022.



Robert Fields, Associate Justice

CC: Kara Cunha, Esq., Assistant Clerk Magistrate (Re: Appointment of a G.A.L.)
Court Reporter



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 23, 2022, on further review, at which both parties appeared along with the G.A.L., a representative from the Tenancy Preservation Program (TPP), and a representative from CHD (D.J. Demmon), the following order shall enter:

Access for repairs

1. The TPP representative has given a list of needed repairs to the landlord and the landlord will address forthwith. For any time that the landlord is seeking access

to effectuate repairs, it shall make its best efforts to coordinate access with Mr. Demmon from CHD for the timing of repairs and shall provide the tenant with at least 48 hours advance written notice with copies of said notice given to the G.A.L., TPP, and CHD so that someone can be present at that time to assist with access. Mr. Myers shall not interfere with said repairs.

2. CHD reported that it will pay for a deep cleaning of Mr. Myers' apartment.
3. The landlord indicated that unless things improve soon, it anticipates bringing a motion for the resumption of the trial.
4. The G.A.L. shall file a report by October 3, 2022.
5. The G.A.L. and TPP shall ensure that Mr. Demmon receives a copy of this order forthwith.
6. This matter shall be scheduled for further review and for any properly marked motions on **October 6, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the Housing Court.

So entered this 13th day of September, 2022.

Robert Fields, Associate Justice

CC: TPP

G.A.L.

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-249

PIONEER CO-OP OF FRANKLIN COUNTY,

Plaintiff,

v.

PRINCESS RAMIREZ,

Defendant.

ORDER

This matter came before the court on September 2, 2022, at which the landlord appeared through counsel and the tenant appeared without counsel, and the following order shall enter:

1. Because the motion alleging that the tenant is violating the Agreement of the parties filed on May 27, 2022, failed to state any specific allegations the hearing shall be continued to the date below.

2. The landlord shall file an updated motion for entry of judgment with specific allegations, and for each such allegation the motion shall include a description of the alleged violative behavior, the date and time and the identify of any witness to same.
3. Such motion shall be filed and served by no later than September 12, 2022.
4. A hearing shall be scheduled for **September 23, 2022, at 10:00 a.m.** live and in-person at the Greenfield Session of the Housing Court.

So entered this 13th day of September, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-584

SCOTT R. SOUTHWORTH, SR. and LINDA
PAQUETTE,

Plaintiffs,

v.

MICHAEL SOUTHWORTH,

Defendant.

ORDER

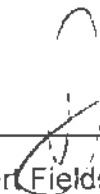
After hearing on September 7, 2022, at which all parties appeared, the following order shall enter:

1. The plaintiffs shall be at the premises on September 8, 2022, at 3:00 p.m. to inspect the interior and exterior of the premises. The defendant shall ensure that the dog is either crated or removed from the premises during said inspection.
2. The plaintiffs shall provide a dumpster at the premises and the defendant shall put any and all debris and/or other items which are located on the outside of the

premises inside the dumpster. Any items remaining on the outside of the premises that the defendant states he has no problem with the plaintiffs discarding them, shall be discarded by the plaintiffs. If there are any items that the plaintiffs wish to discard that the defendant does not agree to, either party may mark up a motion with the court to settle that dispute.

3. The plaintiffs may show the premises to prospective buyers up until 4:30 p.m., Mondays through Fridays, by giving the defendant and his girlfriend notice by text (plaintiffs have both their telephone numbers) at least the previous calendar day prior to needed access. The defendant shall ensure that the dog is either crated or removed from the premises during such showings.
4. If the plaintiffs wish to schedule repairs at the premises, they must provide the defendant no less than 48 hours advance written notice of when they need access. If such repairs require the use of power tools, the plaintiff either provide a power source for said tools or switch the electric service into their names.

So entered this 13th day of September, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

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.

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.

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.

So entered this 13th day of September, 2022.



Robert Fields, Associate Justice

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

Housing Authority could terminate Ms. Thach's subsidy if her daughter or anyone *else* resides in the household.

The Court is unconvinced that Mr. Heathman will stay away from the Premises if Ms. Seng is present. Accordingly, after considering less restrictive alternatives, the Court hereby enters the following order:

1. Matthew Heathman (last known address of 119 Wilbraham Road, Springfield, Massachusetts) shall not be present anywhere on the Colonial Village property. Plaintiff may serve him with a trespass notice. Pursuant to this order, Ms. Thach has no authority to permit Mr. Heathman to visit the Premises and the Amherst police may arrest Mr. Heathman for criminal trespass if he is located anywhere on the Colonial Village property, and specifically in the Premises.
2. Until further Court order, Ms. Thach's daughter, Lilly Seng, shall not be present at the Premises. Plaintiff may serve her with a trespass notice. Pursuant to this order, Ms. Thach may not invite Ms. Seng into the Premises to visit or reside, and the Amherst police may arrest Ms. Seng for criminal trespass if she is located in the Premises. She must visit with her daughter off-site until further Court order.
3. Ms. Seng is not a legal tenant or occupant of the Premises. Therefore, she has no authority to permit Mr. Heathman or any other person to be present in the Premises.

SO ORDERED
DATE: 9/15/2022

cc: Court Reporter

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0620

WESTFIELD HOUSING AUTHORITY,)
)
 PLAINTIFF)
)
 v.)
)
 MICHELLE RAYMOND AND ALL OTHER)
 OCCUPANTS,)
)
 DEFENDANTS)

PRELIMINARY INJUNCTION

This matter came before the Court on September 12, 2022 on Plaintiff’s verified complaint and motion for injunctive relief to recover possession of 9 Kasper Drive, #A, Westfield, Massachusetts (the “Premises”) from any person residing therein. After notice, Defendant Raymond did not appear. Plaintiff’s counsel represents that she had actual notice of the hearing because she informed Plaintiff that she would not be appearing.

Based on verified and uncontroverted allegations in the Complaint that Defendant and others entered the Premises without the permission or knowledge of Plaintiff at a time when the legal tenant was no longer residing there, the Court finds that Plaintiff has a high likelihood of success on the merits at trial and would be at significant risk of irreparable harm if the injunctive relief is not granted. In the absence of any opposition to the motion, the Court concludes that Plaintiff is entitled to the injunctive relief it seeks.

Accordingly, the following order shall enter:

1. All occupants of 9 Kasper Drive, #A, Westfield Massachusetts must vacate the Premises upon 24 hours' advance notice served at the Premises by deputy sheriff or constable.
2. 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 law enforcement officer. 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.
3. After the occupants have been removed from the Premises, Plaintiff may change the locks and retake possession of the Premises.
4. 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: 9/16/22

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. 21-CV-0856

TOWN OF AGAWAM HEALTH DEPT.,)

PLAINTIFF)

v.)

ESTATE OF JANIS GRAY-BERKOWITZ,)

TIANA NIEVES AND CITIZEN BANK,)

DEFENDANTS)

ORDER TERMINATING
ALTERNATIVE HOUSING

This civil matter Came before the Court for a Zoom hearing on September 16, 2022 on motion of the Receiver, Campagnari Construction, LLC, asking the Court to reconsider its order requiring it to provide alternative housing order to Tiana Nieves. By way of background, on May 12, 2022, after the subject property had been condemned, the Court denied Ms. Nieves' motion for alternative housing, largely because the Court had no evidence indicating that Ms. Nieves was a bona fide tenant. On July 1, 2022, the Court imposed an order for temporary alternative housing after receiving evidence that Ms. Nieves had a lease with Mark Berkowitz, the son of the homeowner at the time, granting her the right to occupy the premises.

The Receiver seeks reconsideration of the Court's order based on its contention that the lease provided by Ms. Nieves is fraudulent or, at least, never signed by or agreed to by Mark Berkowitz or his mother. After taking testimony and evidence of Ms. Nieves and Mr. Berkowitz, the Court finds that Ms. Nieves is and was not, in fact, a bona fide tenant and that the lease presented is either a forgery or signed by someone other than Mr. Berkowitz. The Court further finds that Mr. Berkowitz never intended to give tenancy rights to Ms. Nieves and that Ms. Nieves never made any payments for rent or utilities. In light of the foregoing, the Court

concludes that Ms. Nieves had a gratuitous license to occupy the premises and that the license has been revoked. Accordingly, the following order shall enter:

1. The Receiver's obligation to provide alternative housing to Ms. Nieves shall end after the night of September 21, 2022.
2. Because the Court has determined that Ms. Nieves is not and never was a bona fide tenant, she shall have no right to reoccupy the premises upon the condemnation order being lifted.

SO ORDERED.

DATE: 9-20-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-577

TOWN OF GRANVILLE,

Plaintiff,

v.

LINDA DAVIS, RUSSELL NEUHAUSER,
ARTHUR W. TATRO, SHELLY A. HAWLEY,
AND STEVEN TYSZ

Defendants,

ORDER

After hearing on August 16, 2022, at which all parties appeared represented by counsel, except Steven Tysz who appeared self-represented,¹ on Plaintiff's motion to strike the Answer and counterclaims of Defendants Linda Davis, Russell Neuhauser, Shelly A. Hawley, and Arthur W. Tatro, the following order shall enter:

1. Linda Davis, Russell Neuhauser, Arther Tatro, and Shelly Hawley ("Defendants") reside at 232 Sodom Street in Granville, Massachusetts (the "Premises") in separate units. The Defendants-occupants of the Premises are not the former owners. Plaintiff ("Town") obtained title to the Property by virtue of a tax taking foreclosure on or about August 19,

¹ Steven Tysz has not filed an Answer in this matter and was not subject of the motion before the Court on August 16, 2022.

2021. On or about September 24, 2021, the Town served notices to quit on Defendants and thereafter filed a summary process complaint with an entry date March 7, 2022. On May 17, 2022, the court consolidated several related cases stemming from the same tax taking foreclosure.

2. This consolidated summary process action was before the Court on August 16, 2022, for Defendants' motion for leave to file late answer, counterclaims, and discovery requests. Plaintiff filed an opposition to the Defendants' motions, as well as an alternative motion to strike defenses and counterclaims for lack of standing. At hearing, the Court allowed the Defendants' motion to file late answer and counterclaims, took the motion to allow late discovery requests under advisement pending decision and order on Plaintiff's motion to dismiss. The Court then heard the parties on Plaintiff's motion to dismiss defenses and counterclaims. The Court finds and rules as follows.
3. **Standard of Review:** The Supreme Judicial Court ("SJC") has considered the standard of review for motions to dismiss for lack of standing and stated:

A defendant may properly challenge a plaintiff's standing to raise a claim by bringing a motion to dismiss under Mass. R. Civ. P. 12(b)(1) or (6), 365 Mass. 754 (1974). In reviewing a dismissal under rule 12(b)(1) or (6), we accept the factual allegations in the plaintiffs' complaint, as well as any favorable inferences reasonably drawn from them, as true (citations omitted).

4. *Ginther v. Comm'r of Ins.*, 427 Mass. 319, 322 (1998). See *Nader v. Citron*, 372 Mass. 96, 98, 360 N.E.2d 870 (1977); *Doe v. The Governor*, 381 Mass. 702, 705 (1980).
5. It has been held that a motion to dismiss for failure to state a claim should only be allowed where it is certain that the plaintiff is not entitled to relief under any combination of facts that could be drawn or reasonably inferred from the allegations set forth in the complaint. *Eigerman v. Putnam Investments, Inc.*, 450 Mass. 281, 286 (2007). Accordingly, what is required for a complaint to survive motion to dismiss for failure to state a claim at the pleading stage are "factual allegations plausibly suggesting (not

merely consistent with) an entitlement to relief, in order to reflect[] the threshold requirement of [Mass. R. Civ. P.] 8 (a) (1) that the plain statement possess enough heft to sho[w] that the pleader is entitled to relief (quotations omitted)." *Innacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

6. **Discussion:** The SJC recently decided a dispute regarding tax taking and took the opportunity to outline and explain the complex statutory scheme and collection process. See *Tallage Lincoln, LLC. v. Williams*, 485 Mass. 449 (2020) ("Tallage"). The SJC held that the purpose of the chapter 60 statutory scheme is twofold: "first, to ensure that the municipality receives the taxes it is owed, and second, to protect the taxpayer's right of redemption."² *Tallage*, 485 Mass. at 456. Despite an extremely in depth look at the tax taking process in the appendix of *Tallage*, section 6 (b) (v) of the appendix, titled "Eviction," states simply, "[o]nce the Land Court has entered the foreclosure judgment, the municipality or private party owns the property outright. G. L. c. 60, § 69. If the property is occupied, the new owner may then initiate a summary process eviction under G. L. c. 239, § 1." *Tallage*, 485 Mass. at 469.
7. It is well settled law that "[i]f the taxpayer does not respond to the petition or fails to redeem the property according to the terms fixed by the Land Court, and the court enters judgment to foreclose the right of redemption, the municipality or private party takes absolute title to the property." *Tallage*, 485 Mass. at 468. See G. L. c. 60, § 69. See also *Gaunt v. Arzoomanian*, 313 Mass. 38, 39–40 (1943); *Town of Sandwich v. Quirk*, 409 Mass. 380, 383–84 (1991); *Buk Lhu v. Dignoti*, 431 Mass. 292, 296 (2000).

The absolute title conveyed under § 64, however, extinguishes only the interests of any party claiming rights through the record owner, such as mortgagees, lienors, [or]

² The decision and holding in this case is expressly limited to the facts presented. Specifically, had a for-profit corporation taken ownership of the rental property following tax title foreclosure, such an entity seeking possession may not factually satisfy the statutory intent as against former tenants-at-will.

attaching creditors. The purpose of absolute title under § 64 is to clear the new title of all encumbrances placed on the property by the prior record owner.

8. *Buk Lhu*, 431 Mass. at 296 (2000). However, “[e]asements and other servitudes burdening the land are not extinguished.” *Quirk*, 409 Mass. at 384 (1991); see G.L. c. 60, § 45.
9. The question, then, may be restated: whether a residential tenancy-at-will is an interest more akin to a mortgage or lien claiming rights through the record owner and extinguished by the foreclosure of the right of redemption; or is it like some other easement, covenant, or agreement running with said premises and the tax taking is subject to, and retains the benefits of, the at-will tenancy.
10. While this Court has found no Massachusetts cases on point, instructively, when considering claims for tax abatements based upon below market rate leaseholds on the property, the SJC has held that, “an assessment may not be laid upon leases as an interest in the land which is to be assessed, nor upon the owner of such interest in his position as lessee.” *Donovan v. City of Haverhill*, 247 Mass. 69, 72 (1923). As reason therefore, the Court noted that “[a] purchaser at a tax sale under G. L. c. 60, §§ 43, 45, acquires a new and paramount title, a title in fee simple,” and “[s]ection 45 contains the provision that the premises conveyed shall ‘also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto when so taken.’” *Id.* at 71-72. Moreover, the assessment “is upon the land itself and not upon the estate or interest of the person assessed.” *Id.*, citing *Parker v. Baxter*, 2 Gray 185 (1854).

The conclusion that the obligation to pay rent is not to be considered in valuing the mill sites of the taxpayers is in accordance with the principles governing taxation of real estate generally. Real estate is assessed to the owner or person in possession thereof. The tax, however, is assessed upon the whole real estate on its value as a unit and not upon the interest therein of the person assessed. In general the tax to whomsoever assessed is a lien upon the whole estate, and a purchaser at a tax sale obtains a ‘new and unrestricted’ title to the whole estate ‘independent of all

incumbrances and paramount to all existing interests.’ The lien is commensurate with the tax. These principles are applicable, for example, to leased real estate, mortgaged real estate—if a statement of the mortgagee’s interest has not been filed, land and buildings thereon owned by different persons and real estate in which the present owner has only a life interest. A fortiori these principles apply where the owner of real estate has not paid the agreed consideration for the purchase thereof but remains under an obligation to make further payments on account of such consideration (citations omitted).

11. *Crocker-McElwain Co. v. Bd. of Assessors of City of Holyoke*, 296 Mass. 338, 344–45 (1937) (obligation to pay rent was not considered for tax assessment on mill sites). In more modern language, the SJC affirmed a decision, “[r]elying on [Donovan], the board ruled that it must value the property as though it were unencumbered by a lease because the length of the term and the annual rent were ‘highly unfavorable to the lessor.’” *Pepsi-Cola Bottling Co. v. Bd. of Assessors of Bos.*, 397 Mass. 447, 450 (1986). *But see Carye v. Bd. of Assessors of Chelmsford*, 394 Mass. 1001 (1985) (“[a]s long as actual rents adequately reflect earning capacity, the board’s use of actual rents is an acceptable method of valuation”).
12. The Court interprets these holdings to mean that because a municipality, following a tax taking, “acquires a new and paramount title” then tax assessments upon the land do not necessarily consider the actual value generated by existing leaseholds because such leases would be extinguished upon a taking. In other words, the lien is commensurate with the tax, and *vice versa*.³
13. Furthermore, the defenses afforded to bona fide tenants G.L. c. 186A, and the conditions related defenses and counterclaims of G.L. c. 239, § 8A do not seem to apply to the position of the parties in this matter. Chapter 186A, § 2 provides,

³ The ruling that existing leaseholds are extinguished upon foreclosure of the right of redemption following a tax taking is consistent with case law from other jurisdictions. *See In re Application of Olmstead*, 269 Ill. App. 3d 821, 822 (1995) (“Although a lease is not an existing lien like a mortgage or a mechanics lien, it is an encumbrance”); *Rist v. Toole Cnty.*, 117 Mont. 426, 442 (1945) (“Like mortgages and other interests dependent upon the fee, leases and royalty interests must be accepted subject to that legal limitation and to the circumstance that it may become necessary to see that the taxes upon the fee are paid in order to preserve rights dependent thereon”).

"[n]otwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosing owner." While much of chapter 186A is expansive and inclusive, including the definition of "foreclosing owner" to be "an entity that holds title in any capacity, . . . without limitation, . . . to a housing accommodation at any point prior to the foreclosure of the housing accommodation," the definition of "foreclosure" is rather narrow and limited to "a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, and regulated under chapter 244." In this summary process action following tax taking, the municipality is not a former mortgagee and the foreclosure of the right to redemption was pursuant to chapter 60, rather than chapter 244.

14. Therefore, the Defendants asserted defenses and counterclaims pursuant to G.L. c. 186, §§ 12-13, G.L. c. 239, §8A, G.L. c. 186, § 14, and G.L. c. 186A, §§2-4, are hereby dismissed without prejudice.

15. However, in *Tallage*, the SJC also noted how, after taking tax title, the municipality can "take immediate possession" of the property and "[i]f the property generates rent or other income, the municipality can keep the money." *Tallage*, 485 Mass. at 463. See G. L. c. 60, § 53. Furthermore, "[t]he municipality is not liable to the delinquent taxpayer for any damage that occurs during its possession of the property. And the municipality even assumes some duties for the care and maintenance of the property." *Id.* See G. L. c. 60, §§ 53, 77. See also *Milford v. Boyd*, 434 Mass. 754, 759-760 (2001); *Kurtigian v. Worcester*, 348 Mass. 284, 287-289 (1965).

16. In *Kurtigian*, the city of Worcester was held liable for nuisance and damages caused by a falling tree branch that occurred during its right to possession of the property following a tax title taking and foreclosure of the right to redemption. In that case, the SJC

ultimately held, “[p]ublic policy in a civilized community requires that there be someone to be held responsible for a private nuisance on each piece of real estate, and, particularly in an urban area, that there be no oases of nonliability where a private nuisance may be maintained with impunity.” *Kurtigian*, 348 Mass. at 291 (1965). In *Boyd*, the town of Milford was found liable for condominium association dues accruing during its right to possession of several condo units following tax takings and before foreclosure and the SJC affirmed. The SJC noted that, in both cases, “the town could not permit the units and their corresponding share in the common areas to fall into a state of disrepair or dilapidation.” *Boyd*, 434 Mass. at 759 (2001). Notably, the SJC added that “any amount paid [for the maintenance of the property] by the municipality can be recouped either from an owner who redeems the property or from the proceeds of a sale of the property.” *Id.* at 760.

17. Therefore, although the Defendants may not assert tenant-based claims and defenses against a municipality following tax title foreclosure, there may yet be remedies at common law for recovery related to defective conditions at the Premises while the Plaintiff is in rightful possession.⁴ Those claims, to the extent that they exist, have not been filed herein and nothing in this order bars the Defendants from asserting them in a separate action.

18. **Conclusion and Order:** Based on the foregoing, the court hereby **ALLOWS** the Plaintiff’s motion to dismiss Defendants’ counterclaims.

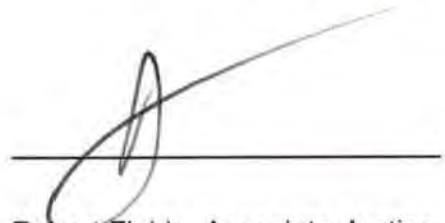
19. Additionally, given that the discovery generated by Defendants for which they seek leave to propound late are based on claims and defenses that are being dismissed as a result of this order, Defendants’ motion for late filing of discovery is **DENIED** without prejudice.

⁴ Any potential common law claims that Defendants may choose to assert in a separate action would be subject to the Massachusetts Tort Claims Act, G.L. c. 258, including all the rights and obligations thereunder.

If Defendants wish to file a new motion for late filing of discovery, with a new discovery demand attached, they may do so if filed by October 14, 2022.

20. This matter shall be scheduled for a Case Management Conference, and for any properly marked motions, with Judge Fields on October 20, 2022, at 9:00 a.m. live and in-person at the Springfield Session of the Housing Court.

So entered this 20th day of September, 2022.



Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP1341

AMHERST HOUSING AUTHORITY,)
)
 PLAINTIFF)
)
 v.)
)
 JOSE LUGO,)
)
 DEFENDANT)

ORDER FOR ENTRY OF
JUDGMENT

This summary process case came before the Court on September 19, 2022 for an in-person hearing on Plaintiff’s motion for entry of judgment for possession. Plaintiff appeared through counsel. Mr. Lugo did not appear, but his Limited Assistance Representation counsel did appear.¹

Mr. Lugo resides at 33 Kellogg Avenue, #72, Amherst, Massachusetts (the “Premises”), which is part of a rent-subsidized housing project for elderly. He has resided there since 2009. Plaintiff terminated his tenancy by a notice in March 2022 alleging material lease violations, including without limitation violations of the guest and no-smoking policy. In lieu of trial, on or about July 7, 2022 the parties entered into a court agreement (the “Agreement”) pursuant to which Mr. Lugo, among other things, agreed not to smoke on the property and not to allow “Anna” to visit him at

¹ Counsel indicated that Defendant thought the hearing was at 2:00 p.m. The Court denied counsel’s oral motion for a continuance. Plaintiff was present with witnesses and the Court is satisfied that proper notice was provided for the 12:00 p.m. start time.

the Premises. By the express terms of the Agreement, his failure to do so would result in entry of judgment if the allegations were proven.

Based on the credible testimony of Plaintiff's witnesses presented at the hearing and the inferences drawn therefrom, the Court finds that Defendant engaged in conduct that constitutes a material violation of the Agreement. Specifically, the Court finds that he allowed "Anna" to visit the Premises on August 9, 2022 and that one or both of the occupants of the Premises at that time were smoking. Accordingly, Plaintiff is entitled to entry of judgment. The following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue in accordance with Uniform Summary Process Rule 13.
3. Use of the execution shall be stayed (temporarily paused) until October 7, 2022. In the meantime, Defendant may serve and file a motion requesting an extension of the stay based on demonstrated steps he has taken to stop smoking, such as enrolling in a smoking cessation program or obtaining treatment from a health care professional.
4. From the date of receipt of this order to the date of any motion to extend the stay, Defendant must comply with the terms of the Agreement.

SO ORDERED.

DATE: September 21, 2022


Hon. Jonathan J. Kane, First Justice

cc: Attorney Cunningham-Minnick, CLA (courtesy copy as LAR counsel)
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1476**

<p>GMC PROPERTY MANAGEMENT, LLC,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>CHRISTIAN SANCHEZ,</p> <p style="text-align:center">Defendant.</p>

ORDER

This matter came before the court on September 19, 2022, for trial. The eviction is for non-payment of rent and the tenant is challenging the landlord's claims as well as seeking to assert a claim for an illegal lock out from the premises. After hearing, the following order shall enter:

1. The tenant explained credibly that he was not aware that he must file an Answer before asserting counterclaims against the landlord. The tenant shall

be granted additional time to do so and has until September 26, 2022, to file and serve an Answer.

2. The landlord's counsel objected to this extension asserting that it contrary to all Summary Process rules. Counsel is referred to the court's Standing Order 1-04:

VI. Scheduling Orders: The Housing Court recognizes that a significant number of litigants appear in court *pro se* and are unfamiliar with the Uniform Rules of Summary Process. Housing Court judges shall apply the rules in a fair, reasonable and practical manner consistent with the legitimate interest of all parties. *Housing Court judges may allow late-filed motions, answer, and other pleadings in the exercise of their sound discretion. Housing Court judge may reschedule hearing in the exercise of their sound discretion.* (Emphasis added)

3. The tenant may wish to seek assistance from Community Legal Aid at 855-252-5342.
4. This matter shall be scheduled for trial on **October 6, 2022, at 11:00 a.m.** with Judge Fields live and in-person at the Springfield Session of the Housing Court.

So entered this 31st 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. 19-SP-3575

SPRINGFIELD GARDENS, LP,)
)
 PLAINTIFF)
)
 v.)
)
 ASHEEAM TAYLOR,)
)
 DEFENDANT)

ORDER

This summary process case came before the Court on September 15, 2022 on Defendant's motion for review. Plaintiff appeared through counsel. Defendant appeared self-represented.

Plaintiff has scheduled a physical eviction for September 19, 2022. The Court will therefore consider Defendant's motion as one to stop the levy. Plaintiff claims an outstanding balance of \$16,165.00, plus \$300.00 if the eviction is cancelled. The Court is satisfied that the RAFT program is prepared to pay \$10,000.00 and Catholic Charities \$4,155.00 toward the balance, leaving a remaining balance of \$1,710.00 including the cancellation fee. Because this is a non-payment of rent case involving the receipt of rental assistance, if Defendant is able to pay the entire balance, his tenancy would be reinstated pursuant to Stat. 2020, c. 257, as amended. In light of the foregoing, the following order shall enter:

1. If Defendant pays \$1,710.00 by 1:00 p.m. on September 16, 2022, the eviction scheduled for September 19, 2022 shall be cancelled.

2. Defendant shall pay \$820.00 for October use and occupancy no later than October 5, 2022.
3. Given the amount of the outstanding balance and the fact that Defendant's last payment of rent was on January 11, 2022, the amounts to be paid and deadlines for payment shall be strictly enforced.
4. Defendant shall diligently work to obtain the funds from RAFT and Catholic Charities, and Plaintiff shall cooperate by providing the information required of it.
5. The parties shall return for an in-person status review on October 6, 2022 at 9:00 a.m.

SO ORDERED.

DATE: September 21, 2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-1909

JESUS CHAIREZ,

Plaintiff,

v.

STANLEY KEAL VAIL,

Defendant.

ORDER

After hearing on September 14, 2022, on the plaintiff's motion for issuance of the execution for possession, at which only the plaintiff moving party appeared, the following order shall enter:

1. Judgment for possession and for money damages entered in this court on October 8, 2021. The plaintiff now seeks by motion filed some ten months later.
2. In accordance with G.L. c.235, s. 23, the court is not able to issue an execution for possession as the judgment entered more than three months ago.

3. Accordingly, the motion is denied as to possession. The landlord was instructed that if he is seeking possession of the premises he will need to file a new summary process action.

So entered this 5th day of September, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0498

COLD SPRING TENANT ASSOCIATION,)
)
 PLAINTIFF)
)
 v.)
)
 AMY LABEL, ET AL.,)
)
 DEFENDANTS)

PRELIMINARY AND PERMANENT
INJUNCTION

This case came before the Court on September 19, 2022 for an in-person hearing on Plaintiff's application for injunctive relief. Plaintiff appeared through counsel. Defendants did not appear. Plaintiff seeks an order permitting it to demolish the manufactured home formerly occupied by Defendant Amy Label located at #31 Sports Haven Mobile Home Park, 370 Mill Valley Road, Belchertown, Massachusetts (the "Home").

Based on the facts alleged in the verified complaint, and taking into account counsel's representation that she spoke to Defendants last week and they had received notice of the hearing and did not intend to appear, and further that they did not oppose Plaintiff's request so long as they would not have to pay for the demolition, the Court finds that Plaintiff is entitled to injunctive relief. The Home has been condemned for more than three years, is structurally unsafe and open to the elements, and has been abandoned by the owner. It is causing an immediate risk of

significant harm to the health and safety of residents of Sports Haven Mobile Park and creating an attractive nuisance.

Accordingly, the following order shall enter as a preliminary and permanent injunction:

1. Plaintiff may demolish the Home and remove all debris from the site.
2. The demolition shall not take place before September 30, 2022 in the event that Defendant decide to oppose Plaintiff's motion.

SO ORDERED.

DATE: 4/22/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-4747

MEREDITH MANAGEMENT CORPORATION,
Managing Agent for Riverboat Village
Association Limited,

Plaintiff,

v.

EVELYN JEFFERS,

Defendant.

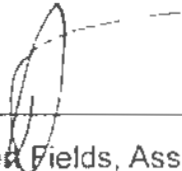
ORDER

After hearings on September 19 and 20, 2022, the tenant's motion to cancel the physical eviction currently scheduled is allowed as outlined in this order:

1. Upon payment today, September 20, 2022, of \$3,673.56 by the tenant to the landlord the physical eviction currently scheduled for September 27, 2022, shall be cancelled by the landlord.
2. This sum represents all outstanding sums including rent, use, occupancy, court costs, and sheriff's costs, through September 30, 2022.

3. Contingent upon the tenant paying her use and occupancy in full and on time in October 2022, the tenant may remain in possession of the premises until November 1, 2022.
4. If the tenant fails to make such payments, the landlord is free to schedule the physical eviction in accordance with G.L. c.239, s.3. Otherwise, such physical eviction shall not be scheduled until after November 1, 2022.

So entered this 2nd day of September, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

address issues with Defendant's tenancy since at least February 2022, the Court concluded that the risk of substantial harm to Plaintiff if another continuance was granted would outweigh the harm to Defendant, especially when considering Plaintiff's likelihood of success on the merits.

At the outset of trial, Defendant said that he "didn't want to fight" about the allegations against him and would accept assistance in trying to relocate. Because he did not file an answer, and given his decision not to contest Plaintiff's case, the Court finds that Plaintiff has established sufficient facts as alleged in the notice to quit and the application for injunctive relief for judgment to enter in its favor for possession. Entry of judgment, however, will be deferred pursuant to the following order:

1. Defendant agrees to begin a diligent search for replacement housing right away. Toward that end, he shall accept the services of TPP and, if offered, assistance from any agency that works in the field of mental health such as the Department of Mental Health. Defendant shall continue to cooperate with the GAL, who shall help Defendant connect with resources and complete a housing search log showing his efforts to find replacement housing.
2. During the pendency of his housing search, Defendant will have no contact with any of the witnesses who appeared in Court today or who have made complaints about him at the apartment complex. He will not flush any foreign objects down the toilet and will take precautions against clogging the toilet with excessive tissue and paper. Further, Defendant will not engage in any conduct which jeopardizes or is likely to jeopardize the health, safety or welfare of other residents and employees of the apartment complex.¹

¹ The issue of whether Defendant owes any use and occupancy was not addressed at the hearing today. If Plaintiff wishes to be heard on this issue, it may raise at the next court date.

3. Judgment shall only enter upon order of this Court, either (a) after an evidentiary hearing scheduled with notice to Defendant and the GAL based on allegations of a material breach of the terms of this order or (b) if he fails to vacate after a vacate date imposed by this Court or agreed upon in a court agreement.
4. The parties shall return for review of Defendant's compliance with the terms of this order in-person in the Hadley session on **October 31, 2022 at 11:00 a.m.**

SO ORDERED.

DATE: _____

9/22/2022

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

fronts. The complaint has at least two fatal defects: first, it includes a demand for July rent despite the fact that it was entered in the Court on June 27, 2022; second, it demands payment of a security deposit/last month's rent deposit, which is not rent and thus cannot be the basis for a non-payment of rent case.

The notice to quit likewise does not survive legal scrutiny. The rent amount listed on the notice is \$3,200.00, a figure that Plaintiff unilaterally decided she would charge the occupants. She did not comply with G.L. c. 186, § 12 by first terminating the existing tenancy and offering a new tenancy at a higher rental rate. Moreover, pursuant to the same statute, a tenant has the right to cure in a non-payment of rent case by tendering the rent due within ten days of receipt of the notice. See G.L. c. 186, § 12. According to the notice served by Plaintiff, it would appear that Defendants would have needed to pay either \$3,200.00 or \$6,400.00 in order to cure the default, when in fact the most that could have been due is \$1,200.00. Even had Plaintiff terminated the tenancy for non-payment of \$1,200.00, the notice may have not properly terminated the tenancy if, as it would appear, the June rent payment was due the prior owner on June 1, 2022, not on June 8, 2022 when Plaintiff became the homeowner.¹

Plaintiff does not dispute the basic facts relating to the date she closed on the property or the amount of rent paid to the prior owner. Accordingly, for the reasons

¹ The transfer of ownership of the house does not automatically terminate Defendants' tenancy. If they customarily paid rent on the 1st of the month, it would have been due on June 1 to the prior owner, not on whatever day Plaintiff recorded the deed. If Plaintiff had an agreement with the prior owner to collect June's rent on his or her behalf, then she would have needed an assignment of rights and notified the tenants of the assignment. Otherwise, her recourse for failing to collect the June rent is against the prior owner, not the tenants.

stated herein, Defendants' motion for summary judgment is allowed.² This Clerk's Office shall transfer this case to the civil docket with the parties reversed and schedule an in-person case management conference with respect to Defendants' counterclaims.

SO ORDERED.

DATE: 9/22/22

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

cc: Clerk's Office (to transfer counterclaims to the civil docket)
Court Reporter

² The Court could have treated Defendants' motion as one to dismiss, but because the Court's conclusions rest in significant part on facts outside of the complaint, the Court elected to treat it as a motion for summary judgment. The result would be the same had the motion been treated as a motion to dismiss.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-628

CRYSTAL VARGAS,

Plaintiff,

v.

**LUIS MIGUEL ROSADO and BRENDA
CASTRO,**

Defendants.

ORDER

After hearing on September 15, 2022, on further hearing of the plaintiff tenant's emergency motion for alternate housing, at which all the parties appeared without counsel the following order shall enter:

1. The defendants shall continue to provide a daily food stipend of \$75 until the tenant is able to be placed by the Commonwealth into an emergency shelter apartment.¹

¹ Defendant Castro is responsible, jointly and severely, with her co-defendant as the person in control of the premises under the State Sanitary Code.

2. The plaintiff shall notify the defendants immediately upon her placement into a new apartment so that they will know when the food stipend order should cease.
3. This matter shall be scheduled for further review and hearing on **September 22, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the Housing Court.

So entered this 22nd day of September, 2022.



Robert Fields, Associate Justice

CC: Gordon Shaw, Esq., Community Legal Aid
Court Reporter

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2131

JGAR, LLC,

Plaintiff,

v.

TRACY MERCADO,

Defendant.

ORDER

After hearing on September 22, 2022, on the tenant's motion for late filing of Answer and Discovery, the following order shall enter:

1. The motion is allowed and the Answer and Discovery Demand has been served and filed.
2. The landlord shall have until October 13, 2022, to serve its responses to said discovery and to file and serve its own discovery demand.

3. If the landlord propounds discovery, as noted above, the tenant shall have until November 3, 2022, to respond to same.
4. LAR counsel shall continue his representation through the discovery period. Community Legal Aid will make a determination as to whether it will file an appearance for the trial noted below.
5. A trial shall be scheduled for **November 17, 2022, at 2:00 p.m.** live and in-person at the Springfield Session of the court.

So entered this 23rd day of September, 2022.

Robert Fields, Associate Justice

CC: David DeBartolo, Esq., Community Legal Aid (LAR Counsel)
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Franklin, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1441**

MJEMMS ORANGE 1, LLC,

Plaintiffs,

v.

LARRY BUNKER,

Defendant.

ORDER OF DISMISSAL

After hearing on September 21, 2022, Larry Bunker's ("Defendant") motion to dismiss, where both parties appeared represented by counsel, the following order shall enter:

1. Mjemms Orange 1, LLC ("Plaintiff") entered this summary process action on May 16, 2022, seeking to recover possession of 50 East Main Street, Apt. 8, Orange, Massachusetts, from Defendant for hold over after notice to quit served on or about January 22, 2022. In addition to possession, the summons and complaint seeks use and occupancy of \$640 for April 2022.

2. The notice to quit states in part that "This Notice hereby directs you to vacate the above described premises at the end of the next rental period beginning after your receipt of this Notice, or thirty (30) days." Further down, the notices states in part, "You need to vacate the premises by February 28, 2022." Defendant argues that the notice does not satisfy G.L. c. 186, § 12, because the stated termination date does not provide for a full rental period and is not a rent day. At oral argument, Plaintiff argues that the notice to quit provides until the end of the next rental period---thus October 1, 2022, a rent day.

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

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

Sanford v. Harvey, 65 Mass. 93, 96 (1853). However, this Court finds that Plaintiff did not unequivocally state the general term of the notice, as described in *Stanford*. Rather, it provided various dates, none of which are a rent day. First, it states that the termination will be in effect “at the end of the next rental period beginning after receipt of this Notice.” This language, alone, might suffice to be a proper notice as it ends at the expiration of March 2022 and, thus, effective on April 1, 2022. (As analyzed in greater detail below). But the notice also states “or thirty (30) days.” If the date of service “leaving a copy at the premises” on February 22, 2022, is accurate, the termination would be in effect on March 24, 2022. Such is not a date upon which rent is due and is insufficient to terminate the tenancy. Lastly, the notice has a third date upon which the tenancy was to be terminated when it states, “You need to vacate the premises by: 2/28/22.” Here, it provides an exact date which was not a rent day and does not provide explicitly that the tenancy would terminate at the expiration of that date. See *U-Dryvit Auto Rental Co. v. Shaw*, 319 Mass. 684, 685–86 (1946) (“A notice given on September 26, 1945, calling for the termination of the tenancy at the end of October, fixed November 1, 1945, a rent day, as the date for termination and, . . . was sufficient to terminate the tenancy”).

4. Accordingly, the time of termination of a tenancy as stated in a notice to quit must fall on “the day upon which rent is payable (or the expiration of that month immediately preceding the rent day).” *Dudley v. Grushkin*, Boston Housing Court No. 02-SP-03695 (September 10, 2002, Kyriakakis, C.J.). This is well settled law in the Massachusetts Housing Court. See *Marak v. Richardson*, Boston Housing Court, (September 17, 1998, Daher, C.J.); *Graham v. Staszewski*, Boston Housing Court NO 01-SP-00643

(March 26, 2001, Daher, C.J.); *Nieves v. Aldrich*, Southeastern Division No. 08-SP-02108 (July 8, 2008, Chaplin, F.J.); *Njoku v. McCra*, Southeast Housing Court No 19-SP-2903TA; *Dowell v. Boseman*, Boston Housing Court No. 00-SP-03971 (September 9, 2009, Daher, C.J.); *Mayflower Village Associates v. Smith*, Southeastern Housing Court No. 09SP03797 (December 16, 2009, Chaplin, F.J.); (October 9, 2019, Michaud, J.); *Simmons v. Fisher*, Southeastern Housing Court No. 19SP4284TA (January 14, 2020, Salvidio, F.J.).

5. In *Marak*, the Housing Court judge found that the notice to quit in question was invalid. "Though it gave thirty (30) days, if the rent day was on the first, then termination on the 31st was premature." *Marak v. Richardson*, Boston Housing Court, (September 17, 1998, Daher, C.J.). In *Mayflower Village Associates*, a notice served on August 27, terminating a tenancy effective September 30, was invalid because it failed to terminate the tenancy on a rent day. *Mayflower Village Associates v. Smith*, Southeastern Housing Court No. 09SP03797 (December 16, 2009, Chaplin, F.J.). Under similar circumstances, where rent was due on the first of the month, a notice to quit terminating the tenancy on the last of the month was found invalid because May 31 was "not a rent day." *Nieves v. Aldrich*, Southeastern Division No. 08-SP-02108 (July 8, 2008, Chaplin, F.J.).

6. Contrast instances where the notice to quit allows for the expiration of the next month of the tenancy beginning after the receipt of notice. In *Graham*, a notice to quit was found valid, if superfluous, that terminated the tenancy at the "expiration of that month of your tenancy which shall begin next after your receipt of this Notice which expiration it states as January 31,2001." *Graham v. Staszewski*, Boston Housing Court

NO 01-SP-00643 (March 26, 2001, Daher, C.J.). The Housing Court stated “[t]he tenancy has been terminated at the expiration of January 2001; as the *Kehoe* court held, such a notice ‘to take effect, implicitly, at the end of [the month]’ is effective notice under s. 12.” *Id.*, quoting *Kehoe v. Schneider*, 6 Mass. App. Ct. 909, 909 (1978) (“The record indicates that the rent day was the first day of the month and that the notice of termination was received on August 1, 1975, to take effect, implicitly, at the end of August”).

7. Likewise, a notice which terminated a tenancy “at the expiration of October 31, 2019,” was valid and enforceable because “[t]he word ‘expiration’ means upon the end or cessation of October 31, which necessarily is November 1, the rent day.” *Simmons v. Fisher*, Southeastern Housing Court No. 19SP4284TA (January 14, 2020, Salvidio, F.J.). However, in that case, the Housing Court judge noted “[h]ad the [notice] stated that the tenancy terminated on or before October 31, 2019, that would have created a factual inconsistency as to the termination date.” *Id.*

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

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

Torrey v. Adams, 254 Mass. 22, 25–26 (1925).

Here, as described above, the Plaintiff's notice was equivocated by the various and differing dates upon which the tenancy was to be terminated: Either March 24, 2022, or February 28, 2022 (but not at the expiration of that date), or at the end February 2022.

9. **Conclusion and Order:** Based on the foregoing, the tenant's motion to dismiss is allowed and the landlord's claim for possession is dismissed

10. Given that the tenant's motion for late filing of his Answer and Discovery Demand was allowed, the September 23, 2022, trial date was taken off the list for that date. Counsel for the tenant has notified the court that in the event the tenant's motion to dismiss was allowed, he would dismiss his counterclaims without prejudice. Accordingly, the matter is dismissed.

So entered this 26 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-90

716 SPRING VALLEY, LLC,

Plaintiff,

v.

PATRICIA ANN BURKE,

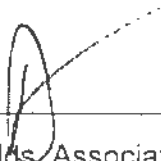
Defendant.

ORDER

The court is in receipt of a contempt complaint and a motion for access. Given the failure of the agreement reached by the parties on March 11, 2022, the defendant's tenancy status is not clearly a settled matter. Accordingly, the court will refrain for the time being on signing off on the contempt complaint for issuance of a contempt summons and ask the clerk's office to schedule a hearing on the plaintiff's motion for access and a status hearing on the overall case.

In addition to the court mailing out a copy of this order with a notice of hearing, the plaintiff shall also have same served to the defendant either in-hand or by putting in an envelope slipped under the defendant's door or taped to the front of the door.

So entered this 08th day of September, 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. 22-SP-854

GRANBY VENTURES, LLC,

Plaintiff,

v.

JOSS K. DORE,

Defendant.


ORDER

This matter came before the court on September 21, 2022, for trial, at which both parties appeared through counsel. After hearing, the following order shall enter:

1. The parties stipulated to the landlord's prima facia case for possession based on a termination notice for *no fault*.
2. The tenant seeking time to vacate the premises in accordance with G.L. c.239, s.9.

3. For the reasons stated on the record including the age and infirmity of the tenant when viewed in contrast to the landlord's interest in renovating the subject premises to seek a higher rent, the tenant shall have until July 1, 2023, to vacate the premises---contingent upon compliance with the terms of this order.
4. As long as the tenant is occupying the premises, he shall pay his present rent through February 2023 and thereafter starting March 2023, shall pay \$1,710 per month until he vacates¹.
5. Whenever possible during his continued to occupancy the tenant should search for alternate housing and keep a log of same, but the court shall not impose a requirement for any particular level of diligence or the keeping of a log due to the tenant's anticipated surgeries and anticipated recovery time.
6. If the tenant fails to make the use and occupancy payments in full and timely as described above, the landlord may file a motion for entry of judgment.
Additionally, if the tenant does not vacate the premises by July 1, 2023, the landlord may file a motion for entry of judgment.

So entered this 22nd day of September, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

¹ This amount (\$1,710) was presented by the landlord as the market rental value for the subject unit after it is renovated.

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1767

MESSIAS JORDAO, d/b/a ROYTAY, LLC,

Plaintiff,

v.

FRANK BURROWS, JOSIE MILLER, and NICK
MATHES,

Defendants.

ORDER

After hearing on September 14, 2022, on the defendant Nick Mathes' motion to dismiss at which the plaintiff appeared through counsel and the defendant Nick Mathes appeared *pro se* and at which Tammy Ives also appeared, the following order shall enter:

1. The tenant's motion to dismiss is based on the assertion that the landlord has failed to name Tammy Ives as a defendant as Mathes and Ives allege that she is a co-tenant at the premises.

2. After consideration of the evidence, which was solely testimonial in nature, the court finds that the moving party has failed to meet his burden of persuasion that Tammy Ives has created a tenancy with the landlord.
3. Mr. Mathes and Tammy Ives both testified as to all the reasons why the court should consider that the landlord knew or should have known that Ms. Ives was a tenant at the premises. Even with all such testimony there is no basis to find that the landlord acquiesced or somehow knew or should have known that she had become a tenant, even if she in fact has been occupying the premises with her boyfriend Nick Mathes. There are no utilities in her name, no lease or any correspondence between her and the landlord, and no allegation that Mathes or Ives spoke with the landlord about a tenancy being formed with Ms. Ives.
4. Accordingly, the motion to dismiss is denied.

So entered this 3rd day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2622

NORTHAMPTON HOUSING AUTHORITY,)

PLAINTIFF)

v.)

JACKIE TRUCKEY,)

DEFENDANT)
_____)

ORDER FOR STAY

This case came before the Court by Zoom on September 23, 2022 on Defendant Truckey's motion to stop a physical eviction scheduled for September 28, 2022 and to stay use of the execution. Plaintiff appeared with counsel; Ms. Truckey appeared with Limited Assistance Representation counsel. Ms. Parent from Highland Valley Elder Services ("HVES") and Ms. Whitfield from Tenancy Preservation Program ("TPP") also participated.

Ms. Truckey resides at 49 Old South Street, #403, Northampton, Massachusetts (the "Premises"). She is 70 years old and physically disabled. Plaintiff terminated Ms. Truckey's tenancy by letter dated July 30, 2021 due to allegations involving the unsanitary conditions in the Premises, among other things. On April 4, 2022, Ms. Truckey entered into a Court agreement that allowed her to remain in the Premises so long as she engaged with TPP and housekeeping services and did not disengage with such services. Following a motion filed by Plaintiff, judgment entered on July 26, 2022 based on non-compliance with the agreement.

Ms. Truckey now asks to stop the physical eviction and stay use of the execution to allow her one final opportunity to demonstrate her willingness and ability to comply with conditions set forth by the Court. Ms. Truckey assured the Court that she will not refuse services, will not refuse inspections, and will comply fully with the conditions recited herein. Accordingly, the following order shall enter:

1. The eviction scheduled for September 28, 2022 shall be canceled and use of the execution shall be stayed until further order of this Court.
2. Ms. Truckey shall maintain safe and sanitary conditions in the Premises.
3. Ms. Truckey shall cooperate with TPP, HVES and any service providers now engaged or recommended by either agency with respect to her housekeeping. She will not refuse services under any circumstances. Once services are put into place, she may not voluntarily terminate services.
4. Ms. Truckey must allow Plaintiff access for bi-weekly inspections of the Premises on Mondays at 10:00 a.m. with the first inspection on Monday, September 26, 2022. No additional notices beyond this order will be required for these inspections. If Plaintiff cannot conduct an inspection on any predetermined Monday, the inspection shall be skipped in order to maintain the bi-weekly schedule. During any inspection, the parties may take photos or videos to document the condition of the Premises.
5. Ms. Truckey must complete her annual recertification forthwith and in no event later than October 1, 2022.
6. If Plaintiff has incurred non-refundable fees associated with canceling the eviction, it may bring the issue before the Court at a subsequent hearing

date.

7. Plaintiff shall be issued a new execution upon request (and return of the original execution then outstanding) if needed for so long as this case remains open.

8. Plaintiff may bring this case back by motion in the event of material non-compliance with the terms of this order.

9. The parties will return for review on compliance with this order by Zoom on **October 14, 2022 at Noon.**

SO ORDERED.

DATE: 10/3/2022

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

On September 12, 2022, one week before trial and six weeks after the deadline imposed by the Court, Plaintiff filed a motion to amend her answer. The proposed amendment included only conclusory statements that she was misled by Plaintiff, that her loan was predatory and that her mortgage was illegitimate. The Court has considered her motion and it is hereby denied. First, it is untimely. Second, it raises no new defenses not already set forth in the answer she filed on May 23, 2022. Third, she articulates no basis for amending her answer other than that her unnamed “advisors” suggested she do so.

Defendant informed the Court that she had no evidence to offer at trial to support her defenses. She explained the absence of evidence by blaming Plaintiff for not providing all of the documents she asked for in discovery. The Court finds her excuse to be without merit. Plaintiff’s counsel provided her with a package of documents relating to the foreclosure well in advance of trial and Defendant could not cite to any particular missing document or type of document, nor did she file a motion to compel. At this late date, on the day of trial, the Court will not consider any request by Defendant for more time to get documents from Plaintiff.²

Based on Defendant’s failure to present any evidence at trial, the Court finds that she has no legal defense to Plaintiff’s prima facie case for possession which was established on the first day of trial. At that time, Plaintiff provided the Court with, among other exhibits, a certified copy of the foreclosure deed, as well as *Eaton* and *Pinti* affidavits attesting that it complied with the requirements of the power of sale

² The Court has provided Defendant with every opportunity to develop a defense in this case. The complaint was filed in January 2022 and the Court suspended the trial after it had started for more than four months to allow her to engage in discovery. Any further delays would be unduly prejudicial to Plaintiff.

in all respects and that it was the holder of the promissory note up through the time of the foreclosure sale. See *Federal National Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 637 (2012). The Court finds that these documents, together with the notice to quit served upon and received by Defendant, and the summary process summons and complaint, which was timely served and filed, entitle Plaintiff to entry of judgment for possession of the subject premises. See *Adjarthey v. Central Div. of Housing Court*, 481 Mass. 830, 834-835 (2019).

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

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

SO ORDERED.

DATE: 10.4.22



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

The Court also amends the amount of damages awarded to Defendant. After trial, the Court found that Defendant was entitled to statutory damages of \$3,585.00 for Plaintiff's improper charges for electricity instead of actual damages of \$2,559.04. As argued by Defendant in its motion, the evidence shows that Defendant's acts of charging Defendant for electricity and threatening to shut it off if she did not pay were unfair and deceptive acts in violation of G.L. c. 93A. Plaintiff's conduct was willful and knowing as defined under G.L. c. 93A, and thus the Court doubles the actual damages to \$5,118.08. This sum is greater than statutory damages and thus is the proper measure of damages for this violation.

Moreover, the Court failed to treble the security deposit interest pursuant to 940 C.M.R. 3.17(4)(c), so instead of \$188.35, the damages awarded Plaintiff should have been trebled for a damages award of \$565.05.

In light of the amended damages award, the Court finds that Defendant is entitled to damages in the amount of \$14,028.13.² Because this amount exceeds the \$3,115.00 that the Court finds is due to Plaintiff in rent through October, 2022, judgment shall enter in favor of Defendant for possession and money damages equal to the difference between these figures.

Separately, the Court considers Defendant's post-trial petition for an award of statutory attorneys' fees and costs. In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case

² This figure is calculated as follows: \$5,118.08 (electricity) + \$3,585.00 (animals) + \$3,585.00 (security deposit) + \$565.05 (security deposit interest) + \$25.00 (late fees) + \$1,150 (retaliation).

is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorneys' fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389. The standard of reasonableness depends not on what the attorney usually charges but, rather, on what the attorney's services were objectively worth. *See Heller*, 376 Mass. at 629.

In this matter, Defendant had to prepare for four (partial) days of trial. He worked on the case from February 10, 2022 through April 6, 2022, when trial concluded. Defendant prevailed on her counterclaims, with the exception of the counterclaim alleging religious discrimination. Although counsel's time spent litigating an unsuccessful claim should be excluded from the calculation of an attorneys' fees award, Defendant's counsel accounted for this factor in his affidavit, noting that he reduced the total hours billed by 20% to account for the unsuccessful claim. The Court finds that the 42.5 hours counsel spent working on this matter is not unreasonable under all of the circumstances.

With respect to the hourly rate, the standard of reasonableness depends on the fair market value of his services. A judge may discern, from his own experience as a

judge and expertise as a lawyer, the rate for which an attorney should be paid. *Heller*, 376 Mass. at 629. Plaintiffs' counsel petitions for an hourly rate of \$250.00 per hour. Based on counsel's background and experience, and based on this judge's experience litigating matters in this Court, the Court deems this rate to be reasonable when taking into consideration the market value for legal services in Housing Court matters in Western Massachusetts.

Accordingly, the following order shall enter:

1. Final judgment shall enter in favor of Defendant for judgment and damages in the amount of \$10,913.13.
2. Defendant's petition for statutory attorneys' fees in the amount of \$10,625.00 is allowed. The award of attorneys' fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

SO ORDERED.

DATE: yfm of October, 2022

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0660

DESEREE STINSON,)
)
 PLAINTIFF)
)
 v.)
)
 WINN RESIDENTIAL PROPERTIES)
 MUSEUM PARK APARTMENTS,)
)
 DEFENDANT)

ORDER

This matter came before the Court for a Zoom hearing on September 22, 2022 on Plaintiff's motion for injunctive relief. Plaintiff appeared self-represented. Defendant appeared through counsel.

Plaintiff testified that she has not been living in her unit at 70 Chestnut Street, Apt. 611, Springfield, Massachusetts (the "Premises") since her ceiling partially fell in on her. She claims she suffered personal injuries and believes Defendant has not addressed the underlying cause of the ceiling damage or the mold that she believes is present in the unit. Defendant reports that Springfield's code enforcement department conducted an inspection and did not condemn the Premises or order that Plaintiff vacate the unit pending repairs. Defendant further claims that the repair work in the Premises is progressing.

Defendant offered to move Plaintiff to a different unit, but Plaintiff declined the offer because she does not believe other units are safe and because she is unhappy with the manner in which management communicates with her. The Court informed Plaintiff that it would not order Defendant to place her in a hotel if they

could instead house her in a different unit. After a brief recess during which she conferred with a representative of the Tenancy Preservation Program, Plaintiff changed her mind and agreed to accept a transfer to another apartment. Defendant reports that other units are currently vacant and that they will be able to complete the transfer process once the unit has passed its Section 8 inspection. Plaintiff is encouraged to ask her Section 8 voucher administrator to schedule an inspection as soon as possible.

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

1. Defendant shall offer a new unit to Plaintiff and conduct air quality testing prior to Plaintiff taking possession. Defendant shall share the results of the testing with Plaintiff.
2. In order to move into the new unit, Plaintiff must get the approval of her Section 8 voucher administrator and must complete all necessary paperwork relating to the property's tax credit status.
3. Nothing in this order precludes Plaintiff from bringing claims against Defendant if she believes she was injured due to Defendant's negligence.

SO ORDERED.

DATE: _____

10.4.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

On May 5, 2022, Defendant, using a pre-printed motion form and without counsel, indicated he was seeking a “notice of appeal to remove judgment from me.” On May 31, 2022, Defendant’s counsel filed a notice of appeal. On June 10, 2022, Defendant’s counsel filed a motion to stay execution, along with a motion to withdraw as counsel. A Zoom hearing on the motions was held on September 2, 2022.

At the outset of the hearing, the Court allowed the motion to withdraw as counsel at the urging of Defendant and without objection by Plaintiff. Regarding Plaintiff’s motion to issue a new execution and Defendant’s motion for stay of execution, the Court allows Plaintiff’s motion and denies Defendant’s motion.

Because the parties agreed for judgment to enter on October 13, 2021, the appeal period began to run at that time. The notices of appeal filed in May 2022 are of no legal effect as they were entered well past any deadline for filing an appeal. Defendant’s argument that the appeal period runs from the date the judgment is actually entered on the record is unpersuasive. There can be no doubt that express intention and agreement of the parties as expressed in the October 13, 2021 agreement was for to enter on that day.¹

Regarding Defendant’s claim that he is entitled to a further stay due to his compliance with the terms of the Court’s April 22, 2022 order, he failed to persuade the Court that he complied with the conditions for a further stay. Plaintiff demonstrated that Defendant poses a risk to the safety of other tenants of the apartment building and that Defendant is only residing in his unit sporadically. The

¹ The Court likely confused matters in its April 22, 2022 order in which it ruled that judgment should enter nunc pro tunc to October 13, 2021. Judgment was effectively entered on that day without the need for the “nunc pro tunc” language.

Court determines that the balance of equities favors Plaintiff and that use of the execution shall not be further stayed.

Accordingly, the following order shall enter:

1. Defendant's notice of appeal is untimely and of no legal effect.
2. Defendant's motion to stay use of the execution is denied.
3. Plaintiff's motion to issue a new execution for possession is allowed.
4. Defendant shall not be entitled to any further stays in this Court.

SO ORDERED.

DATE: 10-5-22

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. 20-SP-1781

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

ORDER TO WAIVE APPEAL BOND

This summary process case came before the Court on October 3, 2022 on Defendants' motion to waive the appeal bond. Both parties were represented by counsel. After hearing, the Court finds the following:

1. The Court finds that Defendants are indigent within the meaning of G. L. c. 261, § 27A.
2. The Court finds that Defendants have a non-frivolous defense. See G.L. c. 239, § 5(e). See also *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'").

3. The Court hereby waives the requirement that Defendants post an appeal bond.
4. Because Defendants are indigent, the Court will further waive the costs of ordering transcripts of the relevant proceedings in this matter.
5. The Court orders that Defendants, who have a Section 8 rental subsidy voucher, timely pay their share of the rent for the duration of the appeal process, as that figure may change from time to time based on annual or interim recertifications done with the subsidy administrator. Their share of rent is currently \$527.00.
6. 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”).

SO ORDERED.

DATE: 10/5/2022


Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0517

FOH, LLC,

PLAINTIFF

v.

LAWRENCE STEFANIK,

DEFENDANT

ORDER

This case came before the Court by Zoom on September 29, 2022 on Plaintiff's motion for an order that Defendant vacate the building located at 769 Worthington Street, Springfield, Massachusetts (the "property").¹ Plaintiff appeared through counsel. Mr. Stefanik appeared self-represented. Ms. Morales from Tenancy Preservation Program ("TPP") also participated.

The Court finds that Mr. Stefanik missed the last court date because he was hospitalized. The Court finds that Mr. Stefanik is not complying with previous order requiring him not to spend time in the common areas of the property to avoid the spread of bed bugs from his wheelchair. Plaintiff displayed images of Mr. Stefanik sleeping in his wheelchair in a common room. TPP reported that it has only recently been able to procure funds to be able to engage a service provide to help prepare Mr. Stefanik's unit (Apt. 204) for treatment. After hearing, the following order shall

¹ The property consists of 60 residential units and 80 shelter beds, along with common spaces.

enter:

1. Mr. Stefanik shall cooperate fully with TPP and Lady Bugs (or any other service provider engaged to assist in the bed bug treatment process) to ensure that his unit is properly prepared for the bed bug treatment. He shall allow the service provider to dispose of any belongings from which bed bugs cannot be eliminated (in the opinion of the service provider or the exterminator).
2. As soon as his unit is prepared for treatment, Mr. Stefanik must temporarily vacate the property and may not return until the bed bug treatment is complete. He may not return until it has been confirmed that he has no bed bugs on his person, his clothing or his wheelchair.
3. Until such time as the service provider helps prepare his unit for treatment, Mr. Stefanik must stay in his unit except as necessary to come and go from the building or the community cafeteria. If the Court is presented with evidence showing that Mr. Stefanik is sleeping in any common area or is otherwise remaining in common areas (beyond simply passing through to his unit), he will be ordered to temporarily vacate the property immediately and he will not be able to return until the bed bug treatments are complete.

SO ORDERED.

DATE: 10/5/22

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

belongings to storage in accordance with G.L. c. 239, § 4. Prior to the move, Plaintiff shall escort Mr. Pederzini to the unit so that he can take pictures or videos of the belongings in the Premises. Mr. Pederzini may place items of personal value to him or Defendant's family into marked boxes for the movers to take to the warehouse. Plaintiff shall extend the same courtesy to Defendant's sister or other family members if requested, so long as the request is made before the belongings have been moved.

3. Once Defendant's belongings have been moved to the bonded warehouse, Plaintiff shall have legal possession of the Premises.
4. The legislative fee for issuing injunctive relief shall be waived.

SO ORDERED.

DATE: 10/5/22



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

(and one person tried to force his way into the neighbor's apartment) leads the Court to conclude that Plaintiff has a high likelihood of success on the merits at trial and would be at significant risk of irreparable harm if the relief requested is not granted. In the absence of any opposition to the application for injunctive relief, the Court rules that Plaintiff is entitled to a preliminary injunction. The following order shall enter:

1. Mr. Batista and all other occupants of 49 School Street, Unit 6, Springfield, Massachusetts must vacate the Premises upon 48 hours' advance notice served at the Premises by deputy sheriff or constable.
2. 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 law enforcement.
3. After the occupants have been removed from the Premises, Plaintiff may change the locks to secure the Premises. Any belongings remaining in the Premises at the time the occupants are removed shall remain in the Premises until a voluntary surrender of the Premises or the levy on execution in a summary process case.
4. For good cause shown, the \$90.00 legislative fee for injunctive relief shall be waived.

SO ORDERED.

DATE: 10-8-22



Hon. Jonathan J. Kane, First Justice

SO ORDERED.

DATE: 10-6-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2566

_____)	
PUFFTON VILLAGE 3, LP,)	
)	
PLAINTIFF)	
)	
v.)	FINDINGS OF FACT, RULINGS OF
)	LAW AND ENTRY OF JUDGMENT
MARGARET STARKWEATHER,)	
)	
DEFENDANT)	
_____)	

This matter came before the Court for an in-person bench trial on June 13, 2022 and on July 11, 2022. Plaintiff appeared through counsel. Defendant appeared self-represented.

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

Puffton Village 3 is an apartment complex of 378 units located in Amherst, Massachusetts. Defendant has lived at Puffton Village intermittently since childhood. Most recently, she rented apartment 533 (the "Premises") as of January 16, 2020. She took over the balance of a lease term of a departing tenant, and the initial lease term expired on August 31, 2020. Plaintiff renewed the lease for one-year periods beginning on September 1, 2020 and September 1, 2021.

The Premises are not Defendant's sole place of residence. She owns a six bedroom single-family home with an in-law apartment in Amherst. She keeps a room at the house and typically rents out some or all of the other bedrooms to tenants. In

the summer of 2020, when Defendant had difficulty finding tenants due to COVID-19, she began renting rooms in her house to short-term renters through Airbnb. Because her adult son's disabilities make it difficult to have him living at the house with renters (in Defendant's words, he was "incompatible" with paying guests), she sought to find him an apartment. Initially, she tried to apply for tenancy at Puffton Village jointly with her son, but she was informed that each adult occupant would have to apply separately. She elected to complete an application listing herself as the only occupant, although she concedes that the primary purpose of the rental was to have a place for her son to reside. Her son did not submit a completed application of his own.

On August 15, 2021, a small fire occurred in the Premises when a wooden cutting board was left on the gas range over a lit burner. No one was home at the time of the fire. When Plaintiff's management was able to reach Defendant, she said she was not staying in the unit at that time but that she had allowed a friend to stay there. Upon investigation further, Plaintiff discovered, and the Court finds based on the evidence, that Defendant was renting out the Premises on Airbnb. Plaintiff terminated Defendant's lease for unauthorized subletting by letter dated August 26, 2021. Defendant acknowledges receipt of the notice.

At trial, Defendant did not deny renting the Premises on Airbnb, but testified that she only did so only a few times in 2021 due to financial exigencies. Although she contends that she did not know she could not have short-term renters in the Premises, her lease at the time permitted her to sublet only with the prior written assent of

Plaintiff, which she neither sought nor received prior to renting the Premises.¹ Defendant's assertion that the absence of a prohibition against short-term rentals in her lease constitutes an acquiescence to the conduct is rejected. She advertised and accepted money to rent her apartment, which constitutes subletting.

In her defense, Defendant claims that she informed Plaintiff during the application process that her seasonal affective disorder required her to travel out of the area each year during which time she would occasionally need to sublet the Premises. She provided no evidence to support her contention that Plaintiff was aware of her intention to sublet the Premises, however, and the Court does not find this statement to be credible. The Court finds that Defendant did not have permission to sublet the Premises.²

The Court finds that Defendant's act of renting the Premises on Airbnb, however occasional, constitutes a material lease violation for unauthorized subletting. Her guests seriously jeopardized the safety and welfare of others living at the apartment complex, and she must be held responsible for their behavior.

During the trial, Defendant informed the Court that she had filed a claim with the Massachusetts Commission Against Discrimination ("MCAD") related to the facts of this case. The Court indicated that she could not pursue discrimination claims in both forums if the claims arose from the same set of facts, and gave her the option of

¹ The lease provision in question recites "Only with prior written assent of the Lessor, which assent may be granted or withheld at Lessor's sole and absolute discretion, may the Lessee(s) assign, sublet, transfer or add additional occupants to the premises during this Lease. All assignees or sublessees must provide all forms, information and meet all standards and requirements of an acceptable Lessee applicant prior to acceptance or occupancy."

² Defendant's claim that her lease did not prevent her from subletting but instead only required her to provide information about the occupants after the fact fails given that, even if true, she did not provide management with such information (at least not prior to the lease termination).

reserving her discrimination claims to her MCAD case, in which case she would not be able to present them as a possible defense to eviction in this case, or presenting her evidence of discrimination claims as a counterclaim in the instant case and withdrawing the MCAD case. She elected to testify about her discrimination claims in this court case.

Defendant claims that Plaintiff discriminated against her when she wanted to add her son to her lease.³ When Plaintiff's employee told that her son would need proof of identity and to undergo a CORI check, Defendant informed the employee that her son had problems with his CORI related to his disability. Defendant claims that the employee implied by her tone that her son would not be approved for tenancy.

Defendant's son did not complete an application for tenancy, either at the time Defendant applied in 2019 or in 2021 when she was interested in adding him to her lease.⁴ Her bare allegations that her son is being discriminated against based on race and disability are completely without foundation (and, in any event, her son is not a party to this action). Her contention that she has been discriminated against because of her association with her son and her own disabilities is also meritless. Defendant never submitted an application for her son, so he was never rejected for tenancy. Her testimony (unsupported by any corroborating evidence) that the manager's tone implied that he would not be accepted for tenancy is inadequate to prove a discriminatory intent.

³ It was not clear if Defendant was referencing her initial application for tenancy in late 2019 or when she talked with management in 2021 when she wanted to add her son to the lease, or both. The Court allowed her to present all evidence of discrimination at trial, regardless of year.

⁴ Defendant's initial application in 2019 included her son's name but only her information and it was never signed nor formally submitted for review. Her son never submitted an application for tenancy.

Moreover, Defendant herself was accepted as a tenant and her lease was renewed twice. Plaintiff only terminated her tenancy when it discovered that she was renting the Premises on Airbnb. The Court finds that Plaintiff's rationale for terminating the tenancy was not pretextual and does not demonstrate discriminatory intent or action. Although the Court has compassion for the challenges Defendant faces in seeking housing for her adult disabled child, her need to find a safe place for her son to live is not germane to this case.⁵ Moreover, because Defendant owns a house and maintains a room there, she will not become homeless if evicted.

Accordingly, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Judgment shall enter for Plaintiff on Defendant's counterclaims.
3. Execution shall issue pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 10/7/2022

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

cc: Court Reporter

⁵ Defendant did not establish any other defense or counterclaim alleged in her answer.

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-657

ZBYLUT REALTY, LLC,

Plaintiff,

v.

CHERYL COOPER,

Defendant.

ORDER

After hearing on October 7, 2022, on the landlord's motions for access and for a cease-and-desist order and opposition thereto, and on the tenant's motions for impoundment of certain documents, the following order shall enter:

1. The landlord's motion for access is allowed consistent with the terms of this order.
2. Landlord's counsel shall provide tenant's counsel with no less than 10 days' advance notice in writing of its wish to access the premises. Said notice shall


state the specific time and date of the desired even and a list of individuals that will be present on behalf of the landlord. Said list may include in addition to Attorney Olanoff, a representative from the landlord and a disinterested camera person, but not Mr. Zbylut or Mr. Johnson.

3. In addition, the Town's inspectors shall be present and anyone of the tenant's choosing may be present.
4. If the tenant is unable to either agree with the proposed date or if she has a medically necessary reason to cancel the inspection, her counsel shall include with such information two immediate alternate dates and/or times for the landlord's consideration.
5. Any photographs and/or videos shall focus on structural and hazardous conditions and great efforts shall be made to avoid focusing on personal items of the tenant.
6. The inspection may include all parts of the house from the basement to the attic.
7. The landlord's motion to extend the Town's Stop Work Order to apply to the tenant is denied based on the record before the court, without prejudice.
8. For good cause shown, and without opposition, the tenant's motions to impound documents provided with her opposition to the landlord's Emergency Motion to Have Tenant Vacate the Unit (which include her affidavit and items listed as Exhibits 1-4) and those documents attached to the tenant's opposition to the landlord's motion to Compel Access for Inspection and to Order Defendant to Comply with Stop Work Order (which include her affidavit and the item listed as Exhibit 1)--which contain highly personal information related to the tenant's

health---are allowed and said items shall be impounded in accordance with the Uniform Rules on Impoundment Procedure.

9. Said impoundment shall be accomplished by the Office of the Clerk Magistrate and shall be fore 20 years from the date of this order noted below.
10. Access to same may only be by leave of court.

So entered this 7th day of October, 2022.



Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate (Re: Impoundment)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV0683

CITY OF CHICOPEE HEALTH DEPARTMENT,)
)
 PLAINTIFF)
)
 v.)
)
 THOMAS RALPH DAVIS,)
)
 DEFENDANT)

ORDER

Following a hearing on October 11, 2022 for which counsel for Plaintiff appeared and Defendant did not appear, the following order shall enter:

1. Subject to the conditions set forth in this Order, Plaintiff may clean the vacant lot owned by Defendant located at 0 Sunflower Avenue, Chicopee, Massachusetts (the "Property") of overgrowth (as defined in Chicopee Ordinance C. 243-38) and shall have the authority to record the costs incurred as a municipal lien against the Property.
2. Plaintiff shall make reasonable efforts to locate Defendant and provide actual notice of its intent to clean the Property and record a lien against the Property.¹ Plaintiff may not take steps to clean the Property of overgrowth for a minimum of two weeks from the hearing date to allow it time to attempt to locate and provide actual notice of Defendant.

¹ Plaintiff provided notice to the address listed for Defendant in the tax assessors' database, but the mail was returned.

3. If Plaintiff believes the Property must be cleaned again in the future, it may mark up a motion for a further order with notice to Defendant².

SO ORDERED.

10-11-22

Jonathan J. Kane
Jonathan Kane, First Justice

² At the hearing, the Court indicated that it was willing to allow future "clean and lien" efforts without returning to Court, but upon further reflection, given Defendant's absence at this hearing, the Court requires a motion in order to address any issues regarding notice.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-663

ANGELA MARRERO,

Plaintiff,

v.

LUIS TORRES,

Defendant.

ORDER

After hearing on September 29, 2022, on the plaintiff's motion for injunctive relief, at which the plaintiff appeared with counsel and the defendant appeared *pro se*, the following order shall enter:

1. The landlord agrees that if he wishes to evict the plaintiff, he will use proper legal process and agrees to make no statements nor actions towards the plaintiff that may be perceived as a threat of eviction without judicial process¹.
2. The requirement for an order that the defendant provide hotel accommodations to the plaintiff is averted by the defendant allowing the plaintiff to utilize the entire single-family house and the defendant shall ensure that utilities remain on in the entire house. By allowing the plaintiff to have access to the entire dwelling, she will have two means of ingress and egress.
3. The defendant shall install smoke detectors throughout the dwelling today at 3:00 p.m. and the plaintiff will allow access for same.
4. The parties shall refer this matter to the city's Code Enforcement Department for an inspection.

So entered this 11th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

¹ The defendant is not waiving his right to be heard on the legitimacy of the plaintiff's tenancy—as he asserted here that he does not consider her a lawful tenant (her boyfriend) claiming that his tenant moved her in without his permission.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2428

MASON WRIGHT SENIOR LIVING, INC.)	
)	
PLAINTIFF)	
)	
V.)	ORDER
)	
JAMES SULLIVAN,)	
)	
DEFENDANT)	

This matter came before the Court on October 6, 2022 for an in-person hearing on Plaintiff’s emergency motion for a preliminary injunction. Plaintiff appeared through counsel. Defendant failed to appear.

Plaintiff owns and operates an affordable senior living community in Springfield known as the Mason Wright Retirement Community (the “Community”). Defendant resides in the Community at 74 Walnut Street, Apartment #220 (the “Premises”). Plaintiff alleges that Defendant smokes in the Premises in violation of the lease, and that because he uses oxygen, his smoking in the presence of oxygen creates a condition that endangers or materially impairs the health, safety and well-being of the residents and staff of the Community. This summary process case has not yet been scheduled for trial and thus Plaintiff seeks injunctive relief in the interim.

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

Here, given Plaintiff's likelihood of success on the merits based on the affidavit of Eileen Drumm Moore, which establishes that Defendant's smoking around oxygen jeopardizes the health, safety and welfare of other residents and staff of the Community, and given that the Community has a designated smoking area that Defendant can use should he choose to smoke without his oxygen nearby, the Court finds that the risk of irreparable harm to Plaintiff if the injunctive relief is denied outweighs the risk of irreparable harm to Defendant if the relief is granted.

In light of the foregoing, the Court enters the following order, which shall remain in effect until further order of the Court:

1. Defendant shall not smoke in the Premises (Apartment 220).

2. More broadly, Defendant must refrain from smoking anywhere on the property except or the designated area, which is an outdoor porch at the end of the 2d floor hallway.
3. The legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: 10/12/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22CV675

TAVAR MCKENZIE,

Plaintiff,

v.

HECTOR HERNANDEZ et al,

Defendants.

ORDER

After hearing on October 3, 2022, at which time all parties appeared, the following order shall enter:

1. For the reasons stated on the record, the plaintiff's request for a temporary restraining order is hereby allowed.
2. The court finds that Mr. Hector Hernandez (defendant) did not establish a tenancy and, therefore, will be required vacate the subject premises.

3. Mr. Hernandez is granted until January 3, 2023 (three months) to vacate the subject premises, conditioned upon full compliance with this court order and the terms of the previous court order dated October 3, 2022.
4. The member of each household shall not cause any disturbances with one another.
5. The parties shall communicate through text, writing, or through counsel, if necessary, except in a *bona fide* emergency.

So entered this 13th day of October 2022



Robert Fields, Associate Justice
Am.

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-717

LUIS RODRIGUEZ,

Plaintiff,

v.

OMAR TUITT,

Defendant.


ORDER

After hearing on October 12, 2022, on the plaintiff's request for a temporary restraining order for which both parties appeared, the following order shall enter:

1. For the reasons stated on the record, the court finds that the plaintiff did not establish a tenancy with the defendant.
2. The plaintiff shall return the keys to the defendant and fully vacate the subject premises on or before November 14, 2022.
3. The plaintiff shall maintain the electricity in his name until he vacates the subject premises and inform the defendant when he is taking the electric service out of his name.

4. The defendant shall not go to the subject premises, other than in a *bona fide* emergency.
5. This matter is scheduled for review on **November 18, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the court..

So entered this 13th day of October 2022.



Robert Fields, Associate Justice *mm*

Cc: Court Reporter

2

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-705

DIANEMARIE TORO,

Plaintiff,

v.

PYNHCON TOWN HOMES & EDGEWATER
TOWERS,

Defendant.

ORDER

After hearing on October 13, 2022, on the plaintiff tenant's motion for injunctive relief regarding State Sanitary Code violations, at which the tenant appeared *pro se* and the defendant landlord appeared through counsel with no witnesses, the following order shall enter:

1. The landlord shall immediately hire a licensed mold inspector to inspect the tenant's unit. The landlord shall comply with recommendations issued by the mold inspector.

2. Before the landlord may put new sheetrock on the ceilings or walls, the mold inspector must first inspect and make a report. This will avoid closing up areas that may have mold.
3. The landlord shall have a licensed exterminator treat the premises, with advance notice provided to the tenant in-hand.
4. The landlord shall address the conditions of disrepair cited by the City of Springfield Code Enforcement Housing Division, in a manner consistent with the terms of this order.
5. This matter is scheduled for a review hearing on **November 10, 2022, at 2:00 p.m.** at the Springfield Session of the court. This date was picked to allow for the City to reinspect the property and issue a reinspection report.

So entered this 13th day of October, 2022.



Robert Fields, Associate Justice

CC: City of Springfield Law Dept., Attn: Amber Gould, Esq.
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1681

ARMANDO TORRES and FLOR TORRES,

Plaintiff,

v.

MADLINE MARTINEZ,

Defendant.

ORDER of DISMISSAL

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

1. This matter is dismissed due to the use of the landlords of a no-fault eviction notice in a Section 8 tenancy. In such regulated tenancies, a landlord may not terminate a tenancy for no-fault---only for non-payment or cause evictions.
2. Accordingly, this matter is dismissed.

So entered this 13th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 18-CV-0480

BOBBIE WILLIAMS, ET AL.,)
)
 PLAINTIFFS)
)
 v.)
)
 DELUCA DEVELOPMENT CORP.,)
)
 DEFENDANT)

ORDER ON ASSESSMENT OF
DAMAGES AND AWARD OF
ATTORNEYS' FEES

This matter came before the Court for an assessment of damages hearing on August 24, 2022. Plaintiffs appeared through counsel. Defendant did not appear after notice of the hearing was served on the corporation's registered agent.

Based on the testimony of Plaintiff Bobbie Williams ("Ms. Williams"), the exhibits submitted at the hearing and the reasonable inferences drawn therefrom, the Court finds as follows:

1. Plaintiffs resided on the first floor of a duplex at 61 Forest Street, Springfield, Massachusetts for two years (the "Premises").
2. Defendant owned and/or managed the Premises.
3. Ms. Williams paid an \$800.00 deposit for last months' rent for which she did not receive interest over two years of tenancy.
4. Ms. Williams suffered several conditions of disrepair that existed at the outset of the tenancy and continued throughout the tenancy, such as inadequate heat, missing handrails, holes in floors, peeling and flaking paint and rotted door jams.

5. During the tenancy, the Premises suffered serious incidents of water intrusion, causing water damage and potentially mold to form.
6. Air quality testing in the Premises showed unhealthy levels of contaminants.
7. Ms. Williams' son suffered health issues due to the air quality in the Premises.
8. Because of the conditions in the Premises, Plaintiffs had to leave the apartment for extended periods of time. For some of the time, Defendant paid for a hotel for Ms. Williams and her two children. At other times, Defendant refused to provide housing and Ms. Williams had to sleep on the floor of her mother's studio apartment while her two children shared a couch.
9. After Ms. Williams called the Code Enforcement Department, Defendant threatened to change her locks because they claimed that she had abandoned the unit despite the fact that all of her belongings remained in the Premises and she was temporarily not residing there due to the conditions of the unit.
10. Common area lighting was metered to Ms. Williams' unit. There is no evidence that such cross-metering was permissible under 410 CMR 254.

Based on the foregoing findings, the Court rules that:

11. The substandard conditions in the Premises interfered with Plaintiffs' quiet enjoyment of the Premises. See G.L. c. 186, § 14. Given the lack of evidence of actual damages, the Court awards Plaintiffs statutory

damages in the amount of three times the rent, or \$2,400.00, plus reasonable attorneys' fees.

12. Defendant engaged in reprisals against Ms. Williams by threatening to change the locks after Ms. Williams contacted the Code Enforcement Department. See G.L. c. 239, § 2. Statutory damages for reprisal are three times the monthly rent, or \$2,400.00, plus reasonable attorneys' fees.
13. Defendant was obligated to pay interest on Defendant's deposit of last months' rent for each of the two years of her tenancy at a rate of 5% per year. See G.L. c. 186, § 15B(2)(a). Plaintiffs are entitled to three times the unpaid interest, namely \$240.00, plus reasonable attorneys' fees.
14. Because of the cross-metering violation, Plaintiffs are entitled to statutory damages equal to three times the monthly rent, or \$2,400.00, plus reasonable attorneys' fees. See G.L. c. 186, § 14.

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

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

Here, although Defendant did not appear at the assessment of damages hearing and thus the hearing was abbreviated, this case began in May of 2017 and included numerous pleadings and discovery, case management conferences, pretrial conferences and a mediation session. The amount of time devoted to this case over five years, 39.25 hours, is reasonable as is Attorney Ringbloom's hourly rate of \$275.00 in light of his experience practicing law and the market for legal services in this part of Massachusetts. Accordingly, the Court awards attorneys' fees in the amount of \$10,793.75.

Given the Court's findings of facts and rulings of law, the Court orders that judgment enter for Plaintiffs for damages in the amount of \$7,440.00. Attorneys' fees shall be awarded in the amount of \$10,793.75.

SO ORDERED.

DATE: 10/13/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

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

_____)	
M.L. ¹ ,)	
)	
PLAINTIFF)	
v.)	ORDER
)	
SAFE PASSAGE,)	
)	
DEFENDANT)	
_____)	

This case came before the Court in-person on October 13, 2022 for an evidentiary hearing on Defendant’s emergency motion to dissolve an earlier Court order, entered on August 18, 2022, requiring Defendant to continue to provide housing to Plaintiff pending further hearing to address the question of whether a summary process action was needed before Defendant could remove Plaintiff from her residence in emergency shelter housing. Both parties appeared with counsel.

Based on the evidence presented at the hearing, and the inferences drawn therefrom, the Court finds and rules as follows:

Defendant Safe Passage, Inc. is a non-profit organization providing support and resources for survivors of domestic violence. Among its services, Defendant provides temporary confidential emergency shelter program for individuals and families in imminent risk of violence or abuse. Defendant provides these services pursuant to a

¹ Plaintiff is a domestic violence survivor who wishes to remain anonymous.

contract with the Massachusetts Department of Public Health (“DPH”), which procures Emergency Shelter Programs through a public bidding process. In providing its services, Defendants are required to follow guidelines promulgated by DPH.

The emergency shelter in this case is a building with six bedrooms and shared living spaces such as a kitchen and a community room. Participants in the shelter program are not required to pay anything in exchange for residence in shelter housing. They are provided with a furnished bedroom and personal hygiene items. Defendant offers a range of needs resources to program participants free of charge.

In accordance with DPH guidelines for Emergency Shelter Programs, individuals and families entering shelter meet with an advocate to review and acknowledge the program policies promulgated by both DPH and Defendant. Among the policies provided to program participants are those relating to termination of emergency shelter housing. In this case, Plaintiff explicitly acknowledged receiving policies governing “Shelter Guest Rights and Responsibilities” and “Termination of Shelter Services,” among others.

On July 7, 2022, Defendant provided Plaintiff with an immediate termination notice pursuant to DPH guidelines.² Plaintiff contends that Defendant cannot terminate Plaintiff’s housing and take possession of her bedroom without commencing a summary process eviction case. Plaintiff relies on *Serreze, et al. v YWCA of Western Massachusetts, Inc.*, 30 Mass. App. Ct. 639 (1991) for the proposition that Plaintiff is

² The actual reason for Plaintiff’s termination from the shelter program were not presented to the Court and are not relevant to the determination of whether Defendant can terminate Plaintiff’s housing without judicial process. The Court simply notes that, after Defendant terminated Plaintiff’s participation in the shelter program, Defendant filed a grievance and, after administrative review by the DPH, the termination was upheld.

an “occupant” of residential housing and is thus entitled to legal protections afforded tenants.

The Court finds that the facts presented in this matter differ significantly from those presented in *Serreze*. The *Serreze* court expressly noted that the YWCA program was “unique in that it is designed not to provide residential therapy for mental health patients or “emergency” housing for the homeless, but rather comprehensive ‘second stage’ support for selected families seeking transition to a life independent of their former abusers.” Participants in the YWCA program were provided with a subsidized apartment in exchange for which the participants paid rent and were expected either to work or attend school. The Appeals Court described the program in question as a transitional housing program pursuant to which participants “reside in an apartment and pay for the exclusive right of possession and control.” *Serreze*, 30 Mass. App. Ct. at 644.

The facts presented in this case are distinguishable from those in *Serreze*. In the instant case, Defendant provides only temporary emergency shelter to domestic violence survivors in a shared living environment. There is no set period during which the program participants will remain in the shelter.³ Program participants do not pay rent or other fees to stay at the shelter. Defendant provides a furnished bedroom, all utilities and certain personal items. Shelter program participants do not have the exclusive right to occupancy of any particular bedroom. They are assigned a room when entering the shelter, but Defendant retains the right to relocate the participant

³ The fact that some program participants may remain at the shelter for a year or more while seeking permanent housing does not change the fact that the shelter is a *temporary* emergency housing shelter for victims fleeing violence.

to a different room depending on the needs of those entering the shelter. For example, if a victim with children enters the shelter and requires a larger room than is available, Defendant may move the individual occupying that room to a different room in order to make the larger room available for the family. Defendant's staff also has the right to enter participants' rooms under certain circumstances.

Based on the findings herein, the Court concludes that Plaintiff is a licensee who must comply with the shelter program's rules and regulations in order to be eligible for temporary housing. She is a legal occupant of the housing, but once Plaintiff is terminated from the program, her license to occupy the shelter can be summarily revoked without resort to summary process. See *Baseball Publ'g Co. v. Bruton*, 302 Mass. 54, 56 (1938) (it is of the essence of a license that it is revocable at the will of the possessor of the land).

Defendant has shown both a likelihood of success on the merits and a significant risk of irreparable harm if it is required to pursue an summary process eviction case against program participants such as Plaintiff after they are terminated from the shelter program. Requiring Defendant to bring summary process against a person who no longer qualifies for emergency shelter would make a scarce resource even less available to domestic violence survivors.⁴ Despite the "summary" nature of summary process, it can take two or more months to recover possession through the eviction process.⁵ The Court acknowledges the risk of harm to Plaintiff if she is no

⁴ The DPH Request for Response notes that the "DV shelter system ... is so overburdened it can rarely be accessed by individuals and families who need to leave an unsafe situation due to [sexual and domestic violence.]" See Ex. 1, § 1.2

⁵ The Third Amended Housing Court Standing Order 6-20 requires every summary process case to proceed in a two-tier process that add several weeks to the pre-pandemic timeline for summary process cases to reach trial.

longer entitled to housing through the shelter, but the balancing of harms must be viewed in light of a party's likelihood of success on the merits. See *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980) ("What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits.").

Accordingly, Defendant's emergency motion to dissolve the Court's temporary restraining order entered on August 18, 2022 is ALLOWED. Defendant's obligation to provide housing to Plaintiff shall terminate upon 72 hours' notice to Plaintiff.

SO ORDERED.

DATE: 10/17/2022

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. 22-CV-0689

WESTFIELD HOUSING AUTHORITY,)

PLAINTIFF)

v.)

TODD SKROCZKY,)

DEFENDANT)

AGREED-UPON ORDER

This matter came before the Court on October 12, 2022 for an in-person evidentiary hearing pursuant to G.L. c. 139, § 19. Plaintiff through counsel. Defendant appeared self-represented. The matter involves Defendant's possession of the apartment located at 9A Kasper Drive, Unit A, Westfield, Massachusetts (the "Premises"). In lieu of a hearing on the merits, the parties agreed upon the following terms,¹ which shall be entered by the Court as an agreed-upon order:

1. Defendant shall vacate the Premises on or before November 9, 2022 and return the keys to Plaintiff.
2. Prior to vacating the Premises, Defendant shall have no guests except for the limited purpose of helping him move out.
3. Defendant shall not engage in any illegal activities at the Premises, and shall not permit anyone else at the Premises to engage in illegal activities.

¹ At the outset of the hearing, to which Plaintiff brought a police officer and another witness, Defendant stated that he did not wish to go forward with the hearing but instead only wanted some time to vacate voluntarily.

4. If Defendant does not vacate on or before November 9, 2022, upon the filing of an affidavit with the Court, Plaintiff shall be entitled to entry of judgment nunc pro tunc (retroactive) to October 12, 2022 and immediate issuance of an execution (eviction order) for possession.

SO ORDERED.

DATE: 10-17-02

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter