Western Division Housing Court
Unofficial Reporter of Decisions

Volume 25

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

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

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

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

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

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

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

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment and taking the Court's views into consideration. Our current redaction and exclusion criteria are as follows: (1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) Decisions made as handwritten endorsements to a party's filing will generally be excluded. (4) Orders detailing or discussing highly sensitive issues relating to minors, 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. (5) Non-public contact information for parties, attorneys, and third-parties are generally redacted. (6) Criminal action docket numbers are redacted. (7) 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 join the listserv can do so at https://groups.google.com/g/masshousingcourtreports, or by emailing Aaron Dulles (dulles@jd11.law.harvard.edu).

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

SECURITY

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

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

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

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 17-SP-1345

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

JONATHAN CASTELLANO,

Defendant.

ORDER

After hearing on May 16, 2023, the following order shall enter:

1. The main focus of this hearing was the landlord's motion for injunctive relief to secure the tenant's temporary relocation to allow for renovations of his unit.
2. The parties reported at the head of this hearing that the tenant successfully relocated to another unit.
3. The landlord also seeks in its motion entry of a judgment and execution for possession. Much of the bases for said request stems from the tenant's lack of cooperation with the relocation efforts noted above, but entry of judgment is also

sought due to the tenant's continued failure to pay an outstanding balance of $689 and for failure to complete his recertification.

4. The landlord highlights the facts that this balance has been outstanding for years despite court orders to pay it and also highlights that the court has now appointed and discharged three Guardians Ad Litem due to problems caused by, or lack of cooperation from, the tenant.
5. The Tenancy Preservation Program (TPP) used to be deeply involved in this matter and continues to receive copies of orders and notices of hearings from the court but may not be involved any longer. It is the court's assessment that with the assistance of TPP the tenant may be able to complete his recertification and pay the back balance. Accordingly, this matter shall be re-referred to TPP.
6. Accordingly, the landlord's motion for entry of judgment at this time is denied without prejudice.
7. This matter shall be scheduled for a Status Hearing on **July 27, 2023, at 2:00 p.m.** The court is hopeful that TPP will have met with the parties and determined if it can open this matter prior to the Status Hearing.

So entered this 6th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter
Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-4431

NUEVA VIDA,

Plaintiff,

v.

NILMAIE GOMEZ,

Defendant.

ORDER

After hearing on June 29, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se* and also at which a representative from Way Finders, Inc. joined by Zoom, the following order shall enter:

1. The amount of outstanding use and occupancy through June 2023 is $2403.14 and court costs are $214.

2. The $420 that was required to be paid in paragraph #1 of the court's most recent order was paid late on June 28, 2023. The tenant asserted that its tardiness was due to sick children in her home.
3. The landlord asserts that the outstanding balance of use and occupancy through June 2023 totals $2,403.14 plus court costs of $214.
4. The tenant has set up Protective Payments from her DTA cash assistance and believes that it will begin in July 2023.
5. The RAFT application was closed on June 27, 2023, due to the tenant's failure to provide sufficient "hardship" documents. The Way Finders, Inc. representative (Ms. Luna) said that her records indicated a number of documents submitted by the tenant. That said, due to the tenant not having a cell phone and not being able to access her email, she testified credibly that she dropped off all of her "hardship" documents at Way Finders, Inc.
6. Way Finders, Inc. informed the court that directly after the tenant dropped of her documents, she was sent an email that more was needed but the tenant did not receive that email as she had no phone (her sole access to email).
7. Given that this involves a project-based subsidy, that the tenant has set up Projective Payments for her Department of Transitional Assistance benefits for her rent going forward, and that the tenant expects having a cell phone beginning tomorrow, the landlord's motion for entry of judgment shall be continued to the date noted below.

8. The tenant shall make sure her rent (use and occupancy) for July and August 2023 are paid in full and timely and that she works diligently towards completion of a new RAFT application.
9. The tenant should also reach out to Springfield Partners for assistance with her RAFT application. That agency can be reached by calling 413-263-6500 and is also located at 721 State Street in Springfield.
10. This matter shall be scheduled for further hearing on **August 17, 2023, at 9:00 a.m.**

So entered this 6th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-4324

PHOENIX SOUTH CITY,

Plaintiff,

v.

TARAH KRAINSKI,

Defendant.

ORDER

After hearing on June 29, 2023, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se* and also at which a representative from the Tenancy Preservation Program (Alisha White), the following order shall enter:

1. A representative from Way Finders, Inc. joined the hearing and reported the RAFT application was timed out due to a lack of "hardship" documents. However, there has not been a subsidy in this tenancy since September 2022.

2. Way Finders, Inc. reported that both the tenant and the landlord listed there being a subsidy.
3. The tenant has re-applied to RAFT with an application number of [redacted]. Way Finders, Inc. left a voice mail with the landlord for their paperwork. Way Finders, Inc. was given the landlord's email contact during the hearing and Way Finders, Inc. emailed the landlord.
4. TPP reported to the court that the referral to TPP of this case fell through the cracks and no work has begun on this application.
5. TPP will now work with the tenant on her new RAFT application and both parties shall make it clear that there is no subsidy.
6. The loss of the subsidy is, however, at the heart of this eviction and there was a CLA attorney in the courtroom (Gabriel Fonseca) and the court asked if he would follow up to see if CLA could offer representation to the tenant regarding her loss of subsidy---the loss of which appears to be a result of the tenant's mental health issues.
7. The landlord reports that $9,632.54 is outstanding in rent, use, and occupancy through June 2023, plus court costs of $214.
8. The tenant reported that she has applied for Department of Transitional Assistance benefits and plans on applying for Social Security benefits.
9. The tenant reported that she has applied for funds from VOC.
10. TPP (Ms. White) will meet with the tenant directly after the hearing.
11. This matter shall be scheduled for further hearing on **July 20, 2023, at 2:00 p.m.**

So entered this 6th day of July, 2023.

Robert Fields, Associate Justice

CC: Gabriel Fonseca, Esq.
TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1270

LUDLOW HOUSING AUTHORITY,

Plaintiff,

v.

SCOTT MCDANIEL,

Defendant.

ORDER

After hearing on May 23, 2023, at which the plaintiff appeared through counsel and the defendant appeared *pro se* and accompanied by his nurse from River Valley Counseling Center, the following order shall enter:

1. **Background:** The plaintiff landlord terminated this tenancy in December 2021 alleging loud and aggressive behavior by the defendant tenant. On July 15, 2022, the parties entered into an agreement whereby the tenant agreed to work

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with the River Valley Counseling Center and treat staff and fellow residents in a non-aggressive manner.

2. In November 2022, the landlord filed a motion to enter judgment alleging that the tenant violated the Agreement. After a hearing on December 27, 2022, the court denied the motion but ordered the parties to engage in a good faith reasonable accommodations dialogue.
3. In January 2023 the plaintiff filed another motion for entry of judgment and a hearing was scheduled for February 27, 2023. After that hearing, the court ordered the landlord to investigate the possibility of installing soundproofing materials between the tenant's apartment and that of his neighbor, Darlene Fekeris. The court also ordered the tenant to no act aggressively towards neighbors or staff. A further hearing was scheduled.
4. At the next hearing, which is the instant hearing on May 23, 2023, the court learned that the landlord purchased and installed soundproofing between the tenant and Ms. Fekeris (his direct neighbor). The court also heard testimony from Ms. Fekeris and another neighbor Donna English. Both neighbors testified that the tenant is yelling and screaming constantly and acts aggressively from his porch towards people outside. They also testified about his verbal threats made within his apartment about them, as they can hear him from their respective units.
5. **Discussion:** The tenant is protected from eviction in both federal and state anti-discrimination law if the behaviors upon which the eviction is based are symptoms of his disability and a reasonable accommodation can be fashioned

whereby the tenant could avoid eviction. Though the tenant has not completely carried his burden that he has a disability and that the complained of behavior stems from that disability, for purposes of the present motion and this Court Order, the court will assume that the tenant will be able to meet that burden at a future point in these proceedings.

6. As such, the question before the court is whether it is reasonable to allow his continued occupancy given the nature of the neighboring tenants' complaints while the tenant's behavior appears unabated.
7. The court finds, after the testimony of Ms. Fekeris and Ms. English, that it is unreasonable to stay entry of judgment for possession any longer in this matter as the tenant's behavior of yelling and screaming continues unabated and there appears no significant plan to diminish that behavior----and the use of soundproofing installed at the landlord's expense is not effective. Accordingly, judgment shall enter for the landlord for possession.
8. This matter shall be scheduled for further hearing to determine if there is any other reasonable accommodation that can be instituted so as to avoid the tenant's homelessness as a result of the judgment entering. This might include, among other possibilities, a delay in the issuance of an execution to allow for the tenant to work with Rivera Valley Counseling Center and Veterans Services to relocate. Or, perhaps, the landlord housing authority can provide the tenant with a rental subsidy mobile voucher so that he can relocated more successfully. By making these suggestions the court is not prejudging their appropriateness or reasonableness in advance of a hearing on same.

9. Further hearing in this matter shall be scheduled, and the parties should be able to discuss and satisfy the court of a good faith effort to accommodate the tenant's disabilities in the fashion described above on **July 27, 2023, at 10:00 a.m.**

So entered this 7th day of July, 2023.

Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

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

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE HOME EQUITY MORTGAGE LOAN ASSET BACKED TRUST SERIES INABS 2006-C, HOME EQUITY MORTGAGE LOAN ASSET-BACKED CERTIFICATES SERIES INABS 2006-C UNDER POOLING AND SERVING AGREEMENT DATED JUNE 1, 2006,

PLAINTIFF

v.

BRENDA CORBIN, DAVID MARTOWSKI, MICHAEL MARTOWSKI AND SHERRI MARTOWSKI,

DEFENDANTS

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This post-foreclosure summary process case came before the Court on April 13, 2023 on Plaintiff's motion for summary judgment. Plaintiff appeared through counsel. Defendants Brenda Corbin ("Ms. Corbin"), Michael Martowski ("Michael") and Sherri Martowski ("Sherri") appeared self-represented. Defendant David Martowski ("David") did not appear. The residential premises in question are located at 3030 Main Street, Palmer, Massachusetts (the "Property").

Defendants are siblings and the children of Joseph Martowski, the former owner of the Property who passed away on November 7, 2016.[1] On April 6, 2006,

[1] On June 21, 2021, the Probate and Family Court entered a Decree and Order for Complete Settlement that approved distribution of the Property to Defendants in equal shares.

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Joseph Martowski executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. ("MERS"), acting solely as a nominee for IndyMac Bank, F.S.B., a federally chartered savings bank, which instrument was secured by the Property (the "Mortgage"). The Mortgage was recorded at the Hampden County Registry of Deeds (the "Registry") on April 11, 2006, in Book 15819, at Page 239.

On June 5, 2009, MERS, as a nominee for IndyMac Bank, F.S.B., assigned the Mortgage to Deutsche Bank National Trust Company, solely as Trustee and not in its individual capacity for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2006-C under the Pooling and Servicing Agreement dated June 1, 2006, which was recorded at the Registry on August 6, 2009, in Book 17928, at Page 49. On April 24, 2013, the Mortgage was assigned to the Plaintiff and this assignment was recorded at the Registry on May 2, 2013, in Book 19803, at Page 281. Joseph Martowski defaulted under the terms of the Mortgage by failing to make timely monthly payments.

On June 23, 2021, Plaintiff conducted a foreclosure sale in accordance with G.L. c. 244, § 14, and Plaintiff was the purchaser.[2] The foreclosure deed was recorded in the Registry on November 17, 2021, in Book 24252, at Page 225. On the same date, Plaintiff recorded an Affidavit Regarding Note Secured By Foreclosed Mortgage in the Registry and an Affidavit of Exemption pursuant to G.L. c. 183, § 5B. On April 15, 2021, Plaintiff recorded an Affidavit Regarding Compliance with G.L c. 244, § 35B and an Affidavit Regarding Note Secured By Mortgage to Be Foreclosed G.L. c. 244, § 35C.

[2] Apparently, Plaintiff conducted a previous foreclosure sale in 2010, which foreclosure was voided by this Court. See 09H79SP004037.

On August 16, 2022, Plaintiff served a 72-hour notice to quit on Defendants.[3] Plaintiff served Defendants with a summary process summons and complaint which entered in this Court on September 23, 2022. The parties (except for Ms. Corbin) appeared for a Housing Specialist Status Conference on November 17, 2022, after which the Court entered a scheduling order for Plaintiff to file and serve a summary judgment by January 9, 2023, which it did, and for Defendants to file and serve written oppositions by February 6, 2023, which only Michael did.

On February 15, 2023, the Court heard a motion to vacate default by Ms. Corbin, which motion was allowed.[4] The Court also extended the deadline for filing oppositions to summary judgment to March 31, 2023. On March 31, 2023, Sherri filed an opposition to summary judgment and also a motion for late answer and counterclaim, which the Court denied.

For a successful motion for summary judgment, the moving party bears the burden of demonstrating, upon viewing the evidence in the light most favorable to the nonmoving party, that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c) (1974); *Bank of New York v. Bailey*, 460 Mass. 327, 331 (2011), *citing Augat Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). In order to meet its burden regarding the absence of a triable issue, the moving party may submit either affirmative evidence that negates an essential element of the opponent's case or demonstrate

[3] The notice is legally adequate and Defendants do not contest receipt.
[4] After the default judgment was vacated, Ms. Corbin expressed that she made no claim to possession. Plaintiff agreed to dismiss her from the case based on her representation disclaiming an interest in the Property.

that "proof of that element is unlikely to be forthcoming at trial." *Flesner v. Technical Communication Corp.*, 410 Mass. 805, 809 (1991). Once the moving party meets its initial burden, the non-moving party must set forth specific facts showing there is a genuine, triable issue; otherwise, summary judgment will be entered against it. *See Community Nat'l Bank v. Dawes, 369 Mass. 550, 554 (1976).*

In this case, the Plaintiff has met its prima facie showing that it obtained a deed to the Property and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements were recorded. *Bank of New York v. Bailey*, 460 Mass. at 334. Through an affidavit of a representative of the loan servicer, Plaintiff submitted a certified foreclosure deed and affidavit of sale (in the statutory format) recorded at the Registry. *See Deutsche Bank National Trust Co. v. Gabriel*, 81 Mass. App. Ct. 564, 568 (2012) (moving party is "entitled to rely on a certified copy of the deed to support its motion for summary judgment"). The Affidavit of Sale attesting to compliance with the power of sale set forth in the Mortgage is sufficient to establish Plaintiff's prima facie case of compliance with G.L. c. 244, § 14. *See Federal National Mortgage Association v. Hendricks*, 463 Mass. 635, 642 (2012). Absent a counter affidavit which raises a genuine issue of fact, Plaintiff is entitled to judgment as a matter of law.[5]

[5] Even if the submissions filed by Michael are considered affidavits, he fails to set forth specific facts showing a genuine, triable issue. To the extent the Court can follow his argument, it appears that he relies on defects in the prior foreclosure in 2010 and the protections afforded under G.L. c. 186A, which do not protect children of the mortgagor. He also raises issues regarding alleged trespass onto the Property by Plaintiff after the 2021 foreclosure. Claims for damages for illegal entry can be brought in a separate civil action against Plaintiff, but do not provide the basis for a defense to Plaintiff's claim for possession.

Based on all of the credible evidence submitted as part of the summary judgment record, and in light of the governing law, it is ORDERED that:

1. Ms. Corbin is hereby dismissed from this case.
2. Judgment shall enter for Plaintiff and against Sherri Martowski, Michael Martowski and David Martowski on Plaintiff's claim for possession.
3. Execution for possession shall issue upon written application ten (10) days from the date on which judgment enters.

SO ORDERED.

DATE: 7/10/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0385

SHAUNIA FLOWERS,

Plaintiff

v.

SPRINGFIELD HOUSING AUTHORITY,

Defendant

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This civil matter came before the Court on June 20, 2023 on Defendant's motion for summary judgment.

Factual Background

Based on the summary judgment record, the Court finds as follows: Plaintiff purchased a home at 83 Jamaica Street, Springfield, Massachusetts on March 4, 2005. She participated in Defendant's Section 8 Housing Choice Voucher (HCV) Homeownership Program offered through the U.S. Department of Housing and Urban Development (HUD), a program allowing families to use their voucher to buy a home and receive monthly assistance in the form of mortgage payments.

Pursuant 24 C.F.R. § 982.551, public housing administrators are required to conduct yearly recertifications with recipients of housing subsidies to verify income and family composition. Plaintiff was initially scheduled to complete her annual

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recertification on January 17, 2018, which appointment was rescheduled to February 2, 2018. After Plaintiff failed to attend the February 2, 2018 appointment, Defendant sent notice rescheduling the appointment to February 12, 2018. After Defendant failed to attend or request a new date, Defendant notified her of its intent to terminate her Section 8 assistance. The notice gave her ten (10) business days to file a written appeal.

On the day of the rescheduled appointment on February 12, 2018, Plaintiff filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD"), alleging that Defendant discriminated against her based on disability and race and color, in violation of G.L. c. 151B, § 4 and Title VIII.

On March 2, 2018, Defendant amended its proposed termination of Section 8 rental assistance to state additional reasons for termination, namely (a) Plaintiff's failure to recertify family composition and income, (b) Plaintiff's failure to fulfill her obligations under the HCV Homeownership Program. Plaintiff was notified that she had ten (10) days to file a written appeal. Between March 9, 2018 and June 18, 2018, Defendant held two informal hearings. After both, Defendant upheld the decision to terminate Plaintiff's participation in the HCV Homeownership Program. The final decision was sent by letter dated July 2, 2018.[1]

An order in Plaintiff's MCAD case was issued on April 9, 2020, when the MCAD's Investigating Commissioner found insufficient evidence to support a determination of probable cause to credit the allegations of Plaintiff's complaint. The MCAD concluded

[1] Plaintiff is no longer part of the HCV Homeownership Program and stated during the summary judgment hearing that she is in good standing in a loan modification program and has been able to get her home out of foreclosure.

that Defendant had a non-discriminatory reason for termination of Plaintiff's participation in the HCV Homeownership Program. On September 15, 2020, Plaintiff filed a written appeal with the MCAD, and on November 23, 2020, the MCAD affirmed the dismissal. On June 21, 2021, Plaintiff filed the instant complaint.

Legal Standard

The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). *See* Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleadings, depositions, answers to interrogatories, admissions documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). All evidentiary inferences must be resolved in favor of the non-moving party. *See Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999). However, the non-moving party may not defeat summary judgment by merely raising vague and general allegations of expected proof. *See Dawes*, 369 Mass. at 555-556.

Discussion

Plaintiff's complaint contains two counts: first, she seeks in the amount of $15,640.00 for Defendant's failure to continue making Section 8 mortgage assistance

payments during the months that her Section 8 termination appeal was pending; second, she appears to be alleging that she suffered emotional distress as a result of Defendant's misconduct.

With respect to her claim that Defendant was required to continue to pay her housing assistance payments during the period of administrative appeals, Plaintiff cites no legal basis for her assertion, nor does she address the issue in her opposition to Defendant's motion for summary judgment. Defendant posits that there are no regulations or policies that allow a continuation of Section 8 housing assistance payments during an appeal, and the Court could find none. The Court concludes that Defendant is entitled to judgment as a matter of law on this issue.

Regarding the emotional distress claim, Plaintiff provides no basis from which the Court can conclude she has a reasonable expectation of proving essential elements of her claim. In her brief in opposition to summary judgment, Defendant raises four arguments, none of which appear to be connected to the claims set forth in her complaint. First, she contends that Defendant failed to comply with the terms of an earlier MCAD settlement; however, any such claim belongs before the MCAD and, further, the MCAD settlement is not even referenced in her complaint.[2] Likewise, her claim that Defendant did not provide her with a copy of the HCV Program MasterBook arises for the first time in her opposition brief, and she makes no connection between this allegation and her claim for emotional distress damages.

[2] To the extent Plaintiff's complaint can be interpreted to allege discriminatory conduct by Defendant, the Court finds that the claim is barred by principles of collateral estoppel. The MCAD entered a final decision on substantially identical claims between the same parties. *See Brunson v Wall*, 405 Mass. 446 (1989).

Her bare assertions in her summary judgment opposition that Defendant failed to deal with substantive issues (with respect to her recertifications) and in her complaint that Defendant subjected her to "unreasonably restrictive interpretations of policy and regulation" are unsupported by the record. The fact that Defendant may have had a "revolving door" of employees, even if supported by the record (which it is not) is no more than a vague allegation that does not establish a reasonable expectation of proving an essential element of either negligence or intentional infliction of emotional distress. Even considered in the light most favorable to Plaintiff, the summary judgment record simply does not support her allegations regarding unconscionable behavior or rude and unprofessional treatment by Defendant's employees.

Conclusion

The Court finds that Defendant has demonstrated by reference to admissible materials,[3] unmet by countervailing materials, that it is entitled to judgment as a matter of law on the two counts of Plaintiff's complaint. Accordingly, Defendant's motion for summary judgment is ALLOWED.

SO ORDERED.

DATE: 7/10/25

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[3] The Court determines that the Affidavit of Blanca Berrios, Defendant's Director of Rental Assistance during period relevant to Plaintiff's participation in the HCV Homeownership Program, provides sufficient foundation for the Court accept the exhibits offered by Defendant as admissible business records.

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23H79CV000396

HOLYOKE HOUSING AUTHORITY,

Plaintiff

v. ORDER

MARILYN RIVERA,

Defendant

After hearing on July 7, 2023, on the landlord's motion for review and for order for tenant to restore electricity service to her unit, at which the tenant was not present (it was represented that Tenant answered the call of the list at 9:00 A.M. but when the case was called for hearing at 12:55 p.m. the tenant was not present), the following order shall enter:

1. The tenant shall forthwith remove the generator installed at the premises; if the tenant fails to remove said generator, Holyoke Housing Authority shall remove the generator and store it properly so as not to damage it;
2. Tenant shall continue to work with and comply with TPP and its recommendations, including applications for financial assistance;
3. Tenant shall not be allowed to reside in said unit until electricity is restored to the unit.
4. Case shall be scheduled for further review on this order on July 21, 2023 at 9:00 A.M. live in Springfield, 37 Elm Street, Springfield, Massachusetts.

So entered this 10th day of July, 2023.

Robert Fields, Associate Justice

cc.TPP

Court reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1248

WILMINGTON TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR MFRA TRUST 2014-2, PLAINTIFF v. KATE E. IRWIN, DEFENDANTS	ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This post-foreclosure summary process case came before the Court on June 6, 2023 on Plaintiff's motion for summary judgment. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential premises in question are located at 5 Olney Avenue, Springfield, Massachusetts (the "Property").

To prevail on its motion for summary judgment, Plaintiff must demonstrate with admissible documents that there are no genuine issues as to any material facts regarding its legal title to the Property. *See Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). In a summary process action for possession after foreclosure by sale, Plaintiff must make a prima facie showing that it obtained a deed to the Property and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded. *See Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). In this case, Plaintiff submitted certified copies of the foreclosure

deed and affidavit of sale showing compliance with statutory foreclosure requirements recorded in the Hampden County Registry of Deeds. *See Federal National Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 642 (2012) (an affidavit of sale in the statutory form satisfies G.L. c. 244, § 15).

Although Defendant filed an answer in this case, she did not file a written opposition to Plaintiff's motion for summary judgment. At the hearing on Plaintiff's motion, Defendant asserted that, although at one point she intended to challenge the foreclosure, she no longer wishes to do so; instead, she said she was engaging in efforts to buy back the Property and had meeting scheduled in the future to effectuate the transaction. Plaintiff's counsel was unaware of such efforts.

Defendant has failed to submit admissible evidence showing a genuine, triable issue as to Plaintiff's superior right to possession of the Property. As the former owner of the Property, Defendant is not a bona fide tenant pursuant to G.L. c. 186A. Plaintiff served a legally sufficient 72-hour notice on Defendant on March 18, 2022, served her with the summons and complaint on April 22, 2022 and entered the case in this Court on May 2, 2022. Defendant does not contest receipt of these notices and pleadings.

Based on the foregoing, Plaintiff has established its prima facie case for possession and it is entitled to judgment as a matter of law. Accordingly, Plaintiff's motion for summary judgment on its claim for possession is ALLOWED.[1]

[1] The Court's delay in issuing this decision provided Defendant with additional time to negotiate with Plaintiff regarding a buy-back.

Based on all of the credible evidence submitted as part of the summary judgment record, and in light of the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff and against Defendant on Plaintiff's claim for possession.
2. Execution for possession shall issue upon written application ten (10) days from the date on which judgment enters.

SO ORDERED.

DATE: 7/10/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-534

RHONDA GIBSON,

Plaintiff,

v.

ERIDAVIA ARIAS,

Defendant.

ORDER

After hearings on July 6 and 11, 2023, at which each party appeared without counsel, the following order shall enter:

1. For the reasons stated on the record stemming from Ms. Gibson's hospitalization, the court finds it more likely than not that Ms. Gibson was not competent when she entered into an arrangement to relinquish her tenancy at 8-10 Stebbins Street, Unit 1, Springfield.

2. Accordingly, the defendant landlord Ms. Arias shall provide Ms. Gibson a key to the subject premises and restore he to her tenancy therein. More specifically, Ms. Arias shall meet Ms. Gibson at the premises on July 12, 2023, at 4:00 p.m. to provide her with a key or keys.
3. Carmen Morales from the Tenancy Preservation Program (TPP) joined the proceedings and will meet with Ms. Gibson on July 12, 2023, at 10:00 a.m. Ms. Gibson's daughter's apartment on High Street in Springfield.
4. TPP will assist Ms. Gibson with obtaining a new bed and perhaps other furniture as well as work with her on a RAFT application. Additionally, TPP shall coordinate with the Court Clinic for an evaluation.
5. The Court Clinic is kindly requested to conduct an evaluation of Ms. Gibson and share its recommendation with the judge of whether a Guardian Ad Litem would be necessary to allow Ms. Gibson to navigate these proceedings (both CV case and eviction matter).
6. Ms. Gibson shall cooperate with TPP's efforts in this matter as well as well as their efforts in the related eviction matter, 23-SP-2546.
7. This matter shall be scheduled for review along with the related summary process action (23-SP-2546) on **July 20, 2023, at 9:00 a.m.**

So entered this 12th day of July, 2023.

Robert Fields, Associate Justice

CC: Carmen Morales, Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-SP-2064
JACOB BARRETO GONZALEZ, PLAINTIFF v. LEEANN MULERO, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action was before the Court for an bench trial on June 30, 2023. Plaintiff seeks to recover possession of 46 Burr Street, Springfield, Massachusetts (the "Premises") from Defendant based on nonpayment of rent. Plaintiff appeared through counsel. Defendant appeared at trial self-represented.

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

Plaintiff owns the Premises. Defendant has been a tenant since 2019. Monthly rent is $1,100.00. Rent has not been paid since July 2022, a period of eleven months to the date of trial. The total amount of unpaid rent is $12,100.00. Defendant acknowledges receipt of the notice to quit dated January 30, 2023. She continues to reside in the Premises. The Court finds that Plaintiff has established his prima facie case.

Defendant did not file an answer nor did she raise any defenses at trial. She does not dispute the balance due and recognizes that she is going to have to vacate. Based on the foregoing, and in light of the governing law, the following order shall enter:

1. Judgment for possession and $12,100.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Execution shall issue upon written application after expiration of the 10-day appeal period from the date the judgment is entered.

SO ORDERED.

DATE: 7/12/23

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-515

CHRISTINE QUINK,

Plaintiff,

v.

PHEASANT HILL VILLAGE,

Defendant.

ORDER

After hearing on July 5, 2023, at which both parties appeared, the following agreed upon order shall enter:

1. The defendant landlord shall forthwith secure and dispatch (with prior approval of the date and time with the tenant) a professional mold technician to take samples from the affected area in the tenant's unit for mold.

2. If mold is found, the landlord shall schedule remediation---which it believes will be to remove the affected wall(s)---and shall provide alternate accommodations for the tenant during the time of the construction work.
3. The landlord shall also ensure that the utmost care shall be used to not spread any mold (if found) to other areas of the dwelling when removing it.

So entered this 12th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2156

CERMOC ENTERPRISES, LLC,

PLAINTIFF

v.

SAMUEL MORALES AND
GLENDA SANTIAGO,

DEFENDANTS

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

This summary process case came before the Court on July 11, 2023 for an in-person bench trial. Plaintiff appeared through counsel. Defendant Morales appeared self-represented. Defendant Santiago did not appear.[1] Plaintiff seeks to recover possession of 94 Westfield Street, West Springfield, Massachusetts (the "Premises") based on non-payment of rent.

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

Plaintiff established hits prima face case for possession by stipulation. Defendants did not file an answer. Mr. Morales acknowledged the rent arrears of $13,800.00.

[1] Default shall enter against Ms. Santiago. Plaintiff shall submit a USPR 10 affidavit.

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

1. Judgment shall enter for Plaintiff for damages and $13,800.00 in damages, plus court costs of $321.06.
2. Execution may issue upon Plaintiff's written application after the ten-day appeal period pursuant to USPR 13.

SO ORDERED.

DATE: 7-14-23

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1816

HURRICANE PROPERTIES LLC,

PLAINTIFF

v.

KAREN LUPIEN AND JOSEPH LUPIEN,

DEFENDANTS

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This no fault summary process case came before the Court on July 13, 2023 for a bench trial. Both parties appeared with counsel (Defendants through the Lawyer for a Day program). At the outset of trial, Defendants made a motion for late answer and counterclaims. Defendants reside in a multifamily rental property located at 204 Exchange Street, Apt. A, Chicopee, Massachusetts (the "Premises").

Mr. Lupien is homebound and cannot leave the Premises without considerable assistance from the fire department. In a related civil code enforcement action involving the same parties, Docket No. 22H79CV000348, the Court noted that the Chicopee Fire Department determined that if a fire broke out anywhere in the building and Mr. Lupien needed to be evacuated, it would be "an extremely dangerous operation which would take at least two full fire crews a very long time" to get him out of the building. The Court entered an order finding that it was dangerous and unsafe for the tenants to remain in the Premises, and Ms. Lupien acknowledged as much. On June 15, 2022, the Court ordered that Defendants relocate from the

Premises for their health and safety and that of first responders. To date, they have been unable to find suitable housing.

Plaintiff served a no cause notice to quit on February 20, 2023, terminating their tenancy as of April 1, 2023. Plaintiff commenced this eviction action on April 21, 2023. The Court conducted a Housing Specialist Status Conference, which took place on June 13, 2023. At no time prior to trial today did they file an answer despite the appearance of Limited Assistance Representation counsel. They now seek to file a late answer and assert various defenses, including conditions claims, that, pursuant to G.L. c. 239, § 8A, could provide a defense to possession. Pursuant to Section 8A, a tenant's or occupant's claims or defenses can defeat possession in no fault eviction cases under certain circumstances. Such tenant or occupant is not entitled to relief under § 8A, however, unless (in relevant part) "the plaintiff does not show that the conditions complained of cannot be remedied without the premises being vacated." Here, the Court concludes that there is no possibility of Defendants can remain in their unit regardless of the merits of their claims and defenses. Any claims Defendants have against Plaintiff may be brought in a separate civil action for damages, but it would be futile to allow them to file claims and defenses to defeat possession given the Court's previous orders that they must vacate for health and safety reasons. Therefore, Defendants' motion for late answer and counterclaims is DENIED.

With respect to Plaintiff's claim for possession, Defendants did not contest that Plaintiff has a superior right to possession, that they received the no fault notice to quit and that they remain in possession of the unit. The notice and the summons and complaint are each legally sufficient. The parties agree that Defendants do not owe

any back rent. Given that Defendants did not file an answer and their motion to file a late answer was denied, Plaintiff is entitled to entry of judgement for possession. The only issue for the Court is whether to impose a stay on use of the execution pursuant to G.L. c. 239, § 9, and, if so, for how long.

The Court cannot adequately address this issue without information from Defendants' worker from Greater Springfield Senior Services, who was not present at trial. Accordingly, the Court continues this matter to **July 18, 2023 at 11:00 a.m.** and requests that a representative from Greater Springfield Senior Services appear. All parties and witness may appear by Zoom. At this time, the Court will consider Defendants' request for stay. No judgment shall enter prior to the next court date.

SO ORDERED.

DATE: 7/17/23

Jonathan J. Kane, First Justice

cc: Court Reporter

MR.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-354

JAMES NESBITT and TIFFANY TAN,

Plaintiffs,

v.

PAULA DeLAURENTIS,

Defendant.

ORDER

After hearing on June 5, 2023, on cross motions for attorneys' fees and the defendant's motion for use and occupancy, the following order shall enter:

1. **Motions for Attorneys' Fees:** The cross-motions for attorneys' fees are denied, without prejudice to be brought at another appropriate juncture in these proceedings.
2. **Motion for Use and Occupancy:** Because this is a Civil Action and not a Summary Process action, the defendant landlord's motion for an order that the

plaintiff tenants pay their use and occupancy pending trial is not made pursuant to G.L. c.239, 8A. Instead, it is to be analyzed as a request for injunctive relief under the standards laid out in Packaging Industries Group v. Cheney, 380 Mass. 609 (1980). A party seeking a preliminary injunction must show that (1) success is likely on the merits; (2) irreparable harm will result from denial of the injunction; and (3) the risk of irreparable harm to the moving party outweighs any similar risk of harm to the opposing party."). Id. at 616-617. See also, *Davis v. Comerford*, 483 Mass. 164 (2019).

3. The landlord failed to present sufficient facts to support a finding that irreparable harm will result from a denial of the request for the injunction. Additionally, given the tenants' claims against the landlord, she has also not sufficiently met her burden that the risk of harm to her outweighs the risk of harm to the opposing party or that she has a likelihood of success on the merits of this civil action.
4. Accordingly, the motion for an order that the plaintiff tenants pay their use and occupancy pending trial is denied, without prejudice.

So entered this 17th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

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

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

This case came before the Court on July 17, 2023 on Plaintiff's request for an emergency order. All parties appeared self-represented. Defendant appeared through counsel. Plaintiff resides at 234 Middle Street, Hadley, Massachusetts (the "Property"), in the rear unit.

Patricia Kowal, who lived in the front unit of the Property, was Plaintiff's landlord until her death in May 2023. Since her passing, Ms. Patten claims no one has taken responsibility for the Premises. She said she has no hot water, because the heat source is in the front unit and no one has filled the oil tank. He said no one has cut the lawn, which is overgrown, and she no longer has access to the circuit box to flip breakers on when they repeatedly trip.

Kenneth Kowal, Patricia's nephew, had been Patricia's guardian until her death. In that role, he managed the Property. Since her passing, however, he no longer is involved in the Property's management. While he was guardian, he served a

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trespass notice on Ms. Patten's adult children; however, a trespass notice is ineffective if a legal occupant, in this case Ms. Patten, invites her adult children to her unit where she has the exclusive right to possession.

After hearing, the Court enters the following order:

1. The Estate of Patricia Kowal shall be added to this case as a Defendant.[1] The personal representative of the Estate shall immediately provide to Plaintiff his or her name and contact information, and said personal representative shall immediately address all conditions in Plaintiff's unit which amount to a violation of law, including, without limitation, restoring hot water and outside water, mowing the lawn, and providing trash receptacles.[2] The Estate shall also provide Plaintiff access to the circuit box.
2. Neither Defendants nor any representative of the Estate may (a) enforce the trespass notices served on Plaintiff's daughters or (b) harass, intimidate or threaten Plaintiff or her family.
3. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

DATE: July 17, 2023

Jonathan J. Kane, First Justice

cc: Court Reporter

[1] The parties report that John Moriarty, Esq. represents the Estate. If the Property is not part of the Estate and has passed to a new owner, the new owner shall be added to the case instead of the Estate and the new owner shall be responsible for complying with the terms of this order.

[2] If the estate wishes to recover possession of the Property from Plaintiff, it must use the legal process and may not constructively evict Plaintiff by failing to provide utilities or maintain it in a condition fit for human habitation.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-2094

DAWN SPIEGLER,

Plaintiff,

v.

DANA CANARY,

Defendant.

ORDER

After hearing on July 10, 2023, at which the plaintiff landlord appeared with counsel and the tenant appeared *pro se* and accompanied by Maxine Anderson from Center for Human Development (CHD), the following order shall enter:

1. The parties stipulated to the landlord's claim for possession, agreeing to receipt of the Notice to Quit for *no fault,* entered into evidence and to the sum of the outstanding use and occupancy through
2. The tenant is seeking time to relocate in accordance with G.L. c.239, s.9.

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3. The landlord reports that she purchased this property recently, closing on the sale in March 2023, and did so to place her parents in the first floor unit and for her (herself) to occupy the subject unit presently occupied by the tenant. The landlord testified that she is "couching surfing" and "staying with friends" until she can occupy the premises.
4. The landlord shared that the outstanding balance through July 2023 is $3,800, representing the monthly use and occupancy of $950 for April, May, June, and July 2023.
5. The tenant has applied to Valley Opportunity Council (VOC) which may have as much as $3,500. The tenant is not eligible again for RAFT (having used those funds at an earlier time) until October 2023[1].
6. The tenant shall pay $350 by July 28, 2023, to the landlord. It is hoped that if the tenant is found eligible for VOC she will be at a $0 balance through July 2023.
7. The tenant shall also continue to diligently search for alternative housing and keep records of her housing search.
8. This matter shall be scheduled for hearing on **August 3, 2023, at 9:00 a.m.**

So entered this 17th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

[1] Confirmed with the RAFT representative on Zoom during the hearing.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0257
CONSOLIDATED WITH 23-SP-2127

SPRINGFIELD HOUSING AUTHORITY,

PLAINTIFF

v.

JESSE WILLIAMS,

DEFENDANT

ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

This matter came before the Court on July 14, 2023 for review and a determination of next steps. Plaintiff appeared through counsel. Defendant appeared self-represented, along with his mother and sister. Alisha White from the Tenancy Preservation Program ("TPP") also participated.

By way of background, Plaintiff first brought a request for injunctive relief and then filed a summary process case, both of which are based on Defendant's apparent inability to live in a safe and sanitary manner. The Court requested a forensic evaluation by the Court Clinic, and after reviewing the clinician's report, the Court concludes that the appointment of a GAL for Mr. Williams is necessary to secure the full and effective administration of justice. The GAL is authorized to do the following:

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- Investigate the facts of the proceeding and gather information relevant to this case, including communicating with Mr. Williams and his sister and mother, as well as with TPP and management to assist Mr. Williams in preserving his tenancy.
- Coordinate with TPP to determine whether resources may be available to assist Mr. Williams with cleaning and maintenance of his unit in a safe and sanitary condition.
- Report to the Court at the next scheduled hearing as to the progress in Mr. Williams' unit and his level of cooperation with the various providers put into place to help him clean and maintain his unit.

The Court further orders:

1. Mr. Williams shall cooperate with TPP and any other services recommended to assist him with the condition of his unit.
2. Management may do two inspections, each upon 72-hours' notice, one in the next ten days and one in the five days prior to the next hearing. Mr. Williams shall not deny access for these inspections.
3. If an inspection reveals that repairs are needed in Mr. Williams' apartment, management shall make the repairs promptly.
4. The civil action and the summary process action shall be consolidated into the summary process action. The first event (a Housing Specialist Status Conference) was conducted, but rather than schedule a trial in the eviction case, the Court will order further review to assess the status of the case and to give time for the GAL to get involved in the case.

5. The parties shall appear on August 24, 2023 at 9:00 a.m. for further proceedings.

SO ORDERED.

DATE: 7/17/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: ACM Cunha (for appointment of a GAL)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0185

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPARTMENT, HOUSING DIVISION, PLAINTIFF v. SPRINGFIELD GARDENS LP, ET AL., DEFENDANTS	ORDER FOR ENTRY OF JUDGMENT OF CONTEMPT

This code enforcement matter came before the Court on June 9, 2023 for a hearing on Plaintiff's complaint for contempt against eleven related entities operating as Springfield Gardens that collectively own residential rental units on approximately 52 separate parcels in the City of Springfield (hereinafter referred to as "Springfield Gardens"). All parties appeared through counsel.

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

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Assn., 382 Mass. 465, 475-476 (1981) (both compensatory and coercive orders are appropriate remedies in civil contempt proceedings).

Plaintiff contends that Springfield Gardens disobeyed the clear and unequivocal demand set forth in paragraph 3 of the Court's order dated April 3, 2023 (the "Order"); namely, that Springfield Gardens actively seek Certificates of Inspection ("C of I") at all of its properties and to provide a written report no later than May 1, 2023 including the following information for each property:

a. The status of the Certificate of Inspection.
    i. If a C of I has issued, the date of issuance.
    ii. If a C of I inspection is scheduled, the date scheduled.
    iii. If a C of I inspection has failed, the reason(s) it failed.
    iv. If a C of I inspection cannot be scheduled, the reason(s) why it cannot be scheduled.
b. If a C of I inspection has either failed at a property or cannot be scheduled, the report should include the following information for each property:
    i. The repair(s) needed to pass the C of I inspection; and/or
    ii. The report(s) needed to pass the C of I inspection; and
    iii. A timeline for the repairs and/or reports to be completed.

Plaintiff further contends that Springfield Gardens did not identify the various contractors hired to complete the work necessary to obtain C of Is for the various properties, as required in paragraph 2 of the Order.

Plaintiff received a document entitled "Owner's Report" dated May 3, 2023 that listed only some of the properties, noting three properties that passed inspection. Four other properties were listed as pending reinspection and the rest simply indicated a date of inspection in the future. Defendants failed to provide the information required information regarding contractors hired to perform work necessary for obtaining the C of I for each property.

Springfield Gardens argues that the Order was not a "clear and unequivocal command" because the language is far from straightforward. It interpreted the Order as a command to work diligently to make the necessary repairs at the properties and then to schedule inspections at the City's convenience. Under that standard, Springfield Gardens argues that it was making excellent progress under difficult conditions, with approximately 20 properties listed as being in substantial compliance following inspection and others were waiting to be inspected.[1]

Plaintiff's Code Enforcement commissioner testified that the reason Plaintiff sought the Order was to obtain a snapshot view of the status of each of the Springfield Gardens properties in order to determine the condition of each building with respect to life safety matters such as sprinklers and fire alarm systems. He stated the brief Owner's Report was woefully inadequate outside of identifying three properties that had passed inspection. He testified that his department expects multi-family property owners to certify annually that their life safety systems were operating properly and that, because Springfield Gardens had not done so, compliance with this Order was of critical importance to the City.

Based on the evidence presented, the Court finds by clear and convincing evidence that the original Owner's Report (which was dated May 3, 2023, two days after the deadline) clearly and undoubtedly failed to substantially comply with the Order, which the Court finds to be clear and unequivocal. The Owner's Report lists less than half of the Springfield Gardens properties and provides none of the information required in the Order with respect to C of I inspections. It also does not

[1] Counsel for Springfield Gardens also contends that Plaintiff is holding it to a standard far more stringent that other multifamily properties in the City, although he provided no evidence to support his contention. Even if he had, it would not have been an excuse to ignore a court order.

include any information about the contractors hired to do the work necessary to obtain a C of I for each property.

One of the primary purposes of civil contempt proceedings is to coerce compliance with court orders. Here, the Court notes that, well before the contempt hearing, Springfield Gardens made another attempt at complying with the Order. It provided Plaintiff with an Amended Owner's Report, dated June 3, 2023, that listed 17 properties that had passed inspection, two that were pending reinspection, eleven for which inspections were scheduled in July 2023, and 19 for which the Building Department had yet to confirm an inspection date, and three which could not be inspected with reasons therefore. This Owner's Report also included the names of contractors hired to perform the necessary work. The Amended Owner's Report is a significant improvement, but it still does not provide information as to the status of the many properties that are either scheduled for inspection or waiting for the Building Department to confirm dates of inspection.

Accordingly, the Court enters the following order:

1. A judgment of contempt shall enter against Springfield Gardens.
2. Within ten days of receipt of this order, for each property that has not passed inspection as of the date this order is received, Springfield Gardens shall provide Plaintiff with the information required in paragraph 3 of the Order.[2]

[2] The Court excludes from this requirement the three unoccupied properties listed at the end of the list of properties on the Amended Owner's Report.

3. Springfield Gardens shall reimburse Plaintiff for all costs associated with the prosecution of the contempt proceeding, including without limitation attorneys' fees, inspection fees and costs of service.[3]

4. As a sanction for contempt, the Court orders that Springfield Gardens pay Plaintiff $5,000.00; provided, however, that this amount shall be reduced to $2,500.00 if Springfield Gardens complies with item 2 above.[4] Payment shall be due within seven days of the review date listed herein.

5. The parties shall return for review on compliance with this order on **Tuesday, August 8, 2023 at 9:00 a.m.**

SO ORDERED.

DATE: 7/18/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[3] Plaintiff shall file and serve an affidavit setting forth such costs and expenses within thirty days and Springfield Gardens shall have thirty days to serve and file a written opposition, after which time the Court will rule on the papers without further hearing, unless specifically requested.

[4] In assessing sanctions, the Court takes into account the fact that Springfield Gardens provided Plaintiff with an Amended Owner's Report without waiting for further court proceedings.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1907

CHRISTINE BEJUNE,

PLAINTIFF

v.

DEENA PETERS,

DEFENDANT

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

This no fault summary process case came before the Court on July 10, 2023 for an in-person bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of a single-family home located at 10 Cottage Avenue, Southampton, Massachusetts (the "Premises").

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

Plaintiff established her prima face case for possession by stipulation. Defendant filed an answer, but she declined to pursue her defenses and counterclaims at trial, seeking instead only a stay to find more time for a housing search. The notice to quit expired March 31, 2023. In the three intervening months, Defendant has been unable to find replacement housing.

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The current tenancy is unsustainable, as the rent of $1,400.00 per month exceeds Defendant's income. She had a housemate who shared the rent, but the housemate moved out. She asserted that she has disabilities, which the Court accepts given that her source of income is Social Security Disability Income benefits.

In considering a request for a stay pursuant to G.L. c. 239, §§ 9-11, the Court must balance the interests of the parties. Plaintiff is a 76-year old woman who is on a fixed income. She is trying to sell the Premises because she cannot afford to carry two properties (she has a home in Florida). Based on the foregoing, the Court concludes that Defendant is entitled to a stay of execution on the following terms:

1. Judgment shall enter for Plaintiff for possession.
2. No execution shall issue prior to August 28, 2023, when the parties will return for review of Defendant's housing search, on the condition that Defendant pay Plaintiff $1,400.00 by August 5, 2023.
3. If she has yet to secure housing as of the next court date, the Court will consider extending the stay at the next court date. Defendant will have to demonstrate a diligent housing search through a log of the locations she contacted, including the result of such contact.
4. For the duration of the stay, the parties shall limit their contact with each other to bona fide landlord-tenant issues. If Plaintiff needs access to the Premises, she must give at least 24 hours advance notice and Defendant must not unreasonably deny access. If a dispute over access arises, a party may seek a further Court order.

5. The parties shall return for review in the Hadley session on August 28, 2023 at 9:00 a.m.

SO ORDERED.

DATE: 7/19/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1348

EUGENE J. BOROWSKI, SR.,
EUGENE J. BOROWSKI, JR., AND
KAREN B. GALE,

PLAINTIFFS

v.

SULEIKA CONCEPCION,

DEFENDANT

FURTHER ORDER
REGARDING ACCESS

This matter came before the Court on July 13, 2023 on a motion by Plaintiffs Eugene Borowski, Sr., and Eugene Borowski, Jr. to enforce agreement. The moving parties appeared self-represented.[1] The other parties appeared through counsel. Defendant resides at 23 Carew Street, South Hadley, Massachusetts (the "Premises").

The moving parties contend that Defendant is violating fire regulations, has failed to maintain the subject premises in a sanitary condition and has denied access for real estate showings. They assert that Defendant's actions violate the Court's orders dated November 22, 2022 and January 17, 2023 and the parties' Agreement dated March 27, 2023. Pursuant to the Court-approved Agreement, Defendant is vacating the Premises no later than August 31, 2023.

[1] At the outset of the hearing, the Court allowed their counsel, Joseph Szawlowski, to withdraw his appearance without opposition.

After hearing, the following order shall enter:

1. The South Hadley Health Department shall inspect the Premises to determine whether any life safety issues exist. If a party is cited for violations of a code applicable to residential housing, the party cited shall correct the violations within the time frame permitted by the Health Department. Defendant shall not unreasonably deny access.
2. Defendant shall not unreasonably deny access for showings of the Premises provided she is given at least 24 hours' advance notice.
3. Defendant shall maintain safe and sanitary conditions in the Premises for the duration of her occupancy.

SO ORDERED.

DATE: 7/19/2023

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

FAUSTIN CORREA, Plaintiff, v. KEVIN MICHAELSON, et al., Defendants.	No. 22-CV-615

KEVIN MICHAELSON, Plaintiff, v. FAUSTIN CORREA, Defendant.	No. 22-SP-2409

These matters came before the court on July 17, 2023, for a consolidated trial for which all parties appeared with counsel. After consideration of the evidence admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Preliminary Matters**: Faustin Correa, (hereinafter "tenant"), filed a civil complaint (22-CV-615) in August 2022 against Kevin Michaelson, Savida Michaelson, and Pegasus Investment Corporation as owners and/or mangers of the rental property where he was residing, for injunctive relief due to being "locked out" of the subject premises. Said complaint also included various other claims arising out to the tenancy. In May 2023, Kevin Michaelson (hereinafter, "landlord") commenced an "for cause" eviction action (22-SP-2409) against the tenant. Both matters were consolidated for trial and the trial was conducted on July 17, 2023. The court shall first determine if the landlord met his burden of proof on his *for cause* eviction and then address the tenant's claims against the landlord.[1]
2. **The Landlord's *For Cause* Eviction:** The landlord terminated the tenancy with a March 27, 2023, Notice to Quit Terminating Tenancy (hereinafter, "Notice to Quit") and lists two reasons: (1) removal of smoke-and-fire detection equipment and (2) smoking on the premises.
3. **Removal of Smoke and Fire Detection Equipment:** The Hadley Fire Department Chief, Michael Spanknebel, testified credibly that when he was at the premises in August 2022, he observed first-hand that there were several

[1] Though the landlord filed an answer in the civil action and asserted various claims, he only went forth on his claim for possession (and account annexed) and his defenses of the tenant's claims against him.

smoke detectors missing at the premises---including in the tenant's bedroom. The Fire Chief also testified that on his second visit to the premises, the "missing" smoke detectors were found on the kitchen table and the tenant's bedroom floor. The landlord also testified that he saw first-hand on the same occasion as the Fire Chief the missing smoke detectors as well as a later occasion when he was there for "repairs". Lastly, the landlord testified that he dispatched one of his employees at his automobile repair business to go to the premises to check on the smoke detectors, presumably after they were reinstalled. That employee did not testify at the trial and there is no evidence that there were any future problems with the detectors after August 2022.

4. The tenant testified credibly that he did not ever tamper with the smoke detectors. Neither counsel made any deeper examination with the tenant on this issue. Additionally, it is unclear from the evidence at trial if there were other tenants residing in the same area as the tenant at the time that the smoke detectors were noticed removed from the ceilings. The landlord testified that there were other tenants residing on the second floor at some period of time with the tenant (not in the tenant's bedroom) and that they vacated but it not clear if when they resided therein nor when they vacated the premises.
5. Lastly, no one observed first-hand the tenant removing or tampering or touching the smoke detectors, ever.
6. **Smoking on the Premises:** The tenant is unabashed about his smoking at the premises. He has always done so since he first took occupancy in March

2022. There is no dispute between the parties that there was no rule against smoking, either in the lease or otherwise, until the Fire Department issued an Order to Cease and Desist on September 30, 2022, requiring no one to smoke at the premises. Thus, it is solely on the basis of this Order to Cease and Desist that that the landlord asserts that the tenant's smoking at the premises violated the terms of the tenancy (as noted in the Notice to Quit).

7. The Order to Cease and Desist was issued on September 30, 2022, and directed to the landlord who indicated his receipt of same by his signature on October 3, 2022. The tenant testified credibly that he never received this Order to Cease and Desist, was not aware of its existence, and that the landlord never communicated to him that he was not allowed to smoke at the premises. The tenant's testimony that the landlord never spoke with him about not smoking or the fact that there was an Order to Cease ad Desist is consistent with the landlord's testimony at trial. The landlord testified, however, that though he never spoke with the tenant about the no-smoking rule, he posted the Order to Cease and Desist on the front door and tenant door at the premises. The court does not credit this testimony as accurate. The landlord had testified earlier in the trial that he has only been at the premises thrice since the beginning of this tenancy, all before the issuance of the Order to Cease and Desist.
8. Based on the foregoing, the court finds that the landlord did not meet his burden of proof on his *for cause* claims for possession.

9. **The Tenant's Claims:** The tenant's claims as asserted in the civil action and consolidated for hearing at the trial include violations of G.L. c.184, s.18, G.L. c.186, s.14, G.L. c.186, s.18, the warranty of habitability, and illegal disposal of personal property.

10. **Retaliation:** The tenant first took occupancy of the subject premises on or about March 1, 2022. Within days he complained to the landlord about a lack of hot water and when the problem was not repaired after several complaints, the tenant complained later in March 2022 about the lack of hot water to the town officials. Directly afterward, on March 19, 2023, the landlord gave the tenant a notice of termination entitled "cansellation of tenantcy". The notice gave the tenant until May 1, 2022, to vacate and informed him that the landlord would be using the tenant's *last month's rent* for April 2022.

11. The sequence and timing of events which occurred between the parties gives rise to a presumption that the landlord's action was in reprisal against the tenant for his protected activity of complaining about the lack of hot water to the town officials. That statute states that by serving the tenant a termination notice within six months of the tenant's complaint to the town officials creates a "rebuttable presumption that such notice [] is a reprisal against the tenant for engaging in such activities." The presumption of reprisal may be rebutted only by "clear and convincing" evidence that the landlord had "sufficient independent justification" for taking such action, and "would have in fact taken such action, in the same manner and at the same time," G.L. c.186, s.18, irrespective of the tenants' protected activities.

12. The landlord was unable to provide "clear and convincing" evidence that he would have terminated the tenancy when he did---less than three weeks into the tenancy---and is therefore liable for between one and three months' rent under the statute. The court finds that this retaliatory action by the landlord was so brazen given its timing and after the tenant had paid two months' rent upon moving in that the court shall award the tenant three months' rent plus reasonable attorney's fees and costs totaling **$1,425** [representing 3 X $475 (monthly rent)].

13. Illegal Lock-Out: There is no dispute that the landlord locked the tenant out in May 2022. He admitted so when testifying and explained that he thought he had the right to do so until better informed by his attorney and allowed the tenant to return to the premises. The court also finds that in August 2022, the tenant was again locked out and was let back in several days later.

14. The landlord's locking out the tenant as described above violated both G. L. c. 184, s.18 and G.L. c.186, s.14 and in accordance with G.L. c.186, s.14, the court shall award the tenant three months' rent totaling **$1,425** plus reasonable attorney's fees and costs.[2]

15. Lack of Hot Water and Electricity: The court credits the tenant's testimony that there was no lot water during the first days of his tenancy and that after he complained to town officials the landlord made repairs to restore the hot water. Then, when the tenant returned after the August 2022 lock out, there was no electricity at the premises (and thus no hot water either) and the

[2] For clarity on this ruling, the court highlights the fact that even if the tenant was only locked out once (as is the landlord's assertion) the damages would have been the same as provided here.

tenant again complained to town officials. The town's response was to inspect the premises and shut them down immediately and provide the tenant with three days' of hotel accommodations.

16. It is unclear exactly why there was no electricity at that time. It may have been a tripped circuit or perhaps it was due to the vacating of the premises of two tenants who had the electric utility under their name. Either way it is the landlord's responsibility to either ensure that the utility remain on or, if the tenant was responsible to put the utility in his name when the other tenants vacated to ensure that the tenant was made very aware of this responsibility. The landlord did not convince the court that he took any steps to avoid the loss of electrical service that was a factor in the town requiring the tenant to stay in a hotel for several days.

17. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his acts or inactions cause a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102, (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). The court finds that the landlord's failures as described above which resulted in the town's shutting down of the premises and requiring the tenant to temporarily relocate to a hotel, violated G.L. c.186,

s.14 and shall award the tenant three months' rent totaling **$1,425** plus reasonable attorney's fees and costs.[3]

18. **The Tenant's Other Claims:** The court finds and so rules that the tenant failed to meet his burden of proof on his claim for loss of personal property and for warranty of habitability damages beyond the breaches of laws described above.

19. **Conclusion and Court Order:** The tenant shall be awarded possession, as the landlord failed to meet his burden of proof that the tenant violated the tenancy in a manner that should result in his being evicted. The court shall award the landlord $2,850. This award is based on the finding that 15 months of use and occupancy @$475 is unpaid through July 2023, totaling $7,125 (Account Annexed) and that said amount shall be offset by the award given herein to the tenant for damages in the amount of $4,275.

20. No judgment shall enter at this time because as a prevailing party on several fee-shifting claims, the tenant shall have 20 days from the date of this order to file and serve a petition for reasonable attorney's fees. The landlord shall have 20 days after receipt of said petition to file and serve an opposition. The court shall rule thereafter on the petition and shall at that time enter final judgment.

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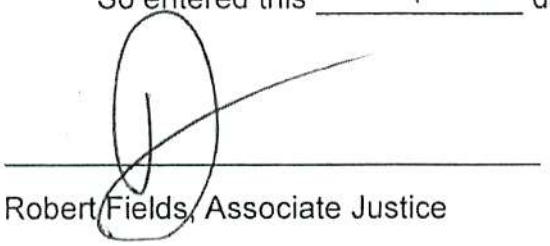
[3] This violation and award represents a separate "clause" of G.L. c. 186, s.14, separate and distinct from the clause that addresses a landlord's attempt to regain possession without judicial process. See, *Clark v. Leisure Woods Estates, Inc.*, 89 Mass. App. Ct. 87 (2016).

So entered this 19th day of July, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0546

RONALD J. LAVERDIERE, Plaintiff and Defendant-in-Counterclaim v. PETER ST. ONGE, Defendant and Plaintiff-in-Counterclaim v. AMHERST OFFICE PARK LLC, Third Party Defendant and Defendant-in-Counterclaim	RULINGS ON MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE

This matter came before the Court on April 27, 2023 for motion hearings. Plaintiff Ronald J. Laverdiere ("Laverdiere") commenced this eviction action against Defendant Peter. St. Onge ("St. Onge") on February 22, 2022. On September 7, 2022, the Court allowed St. Onge to add Amherst Office Park LLC ("AOP") as a defendant-in-counterclaim. On April 4, 2023, Laverdiere stipulated to dismissal of his claim for possession, leaving St. Onge's affirmative claims against Laverdiere and AOP.[1]

St. Onge alleges that Laverdiere, manager of AOP, constructed an unsafe

[1] The Court has ordered that this case be transferred to the civil docket and recaptioned as *Peter St. Onge v. Ronald J. Laverdiere and Amherst Office Park LLC*.

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stairwell without handrails outside of his apartment. St. Onge claims that he fell and suffered personal injuries as a result of the conditions caused by Defendants. St. Onge seeks summary judgment on his claims for breach of warranty, quiet enjoyment and violation of G.L. c. 93A.

The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). *See* Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleadings, depositions, answers to interrogatories, admissions documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). All evidentiary inferences must be resolved in favor of the nonmoving party. *See Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999).

After reviewing the memoranda of law together with the supporting affidavits and documentation in the light most favorable to the nonmoving party, the Court concludes that there exist genuine issues of material fact pertaining to Defendants' liability on the causes of action for breach of warranty, quiet enjoyment and c. 93A. Each cause of action shall be addressed in sequence.

Massachusetts law is clear that the existence of a code violation in a property used for human habitation is not a per se breach of the warranty of habitability. *See, e.g., S. Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 464

(2017); *Goreham v. Martins*, 485 Mass. 54, 65 (2020). The materials submitted to the Court show that the staircase in question was not a means of egress to street level (the building had two other staircases and the staircase in question led to a deck) and that it was intended to be inaccessible during construction. Viewed in the light most favorable to Defendants, and drawing all inferences in their favor, a reasonable factfinder could find that a missing handrail for a short period of time in a staircase not used for egress was not a substantial violation or significant defect in the premises and, therefore, not a breach of the implied warranty of habitability.

Regarding the breach of the covenant of quiet enjoyment, liability requires proof of some degree of negligence. Negligence is generally a question of fact to be determine at trial. *See Bowers v. P. Wile's, Inc.*, 475 Mass. 34, 37 (2016) ("Ordinarily, question of negligence are for the trier of fact; only when no rational view of the evidence would warrant a finding of negligence is the question appropriate for summary judgment."). Here, when viewing materials in the light most favorable to Defendants, it is clear to the Court that negligence has not been established.

With respect to the G.L. c. 93A claim, St. Onge argues that the circumstances of this case show that the violations of the state sanitary and building codes constitute a violation of c. 93A. *See* 940 C.M.R. § 3.16(3). In order for a violation of a state code to constitute a violation of c. 93A, however, the conduct leading to the violation must be both unfair or deceptive and it must occur in trade or commerce. "[W]hether the particular violation or violations qualify as unfair or deceptive conduct 'is best discerned from the circumstances of each case.'" *See Klairmont v. Gainsboro Rest., Inc.*, 465 Mass 165, 174 (2013) (citations omitted). The Court reserves for trial

the question of whether the conduct about which St. Onge complains was unfair or deceptive. Accordingly, for the reasons set forth herein, St. Onge's motion for summary judgment on the causes of action for breach of warranty, quiet enjoyment and c. 93A is **DENIED**.

With respect to St. Onge's motion to strike, St. Onge contends that Mr. Laverdiere's affidavit submitted in opposition to summary judgment contradicts statements given during his deposition around the question of when the door became unlocked. St. Onge claims that Mr. Laverdiere admitted in his deposition that he noticed that the door had become unlocked toward the end of the construction and that, in his affidavit, Mr. Laverdiere claims the door was locked when he checked it. When viewed in the light most favorable to Defendants, the Court is not convinced that the statement in Mr. Laverdiere's affidavit is a clear contradiction of his deposition testimony. Accordingly, St. Onge's motion to strike is **DENIED**.

After this case is transferred to the civil docket and recaptioned as *Peter St. Onge v. Ronald J. Laverdiere and Amherst Office Park LLC*, the Clerk shall schedule this case for a jury trial with a Rule 16 pre-trial order.

SO ORDERED.

DATE: 7/19/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-4240

JOSE A. RAMOS,

PLAINTIFF

v.

ISABEL CRUZ,

DEFENDANT

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

This residential eviction case came before the Court for a bench trial that began on May 9, 2023 and concluded on June 8, 2023. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover a unit located at 95 Congress Avenue, 1st Floor, Holyoke, Massachusetts (the "Premises") from Defendant.

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

Mr. Ramos owns the Premises. By letter dated August 30, 2022, he had a notice to vacate served upon Ms. Cruz, terminating her tenancy as of November 1, 2022. Ms. Cruz has not vacated the Premises. Monthly rent is $1,250.00 per month and Mr. Ramos is not making a claim for unpaid rent. Because Ms. Ramos has a rent voucher administered by Way Finders through the Massachusetts Rental Voucher Program, Mr. Ramos notified Way Finders and Ms. Cruz that the reason for the no-fault termination

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was his intention to use the Premises for personal use. The Court finds that Plaintiff has established his prima facie case for possession.

Defendant filed an answer asserted various defenses and counterclaims, including retaliation, cross-metering, breach of the warranty of habitability and interference with quiet enjoyment as a result of his failure to address harassing behavior by the second floor tenants. Repeatedly throughout the trial Ms. Cruz testified that her primary concern was Mr. Ramos' apparent favoritism toward the second floor tenants and his unwillingness to take action to prevent the second floor tenants from interfering with her quiet enjoyment.

The Court finds that the assessment of blame for the conflicts between the first floor and second floor tenants is not clear cut. Each household blames the other for harassment and disturbances. Other than her testimony, Ms. Cruz offered little evidence to support her claim that the behavior of the second floor tenants warranted additional action by Mr. Ramos. Ms. Cruz testified that Mr. Ramos told her to call the police if she was being bothered by the second floor tenants, which is reasonable advice given that he does not live at the property. The Court finds that Ms. Cruz has not established by clear and convincing evidence that the behavior of the second floor tenants is actionable or that Mr. Ramos had an obligation to believe her side of the story and to evict the other tenants. Accordingly, her claim for interference with quiet enjoyment fails.

With respect to her claim of retaliation, Ms. Cruz did not establish a presumption of retaliation. She contacted the Board of Health in October 2022, well after she received the notice to quit in this case. The previous complaint to the Board

of Health was in late 2021, more than six months prior to the notice to quit, and does not create a presumption of retaliation. Moreover, even if the eviction notice had been served within six months of a complaint to the Board of Health, the Court finds that Mr. Ramos had a non-retaliatory reason for seeking possession (personal use) and, therefore, the Court finds in his favor on Ms. Cruz's claim for retaliation.

Next turning to Ms. Cruz's complaints about conditions of disrepair in the Premises, the Court finds that the items listed in the Board of Health's notice of violation in April 2023, including, among other things, a bedroom window that was difficult to open, gaps between floor and baseboard, behind a window frame and above the sink, and uneven kitchen floor tiles behind the refrigerator, are not substantial conditions of disrepair that materially impair the value of the Premises. Ms. Cruz did not testify about the severity of any of these items, nor did she convince the Court that a leak not cited by the Board of Health justifies an abatement of rent. The Court rules that Mr. Ramos did not violate the warranty of habitability and that the conditions complained of do not amount to a breach of the covenant of quiet enjoyment.

Accordingly, based on the foregoing, the Court finds that Ms. Cruz did not establish any legal defenses or counterclaims that would warrant a finding in her favor.[1] Therefore, in light of the governing law, the following order shall enter:

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

[1] In her answer, Ms. Ramos made a claim of cross-metering, but did not address it at trial. Therefore, this claim is dismissed.

2. Execution shall issue upon written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 7/19/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-SP-2050
TINKHAM MANAGEMENT, PLAINTIFF v. KAREN DUPUIS, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ENTRY OF JUDGMENT

This nonpayment summary process case came before the Court for a bench trial on July 18, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented.[1] Plaintiff seeks to recover possession of 81 Amherst Ave., Feeding Hills, Massachusetts (the "Premises") from Defendant.

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

Plaintiff established its prima facie case for possession. Defendant initially testified that she was not sure if she received the notice to quit, but she subsequently acknowledged receipt. She did not vacate at the expiration of the notice period. She did not file an answer and agrees that she owes $5,472.65 in rent arrears through the

[1] Defendant claims she was referred to the Tenancy Preservation Program but was never contacted. Although the Court believes it is unlikely that Defendant is eligible for services at this stage of the proceedings, the Court requests that TPP reach out to Defendant to close the loop.

date of trial.[2] She has exhausted all but $800.00 of rental assistance funds for which she might be eligible.

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

1. Judgment for possession and $5,472.65 in damages, plus court costs, shall enter in favor of Plaintiff.

2. Execution (eviction order) shall issue upon written application after expiration of the appeal period.

SO ORDERED.

DATE: 7/19/23

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

cc: Tenancy Preservation Program of Pioneer Valley
Court Reporter

[2] Had Defendant sought leave of court to file a late answer, the motion would have been denied as she articulated no meritorious defenses.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1432

DOUBLE K REALTY LLC,	)	
	)	
PLAINTIFF	)	
v.	)	ORDER FOR ENTRY OF JUDGMENT
	)	
RAFAEL SANTOS ALICEA,	)	
	)	
DEFENDANT	)	

This nonpayment summary process case came before the Court for a bench trial on July 20, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 801 ½ High Stret, Holyoke, Massachusetts (the "Premises") from Defendant.

The parties stipulated to Plaintiff's prima facie case for possession, including Defendant's receipt of the notice to quit. Defendant did not file an answer and asserted no legal defenses at trial. Monthly rent is $850.00 per month. Defendant acknowledges that the sum of $2,625.00 in rent is due through the date of trial. He is not eligible for additional rental assistance funds. Defendant has no income and no ability to pay for his continued use and occupancy of the Premises.

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

1. Judgment for possession and $2,625.00 in damages, plus court costs, shall enter in favor of Plaintiff.

2. Execution (eviction order) shall issue upon written application after expiration of the appeal period.

SO ORDERED.

DATE: July 20, 2023

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3326

MOHINDER GREWAL,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT,
	)	RULINGS OF LAW AND
JOSHUA HURD,	)	ENTRY OF JUDGMENT
	)	
DEFENDANT	)	

This nonpayment summary process case came before the Court for a bench trial on June 12, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 80 Damon Road, No. 3107, Northampton, Massachusetts (the "Premises") from Defendant.

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

Plaintiff established its prima facie case for possession by stipulation. Defendant acknowledges receipt of the notice to quit and has not vacated. Plaintiff claims unpaid rent in the amount of $21,750.00. Although Defendant did not file an answer, he asserts that he owes less than Plaintiff claims, and that he did not owe any money at the time the notice to quit was served in July 2022, thereby rendering the notice defective. He acknowledges that he has not paid rent for the past six months.

The Court finds that monthly rent is $1,200.00. Defendant acknowledges that he agreed to this amount and he never agreed to pay a higher amount. Plaintiff purports to have raised the rent to $1,350.00 beginning February 1, 2021 and to $1,450,00 beginning September 1, 2021, but these rent increases are not effective because they did not terminate the existing tenancy before offering a new tenancy at a different rate, and Defendant did not accept the rent increase by paying an amount greater than $1,200.00 at any time.

The RAFT program paid rent at the rate of $1,200.00 for eleven months from November 2020 through August 2021. Presumably, this brought Defendant to a zero balance at that time. Way Finders subsequently paid rent for seven more months from September 2021 through March 2022 at a rate of $1,450.00, a rate Defendant never agreed to pay. Had it been calculated at a rate of $1,200.00, Plaintiff would have received $8,400.00 instead of $10,150.00; therefore, the difference of $1,750.00 must be credited to Defendant's balance.

The Court has no evidence that Defendant made any payment from April 2022 through the date of trial.[1] By the time of the notice to quit in July 2022, Defendant owed rent, although not the amount cited in the notice.[2] At a rate of $1,200.00, the

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[1] Defendant claims he made payments of $5,500.00 and $600.00 that have not been credited to him, but provided no evidentiary support for his claim. He also argues that because Plaintiff sent a text message in February 2023 telling him he owed rent for the past two months, he must have had a zero balance through December 2022. Had Defendant provided evidence of payments after April 2022, the Court might agree, but the weight of the evidence supports a finding that no such payments were made after that date.

[2] The error in the notice to quit is not fatal as Defendant made no payments amount after receipt of the notice to quit; therefore the Court's recalculation of what is owed negates any material defect in notice.

amount due from April 2022 to the date of trial is $18,000.00. After crediting the RAFT overpayment of $1,750.00, the balance due is $16,250.00.

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

1. Judgment shall enter in favor of Plaintiff for possession and damages in the amount of $16,250.00, plus court costs.
2. Execution (eviction order) shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED

DATE: July 20, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-580

LUIS CLASS,

Plaintiff,

v.

GMC PROPERTY MANAGEMENT,

Defendant.

ORDER

After hearing on August 29, 2022, at which the plaintiff appeared *pro se* and the defendant appeared through counsel, the following order shall enter:

1. As a preliminary matter, the undersigned judge apologizes for the very long delay in issuing this order. Through his inadvertence this order did not issue at an earlier date but was percolated by the recent filings of a summary process and small claims action.

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2. This plaintiff tenant appeared seeking injunctive relief for the landlord to make various repairs and to take steps to eliminate the unlawful entry of non-residents and non-guests unto the premises and the building in which the premises is located.
3. Upon consideration of the testimony of the tenant and of the defendant landlord's witness, Sal Cangialosi (owner and operator of GMC Property Management), the landlord shall investigate the tenant's unit and make all necessary repairs including but not limited to the violations cited by the Board of Health, forthwith. The landlord shall also make all necessary and appropriate efforts to better secure the premises from intrusion by non-tenants and non-guests.
4. The landlord shall provide advance written notice to the tenant when access is required for said repairs. Such notice shall identify the date and time for said access and a description of the window of time for said repair(s). All repairs that require a licensed professional or permit from the city shall be effectuate in that manner. Access shall not unreasonably be denied by the tenant.

So entered this 21st day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-0544

MWD ASSET SERVICING LLC,	)	
	)	
PLAINTIFF	)	
v.	)	FINDINGS OF FACT,
	)	RULINGS OF LAW AND
GREGORY A. KINGSBURY AND	)	ENTRY OF JUDGMENT
KATHRYN H. BRIDGES,	)	
	)	
DEFENDANTS	)	

This nonpayment summary process case came before the Court for a bench trial on June 16, 2023. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of a single family home located at 71 Lyman Hill Road, Northfield, Massachusetts (the "Premises") from Defendants.

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

Plaintiff purchased the Premises in May 2019. Defendants were residing in the Premises at the time of the purchase pursuant to an unexpired written lease with the prior owner. Plaintiff offered a 5-year written lease to Defendants which Defendants elected not to sign. Monthly rent is $800.00. Defendants last paid rent in November 2019. Plaintiff claims a balance of unpaid rent of $34,400.00 through trial. Defendants acknowledge receipt of the notice to quit and continue to reside in the Premises. The

notice to quit is dated November 2, 2022. The summons and complaint were timely served and filed with this court on February 3, 2023.

Defendants filed a timely answer asserting various defenses and counterclaims falling into the categories of violation of the security deposit law, conditions claims, retaliation and unfair and deceptive acts and practices. The Court will examine each claim separately.

A. Violation of the Security Deposit Law, G.L. c. 186, § 15B

Defendants paid a security deposit of $800.00 to the prior owner. Plaintiff acknowledges that it was not handled according to law. Although statutory damages for violation of the security deposit law are three times the amount of the deposit, plus five percent interest, Defendants did not include this claim in their answer and made no other written demand for the return of the security deposit. Once Plaintiff was put on notice that Defendants sought the return of their deposit, it offered to return the $800.00 security deposit in full, plus interest in the amount of $174.75, for a total amount of $974.75. This payment makes Defendants whole and, because Defendants made no demand in advance of trial and were offered a refund with interest, the Court declines to award statutory damages.

B. Conditions Claims

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

the requirements of the State Sanitary Code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. A tenant's obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability." *Id.*, citing *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 (1979). The warranty of habitability applies only to "substantial" violations or "significant" defects. *See McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State Sanitary Code supports a warranty of habitability claim). Damages for breach of the implied warranty of habitability are measured by 'the difference between the value of the premises as warranted (the rent may be evidence of this value) and the value of the premises as it exists in its defective condition.'" *Id.*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994).

The evidence shows that Plaintiff inspected the Premises after purchase in May 2019 and made various repairs. In October 2019, Plaintiff sent contractors to the Premises to repair and upgrade the heating system. The contractors removed the heat registers and thermostats and installed heat pumps. Defendants complained that the heat pumps did not provide adequate heat to all of the rooms in the Premises. They told Plaintiff to remove the heat pumps as they were not working and were noisy. Plaintiff took away the heat pumps and did not provide any other source of heat.

Defendants contacted the Board of Health, which inspected the Premises on November 25, 2019. After the inspection, the Board of Health issued a correction order, noting that the Premises did not have "operable heating ducts or units in the

two first floor bedrooms, nor in the 3rd basement bedroom which is presently being used as office space. The temperature in the master bedroom on the first floor read 51 degrees at 11 a.m." Plaintiff was ordered to restore heat to all habitable rooms within 48 hours.

On or about November 27, 2019, Defendants notified Plaintiff that they would withhold rent until the heat was restored. As of December 9, 2019, no work had been done on the heating system. Defendants then took it upon themselves to apply for an electrical permit from the Town of Northfield and hired an electrician to install heat in the Premises at their own cost. The electrician was able to complete two bedrooms and half of the living room before work stopped on December 12, 2019, when Plaintiff's manager, Joe Jarvies, sent an email to Defendants instructing them to stop all work and to cease making repairs at the Premises. Plaintiff never returned to correct the heat issue. The evidence shows that Defendants paid $50.00 for the permit, $247.90 for baseboard heaters and thermostats, and $681.50 for the electrician. The used a wood burning stove to heat the lower level of the house at their own expense.

Defendants also claim other conditions of disrepair. Plaintiff was on notice no later than August 9, 2020, when Defendants sent Mr. Jarvies an email citing, in addition to the lack of heat, the need for repairs to windows, gutters and doors. Plaintiff did not make repairs. In fact, Mr. Jarvies stated that he had "a lot of other things to do and not keep worrying about going back and forth, back and forth" with Defendants. Although Mr. Jarvies testified to a significant amount of work done at the

Premises in 2019 after purchasing it, there was no testimony or other evidence that Plaintiff made any repairs in the Premises after December 2019.[1]

In the weeks leading up to trial, Defendants again contacted the Board of Health. An inspection was conducted on May 26, 2023. The inspector issued a notice of violations for structural issues with porch, ceilings in disrepair, missing framing around windows and the patio door, missing screens, gutter downspouts missing or in disrepair, the egress door in disrepair and gaps in walls allowing for pests to enter. Defendants claim that they had suffered from infestations, but there is no notice of such a complaint being made to Plaintiff. Likewise, Defendants claim that they made repairs to the driveway, but they did not produce evidence that Plaintiff was ever put on notice of the need for these repairs.[2]

Based on the foregoing, the Court finds that Defendants are entitled to damages for breach of warranty. Damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) ("While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference."). The absence of an adequate heating system for every habitable room warrants a rent abatement of 25% beginning in December 2019 and

[1] Plaintiff alleges that Defendants sent his contractors away and thus they did not allow the work to be done. It provided no evidence in support of this allegation, and Plaintiff took no further steps to gain access to make necessary repairs.

[2] Both sides testified about who was responsible for mowing the lawn and removing ice and snow. The Court finds insufficient evidence to award any additional damages to Defendants for Plaintiff's failure to undertake these responsibilities.

continuing for each heating season (September 15 to June 15) thereafter. The other conditions of disrepair about which Plaintiff had notice as of August 9, 2020 warrant a 5% reduction in rental value. Collectively, the conditions of disrepair entitle Defendants to a rent abatement of $200.00 per month for seven months to June 2020, and nine months in each of 2021, 2022 and 2023 (an aggregate amount of $6,800.00) and $40.00 per month for the 40 months from August 2020 through the month of trial ($1,360.00) for a total of $8,160.00. The Court finds Plaintiff's failure to adequately respond to the issues in the Premises to be willful and knowing, and doubles the warranty damages under G.L. c. 93A to $16,320.00.[3]

C. Retaliation

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

In this case, on December 13, 2019, one day after Mr. Jarvies learned of the complaint to the Board of Health, Mr. Jarvies sent a notice of default demanding

[3] The defective conditions also warrant a finding that Plaintiff violated the covenant of quiet enjoyment codified in G.L. c. 186, § 14. Defendants are entitled to damages under the legal theory that results in the greatest award, and given that damages for violations of the quiet enjoyment statute are either statutory damages (3 months' rent) or actual damages ($1,000.00), the warranty damages clearly result in the greatest damages for the defective conditions.

payment of December rent within ten days and threatening to begin eviction proceedings if it was not received within ten days, despite acknowledging that Defendants had informed him that they were withholding December rent due to conditions. The Court finds this to be an act of reprisal. As damages, the Court awards three months' rent, or $2,400.00.[4]

D. Violations of G.L. c. 93A

Chapter 65 of the Acts of 2020 was passed on April 20, 2020 and prohibited almost all evictions and notices to quit. The statute did not allow landlords to "send any notice ... requesting or demanding that a tenant of a residential dwelling unit vacate the premises." St. 2020, c. 65, § 3(a)(ii). This prohibition applied in "non-essential" evictions, including cases brought for nonpayment of rent. The law was in effect from April 20, 2020 through October, 2020.

On August 3, 2020, Mr. Jarvies made specific reference to the eviction moratorium but wrote that he believed he was allowed to proceed with the eviction process and asked them to move out voluntarily. This is a clear violation of the law then in effect, and constitutes an unfair and deceptive act in violation of G.L. c. 93A. Plaintiff willfully and knowingly violated the law by seeking the removal of Defendants during the moratorium. Misapprehension of the law is not a defense, either to violation of G.L. c. 93A or for willful and knowing violations of the statute.

[4] Because Defendants represented themselves, the Court awards no damages for attorneys' fees for any of the claims upon which they prevailed.

See Montanez v. Bagg, 24 Mass. App. Ct. 954, 956 (1987). The Court awards damages in the amount of $2,400.00 (three months' rent) for this violation of c. 93A.

The Attorney General's regulations relating to landlord tenant matters deems it an unfair or deceptive act or practice to "fail, during the term of the tenancy, after notice is provided in accordance with M.G.L. c. 111, § 127L, to (1) remedy a violation of law in a dwelling unit which may endanger or materially impair the health, safety, or well-being of the occupant, or (2) maintain the dwelling unit in a condition fit for human habitation...." *See* 940 C.M.R. 3.17(1)(b). *Id.* Here, Plaintiff clearly violated the Attorney General's regulations by failing to promptly comply with the Board of Health order in 2019. The Court awards damages of $2,400.00 (three months' rent) for this separate violation of c. 93A.

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

1. Plaintiff is entitled to unpaid rent through the date of trial in the amount of $34,400.00. Defendants are entitled to damages in the amount of $24,494.75. After crediting Defendants' damages against the unpaid, rent, the balance due Plaintiff is $9,905.25 through the date of trial.
2. Pursuant to G.L. c. 239, § 8A, Defendants shall have ten (10) days from the date this order is entered on the docket to deposit with the clerk of Court the sum of $9,905.25, plus court costs in the amount of $222.22 and interest, for a total amount of $ 10,674.95 by bank check or money order. If such payment is made, judgment for possession shall enter for

Defendants.

3. If the deposit is not received within the ten day period, judgment shall enter for Plaintiff for possession and unpaid rent in the total amount set forth in the previous paragraph, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.
4. Plaintiff is ordered to correct all violations set forth in the Northfield Board of Health's notice of violations dated May 29, 2023 that have not already been corrected within thirty days of the date this order is entered on the docket or such earlier date as mandated by the Board of Health.

SO ORDERED.

DATE: July 21, 2023

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

cc: Court Reporter

QR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-CV-1171

KIARA PEREIRA and ALEX LOPEZ,

Plaintiffs,

v.

MANUEL GOMES and MANUEL PEREIRA,

Defendants.

ORDER

This matter came before the court for trial on November 7, 2022. Based on the evidence admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Procedural Background:** By order of the court on June 24, 2022, a default was entered against the defendants for liability on the plaintiffs' claims and a damages hearing was scheduled. That hearing was held on November 7, 2022 and the plaintiffs' claims for Quantuim Meruit, Breach of the Warranty of Habitability, and Breach of the Covenant of Quiet Enjoyment are analyzed herein below and a judgment shall enter consistent with such findings and rulings of law.

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2. **Discussion:** This case is yet another story of family trying to help one another out but ending up in litigation. The defendant Manual Pereira owned a house located at 85 Goodwin Street in Springfield, Massachusetts (hereinafter, "the premises" or "the property"). Mr. Pereira had fallen on tough times financially and his uncle Manuel Gomes was paying his mortgage for a period of a time. Then, in about February 2018 Mr. Pereira's daughter Kiara and her then boyfriend Alex Lopez entered into an arrangement to "rent-to-own" the property. At that time, when the couple took occupancy, the condition of the house was very poor with many conditions of disrepair. The arrangement between the parties, which was never reduced to writing, was that the couple, Kiara and Alex, would (and did) pay the monthly mortgage bill plus all utilities and water until they could get their financing in order and purchase the property.
3. Over the year or so that Kiara and Alex resided at the property, they made repairs and renovations and installed new fixtures and appliances. Some of the work was done by Alex and Mr. Pereira and some work by professional contractors. Alex and Kiara paid for all the materials and the contractors. That winter, the heating system failed and Alex and Kiara paid for its replacement after Mr. Pereira failed to do so after several occasions of it failing to provide heat.
4. In late March and early April 2018, the City of Springfield code departments inspected the premises and cited it for many violations, mostly around electric and plumbing issues. The city also required Alex and Kiara to vacate the premises until the city approved of its occupancy after repairs. By the time the city brought a code enforcement action in the Housing Court action on April 13,

2018, the couple were staying with Alex's mother in accordance with the city's requirement that they vacate. After eight months, and many court agreements wherein Mr. Pereira agreed to make all repairs, the city court case was dismissed, having found all violations corrected.

5. By then things had soured considerably between the parties and instead of Kiara and Alex moving back in, they were not permitted to do so by the defendant Manuel Pereira and were not able to remove some of their things including several appliances. The defendant Manuel Pereira thereafter sold the property to a third party.
6. The plaintiffs commenced this lawsuit against the defendants in November 2018 seeking damages for Quantum Meruit, breaches of the Warranty of Habitability, and Breaches of the Covenant of Quiet Enjoyment.
7. **Manuel Gomes:** There was no evidence admitted at trial that could result in finding for damages against defendant Manuel Gomes. The evidence at trial supports the factual finding that Mr. Gomes' involvement was as someone who would be owed money from the hopeful sale of the property to the plaintiffs and that sale never came to fruition. The defendant Manuel Gomes is hereby dismissed from this matter and the remainder of this order shall use the terms "defendant" or "Manual Pereira" or "Mr. Pereira" for the defendant Manual Pereira.
8. **Quantum Meruit:** A quantum meruit claim derives from principles of equity and fairness and is a theory used to enforce a contract which may have been express or implied but has provisions that can be inferred in whole or in part from the

parties' conduct, words and writing. (See generally, 5S.Williston, Contracts s.508 (3ed 1961). Common examples of implied-in-fact contracts are where a person performs services at another's request, or where services are rendered by one person for another without expressed request, but with knowledge and under circumstances which raise the presumption that the parties understood and intended the compensation to be paid. *J.A.Sullivan Corp. v. Comm.*, 397 Mass. 789, 793 (1986). Further, courts examine whether enforcement of a contract will prevent one party from unjustly being enriched at the expense of the other party. *Mike Glynn & Co. v. Hy-Brasil Restaurants, Inc.*, 914 N.E.2d. 103, 75 Mass. App.Ct. 322, 324 (2009). Lastly, in the cases of implied-in-fact contracts, if payment is contested after the work is performed, the court or the jury can infer that the price that the parties intended to govern their contract was the reasonable market value of the plaintiffs' services. *Lachance v. Rigoli*, 325 Mass. 425, 427 (1950).

9. As described above, the condition of the premises when the plaintiffs first took occupancy was very poor. With knowledge of the defendant and his blessings, if you will, the plaintiffs made repairs and improvements such as refinishing floors, installation of hardwood floors, installation of sheetrock, interior painting, and renovation of a bathroom with installation of a new toilet, sink, and shower.
10. Though some of the work was done by the plaintiffs and on occasion with the assistance of the defendant, the plaintiffs paid for supplies such as hardwood floors. These costs were **$2,500** for hardwood floors that the parties installed and **$3,000** for the professionally installed floors.

11. The plaintiffs also purchased and installed new kitchen appliances including a refrigerator, a dishwasher, a stove, and a washer and dryer. The plaintiffs were able to remove the stove and dryer prior to the sale of the premises to another buyer but due to the defendant preventing the plaintiffs access to remove other items, the plaintiffs were forced to leave behind the refrigerator at a cost of $1,100, the washing machine at a cost of $700, a dishwasher at a cost of $500, totaling **$2,300.**
12. During the tenancy, the plaintiffs complained repeatedly about the deficiency of the heating system and the defendant Manuel Periera made attempts to repair it. At some point, however, the system completely stopped working completely and needed replacement. The defendant was fully aware and the plaintiffs hired a technician that was used previously by the defendant to replace the heating system which cost **$8,000** and was paid for by the plaintiffs.
13. If things had gone as planned by the parties and Kiara and Alex purchased the property, these improvements and repairs and the couple's sweat equity and costs would have all been negotiated as part of the purchase price and the plaintiffs would be homeowners. Instead, they became improvements in a property that was sold to a third part that benefitted the defendant and the plaintiffs have the right to be recompensed for their value.
14. **Warranty of Habitability:** The city's list of code violations is voluminous (and were admitted into evidence) and included extensive plumbing and electric violations in addition to problems with structural items and fire detection equipment. The record is sufficiently clear that these conditions existed for the

entirety of the tenancy as the city's citations caused the plaintiffs to vacate so the duration of the time of these conditions is very clear as it relates to this claim; ergo they existed from March 2018 to March 2018.

15. As stated above, if the parties' plan had totally worked out the plaintiffs would be owners of the premises and there would be no warranty of habitability claim. The plaintiffs, however, were tenants during their occupancy for whom a warranty of habitability is designed to protect.

16. The court finds and so rules that all of the violations listed by the city existed from the inception of the tenancy to its abrupt end, and that either the defendant was fully aware of them or is imputed with knowledge of them under the law. *McKenna v. Begin*, 3 Mass.App.Ct. 168 (1975). Those conditions had a predictable and negative effect on the plaintiffs' use and enjoyment of the premises and violated the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code, 105 C.M.R. 410.00 et seq. These conditions at the premises support the plaintiffs' claim based upon breach of the implied warranty of habitability, for which the defendant is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the

value in their actual condition. Haddad v. Gonzalez, 410 Mass. 855, 576 N.E.2d 658 (1991).

17. The court finds that the fair rental value of the premises was reduced by 20%, on average, as a result of these conditions for the entire twelve months of the tenancy. The court understands that the monthly mortgage payments of $1,350 were paid by the plaintiffs and will use that amount as the monthly rent.[1] Thus, the plaintiffs shall be awarded **$3,240** for damages for said breaches of the warranty of habitability (representing 20% of the monthly rent of $1,350 for 12 months).

18. **Breach of the Covenant of Quiet Enjoyment:** As described above, as a result of the city's inspections in March and April 2018, the plaintiffs were required to vacate the premises abruptly with their young child and had to stay with Mr. Lopez' mother.

19. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

[1] The plaintiffs were seeking to be repaid all the monies they paid towards the mortgage and utilities and water costs. The court finds and so rules that such payments are what established the tenancy and were paid towards use and occupancy (plus utilities).

20. The court finds that the abrupt forced vacating of the premises due to multitude of code violations and city action violated the plaintiffs' covenant of quiet enjoyment and G.L. c.186, §14 and hereby awards the plaintiffs damages equaling three months' rent totaling **$4,050** (representing $1,350 X 3) plus reasonable attorney's fees and costs.

21. **Conclusion and Order:** Based on the foregoing, an order awarding the plaintiffs **$19,850** and for reasonable attorney's fees and costs shall enter. This is an order and not yet a judgment because as a prevailing party on their claim for breach of quiet enjoyment, the plaintiffs are to be awarded reasonable attorney's fees and costs.

22. **Attorney's Fees and Costs:** The plaintiffs shall have 20 days from the date of this order noted below to file and serve a petition for attorney's fees and costs. The defendant shall have 20 days from the date he receives said petition to file and serve his opposition to same. The court shall issue a ruling on said fee petition and enter a final judgment thereafter.

So entered this 21st day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

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CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-CV-670

PAUL PRENTICE,

Plaintiff,

v.

GENNADIY A. LISITSIN,

Defendant.

ORDER

This matter came before the court for trial on February 22, 2023, at which both parties appeared through counsel. After consideration of the evidence admitted at trial the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Paul Prentice (hereinafter "tenant") rented a basement apartment located at 28 Union Street in Westfield, Massachusetts (hereinafter, "premises" or "property"). The defendant, Gennadiy Lisitsin

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(hereinafter, "landlord") was the owner of the premises at all times relevant to this matter.[1]

2. In late Fall 2018, the tenancy ended and thereafter the tenant filed this instant lawsuit against the landlord, claiming that he was illegally locked out and evicted from the premises with asserted claims of breach of the covenant of quiet enjoyment, breach of the warranty of habitability, violations of the security deposit law, and violations of the consumer protection act. The landlord asserts defenses but did not counterclaim.[2]
3. **Security Deposit Claim:** The landlord accepted funds towards a security deposit from the tenant but did not treat those funds in any way consistent with the security deposit laws. He testified that he "never" accepted security deposits but would accept last month's rent paid in advance and often over time.
4. The problem with the landlord's position is that he and his wife gave the tenant at least three receipts (for October 7 and 14, and December 3, 2017), which state that they are partial payments towards a "security deposit". In addition, to suggest that the landlord's wife did not understand at the time she completed and signed these receipts what a security deposit was, does not explain why the landlord also filled out and signed one of the receipts; especially with a landlord who has owned and managed rental properties for more than a decade and testified that he does receive security deposits for at least of his other rental properties.

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[1] Though the tenancy ended in 2018, the court shall use the terms "tenant" and "landlord" for ease.

[2] As a preliminary matter, the landlord filed a motion *in limine* to offer the tenant's past criminal convictions. At the time, the court took the motion (and the tenant's opposition) under advisement. After consideration, the motion is allowed and the prior convictions shall come into evidence.

5. The court finds that the funds paid by the tenant to the landlord on the three dates noted above, totaling $515, were for a security deposit. Having failed to comply with each and every requirement of the security deposit laws at G.L. c.186, s.15B, the court shall award the tenant three times the deposit plus interest at the statutory rate of 5%, totaling **$1570.75** plus reasonable attorney's fees and costs ($515 X 3 + $25.75).
6. **The Illegal Lock-Out:** On December 7, 2018, the landlord's brother Daniel removed the tenant's personal belongings in large garbage bags and put them outside against the shed. The tenant returned home in the midst of this activity. He did not recognize Daniel and assumed he was being robbed so he called the police and the police officer, Alexander Golenev, arrived on the scene. Golenev testified that the tenant explained to the police that he lived there and that the landlord was illegally removing his belongings. A neighbor told Officer Golenev that he saw the tenant at the premises every day. Officer Golenev also testified that he heard Daniel say to the landlord at this occasion that he should say that Daniel lives in the basement unit. He also testified that Daniel threatened that if the tenant remained at the premises, he would punch the tenant. Having sized this up as an illegal lock out, Officer Golenev explained to the landlord that he should use the courts to evict the tenant but urged the tenant to stay elsewhere that night to keep the peace. The tenant called someone who came to get him, and they put the tenant's belongings in some six large garbage bags that had been placed by the shed by Daniel (the landlord's brother) into the car.

7. The landlord testified that he believed that the tenant had already vacated the premises at the end of November 2018, because he had met with the tenant in mid-to-late November 2018 and had struck a deal with the tenant to pay him $1,000 to vacate the premises. The landlord also stated that several days after giving the tenant money to vacate, the landlord went to the basement unit and saw that the tenant had removed his clothes.
8. The court does not credit the landlord's testimony regarding his meeting the tenant at the Mobil gas station near the premises in mid-to-late November 2018 and giving the tenant $1,000 to move out nor that he inspected the basement unit and determined that the tenant had vacated in late November 2017. There is no receipt or any paperwork to evidence this transaction at the Mobil station and there were no witnesses. Additionally, the landlord's statements in his testimony were inconsistent with the emails to his tenants that were admitted into evidence. Whereas his testimony was that he reached a deal with the tenant in mid-to-late November 2018 to move out, he texted his tenants in late January 2019 stating that he "tried working out a financial agreement with [the tenant] so he moves out peacefully but he did not want one." Additionally, he testified that he thought the tenant vacated by the end of November 2018 but he texted his tenants in late January 2019 that the tenant "did not pay for December."
9. The court finds these to be significant inconsistencies and contribute to the court not finding him credible and the court finds the tenant credible in his testimony that no such meeting or exchange ever occurred and that he did not vacate the premises until he was forced to on December 7, 2018.

10. Though the landlord testified that he rented the unit furnished, the court credits the tenant's testimony that other than the bed provided by the landlord he brought in his own furniture including end tables, lamps, a reclining chair, a dresser, a coffee table, and kitchen items, and various other furniture. Would the landlord have gone to the premises in late November 2018 he would have seen that the tenant had not vacated the premises.
11. Lastly, on the night of December 7, 2018, when the landlord arrived to the police and the tenant claiming that he never moved out the landlord could and should have made a determination at that time if the tenant had in fact not vacated. The six large garbage bags of personal effects being brought out by his brother from the basement unit and a simple inspection to see that the tenant's furniture was still in the unit would and should have been convincing of that fact. Thus, even if the landlord had in fact believed that the tenant had vacated by the end of November 2018, it was impossible to maintain that position on the night of December 7, 2018, and he was required to allow the tenant back into the unit and not to change the key codes to access same.
12. The court finds and so rules that the events of December 7, 2018, violated G.L. c.186, s.14 which states that a landlord "who attempts to regain possession of such premises by force without benefit of judicial process" shall violate this statute and be liable for three months' rent plus reasonable attorney's fees and costs. Accordingly, the tenant shall be awarded **$1,650** plus reasonable attorney's fees and costs.

13. **Conditions of Disrepair:** When the tenant first moved into the premises in October 2017, it was an unfinished basement with no sheet rock, exposed ceilings, and cement floors. The only source of heat was a portable heater in the bedroom area, but no heat source in the basement. Beginning in February 2018, about six months into the tenancy, the landlord had a relative begin to finish the basement with sheetrock, floor tiles, heating units, and kitchen appliances and countertops. Said work greatly improved the premises but there continued to be exposed ceilings unfinished spaces at the time the tenant as illegal removed. Additionally, at some point in time during the tenancy, there were roof leaks that resulted in the staining of the ceiling tiles at the premises and sewage that came up the drain in the shower stall.

14. A landlord is liable for breach of the covenant of Previous quiet enjoyment if the natural and probable consequence of his acts or inactions cause a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

15. The court finds and so rules that the conditions of the premises as described above violated the tenant's covenant of quiet enjoyment in violation of G.L. c.186, s.14, and hereby awards the tenant an additional three months' rent totaling **$1,650** plus reasonable attorney's fees and costs.

16. **Conclusion and Order:** Based on the foregoing, an order awarding the plaintiff **$4,871.75** and for reasonable attorney's fees and costs shall enter. This is an order but not yet a judgment because as a prevailing party the tenant shall have 20 days from the date of this order noted below to file and serve a petition for attorney's fees and costs. The plaintiff shall have 20 days after receipt of said petition to file and serve his opposition, if any. The court shall thereafter issue a ruling on the fee petition and enter a final judgment.[3]

So entered this 24th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

[3] Any award in accordance with G.L. c.93A would be duplicative of the above awards under G.L. c.186, s.14.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-CV-475

HONG QIAN and XIAOMAO B. WONG,

Plaintiffs,

v.

NATASHA EMERY,

Defendant.

ORDER

This matter came before the court for trail on February 24, 2023, at which both parties appeared.[1] After consideration of the evidence and testimony admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background**: The plaintiffs, Hong Qian and Xiaomao B. Wong (hereinafter, "landlords") own a two-family dwelling at 51 Greenleaf Street in Springfield, Massachusetts (hereinafter, "premises"). The defendant, Natasha Emery

[1] Hong Qian appeared as plaintiff but not Xiaomao B. Wong.

(hereinafter, "tenant") was a tenant of the premises when it was purchased by the landlords on January 14, 2022.[2] The landlords served the tenant with a rental termination notice in March 2022 and thereafter a summary process summons. By the time that the matter was scheduled for trial on July 8, 2022, the tenant had already vacated the premises. The parties agreed to transfer the matter to the civil docket and the tenant, by agreement, filed an Answer and asserted claims of breach of the warranty of habitability, and breach of the covenant of quiet enjoyment stemming from problems with the heat consumer protection violations.

2. **The Landlord's Rent Claim:** Though the landlord was seeking rent beginning on the day of her purchase (January 14, 2022) using a calculation of $1,100 per month, the tenant persuaded the court that her rent prior to the landlord's purchase of the property was $900 per month and she never agreed to a higher rent. Accordingly, the outstanding rent shall be calculated a monthly rate of $900 from January 14 through July 3, 2022, when the tenant vacated. As such, the landlord shall be awarded **$4,587** for her rent claim.
3. **The Tenant's Breach of Quiet Enjoyment Claim:** There were problems with the heat from prior to the landlord's purchase of the premises and continuing thereafter. In some rooms it was too hot and in other rooms there was no heat and some radiators spewed water and it appears that when the landlord began making repairs the heating issues worsened before they improved. The tenant explained all of this to the landlord when she first purchased the property and introduced herself to the tenant and followed up with texts that were admitted into

[2] The court shall use the term "landlord" and "tenant" for ease, even though the tenant moved out long before the trial.

evidence. The January 30, 2022, City of Springfield Code Enforcement inspection report cited problems with the heating system that supported the tenant's testimony. The tenant testified credibly that the problems with heat persisted for the entirety of that hearing season.

4. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his acts or inactions cause a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997) .
5. The court finds and so rules that the landlord breached the covenant of quiet enjoyment in violation of G.L. c. 186, s. 14 by failing to remedy the heating system problems for the entirety of the heating season. As such, the tenant shall be awarded statutory damages equal to three months' rent, totaling **$2,700**.
6. **Conditions of Disrepair:** The tenant informed the landlord of many problems at the premises that existed at the time the landlord purchased the property. After a couple of weeks after the landlord's new ownership and with no attempts to make any repairs, the tenant contacted the city code enforcement department which inspected the premises on January 31, 2022. The City cited many problems including non-weathertight windows and windows that cannot stay up, missing or broken doorknobs, peeling paint, broken sinks, broken doors, cross-metering, and exposed wires.

7. Other than the heat issue which was already addressed above, the landlord appears to have diligently address the citations listed by the City code report, all within one month of purchasing the premises.
8. Accordingly, the court finds that these conditions existed from the inception of the tenancy, so that the tenant does not have the burden of proving notice to the landlord. *McKenna v. Begin*, 3 Mass.App.Ct. 168 (1975). Additionally, the tenant told the landlord in person, and then followed up with texts, regarding these conditions of disrepair. Said conditions had a predictable and negative effect on the tenant's use and enjoyment of the premises and constituted violations of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code, 105 C.M.R. 410.00 et seq. for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).
9. The court finds that the fair rental value of the premises was reduced by 30% as a result of these conditions which existed from the first day of the landlord's ownershop until March 1, 2022. Damages, therefore, for breach of the warranty

of habitability in the amount of **$405** will be awarded the tenant, representing 30% of the rent ($900) for six weeks.

10. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the landlord, Hong Qian, in the amount of **$1,482**. This represents an award to landlord of $4,587 in use and occupancy offset by the tenant's award of $3,105.

So entered this 27th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2117

ANGEL RODRIGUEZ,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ENTRY OF
LONI OTERO,	)	JUDGMENT
	)	
DEFENDANT	)	

This no fault summary process case came before the Court on July 24, 2023 for an in-person bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 72 West Main Street, Ware, Massachusetts (the "Premises"). The Premises are the second floor of an owner-occupied two-family house.

Defendant stipulated to Plaintiff's prima facie case for possession, but disputes the amount of rent she owes. Defendant has a mobile Section 8 voucher but the parties could not agree on the amount of her share of the rent. Neither party provided any evidence for the Court to consider. The Court therefore adopts Defendant's testimony that her rent share was $370.00 per month from the time Plaintiff purchased the property, and $170.00 per month as of January 2023. Plaintiff acknowledges receipt of $650.00 in that time period; thus the Court finds that the balance of unpaid rent is $2,020.00.

25 W.Div.H.Ct. 122

Defendant did not file an answer and, other than disputing the amount due, raised no legal defenses at trial. She testified that she simply needed more time to find a place to live. To be eligible for a statutory stay under G.L. c. 239, § 9 et seq., Defendant would have to pay the $2,020.00 in rent arrears. See G.L. c. 239, § 11 (the tenant must pay all rent unpaid prior to the period of the stay). However, given that Plaintiff continues to get the majority of the monthly rent from Section 8 (approximately $1,300.00 of the $1,500.00 contract rent), the equities favor allowing Defendant a reasonable extension of time without requiring her to pay the arrears. She does, however, have to pay her share of the rent for her use and occupation of the Premises for the duration of the stay.

Based on the foregoing, the following order shall enter:

1. Judgment shall enter for Plaintiff for possession and $2,020.00 in damages, plus court costs.
2. Pursuant to G.L. c. 239, § 9 et seq., the Court will stay issuance of the execution (the eviction order) provided that Defendant pay her share of the rent no later than the 5th of each month, beginning in August 2023.
3. If payment is not made as required herein, upon filing of an affidavit to that effect (with a copy served on Defendant), execution shall issue without the need for further hearing.
4. If payment is made, at the next court date, Defendant may seek a further stay provided that she convinces the Court that she has used best efforts to find replacement housing. She shall bring with her to the hearing a list of the apartments, including their addresses, about which she inquired or

submitted an application, including the dates of inquiry or application, the method of inquiry or application (if on-line, that website address where she made inquiry or application) and the result of such inquiry or application.

5. The parties shall appear in the Springfield session on **August 29, 2023 at 9:00 a.m.** for review and further order. If Defendant fails to appear, Plaintiff may ask for issuance of the execution.

SO ORDERED.

DATE: July 25, 2023

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0046

DAVID BEDFORD,

PLAINTIFF

v.

IRONSIDE SUMNER, LLC D/B/A
IRONSIDES PROPERTY GROUP,

DEFENDANT

RULINGS ON DEFENDANT'S MOTION TO DISMISS AND PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME

Defendant moves for dismissal of the instant action pursuant to Mass.R.Civ.P. 4(j). The case was filed on January 24, 2003, and a courtesy copy of the complaint was forwarded to Defendant's counsel the next day. The summons and complaint were sent to the sheriff's department for service on March 7, 2023. Service was made on Defendant's resident agent on May 16, 2023, and the return of service was filed on June 12, 2023. The end of the 90-day period for service was April 25, 2023.

Rule 4(j) mandates dismissal of complaints served outside the ninety-day limit unless a plaintiff demonstrates "good cause." The determination of good cause is left to the motion judge's discretion. *See Shuman v. Stanley Works*, 30 Mass. App. Ct. 951, 952-953 (1991). "Good cause is a stringent standard requiring diligen[t] albeit unsuccessful effort to complete service within the period prescribed by the rule." *Commissioner of Rev. v. Carrigan*, 45 Mass. App. Ct. 309, 311 (1998) (quotation omitted). *See Nett v. Bellucci*, 437 Mass. 630, 640 n.8 (2002). "The focus of the court's inquiry [as to good cause] is the reasonableness and diligence of counsel's effort to

effect service within the time required." *Carrigan*, supra at 312, quoting from *Shuman*, supra at 953.

Based on the affidavits of Talia K. Williams, the Court finds that Plaintiff satisfied the "good cause" standard. Plaintiff delivered the summons and complaint to the sheriff for service on March 7, 2023, seven weeks before the 90-day deadline. Neither the sheriff's office nor Plaintiff's counsel could locate a good address to serve Defendant, despite diligent efforts. Defendant had not updated the corporate records on file with the Secretary of State, and neither the company nor the resident agent could be located at the addresses listed. Defendant was no longer operating from the address listed on the relevant lease and deed. Plaintiff's counsel reached out to Defendant's counsel prior to the 90-day deadline to ask for contact information and asked counsel to accept service on behalf of his client, which request was denied. Plaintiff's counsel searched various property and business databases to no avail.

Despite Plaintiff's failure to file a motion to enlarge time prior to the deadline, the Court is satisfied that Plaintiff demonstrated good cause for the late service, particularly given the absence of surprise[1] and Defendant's culpability in failing to maintain accurate corporate records with the Secretary of State. Accordingly, Defendant's motion to dismiss is DENIED and Plaintiff's motion for enlargement of time is ALLOWED.

SO ORDERED.

DATE: July 26, 2023

Jonathan J. Kane

Jonathan Kane, First Justice

cc: Court Reporter

[1] Defendant's counsel not only received a courtesy copy of the complaint immediately after filing, but he also asked for an extension of time to file an answer.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-0614

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPARTMENT, HOUSING DIVISION, PLAINTIFF v. DOMINIC KIRCHNER, TRUSTEE OF SAKLAA REALTY TRUST, DEFENDANT	ORDER FOR ENTRY OF JUDGMENT OF CONTEMPT

This code enforcement matter came before the Court on July 21, 2023 for a hearing on Plaintiff's complaint for contempt. Both parties appeared through counsel. The property in question is located at 169 Princeton Street, Springfield, Massachusetts (the "Property").

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

In this case, the Court finds that Defendant purchased this fire-damaged property in February 2023 after agreeing to provide Plaintiff with a rehabilitation plan for the Property and proof of funds to complete the work. After a hearing on February 27, 2023, Defendant was ordered to maintain the Property clear of all trash, debris and overgrowth and to correct all code violations at the Property no later than June 12, 2023 ("March 6 Order").

Thereafter, Defendant decided not to renovate the Property and instead marketed the Property for sale. A buyer was located and the Property was under contract by April 5, 2023. Defendant did not inform Plaintiff of its decision to sell the Property rather than make the necessary repairs. Defendant concedes that it violated the March 6 Order and only contests the sanction sought by Plaintiff, which is a lump sum fine of $3,000.00. Defendant argues that it did not act in bad faith and did not intend to flip the Property initially. Defendant further contends that the buyer is committed to completing the renovations, which is Plaintiff's ultimate goal.[1]

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

1. Judgment for contempt will enter in favor of Plaintiff.
2. As a sanction for its contempt, Defendant shall pay all reasonable attorneys' fees, inspection fees and costs incurred by Plaintiff related to its approval of Defendant's purchase of the Property, including reviewing Defendant's rehabilitation plan and proof of financing, obtaining a court order to substitute defendants, and conducting inspections during the period that Defendant was the owner of the Property. Plaintiff shall file and serve an

[1] At the hearing today, the Court allowed Defendant's motion to sell in a separate order.

affidavit of such fees and costs within twenty days, and Defendant shall have twenty days to file and serve any opposition thereto. The Court will then enter an order without further hearing, unless specifically requested.

3. As a further sanction, the Court orders that Defendant remain as a Defendant in this action until the condemnation has been lifted at this Property. If the purchaser does not complete the rehabilitation of the Property within the time frames ordered by the Court, Plaintiff may seek to reopen this hearing to ask for further sanctions against Defendant related to the delays in completing the work.

SO ORDERED.

DATE: 7/26/23

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

MR.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-0017

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPARTMENT, HOUSING DIVISION, PLAINTIFF v. N.W.O. REALTY, INC., DAHSA MILLER AND DAVID SIMS, DEFENDANTS	ORDER FOR ENTRY OF JUDGMENT OF CONTEMPT

This code enforcement matter came before the Court on July 28, 2023 for a hearing on Plaintiff's complaint for contempt. Both parties appeared through counsel. The in question is located at 358 Wilbraham Road, Springfield, Massachusetts (the "Property").

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

25 W.Div.H.Ct. 130

After hearing on May 22, 2023, Defendants were ordered to file a written statement with this Court with a copy to Plaintiff no later than May 30, 2023 disclosing its election to either rehabilitate or demolish the Property. *See* May 15, 2023 order ("Order"), ¶ 5. The Court finds the terms of ¶ 5 to be a clear and unequivocal demand.

On June 22, 2023, Defendants' counsel sent an email to Plaintiff indicating that Defendants had retained a contractor and would be seeking permits. Although Defendants did not follow the terms of the Order, it is fair to say that Plaintiff was notified of Defendant's decision to proceed with the rehabilitation as of June 22, 2023. Despite this notice, however, the building permit has yet to be pulled. Mr. Sims testified that his architect and the City's Building Department have been communication about acceptable drawings and that he expects that the permit will issue once the drawings are approved.

Plaintiff's frustration about the slow pace of progress in this case is palpable. The fire that damaged the Property occurred in December 2019. The Court first ordered Defendants to provide a written plan for rehabilitation or demolition of the Property by April 24, 2020. Therefore, the Court finds that Defendants' failure to meet the latest deadline is clear and undoubted disobedience of the Order.

Accordingly, the Court enters the following order:

1. A judgment for contempt shall enter in favor of Plaintiff.
2. Defendant shall pay Plaintiff the sum of $2,000.00 as a sanction for its disobedience of the Order. The fine shall be held in abeyance until the next Court date after the September 27, 2023 inspection by Plaintiff. If at that

time, all permits have been closed and the work at the Property completed, the judgment of contempt will be vacated and the fine shall be rescinded.

3. If all permits have not been closed and the work at the Property has not been completed by September 27, 2023, the $2,000.00 sanction will be paid to Plaintiff and the Court will consider the imposition of daily fines until compliance is achieved.

SO ORDERED.

DATE: July 26, 2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0569

KIMBERLY HENDERSON, ET AL.,
PLAINTIFFS
v.
STEPHEN BOSCO,
DEFENDANT

RULING ON PETITION FOR ATTORNEYS' FEES AND ENTRY OF FINAL JUDGMENT

Plaintiff Kimberly Henderson ("Ms. Henderson") petitions this Court for an award of reasonable attorneys' fees and costs pursuant to G.L. c. 186 and G.L. c. 93A following a jury verdict returned on March 2, 2023. She seeks an award of $72,440.00 in fees and $3,240.18 in costs. Defendant opposes the amount of fees and costs, and contends that Ms. Henderson is entitled to $5,435.50 in fees and $324.08 in costs.

"While the amount of a reasonable attorney's fee is largely discretionary, a judge 'should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.'" *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC, supra*, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001).

The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. *See Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993).

In determining time reasonably spent on a matter, the court must be mindful of "the difficulty of the case" and "the results obtained" ... and "compensable hours may be reduced if the time spent was wholly disproportionate to the interests at stake." *Killeen v. Westban Hotel Venture, LLC*, 69 Mass. App. Ct. 784, 792 (2007) (citations omitted). No fee should be awarded for unsuccessful claims unless the court finds that the unsuccessful claims are sufficiently interconnected with the prevailing claims. *Id.* at 792-793.

Here, the jury returned a verdict in favor of Ms. Henderson on her breach of the warranty of habitability and breach of quiet enjoyment based on Defendant's attempt to collect rent not due to him. The jury returned a defense verdict on Ms. Henderson's claims for breach of quiet enjoyment based on conditions of disrepair. The Court held Defendant liable under c. 93A for seeking to collect rent due the prior owner, but not on any other grounds.

After reviewing the petition and supporting materials filed by Ms. Henderson's counsel, the Court finds that a reasonable hourly rate for Attorney Feldman is $350.00 per hour. In reaching this conclusion, the Court considered the experience, reputation, and ability of counsel, and the usual price charged for similar services by other attorneys in this Court. The Court finds that a reasonable hourly rate for Attorney Shoenhard, who was admitted to the Massachusetts Bar approximately four months prior to the trial, is $150.00 per hour.

Regarding the number of hours spent litigating this matter, the Court reviewed Attorney Feldman's billing records and finds the time spent on each separate task to be reasonable. The total hours must be considered in light of the results obtained at trial, however. This case was essentially one about a tenant living with conditions of disrepair and allegations that the landlord did little to address her concerns, including her complaints about unauthorized people living in common areas. Ms. Henderson prevailed on her claims alleging that Defendant tried to collect rent money not due to him and on claims that Defendant was liable under the warranty of habitability. She did not prevail with respect to her claims that the conditions of disrepair interfered with her quiet enjoyment and that she suffered emotional distress as a result of the circumstances in her unit and building. Nonetheless, the successful and unsuccessful claims involving conditions were significantly intertwined, at least with respect to conditions claims.

The Court concludes that one-third of Attorney Feldman's time should be deducted as a result of unsuccessful claims, leaving a total of 103.59 hours. The Court notes that preparation for, and the conducting of, a jury trial is substantially more time-intensive than bench trials, and the Court credits Attorney Feldman's statements that a significant amount of the deposition-related time could have been reduced had Defendant been more responsive to the written discovery requests.

With respect to Attorney Shoenhard's time, the Court finds that a newly admitted lawyer in that lawyer's first few months of practice adds little value to the case, especially given Attorney Feldman's well-documented expertise in the field. The time Attorney Shoenhard spent in the courtroom during the jury trial, which

constituted over 40% of the total time she spent with this case, should be considered a valuable learning experience as opposed to time required to act as co-counsel at trial. The Court accepts that a call to a potential witness and work obtaining and reviewing documents in discovery added value and was work that Attorney Feldman did not have to do. The Court finds that five hours of Attorney Shoenhard's time are compensable.

Accordingly, after consideration of the relevant factors, and employing the "lodestar" method, the Court rules that Plaintiff is entitled to reasonable attorneys' fees in the amount of $37,006.60. Despite the unusual circumstances that led to multiple depositions of the same witness, the Court accepts Attorney Feldman's explanation in his affidavit as to the need for them, and therefore awards costs in the amount requested, namely $3,240.18.

Based on the foregoing, final judgment shall enter in favor of Ms. Henderson in the amount of $41,131.78.[1]

SO ORDERED.

DATE: July 26, 2023

Jonathan Kane, First Justice

cc: Court Reporter

[1] This figure accounts for the award to Ms. Henderson after trial in the amount of $885.00, plus the attorneys' fees and costs.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0569

KIMBERLY HENDERSON, ET AL.,
PLAINTIFFS
v.
STEPHEN BOSCO,
DEFENDANT

RULING ON MOTION FOR RECONSIDERATION

Plaintiff Kimberly Henderson ("Henderson") moves pursuant to Mass. R. Civ. P. 59 and 60 to alter, amend, reconsider or grant relief from its June 2, 2023 decision regarding Defendant's liability under G.L. c. 93A (the "Order"). A motion for reconsideration calls upon the discretion of the motion judge. See *Audubon Hill S. Condominium Assn. v. Community Assn. Underwriters of America, Inc.*, 82 Mass. App. Ct. 461, 470 (2012). The motion should be based on changed circumstances or a particular and demonstrable error in the original ruling or decision. *Id.* (citations omitted). In this case, Ms. Henderson claims that the Court committed demonstrable error by failing to address the Attorney General's landlord-tenant regulations in determining Defendant's liability under c. 93A.

The Attorney General's landlord-tenant regulations, 940 CMR 3.17, recite as follows:

> (1) Conditions and maintenance of a Dwelling Unit. It shall be an unfair or deceptive act or practice for an owner to:
> (a) Rent a dwelling unit which, at the inception of the tenancy

> 1. contains a condition which amounts to a violation of law which may endanger or materially impair the health, safety, or well-being of the occupant; or
> 2. is unfit for human habitation ... [940 CMR 3.17(1)(a)];
>
> ...
>
> (i) Fail to comply with the State Sanitary Code or any other law applicable to the conditions of a dwelling unit within a reasonable time after notice of a violation of such code or law from the tenant or agency ... [940 CMR 3.17(1)(i)].

In this case, Mr. Bosco did not rent the subject premises to Ms. Henderson. She was living in the unit when Mr. Bosco purchased the building. Although a new tenancy arose between the parties when Mr. Bosco became the property owner, he was not the landlord at the inception of the tenancy (at move-in) and he is not responsible for any conditions of disrepair prior to his purchase. It is illogical to conclude that anyone who purchases an occupied residential unit in poor condition has committed an unfair and deceptive act simply by becoming the new owner. In such circumstances, the relevant question is whether the new owner complied with § 3.17(1)(i) by addressing the conditions within a reasonable time.

Here, the Court infers from the jury verdict that it found that Mr. Bosco did substantially address the material conditions of disrepair in the unit within a reasonable time after notice. Based on the totality of the circumstances, the Court finds that there was sufficient evidence for the jury to make such a finding.

Based on the foregoing, Ms. Henderson's motion for reconsideration is DENIED.

SO ORDERED.

DATE: July 26, 2023

Jonathan J. Kane
Jonathan Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-SP-1633
MAXWELL PARK LLC AND ANTHONY CARDAROPOLI, PLAINTIFFS v. JUDITH REAL, DEFENDANT	FINDINGS OF FACT, RULINGS OF LAW AND ENTRY OF JUDGMENT

This no-fault summary process case came before the Court on June 29, 2023 for a bench trial. Plaintiff Maxwell Park LLC appeared through counsel and one of its principals, Mary Cardaropoli. Defendant Real appeared self-represented. Plaintiff seeks to recover possession of a single family home located at 1004 Maple Street, Palmer, Massachusetts (the "Premises") from Defendant.

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

Plaintiff purchased the Premises in 2018. The Premises were Defendant's childhood home where she moved when she was 9 years old. At some point after college, Defendant returned to the Premises to help her mother (also Judith Real), who was suffering from dementia. Rent for the Premises was $1,000.00 per month, and it was direct deposited into Plaintiff's bank account.

25 W.Div.H.Ct. 139

On February 5, 2023, a pipe burst in the Premises. Defendant's mother was still alive at that time, but was residing in a nursing home. When neighbors reported noise coming from the Premises that night, Ms. Cardaropoli asked them to call the police because she assumed Defendant's mother was still living in the Premises and was concerned for her health and safety. Defendant was in the Premises when Ms. Cardaropoli arrived. The Board of Health subsequently condemned the Premises and ordered that the house be locked and secured. Plaintiff repaired the pipe and added oil to the tank (which was the responsibility of Defendant's mother) the next day, but the condemnation was not lifted due to poor sanitary conditions inside the Premises attributed to the occupants. Since the condemnation, Defendant has not resided in the Premises.

Defendant asserts tenancy rights based on the facts that she uses the Premises for her mailing address, that utility bills are in her name, and that rent payments came out of a joint account with her mother. She also testified that, following the pipe burst, Ms. Cardaropoli told her that she was the responsible party for the house, which Defendant took to mean that Plaintiff acknowledged her rights as a tenant. Defendant therefore argues that Plaintiff had the obligation to place her in alternative housing and, because it did not, should reimburse her for her out-of-pocket expenses.

Ms. Cardaropoli knew that Defendant was often at the Premises with her mother but believed that she was there as a caregiver. Defendant was not on the lease when Plaintiff acquired the Premises, and Plaintiff never added her to the

lease. Ms. Cardaropoli had no contact with Defendant until February 2023, when the pipe burst. Plaintiff did not knowingly accept rent from Defendant,[1] nor is there credible evidence that shows that there was a meeting of the minds whereby Plaintiff accepted Defendant as its tenant. The evidence does not support a finding that Plaintiff's actions caused a tenancy to be created.

After the Premises were condemned, Plaintiff accept rent for February and March 2023. Although the Court is unwilling to require Plaintiff to reimburse Defendant for her out-of-pocket expenses to say in a hotel, equitable principles justify an order that Plaintiff return the $2,000.00 received for use and occupancy for February and March 2023 when the Premises were uninhabitable. The Court finds this payment is necessary to avoid unjust enrichment, and such payment shall not be considered under G.L. c. 239, § 8A.

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. Execution shall issue upon written application pursuant to U.S.P.R. 13.
2. Plaintiff shall return $2,000.00 to Defendant within ten days. Any claims that Plaintiff may have for unpaid rent would need to be asserted against her estate.

[1] Rent was direct deposited and indicated the money came from "J. Real," which did not distinguish between mother and daughter.

3. Defendant shall have fifteen days from the date judgment enters on the docket to remove personal belongings from the Premises.
4. Plaintiff may schedule the physical eviction after receiving the execution, but the levy may not occur within the fifteen day period following entry of judgment on the docket.

SO ORDERED.

DATE: July 26, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-3651

MOUNT OLIVE PROPERTIES, LLC,

Plaintiff,

v.

JANELL HAYNES,

Defendant.

ORDER

After hearing on July 13, 2023, for review of this matter to determine if the tenant will be granted additional time to relocate, the following order shall enter:

1. By agreement of the parties, the landlord shall provide a new written neutral reference that includes information based on "information and belief" that the tenant has resided at the premises for 12 years (prior to its ownership).
2. The tenant shall continue to diligently search for alternate housing and reports that now her brother is able to co-sign her applications to assist her in finding a

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new apartment. The tenant also reports that she is disabled and shared her diagnoses during the hearing.

3. Landlord's counsel did not have a witness but explained that his client indicates that it is looking to sell the property with the tenant's unit vacant The landlord may wish to bring a witness to provide evidence of its needs relative to the vacancy of the subject unit.
4. The tenant shall pay the landlord use and occupancy in full for July 2023 today.
5. The tenant shall pay the landlord use and occupancy for August 2023 on time and in full.
6. This matter shall be scheduled for further review and to determine if the tenant will be granted any further extension on **August 24, 2023, at 2:00 p.m.**

So entered this 26th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

MR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CONSOLIDATED CASES

AIXA OYOLA, PLAINTIFF v. JASMINE DUKE AND ELIJAH NAYLOR, DEFENDANTS	DOCKET NO. 23-CV-0570

and

JESSICA REYES, PLAINTIFF v. JASMINE DUKE AND ELIJAH NAYLOR, DEFENDANTS	DOCKET NO. 23-CV-0571

and

JASMINE DUKE, PLAINTIFF v. AIXA RODRGUEZ aka (AIXA OYOLA), JESSICA SANTIAGO, SHERLEY SANTIGO REYES, DEFENDANTS	DOCKET NO. 23-CV-0573

ORDER

These matters came before the Court on July 25, 2023 on motions for emergency orders relating to neighbor disputes. Ms. Oyola (1st Floor), Ms. Reyes and

her daughter Jessica Santiago (3rd Floor) and Jasmine Duke (2nd Floor) all reside at 14 Massasoit Place, Springfield, Massachusetts (the "Property"). All appeared self-represented. Elijah Naylor owns the Property through and LLC. Neither Mr. Naylor nor counsel for the LLC appeared, although Robert Davis, who identified himself as the property manager, appeared.

The first and third floor tenants claim that Ms. Duke makes excessive noise and has acted disrespectfully toward them and their families. Ms. Duke claims that the first and third floor tenants and their family are harassing her. She obtained a Harassment Prevention Order against Ms. Oyola based on her allegation that her son confronted her with a weapon.[1] The landlord claims it has investigated the parties' claims and reports that the results are inconclusive.

Rather than make a finding of who is most a fault in this neighbor dispute, the Court will enter an order requiring the parties to stay away from each other and to respect the other parties' peaceful enjoyment of the Property. Ms. Duke, who was unable to control herself in the courtroom and made disparaging comments toward the Court, appears to believe that this Court can issue orders to protect her safety; however, it cannot issue Abuse Prevention Orders or Harassment Prevention Orders. Ms. Duke was advised to contact the police if the circumstances warrant.

After hearing, the following order shall enter:

1. Ms. Oyola, Ms. Reyes and Ms. Santiago and their respective household members and guests ("Oyola/Reyes Parties") on the one hand, and Ms. Duke and her household members and guests ("Duke Parties") on the other hand,

[1] The next hearing in Springfield District Court for extension of the c. 258E order is on August 1, 2023.

shall not communicate in any manner at the Property except in the event of a bona fide emergency.

2. The Oyola/Reyes Parties and the Duke Parties, respectively, shall not harass, threaten, intimidate or cause physical harm to the other.
3. The Oyola/Reyes Parties and the Duke Parties, respectively, shall maintain their music at reasonable noise levels at all times (and they are encouraged to use headphones to avoid future allegations of excessive noise).
4. The Oyola/Reyes Parties and the Duke Parties, respectively, shall refrain from acting in any manner that unreasonably disturbs the peaceful enjoyment of, or threatens the health or safety of, the other.
5. The parties shall be held responsible for the behavior of their respective household members and guests.
6. If any party alleges a breach of this order, that party shall file a motion, with a copy sent to the other parties, identifying the manner in which the order was violated. The Court will schedule a hearing, at which the party alleging the breach must prove the violation with admissible evidence.
7. The property owner shall take reasonable steps to investigate the parties' complaints. It shall keep records of its efforts and be prepared to present them to the Court if there are additional hearings..
8. The $90.00 legislative fee for injunctive relief is hereby waived.

SO ORDERED.

DATE: July 26, 2023

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. 23-SP-2068

HONG QIAN,
PLAINTIFF
v.
DEBORAH FERGUSON,
DEFENDANT

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

This residential eviction case came before the Court on June 30, 2023 for a bench trial. Both parties appeared self-represented. Plaintiff seeks to recover a residential dwelling unit located at 21 Grover Street, Springfield, Massachusetts (the "Premises") from Defendant. Defendant, who is a 67 year-old with disabilities, lives on the first floor.

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

The Premises are part of a two-family home that was owned by Defendant's mother prior to her death. Plaintiff purchased the home at auction on March 30, 2022. The parties entered into a lease agreement beginning April 1, 2022 with a rent of $1,100.00 per month. Defendant acknowledges receipt of the notice to quit terminating her tenancy as of April 30, 2023, and she has not vacated the Premises.

Plaintiff has established her prima facie case for possession. Defendant moved into the first floor years ago, when her mother lived on the second floor.

In her answer, Defendant asserts defenses based on retaliation, bad living conditions and interference with quiet enjoyment, as included counterclaims for emotional distress, having to spend her own money to make repairs and the performance of yard work without compensation. Regarding retaliation, Defendant claims that the only work done in the Premises happened after Defendant called Code Enforcement. Plaintiff called Code Enforcement in May 2023, however, well after receiving the notice to quit on March 31, 2023. Therefore, the Court finds Defendant's claim for retaliation fails.

Likewise, although Defendant complained about a ceiling in need of repairs, inadequate heat in two rooms, a leaking toilet, problems with the refrigerator and windows, and a mold-like substance in the bathroom, she provided insufficient evidence to prove that Plaintiff is liable for breach of warranty or interference with quiet enjoyment. The Court infers that the conditions complained of predated Plaintiff's ownership of the Premises and were caused by Defendant's (and her family's) use of the Premises over many years. More important, the Court has insufficient evidence to find that Defendant gave notice to Plaintiff of repairs that were needed in the Premises. Defendants claims for defective conditions is dismissed.[1]

[1] Now that Code Enforcement is involved, the Court expects that any repairs that are needed will be addressed in due course.

Defendant also testified that, when Plaintiff purchased the house, Plaintiff threw away her items stored in the garage. The Court finds, however, that Plaintiff was told by Defendant's sister, who was then residing on the first floor, that the items belonged to her (the sister) and her mother and could be discarded. When Defendant protested, Plaintiff stopped removing items. Defendant also testified without any specificity that Plaintiff has attempted to enter her unit without adequate notice and that the renovation work taking place on the second floor has interfered with her quiet enjoyment. The Court finds insufficient evidence on all of Defendants claims for breach of quiet enjoyment.[2]

Plaintiff did not ask for any money in her complaint; thus the Court awards no monetary damages. Because Defendant did not sustain her burden of proof with respect to her defenses and counterclaims, the Court awards her no damages.[3]

Accordingly, based on the foregoing, the Court enters the following order:

1. Plaintiff is entitled to judgment for possession.
2. This case having been brought for no fault of Defendant, Defendant is entitled to a stay on entry of judgment and issuance of execution pursuant to G.L. c. 239, §§ 9-11. The Court hereby stays entry of judgment through September 30, 2023 on the following terms and conditions:
    a. Defendant must pay $1,100.00 each month by the 5th beginning in August 2023 for her use and occupancy of the Premises.

[2] Regarding landscaping, the evidence was unclear as to which party has responsibility. Because it is a multifamily house, Defendant cannot be responsible for maintaining the yard, so from this date forward, all landscaping and lawn care must be done by Plaintiff.
[3] Defendant testified that she has filed a complaint with the Massachusetts Commission Against Discrimination, so this Court reserves any claims she has for discrimination to that forum.

b. Defendant shall leave the driveway clear during daytime hours so as not to interfere with contractor vehicles there to work on the property.

c. Defendant shall not interfere with the renovation work to the first floor and attic and she shall not interact with the contractors on site. Such renovation work may take place only on weekdays during business hours (8 a.m. to 5 p.m.).

d. Defendant shall not feed any birds on the property.

3. The Court requests that Tenancy Preservation Program do an assessment of Defendant and, if appropriate, make a referral to Greater Springfield Senior Services and Veterans Services (based on her testimony that she is the widow of a veteran).

4. The parties shall return at **9:00 a.m. on September 28, 2023** for a review of Defendant's housing search efforts and further order..

SO ORDERED.

DATE: July 26, 2023

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Tenancy Preservation Program of Pioneer Valley
Court Reporter

MR.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1719

DAVID C. BROOKS, TRUSTEE OF THE DEERFIELD VALLEY MANAGEMENT TRUST,

PLAINTIFF

v.

RUSSELL P. MIZULA AND MARYELLEN E. DAHROOGE,

DEFENDANTS

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

This no fault eviction case came before the Court on July 7, 2023 for a bench trial. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover a single family home located at 399 Leverett Road, Shutesbury, Massachusetts (the "Property") from Defendants.

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

In October 2014, the parties agreed to the terms of a purchase and sale agreement whereby Defendants would purchase the Property from Plaintiff for $250,000.00, with $10,000.00 paid up front and Plaintiff agreeing to finance the balance of the purchase price. Defendants paid $500.00 in cash toward the deposit and the parties agreed that Plaintiff would reduce the purchase price by $10,000.00

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(to $240,000.00) in exchange for a backhoe owned by Defendants. Defendants were planning to pay off the loan or refinance it once they sold other property they owed.

Defendants could not make the payments under the note, and Plaintiff commenced a foreclosure action against Defendants in Franklin County Superior Court (Docket No. 2178CV00018). The parties settled that matter by a stipulation for judgment, pursuant to which Defendants would try to sell the Property and use the proceeds to repay the $240,000.00 loan. The parties further agreed that Defendants would pay Plaintiff $800.00 each month beginning in October 2021 for their use and occupancy of the Property pending any sale. Further, Defendants agreed to sign a deed in lieu of foreclosure which was to be held in escrow until September 1, 2022; provided, however, that Plaintiff could record the deed in lieu of foreclosure sooner and commence a summary process action if, among other things, Defendants failed to make the monthly use and occupancy payments. As part of the settlement, Defendants agreed to waive and release any and all claims and defenses.

Plaintiff served Defendants with a no fault notice to quit dated October 28, 20222 terminating the tenancy as of December 1, 2022, which notice Defendants acknowledge receiving. Defendants did not vacate the Property at the end of the notice period. Plaintiff asserts that Defendants failed to make the monthly payments and seek to recover $8,000.00, representing the period from September 2022 to June 2023. Defendants tended an $800.00 payment for July 2023.

Defendants raised two defenses/claims at trial. First, they contend that the backhoe taken by Plaintiff was worth more than $10,000.00 and the excess value should be applied to the balance. This defense is without merit for several reasons.

First, any dispute about the value of the backhoe is relevant to the Superior Court matter, and in that case Defendants stipulated that the payoff amount was $240,000.00, consistent with the agreement that the backhoe would reduce the purchase price by $10,000.00. Second, the financing transaction between the parties occurred more than 8 years ago and is outside the statute of limitations for contract claims. Third, even if the value of the backhoe was relevant in this summary process action, Defendants offered no evidence as to its actual value.

Defendants also testified generally about three incidents in September 2022 in which Plaintiff's daughter and others accompanying her allegedly came onto the Property without permission. Defendants could not specify dates and the testimony was unsupported by any evidence. Therefore, the Court finds that Defendants have not proven by a preponderance of the evidence that Plaintiff interfered with their quiet enjoyment.

This case having been brought for no fault of Defendants, Defendants are entitled to a stay on entry of judgment and issuance of execution pursuant to G.L. c. 239, §§ 9-11, provided they meet the statutory conditions. One such condition is that they pay all rent due through the date of trial. Defendants, who claim disabilities, cannot pay this sum but are asking for an equitable stay on use of the execution (eviction order) nonetheless. After considering the equities and the respective risk of irreparable harm, the Court will allow an equitable stay on the conditions recited herein.

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

1. Plaintiff is entitled to judgment for possession and damages in the amount of $8,000.00.
2. The execution shall not issue before October 1, 2023, provided that Defendants pay $800.00 for August use and occupancy by August 5, 2023, and $800.00 for September use and occupancy by September 5, 2023.
3. Execution shall issue upon written application if Defendants fail to make a required payment or if they fail to vacate as of October 1, 2023.

SO ORDERED.

DATE: July 27, 2023

Jonathan J. Kane, First Justice

cc: Court Reporter

MR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HADLEY, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1721

NANCY OZCELIK AND STEVE OZCELIK,

PLAINTIFFS

v.

KELLY SULLIVAN,

DEFENDANT

ORDER ON AMENDED
ENTRY OF JUDGMENT

This summary process case came before the Court on July 10, 2023. Both parties appeared through counsel.[1] Although the Court sent out a notice scheduling trial for today, the Court finds no reason for trial given that a judgment for possession and monetary damages in the amount of $6,475.28 entered on September 22, 2022. The judgment has never been vacated, despite three motions (on October 31, 2022, November 22, 2022 and December 23, 2022) by Defendant seeking that relief. It appears that Defendant did not appear for the hearings on her motions.

Defendant filed a motion to stop a physical eviction, and after a hearing on January 23, 2023, the Court allowed the motion, cancelled the eviction and instructed Defendant, with help from agencies, to apply for RAFT. The judge did not vacate the judgment at that time. Accordingly, the Court treats this hearing as one to amend the judgment.

[1] Defendant's counsel appeared on a limited assistance representation basis.

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

Defendant resides at 21 Depot Street, 1st Floor, Belchertown, Massachusetts (the "Premises"). According to Plaintiffs' rent ledger, Defendant owes $14,950.00 in rent arrears. Defendant produced bank records showing she made a payment of $1,000.00 in March 2023 that Plaintiff failed to credit. Plaintiff did credit the other payments listed in Defendant's records.[2] The Court, therefore, will credit the $1,000.00 payment, reducing the arrears to $13,950.00 through the date of this hearing.

Defendant contends that Plaintiff refused rental assistance from the RAFT program which would have reduced the balance owed. Both parties acknowledge that RAFT was not willing to send payment to Plaintiff without a payment agreement for the remaining balance, which would have been $4,050.00 after RAFT assistance. Plaintiff signed a payment agreement requiring Defendant to pay $675.00 per month in addition to the rent to be applied to the balance and sent it to Defendant, but Defendant did not accept the offer. There is no evidence that Defendant asked for a more affordable repayment plan or that she otherwise engaged in discussions with Plaintiff to try to negotiate a different payment schedule. Under these circumstances,

[2] Defendant claims that RAFT made a large payment in 2022. Plaintiff's rent ledger shows rent having been paid in full through March 22, 2022, with a partial payment for April 2022. The payments reflected on the ledger may have been paid by RAFT, but if Defendant contends that she made the 2022 payments on the ledger herself and that RAFT made a payment thereafter, she had no evidence to support her claim.

the Court finds that Plaintiff is not solely responsible for RAFT closing Defendant's application.

Based on the foregoing, the following order shall enter:

1. The judgment that entered on September 22, 2022 shall be amended to reflect damages in the amount of $13,950.00, exclusive of court costs and interest.
2. Execution (the eviction order) may issue by written application ten days after the amended judgment is docketed.

SO ORDERED.

DATE: July 27, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1984

BALTIMORE CITY PROPERTIES, LLC, Plaintiff, v. FERDINAN FOUNTAIN, Defendant.	ORDER

This matter came before the court for trial on June 1, 2023, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se*. After consideration of the evidence admitted at trial the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Baltimore City Properties, LLC (hereinafter, "landlord") owns a multi-unit dwelling located at 66 Marble Street n Springfield, Massachusetts (hereinafter, "premises" or "property"). The defendant, Ferdinan Fountain (hereinafter, "tenant") has resided at the premises since June 2017. The landlord's claim for possession was dismissed at an earlier juncture in this case and the tenant's counterclaims are the sole claims to be adjudicated by the court. Said claims include reimbursement for an electric bill, breach of the

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warranty of habitability, retaliation, and breach of the covenant of quiet enjoyment. The only person to testify was the tenant himself as the landlord did not have any witnesses.

2. The landlord's defense to much of the tenant's claims is that the Mr. Fountain was never a tenant of the landlord but was a tenant of a sublessor, Calvin Wilson. It appears that Mr. Wilson rented the entire premises and rented out rooms for several years, charging the tenant a monthly rent of $450. In January 2020, the landlord began eviction proceedings against Mr. Wilson and obtained judgment for possession against him in March 2020. The court finds that the landlord, as owner, was ultimately responsible for the conditions of disrepair and liable for all acts and omissions relative to the maintenance and control of the premises.
3. **Breach of the Covenant of Quiet Enjoyment: Failure to Provide Electric Service:** The electric utility for the premises was about to be shut off by the utility company in November 2018 and the landlord was not going to put the utility in its name. This utility was never in the tenant's name and there was no contractual obligation in any way for him to put it in his name. The tenant, however, was very concerned about losing electric service--- especially because one of his housemates required a machine to help him to breath---and put the electric utility in his name. It was not until June 14, 2020, that the utility was finally removed from his name.
4. Pursuant to G.L. c.186, s.14, a landlord must furnish electric service unless there is a written letting agreement that transfers that obligation to a tenant. The

landlord's failure to maintain the electric service violated the tenant's covenant of quiet enjoyment. Having not produced sufficient evidence upon which the court can calculate the actual amount of the electric bills paid by the tenant, the court shall award the tenant the statutory amount of three months' rent (@ $450), totaling **$1,350**.

5. **Breach of the Covenant of Quiet Enjoyment: Condemnation:** On November 6, 2019, the City of Springfield, Housing Inspection Division condemned the premises for conditions that violated various state safety codes. The tenant was required to stay in a hotel for a week, initially at his own costs before the landlord ultimately took responsibility for some of the bill. There is no question that the basis for the condemnation was due to the failures of the landlord.
6. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of its acts causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). In this instance, the court finds that the landlord's acts and omissions in its failures to make sufficient repairs to avoid condemnation were knowing and rule that the landlord breached the tenant's covenant of quiet enjoyment. Accordingly, the court shall award the tenant three months' rent totaling **$1,350**, under a separate and distinct prong of G.L. c.186, s.14. See, *Clark v. Leisure Woods Estates, Inc.*, 89 Mass. App. Ct. 87 (2016).

7. **Breach of the Warranty of Habitability**[1]: Conditions of disrepair existed at the premises from the commencement of the tenancy through the date of the dismissal of the City's code enforcement actions on February 13, 2023. Along the way, the landlord's failure to make repairs resulted in multiple court actions by the City of Springfield which ultimately led to the appointment of a Receiver on August 16, 2022.

8. Such conditions of disrepair included a non-functioning stove, lack of a working heating system, non-functioning or missing smoke detection equipment, various and extensive electrical issues, broken plaster, rotted steps, and peeling paint, as well as others.

9. These conditions constituted breaches of the warranty of habitability, for which the landlord is strictly liable. *Berman& Sons v. Jefferson*, 379 Mass.196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not required absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for a breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). An average abatement of 20% compensates the tenant for the diminished rental value of the premises resulting from these conditions over a period of 34 months (from the inception of the tenancy in June

[1] By agreement of the parties during the trial, the court took judicial notice of the City Code Enforcement matters in the court which included 19-CV-1060 and 19-CV102.

2017 through the date of Mr. Calvin's eviction in March 2020). The tenant's damages for the landlord's breach of the warranty of habitability are, therefore **$3,060**.

10. Even though the conditions of disrepair continued until the appointment of a Receiver in August 2022, and thus for many months after the court's cut-off when Calvin Wilson was evicted, there is no rent claim against which to calculate an abatement. It is the court's understanding that the landlord has not sought rent, use, or occupancy from the tenant since Mr. Calvin's eviction in March 2020. Thus, there is no rent claim thereafter to abate. Whereas the landlord has asserted repeatedly in all proceedings against the tenant that he was not a tenant of the landlord, and the landlord did not assert a claim for rent, use, or occupancy against this tenant in these proceedings, the court shall foreclose the landlord from bringing a claim for rent, use or occupancy through the date of this order noted below *in any court action*.

11. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the tenant, Ferdinan Fountain for damages of **$5,760** (money damages only as possession is not a claim herein).

So entered this 28th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-SP-1816
HURRICANE PROPERTIES LLC, PLAINTIFF v. KAREN LUPIEN AND JOSEPH LUPIEN, DEFENDANTS	ORDER PURSUANT TO G.L. C. 239, § 9 AND FOR APPOINTMENT OF GAL

This no fault summary process case came before the Court on July 19, 2023 for further proceedings following a bench trial on July 13, 2023. Plaintiff appeared with counsel. Defendants appeared self-represented. Defendants reside at 204 Exchange Street, Apt. A, Chicopee, Massachusetts (the "Premises").

After trial, the Court determined that Plaintiff was entitled to a judgment for possession.[1] The Court reserved the question of a stay pursuant to G.L. c. 239, § 9 in order to obtain an update from Greater Springfield Senior Services ("GSSS"), who is working with Ms. Lupien with respect to a housing search. At the hearing, GSSS reported that it has an open case with Ms. Lupien, but that no replacement housing has been identified. The Court is constrained in permitted an extended stay because it has made a finding in a related case that it is dangerous and unsafe for Defendants to remain in the Premises.

[1] Defendants owe no rent arrears.

After further consideration of the circumstances presented to the Court at trial, the Court finds, by clear and convincing evidence, that Mr. Lupien cannot meaningfully engage in the legal proceedings without the appointment of a guardian ad litem. He lacks the ability to meet essential requirements for his physical health and safety given that he cannot leave his second floor unit in an emergency or to attend medical appointments. Accordingly, in order to secure the full and effective administration of justice, the Court shall appoint a guardian ad litem ("GAL") for Mr. Lupien.

Based on the foregoing, the Court enters the following order:

1. No judgment shall enter for possession prior to the next hearing.
2. At the next hearing, the Court will review Defendants' efforts to locate replacement housing. If at the time of the next hearing Defendants are working with an agency or individual who is assisting them in their housing search, they are encouraged to ask such agency or individual to appear at the hearing to inform the Court as to what efforts have been and are being made to help Defendants relocate.
3. The GAL is authorized to investigate the facts of the proceeding and gather information relevant to this case, particularly relating to what services are in place to assist Defendants in finding new housing and what emergency housing options are available if the Court orders issuance of the execution.
4. The GAL is further authorized to discuss Defendants' housing issues with Plaintiff's counsel, TPP and GSSS, as well as any other agencies that are or might assist Defendants.

5. This order constitutes a general release permitting GSSS and Defendants' health care providers to share confidential or protected health information about Defendants with the GAL for the purposes of determining Defendants' ability to relocate and live independently. The authorization granted by this order shall expire three (3) months from the date of this order, unless extended by further Court order.
6. The parties shall appear for further review in the Springfield session on **August 22, 2023 at 11:00 a.m.** Mr. Lupien is permitted to appear by Zoom, and any other party or witness may elect to appear in person or by Zoom.

SO ORDERED.

DATE: 7-28-23

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

BRIAN KELLY,

Plaintiff,

v.

MICHAEL ROACH,

Defendant.

No. 23-CV-176

MICHAEL ROACH, III,

Plaintiff,

v.

BRIAN KELLY,

Defendant.

No. 23-SP-2192

These matters came before the court for a consolidated trial on July 26, 2023, at which both parties appeared with counsel. After consideration of the evidence admitted at trial, the findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff in the Civil action 23-CV-176 and the defendant in the Summary Process action 23-SP-2192, Brian Kelly (hereinafter, "tenant") has resided 49 Washington Road in Springfield, Massachusetts (hereinafter, "premises" or "property") since February 2020. The defendant in the Civil action and the plaintiff in the Summary Process action, Michael Roach (hereinafter, "landlord") owns the premises.
2. The landlord attempted to terminate the tenancy for no-fault in September 2022 and then commenced a Summary Process action in December 2022, which was dismissed by the court and the tenants' counterclaims were transferred to this Civil action (23-CV-176). The landlord then terminated the tenancy again for no-fault and then commenced this Summary Process action (223-SP-2192).
3. **The Tenant's Claims; Breach of the Covenant of Quiet Enjoyment: Lack of Heat:** During the heating season of 2021/2022, the furnace was malfunctioning and Eversource red tagged it due to it leaking carbon monoxide. The premises were without a heating source for several months until the landlord was able have a new one installed[1]. The tenants were forced to use space heaters which are not designed to replace a working furnace and are dangerous when used in

[1] The parties testified to differing amount off time for which there was no heat and the court credits the tenant's testimony that it was for several months.

that matter. Even though it was for a substantial time, the landlord did not provide nor offer to provide alternate housing for the tenant.

4. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his acts or inactions cause a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997) .
5. The court finds and so rules that the landlord breached the covenant of quiet enjoyment in violation of G.L. c. 186, s. 14 by forcing the tenant to reside at the premises with no working heating system for several months without an offer of alternate housing requiring his tenants to use space heaters throughout the property---a situation that he admitted was not safe.
6. For this breach of G.L. c.186, s.14, the court awards the tenant three months' rent as damages totaling **$1,500** plus reasonable attorney's fees and costs.
7. **Breach of the Covenant of Quiet Enjoyment: Utilities:** The landlord is the owner of the premises and resides therein with his girlfriend and rents out rooms to three tenants (including Mr. Kelly). The arrangement regarding utilities is that he charges all of his tenants equal shares (and he himself pays a equal portion) for all utilities including for lights, water, and heat. Though there is a clause in the lease that the "Resident agrees to pay all utilities" some of the utilities are for areas not within the rental premises such as the garage (and not used by the tenants). Additionally, he charges for water costs without complying with G.L.

c.186, s.22. Additionally, the landlord does not produce the utility bills for examination by the tenants so that they can verify the costs and the portions being charged. Finally, the Springfield Water & Sewer Commission tagged the house with *Notice of Water Service Shut Off* on at least three occasions during the tenancy. The tenant testified credibly, especially given the lack of heat described above and the failures to address conditions of disrepair described below, that he feared that the water would be shut off and he would have to live without water for a period of time.

8. Based on the foregoing regarding utilities, the court finds and so rules that the landlord violated a separate and additional prong of G.L. c.186, s.14 and awards the tenant three months' rent totaling **$1,500** plus reasonable attorney's fees and costs. See, *Clark v. Leisure Woods Estates, Inc.*, 89 Mass. App. Ct. 87 (2016)

9. **Breach of the Warranty of Habitability:** From the commencement of the tenancy there was a roof leak into the ceiling of the third floor directly outside the tenant's room. The leak worsened with time and in the winter of 2021 the landlord had the roof leak addressed. The extensive damage to the third-floor ceiling as well as the second-floor ceiling directly below has never been repaired. The photographs and videos admitted into evidence show exposed lath and missing plaster and water damage that has lasted for years.

10. These conditions constitute a breach of the warranty of habitability for which the landlord is strictly. liable. *Berman& Sons v. Jefferson*, 379 Mass.196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but

rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for a breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). An abatement of 15% compensates the tenant for the diminished rental value of the premises resulting from these conditions over the 41-month period of this tenancy. The tenant's damages for the landlord's breach of the warranty of habitability are **$3,075**.

11. **The Landlord's Claim for Rent:** The landlord was unable to affirmatively establish a rent claim in this consolidated action. He keeps no ledger, nor could he assert with any details what rent went unpaid and for which months. At least two of the tenant's checks admitted into evidence tendered in October 2022 were for "rent and utilities" and though landlord convincingly testified that he applied it all to outstanding rent he could not accurately convey what the outstanding balance was at the time of those two checks were given him.
12. The tenant, however, stipulated five months of rent (since March 2023) as outstanding and unpaid though July 2023. It is based solely on this stipulation that the court can calculate the amount of claim for outstanding rent.
13. **Conclusion and Order:** Based on the forgoing, the tenant shall be awarded possession plus **$3,575** plus reasonable attorney's and costs. At the conclusion of the trial, counsel for the tenant argued that because the landlord's claim for use and occupancy was vis-à-vis a Breach of Contract counterclaim in the Civil

action only and not in the Summary Process action, any award for rent, use, or occupancy should not be part of an G.L. c.239, s.8A analysis and calculation. Because the award to the tenant exceeded the amount of outstanding rent, use, and occupancy the court need not reach that issue.

14. **Reasonable Attorney's Fees and Cost:** As a prevailing party in his claims for breach of the covenant of quiet enjoyment and the tenant shall have 20 days from the date of this order noted below to file and serve a petition for reasonable attorney's fees and costs. The landlord shall have 20 days after receipt of same to file and serve any opposition thereto. The court shall thereafter issue a ruling on the fee petition and enter final judgment at that time.

So entered this 28th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0575

YELENA SOKOLOVA,

PLAINTIFF

v.

DIANA ORTIZ AND ANGEL ORTIZ,

DEFENDANTS

NO CONTACT ORDER

This matter came before the Court on July 25, 2023 on Plaintiff's request for an emergency order. The parties appeared and represented themselves. Plaintiff landlord lives on the second floor of 5 Frederick Street, Westfield, Massachusetts (the "Property") and Defendants reside on the first floor. Each side makes allegations of harassment and disturbances. The parties have a summary process eviction trial scheduled for August 3, 2023.

After hearing, the Court enters the following order:

1. Pending the trial date in the summary process case,
    a. Plaintiff and her household members and guests (the "Plaintiff Parties") shall have no contact or communication with Defendants or their household members and guests (the "Defendant Parties") except with respect to legitimate landlord-tenant matters.

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b. The Defendant Parties shall have no contact or communication with the Plaintiff Parties except with respect to legitimate landlord-tenant matters.

2. The Plaintiff Parties on the one hand and the Defendant Parties on the other hand shall not act in a manner that disturbs the peaceful enjoyment of, or threatens the health or safety of, the other, nor shall they act in a manner which threatens, intimidates or harasses the other.

3. The $90.00 legislative fee for injunctive relief is hereby waived.

SO ORDERED.

DATE: 7.28.23

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. 23-SP-4323
SPRING MEADOW APARTMENTS, PLAINTIFF v. TANIKA HOLLINS, DEFENDANT	ORDER FOR SPRINGFIELD HOUSING AUTHORITY TO APPEAR

This matter came before the Court on July 20, 2023 on Plaintiff's request for review of an order dated July 5, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented, accompanied by Ms. White from Tenancy Preservation Program ("TPP"). Plaintiff avers that the current balance of rent arrears is $6,159.76, with $218.54 due in court costs.

Defendant has lost her rental voucher, which is administrated by Springfield Housing Authority ("SHA"). Defendant apparently provided documentation to complete her recertification in a timely manner, but Ms. White reports that her paperwork was rejected by SHA because it was not submitted in PDF form. The Court cannot understand how Defendant lost her rental subsidy over an issue about the method of submitting documents. Accordingly, the Court will order SHA to appear at the next hearing to explain to the Court how and when Defendant attempted to recertify and why her recertification was not processed. The Court finds this information necessary to be able to decide whether to lift the stay on use of the

execution. Moreover, the information may also be necessary for Defendant to be able to complete her RAFT application, which is now pending.

Further, the Court finds that Defendant paid $200.00 in July, not $250.00 as was required by the previous Court order. In light of the foregoing, the following order shall enter:

1. The stay on use of the execution shall continue until further Court order.
2. Defendant will pay $300.00 ($250.00 toward August use and occupancy plus the $50.00 she failed to pay by today) by the next Court date.
3. A representative of SHA shall appear at the next hearing to report to the Court on the status of Defendant's voucher and to explain why her recertification paperwork, if timely submitted, was not accepted.
4. If requested by Way Finders, Plaintiff shall provide documentation to the RAFT program in order to complete the application process.
5. The parties and SHA shall return for further hearing on **August 17, 2023 at 9:00 a.m.**

SO ORDERED.
DATE: 7.28.23

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

cc: Springfield Housing Authority c/o Priscilla Chesky, Esq.
Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-695

ZBYLUT REALTY, LLC,

Plaintiff,

v.

CHERYL COOPER,

Defendant.

ORDER

This matter came before the court on June 21, 2023, for hearing on several motions, at which both parties appeared through counsel. After hearing, the following order shall enter:

1. **The Tenant's Motion to Dismiss or for Summary Judgment:** The tenant argues that the notice to quit ("Notice") in this matter is fatally flawed and, as such, the landlord's claim for possession should be dismissed. The tenant makes two arguments. First, that the Notice terminates the tenancy on a non-rent day. Because the parties each submitted affidavits and they dispute upon

which day of the month the rent was due, there remains a genuine factual dispute that can only be determined at trial. The tenant's second argument is that the Notice is misleading because it includes "30 Day Notice to Quit" in its heading and thirty days from the date the Notice was January 18, 2023, which is clearly not a "rent day"[1].

2. The time of termination of a tenancy as stated in a notice to quit must fall on "the day upon which rent is payable (or the expiration of that month immediately preceding the rent day)." *Dudley v. Grushkin*, Boston Housing Court No 02-SP-03695 (September 10, 2002, Kyriakakis, C.J). This is well settled law in the Massachusetts Housing Court. See *Marak v. Richardson.* Boston Housing Court, (September 17, 1998, Daher. CJ.); *Graham v. Staszewski*, Boston Housing Court NO 01-SP-00643 (March 26, 2001, Daher, CJ): *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.)
3. 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

[1] Though the parties dispute which is the day the rent is due, they do not suggest in their affidavits that the "rent day" could be January 18, 2023.

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

4. Appreciating, as noted above, that the parties would dispute whether the "rent day" in this tenancy is the last day of the month versus the first days of the month, the question before the court is whether the notice is insufficient due to being equivocal on which date the Notice was terminating the tenancy.
5. The Notice is titled **"30 DAY NOTICE TO QUIT"** in bold and capital letters and because the Notice was arguably served on December 19, 2022, the thirty-day date would be January 18, 2023. Does this cause the Notice to be insufficient and equivocal even if there is correct language in the body of the notice which informs the tenant that she is "requested to vacate at the end of the next month, no later than January 31, 2023" (separate from the issue of whether or not January 31, 2023, is a "rent day")?
6. Delivery of a legally sufficient notice to quit "is a condition precedent to a summary process action and part of the landlord's *prima facie* case." *Cambridge St. Realty LLC v. Stewart*, 481 Mass. 121, 122 (2018). Courts have often found that if the language has a "tendency to mislead," irrespective of its actual impact

on the tenant in question, the notice is insufficient to terminate the tenancy. See, e.g., *Walnut Apartment Associates v. Perez*, Western Division Housing Court, 14-SP-4924 (Fields, J., February 25, 2015) ("[t]he standard applied when analyzing the equivocal nature of a termination notice is not whether in fact the tenant was misled by the notice but whether the notice is sufficiently clear, accurate and not subject to being reasonably misunderstood." *Sargeant West, II LP, v. Keebaugh*, Western Division Housing Court, 11-SP-2012 (Fein, J., July 11, 2012) (no reliance upon, or even knowledge of, the deceptive language or effect must be shown".

7. The termination notice cases in the Commonwealth share a purposeful reluctance to look beyond the four corners of the notices in question. The standard applied is not whether the tenant was actually mislead to his prejudice but whether the notices are sufficiently clear, accurate and certain so that they cannot reasonably be misunderstood. Furthermore, they should not have a "tendency to deceive" and no reliance upon, or even knowledge of, the deceptive language or effect must be shown. *Leardi v. Brown*, 394 Mass 151, 156 (1985).
8. Additionally, "a notice to quit must be 'sufficient and perfect of itself' in order to terminate a tenancy before proceeding under summary process." *Oakes v. Munroe*, 62 Mass. 282 (1851). Accordingly, a notice to quit must include an accurate and definite time period in which the tenant is required to vacate the premises; failure to include such a statement renders the notice to quit fatally defective. See *Oakes*, 62 Mass. at 282.

9. "The law does not impose this requirement simply as an exercise in technicalities. Rather, the requirement of clear and consistent notices to quit arises out of a tenant's legitimate interest in knowing the status of her tenancy and what actions she may take, if any, to preserve the tenancy." *Schulze v Collazo*, Western Division Housing Court No. 01-SP-1115 (Fein, D. 2001).
10. The court answers this question in the affirmative. Using a notice to quit that has in bold and capital letters **30 DAY NOTICE TO QUIT**, and thus terminating the tenancy in the middle of the next which is not a "rent day"---even with other language indicating a vacate date of the last day of that month---equivocates the notice and renders it insufficient to terminate the tenancy. Accordingly, the landlord's claim for possession is dismissed, without prejudice.
11. **The Tenant's Motion to Amend Answer and Counterclaims:** The tenant's motion to amend the answer and counterclaims is allowed and the Amended Answer and Counterclaims with Jury Demand filed with the motion is considered accepted by the court and served on the landlord.
12. **Transfer of the Tenant's Answer and Counterclaims to the Civil Docket:** Given the above rulings, the tenant's Amended Answer and Counterclaims shall be transferred by the Clerks Office to the Civil Docket and tilted *Cheryl Cooper v. Zbylut Realty, LLC* and the Clerks Office is requested to schedule a Case Management Conference in that matter. Accordingly, this summary process action is dismissed.
13. **The Landlord's Motion to Dismiss Counterclaim or For Summary Judgment:** The court will not address at this time the landlord's motion to

dismiss the tenant's counterclaims but ask the parties, if the landlord continues to wish to have same heard, to schedule it with the Clerk in the new Civil matter discussed above.

So entered this 28th day of July, 2023.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SC-114

CASSONDRA GENDRON,

Plaintiff,

v.

MATTHEW EMERSHY,

Defendant.

ORDER

After hearing on July 31, 2023, at which both parties appeared without counsel, the following order shall enter:

1. Mr. Emershy's motions for issuance of the execution and for wage attachment are denied, without prejudice.
2. This is due to Ms. Gendron's substantial compliance with Clerk Kunha's Payment Order dated June 29, 2023.

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3. Hereafter, Ms. Gendron shall continue to pay Mr. Emershy $100 until the debt is paid in full, post-marked every other Friday.
4. If Ms. Gendron's income increases by 30% or more consistently over a six-month period or she wins a lottery in an amount greater than the debt owed in this matter, she must so inform Mr. Emershy so that an increased payment schedule may be established (by agreement of the parties or by court order after motion).

So entered this 31st day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-CV-651

IVY AFRA,

Plaintiff,

v.

YAW AGYAPONG and ROSE TURPIN,

Defendants.

ORDER

After hearing on July 18, 2023, at which all parties appeared through counsel, the following order shall enter:

1. Attorney Wiener concedes that G.L. c.244, S. 16 does not apply to this matter at this time and the court concurs.
2. The defendants offered to pay $500 to the plaintiff for a 30-day extension to provide discovery. Though the plaintiff did not accept this offer, the court shall

order that if $500 is received by plaintiff counsel by July 24, 2023, the defendants shall have until August 18, 2023, to respond to outstanding discovery.

3. If said payment is not received timely or in full, there shall be a daily sanction of $100 to be paid by the defendants until the discovery responses are provided. Said daily sanction shall be payable to the plaintiff's counsel to be held in escrow by that attorney until further order of the court.
4. If said funds are paid in full and timely, there shall be a $100 daily sanction beginning August 19, 2023, until the discovery responses are received by plaintiff's counsel.
5. Additionally, the defendants are prohibited from selling, transferring encumbering, or gifting any real estate that they own or have a financial interest in without leave of court.
6. Attorney Weiner's motion to withdraw as counsel is allowed. Attorney Weiner shall ensure that a copy of this order is immediately provided to the defendants.

So entered this 2nd day of August, 2023.

Robert Fields, Associate Justice

CC: Steven Weiner, Esq. (former defendants' counsel)
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-4135

MINNAL, LLC,

Plaintiff,

v.

NICOLE HARRIS,

Defendant.

ORDER

This matter came before the court on April 11, 2023, for trial at which both parties appeared represented by counsel. After consideration of the evidence admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Minnal, LLC (hereinafter, "landlord") owns a three-family dwelling located at 212 Hampden Street in Chicopee, Massachusetts. The defendant, Nicole Harris (hereinafter, "tenant") resides in the first-floor unit (hereinafter, "premises" or "property") at a monthly rent of $1,075. The landlord purchased the premises on June 21, 2022, and the tenant was already residing

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therein. On October 13, 2023, the landlord gave a 14-day notice to quit for non-payment of rent. Thereafter, the landlord commenced this Summary Process matter. The tenant filed an Answer, and then an Amended Answer, asserting claims arising out an alleged breach of warranty of habitability and breach of the covenant of quiet enjoyment and violations of the consumer protection act.

2. **The Landlord's Claim for Possession and for Use and Occupancy:** The parties stipulated to the *prima facie* elements of the landlord's claim for possession and for use and occupancy through April 2023 in the amount of $5,950.
3. **Warranty of Habitability Claim:** Shortly after the landlord purchased the property, the tenant met with Pablo Ottenwalder who appeared to be in control of the premises. He came by to collect rent and to whom the tenant informed several times early into their ownership about problems at the premises, many of which pre-existed the landlord's purchase of the property. The tenant informed Pablo that she had a mouse infestation, problems with the bathroom and kitchen sinks, a fruit fly infestation from the rotting sink cabinets, a sparking ceiling fan, ripped carpets, and faulty doors (including the front main door that was not sealing properly).
4. Even though she told Pablo about the mouse infestation he did not initially attend to their elimination. The infestation worsened through the spring and into the summer, despite the tenant's purchase of traps. The mice were increasing and getting into the tenant's food and the tenant found an increase

in mouse droppings in various rooms within the premises. The tenant increased her cleaning and came across extensive amounts of mice droppings. At one point during this time, the tenant caught 16 mice in one week. Despite the additional cleaning by the tenant, the smell of mouse urine was always prominent. The tenant's photographs admitted into evidence display extensive mouse droppings throughout the premises and of many dead mice.

5. The tenant's couch was destroyed by the infestation and the tenant also lost food to the infestation, as the mice ate through plastic food containers. The tenant got two cats, even though she would otherwise not have cats as pets, to help with the infestation as well as purchase mouse resistant containers for her food and pet food. The mice infestation was pervasive, and the cats were constantly catching mice. On one horrible occasion in November 2022, the cats half-killed a mouse that was then picked up by the tenant's 1.5-year-old autistic son who placed the mouse to his mouth and threw it at his mother.
6. The tenant also spoke with Joanna Bosine, in October 2022, when she took over management and reported all of the same conditions to Joanna. The tenant informed Joanna that she was going to withhold the rent until it was addressed.
7. By this time, October and November 2022, the infestation at its worst with the cats catching mice and the tenant constantly sweeping behind all furniture and finding new mice droppings.
8. The tenant also testified about other conditions of disrepair, separate from the mouse infestation. The court found her testimony to be credible and accurate

relative to conditions such as to the very poor condition of the carpeting in the unit, the rotted sinks and the fruit fly infestation that resulted from them, a non-working stove and oven (for which she purchased a new one after not hearing back from Joanne after complaining about it), broken doors, and holes in walls. The court also credits her testimony that she complained repeatedly to the landlords.

9. Though the landlord hired a professional exterminator, who treated the premises multiple times and filled in the many holes in the walls throughout the premises with steel wool, the infestation is so extreme that it continued to exist at the time of the trial in April 2023.

10. The landlord also made repairs to the other conditions in February 2023. The landlord's efforts to convey to the court that some of delay in repairs and exterminations were due to the tenant's denying access for same and/or contributing to the problems by her cluttered lifestyle and ownership of two cats and a dog. The court finds no credible evidence that the tenant denied access or contributed to the problems.

11. The above-described conditions violated the minimum standards of fitness for human habitation, as set forth in Article II of the State Sanitary Code, 105 CMR 410 et seq. and constitute a defense and counterclaims based upon breach of the implied warranty of habitability, for which the landlords are strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use

approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855, 576 N.E.2d 658 (1991).

12. The court finds that the fair rental value of the premises was reduced by 40% on average during the months of June 2022 through September 2022 (conditions of disrepair plus infestation), and 60% for the months of October through February 2023 (conditions of disrepair and extreme infestation), and then by 35% for the months of March through the day of trial in April 2023 (continued but reduced infestation). Accordingly, the court shall award the tenant damages of $5,697.50 for the landlord's breach of the warranty of habitability.

13. **Chapter 93A:** The parties stipulated that "the landlord conducts trade and commerce in the renting of residential apartments" and, therefore, is subject to Chapter 93A, the Consumer Protection Act.

14. The court finds and so rules that the landlord's failures to remedy the infestation and conditions of disrepair discussed above violated G.L. c.93A, and the Attorney General's regulations thereunder, 940 CMR 3.17. Pursuant to c.93A, s.9(3), the landlord is liable for multiple damages, not less than double nor more than treble, if the violation was "willful or knowing." "The 'willful or knowing' requirement of s.9(3), goes not to actual knowledge of the terms of

the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the defendant knows it or not, amount to violations of the law. *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987). The conditions that existed during this tenancy existed on the day that the landlord purchased the property and, therefore, is imputed with knowledge of same. In addition, the tenant complained extensively to the landlord's various agents who were in control of the premises.

15. Although the facts of this case would arguably justify an award of treble damages, I am exercising my discretion under c.93A to award double damages of the warranty of habitability damages as the landlord has contracted with an exterminator and has completed a number of repairs at the premises.

16. Thus, the tenant's damages for the landlords' breach of the warranty of habitability of $5,697.50 are doubled, totaling $11,395, and the tenant shall also be awarded reasonable attorney's fees[1].

17. Conclusion and Order: Based on the foregoing, the tenant shall be awarded possession plus **$5,445** plus reasonable attorney's fees [representing on offset of the total award to the tenant of $11,395 MINUS the award to the landlord for outstanding rent of $5,950]. This is an award and not yet a judgment as the tenant is a prevailing party in her Chapter 93A claim and shall be given 20 days from the date of this order noted below to file and serve a petition for reasonable attorney's

[1] The court also finds that the landlord's delays and failures to address these conditions of disrepair and infestation violated her covenant of quiet enjoyment but a litigant is not entitled to duplicative recoveries on separate legal theories for the same factual wrongs and injuries. Instead, a party who prevails on more than one cause of action is entitled to recover upon which ever legal theory yields the greater award. As such, the court awards the tenant damages for breach of the warranty of habitability doubled pursuant to Chapter 93A and not for breach of the covenant of quiet enjoyment. *Darmetko v. Boston Housing Authority*, 378 Mass. 758, 762 (1979).

fees and costs. The landlord shall have 20 days after receipt of said petition to file its opposition. The court shall then make an order regarding said fees and costs and enter a final judgment for fees and costs, damages, and possession.

So entered this 2nd day of August, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-657

ZBYLUT REALTY, LLC,

Plaintiff,

v.

CHERYL COOPER,

Defendant.

ORDER FOR ENTRY OF FINAL JUDGMENT FOR POSSESSION, DAMAGES, AND ATTORNEY'S FEES AND COSTS

This matter came before the court for a jury trial on December 7 through 12, 2022, and resulted in an award of possession for the tenant plus $8,700 in damages to the tenant, plus reasonable attorney's fees and costs. After hearing on January 24, 2023, and further consideration of the tenant's Chapter 93A claim, the following order shall enter:

1. The parties assented at the January 24, 2023, hearing to the tenant's petition for attorney's fees totaling $11,940 in fees and $44.99 in costs.

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2. As to the remaining Chapter 93A claim taken under advisement by the court, that claim is denied as it would be duplicative of the breach of quiet enjoyment award. See, *Darmetko v. Boston Housing Authority*, 378 Mass. 758, 762 (1979).
3. Accordingly, final judgment shall enter for the tenant for possession and for $8,700 in damages and for $11,940 in attorney's fees and $44.99 in costs[1].

So entered this 2nd day of August, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

[1] The court sincerely apologizes for the delay in issuing this order.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-2405

AUDREY DWANE,

Plaintiff,

v.

JAE and ANDREA MCLELLAN,

Defendant.

ORDER

This matter came before the court for trial on August 2, 2023, at which the plaintiff appeared with counsel and the defendants appeared *pro se*. After consideration of the evidence admitted at trial the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Audrey Dwane (hereinafter, "landlord") owns a single-family dwelling located at 115 Edgewater Road in Agawam, Massachusetts (hereinafter, "premises" or "property"). The defendants, Jae

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and Andrea McLellan (hereinafter, "tenants") have resided in the premises since January 2023 at a monthly rental amount of $2,100. On or about May 1, 2023, the landlord had the tenants served with a notice to quit for non-payment of rent and thereafter commenced this instant summary process action. The tenants filed an Answer with Counterclaims, asserting breaches of the covenant of quiet enjoyment, violations of the warranty of habitability, retaliation, and unfair and deceptive trade practices.

2. **The Landlord's Claims for Possession and for Outstanding Use and Occupancy:** The parties stipulated to the landlord's *prima facie* elements for her claim for possession and for use and occupancy totaling $10,500 through August 2023. What remains for the court's adjudication are the tenants' claims against the landlord which will be addressed in turn below.

3. **The Tenants' Claim for Breach of the Covenant of Quiet Enjoyment: Failure to Provide a Working Heating System:** On or about January 9, 2023, during the first week of the tenancy, the heating system at the premises stopped working. The tenants immediately contacted the landlord. The landlord did nothing to remedy the situation. The landlord testified that she did nothing because she chose to not believe the tenants that there was any problem with the heating system. She did not ask to come inspect the heating system (to substantiate her belief that the tenants were lying), or dispatch a technician, or anything. She chose to do nothing. The tenants, without a alternative, hired a technician who repaired the heating system at a cost to them of $500.

4. The court views the landlord's actions and inactions as a 'willful and intentional failure to furnish heat' in violation of G.L. c.186, s.14 and awards the tenants three months' rent, totaling ($2,100 X 3) **$6,300**.
5. **The Tenants' Claim for Breach of the Covenant of Quiet Enjoyment: Impermissible Entries:** The landlord used to live at the premises for ten years prior to renting it out to the tenants in January 2023. The parties stipulate that the landlord had items remaining at the property that she was going to remove shortly after the tenancy began. By agreement of the parties, the tenants moved any and all of the landlord's belongings that she wished to remove to the garage and the parties arranged for their removal on January 22, 2023. On that date, the landlord inappropriately and without permission entered the tenant's home. Further, she went into the basement and took photographs inside the home without permission.
6. Several months later, on March 25, 2023, the landlord appeared at the property unannounced and knocked on the back door. Mr. McLellan answered the door, quickly explained that he had just had surgery, and that the landlord was not welcome to enter the home. When the tenant went to close the door, the landlord pushed her way into the home by taking a step inside against the tenant's expressed wishes. The windowpane from the kitchen door broke in the altercation and it appears that both the tenant and the landlord sustained injury.[1]

[1] Any possible personal injury claims are not part of this action and are expressly not waived by this action.

7. The landlord testified that she was at the premises to follow up on an email she had sent to the tenants regarding a water bill. She admitted that her email had said that the tenants could respond with any questions. The landlord then changed her testimony that she was there to obtain a key to the premises. These inconsistencies were pervasive during the landlord's trial testimony.
8. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). The court finds that the landlord's entry into the tenants' home on these two occasions was extremely intrusive and had a very serious effect on the tenants' emotional state and very clearly violated a separate prong of G.L. c.186, s.14 and their covenant of quiet enjoyment and the court awards the tenants damages equaling three months' rent, totaling ($2,100 X 3) **$6,300**.
9. **The Tenants' Warranty of Habitability Claim:** On June 16, 2023, the Town of Agawam Health Department inspected the premises and issued a report citing numerous violations of the State Sanitary Code, Chapter II, 105 CMR 310.000 Minimum Standards of Fitness for Human Habitation. Such conditions included a lack of smoke detection equipment (which required

immediately remedy), improper functioning gas stovetop, improper venting of the gas oven, electric outlets not functioning properly, leaking sink faucet, malfunctioning clothes dryer, problems with light fixtures, excessive moisture in basement, deteriorating walls, illegal basement bedroom, and insufficient illumination in the basement.

10. The landlord did not attend to any of these conditions of disrepair. Instead, she informed the Town Health Department that the tenants must make the repairs and could deduct the costs from their rent.

11. Said conditions constituted breaches of the warranty of habitability, for which the landlord is strictly liable. *Berman& Sons v. Jefferson*, 379 Mass.196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not required absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for a breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). The court finds that the conditions of disrepair cited by the town are conditions that existed at the commencement of the tenancy and therefore, the landlord is imputed with knowledge of their existence. In addition, the landlord clearly know about the humidity in the basement as she had dehumidifiers in the basement and her

trial testimony bolster this conclusion when she said that she used the dehumidifiers when she lived there in the non-winter months.

12. The court finds that an abatement of 50% compensates the tenant for the diminished rental value of the premises resulting from these conditions over the seven-month period of January through July 2023. The tenants' damages for the landlord's breach of the warranty of habitability are **$2,205** ($2,100 X 15% = $315 X 7months).

13. **The Tenants' Security Deposit Claim:** Prior to the commencement of the tenancy the landlord required and the tenants paid a Security Deposit in the amount of $2,100. Though the landlord gave a simple receipt for same at the time of the transaction in October 2022, said receipt did not have any information required by the statute about the bank and bank account for the deposit. Thereafter, the landlord provided no evidence that she handled the deposit in the manner required by the statute. See, G.L. c.185, s.15B. By failing to comply with the security deposit law, the landlord forfeited her right to retain the deposit.

14. The tenants included a claim for the security deposit law violation in their Answer filed and served on about June 30, 2023. In accordance with well-established case law said Answer is to be considered a "demand" for the return of the security deposit. The landlord did return the deposit and is liable for three times the security deposit. Accordingly, the tenants are awarded three times the deposit, totaling **$6,300.**

15. **The Tenants' Consumer Protection Claims:** The court finds and so rules that the landlord's leasing of the premises which contained violations of the State Sanitary Code at the commencement of the tenancy and then her failure to address same after being cited by the town constitutes a violation of the State's Consumer Protection Act at G.L. c.93A and the Attorney General's regulations thereunder, 940 CMR 3.17. The landlord stipulated in her testimony that she is engaged in the trade and business of rental property, owning several rental properties. Pursuant to G.L. c.93A, s.9(3), the landlord is liable for multiple damages, not less than double nor more than treble, if the violation was "willful or knowing." "The 'willful or knowing' requirement of s.9(3), goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the defendant knows it or not, amount to violations of the law. *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987).

16. Although the facts of this case would arguably justify an award of treble damages, the court will exercise its discretion under G.L. c.93A to award double damages of the warranty of habitability damages of $2,205, totaling **$4,410.**

17. **The Tenants' Claim of Retaliation:** The court finds and so rules that the tenants failed to meet their burden of proof on their retaliation claim.

18. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the tenants for possession and in damages in the amount of **$12,810**. This

represents an award of $23,310 to the tenants for their claims MINUS the award to the landlord for outstanding rent of $10, 500.

So entered this 4th day of August, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-190

BANK OF NEW YORK MELLON,

Plaintiff,

v.

ALTON KING, DAVID WHITE, and RACE STREE PROPERTIES, LLC.,

Defendants.

ORDER

After hearing on July 7, 2023, at which all parties appeared, the following order shall enter:

1. For the reasons stated on the record, the court is very concerned with the irregularities and non-compliance with the laws pertaining to storage of and ultimate sale of Mr. King's property moved and stored pursuant to a physical levy of a Summary Process eviction.

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2. Examples of such malfeasance include but are not limited to the failure to send Mr. King "monthly statements" regarding costs accruing by the warehouseman upon which a claim can be made upon Mr. King as required by G.L. c.239 s.4(b)(8). The defendants David White and Race Street Properties, LLC's argument that a "statement" send once at or near the levy suffices is wrong as a matter of law.
3. Additionally, the defendants David White and Race Street Properties, LLC, are very likely to have violated the requirement to advertise the sale of stored goods in a "newspaper of general circulation where the sale is to be held" by utilizing Turley Publications' Holyoke Sun instead of The Republican Newspaper. That issue may be further analyzed as a result of a discovery process at a later juncture in these proceedings.
4. Further, Mr. King credibly testified, and the defendant David White's statements at the hearing did not undermine such testimony, that he has not been provided a real opportunity to access his stored belongings in a manner afforded by G.L. c.239, s.4(f). Mr. White's argument that Mr. King was afforded time on the day of the physical eviction prior to moving items onto the moving trucks is not a substitution for this requirement.
5. Lastly, for today's purposes, the fact that the defendants David White and Race Street Properties, LLC generated flyers which listed a "postponed" sale for July 29 and September 16, 2023, after the court cancelled the July 1, 2023, sale of Mr. King's belongings and ordered them (White and Race Street) to not "re-

advertise" a sale indicates to the court a concerning level of non-compliance with the court's orders.

6. **Conclusion and Order:** Based on the foregoing, the court is satisfied that an injunction is necessary to prevent irreparable harm to the moving party, Mr. King, and the following order shall enter:

    a. Until further order of the court the defendants David White and Race Street Properties, LLC shall not sell, transfer, gift, advertise for auction, or encumber in any fashion the items belonging to Mr. King that are stored by them;

    b. David White and Race Street Properties, LLC shall coordinate with Mr. King, if he so chooses, for access to and removal of his belongings in a manner consistent with the relevant law;

    c. The parties shall have 45 days from the date of this order to propound written discovery and 45 days from the date each party receives any such discovery demand to respond;

    d. The Clerk's Office is requested to schedule this matter for a Case Management Conference with their office to establish a schedule for this litigation. The parties are to appear prepared, for among other things, to also identify if there are any pending motions that they believe have not been acted on by the court.

    e. The Scheduling Order that results from that Case Management Conference shall include, among other dates, a briefing and hearing schedule for motions on whether the claims by Mr. King against David

White and Race Street Properties, LLC should be severed into a separate Civil Action that does not include the plaintiff in these proceedings, Bank of New York Mellon. The Scheduling Order shall also schedule for hearing any pending motions identified by the parties as not having been addressed by the court.

So entered this 7th day of August, 2023.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-CV-0611
MORGAN DIBACCO C/O RUACH MANAGEMENT, PLAINTIFF v. JUDITH MONTERO, ANA MARRERO AND MOSES SANTIAGO, DEFENDANTS	ORDER TO VACATE

This matter came before the Court on August 7, 2023 on Plaintiff's emergency motion for injunctive relief. Plaintiff appeared through counsel. Defendants did not appear after notice.[1] Plaintiff seeks an order requiring Defendants to vacate residential premises located at 22 Quincy Street, Springfield, Massachusetts (the "Premises").

According to the Verified Complaint, Defendant Montero is the only authorized occupant at the Premises. On July 17, 2023, Plaintiff learned that Ms. Montero permitted Defendants Marrero and Santiago to reside at the Premises without prior authorization or knowledge of Plaintiff. Ms. Montero then vacated the Premises and Defendants Marrero and Santiago remain at the Premises.

Because Defendants Marrero and Santiago are not authorized occupants of the Premises and moved in without Plaintiff's knowledge or permission, their rights to possession can be no greater than those of Ms. Montero. Now that Ms. Montero has

[1] Plaintiff served notice of the hearing upon Defendants via Deputy Sheriff.

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surrendered possession, any rights Defendants Marrero and Santiago have to remain at the Premises have been extinguished. Given the foregoing, any irreparable harm they might suffer by the issuance of an injunction is outweighed by the substantial risk of irreparable harm to Plaintiff if injunctive relief is not granted. Accordingly, the following order shall enter:

1. Defendants Marrero and Santiago must vacate the Premises upon 72 hours' advance notice served at the Premises by an agent of Plaintiff, deputy sheriff or constable.[2]
2. If Defendants Marrero and Santiago 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.
4. If Defendants believe that they have a right to continued possession, they shall file an emergency motion with this Court, providing a copy to Plaintiff's counsel, within the 72-hour period. If such a motion is filed, Plaintiff shall not take steps to remove Defendants from the Premises without further court order.
5. The $90.00 legislative fee for injunctive relief shall be waived.

SO ORDERED.

DATE: 8/7/23

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

cc: Court Reporter

[2] In calculating the 72 hour notice period, weekends shall be excluded.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SC-123

COURTNEY EVANS,

Plaintiff,

v.

SPRINGFIELD GARDENS 99-103 LP,

Defendant.

ORDER

After hearing on July 12, 2023, the following order shall enter:

1. The plaintiff/defendant-in-counterclaim commenced this small claims action against the defendant/plaintiff-in-counterclaim (the plaintiff's former landlord) on September 22, 2022. The plaintiff's Statement of Small Claim seeks $4,000.00 in damages for emotional distress, return of security deposit, bad conditions in the unit, and loss of personal property. The plaintiff's claims arise from a tenancy at Unit 4L of 99 Federal Street in Springfield ("the premises"). In response to the

Statement of Small Claim, the defendant filed an Answer with a counterclaim for unpaid rent. After trial, the magistrate found for the defendant on the plaintiff's claims as well as the defendant's counterclaim. Judgment for $8,977.58 plus interest entered for the defendant on June 1, 2023. The plaintiff appealed the judgment on the counterclaim, and the case was scheduled for trial before a judge.

2. Prior to the commencement of trial, the issue was raised of whether the plaintiff, Courtney Evans, can assert the claims set forth in the Statement of Small Claims as affirmative defenses to the defendant's counterclaim. Pursuant to the Uniform Small Claims Rules, the plaintiff in this action is barred from relitigating on appeal the claims raised in the Statement of Small Claim. Thus, the Court will not consider evidence at trial related to the claims raised by the plaintiff in the original complaint.
3. Ms. Evans may, however, assert other defenses to Springfield Gardens' claim for unpaid rent---if she has any---that are not related to the ones she asserted in her original complaint.
4. The Clerk's Office is requested to reschedule the small claims appeal trial in this matter.

So entered this 7th day of August, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-SP-5447

PHOENIX DEVELOPMENT, INC.,

Plaintiff,

v.

PRINCE GOLPHIN, JR. and TAMMY GOLPHIN,

Defendants.

ORDER FOR FINAL JUDGMENT FOR POSSESION AND FOR USE AND OCCUPANCY AND COURT COSTS

After hearing on June 1, 2023, at which all parties appeared, the following order shall enter:

1. **Procedural Background:** On May 1, 2023, the court entered an order finding that the plaintiff has superior right to title in accordance with G.L c.239, s.1 and awarded the plaintiff possession. The award for possession was not entered as a judgment as the plaintiff also had a claim for use and occupancy.

2. **Use and Occupancy:** After the May 1, 2023, summary judgment order noted above the parties were scheduled for an evidentiary hearing on June 1, 2023, to establish the plaintiff's claim for use and occupancy and, more specifically, the amount to be established for monthly use and occupancy.
3. After consideration of the evidence presented by the plaintiff's witness (a licensed real estate broker) and by Mr. Golphin, the court is satisfied that $1,500 per month is an appropriate monthly use and occupancy amount.
4. Because the plaintiff purchased the premises at auction on October 24, 2018, the plaintiff's claim for use and occupancy through July 2023, totals $84,000 [representing 56 months @$1,500].
5. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the plaintiff for possession and for $84,000 plus court costs.

So entered this 7th day of August, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2160

MICHAEL POPE,

Plaintiff,

v.

KATRINA MEEKS,

Defendant.

ORDER

This matter came before the court for trial on August 3, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se*. After consideration of the evidence admitted at trial, the following findings of fact and rulings of law and order shall enter:

1. **Background:** The plaintiff, Michael Pope (hereinafter, "landlord") is the lessor of property located at 61-63 Westford Circle in Springfield, Massachusetts (hereinafter, "premises" or "property"). The defendant Katrina Meeks

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(hereinafter, "tenant") has resided at the premises for about seven years which predates when the current owner of the property purchased the property in August 2021.

2. In April 2023 the landlord terminated the tenancy with a Notice Vacate for Non-Payment of Rent and thereafter commenced these summary proceedings. The tenant filed an Answer with Counterclaims and Defenses asserting a breach of the warranty of habitability, breach of the covenant of quiet enjoyment, and violations of the consumer protection statute and the security deposit laws.
3. **The Landlord's Claim for Possession and for Use and Occupancy:** The parties stipulated that the monthly rent is $1,050 and that the amount of outstanding rent through July 31, 2023, as **$6,063**. What remains for this litigation is to adjudicate the tenant's claims against the landlord.
4. **The Tenant's Claim for Breach of the Warranty of Habitability:** There have been conditions of disrepair at the premises since the landlord took ownership of the premises in August 2021. Such conditions include water damaged ceilings and walls and door jambs. There has been a section of the ceiling covered by a water-stained plywood for the entirety of the landlord's ownership. I credit the tenant's testimony that the plywood and other places in the house have an odor from the additional moisture that likely entered the unit from overly full gutters. Additionally, there was insufficient heat briefly in October 2022 and then no heat when the furnace failed and had to be replaced in December 2022/January 2023.
5. Other than the heat issues, these conditions were present at the commencement of this tenancy and, thus, knowledge of them is imputed to the landlord.

6. These conditions constituted a breach of the warranty of habitability, for which the landlord is strictly liable. *Berman& Sons v. Jefferson*, 379 Mass.196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for a breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). An abatement of 5% compensates the tenant for the diminished rental value of the premises resulting from these conditions, other than the problems with the heat, over the 24-month period of ownership. Regarding the heat problems on the two occasions (in October and December 2022), there is 100% abatement for 10 days. The tenant's damages for the landlord's breach of the warranty of habitability are **$1,598** [This represents a 5% abatement of the monthly contract rent of $1050 ($52.50 X 24 months) subtotaling $1,260 PLUS 10 days of 100% abatement ($338) for the loss of heat].
7. **The Tenant's Claim for Breach of the Covenant of Quiet Enjoyment:** The tenant did not meet her burden of proof that the lack of heat at the premises were willful and knowing sufficient to breach her covenant of quiet enjoyment.

8. **The Tenant's Claim for Violation of the Security Deposit Law:** The tenant did not meet her burden of proof on her claim that the landlord violated the security deposit law.

9. **The Tenant's Consumer Protection Claim:** The court finds and so rules that as owner of a three-family non-owner occupied dwelling the landlord is in the trade and business of rental housing and is subject to the Consumer Protection Act. Further, the court finds and so rules that the landlord's leasing of the premises which contained violations of the State Sanitary Code at the commencement of the tenancy and then his failure to address same throughout the tenancy constitutes a violation of the State's Consumer Protection Act at G.L. c.93A and the Attorney General's regulations thereunder, 940 CMR 3.17. Pursuant to G.L. c.93A, s.9(3), the landlord is liable for multiple damages, not less than double nor more than treble, if the violation was "willful or knowing." "The 'willful or knowing' requirement of s.9(3), goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the defendant knows it or not, amount to violations of the law. *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987).

10. Accordingly, the breach of warranty violations, other than the heat issues, for which the court awarded the tenant $1,260 above is doubled in accordance with G.L. c.93A, totaling **$2,520.**

11. **Conclusion and Order:** Based on the forgoing and in accordance with G.L c.239, s.8A, the tenant shall have ten days from the date of the order noted below to deposit with the court $ 3,845.21 . This

represents the award to the landlord for unpaid rent $6,063 MINUS the award to the tenant of $2,520 PLUS court costs of $ 204.30 and $ 97.91 interest. If the tenant makes said deposit, judgment shall enter for the tenant for possession and the clerk's office shall disburse said funds to the landlord. If the tenant fails to make said deposit, judgment shall enter for the landlord for possession plus $3,543 plus court costs and interest.

So entered this 7th day of August, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-2556

TROY SANTERRE and JOHN DUNPHY,

Plaintiffs,

v.

MARLEY ENGVALL,

Defendant.

ORDER

This matter came before the court for trial on August 4, 2023, at which the plaintiffs appeared through counsel and the defendant appeared *pro se*. Additionally, Michel Richtell appeared on behalf of the Tenancy Preservation Program. After hearing, the following order shall enter:

1. Mr. Richtell was able to meet with the defendant prior to the matter being called for hearing. Mr. Richtell shared his opinion that he had real concerns that the defendant, who is the former owner of the subject premises and is being evicted by the new owners who purportedly purchased same after foreclosure, does not appreciate nor able to navigate these proceedings. Mr. Richtell recommends

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that the defendant be evaluated by the Court Clinic for competency and for their opinion on whether the defendant shall have a Guardian Ad Litem appointed.

2. In order to determine if Mr. Engvall is an "incapacitated person" as that term is defined in G.L. c.190B, s.5-101(9), the court hereby orders that he undergo a forensic psychological evaluation with the Court Clinic.
3. The court requests that the clinician evaluate Mr. Engvall with respect to his decision-making capacity, his ability to comply with court orders regarding his housing, and his ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a Guardian ad Litem for Mr. Engvall. Accordingly, these proceedings shall be postponed to the date noted below.
4. After review of the Court Clinic report, the court may appoint a Guardian Ad Litem for Mr.Engvall even prior to the next hearing.
5. A formal referral was made this day by the judge to the Tenancy Preservation Program.
6. This matter shall be schedule for a Status Hearing on **September 15, 2023, at 9:00 a.m.**

So entered this 7th day of August, 2023.

Robert Fields, Associate Justice

CC: Court Clinic
Michael Richtell, Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 23H79SP001969

ROBERT SCOTT,

Plaintiff

VS.

GABRIELLA C. LOPEZ,

Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER OF JUDGMENT

This is a summary process action in which plaintiff Robert Scott is seeking recover possession of a residential dwelling from defendant Gabriella C. Lopez upon the termination of a tenancy based upon nonpayment of rent.

Based upon all the credible testimony and evidence presented at trial conducted on June 28, 2023, and the reasonable inferences drawn therefrom, the Court finds as follows:

The plaintiff owns the single-family residential dwelling at 37 Kellogg Street, Pittsfield, Massachusetts (the "premises"). Defendant Gabriela C. Lopez has occupied the premises since January 2022. She occupies the premises subject to the terms of a written lease. The monthly contract rent is $1,200.00 due by the first day of each month. The defendant is responsible for utilities. Initially the defendant occupied the premises with her adult daughter and her daughter's boyfriend; but they vacated the premises two months after the tenancy began. Thereafter the defendant has been the sole occupant.

The defendant experienced financial difficulties when she lost her business during the pandemic. She received RAFT assistance in 2022 which enabled her to preserve her tenancy at that time. However, the defendant was unable to make any rent payments from February through June 2023. She owes $6,000.00 in unpaid rent through June 2023.

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On April 8, 2023 the plaintiff served the defendant with a legally sufficient 14-day notice to quit for nonpayment of rent.

The plaintiff has established his case to recover possession of the premises and damages in the amount of $6,000.00.

Execution shall issue in due course. However, with the plaintiff's consent, the plaintiff shall not levy on the execution prior to September 1, 2023 so long as the defendant pays her July rent by July 10, 2023 and her August rent by August 10, 2023 (which the plaintiff may accept for use and occupancy only).

ORDER FOR JUDGMENT

Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that:

1. Judgment enters for the plaintiff on the claim for possession.
2. Execution shall issue in due course; however the plaintiff shall not levy on the execution prior to September 1, 2023 so long as the defendant pays her July rent by July 10, 2023 and her August rent by August 10, 2023 (which the plaintiff may accept for use and occupancy only).

SO ORDERED this 7th Day of August, 2023.

Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-CV-651

IVY AFRA,

Plaintiff,

v.

YAW AGYAPONG and ROSE TURPIN,

Defendants.

ORDER

After hearing on July 7, 2023, the court allowed the plaintiff's motion for attorney's fees to be paid by the defendants due to their non-compliance with providing responses to the plaintiff's discovery demand. The plaintiff was given ten days to file a petition for attorney's fees incurred in furtherance of compelling compliance with the discovery demand and the defendants were given ten days after that to file any opposition.

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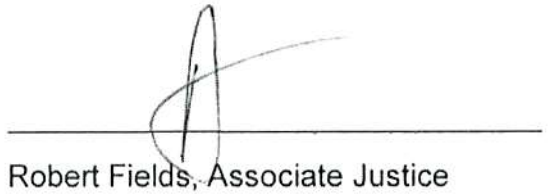
The plaintiff filed its motion and the defendants did not file any opposition. Upon review of the petition, the court finds the hourly rate of $200 and the 3.5 hours expended in this effort as reasonable.

Accordingly, the defendants shall be liable for said fees and must pay to plaintiff's counsel $700 forthwith.

So entered this 8th day of August, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0611

MORGAN DIBACCO C/O RUACH MANAGEMENT, PLAINTIFF	)	
v.	)	ORDER TO VACATE
JUDITH MONTERO, ANA MARRERO AND MOISES SANTIAGO, DEFENDANTS	)	

This matter came before the Court on August 7, 2023 on Plaintiff's emergency motion for injunctive relief. Plaintiff appeared through counsel. Defendants did not appear after notice.[1] Plaintiff seeks an order requiring Defendants to vacate residential premises located at 221 Quincy Street, Springfield, Massachusetts (the "Premises").

According to the Verified Complaint, Defendant Montero is the only authorized occupant at the Premises. On July 17, 2023, Plaintiff learned that Ms. Montero permitted Defendants Marrero and Santiago to reside at the Premises without prior authorization or knowledge of Plaintiff. Ms. Montero then vacated the Premises and Defendants Marrero and Santiago remain at the Premises.

Because Defendants Marrero and Santiago are not authorized occupants of the Premises and moved in without Plaintiff's knowledge or permission, their rights to possession can be no greater than those of Ms. Montero. Now that Ms. Montero has

[1] Plaintiff served notice of the hearing upon Defendants via Deputy Sheriff.

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surrendered possession, any rights Defendants Marrero and Santiago have to remain at the Premises have been extinguished. Given the foregoing, any irreparable harm they might suffer by the issuance of an injunction is outweighed by the substantial risk of irreparable harm to Plaintiff if injunctive relief is not granted. Accordingly, the following order shall enter:

1. Defendants Marrero and Santiago must vacate the Premises upon 72 hours' advance notice served at the Premises by an agent of Plaintiff, deputy sheriff or constable.[2]
2. If Defendants Marrero and Santiago 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.
4. If Defendants believe that they have a right to continued possession, they shall file an emergency motion with this Court, providing a copy to Plaintiff's counsel, within the 72-hour period. If such a motion is filed, Plaintiff shall not take steps to remove Defendants from the Premises without further court order.
5. The $90.00 legislative fee for injunctive relief shall be waived.

SO ORDERED.

DATE: 8.8.23

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

[2] In calculating the 72 hour notice period, weekends shall be excluded.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0632

SPRINGFIELD HOUSING AUTHORITY, PLAINTIFF v. RODMARIE RODRIGUEZ, DEFENDANT	)	INTERIM ORDER

This matter came before the Court on August 9, 2023 on Plaintiff's emergency motion for injunctive relief. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks an order prohibiting Defendant from residing at her apartment located at 178 Nursery Street, Apt. B9, Springfield, Massachusetts (the "Premises") pending the outcome of a summary process case.

Because Defendant is involved in criminal proceedings related the subject matter of this motion for injunctive relief, and because she speaks Spanish and claims she did not understand that Plaintiff was seeking an order removing her from the Premises, the Court shall continue this hearing to August 16, 2023 at 2:00 p.m. Defendant is advised to meet with Community Legal Aid in order to understand her constitutional rights regarding self-incrimination and, if eligible for services, to seek the assistance of legal counsel at the next hearing.[1]

[1] The Court informed Defendant that Community Legal Aid representatives would be in the courthouse beginning at 9:00 a.m. tomorrow, August 10, 2023.

25 W.Div.H.Ct. 227

Pending the next hearing, the following order shall enter:

1. Defendant shall have no contact or communications with any employee of the Springfield Housing Authority except in the event of an urgent need for repairs.
2. Defendant shall have no contact or communication with Maria Miranda, who is a resident of the same property, and Defendant shall adhere to the provisions of any harassment prevention order currently in effect.
3. The parties shall appear for a hearing on Plaintiff's motion for injunctive relief on **August 16, 2023 at 2:00 p.m.**

SO ORDERED.

DATE: 8/9/23

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter