

**Western Division Housing Court**  
***Unofficial Reporter of Decisions***

**Volume 1**

Oct. 28, 2019 — Nov. 22, 2019

## **ABOUT**

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

## **WHO WE ARE**

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

Hon. Dina Fein, First Justice, *Western Division Housing Court*

Hon. Robert Fields, Associate Justice, *Western Division Housing Court*

Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*

Aaron Dulles, Esq., *Community Legal Aid*

Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

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

## **OUR PROCESS**

The Court has agreed to set 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. When the editors have gathered a sufficient quantity of pages to warrant publication, they compile the decisions, review the draft compilation with the Court for approval, and publish the new volume. Within each volume, decisions are assembled in chronological order. The primary index is chronological, and the secondary index is per-judge (or clerk). The editors publish the volumes online and via an e-mail listserv. Additionally, the Social Law Library receives a copy of each volume.

## **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. 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.

Exclusion by the Editors. The editors will exclude material if one or more of the following specific criteria are met:

1. Case management and scheduling orders.
2. Terse orders and rulings that, due to a lack of sufficient context or background information, are clearly unhelpful to a person who is not familiar with the specific case.
3. Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, and/or certain criminal activity.

The editors make their decisions by consensus, applying their best good faith judgment.

In certain circumstances, the editors may elect to confer further with the Court before deciding whether to exclude a decision based on references to confidential information (*e.g.*, information relating to minors, medical records, domestic-relations matters, substance use, and guardian ad litem reports) that might lead to the public disclosure of private facts. If the editors or the Court chose to exclude a decision after such a review, the editors will revise the exclusion criteria to reflect the principles that led to that determination.

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.

Online. Please visit [www.masshousingcourtreports.org](http://www.masshousingcourtreports.org).

E-mail. Anybody can sign up to receive new volumes by e-mail as they are released. Those wishing to sign up should e-mail Aaron Dulles, [adulles@cla-ma.org](mailto:adulles@cla-ma.org).

## **SECURITY**

The editors employ 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](http://keyserver.pgp.com). The key is associated with the e-mail address [dulles@jd11.law.harvard.edu](mailto:dulles@jd11.law.harvard.edu), and it has the following "fingerprint" identifier: 0C7A FBA2 099C 5300 3A25 9754 89A1 4D6A 4C45 AE3D

## **CONTACT US**

Comments, questions, and concerns may be raised to any person involved in this project. Out of respect for the Court's time, please direct such communications at the first instance to Aaron Dulles ([adulles@cla-ma.org](mailto:adulles@cla-ma.org)) and/or Peter Vickery ([peter@petervickery.com](mailto:peter@petervickery.com)).

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**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hamdpen, ss:

Housing Court Department  
Western Division  
No. 19-SP-2284

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**LINDA McDANIEL,**

**Plaintiff,**

**v.**

**VANESSA WILLIAMS, TYESHA  
COVINGTON, and LUCILLE  
WILLIAMS, A/K/A LUCILLE  
DESVIGNES,**

**Defendants.**

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**ORDER**

After hearing on October 8, 2019, on the plaintiff landlord's motion for execution, at which only the landlord appeared, the following order shall enter:

1. The landlord reported to the court that the tenants have vacated and that the landlord has regained possession of the premises.
2. Accordingly, the motion for issuance of an execution for possession is moot, and therefore denied.
3. The landlord is also seeking unpaid monies that may be owed to her. According to the agreements filed with the court, the landlord waived all monies outstanding through July, 2019, the tenants were to pay \$1000 for August, 2019, and the landlord would use the last month's rent she was holding for September, 2019.

4. As such, the only use and occupancy monies that may be available to the landlord are the \$1,000 for August, 2019 and a per diem for each day in October, 2019 until possession was relinquished to the landlord.
5. The landlord did not inform the court the status of any payments she may have received towards those sums. As such, the landlord shall be required to file and serve an appropriate motion if she wishes to seek an order for such funds.

So entered this 20<sup>th</sup> of Oct, 2019.

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Robert Fields Associate Justice

THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN ss:

Western Division  
Housing Court Department

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**JOSEPHUS GRANT JR,**

**Plaintiff,**

v.

**No. 18-CV-1018**

**MID-ISLAND MORTGAGE CORP.,**

**Defendant.**

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**VITALY GLADYSH,**

**Plaintiff,**

v.

**No. 18-SP-4521**

**JOSEPHUS GRANT et al,**

**Defendants.**

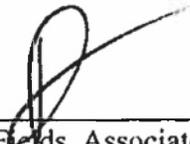
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After hearing on October 24, 2019, for which Vitaly Gladysh appeared through counsel and for which Mr. Grant appeared *pro se*, and for which Mid Island Mortgage Corp appeared through counsel, the following order is to enter:

1. Mid-Island Mortgage Corp's motion for late filing of a jury demand is, pursuant to Mass. R. Civ. P 39, is hereby allowed.
2. A Judicial Case Management Conference shall be scheduled for **November 14, 2019 at 2:00 p.m.** NOTE: According to the Summary Judgment proceedings in *Josephus Grant Jr. v.*

*Mid-Island Mortgage Corp.*, No. 18-CV-1018, it appears that the only issues of fact in dispute is whether Mid-Island Mortgage Corp. complied with the HUD Guideline requirements for a *face-to-face* meeting prior to foreclosure proceedings. The parties should come prepared at the Case Management Conference to discuss whether this is the only matter for fact-finding by the jury, or not, in that civil action---and if it is the only such issue, the parties should also be prepared to discuss at the conference whether the summary process matter (18-SP-4521) should be bifurcated until the civil matter between Grant and Mid-Island is adjudicated.

So entered this 31<sup>st</sup> day of October, 2019.

  
\_\_\_\_\_  
Robert G. Fields, Associate Justice

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hampden, ss:

Western Division  
Housing Court Department

No. 19-CV-414

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**Springfield Portfolio Holdings, LLC and  
M&M Properties, LLC  
Plaintiffs,**

**v.**

**ORDER**

**Maribel Rodriguez  
Defendant.**

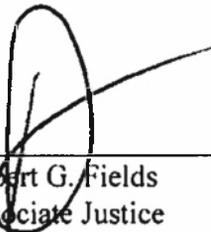
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After a hearing on October 30, 2019, at which the plaintiffs appeared via counsel with the property manager and the defendant, Maribel Rodriguez, appeared self-represented via telephone, the following order of the court does hereby issue by agreement of the parties:

1. The defendant, Maribel Rodriguez, shall allow the plaintiffs, Springfield Property Holdings, LLC and M&M Properties, LLC and/or their agent access to 197-199 Leyfred Terrace, Apt 2, Springfield, MA on Monday, November 4, 2019 from 10:00am - 1:00pm and 2:00pm - 4:00pm to inspect and repair any and all violations cited by the City of Springfield Code Enforcement Department.
2. The defendant shall allow the plaintiffs and/or their agents future access to the subject property upon 24 hours written notice except in the event of a genuine emergency. Said written notice shall be placed in the defendant's mailbox by the plaintiff and must include the date, time and list all repairs to be made. The defendant must be present for the plaintiffs and/or their agents to enter the subject property to effectuate repairs.

3. All repair work conducted by the plaintiffs must be done in a workman like manner by licensed professionals with permits pulled as required by law.

So entered this 31<sup>st</sup> day of October, 2019.



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Robert G. Fields  
Associate Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 19-CV-1002

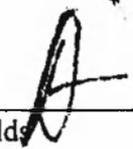
Angel L. Velez et al,  
Plaintiff  
v.  
Avelino Mendre et al,  
Defendant

ORDER

After a hearing on October 28, 2019 at which time the plaintiffs and the defendant appeared, the following order is to enter:

1. For the reasons stated on the record, the defendants shall provide alternative housing accommodations in the form of a motel/hotel room with cooking facilities to the plaintiffs pending further hearing from the court. If said room does not have cooking facilities, a daily food stipend shall also be provided by the defendants to the plaintiffs of \$50/day.
2. A further hearing is scheduled for November 4, 2019 at 9:00 a.m. at the same time as the related code enforcement case with the City of Springfield. All parties shall appear.

So entered this 31<sup>st</sup> day of October, 2019.

  
\_\_\_\_\_  
Robert G. Fields  
Associate Justice

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Open, ss:

Housing Court Department  
Western Division  
No. 19-SP-3927

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**DEBORAH SZENKUM,**

**Plaintiff,**

**v.**

**SALLY MEMOLE,**

**Defendant.**

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**ORDER**

This matter came before the court for trial on October 17, 2019, at which both parties appeared without 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 Deborah Szenkum (hereinafter, “landlord”) owns a two-family home in which she resides on the first floor. The defendant, Sally Memole (hereinafter, “tenant”) has been renting the second floor at 6 Gold Street, Westfield, MA (hereinafter, “premises”) at a monthly rate of \$800 since June, 2016. The landlord served the tenant with a *no fault* notice to quit in July, 2019 and thereafter with a summary process summons and complaint. The tenant has filed an answer with claims and defenses including breach of the warranty of habitability, breach of the covenant of quiet enjoyment, and retaliation.

**2. The Landlord’s Claim for Possession:** The parties stipulated to the landlord’s *prima*

*facie* case for possession. The tenant agrees to proper service of the *no fault* notice to quit and the summons and complaint. The parties also agree that no use and occupancy monies are outstanding. What remains for the court's adjudication are the tenant's defenses and counterclaims.

**3. Breach of Quiet Enjoyment; Conditions of Disrepair:** There have existed various conditions of disrepair at the premises over the course of the tenancy. On December 3, 2018 the tenant sent a letter to the landlord regarding several concerns including the incomplete repair of the once-collapsed bedroom ceiling tiles (which collapsed in the summer of 2017 and was still missing the trim at the time of the letter), a leaking shower faucet and shoddy repair, a leaking refrigerator, a faulty bathroom doorknob, mice infestation, and safety changes needed for the front door lock. On August 2, 2019 the Health Department inspected the premises and cited the landlord for several items including *all of those listed* by the tenant in her December, 2018 letter other than the rodent infestation. The tenant sent another letter to the landlord on September 1, 2019 reminding her of several outstanding repairs and informing her that the tenant would have the refrigerator repaired and deduct the cost of same from the rent if the landlord continued to fail to repair it. On September 3, 2019 the Health Department reinspected the premises and determined that much of the repairs were complete except noting that the faucet flanges needed to be reinstalled in the shower and that the refrigerator was leaking. On September 9, 2019, the landlord informed the tenant that she would not be fixing the refrigerator because she was not required to do so. Though the court credits the landlord's testimony that she believed that she was not responsible for repairing the refrigerator because there was no written lease and because landlords are not required to provide refrigerators in Massachusetts, the landlord is responsible to

make repairs to the refrigerator in this tenancy due to her choosing to provide the refrigerator as part of the tenancy from its commencement, as it became a part of the tenancy and must be maintained by the landlord.

4. 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, 431 N.E.2d 556, 565 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851, 679 N.E.2d 528, 530 (1997). The court does appreciate that once the landlord received the citations by the Health Department she completed all the repairs at the premises. Though the landlord provided some testimony that the tenant denied her access to make repairs, the court was not persuaded that the tenant's actions or failures to act limited the landlord access for repairs.

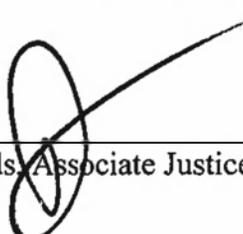
5. The court finds that the landlord's failure to more promptly repair in a workmanlike fashion the bathroom repairs, the completion of the bedroom ceiling repair, and the total failure to address the leaking refrigerator, violated the tenant's covenant of quiet enjoyment and G.L. c.186, §14 and hereby awards the tenant damages equaling three months' rent for this claim of breach of quiet enjoyment, totaling (\$800 X 3) **\$2,400**.

6. **Retaliation:** The tenant failed to meet her burden of proof on her claim of retaliation. Though the tenant sent a letter to the landlord in December, 2018 complaining of conditions of conditions of disrepair and had previously sent text messages regarding same, the landlord's notice to quit was not served upon the tenant until more than six months later. Though the

tenant's reporting to the Health Department conditions of disrepair on July 15, 2019 is very close in time to the July 27, 2019 notice to quit, I credit the testimony of the landlord that she was not aware of the complaint to the Health Department until the landlord received the Health Department's citation dated August 7, 2019. Additionally, the court credits the landlord's testimony that she terminated the tenancy and pursued this eviction due to her desire to have her sister move into the premises so that she can assist in taking care of the landlord's special needs son.

**7. Conclusion and Order:** Based on the foregoing, in accordance with G.L. c.239, 8A in a *no fault* matter, judgment shall enter for the defendant tenant for possession plus \$2,400 (Quiet Enjoyment damages).

So entered this 1<sup>st</sup> of November 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hampden, ss:

Western Division  
Housing Court Department

No. 19 CV 1028

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**SADIE VARGAS,**

**Plaintiff**

v.

**MOUMOUNI AMIDOU and  
SPRINGFIELD WATER AND SEWER  
COMMISSION,**

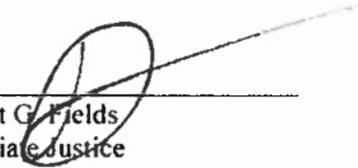
**Defendants**

**ORDER**

As a result of an emergency hearing held before the undersigned on November 1, 2019, at which the plaintiff appeared and the defendant Moumouni Amidou appeared telephonically, the following order of the court does hereby issue:

1. The plaintiff is prohibited from residing at the subject property at 46 Slater Avenue until further court order due to the water shut off. The plaintiff may access the property to retrieve personal belongings and to allow for the City of Springfield to conduct an inspection but may not otherwise reside at the property.
2. The City of Springfield Code Enforcement shall inspect the subject premises prior to the next scheduled review date and provide a report to the Court.
3. The parties shall appear for a review of this matter on Thursday, November 7, 2019 at 10:00 a.m.

So entered this 15<sup>th</sup> day of November 2019.

  
\_\_\_\_\_  
Robert G. Fields  
Associate Justice

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Franklin, ss:

Housing Court Department  
Western Division  
No. 18-SP-4529

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**MTGLQ INVESTORS, L.P.,**

**Plaintiff,**

v.

**ROBERT SOBIESKI and YOLANDA  
DRONSKI-SOBIESKI,**

**Defendants.**

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**ORDER**

After hearing on October 18, 2019 on the plaintiff's motion for entry of judgment retroactive to December 14, 2018 and for issuance of the execution, at which the plaintiff appeared through counsel and the defendant, Yolanda Dronski-Sobieski, appeared through L.A.R. counsel, the following order entered on the record and is memorialized herein<sup>1</sup>:

1. The plaintiff's motion is allowed, judgment shall enter *nunc pro tunc* and execution shall issue for possession only for the plaintiff.
2. By agreement of the plaintiff, it shall not levy on the execution prior to November 2, 2019 and if the defendant relinquishes possession and turn over the keys to the plaintiff by November 1, 2019 (and signs a document that states that she has completely relinquished possessory rights to the premises), the plaintiff shall return the execution to the court

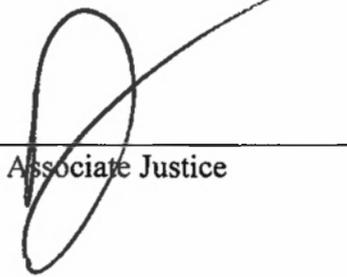
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<sup>1</sup>The co-defendant, Robert Sobierski, has already been default. The execution allowed in this motion shall include both defendants' names.

satisfied with a stipulation vacating the judgment.

3. The defendant is not barred from bringing contract claims including a claim for specific performance on an alleged offer and acceptance of an amendment of the vacate terms of the court agreements .

So entered this 14th of November, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 19-CV-105

Aurora Vera-Serrano,  
Plaintiff

v.

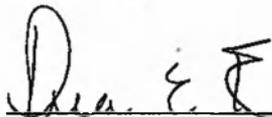
Westfield Housing Authority,  
Defendant

ORDER

After trial, the following order is to enter:

1. The plaintiff has not met her burden of proving the defendant's liability for damages, and the defendant is entitled to a ruling in its favor on those claims.
2. For the reasons stated on the record, the court is ruling in the tenant's favor with respect to her claims for injunctive relief, as the court concludes that there are additional steps reasonably imposed on the Housing Authority to ensure the plaintiff's right to quiet enjoyment.
3. The Housing Authority is ordered to investigate alternative smoke detectors for use in Lorraine Wright's apartment.
4. The defendant is ordered to keep a written record of any complaints made by the plaintiff, is ordered to take reasonable steps to investigate those complaints, and is ordered to inform the plaintiff in writing as to the results of those investigations.
5. Counsel for the plaintiff shall file and serve a petition for reasonable attorney's fees on or before November 11, 2019.

So entered this 4th day of November 2019.



Dina E. Fein  
First Justice

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hamdpen, ss:

Housing Court Department  
Western Division  
No. 19-SP-4316

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**ABIMAEEL CLAUDIO,**

**Plaintiff,**

**v.**

**ORDER**

**ADAM GRAVEL,**

**Defendant.**

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This matter came before the court for trial on October 31, 2019 with each party appearing without 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, Abimael Claudio (hereinafter, "landlord") owns a four unit building located at 1530 North Main Street in Palmer, Massachusetts. The defendant, Adam Gravel (hereinafter, "tenant") has been residing as a tenant in a three-bedroom unit on the first floor (hereinafter, "premises") since February 1, 2019 at a monthly rental rate of \$1,100. The landlord commenced this summary process action for non-payment of rent. The tenant has filed an Answer with counterclaims and defenses regarding conditions of disrepair and violations of the security deposit statute.

2. **The Landlord's Claim for Possession and Use and Occupancy:** The parties stipulated to the landlord's prima facie case for possession and for rent, use, and occupancy totaling \$2,200 through October, 2019. What remains for the court's adjudication are the

tenant's claims and defenses.

**3. Conditions of Disrepair, Breach of the Covenant of Quiet Enjoyment:** On the very first day of the tenancy, there was no water or heat at the premises due to the bursting of pipes. It took between several days and two weeks to restore and iron out the provision of heat and water. Thereafter there continued to be leaks at the premises. The tenant notified the landlord repeatedly and consistently by text regarding these leaks. The landlord made attempts to repairs same, including opening up the bathroom ceiling and replacing portions of the pipes. With each attempted repair, the leaks would continue and the tenant notified the landlord. By mid-August, the tenants children were almost getting injured from standing water from these leaks. In addition to the tenant's credible testimony regarding these leaks, the tenant provided photographs and a Town of Palmer Board of Health Correction Order dated September 12, 2019 citing the landlord for these leaks.

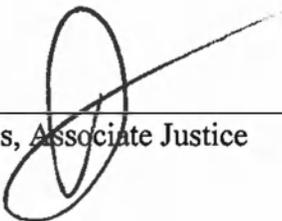
**4. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises.** G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102, 431 N.E.2d 556, 565 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851, 679 N.E.2d 528, 530 (1997). In the instant matter, the evidence is overwhelming that the landlord failed to make sufficient repair to the source of the leaks. In the end, it appears that the leaks were due to the lack of sufficient seal around the second floor bathroom shower/tub stall. This problems should have been detected much closer in time to the beginning of the leaks in February and March, 2019. The landlord's failure to do so, even though he was making attempts to self-repair, seriously interfered with the tenant's ability to enjoy the home for almost the entire tenancy. As such, the court finds and so rules that

the landlord violated the tenant's covenant of quiet enjoyment and G.L. c.186, §14 and hereby awards the tenant damages equaling three months' rent for this claim of breach of quiet enjoyment, totaling (\$1,100X 3) **\$3,300**.

**5. Violation of the Security Deposit Laws:** At the commencement of the tenancy, the tenant paid the landlord \$3,300, representing first and last months' rent and for a security deposit. Thereafter, the landlord failed to comply with various aspects of the security deposit laws including a failure to deposit said funds in an appropriate bank account and to provide the proper receipt in accordance with G.L. c.186, §15B. Pursuant to that statute and relevant case law, the Answer in this action shall be treated as a demand for the immediate return of the security deposit with accrued interest. See, *Castenholtz v. Cairra*, 21 Mass. App. Ct. 758 (1986). As such, the court shall award the tenant **\$1,136.64**. This represents the return of the security deposit of \$1,100 plus statutory interest of 5% per annum.

**6. Conclusion and Order:** Based on the foregoing, and in accordance with G.L. c.239, §8A, judgment shall enter for the tenant for possession and for **\$2,236.64**. This represents an award to the tenant totaling \$4,436.64 MINUS the award to the landlord for outstanding rent totaling \$2,200.

So entered this 5<sup>th</sup> of November, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hamdpen. ss:

Housing Court Department  
Western Division  
No. 18-SP-137

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**HSBC BANK USA, N.A.,**

**Plaintiff,**

v.

**DEBORAH FERGUSON and  
KATHERINE FERGUSON,**

**Defendants.**

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**ORDER SETTING APPEAL BOND  
and RULING ON THE DEFENDANT'S  
OTHER MOTIONS**

This matter came before the court on November 1, 2019 to establish an appeal bond and consider the defendant Deborah Ferguson's request that the bond be waived due to indigency. After hearing, at which the plaintiff appeared through counsel and the defendant Deborah Ferguson appeared *pro se*, but for which Katherine Ferguson did not appear, the following order shall enter:

1. In accordance with G.L. c.239, §5 and §6, the court must determine if the defendants are indigent and whether they have non-frivolous defenses or claims.
2. Given the submissions of the defendant Deborah Ferguson including an affidavit of indigency and a Financial Statement, Deborah Ferguson has income of approximately \$21,632 per year and the court does not find that she is indigent in accordance with G. L. C.261, §27A-27G. Ms. Katherine Ferguson did not motion the court for a waiver of the appeal bond.

3. Additionally, the court does not find that the defendants have non-frivolous defenses or counterclaims.

4. **The monthly value of the premises; Use and Occupancy:** Based on the testimony of the plaintiff's witness, a real estate broker of 20 years, the court finds that the current value of the premises is \$1,400. The court reaches this figure based on the testimony of the real estate broker establishing a monthly rental value of the two family premises which she visited and inspected in the spring, 2019.

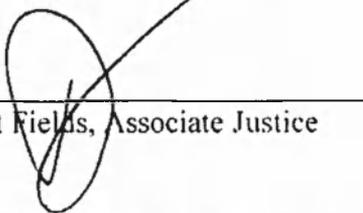
5. **The bond:** In accordance with G.L. c.239, §6, the bond shall include use and occupancy from the date of the plaintiff's purchase of the subject premises on October 17, 2017. As such, the bond shall be set in the amount of **\$33,600** which represents use and occupancy at the rate of \$1,400 from October, 2017 until the date of this order (November 1, 2019 totaling 24 months). Said amount shall be paid to the clerks' office of the court by no later than November 15, 2019 and shall remain deposited with the court, without accrual of interest, until further order of the court.

6. Additionally, the defendants shall make monthly use and occupancy payments—as long as they continue to occupy the subject premises—of **\$1,400**. These monthly payment shall also be deposited with the court's clerks' office by the last day of each month beginning in November, 2019 pending appeal.

7. **Other motions:** The defendant, Deborah Ferguson, also filed two additional motions. The motion to transfer the case to the Superior Court is denied. The motion to require the plaintiff to make repairs at the premises is allowed. More specifically, the plaintiff shall immediately dispatch a property manager to inspect and assess what repairs are needed to keep

the defendants safe on the premises and make such repairs. The plaintiff shall provide the defendants with proper notice prior to accessing the premises for inspection and for repairs. The defendants shall not deny access unreasonably. If there are any repairs discovered that the plaintiff deems that it should not be required to repair, it may file a motion to the court seeking leave to not make those repairs. The matter shall also be referred to the City of Springfield Code Enforcement Department for that office to independently inspect the premises.

So entered this 5<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

cc: Laura Fenn, Esq., Assistant Clerk Magistrate  
Jenni Pothier, Chief Housing Specialist (for referral to the City of Springfield)

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 19-SP-3924

<p>PHEASANT HILL VILLAGE ASSOC., Plaintiff</p> <p>v.</p> <p>MARIA LABASKO AKA MARIA LABOSCO, et al, Defendants</p>
--

ORDER

After a hearing on November 4, 2019, at which Plaintiff and Defendant Maria Labosco (“Labosco”) appeared through counsel, with Labosco attending telephonically, the following order is to enter:

Labosco is a 53-year old blind woman with disabilities. She has lived at 64 Paul Revere Dr., Feeding Hills, MA for twenty years. The unit has a subsidy attached (a “project-based subsidy”).<sup>1</sup> Labosco apparently lives in the unit with co-Defendant Thomas Troughton.<sup>2</sup>

On or about July 24, 2019, Plaintiff caused a notice to quit to be served on the Defendants, which notice alleges serious criminal activity in the unit. A summary process complaint was entered on September 16, 2019. On October, 10, 2019, judgment entered by

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<sup>1</sup> These facts are taken from Labosco’s answer to the complaint and supporting letter.

<sup>2</sup> A default judgment entered against Troughton and he did not join in the present motion.

default against both Defendants. On October 11, 2019, Labosco filed a motion to remove default and submitted a doctor's note indicating she had missed the trial date due to an emergency appointment. Labosco did not appear at the hearing on her motion to remove default on October 23, 2019, and her motion was denied. On the same day, Labosco filed a note from Baystate Health indicating that she was in the hospital with a major injury. Plaintiff applied for the execution on October 24, 2019, and it was issued on October 25, 2019.

Labosco filed the instant motion on October 25, 2019, apparently without benefit of counsel. Despite the form she used, Labosco seeks not only a stay, but also requests that the judgment be vacated and that a guardian ad litem ("GAL") be appointed for her. In her affidavit filed prior to the hearing and based on statements at the hearing, it is evident that Labosco wishes to remain in the premises.<sup>3</sup> Accordingly, in light of the fact that her motion was not filed with the assistance of counsel, the Court will treat Labosco's motion to stay as a motion to vacate the default judgment and for appointment of a GAL.

With respect to Labosco's motion to vacate the default, based on the medical notes submitted in this case, the Court finds that Labosco had a valid excuse for failing to appear at the trial date and for failing to appear for the first hearing to remove the default. In her answer, Labosco alleges discrimination based on disability, seeks a reasonable accommodation and asserts that she is a tenant in subsidized housing who is being evicted as a result of the behavior of a household member or guest. If proven, these are meritorious defenses that relate directly to the underlying cause for the eviction. Accordingly, Labosco's motion to vacate the judgment is

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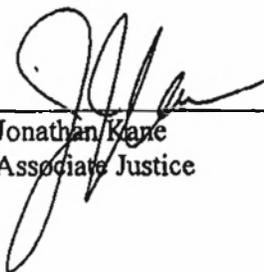
<sup>3</sup> Given her health conditions (she is currently hospitalized with a broken hip and is facing possible limb amputation), a modest extension of time to move would not make a meaningful difference under the circumstances

**ALLOWED.**<sup>4</sup> A case management conference will be scheduled by the Clerk's office.

As to the request for the appointment of a GAL, the motion is **DENIED**. Based on her answers to questions on the record, the Court finds her cogent and clear as to the case against her; further, she was able to obtain legal assistance for the hearing today and has legal counsel in her criminal proceeding. She appears capable of arranging for counsel to assist her at trial in this case. Moreover, given the Court's order to vacate judgment, the criminal case against Labosco might proceed to trial prior to this summary process case, thereby eliminating any risk of waiving constitutionally protected rights in this case.

SO ORDERED.

November 6, 2019.



Jonathan Kane  
Associate Justice

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<sup>4</sup> Plaintiff shall return the execution forthwith. It may apply in writing for an execution with respect to Thomas Troughton.

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

HAMPDEN, ss:

Housing Court Department  
Western Division  
No. 19-SP-1745

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**CITY VIEW COMMONS I,**

**Plaintiff,**

v.

**TAMIKA HARRIS,**

**Defendant.**

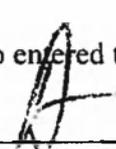
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**ORDER**

After hearing on November 5, 2019, on the defendant's (tenant's) emergency motion to stop a physical eviction for which both parties were present, the following order shall enter:

1. The tenant's emergency motion to stop a physical eviction is hereby allowed conditioned upon the tenant complying with all of the terms set forth in this court order.
2. It is established that amount of owed to the landlord is \$97 in rent arrears, \$300 sheriff cancellation fee, and \$174 in court costs totaling \$571.
3. The tenant shall pay the landlord November's rent in full on November 6, 2019 plus \$100 on November 20, 2019 towards the amount owed.
4. The tenant shall pay her rent going forward as it becomes due plus an additional \$100 by the second week of each month until the \$571 is paid in full.
5. There shall be no further hearings or stays on the use of the execution (eviction order).

So entered this 7<sup>th</sup> of November, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Am.

THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

Housing Court Department  
Western Division  
No. 19-SP-4614

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ERROL W CAMPBELL A/K/A ERROL  
CAMPBELL

Plaintiff,

v.

ORDER

AMANDA WOODS,

Defendant.

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After hearing on November 7, 2019, for which both parties were present, the following order shall enter:

1. The tenant shall restore the gas service at the subject premises forthwith, and my not reside at the premises until the gas service is restored.
2. The landlord shall repair the oven at the subject premises forthwith.
3. This matter is scheduled for trial on November 14, 2019 at 2:00 p.m.

So entered this 8<sup>th</sup> of November, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice 

THE TRIAL COURT  
HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
37 ELM STREET · P.O. BOX 559  
SPRINGFIELD, MA 01102-0559  
TELEPHONE (413) 748-7838  
FAX (413) 732-4607

DINA E. FEIN  
FIRST JUSTICE  
ROBERT G. FIELDS  
ASSOCIATE JUSTICE

MICHAEL J. DOHERTY  
CLERK MAGISTRATE  
JENNI POTHIER  
CHIEF HOUSING SPECIALIST

Case No. 19CV 1002 Date 11-8-19

Angel Velez et al v. Arclino Mendez

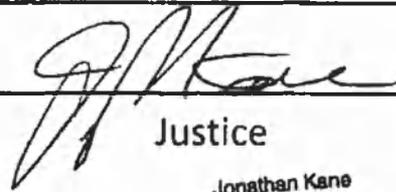
Plaintiff

Defendant

**ORDER**

① ~~ORDER~~ After hearing on 11-8-19, it is  
ORDERED that Defendant pay \$1,400  
to Plaintiff at 5pm on Monday 11-11-19.  
This payment will relieve Defendant of  
any obligation to provide temporary housing.

② Plaintiff may have access to their former  
apartment to collect belongings at 2pm  
on Saturday for no more than 3 hours.  
Mr. Angel Velez shall not be present but  
may send someone on his behalf.



Justice

Jonathan Kane  
Associate Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 19-SP-1803

A.P. II LP,	Plaintiff
v.	
YASMENE BURTON,	Defendant

ORDER

After a hearing on November 8, 2019 on Defendant's motion to stop a physical eviction at which the Plaintiff landlord appeared through counsel and the Defendant tenant represented herself, it is ORDERED:

1. The motion is ALLOWED with the following conditions:
  - a. The tenant shall pay \$300 today in good funds to the management office;
  - b. The tenant shall pay her share of the monthly rent (\$634) in good funds to the management office by November 22, 2019;
  - c. The tenant shall pay her share of the monthly rent (\$634) in good funds to the management office by December 6, 2019;
  - d. The tenant shall attend a meeting with Catholic Charities that has been scheduled for December 3, 2019.
2. The parties shall return for review on compliance on December 10, 2019.

3. The stay on use of the execution shall be lifted if the tenant fails to comply with this order.

SO ORDERED.

November 6, 2019.



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Jonathan Kane  
Associate Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 19-SP-1758

BC COLONIAL ESTATES LLC,  
Plaintiff

v.

NAKEISHA PEARSON,  
Defendant

ORDER

After a hearing on November 8, 2019 on the Plaintiff landlord's Motion to Remove Stay on Use of Execution, at which the landlord appeared through counsel and the Defendant tenant represented herself, and at which a representative of the Tenancy Preservation Program (TPP) appeared, it is ORDERED:

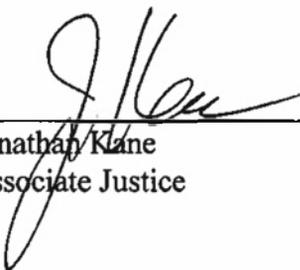
1. The landlord's motion is continued to December 3, 2019 at 9 a.m. in order to allow the tenant a final opportunity to report her loss of income and to work further with TPP to seek assistance for repayment of the balance due the landlord.
2. The tenant must pay \$553 (November use and occupancy) no later than November 15, 2019;
3. The tenant must bring all paperwork necessary for an interim income recertification to the management office by November 15, 2019;
4. The tenant concedes that she failed to make any reasonable accommodation

request by October 18, 2019, as required by the Order dated September 27, 2019,  
and she did not ask for any additional time to make such a request.

5. Plaintiff shall be entitled to a new execution in the amount of \$4,554.50 (inclusive of unpaid rent, court costs and the balance of cancellation fees) upon written application, with use of the execution stayed until further order of the Court.

SO ORDERED.

November 13, 2019.



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Jonathan Kane  
Associate Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 18-SP-5226

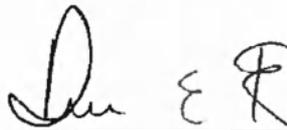
Brit Management LLC,  Plaintiff  v.  Milton Feliciano,  Defendant
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ORDER

After hearing on November 12, 2019 at which the plaintiff (landlord) appeared, but for which the defendant (tenant) did not appear, the following order is to enter:

1. The landlord's motion to renew and extend the execution (eviction order) and levy upon the execution is continued to **November 26, 2019 at 9:00 a.m.** The tenant and Aimee Hiersche are ordered to appear at that time.

So entered this <sup>th</sup> 13 day of November, 2019.



Dina E. Fein  
First Justice

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hamdpen, ss:

Housing Court Department  
Western Division  
No. 19-SP-3167

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**RAFAEL RODRIGUEZ,**

**Plaintiff,**

v.

**BIANCA RIVERA,**

**Defendant.**

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**ORDER**

After hearing on November 6, 2019, on the defendant's motion to stop a physical eviction, at which the plaintiff did not appear but for which Attorney Patti Glenn appeared and reported to the court that she is the owner of the premises, the following order shall enter:

1. There shall be a stay on the use of the execution until further order of the court.
2. It appears that the plaintiff is not the owner of the property but instead is the Attorney Glenn's tenant under a Section 8 lease and the defendant is a named tenant on that lease.
3. Additionally, there is no notice to quit in the court's file.
4. Accordingly, the court is concerned that the plaintiff may not have superior right to possession over the defendant and this matter shall be scheduled for further hearing.
5. The defendant apparently also has a Restraining Order from another court against the plaintiff. The defendant has agreed that should she ascertain the plaintiff's current

address, she will inform the court of same. Attorney Glenn (a non-party) also agreed to take efforts to ascertain an address for the plaintiff and share same with the court, and shall also take steps to notify the plaintiff of the next hearing date noted below.

6. The Housing Specialist Department, which reached out to the plaintiff and has already left messages on his voice mail, shall attempt to reach him again and if a voice mail message is required, shall inform the plaintiff of the next court date.
7. This matter shall be scheduled for hearing on **November 21, 2019 at 10:00 a.m.**

So entered this 13<sup>th</sup> of November, 2019.

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Robert Fields, Associate Justice

cc: Mariann Gonzales (Housing Specialist)  
Jenni Pothier (Chief Housing Specialist)

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

HAMPDEN, ss:

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Housing Court Department  
Western Division  
No. 19-SP-4160

QUANG TRAN,

**Plaintiff,**

v.

TIFFANY L. DELGADO

**Defendant.**

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**AGREED UPON ORDER**

After hearing on November 7, 2019, at which time both parties appeared, the following order shall enter:

1. It is established that the amount of rent owed is \$6,100.
2. A stay on the entry of judgment and issuance of the execution (eviction order) is granted conditioned upon the tenant complying with all of the terms set forth in this court order.
3. The tenant shall pay her rent in full by the first of each month commencing in December 2019. In addition, the tenant shall pay \$500 by the 15<sup>th</sup> (two weeks thereafter) of each month commencing in December towards the arrears until there is a zero balance.
4. The tenant shall take all steps necessary to pursue RAFT funds for the rent arrears.

So entered this 15<sup>xn</sup> of November, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

pm

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 19-SP-359

212 PEARL, LLC,	Plaintiff
v.	
DARLENE DODDS,	Defendant

ORDER

This summary process matter came before the Court on November 8, 2019 on Plaintiff's motion for joinder. Plaintiff (the "landlord") is the landlord and Defendant (the "tenant") is a tenant who at one time held a HUD Housing Choice Voucher ("voucher") administered by Way Finders, Inc. ("Way Finders"). The landlord seeks to recover possession based on the tenant's failure to pay rent. In her answer to the summons and complaint, the tenant, who is self-represented, alleges that the apartment failed a Section 8 inspection and, as a result, she lost her voucher. The landlord, through its counsel, claims that it did not have notice of the failed inspection because Way Finders sent the inspection results to the prior owner. The landlord now moves to join Way Finders in this case and Way Finders opposes joinder.

The Uniform Summary Process Rules do not address joinder of parties or third-party

practice, so the Court turns to the Massachusetts Rules of Civil Procedure for guidance.<sup>1</sup> The landlord does not cite a particular rule in its pleading but titles the motion as one for “joinder,” presumably referring to Rule 19 or 20. The applicable rule, however, appears to be Rule 14, which governs third-party practice. *See* Mass.R.Civ.P. 14. Pursuant to Rule 14(a), a defendant may, at any time after commencement of the action, “cause a summons and complaint to be served upon a person who is or may be liable to him for all or part of the plaintiff’s claim against him.” Mass.R.Civ.P. 14(a). In this case, the landlord is the defendant-in-counterclaim seeking to bring in a third party who, it alleges, may be liable to it for all or part of any damages awarded the tenant (who, in this scenario, is the plaintiff-in-counterclaim).

In its opposition to the motion, Way Finders contends, among other arguments, that the termination of the Housing Assistance Payments (“HAP”) contract between it and the landlord is a separate and distinct action from the expiration of the tenant’s voucher. Essentially, Way Finders suggests that a HAP contract dispute between it and the landlord should not be part of a summary process action between the landlord and the tenant. Way Finders acknowledges that, in *Loring Towers Assoc. v. Furtick*, 85 Mass. App. Ct. 142 (2014), the Massachusetts Appeals Court upheld a Housing Court judge’s decision to allow a tenant to file a third-party complaint against a housing authority in a summary process case, but distinguishes the present case because the issue before this Court involves a contract dispute between a landlord and a subsidy administrator, whereas the *Loring Towers* case was concerned with a violation of due process rights.

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<sup>1</sup>The Massachusetts Rules of Civil Procedure apply in summary process actions unless inconsistent with the Uniform Summary Process Rules. *See* USPR Rule 1.

The Court is not convinced that *Loring Towers* is inapposite. It stands for the proposition that third-party practice is permitted under Rule 14(a) in summary process cases. Here, the landlord seeks to bring in a third party “who is or may be liable to [it] for all or part of the ... claim against [it].” Accordingly, Way Finders is a proper candidate to be brought into this summary process action.

Way Finders further contends that the motion for joinder (1) only references the termination of the HAP contract and is silent on the issue of the tenant’s voucher, and (2) is untimely. With respect to the first contention, the issue before the Court is whether Way Finders is a party “who is or may be liable” to the landlord for any claims alleged by the tenant. If the evidence shows that Way Finders failed to provide proper notice to the landlord of the failed inspection which led to the loss of the tenant’s voucher, which in turn caused her to be unable to pay rent, it is possible that Way Finders could be liable for contribution or indemnification.<sup>2</sup> Accordingly, Rule 14(a) applies here and authorizes the filing of a third-party claim.

The remaining question for the Court is whether the request to assert a third-party claim is timely. Pursuant to Rule 14(a), a party must obtain leave of Court if it seeks to file a third-party complaint more than 20 days after it serves the original answer. Because the instant action is a summary process case, an answer to a counterclaim is not required and, therefore, the 20-day period recited in Rule 14(a) is not entirely applicable. Nonetheless, this motion to add a party is

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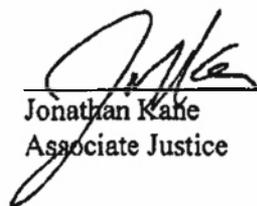
<sup>2</sup> The Court does not pass on the merits of the landlord’s claim. The landlord may not be able to collaterally attack the termination of its contract with Way Finders without first exhausting its administrative remedies, and it may not be able to hold the tenant responsible for Way Finders’ share of the rent if its actions led to the termination of the HAP contract. These issues, however, are not before the Court at this time.

before the Court many months after the counterclaims were first asserted on January 18, 2019.<sup>3</sup> If the tenant had moved to add a third party at this late date, the delay would likely prejudice a landlord seeking an expedited process to regain possession. In this case, however, it is the landlord filing the motion and risking further delay in recovering possession. Given these circumstances, the benefit of having all of the issues relating to the tenancy and the tenant's rental subsidy to be heard in a single trial outweighs the risk of prejudice caused by allowing the motion at this late date.

For the foregoing reasons, the motion is ALLOWED.

SO ORDERED.

November 19, 2019.

  
Jonathan Kane  
Associate Justice

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<sup>3</sup> At a case management conference held on September 17, 2019, the matter was scheduled for trial on October 25, 2019 and a final pretrial conference was scheduled for October 11, 2019. On the date of the final pretrial conference, the docket notes that "parties shall file [a motion] to add Wayfinders [sic] to case if necessary, trial to go forward 10-25-19 unless parties request for leave." No written motion for leave to continue the trial appears on the docket, but nonetheless, the case has not yet gone to trial.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 19-SP-1933

HOLYOKE HOUSING AUTHORITY  
Plaintiff,  
v.  
NELLYS GARCIA  
Defendant.

**ORDER**

After a hearing on November 21, 2019, for which the defendant was accompanied by Attorney Danny Flynn, [REDACTED] and the plaintiff appeared via counsel, the following order is to enter:

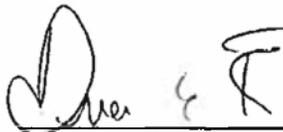
1. The defendant's request to re-occupy the subject property is allowed pending the disposition of this Housing Court matter. Furthermore, this case is bifurcated and will proceed only as to the allegations surrounding damage caused at the subject property.
2. The defendant's request to re-occupy the subject property is also allowed conditioned upon the following:
  - A. The defendant will pay the rent arrearage owed to the plaintiff/landlord forthwith,
  - B. The defendant will forthwith complete the recertification process at the management office,
  - C. The defendant will forthwith restore the electricity at the subject

property in her own name,

- D. The defendant is prohibited from allowing dogs in the subject property,
- E. The defendant is prohibited from conducting and/or participating in any drug activity at the subject property and
- F. Beginning in December 2019 the defendant shall pay the plaintiff \$500.00 per month towards the alleged property damage that occurred at the subject property until such time as a ruling is issued in this matter.

- 3. All parties shall appear in the SPRINGFIELD session of the Western Division Housing Court for a case management conference on **Monday, December 9, 2019 at 10:30am.**

So entered this 22<sup>nd</sup> day of November, 2019.



\_\_\_\_\_  
Dina E. Fein  
First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 19-SP-4798

US BANK NATIONAL ASSOCIATION,  
AS TRUSTEE

Plaintiff,

v.

REGINA N THOMA, and  
ASHLEY THOMA

Defendants.

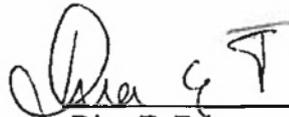
**ORDER**

After a hearing held before the undersigned on November 21, 2019, at which the plaintiff appeared via counsel and the defendants appeared through the assistance of counsel on a limited appearance, the following order is to enter:

1. The defendant's Motion to Amend Answer and Request Discovery is allowed over the plaintiff's objections.
2. The plaintiff shall serve their answers to discovery on the defendant 45 days from the date of this order and their affirmative discovery requests on the defendant within 14 days of the date of this order. The defendant shall serve their answers to plaintiff's discovery requests on the plaintiff within 30 days of receipt of the discovery requests.

3. All parties shall appear at the clerk's office in the SPRINGFIELD session of the Western Division Housing Court for a case management conference on **Tuesday, January 21, 2020 at 10:00am.**

So entered this 22<sup>nd</sup> day of November, 2019.

  
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Dina E. Fein  
First Justice