

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 18

Oct. 18, 2022 — Nov. 14, 2022
(and certain older decisions)

ABOUT

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

WHO WE ARE

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

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*

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

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

Aaron Dulles, Assistant Attorney General, *Massachusetts Attorney General’s Office*

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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, mental health disabilities, specific personal financial information, and/or certain criminal activity will be redacted if reasonably possible, or excluded if not. As applied to orders involving guardians ad litem or the Tenancy Preservation Program, redaction or exclusion is not triggered by virtue of such references alone but rather by language revealing or fairly implying specific facts about a disability. (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 sign up for the listserv should e-mail Aaron Dulles (dulles@jd11.law.harvard.edu).

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

SECURITY

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 316

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS SPK OWNER LLC (owner) and
BIANCA RODRIGUEZ (tenant)
Defendants

Re: Premises: 683 State Street, Apt. 8, Springfield, Massachusetts

ORDER

(Hampden County Registry of Deeds Book/Page: #24122/163)

After a hearing on October 3, 2022 for which a representative of the Plaintiff appeared, and Defendant SPRINGFIELD GARDENS SPK OWNER LLC appeared by counsel Carolyne Pereira, and after having been given notice of said hearing a representative of Defendant BIANCA RODRIGUEZ did not appear, the following order is to enter:

1. Defendant SPRINGFIELD GARDENS SPK OWNER LLC shall correct all State Sanitary Code violations at the above premises, as listed in Exhibit A attached to the Plaintiff's original petition, FORTHWITH, and in any event no later than October 14, 2022 at 10:30 a.m. All work is to be done in a workmanlike manner and by licensed professionals with permits pulled as required by law.
2. Defendant SPRINGFIELD GARDENS SPK OWNER LLC and BIANCA RODRIGUEZ shall allow the Plaintiff interior access to the subject property the purpose of re-inspection on October 14, 2022 at 10:30 a.m. to verify compliance with this order.
3. The Plaintiff shall inspect the property to verify compliance with this order on October 14, 2022 at 10:30 a.m.
4. This matter shall be up for review with the Court on October 31, 2022 at 9:00 a.m. Failure of the Defendants to appear on said date may result in the issuance of a capias for their arrest or the filing of a complaint for contempt.

So entered this 6th day of September, 2022.

A

Robert G. Fields, Associate Justice
Western Division Housing Court

RM

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-618**

JOALIS GARCIA,

Plaintiff,

v.

HOWIE HABERMAN,

Defendant.

ORDER

After hearing on September 12, 2022, at which the plaintiff tenant appeared without counsel and the defendant landlord appeared through counsel and one of the property owners, Susan Haberman Dupuis, also appeared, the following order shall enter:

1. The defendant landlord shall forthwith make all outstanding repairs to the subject premises that are listed by the city's Board of Health.

2. In doing so, the landlord shall provide the tenant with no less than 24 hours advance written notice with a description of the anticipated work and the time for said access and an approximation of the amount of time the repairs will take.
3. Any such repair work that requires a licensed professional or a permit obtained from the city shall be effectuated in that manner. All work shall be performed in a workmanlike manner, which shall include cleaning up the work area at the end of each day.
4. This matter is scheduled for hearing live and in person at the Springfield session on **September 29, 2022, at 9:00 a.m.** The tenant is encouraged to reach out to Community Legal Aid for assistance in this matter. If she is unable to meet with CLA prior to the hearing, she should ask to do so when she first arrives for the hearing.

So entered this 29th day of September, 2022.

Robert Fields, Associate Justice
CC: Court Reporter

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

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

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

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

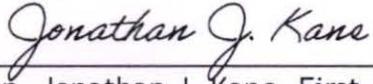
in all respects and that it was the holder of the promissory note up through the time of the foreclosure sale. See *Federal National Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 637 (2012). The Court finds that these documents, together with the notice to quit served upon and received by Defendant, and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

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

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

SO ORDERED.

DATE: 10.4.22



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1817

OPUS DURAM, LLC,

Plaintiff,

v.

MARIA DUPUIS,

Defendant.

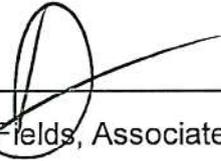
ORDER

This matter came before the court for trial on September 1, 2022, at which the plaintiff landlord appeared through counsel and the tenant defendant tenant appeared *pro se*. After hearing, the following order shall enter:

1. The parties stipulated to the landlord's case for possession.
2. In accordance with G.L. c.239, s.9 the tenant is seeking additional time to relocate.

3. The landlord has contracted to sell this property and is requesting a judgment for possession. The buyer, who is a client of landlord's counsel, is likely looking for a higher rent.
4. The tenant will diligently search for housing and keep a log documenting her efforts to relocate and provide a copy of same to landlord's counsel by no later than September 30 and again on October 24, 2022. The tenant shall also continue to pay her rent.
5. The landlord's counsel shall inform the buyer of the tenant's interest in possibly paying a higher rent in order to remain at the premises.
6. This matter shall be scheduled for further hearing on **October 26, 2022, at 2:00 p.m.** live and in-person at the court.

So entered this 12th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 558

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS 41-49 LP (owner),
ANNA SMITH (tenant),
MARLEE VELAZQUEZ (tenant) and
THOMAS ROMERO (tenant)
Defendants

Re: Premises: 41-49 School Street, Springfield, Massachusetts

ORDER

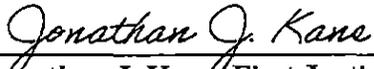
(Hampden County Registry of Deeds Book/Page: #23737/585)

After a hearing on September 30, 2022, for which a representative of the Plaintiff appeared, Defendant SPRINGFIELD GARDENS 41-49 LP appeared with counsel Richard Herbert, Defendant ANNA SMITH appeared with counsel Daniel Ordorica, Defendant MARLEE VELAZQUEZ appeared with counsel Joel Feldman, and Defendant THOMAS ROMERO appeared, the following order is to enter:

1. Defendant SPRINGFIELD GARDENS 41-49 LP shall correct all broken exterior door locks at 41-49 School Street, FORTHWITH, and in any event before Tuesday, October 11, 2022 at 9:30 a.m.
2. Pursuant to the September 27, 2022 court order, daily fines of \$500.00 (five hundred dollars and 00/100) shall continue to accrue against SPRINGFIELD GARDENS 41-49 LP until all exterior locks at the property located at 41-49 School Street are corrected or until further court order.
3. Defendant SPRINGFIELD GARDENS 41-49 LP correct all State Electrical Code violations attached hereto as Exhibit A, and close permits Electrical Permits 22BDOT-01762EL and 22BDOT-01700EL, FORTHWITH, and in any event before Tuesday, October 11, 2022 at 9:30 a.m. All work is to be done in a workmanlike manner and by licensed professionals with permits pulled as required by law.

4. Pursuant to the September 27, 2022 court order, daily fines of \$250.00 (two hundred fifty dollars and 00/100) shall continue to accrue against SPRINGFIELD GARDENS 41-49 LP until the electrical permits have been closed or until further court order.
5. Defendant SPRINGFIELD GARDENS 41-49 LP shall hire a Massachusetts-licensed plumber to open and close permit(s) to correct all State Plumbing Code violations attached hereto as Exhibit B, FORTHWITH, and in any event before Tuesday, October 11, 2022 at 9:30 a.m. All work is to be done in a workmanlike manner and by licensed professionals with permits pulled as required by law.
6. Pursuant to the September 27, 2022 court order, daily fines of \$250.00 (two hundred fifty dollars and 00/100) shall continue to accrue against SPRINGFIELD GARDENS 41-49 LP until the plumbing permits have been closed or until further court order.
7. Defendants SPRINGFIELD GARDENS 41-49 LP, ANNA SMITH, MARLEE VELAZQUEZ and THOMAS ROMERO shall allow the Plaintiff interior access to the subject units of the property for the purpose of re-inspection on Tuesday, October 11, 2022 at 9:30 a.m. to verify compliance with this order. Defendant Springfield Gardens 41-49 LP shall be present at the inspection. Mr. Romeo agreed in court that the landlord can enter his unit for purposes of inspection if he is not home.
8. The Plaintiff shall inspect the subject units of the property to verify compliance with this order on Tuesday, October 11, 2022 at 9:30 a.m.
9. Defendant SPRINGFIELD GARDENS 41-49 LP shall provide Defendants ANNA SMITH, MARLEE VELAZQUEZ and THOMAS ROMERO with at least 24-hour notice for access to their subject units for repairs. Said notice shall be posted on the door of the unit and emailed to the defendant tenant and their attorney if the tenant has an attorney. For notice regarding extermination, Defendant SPRINGFIELD GARDENS 41-49 LP shall provide defendant tenants with instructions on how to prepare for the extermination with the notice.
10. Defendants' ANNA SMITH's and MARLEE VELAZQUEZ's Complaint for Contempt will be heard on Thursday, October 13, 2022 at 10:00 a.m.
11. This matter shall be up for review with the Court on Thursday, October 13, 2022 at 10:00 a.m. Failure of the Defendants to appear on said date may result in the issuance of a *capias* for their arrest or the filing of a complaint for contempt.

So entered this 13 day of October, 2022.



Jonathan J. Kane, First Justice
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION NO. 22-CV- 558

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS 41-49 LP (owner),
ANNA SMITH (tenant),
MARLEE VELAZQUEZ (tenant) and
THOMAS ROMERO (tenant)

Defendants

Re: Premises: 41-49 School Street, Springfield, Massachusetts (the "Premises")

ORDER

(Hampden County Registry of Deeds Book/Page: #23737/585)

After a hearing on October 13, 2022, for which a representative of the Plaintiff appeared, Defendant SPRINGFIELD GARDENS 41-49 LP ("SG") appeared with counsel Richard Herbert, Defendant ANNA SMITH ("Smith") appeared with counsel Daniel Ordorica, Defendant MARLEE VELAZQUEZ ("Velazquez") appeared with counsel Joel Feldman, and Defendant THOMAS ROMERO ("Romero") appeared self-represented, the following order is to enter:

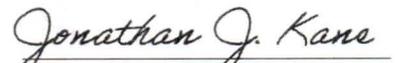
1. SG shall correct all broken exterior door locks and windows at the Premises, FORTHWITH, and in any event before Wednesday, October 26, 2022 at 9:00 a.m.
2. Pursuant to the September 27, 2022 court order, daily fines of \$500.00 (five hundred dollars and 00/100) shall continue to accrue against SG until all exterior locks and windows at the property located at the Premises are corrected or until further court order.
3. Defendant SG correct all State Electrical Code violations attached hereto as Exhibit A, and close permits Electrical Permits 22BDOT-01762EL and 22BDOT-01700EL, FORTHWITH, and in any event before Wednesday, October 26, 2022 at 9:00 a.m. All work is to be done in a workmanlike manner and by licensed professionals with permits pulled as required by law.
4. Pursuant to the September 27, 2022 court order, daily fines of \$250.00 (two hundred fifty dollars and 00/100) shall continue to accrue against SG until the electrical permits have been closed or until further court order.

5. Defendant SG shall hire a Massachusetts-licensed plumber to open and close permit(s) to correct all State Plumbing Code violations attached hereto as Exhibit B, FORTHWITH, and in any event before Wednesday, October 26, 2022 at 9:00 a.m. All work is to be done in a workmanlike manner and by licensed professionals with permits pulled as required by law.
6. Pursuant to the September 27, 2022 court order, daily fines of \$250.00 (two hundred fifty dollars and 00/100) shall continue to accrue against SG until the plumbing permits have been closed or until further court order.
7. When the plumbing and electrical permits have been closed and the exterior door locks and windows have been repaired, the City may schedule a motion to assess the total amount of fines to be assessed against SG. SG will be given an opportunity to present evidence as to when the required work was completed.
8. SG shall place Smith and her two children in a hotel in Springfield in a convenient location (the parties appear to have agreed upon the Sheraton) until the active leak in her unit is repaired. SG may conduct mold remediation in her unit during the time she is residing in the hotel. SG shall provide Smith with a daily food stipend of \$75.00 if the hotel does not have cooking facilities.
9. SG stipulates that it has failed to comply with previous court orders to correct all State Sanitary Code violations in the Premises. Therefore, the Court does not need to conduct a hearing on the merits of Smith's and Velazquez's contempt complaint. In considering sanctions for contempt, the Court notes that it has held hearings in this matter on August 22, 2022, September 2, 2022, September 16, 2022, September 23, 2022, September 30, 2022 and October 13, 2022. Despite the urgent nature of several items, little has been accomplished as of the October 13, 2022 hearing. For example:
 - a. The Court ordered that all State Sanitary Code violations be corrected by September 21, 2022; the work has not been completed (and, in the case of many if not most items, not yet started);
 - b. Despite an original deadline of August 29, 2022 to repair exterior door locks, SG concedes that the front door lock was only recently repaired, and it appears that it has since been vandalized;
 - c. An electrical permit was to be opened and closed by August 29, 2022; it has yet to be closed and there is a dispute whether it has been opened;¹
 - d. A plumbing permit was to be opened and closed by September 21, 2022; it has not been opened.
 - e. SG failed to comply with a number of other Court-ordered completion dates for other violations cited by Plaintiff.

¹ Counsel for SG said he understands that an electrical permit was recently opened, but counsel for the City has no record of it. The date the electrical permit was pulled can be resolved at a future hearing.

10. One 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). Financial sanctions may also be imposed as a sanction for civil contempt. *Giannetti v. Thomas*, 32 Mass. App. Ct. 960, 961 (1992) (trial judge in civil contempt proceedings can impose either compensatory or coercive order or both). Accordingly, the Court orders that SG be assessed daily fines of \$50.00 payable to each of Smith, Velazquez and Romero retroactive to September 22, 2022² and continuing until all State Sanitary Code violations have been corrected in each of their respective units.
11. The daily fines referenced in the preceding paragraph shall be doubled for each unit after October 26, 2022 if the State Sanitary Code violations have not been corrected by that date.
12. As a further sanction for contempt, counsel for Smith and Velazquez may petition for attorneys’ fees (a) for appearing for hearings in this Court beginning on September 23, 2022 (a date that is approximately 30 days after the initial hearing in this case), and (b) for preparing and filing the contempt complaint. In the alternative, counsel may defer the petition for attorneys’ fees to any civil cases they have filed or may file against SG. If counsel does petition for the attorneys’ fees described herein as a sanction for contempt, they may not include the same fees in any other action against SG.
13. Defendants SG, Smith, Velazquez and Romero shall allow the Plaintiff interior access to the subject units of the property for the purpose of re-inspection on Wednesday, October 26, 2022 at 9:30 a.m. to verify compliance with this order. SG shall be present at the inspection. Romeo agreed in court that the landlord can enter his unit for purposes of inspection if he is not home.
14. The Plaintiff shall inspect the subject units of the property to verify compliance with this order on Wednesday, October 26, 2022 at 9:30 a.m.
15. SG shall provide Smith, Velazquez and Romero with at least 24-hour notice for access to their subject units for repairs (except on any day in which said defendants are being housed in a hotel). Said notice shall be posted on the door of the unit and emailed to the subject tenant and his or her attorney if the tenant has an attorney. For notice regarding extermination, SG shall provide the tenants with instructions on how to prepare for the extermination with the notice.
16. The parties shall appear in-person for review on Thursday, October 27, 2022 at 10:00 a.m.

So entered this 17th day of October, 2022.


Jonathan J. Kane, First Justice

cc: Court Reporter

² The Court selects this date because it is the date the contempt complaint was entered in the Court.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2094

KEN and KATIE BEAGLE,

Plaintiffs,

v.

KEISHA MARIE PAUL,

Defendant.

**ORDER VACATING THE
DEFAULT JUDGMENT AND
REQUIRING THE RETURN OF
THE EXECUTION**

After hearing on October 14, 2022, at which the plaintiff Katie Beagle and the defendant appeared without counsel, the following order shall enter:

1. The court finds the tenant credible that she was sick with COVID at the time of her default and that she has the defense of G.L. c.239, s.9 in this no-fault eviction. Further, a representative from Way Finders, Inc. joined the hearing and verified that the landlords were paid rent through September 2022, and court costs.

2. The tenant was going to meet with Way Finders, Inc. directly after the hearing to commence a new application for rental assistance through to January 1, 2023, and for the costs incurred by the landlords for the cancellation of the physical eviction currently scheduled for October 19, 2022.
3. The tenant's motion to vacate the judgment is allowed. The landlords shall return the execution to the court and shall immediately cancel the currently scheduled physical eviction.
4. In accordance with G.L. c.239, s.9 the tenant can remain in occupancy at the premises until January 1, 2023, as long as she pays her rent or has an application pending with Way Finders, Inc.

So entered this 18th day of October, 2022.



Robert Fields, Associate Justice

CC: Lucien Ortega, Way Finders, Inc.
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-97

JONATHAN CASTELLANO,

Plaintiff,

v.

BEACON RESIDENTIAL MANAGEMENT, L.P.,

Defendant.

ORDER

After trial on September 16, 2022, at which both parties appeared as did the plaintiff's Guardian Ad Litem, the following order shall enter:

1. The plaintiff failed to meet his burden of proof on any of his claims for injunctive relief relative to a neighbor's pitbull dog, the condition of a handicap accessible ramp, the lack of emergency contact with the landlord, fire safety, and lack of the landlord's alleged lack of enforcement regarding illegal drug usage at the premises.

2. Accordingly, judgment on said claims shall enter for the defendant in this matter.

So entered this 18th day of October, 2022.



Robert Fields, Associate Justice

CC: G.A.L., Thomas Wilson, Esq.

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1101

AMIR MIKCHI,
Plaintiff,
v.
DAVID BARROWS,
Defendant.

ORDER

After hearing on October 17, 2022, on the defendant tenant's motion for a late filing of an Answer at which the plaintiff landlord appeared with counsel and the tenant appeared *pro se*, the following order shall enter:

1. The tenant's motion is allowed, and he is instructed to meet with a Lawyer for the Day counsel to finalize the proposed late Answer and serve and file same today (October 17, 2022).

2. The tenant met with Way Finders, Inc. on the morning of the hearing by Zoom and will file an application for RAFT funds by the end of business this day.
3. The landlord shall include with any documents it shares with Way Finders, Inc. a copy of the ledger with all outstanding monies including court costs (if they are in fact outstanding).
4. The tenant shall pay use and occupancy for October 2022 (\$950) today.
5. This matter shall be scheduled for trial and for hearing on properly marked motions on **October 31, 2022, at 9:00 a.m.** at the Hadley Session of this court. If either party wishes to be heard on a motion at said hearing, it must be filed and served by no later than October 24, 2022.

So entered this 18th day of October, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-504**

AMELIA ORTIZ,

Plaintiff,

v.

HANATI LUBEGA,

Defendant.

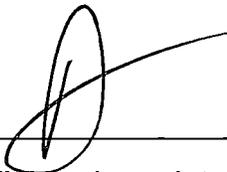
ORDER

After hearing on October 12, 2022, on review of this matter at which the plaintiff tenant appeared with LAR counsel and the defendant landlord appeared *pro se*, the following order shall enter:

1. Tenant's counsel shall provide the landlord by email a list of conditions of disrepair the tenant is seeking the landlord to repair.
2. The landlord shall provide the tenant's attorney by email a copy of the lease between the parties.

3. These emails shall be sent by no later than October 18, 2022.
4. The landlord shall provide the tenant with no less than 24 hours advance notice by text for when she wishes to access the unit for any and all repairs. Each such text shall include the time and date and a description of the anticipated repairs. The tenant shall promptly respond either that that time and date works or, if not, an alternate time and date for access.
5. This matter shall be scheduled for further hearing, at which the parties will produce a copy of Way Finders, Inc.'s latest inspection report, as to the status of the repairs at the premises and for further court order, if needed. Said hearing shall be live and in-person (not on Zoom) on **October 24, 2022, at 2:00 p.m.** It is understood by the court that LAR counsel shall be appearing with the tenant at this hearing.

So entered this 18th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-672/684

TULLIO P. PEDERZINNI, et al.

Plaintiffs,

v.

GREENFIELD GARDENS APTS.,

Defendant.

ORDER

After hearing on October 14, 2022, on the plaintiff's motion to enforce and/or clarify the court's earlier order, at which all parties appeared, the following order shall enter:

1. Andrea Goldman shall be added as a party-plaintiff. Her address is 26 Riverside Drive in Greenfield, MA.
2. Heidi Flaherty shall be added as a party-plaintiff. Her address is the same as the initial plaintiff Tullio P. Pederzinni.

3. The defendant shall hire a bonded moving company/warehouse to remove the contents of the subject premises to storage in accordance with G.L. c.239, s.4. The defendant shall also make arrangements so that anything determined by the moving company to be trash and not to be removed shall remain at the premises.
4. After said move-out of belongings, the defendant shall notify the plaintiffs and make arrangements for them to enter the premises and go through everything that remains and put any item of their choosing into a box. After the plaintiffs have completed this task they shall so notify the defendant.
5. The defendant will then have the same bonded moving company/warehouse remove the box(es) of items placed there by the plaintiffs to the same storage bin of the same facility as the other previously removed belongings.
6. The plaintiffs may not take anything from the premises nor damage anything therein. They also may not photograph any paperwork. At the end of each time the plaintiffs are at the premises sifting through and culling the items therein, they must notify the defendant who will then dispatch someone to be present when the plaintiff(s) leaves to ensure that no item was taken.

So entered this 12th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-724

TOWN OF SOUTH HADLEY, BOARD OF
HEALTH,

Plaintiff,

v.

JOHN ARTHUR and PEOPLE'S BANK,

Defendants.

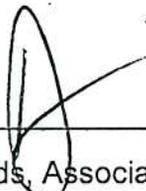
ORDER

After hearing on October 17, 2022, on the plaintiff town's motion for injunctive relief and at which the town appeared through counsel as did the defendant bank, but for which the defendant property owner John Arthur did not appear after proper notice to do so, the following order shall enter:

1. The defendant John Arthur shall have until October 24, 2022, to vacate the premises due to the town's condemnation, or have the condemnation lifted by that date.

2. If the defendant fails to vacate or have the condemnation lifted by that date, the town shall have the authority to have Mr. Arthur removed from the premises through the use of a sheriff who shall be authorized to remove all individuals inside the premises. Equally, the police are authorized to remove any and all individuals in conjunction with the town's authority to allow the town to board and secure the premises.
3. The town shall board and secure said premises on October 24, 2022, unless the condemnation is lifted.
4. Mr. Arthur is invited to reach out to the town to inquire about and benefit from resources to locate alternate housing and other resources by calling during regular business hours 413-538-5030 X6184.
5. The town shall post each exterior door at the premises with a copy of this Order.
6. If the defendant, John Arthur, wishes to be heard by the court he may file a motion and may reach the court's clerks office at 413-748-7838.

So entered this 18th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1184

FEDERAL MANAGEMENT CO., INC.,

Plaintiff,

v.

CELEST ORTEGA,

Defendant.

ORDER

After hearing on October 4, 2022, on the tenant's motion to vacate the default judgment, at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day counsel, the following order shall enter:

1. The tenant's motion to vacate the default judgment is allowed. The tenant submitted paperwork that she was diagnosed with COVID-19 on September 6, 2022, and asserted that she was still sick at the time of the trial on September 19, 2022, when she defaulted.

2. The tenant shall have until three days before the Case Management Conference scheduled below to file her Answer and Discovery Demand.
3. A referral was made by the Clerk's Office at the July 15, 2022, case management conference to the Tenancy Preservation Program. A new referral will be made again today by the court to the Tenancy Preservation Program. The tenant's telephone number for purposes of this referral is 413-275-7131.
4. Given the assertions by the tenant, through her Lawyer for the Day counsel, it appears that her defenses and counterclaims may be very complicated and Community Legal Aid is urged to consider further representation of the tenant, either directly or through its referral process.
5. A Case Management Conference shall be scheduled for **November 4, 2022, at 2:00 p.m. by Zoom**. The court's Zoom platform can be reached with Meeting ID: 161 638 3742 and Password: 1234. If any party cannot utilize Zoom, they may come to the court and utilize the court's Zoom Room.

So entered this 19th day of October, 2022.



Robert Fields, Associate Justice ^(m)

CC: David DeBartolo, CLA, Lawyer for the Day
Court Reporter

cl

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-3391

SERVICENET, INC.,

Plaintiff,

v.

HELEN BERG,

Defendant.

ORDER

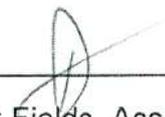
After hearing on October 17, 2022, the following order shall enter:

1. The GAL reported that the tenant was evaluated by the Court Clinic on June 6, 2022. A copy of that report was made available during the hearing to the parties, TPP and the court. A protective order shall enter regarding this report, which shall not be copied or shared in any way by the plaintiff, TPP, or GAL.
2. The GAL shall continue to communicate with Community Legal Aid (CLA) for a referral for legal assistance including to CLA's pro bono referral panel. If that

fails, the GAL is requested to identify and hopefully secure legal representation for the tenant.

3. The tenant's motions for the undersigned judge to recuse himself, for judicial review, and to dismiss are all denied.
4. The parties shall engage in a reasonable accommodations dialogue to identify if there are solutions short of an eviction action to resolve the parties' issues.
5. The GAL shall file a report on December 9, 2022.
6. TPP shall further assess if there are mental health or other resources that might benefit the tenant.
7. The parties shall discuss whether the parties wish to propound discovery and, if so, propose a schedule for same.
8. This matter shall be scheduled for further hearing on **December 12, 2022, at 9:00 a.m.** at the Hadley Session.

So entered this 19th day of October, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-964

DENNIS DEVEAUX,

Plaintiff,

v.

TONY DEWDNEY,

Defendant.

ORDER

After hearing on October 19, 2022, on the defendant tenant's motion to stop a physical eviction at which the plaintiff landlord appeared with counsel and the tenant appeared with Lawyer for the Day Counsel, the following order shall enter:

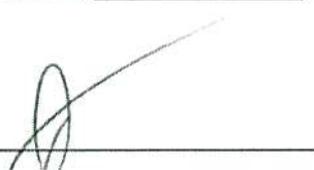
1. For the reasons stated by the judge on the record, the motion is allowed, and the physical eviction scheduled for October 20, 2022, shall be cancelled. The landlord is directed to so notify the moving company and the sheriff forthwith.

2. Additionally, the default judgment entered in this matter is vacated and the landlord is instructed to return the execution to the court. As mentioned on the record, the judge was satisfied after a hearing in a related civil action (22-CV-627) on October 6, 2022, that the landlord locked the tenant out and prevented him from receiving his mail at the premises¹. This is consistent with the fact that mail (which included the judgment mailed on August 10, 2022, and the execution mailed on September 12, 2022) was returned to the court undelivered to the tenant.
3. Given the assertions in the civil action, the tenant has possible counterclaims and defenses in this non-payment of rent matter and the court sees that he was asserting them in the civil matter and not in the summary process matter, within the same general time frame.
4. The tenant shall have until October 28, 2022, to file and serve an Answer and Discovery Demand and the landlord shall have until November 9, 2022, to respond to said discovery.
5. The landlord has until October 31, 2022, to propound discovery upon the tenant and the tenant shall have until November 14, 2022, to respond.
6. The civil action (22-CV-627) shall be consolidated into the summary process matter (22-SP-964).
7. The Lawyer for the Day Counsel has agreed to extend her LAR appearance through the discovery phase.

¹ The court fully appreciates that these facts can be revisited at the trial on the merits scheduled herein.

8. This matter shall be scheduled for trial on **December 1, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 25th day of October, 2022.



Robert Fields, Associate Justice

CC: Christa Douaihy, Esq. (LAR counsel)
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1670

TIMOTHY DOBEK,

Plaintiff,

v.

GABRIEL CEDRES, DARCIE LEWANDOWSKI,
CAROLINE RICE, and GABRIEL CEDRES
ARRUFFATT,

Defendants.

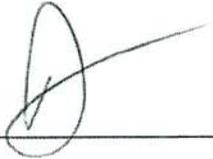
ORDER

After hearing on September 29, 2022, on review, at which all the defendants and Ms. Rice's G.A.L. appeared but for which the plaintiff failed to appear, the following order shall enter:

1. The G.A.L. filed a written report and made an oral report at the hearing.
2. Ms. Rice is no longer residing at the premises but continues to have furniture at the premises.

3. Ms. Rice has an evaluation scheduled with the Court Clinic on October 5, 2022.
The G.A.L. shall have the Court Clinic sent to the attention of Judge Fields.
4. The G.A.L.'s request further extension of time to file an Answer on his ward's behalf is allowed. The G.A.L. shall be mindful when considering if and when to file an Answer that the matter is scheduled for trial as noted below.
5. The other tenants shall have until October 7, 2022, to file and serve a Discovery Demand. The landlord shall have ten days after receipt of said discovery to respond.
6. A trial is scheduled for **November 18, 2022, at 10:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 20th day of October, 2022.



Robert Fields, Associate Justice

CC: G.A.L. Shawn Mansfield, Esq.
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-604

MARIBEL HERNANDEZ,

Plaintiff,

v.

ANTIME SABY,

Defendant.

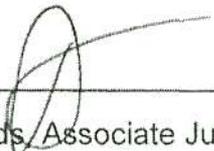
ORDER

After hearing on September 1, 2022, at which both parties appeared without counsel, the following order shall enter:

1. The plaintiff tenant is seeking to enforce the existing terms of the Section 8 tenancy that pre-date the defendant's plaintiff's recent ownership of the premises until such terms are amended by agreement or court order.

2. The tenant's application for an injunctive order is allowed and the landlord has purchased this property subject to the terms of the tenancy and he may not unilaterally change its terms.
3. The landlord shall be required to repair those items cited by the Section 8 inspector and to allow the tenants to continue to use the basement for use of her washer/dryer and for some storage.
4. Further, the landlord shall not enter the tenant's apartment without her permission and shall limit his communications with her solely in written form.

So entered this 20th day of October, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-442

RANDALL R. JARRY, et al.,

Plaintiffs,

v.

RACHEL CARTER, et al.,

Defendants.

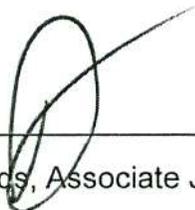
ORDER

After hearing on October 13, 2022, on the tenants' motion for an extension of time to move out and the landlords' motion for entry of judgment, the following order shall enter:

1. The tenants had originally agreed to vacate by October 1, 2022 but were not able to secure housing prior to that date. They now report that they have secured housing for December 1, 2022.

2. The landlord is seeking judgment for possession as the tenants did not vacate by the agreed upon date of October 1, 2022.
3. Both parties' motions are allowed consistent with the terms of this order.
4. The tenants may continue to reside at the premises until December 1, 2022, so long as they provide a copy of their new lease with the landlords' attorney by no later than October 31, 2022 and pay their use and occupancy in full and on time.
5. Judgment shall enter for the landlord for possession and execution shall issue in due course upon the filing and service of a Rule 13 Application.
6. There shall be a stay on the physical eviction until December 2, 2022, if the tenants comply with this order.

So entered this 20th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-124

LORD JEFFREY APARTMENTS,

Plaintiff,

v.

BRUCE WATCHTA,

Defendant.

ORDER

After hearing on October 17, 2022, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se* and also at which the Guardian Ad Litem (GAL) appeared as did a representative from the Tenancy Preservation Program (TPP), the following order shall enter:

1. There were two parts to the tenant's motion; one seeking dismissal of this action and one seeking removal of a default judgment.

2. A default judgment did not enter when the tenant did not appear at the August 31, 2022, hearing. The court shall therefore treat the motion as a request that the order issued as a result of that hearing be reconsidered. The tenant also reported to the court that Renee Rioux is no longer residing with him in his unit.
3. The court's order dated September 1, 2022, shall be amended in the following manner: the landlord shall give notice to the tenant of a date and time when it wishes to access his unit for repairs. If access is denied, the landlord shall have the authority to act in the manner described in the September 1, 2022, order for access.
4. Any repairs conducted that require licensure shall be effectuated by a licensed person/company. Any such work that requires a permit to be opened and closed by the town shall be accomplished in that manner. Any and all repair work shall be conducted in a workmanlike manner and the landlord shall ensure that work is cleaned up when completed each day.
5. The second part of the tenant's motion, to dismiss this matter, is denied.
6. The GAL shall work with the parties and TPP to investigate the relationship between the tenant and Ms. Rioux and make a determination if steps are required to protect the tenant from harm that may be caused by Ms. Rioux being a Power of Attorney or having access to the tenant's finances.
7. The GAL shall also pursue a referral to Community Legal Aid, including that agency's pro bono referral panel.

8. The landlord will make sure that the tenant is presently on its waiting list for being relocated to a first-floor unit and shall routinely update the tenant on the status of that waiting list.
9. The GAL shall file a report with the court by no later than November 30, 2022.

So entered this 20th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1983

PINKY PATEL,

Plaintiff,

v.

JAVIER and DOREEN ZEVALLOS,

Defendants.

ORDER

After a trial hearing on October 20, 2022, at which the plaintiff appeared with counsel and the tenant, Javier Zevallos, appeared *pro se*, the following order shall enter:

1. At the close of trial the parties reached a settlement which will be an agreed-upon order of the court.
2. The tenants shall have until January 2, 2023, to vacate the premises.

3. During the remainder of their occupancy, there shall not be any use and occupancy required and any other monies that might be owing for use and occupancy and court costs through today are waived.
4. The plaintiff's request that Doreen Zevallos be defaulted is denied without prejudice, but the court considers that she will be subject to the terms of this agreed-upon order.
5. If the tenants have not vacated by January 1, 2023, the plaintiff may send a letter and affidavit, copied to the tenants, seeking a judgment for possession only, retroactively to October 24, 2022, and an execution and same shall enter and issue without hearing.

So entered this 26 day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-523

FERMANDO SANTANA,

Plaintiff,

v.

YARDIRYS GONZALEZ,

Defendant.

ORDER

After hearing on September 8, 2022, on the landlord's motion for access and the tenant's motion for additional time before having to relocate, the following order shall enter:

1. The landlord shall have access on September 10, 2022, at 2:30 p.m. to inspect the apartment and to make any necessary repairs to the leak. If the landlord requires further need to enter the unit or for a plumber to make further repairs,

same shall be scheduled with at least 24 hours advance written notice and for a access time between 4:00 p.m. and 5:00 p.m. Monday through Friday.

2. The parties reported that Way Finders, Inc. paid all outstanding arrearage through August 31, 2022.
3. The tenant shall pay \$1,100 for September 2022 rent by no later than September 16, 2022, and \$1,100 for October by October 14, 2022.
4. If the tenant complies with providing access and make all the payments noted above, she can remain at the premises until November 1, 2022, but not beyond.

So entered this 20th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 179

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS LP (owner), and
ANTONIO MATOS (tenant)

Defendants

Re: Premises: 34 Salem Street, Springfield, Massachusetts

ORDER

(Hampden County Registry of Deeds Book/Page: #23038/217)

After a hearing on October 21, 2022, for which a representative of the Plaintiff appeared, Defendant SPRINGFIELD GARDENS LP appeared by counsel Richard Herbert and Defendant ANTONIO MATOS appeared, the following order is to enter:

1. Bezaida Correa appeared and represents that she resides at 34 Salem Street, Unit 1B. Bezaida Correa shall be added as a defendant tenant to this matter.
2. Defendants ANTONIO MATOS and BEZAIDA CORREA and their respective household members must vacate the above said premises, FORTHWITH, and not re-occupy until such time as the Plaintiff has verified that there is sufficient heat or by leave of Court.
3. Defendant SPRINGFIELD GARDENS LP shall provide alternative housing for Defendants ANTONIO MATOS and BEZAIDA CORREA and their respective household members at the above property until such time as the Plaintiff has verified that there is sufficient heat at the subject unit or by leave of Court. Said alternative housing shall a hotel room with two beds and kitchen/cooking facilities. If the hotel provided by SPRINGFIELD GARDENS LP is not satisfactory, Defendants ANTONIO MATOS and BEZAIDA CORREA can negotiate a different hotel with SPRINGFIELD GARDENS LP or bring the issue before the Court.
4. Defendant SPRINGFIELD GARDENS LP shall provide the Plaintiff with a list of all tenants currently residing at 34 Salem Street with contact information for each tenant, FORTHWITH, and in any event no later than October 21, 2022 at 5:00 p.m.

5. Defendant SPRINGFIELD GARDENS LP shall allow the Plaintiff with interior access to the entire building and each unit at the property located at the subject property for the purposes of inspection on Monday, October 24, 2022 at 9:30 a.m. Defendant SPRINGFIELD GARDENS LP shall be present for the inspection and shall allow the Plaintiff interior access to any unit at the property at which a tenant is unable to provide access.
6. Defendant SPRINGFIELD GARDENS LP shall post written notice of the inspection on the doors of all units at 34 Salem Street, FORTHWITH, and in any event no later than October 21, 2022 at 5:00 p.m. Defendant SPRINGFIELD GARDENS LP shall use all resources to notify every tenant of the inspection on Monday, October 24, 2022 at 9:30 a.m. and shall assist tenants in making sure access can be granted to the Plaintiff.
7. The Plaintiff shall inspect the property on Monday, October 24, 2022 at 9:30 a.m.
8. This matter shall be up for review with the Court on Friday, October 28, 2022 at 9:00 a.m. Failure of the Defendants to appear on said date may result in the issuance of a capias for their arrest or the filing of a complaint for contempt.

So entered this 24th day of October, 2022.



Robert G. Fields, Associate Justice
Western Division Housing Court

his behavior on the other residents of Winslow Wentworth House and that the stay on eviction will be lifted if he materially violates the conditions.

The Court hereby enters the following order:

1. Issuance of the execution shall be stayed pursuant to this order.
2. The execution shall not issue provided that Defendant complies with the following behavior conditions:
 - a. Defendant shall substantially comply with all material terms of his lease;
 - b. Without limiting the foregoing, Defendant and his guests shall conduct themselves in a peaceful manner and in a manner which will not injure, endanger, harass or disturb other residents, employees or others lawfully on the Winslow Wentworth House, including any person at the property to provide services to residents;¹
 - c. Defendant shall accept the supportive services from LifePath and cooperate with any case worker offering recommendations for behavior modifications that will help him maintain his tenancy.
3. If Plaintiff alleges that Defendant has materially violated one or more of these conditions, it may file a motion for issuance of the execution that (a) includes the nature of the alleged violations and the dates and times thereof, and (b) identifies any witnesses who may testify at the hearing.

¹ To avoid confusion, the Court considers repeated police calls to this home for elderly and disabled residents because Defendant cannot get a guest he brought to the property to leave to be a violation of the provision requiring him to live in a peaceful manner. Likewise, bringing guests to the home and drinking to excess is not living in a peaceful manner if it disturbs any other person lawfully on the property.

4. This case shall stay open for a period of one year from entry of this stay on issuance of the execution in order on the docket to monitor Defendant's compliance.

SO ORDERED.

DATE:

10/24/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-732

ALICIA JENKINS,

Plaintiff,

v.

BASIL ISRAEL,

Defendant.

ORDER

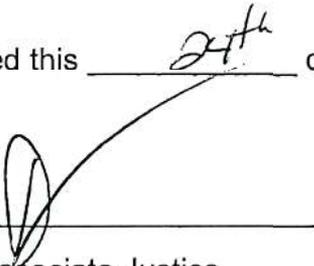
After hearings on October 20 and 21, 2022, at which both parties appeared without counsel, the following order shall enter:

1. The defendant landlord is responsible for providing the plaintiff tenant with a working oven with a stove top.
2. The landlord shall install same IMMEDIATELY.
3. The landlord shall text the tenant and notify her when the licensed workperson will need access to complete the installation and the tenant will allow access and

ensure that her older son (34-year-old) is not present when the work is being done.

4. If the stove/oven are not installed by a licensed workperson by 5:00 p.m. on October 22, 2022, the landlord shall provide the tenant with a daily food stipend of \$100 cash (given in advance of each day) until the stove/oven is properly installed and functioning.

So entered this 24th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-434

JUDITH and DAN NEWBERRY,

Plaintiffs,

v.

STEPHEN FARR and MICHELLE FARIA,

Defendants.

ORDER

After hearing on October 20, 2022, on cross-motions filed by the parties, at which the plaintiffs appeared through counsel and the defendant appeared *pro se*, the following order shall enter:

1. The plaintiffs' motion for entry of judgment for possession *only* is allowed. Execution shall issue in due course upon the filing *and service* of a Rule 13 Application.

2. The defendants' motion seeking additional time to vacate is also allowed given that their request is to not have to leave prior to November 1, 2022. The timing appears to not permit use of the execution prior to November 2, 2022, but nonetheless, the landlord may not levy on the execution for possession until after November 1, 2022.

So entered this 24th day of October, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2353

FELIX NUNEZ,

Plaintiff,

v.

NIKITA PERKINS,

Defendant.

ORDER

After hearing on October 20, 2022, on the landlord's motion to re-open the case after his default and dismissal for failure to appear at the Tier 1 event, at which both parties appeared, the following order shall enter:

1. The motion is allowed and the matter shall be restored to the court's summary process list.
2. The tenant reported a pending application with Way Finders, Inc. In accordance with St. 2020 c. 257, as amended by St. 2021, c.20, as amended by St. 2022,

c.42, this matter shall be scheduled for a case management with the judge noted below.

3. The tenant filed and served her Answer with Counterclaims.
4. The landlord shall inspect and make necessary repairs at the premises and shall be granted reasonable access by the tenant on Tuesdays and Thursdays upon a 48 hour advance written notice.
5. This matter shall be scheduled for a judicial case management conference on **November 3, 2022, at 9:00 a.m.** live and in-person at the Springfield Session. The parties shall update the court on the pending RAFT application and on repairs and the court will case management this matter for trial.

So entered this 24th day of October, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 22-~~cv~~-0742
22-~~cv~~-0743
22-~~cv~~-0744
22-~~cv~~-0746
22-~~cv~~-0747
22-~~cv~~-0749

RESIDENTS OF 683-685 STATE STREET,)
SPRINGFIELD, MASSACHUSETTS,)
)
 PLAINTIFFS)
v.)
)
)
SPRINGFIELD GARDENS,)
)
)
 DEFENDANT)

ORDER FOR TEMPORARY
ALTERNATIVE HOUSING

On October 19, 2022, several residents of an apartment building at 683 - 685 State Street, Springfield, Massachusetts (the "Property"), filed emergency motions for alternative housing after they were ordered to vacate the building following a condemnation by the City of Springfield Code Enforcement Department. After hearing, the following order shall enter:

1. Defendant shall provide temporary alternative housing for each of the affected residents and their respective household members residing at the Property until such time as the condemnation has been lifted by the City or by leave of this Court, whichever first occurs.
2. Alternative housing shall be in the form of a hotel or motel room located within a reasonable distance of the Property. If the hotel or motel room does

not have cooking facilities, Defendant shall provide the residents and their respective household members with a daily cash food stipend, which stipend shall continue for the duration of the period of alternative housing. The food stipend shall be in the amount of \$30.00 for the first person in the household, and \$20.00 for each additional person in the household, including children.

3. The parties shall return for an in-person review on October 25, 2022 at 2:00 p.m.

SO ORDERED.

DATE: 10-24-22

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0601

_____)	
KALEIGH SEBASTIAN AND SHAWN)	
LUNDQUIST,)	
)	
PLAINTIFFS)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
TODD RUSSO,)	
)	
DEFENDANT)	
_____)	

This civil case came before the Court on August 29, 2022 for an in-person bench trial. Ms. Sebastian and Defendant appeared self-represented; Mr. Lundquist did not appear at trial. The case began as a summary process eviction case brought by Defendant against Plaintiffs. After Defendant's claim for possession was dismissed, Plaintiffs' counterclaims were transferred to the civil docket and this trial for damages was scheduled.

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

Plaintiffs reside at 122 North Street, 2d Floor, Ware, Massachusetts (the "Premises"). Plaintiffs moved in on October 15, 2021 and continue to reside there with their two children. They took possession pursuant to a written month-to-month rental agreement calling for monthly rent of \$1,600.00. They live on the second floor of a duplex that is not owner-occupied.

The evidence shows that after Defendant texted Ms. Sebastian on May 16, 2022 to inquire about overdue rent, Ms. Sebastian responded by listing several problems with the Premises, namely the stairs and railing needed repair, the shower was running constantly and there were dead birds in the attic. Defendant responded by informing Ms. Sebastian that he would stop by the Premises that evening and that he had scheduled a plumber for the next day. When the plumber arrived, the shower could not be repaired without new parts. The shower was left as is, and Defendant informed Ms. Sebastian that he would return in a couple of days to complete the repair. In the meantime, Defendant testified that the shower worked despite the water dripping through the valve, and, pending completion of the repair, the dripping could be stopped by using the shut-off valve in the hall closet.

One day later, on May 18, 2022, frustrated with the situation, Ms. Sebastian contacted the Health Inspector from the Quabbin Health District. The Health Inspector let Defendant know about Ms. Sebastian's concerns but did not conduct an inspection. Mr. Lundquist contacted Defendant the next day and told him to drop off a new valve and he would repair the shower valve himself. A couple of days later, when Defendant returned to complete the repairs mentioned by the Health Inspector, Defendant noted that the shower valve had been repaired.¹

It was difficult to ascertain from Ms. Sebastian's testimony the exact chronology of events regarding her complaints about the Premises. It appears that, over the next two weeks after Ms. Sebastian's initial text complaint on May 16, 2022,

¹ Defendant testified credibly that he was prepared to complete the repairs and did not ask Mr. Lundquist to do the work. Defendant also testified that when he returned after the valve was replaced, he needed to caulk around the tub spout and make other repairs.

Defendant attempted to address windows that were difficult to open and had an electrician come to address concerns Ms. Sebastian had with flickering lights and a noise coming from the breaker panel. He also entered the attic with a handyman to inspect for dead birds. They repaired a small hole they found in the attic but did not see any dead animals.

Immediately prior to the parties' August 22, 2022 trial date in the related summary process case (22-SP-1677), Ms. Sebastian contacted the Quabbin Health District again and an inspection was conducted. In the inspection report, the Health Inspector cited two windows that were hard to open, one that was not able to stay open and one that needed to be able to lock. These and the other minor code violations cited by the inspector do not, in this Court's view, materially affect the fair rental value of the Premises.

Despite the inspection report failing to cite major defects, Ms. Sebastian testified that the condition of the Premises prevented her from residing in the home for long stretches of time. Her primary concern was the air quality in the home and the adverse effect the air quality has had on her and her children's breathing functions.

Ms. Sebastian offered insufficient evidence for the Court to find that Defendant is responsible for any conditions of mold or other causes of poor air quality in the Premises. She provided no air quality test results or other evidence (such as corroborating witness testimony) from which the Court could conclude that the air in the Premises was unhealthy. To the extent that she claims that dead birds in the attic are causing a terrible odor in the Premises, Ms. Sebastian provided no evidence

beyond her testimony that she once found a dead bird in the hatchway to the attic. Although she argued that dead birds must be in the attic based on a certain type of bug she found in the house that feed on dead birds, she provided no evidence that these bugs exist or that the bugs are present only when dead birds are nearby. In fact, the only evidence presented at trial relating to dead birds came from Defendant, who, along with a handyman, inspected the attic and found no evidence of dead animals. No other witness at trial had first-hand knowledge of the condition of the attic.

Beyond the air quality and dead bird issues, the Court finds that Ms. Sebastian did not meet her burden of proving that substantial conditions of disrepair existed in the Premises and that Defendant knew about the problems but did not adequately repair them. A landlord cannot be held responsible for conditions of disrepair until a tenant provides notice. Here, Ms. Sebastian gave written notice to Defendant on May 16, 2022 about stairs and railing needing repair, the leaking shower, and dead birds in the attic. She concedes that Defendant addressed the stairs and railing issue promptly. The evidence shows that he responded to the leaking shower promptly and, despite Ms. Sebastian's opinion that he could have made the repair sooner, Defendant was in the process of addressing the issue when Mr. Lundquist made repairs to the shower himself.

In conclusion, the Court finds that Defendant acted reasonably when put on notice of bad conditions. Plaintiffs were already behind in the rent when Ms. Sebastian first complained about the conditions, so she cannot claim that she was withholding rent in order to coerce the landlord to make repairs. The only

independent inspection, done by the Board of Health in August 2022, uncovered no material conditions of disrepair that would impair the fair rental value of the Premises.

Accordingly, based on the foregoing findings, and in light of the governing law, the Court finds in favor of Defendant on Plaintiffs' claims for monetary damages.²

SO ORDERED.

DATE: 10/24/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

² Because all claims brought by Plaintiffs in this case have been adjudicated, they may not assert them as counterclaims in any subsequent summary process (eviction) case between the parties. Plaintiffs are not prohibited, however, from asserting counterclaims if the facts giving rise to the counterclaims arose after the date of trial.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1349

LEIGHANNE HARRIS,

PLAINTIFF

v.

ROBERT HARRIS AND KRISTIE HARRIS,

DEFENDANTS

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER

This no fault summary process case came before the Court on September 20, 2022 for an in-person bench trial. Plaintiff appeared with counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 30 Moose Brook Road, Southampton, Massachusetts (the “Premises”).

The parties stipulated to the following facts:

1. The Premises are a single-family home that is not owner-occupied.
2. A three-month notice to quit was served and received.
3. Plaintiff (“Leighanne”) is not seeking monetary damages, only possession.

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

Defendant Kristie Harris (“Kristie”) is Plaintiff’s sister and Defendant Robert Harris (“Robert”) is the father of both Kristie and Leighanne. The Premises is the family home that was owned by Robert’s mother (Leighanne’s grandmother) prior to

her death in May 2021, Robert has lived in the Premises his entire life and Kirstie returned to live in the Premises in January 2020. Leighanne inherited the Premises from her grandmother and is now the sole owner of the Premises.

Leighanne cannot afford to maintain two separate homes and wishes to either sell or move into the Premises. She has never charged rent to Robert or Kristi since inheriting the Premises. For a period of time after his mother died, Robert continued to pay real estate taxes and home insurance. He was not sure of the total amount he paid, but he recalled making four tax payments (perhaps at the rate of \$450.00 each time) and an insurance premium payment of approximately \$300.00. Leighanne gave her father a check for \$10,000.00 in early 2022, which more than compensates him for any out-of-pocket expenses he incurred after Leighanne inherited the Premises.

Robert claims that the Premises have numerous conditions of disrepair, including cracks in the foundation and mold-like substances in the basement, among others. The conditions have existed for a number of years and predate Leighanne's inheritance. The only significant problem that appears to have arisen after Leighanne became the homeowner was the failure of the water heater. Leighanne replaced the water heater promptly.

In light of the foregoing facts, the Court rules that Leighanne has demonstrated her prima facie case for possession. The Court further rules that Defendants are tenants at sufferance. The parties had no agreement to create a tenancy and the evidence does not support an argument that Defendants paid expenses related to the operation and maintenance of the home in lieu of rent. Leighanne did not warrant the

condition of the Premises and has not done anything to interfere with Defendant's quiet enjoyment of the Premises.

Accordingly, Plaintiff is entitled to entry of judgment for possession; however, judgment will not enter for 60 days to allow Defendants additional time to find replacement housing. After 60 days from the date of this order, judgment shall enter nunc pro tunc (retroactive) to the date this order is entered on the docket and Plaintiff may apply in writing for issuance of the execution.

SO ORDERED.

DATE: 10-25-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

the prior action between these parties was flawed and its ruling that Plaintiff could not commence a no fault summary process action was incorrect.¹

In the prior case, the Court's focus was on Plaintiff's dual role as the park operator and the purchaser of the home following its repossession by the lender. The Court's literal reading of the second paragraph of § 32J of G.L. c 140, known as the Manufactured Housing Community Act (the "Act"), led the Court to conclude that Plaintiff, as the park licensee, could terminate Defendants' occupancy only for one of five enumerated reasons.² In retrospect, instead of focusing on Plaintiff's capacity, the Court should have focused on Defendants' posture. The first paragraph of § 32J indicates that the section only applies when a "manufactured home owner or person holding under him holds possession of a manufactured home site in a manufactured housing community without right, after the determination of a tenancy or other estate at will or lease ...". Because Defendants are not owners of the home, nor are they holding possession under the rights of the home owner, the Act does not govern the eviction in this case.

The Court's reading of § 32J in this case is consistent with the purposes of the Act, which was designed to protect manufactured home owners, not tenants of the homeowners. See *Danusis v Longo*, 48 Mass. App. Ct. 254, (1999) ("Sections 32A through 32S of [chapter 140] provide comprehensive and substantial rights to owners

¹ The outcome of the first eviction case would not have been different even had the Court allowed Plaintiff to proceed with a no-fault eviction because Defendants' claims would have defeated Plaintiff's claim for possession.

² The paragraph in question recites: "Any tenancy or other estate at will or lease in a manufactured housing community, however created, and including any existing contract for occupancy of a manufactured home site in a manufactured housing community, may be terminated by the licensee entitled to the manufactured home site or his agent only for one or more of the following reasons:".

of manufactured homes who place such structures upon land rented by them”). In particular, § 32J governs evictions of owners of manufactured homes. See, e.g. *Liberty Mobilehome Sales, Inc. v. Bernard*, 6 Mass. App. Ct. 914 (1978) (§ 32J “enumerates the possible grounds on which a manufactured home owner may be evicted”). One of the essential purposes of the statutory protections is to mitigate the risk of a homeowner having to forfeit his or her investment in the manufactured home if evicted from the park. See *The Attorney General’s Guide to Manufactured Housing Community Law*, pp. 1-2 (Nov. 2017) (“Once placed on a lot, a manufactured home is essentially immobile [and] as a result, it is usually very difficult, if not impossible, to sell a manufactured home if it is not on a lot”). The Attorney General’s regulations set forth at 940 CMR 10.00 et seq. are likewise designed to protect owners of manufactured homes, not former owners continuing to occupy their home following repossession by a lender.

Because the Act is designed to protect manufactured home owners, and because Defendants are no longer owners, they do not benefit from the protections of the Act, and § 32J does not apply in this case. Accordingly, Plaintiff is not limited to evicting Defendants for the reasons enumerated in the statute. Presumably, based on the Court’s earlier order, Plaintiff elected to begin the instant action for nonpayment of rent in order to satisfy the requirements of § 32J. In this case, however, no rent has been established for occupancy of the home, and Plaintiff’s notice to quit equating unpaid Defendants’ failure to pay use and occupancy with nonpayment of

rent renders the notice defective.³ Accordingly, Defendants' motion for summary judgment is granted and Plaintiff's motion for summary judgment is denied.

SO ORDERED.

DATE: 10/25/2022

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

cc: Court Reporter

³ It is unfortunate that the Court's earlier ruling will cause Plaintiff further delay in recovering possession of the home, but the Court cannot allow its error to be compounded by permitting Plaintiff to proceed in this case on a defective notice.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1465

_____)	
JASON KOLODZIEJ,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
LAURA SEARS AND RAQUEL SEARS,)	
)	
DEFENDANTS)	
_____)	

This summary process case brought for non-payment came before the Court on September 15, 2022 for an in-person bench trial. The parties appeared self-represented. Plaintiff seeks to recover possession of 27 Fairview Avenue, 1st Floor, West Springfield, Massachusetts (the "Premises").

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

The Premises are a three-family house owned by Plaintiff. The Premises are not owner occupied. The tenancy began in September 2020. Defendants benefit from a rental subsidy through a Section 8 mobile voucher. Contract rent is \$1,370.00 per month and Defendants' portion is \$862.00 per month. Defendants acknowledge that the notice to quit was received. Plaintiff claims that \$6,896.00 is owed. Defendants do not agree with this amount. Defendants assert defenses and counterclaims relating to the conditions of the Premises.

First, the Court will address Plaintiff's claim for unpaid rent. The parties agree that Way Finders made a payment that paid all of Defendants' rent arrears through January 2022.¹ The parties also agree that Defendants have made no payments for February 2022 or thereafter, a period of eight months through the trial date at a rate of \$862.00 per month. The total amount claimed by Plaintiff through trial, then, is \$6,896.00. Defendants contend that they withheld rent and are entitled to monetary damages as a result of conditions of disrepair.

Turning next to Defendants' defenses and counterclaims, the Court finds that Defendants complained about a countertop edge separating from the counter and a improperly installed porch door in 2020, and in 2021, a leak in the kitchen sink and stair railings that needed to be sanded down. At the time of move in, Defendants complained about outdoor stairs needing repair, and although fixed in 2020, the problem has returned. The Court finds that all of these issues were adequately addressed by Plaintiff given the absence of evidence that these issues persisted, and rules that these conditions did not materially impair the rental value of the Premises.

The Board of Health inspected in May 2022, but neither party offered the report listing its findings into evidence.² An inspection report from the re-inspection was entered as evidence, and the list of items had all been addressed. These included the trim above the storm door, the lock on the oven door, certain windows that did not property close, the steps to the second and third floors and the need for on-going

¹ Although Defendants contend that Plaintiff received too much money from the RAFT program because he failed to account for a \$344.00 payment they made, the Court will not address the issue in this case. Way Finders apparently informed Defendants that they would not be eligible for financial assistance again to assist with the current arrears.

² The cover letter from the May 2022 inspection was taken into evidence, but the list of violations was not included as part of the exhibit.

extermination. Defendants were cited for using the front room as a bedroom when it was not intended for that purpose. None of these items rise to the level of significant issues of disrepair that materially impair the value of the rental property, and the only item mentioned in the re-inspection report that required immediate attention was the smoke detectors. The other issues referenced by Defendants during the course of the trial, including broken door jambs, cracking and peeling paint on walls, and malfunctioning heat were not mentioned in the report, and therefore the Court infers were no longer a problem by the time of the inspection. The Board of Health issued Defendant a certificate of compliance in August 2022.

The Court assumes Defendants' Section 8 administrator inspected the Premises prior to Defendant Laura Sears moving in, as is required in a Section 8 tenancy, and Ms. Sears signed a statement of condition at the outset of the tenancy that did not cite any conditions requiring repair. Moreover, Plaintiff showed pictures of the condition of the unit at the time of move in. For these reasons, and because most of the conditions were addressed in a timely manner after Plaintiff was put on notice of the need for repairs, the Court rules that Plaintiff did not breach the implied warranty of habitability.³

Nonetheless, two issues appear to have persisted over a period of time without complete repair: heating problems and malfunctioning smoke detectors. Beginning in December 2021, Defendants complained about insufficient and intermittent heat, and

³ 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). 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).

in January 2022, notified Plaintiff that they would withhold rent until the problem was resolved. In mid-January, Defendant said he would address the problem or that Defendants could hire a contractor and he would pay for it. With respect to the smoke detectors, the evidence shows that they have repeatedly sounded without apparent reason and continue to malfunction as of the date of trial.

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

Here, the Court rules that Plaintiff's failure to furnish heat in the winter of 2021-2022 and his failure to repair the malfunctioning smoke detectors constitute interference with Defendants' quiet enjoyment in violation of G.L. c. 186, § 14. A landlord using reasonable efforts would have ensured that these two issues were addressed promptly and permanently. Given the absence of any evidence of actual or

consequential damages, the violation of G.L. c. 186, § 14 entitles Defendants to statutory damages equal to three month's rent, which in this case amounts to \$4,110.00.⁴ Defendants failed to sustain their burden of proof on the other counterclaims set forth in their answer.⁵

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

1. Plaintiff is entitled to unpaid rent through the date of this order in the amount of \$7,758.00.⁶
2. Defendants are entitled to damages in the amount of \$4,110.00.
3. Setting off the amount that Plaintiff owes Defendants on their claims against the amount due from Defendants, Defendants owe \$3,648.00 through October 2022.
4. Pursuant to G.L. c. 239, § 8A, Defendants shall have ten (10) days from the date this order enters on the docket to pay to Plaintiff the sum of \$3,648.00 by bank check or money order and to file a receipt with the Court. If such receipt is then on file with the Court, judgment shall enter for Defendants for possession. If such receipt is not then on file with the Court, judgment

⁴ In a tenancy involving a rental subsidy, the measure of damages under G.L. c. 186, § 14 is based on the total contract rent, not merely the tenant's share. *Simon v. Solomon*, 385 Mass. 91, 110, n.13 (1982).

⁵ Defendants' retaliation counterclaim fails because this case was brought for non-payment of rent and, in any event, Plaintiff did not serve a notice to quit until Defendants had failed to pay rent for the prior three months. Defendants presented no evidence of discrimination whatsoever.

⁶ This figure includes rent for the month of October 2022, so if Defendants have made any payments of rent or use and occupancy since the date of trial, they should immediately file a motion to amend the balance due.

shall enter for Plaintiff for possession and unpaid rent of \$3,648.00 plus court costs and interest.

5. Plaintiff shall hire a licensed electrician to inspect the electrical system in the Premises and to investigate the reasons the smoke detectors repeatedly. Defendants shall not unreasonably deny access for such repairs.

SO ORDERED.

DATE: _____

10/25/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-697

JAYSON PAYERO,

Plaintiff,

v.

ROMAN TAPIA,

Defendant.

AGREED-UPON ORDER

After hearing on October 13, 2022, at which both parties appeared without counsel, the following agreed-upon order shall enter:

1. The landlord shall make sure to pay his water bills in a timely manner so as to avoid the Springfield Water & Sewer Commission sending out shut-off warning notices to the tenants.
2. The landlord shall have a licensed electrician install a third circuit box for the common areas of the premises.

So entered this 25 day of October 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2130

SUZANNE RATAJ,

Plaintiff,

v.

RAQUEL (RACHEL) VELAZQUEZ,

Defendant.

ORDER

After hearing on October 20, 2022, at which the plaintiff appeared through counsel and the defendant appeared through Lawyer of the Day Counsel, the following order shall enter:

1. This matter shall be continued for trial as noted below.
2. The tenant shall provide copies of photographs, copies of code inspection reports, and text messages and any other documents she wishes to admit at trial to landlord's counsel by no later than November 4, 2022. The tenant also stated

that her two daughters, Anyahli and Elena Mendez are expected to testify at the trial.

3. The landlord's oral request for an order that the tenant pay her attorneys fees for today's proceedings is denied, without prejudice.
4. The parties agreed that the landlord has already provided the tenant with copies of those documents she wishes to have admitted at trial.
5. This matter shall be scheduled for trial on **November 10, 2022, at 2:00 p.m.** at the Springfield Session of the court.

So entered this 25th day of October, 2022.



Robert Fields, Associate Justice

CC: Gabriel Fonseca, Esq., (CLA Lawyer for the Day)

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO.: 22CV742
22CV743
22CV744
22CV746
22CV747
22CV749
22CV758

RESIDENTS OF 683-685 STATE STREET, SPRINGFIELD, MASSACHUSETTS
Plaintiffs¹

v.

SPRINGFIELD GARDENS
Defendant²

ORDER

This matter came before the court on October 25, 2022, for Status/Review on the Court's Order of October 24, 2022. Plaintiff appeared represented by counsel.³ Defendant appeared represented by Counsel. After hearing, the Court orders as follows:

1. Defendant agrees that all repairs cited in the various complaints shall be completed no later than October 28, 2022.
2. Defendant shall relocate Plaintiff, Turner Ogden (22CV746) to hotel accommodation within the City of Springfield.
3. All other provisions of the Court Order of October 24, 2022 shall remain in effect until further notice.
4. Court shall hold a status/review hearing on November 4, 2022, at 2:00 P.M.

¹ As used herein, the term Plaintiffs shall refer to all persons identified in the line marked "Plaintiffs" collectively for the enumerated cases listed in the heading.

² As used herein, the term Defendant shall refer to all persons identified in the line marked "Defendant."

³ Counsel represents Plaintiffs in case number 22CV742 and 22CV749. All other parties appeared self-represented.

SO ORDERED

October 25, 2022

Sergio E. Carvajal

**SERGIO E. CARVAJAL
ASSOCIATE JUSTICE**

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-3219

U.S. BANK, N.A.,

Plaintiff,

v.

JOSE SOTO GARCIA,

Defendant.

ORDER

After hearing on September 7, 2022, on the plaintiff's motion for summary judgment, the following order shall enter:

1. There continues to be a genuine dispute about facts surrounding the defendant's assertion that the plaintiff did not comply with the face-to-face protocols required by the HUD regulations.
2. The plaintiff provided a copy of the December 27, 2013, letter notifying the defendant of an upcoming visit for a face-to-face meeting and an assertion in an

accompanying affidavit from Anthony Younger, an Assistant Secretary with the Servicer that “[o]n January 4, 2014, an agent of JM Adjustment Services conducted the HUD face to face visit and contact was made with Mr. Soto Garcia, who declined to participate in the financial interview.”

3. Mr. Younger has no first-hand knowledge of such a face-to-face visit and of the declination of participation by the defendant and does not refer to any particular document or digital business record (or any source) for his conclusory statement.
4. Accordingly, whether the plaintiff complied with the face-to-face protocols remains a question of fact to be resolved at trial and the plaintiff's summary judgement motion is denied.
5. The Clerk's Office shall schedule this matter for a Case Management Conference to schedule the remainder of this litigation to trial.

So entered this 25th day of October, 2022.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1745

_____)	
APPLETON CORPORATION,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
BEVERLY A. PLEITER)	
)	
DEFENDANT)	
_____)	

This summary process case brought for lease violations came before the Court on September 21, 2022 for an in-person bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 176 Columbus Avenue, Unit 105, Pittsfield, Massachusetts (the "Premises").

The parties stipulated to the following facts:

1. The Premises are part of a multi-family apartment complex known as Berkshiretown Apartments (the "Property").
2. Defendant moved into the Property in approximately 2007 pursuant to a written lease.
3. Defendant has a project-based Section 8 subsidy.
4. Plaintiff served and Defendant received a notice to quit.

Plaintiff served Defendant with a notice to quit citing numerous lease violations, including failing to maintain sanitary conditions, disturbing neighbors and

violating the no smoking policy. The trial testimony focused exclusively on allegations regarding smoking. Based on the stipulated facts, the evidence and testimony presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

In 2014, Defendant signed a lease for occupancy at the Property. Pursuant to Section 27(c) of the lease, she expressly accepted the "House Rules" which prohibit smoking in the Premises and everywhere else on the Property except for the designated as smoking area. On December 4, 2019, she signed off on a separate Healthy Air Policy that likewise prohibits smoking except in the designated smoking area.

She denies violating the no smoking policy. The Court, however, finds that Plaintiff has met its burden of proving by a preponderance of the evidence that Defendant or others smoke cigarettes in the Premises. The Court finds the testimony of Ms. Gosselin, the property manager, to be credible. The management office is just around the corner from the Premises, and Ms. Gosselin walks by the door to the Premises regularly in order to get to and from the parking lot and the other building she manages. Ms. Gosselin maintained a log over a period of approximately six months beginning in March 2022 of each time she smelled the odor of smoke at Defendant's doorway. She logged approximately 30 to 40 incidents in that time frame. Ms. Gosselin testified that none of the other tenants on Ms. Gosselin's wing smoke.

Ms. Gosselin also received a similar number of complaints from neighbors about smoke emanating from the Premises. She concedes that many of the complaints came from the same neighbor, but this fact does not render the complaints invalid. The

Court also credits the testimony of the Property's maintenance supervisor, who personally smelled the strong odor of smoke when he was in the Premises to swap out the air filter and found the filter itself smelled of smoke and was stained in a brownish color, which is different from the dusty gray color of other air filters he removes.

Defendant admits that both she and her daughter, who is her personal care attendant and is regularly in the Premises, smoke. Her testimony that she absolutely never smokes in her apartment, despite the fact that she said she smokes approximately eight or nine cigarettes a day at hour and a half intervals, is not credible. She denies that her daughter smokes in the Premises, and her daughter confirmed that she does not smoke in the Premises. Defendant attributes the smell of smoke in and around the Premises to her clothing, but the Court believes that smoke on clothing would not stain the air filter and cause odors strong enough to be smelled by passers-by in the hallway.

Although the evidence warrants entry of judgment in favor of Plaintiff, the Court takes into account what it considers a request by Defendant for an equitable stay on issuance of an execution. Defendant is 83 years old and suffers from various physical ailments. She is on a fixed income and cannot afford a market rent apartment. She is unlikely to find replacement subsidized housing without a lengthy wait.

Accordingly, based on the foregoing findings, and in light of the governing law, and taking into account Defendant's circumstances, the following order shall enter:

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

2. Issuance of the execution will be stayed so long as Defendant complies with the House Rules attached to her lease and the Healthy Air (No Smoking) Policy she signed on December 4, 2019. Defendant shall be held responsible for violations of the no smoking rules and policies caused by her guests and any personal care attendants, including her daughter, who come to the Premises.
3. In order to measure compliance, Plaintiff may elect to place a device such as a nicotine or particle monitor in the Premises. If Plaintiff elects to install a monitoring device, Defendant shall cooperate and permit Plaintiff access to install and retrieve the device for analysis.
4. If Plaintiff alleges that Defendant has violated the terms of this order, it may file a motion to issue the execution. The motion shall include (a) the nature of the alleged violations and the dates and times thereof, and (b) the identity of any witnesses who may testify at the hearing.
5. This case shall dismiss twelve months from the date this order enters on the docket if a motion for issue the execution has not been filed by that date.

SO ORDERED.

DATE: 10-24-20

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1079

<hr/>		
BELCHERTOWN HOUSING AUTHORITY,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
CRAIG PUSHEE,)	
)	
DEFENDANT)	
<hr/>		

This summary process case came before the Court on September 27, 2022 for an in-person bench trial. Both parties appeared through counsel. Plaintiff seeks to recover possession of 41 Everett Avenue, Apt 25D, Belchertown, Massachusetts (the “Premises”). Plaintiff elected to annul and make void Defendant’s tenancy in accordance with G.L. c. 139, § 19 (“Section 19”).¹

Section 19 is a powerful private remedy that permits a landlord, in certain limited circumstances, to recover possession of an apartment in an expeditious fashion. *Glendale Assoc., LP v. Harris*, 97 Mass. App. Ct. 454, 464 (2020). Plaintiff

¹ Section 19 recites, in relevant part, as follows: “ ... if a tenant or household member of a housing authority or federal or state assisted housing commits an act or acts which would constitute a crime involving the use or threatened use of force or violence against the person of an employee of the housing authority or of state or federally assisted housing or against any person while such person is legally present on the premises of a housing authority or on the premises of federal or state assisted housing, such use or conduct shall, at the election of the lessor or owner, annul and make void the lease or other title under which such tenant or occupant holds possession and, without any act of the lessor or owner shall cause the right of possession to revert and vest in him, and the lessor or owner may seek an order requiring the tenant to vacate the premises or may avail himself of the remedy provided in chapter two hundred and thirty-nine.”

gave Defendant notice of its intent to annul and make void his lease pursuant to Section 19. See *New Bedford Housing Auth. v. Olan*, 435 Mass. 364, 373 (2001) (Although G. L. c. 139, § 19, is silent as to the question of notice to either public or private housing tenants, G. L. c. 121B, § 32, makes written notice to public housing tenants a prerequisite to filing suit under G. L. c. 139, § 19). The rules that Plaintiff provided legally adequate notice prior to commencing this action.

Based on the evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that on February 11, 2022, Defendant drove his vehicle between two accessible parking spaces and onto a sidewalk path that cuts through the lawn leading to the apartment building, thereby blocking the curb cut used by tenants with disabilities. He parked his vehicle in order to inflate his tires with a machine running on an extension cord from his unit.

Another tenant, Mr. Hodak, who was parked in one of the spots reserved for disabled persons, exited his vehicle and was pushing a cart loaded with items. He wanted to use the curb cut access point to enter the sidewalk, and shouted "hey asshole" at Defendant to get his attention. He angrily asked Defendant how he was supposed to get onto the sidewalk with Defendant's car blocking his way. Defendant told him there was plenty of room to get by and that he should just go a different way. Thereafter, an altercation ensued. Defendant approached Mr. Hodak with a closed fist and, according to his own testimony, took three swings in front of Mr. Hodak, quickly moved behind him and took three more swings. He claims he was not trying to hit Mr. Hodak and Mr. Hodak acknowledges that Defendant did not strike him. However, the Court finds that, as a result of Defendant's behavior, Mr. Hodak lost his balance and fell, spilling the items in his cart on the parking lot. When Defendant

returned to his car, he said “excuse me while I run someone over” and then drove his vehicle along the sidewalk and across the lawn, reentering the roadway in a different location.²

Defendant accepted no responsibility for his role in the incident with Mr. Hodak, claiming that Mr. Hodak could have avoided the whole situation by simply using another route to his apartment. He mocked Mr. Hodak for crying and falling down, calling it “comical.” He said that Mr. Hodak has threatened to kill him “six times” in the past, as if that justified his behavior. The Court does not credit Defendant’s testimony that Mr. Hodak was the aggressor in their confrontation and that he was acting in self-defense.

Although not arrested on the Premises on February 11, 2022, the Defendant is currently facing criminal charges as a result of the incident. After the incident, he met with Plaintiff’s Executive Director to review the incident. Defendant acted aggressively and in a hostile manner toward her. She felt threatened and intimidated by Defendant. The Court credits her testimony. Defendant attempted to explain his behavior by claiming that the Executive Director insulted him by mispronouncing his name and sat too close to him during their meeting.

The Court finds that Defendant’s behavior violates Section 19. He is a tenant of a housing authority and committed “an act which would constitute a crime involving the use or threatened use of force or violence against the person of an employee of the housing authority ... or against any person ... legally present on the premises of a housing authority.” G.L. c. 239, § 19. The Court finds that Defendant’s actions toward Mr. Hodak involved the “threatened use of force or violence” as the phrase is used in Section 19.³ His conduct toward

² Plaintiff provided video footage from a surveillance camera from the day in question. The footage had some gaps in time and not every moment of the interaction between Defendant and Mr. Hodak was captured. The Court’s findings are drawn primarily from the credible testimony of Mr. Hodak. The video does not contradict Mr. Hodak’s testimony and generally supports the findings made herein.

³ Although this Court does not determine criminal culpability, based on the civil preponderance of the evidence standard, the Court finds sufficient evidence of assault. Defendant demonstrated an apparent intent to use immediate force, placed Mr. Hodak in fear of an imminent battery and took swings in Mr. Hodak’s direction that were reasonably perceived an imminent threat of battery.

the Executive Director, even if not criminal, demonstrates that Defendant acts with hostility and aggression toward other tenants and employees at the property.

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

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

SO ORDERED.

DATE: 10-26-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1735

NELSON CRUZ,

Plaintiff,

v.

**PEDRO CRUZ, SHAKIRA ORTIZ and JUAN
CRUZ,**

Defendants.

ORDER of DISMISSAL

After hearing on October 19, 2022, for a status hearing at which the parties appeared all without counsel, the following order shall enter:

1. This matter is dismissed for the reasons stated on the record which include that the landlord terminated the tenancy for non-payment of rent but commenced an eviction action based on various "cause" allegations.
2. The tenants agree that their counterclaims asserted in their Answer shall be dismissed without prejudice.

So entered this 26 day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1352

_____)	
MOBY PROPERTIES, LLC,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
RENE LIBBY,)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court on September 21, 2022 for an in-person bench trial. Both parties appeared through counsel. Plaintiff seeks to recover possession of a residential unit located at 316 North Street, Apt. 11, Pittsfield, Massachusetts (the "Premises").

The parties stipulated to the following facts prior to the commencement of trial:

1. The Premises are part of a multi-family apartment complex.
2. Defendant took possession of the Premises pursuant to a written lease.
3. Defendant receives a Section 8 rental subsidy administered by the Pittsfield Housing Authority. His share of the rent is \$118.00. Contract rent is \$795.00.
4. Plaintiff served and Defendant received a notice to quit.

5. Plaintiff terminated Defendant's tenancy without cause and is not seeking any rent arrears.¹

In addition to the stipulated facts, based on the evidence and testimony presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

In February 2020, Plaintiff purchased a property with 23 residential units located at 316 North Street, Pittsfield, Massachusetts (the "Property") with the intent of renovating the building and leasing units for market rent. At the time of purchase, Defendant resided in one unit and 18 other units were occupied. Plaintiff terminated the tenancies of all tenants at the Property and all but Defendant have vacated. Defendant, therefore, is the only person currently residing in the Property.

Rebecca Weeks, the Director of Property Management for Blueprint Property Group, which manages the Property on behalf of Plaintiff, testified that the Property cannot be renovated with occupants residing there. She claims that the renovation requires that the Property be vacant because utility service to the building needs to be shut down and the heating and electrical systems need to be completely replaced. She testified that she is overseeing the renovation for the management company.

Defendant contends that Plaintiff failed to establish its prima facie case for possession because it did not demonstrate a valid basis to terminate Defendant's Section 8 tenancy. The "Tenancy Addendum" to Defendant's lease recites that, after

¹ Plaintiff's witness testified that Defendant has been in arrears in the rent since 2020. Defendant argues that the arrears might have been paid through the RAFT program but that Plaintiff refused the money. Because this is a no fault case and not a nonpayment of rent case, St. 2020, c. 257, as amended, does not apply. In any event, Plaintiff is not seeking to recover the arrears in this case.

the initial lease term, the owner may terminate the tenancy for certain enumerated reasons, one of which is “other good cause.” See Tenancy Addendum, § 8(b). Other good cause may include a “business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner’s desire to rent the unit for a higher rent).” Tenancy Addendum, § 8(d)(3)(c).²

Defendant contends that Ms. Weeks is not a competent witness to establish “other good cause” as that phrase is defined in the Tenancy Addendum. The Court disagrees. She is charged with overseeing the renovation and testified specifically about the reasons why the Property needed to be emptied of occupants in order for the renovations to be completed. She explained that the building systems and utility services to the building would be shut down and replaced. She testified that all of the other occupants in the building have vacated. It is illogical for a business to eliminate its source of revenues if it did not have a legitimate interest in renovating the entire Property. Moreover, she testified credibly that Plaintiff purchased the building with the express intent of renovating it to be able to charge market rents.

The standard Defendant seeks to impose on Plaintiff is too strict. The Court needs to be satisfied that Plaintiff’s “business or economic reason” to terminate Defendant’s testimony is not pretextual or fictional; it does not require Plaintiff to provide expert testimony to justify the need to replace each of the mechanical systems in the Property. The Court finds that Ms. Weeks is a credible witness whose

² The federal law upon which this provision is based can be found at 24 C.F.R. § 982.310(d)(iv).

testimony was bolstered by circumstantial evidence that the Property has to be vacant in order for renovations to be completed.³

With respect to Defendant's counterclaims, Defendant testified that he has suffered from an infestation of cockroaches since mid-2021. Defendant argues that the presence of cockroaches in the Premises is a violation of the implied warranty of habitability. See *Boston Housing Auth. v Hemingway*, 363 Mass. 184, 199 (1973) (implied in every tenancy is a warranty that the leased premises are fit for human occupation and will remain so throughout the tenancy). Under Massachusetts law, 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, regardless of fault. *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 -200 (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). The purpose of the warranty is not to "punish landlords for misbehavior but rather to ensure that tenants receive what they are paying for: a habitable place to live." *Goreham v. Martins*, 485 Mass. 54, 63 (2020), citing *Berman*, 379 Mass. at 202.

In this case, the evidence does not support Defendant's allegations about a cockroach infestation prior to the commencement of this lawsuit. The Court finds that Defendant made a single complaint about cockroaches on June 22, 2021.⁴ An

³ Moreover, the law does not require that Plaintiff rehouse Defendant or prove that it has no other alternative but to terminate Defendant's tenancy, as Defendant suggests.

⁴ The Court finds that Defendant's testimony regarding additional verbal notice in November 2021 not to be credible.

exterminator, Pest Off, went to the Premises the next day, although it is not clear if a treatment was done that day or in one of the following days. In any event, Defendant did not complain again about cockroaches until just prior the trial date over a year later. Although the warranty of habitability incorporates a strict liability standard, the facts of this case do not lead the Court to find that Plaintiff breached the warranty. The Court finds insufficient evidence to conclude that the unit was rendered uninhabitable and the Court rules that the presence of cockroaches for a few days during the treatment process does not rise to the level of a substantial code violation or significant defect in the Premises meriting an abatement of rent.⁵

Further, the Court finds insufficient evidence to conclude that Defendant is entitled to relief under G.L. c. 239, § 8A (“Section 8A”). Pursuant to Section 8A, a “tenant or occupant shall not be entitled to relief under this section unless ... the owner or his agents, servants, or employees, or the person to whom the tenant or occupant customarily paid his rent knew of such conditions before the tenant or occupant was in arrears in his rent.” Here, the Court finds that Defendant was behind in rent as of June 22, 2021, the date of the first and only notice Defendant gave to Plaintiff or its agents regarding cockroaches.⁶

In light of the foregoing findings and rulings, and in light of the governing law, the Court enters the following order:

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

⁵ Defendant showed compelling video of cockroaches in the Premises taken the night before trial. The Court credits Ms. Weeks’ testimony that she was completely unaware of the problem until just prior to trial. Defendant’s answer, filed in September 2022, simply references “cockroaches and/or other insects, which could have been a reference to the June 2021 incident.

⁶ Defendant’s other counterclaims, for interference with quiet enjoyment and violation of G.L. c. 93A, are without merit given the Court’s rulings.

2. Execution shall issue pursuant to Uniform Summary Process Rule 13.
3. For as long as Defendant resides in the Premises, Plaintiff shall take all necessary and appropriate action to treat the Premises for cockroaches.

SO ORDERED.

DATE: 10-26-22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-573**

HOLLY URANITE,

Plaintiff,

v.

DAVID DEBARGE,

Defendant.

ORDER

After hearing on October 20, 2022, which was scheduled for a contempt trial at which each party appeared without counsel, the following agreed upon order shall enter:

1. The plaintiff shall go to the subject premises on November 1, 2022, at 1:00 p.m. to retrieve her personal belongings.
2. The defendant states that all of the plaintiff's belongings are located inside the garage at the premises. That said, the defendant shall conduct his own walk through of the entire premises to see if the plaintiff has belongings anywhere

other than the garage. If the defendant identifies any such belongings, he will move same to the garage for the plaintiff's retrieval noted above.

3. The defendant states that there is nothing of the plaintiff's belongings located anywhere other than the garage.
4. If the plaintiff asserts that there are items missing, she can bring a separate action for a damages lawsuit.
5. Relying on this agreement, the Contempt Trial was continued generally. If the defendant fails to comply with this order, the plaintiff may file another contempt complaint.

So entered this 26th day of October, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2705

ANGEL REYES,

Plaintiff,

v.

JENNIFER DEL RIO RIVERA and DANIEL
SIERRA,

Defendants.

ORDER OF DISMISSAL

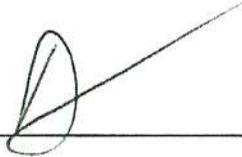
After hearing on October 19, 2022, at which the plaintiff landlord appeared through counsel and the defendant tenants appeared *pro se*, the following order shall enter:

1. This matter is dismissed for the reasons stated on the record which include the fact that the landlord had the tenants served with multiple termination notices including one for no-fault and one for non-payment, and then a summons which

states that it based on the tenant's alleged allowance of non-tenants residing at the premises.

2. The result of the multiple notices is to equivocate one another, making it unclear to a reasonable person what the eviction is based on. Additionally, the inconsistency of the for-cause summons is seemingly unrelated to the underlying notices.
3. The tenants agree to have their counterclaims dismissed without prejudice.
4. Accordingly, this matter is dismissed without prejudice.

So entered this 27th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 179

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS LP (owner),
BEZAIDA CORREA (tenant), and
ANTONIO MATOS (tenant)

Defendants

Re: Premises: 34 Salem Street, Springfield, Massachusetts

ORDER

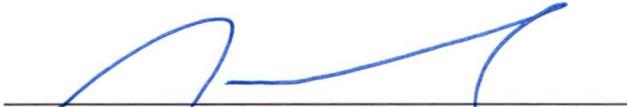
(Hampden County Registry of Deeds Book/Page: #23038/217)

After a hearing on October 28, 2022, for which a representative of the Plaintiff appeared, Defendant SPRINGFIELD GARDENS LP appeared by counsel Richard Herbert and Defendant BEZAIDA CORREA did/~~did not~~ appear and Defendant ANTONIO MATOS did/~~did not~~ appear, the following order is to enter: 

1. Defendant SPRINGFIELD GARDENS LP shall allow interior access to all units, the basement and common areas at the property on Monday, October 31, 2022 at 9:30 a.m.
2. Defendant SPRINGFIELD GARDENS LP shall have a representative from Springfield Gardens LP present at the property to unlock all units, basement and common area for the Plaintiff's inspection on Monday, October 31, 2022 at 9:30 a.m.
3. Defendant SPRINGFIELD GARDENS LP shall post written notice of the inspection on the doors of all units at 34 Salem Street, FORTHWITH, and in any event no later than October 28, 2022 at 5:00 p.m. Defendant SPRINGFIELD GARDENS LP shall use all resources to notify every tenant of the inspection on October 31, 2022 at 9:30 a.m. and shall assist tenants in making sure access can be granted to the Plaintiff.
4. The Plaintiff shall inspect the property on Monday, October 31, 2022 at 9:30 a.m.

5. This matter shall be up for review with the Court on November 4, 2022 at 9:00 AM
Failure of the Defendants to appear on said date may result in the issuance of a capias for
their arrest or the filing of a complaint for contempt.

So entered this 28th day of OCTOBER, 2022.



Robert G. Fields, Associate Justice
Western Division Housing Court

SERGEI E. CARVASAL

6.) COUNSEL FOR DEFENDANT SPRINGFIELD
GARDENS LP HAS AGREED TO ACCEPT
SERVICE ON BEHALF OF DEFENDANT
VIA E-MAIL SERVICE. FOR ANY FUTURE
ENFORCEMENT ACTION, INCLUDING CONTEMPT.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-489

CHRISTINE LIEBERT,

Plaintiff,

v.

TOWN OF NORTH ADAMS BOARD OF
HEALTH,

Defendant.

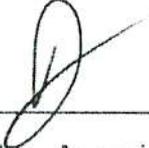
ORDER of DISMISSAL

After conducting a status hearing on October 26, 2022, at which both parties appeared, the following order shall enter:

1. Given that the underlying request for injunctive relief has been satisfied (lifting of the condemnation), and the plaintiff is residing in her home and effectuating repairs by licensed professionals, this matter shall be dismissed without prejudice.

2. The parties were instructed that the dismissal of this case has no prohibitive effect on any other litigation that may be commenced between the parties.

So entered this 28th day of October, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-756

ORANGE TEEN HOUSING, INC.,

Plaintiff,

v.

TIFFANY CACCIOLFI and BRANDON
FOSHAY,

Defendants.

ORDER

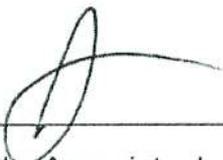
After hearing on October 28, 2022, at which the plaintiff appeared but for which the defendants did not appear after service of the summons was left at their home by a sheriff, the following order shall enter:

1. The defendants shall not act in an aggressive manner towards any of their neighbors.
2. Additionally, and more specifically, the defendants shall not communicate in any manner with their neighbor Zaroma Bryan. This includes texting or emailing or

any form of written communication and also includes verbal and non-verbal communication (such as gestures).

3. In addition to the Clerk's Office mailing this order to the parties, the plaintiff shall deliver this order to the defendants today, October 28, 2022, and if they are not home and shall tape it to their door.
4. The defendants are instructed to communicate with each of their criminal defense counsel---if they have pending criminal matters related to the assertions contained in the Complaint and have counsel in those matters---to inform them of these proceedings and ask for their joining the court at the next hearing to protect the defendants' constitutional right against self-incrimination.
5. This matter shall be scheduled for further hearing on **November 4, 2022, at 9:00 a.m.** at the Greenfield Session of the Housing Court.

So entered this 28th day of October, 2022.



Robert Fields, Associate Justice

CC: Amy Martin, Session Clerk (for emailing order to Attorney Farber so he can have it delivered to the defendants in the manner described above)

Court Reporter

February 28, 2022. His rent was \$400.00 per month plus electricity. During time periods relevant to his case, Mr. Moseley's housemates were Mr. Iduoze, Mr. Stewart and Mr. Haynes. Mr. Moseley seeks to recover damages from Plaintiff based on breach of quiet enjoyment, breach of the implied warranty of habitability, violations of the security deposit statute (G.L. c. 186, § 15B) and the Massachusetts Consumer Protection Act, G.L. c. 93A ("Chapter 93A"). The Court will address each of Mr. Moseley's causes of action separately.

I. Breach of Quiet Enjoyment (G.L. c. 186, § 14)

In relevant part, G.L. c. 186, § 14 makes it unlawful for a landlord to "directly or indirectly interfere with the quiet enjoyment of any residential premises by the occupant." Mr. Moseley asserts that Plaintiff violated his right to quiet enjoyment by renting the entire Premises, inclusive of his bedroom, to Mr. Haynes as of March 1, 2022.¹ Mr. Haynes moved in as of February 1, 2022² and subsequently became embroiled in one or more altercations with Mr. Stewart that led to Mr. Haynes obtaining a ten-day abuse prevention order against Mr. Stewart on February 14, 2022. Mr. Stewart was prohibited from entering the Premises during that ten-day period. At the end of the initial period, the restraining order was extended for a year but Mr. Stewart was permitted to return to the Premises. Before Mr. Stewart could return to the Premises, Mr. Haynes began to take measures to keep him out.

¹ Mr. Moseley argued that Plaintiff rented the Premises to Mr. Haynes as of February 1, 2022; however, the whole house lease to Mr. Haynes, which was revoked on February 2, 2022, was set to commence on March 1, 2022. See Trial Ex. 11 in 22H79SP0370, a case pending in this Court of which judicial notice is taken.

² Based on evidence from a different case filed in this Court by Plaintiff against Mr. Haynes, 22H79CV0161, it appears that Mr. Haynes may have started to move his belongings into the Premises soon after signing a lease on or about January 24, 2022.

On February 25, 2022, Plaintiff heard drilling and other noises coming from the Premises, which ultimately turned out to be Mr. Haynes installing two-by-fours to barricade the doors from opening, even with a key.³ Concerned about what was happening in the Premises, Plaintiff gave notice that he intended to inspect on February 28, 2022. When he arrived, he was able to enter the main level through the front door, but saw evidence that it had previously been barricaded. The door to Stewart's room (which opened directly to the outside) was boarded up.

Plaintiff filed an emergency motion against Mr. Haynes in this Court on March 1, 2022 with respect to his conduct in preventing access to the Premises.⁴ Despite his efforts to get a Court order against Mr. Haynes, Mr. Haynes continued his efforts to prevent Mr. Stewart from entering the Premises by not only boarding up Mr. Stewart's bedroom door and window but also by placing two-by-fours across the front door and the interior door leading to the lower level. Both Mr. Haynes and Mr. Iduoze had the ability to access their bedrooms directly from the exterior of the house, but Mr. Moseley could not. Therefore, Mr. Haynes' barricading of the doors prevented Mr. Moseley from entering the Premises to access his bedroom, the bathroom and the kitchen.

The evidence shows that Mr. Moseley was in fact unlawfully locked out of the Premises for a short time.⁵ Although the Court finds that Plaintiff himself never

³ Mr. Moseley testified that Mr. Haynes admitted to him that he had erected the barricades.

⁴ The Court takes judicial notice of this case, which is Docket no. 22H79CV0161.

⁵ Mr. Moseley claims that he could not access the bathroom or his bedroom for seven to ten days, during which he had to defecate in a bucket or walk a mile to a convenience store or go to his girlfriend's house to use a bathroom. His testimony was not supported by any evidence, and throughout his testimony he had great difficulty remembering dates. Although the Court credits his testimony that there was some period of a time that he could not access the Premises, the Court does not believe this denial of access extended for "seven to ten" days.

locked out Mr. Moseley, he indirectly interfered with Mr. Moseley's quiet enjoyment by creating the environment that led to the lockout. He agreed to allow Mr. Haynes to rent the entire Premises, and even though that arrangement was subsequently revoked, Mr. Haynes may have had the impression that he had superior rights to his housemates. In any event, the Court finds that under the circumstances of this case, Plaintiff, as Mr. Moseley's landlord, must be held responsible for the inability of Mr. Moseley to have complete and uninterrupted access to the Premises.

In assessing Mr. Moseley's actual damages related to the lockout, The Court does not credit Mr. Moseley's testimony that he suffered severe embarrassment and shame from having to borrow clothes from a couple of days, even if some of those clothes belonged to his girlfriend. The Court therefore does not award Mr. Moseley actual damages, but instead awards him statutory damages for Plaintiff's violation of G.L. c. 186, § 14 equal to three times rent, which in this case amounts to \$1,200.00, plus reasonable attorneys' fees.

A separate prong of G.L. c. 186, § 14 makes it unlawful for a landlord to fail to furnish electricity, to interfere with the furnishing of electricity by another to transfer responsibility for payment for electricity to the tenant without the tenant's knowledge or consent. Moreover, the State Sanitary Code requires an owner to provide electricity used in each dwelling unit unless it is "metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit." 105 CMR § 410.354(A)(1) (emphasis added).

Here, although Mr. Moseley's lease provides that he is responsible for electricity, there was no electric meter for the area under his exclusive use, namely

his bedroom. The Premises was served by a single electrical meter and Mr. Iduoze was given (or otherwise accepted) the job of collecting from each of his housemates in equal shares to pay the electric bill. Mr. Moseley testified that he paid in the range of \$50.00 or \$60.00 per month in cash to Mr. Iduoze to cover his share of the electricity usage.

By charging the occupants of the Premises collectively for use of electricity in the Premises, it is impossible to determine if Mr. Moseley was paying only for the electricity he used, as is required by the State Sanitary Code. The individual usage of electricity by his tenants is simply an estimate. If Mr. Moseley used only a fraction of the electricity used by a housemate (for example, if a housemate had multiple high-energy usage items in his bedroom), he was still required to pay an equal share of the electricity. This violation of G.L. c. 186, § 14 arises from a different set of facts as the interference with quiet enjoyment as a result of the lockout and is therefore a separate and distinct violation of the statute for which Mr. Moseley is entitled to damages.⁶ Because the evidence of actual damages is sparse (only Mr. Moseley's estimates), the Court rules that the proper measure of damages is an award of statutory damages of \$1,200.00, plus reasonable attorneys' fees.

II. Conditions of Disrepair

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). The warranty of habitability typically requires that the physical conditions of the premises

⁶ The Court also finds that Plaintiff's actions are unlawful under Chapter 93A by virtue of 940 CMR § 3.17. The award of damages under Chapter 93A would be duplicative of this award, however, which already incorporates a treble damages component.

conform to the requirements of the State Sanitary Code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). 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).

Mr. Moseley alleges problems with heat, mice and leaks. He concedes that he did not communicate much with Plaintiff in writing and that he did not give Plaintiff notice himself of any of the conditions about which he complains. He testified that he relied on Mr. Iduoze to communicate to Plaintiff and that, once the Health Inspector became involved, he assumed that the issues would be resolved, obviating the need for him to communicate with the landlord about conditions.

Regarding his heat complaint, Mr. Moseley testified that the heating system in his bedroom worked but smelled terribly, forcing him to use space heaters. He also testified that the living room baseboard heat was broken and there was a note on it that it should not be used. He said that the house was always cold and that he sometimes had to sleep in a jacket. The Court notes that the September 20, 2021 inspection by the Board of Health does not mention any heating issues in the house apart from Mr. Stewart's bedroom, where the thermostat needed a new battery. Plaintiff testified that the first he knew of the living room baseboard heating problem was on June 7, 2022, when he inspected the Premises, and that by that time he was

fighting in Court with some or all of the tenants in the Premises to get access. He testified credibly that any damage to the baseboard heating system must have been caused by the occupants. The Court also credits his testimony that, given hostility throughout the Premises, he could only enter to make repairs pursuant to Court orders giving him access. Given these findings, the Court rules that the problems with heat do not constitute a breach of warranty.

With respect to mice, Mr. Moseley testified that he heard crawling noises in the walls once or twice per week from the inception of his tenancy in September 2021. Plaintiff testified that a previous tenant complained about mice and that, in December 2020, he hired Braman Pest Control to exterminate. He said he had no further notice of a problem with mice prior to the Health Inspector's report in September 2021, so he assumed the treatment was successful. The Health Inspector's report cites "dead mice observed in laundry area; professional bait traps (dated from 2020) found on ground floor but all appear empty of bait." Plaintiff removed two dead mice following the Health Inspector's visit, and removed one additional dead mouse in June of 2022. The evidence does not demonstrate a serious infestation of mice. Plaintiff's testimony that he received no complaints about a continuing problem with mice after the Health Inspectors visits was uncontroverted by any credible evidence. The Court rules that the presence of a few mice over a period of many months does not materially impair the rental value of the Premises and thus does not violate the warranty of habitability.

As for leaks, the evidence shows that Plaintiff first became aware of the leak in the bathroom sink when the Town of Amherst's Health Inspector visited on

September 22, 2021. Plaintiff testified credibly that he repaired the leak promptly, and there is no evidence to the contrary. When the Health Inspector returned on October 18, 2021, he discovered a more significant leak from the bathroom that was causing water to pool and spread on the laundry room floor below. Again, the Court finds that Plaintiff corrected the problem promptly. Plaintiff was not aware of any further problems until February 2022, when another major leak into the basement occurred. Mr. Moseley testified that the leak is no longer an issue but had no recollection of when it was fixed.

The warranty of habitability incorporates a strict liability standard, so fault is not a component of the cause of action. See *Goreham v. Martins*, 485 Mass. 54, 62-63 (2020). In evaluating the degree to which the leaks diminished the rental value of the Premises, the Court notes that the water from the leak did not enter any area used by Mr. Moseley other than the laundry room. He claims that the water leak caused him to use footwear when doing laundry, He also said that he moderated his use of water from that sink knowing that using the leak could affect Mr. Stewart, whose bedroom was adjacent to the laundry room. Both of these are minor inconveniences. The Court therefore applies a 10% abatement. The Court finds that each of the three leaks lasted for only a few days at most, so the Court will award 10 days of rent abatement at a per diem rate of \$13.33 for a total abatement is \$120.00. A breach of the warranty of habitability is deemed to be an unfair and deceptive practice pursuant to

940 CMR 3.17(1). Accordingly, the Court will treble the damages under Chapter 93A to \$360.00, plus reasonable attorneys' fees.⁷

III. Violations of G.L. c. 186, § 15B

The Court finds that Mr. Moseley paid a security deposit in the amount of \$400.00 as well as a last month's rent deposit of \$400.00. Pursuant to Section 15B(1)(e), "a security deposit shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the lessor, and shall not be subject to the claims of any creditor of the lessor." Moreover, a landlord must give a receipt to the tenant "within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit." G.L. c. 186, § 15B(3)(a). A violation of these provisions entitles the tenant to damages in an amount equal to three times the amount of such security deposit. G.L. c. 186, § 15B(7).

Plaintiff claims he did not deposit Mr. Moseley's security deposit in a separate account outside of the reach of his creditors because Mr. Moseley did not provide his social security number. There are other ways a landlord can ensure that a security deposit is outside of the reach of its creditors than placing it in an account under the tenant's name. Moreover, there is no language in the statute that requires compliance only if the tenant provides a social security number. Accordingly, the

⁷ The Court has no evidence as to the cause of the leaks, and thus no basis to conclude that the leaks were the result of Plaintiff's negligence, which is a necessary component of finding a violation of G.L. c. 186, § 14 for conditions-based interference with quiet enjoyment.

Court finds that Plaintiff violated the security deposit law and awards Mr. Moseley three times the deposit, or \$1,200.00, plus reasonable attorneys' fees.

G.L. c. 186, § 15B(2)(a) requires a landlord to pay interest on the last month's rent at the rate of 5% each year. Here, Mr. Moseley is entitled to \$20.00 of interest (as of September 15, 2022, the anniversary of the lease commencement). The Court shall award treble damages pursuant to 940 C.M.R. (4)(c), which amounts to \$60.00, plus reasonable attorneys' fees.

V. Chapter 93A

Chapter 93A, § 2, makes unlawful "unfair or deceptive acts or practices" in the conduct of "any trade or commerce." Although Plaintiff is engaged in "trade or commerce" as a landlord, the evidence does not show that he engaged in an unfair or deceptive act or practice. The only argument presented at trial is that Plaintiff's knowing or willful refusal to tender a written offer of settlement warrant an award of Chapter 93A multiple damages. As Mr. Moseley's Chapter 93A claims were asserted by way of counterclaim and not by a thirty-day demand letter, a tender of settlement by Plaintiff was not required § 9(3) (demand requirements do not apply if the claim is asserted by way of counterclaim).⁸ Therefore, the Court rules that Plaintiff is not liable under G.L. c. 93A.

Given the foregoing findings and rulings, and in light of the governing law, the Court orders as follows:

⁸ Although Chapter 93A, § 9(3) permits a landlord to tender a written settlement offer to limit a tenant's potential recovery to single damages, it does not obligate him to do so.

1. Mr. Moseley is entitled to judgment in his favor in the amount of \$4,020.00, plus reasonable attorneys' fees.⁹
2. Even though this case was commenced on a no fault basis, in order to avoid further proceedings between these parties, the Court will determine the amount of use and occupancy due Plaintiff and offset this amount against the money judgment in favor of Mr. Moseley before entering a final judgment. The Court requests that the parties stipulate to the months of unpaid use and occupancy and submit the stipulation to the Court within 30 days. If they cannot so stipulate, Plaintiff shall schedule a hearing before the undersigned judge for that purpose.¹⁰
3. Defendant shall have fifteen days to submit a petition for attorneys' fees and Plaintiff shall have fifteen days thereafter to file any opposition, after which time the Court will assess attorneys' fees without need for further hearing, unless the Court so requests.
4. After the amounts due Plaintiff and the award of attorneys' fees have been established, the Court will enter final judgment.
5. If the heat in Defendant's bedroom and the common living room has not yet been repaired, Plaintiff shall schedule a licensed contractor to make the necessary repairs within 30 days. Written notice to each tenant in the

⁹ This figure is calculated by adding together damages for quiet enjoyment (\$1,200.00 each for two violations), breach of warranty (\$360.00), violation of the security deposit statute (\$1,200.00) and last month's rent interest (\$60.00).

¹⁰ Such hearing is in lieu of any small claims action that Plaintiff may have commenced to collect unpaid rent or use and occupancy. If a small claims case is pending, Plaintiff shall immediately dismiss it.

Premises must be given 24 hours' in advance. Mr. Moseley shall not obstruct access or interfere with the repairs.

SO ORDERED.

DATE: 10/31/2022

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

cc: Court Reporter

without going into the main house, and there is an adjacent door that leads to the main level upstairs. The lower level also has a utility area that has been used by Plaintiff who lives in an adjacent house at the same address.

After answering an advertisement on Craigslist, Mr. Stewart signed a lease with Plaintiff on or about January 20, 2021. The rental period commenced on February 1, 2021 and expired on January 31, 2022. Monthly rent was set at \$600.00 per month plus utilities, and Mr. Stewart paid a \$500.00 security deposit. For the time period relevant to this case, Mr. Stewart's housemates were Mr. Iduoze, Mr. Moseley and Mr. Haynes. The Court pieced together the following chronology of events through the witness testimony and exhibits in this case and by taking judicial notice of numerous related court cases:¹

1. Plaintiff filed a summary process case for non-payment of rent against Mr. Stewart on May 26, 2021. The rental arrears were paid through the RAFT program. The funds did not cover court costs and, as part of a court agreement, Mr. Stewart paid a portion immediately and agreed to pay the balance of \$83.74 by August 1, 2021.
2. On September 20, 2021, the Health Inspector from the Town of Amherst's Inspection Services Department inspected the Premises and issued orders

¹ In order to construct this chronology, the Court reviewed 21H79SP1476, a summary process action between the same parties, 21H79CV0790 and 22H79CV0123, civil restraining order cases between the same parties, a harassment prevention order case (2298RO0043) brought by Mr. Stewart against Plaintiff, an abuse prevention order case (2298RO0062) brought by Mr. Haynes against Mr. Stewart and an abuse prevention order case (2298RO0092) brought by Mr. Stewart against Mr. Haynes. The Court also reviewed 22H79CV0161, a case brought by Plaintiff against Mr. Haynes. In addition, prior to finalizing the instant decision, the Court took testimony in 22H79SP0971, a summary process action filed by Plaintiff against Mr. Moseley, and in 22H79SP2860, a summary process action filed by Plaintiff against Mr. Iduoze.

for correction. Among other issues, the Health Inspector noted a leak from the bathroom sink that was entering the lower level laundry room.

3. On September 23, 2021, Plaintiff gave notice that he needed access to Mr. Stewart's unit for certain repairs pursuant to the order to correct. Due to the friction between the parties, Plaintiff began but was unable to complete the repairs.
4. On October 18, 2021, the Health Inspector returned to the Premises. Because Plaintiff and Mr. Stewart were unable to interact peacefully, the Health Inspector did some of the work in Mr. Stewart's bedroom (the installation of smoke alarms) himself. While at the Premises, the Health Inspector found that the bathroom sink was once again leaking into the laundry room below.
5. The same day, October 18, 2021, Plaintiff filed a motion against Mr. Stewart in the still-open summary process case (21H79SP1476) seeking to enforce Mr. Stewart's obligation to pay \$83.74 and to obtain a Court order that Mr. Stewart allow him access to make repairs. A hearing was scheduled for November 10, 2021.
6. On October 19, 2021, the police were called when Plaintiff attempted to enter the Premises to make repairs.
7. On November 10, 2021, the Court held a hearing on Plaintiff's motion for access. The Court ordered Plaintiff to give 24 hours written notice of an intent to enter to make repairs and ordered Mr. Stewart not unreasonably deny access. The Court also transferred the dispute over access to the civil

- docket as it was not part of the non-payment case. A new civil file, 21H79CV0790, was opened.
8. On or about January 20, 2022, Plaintiff signed a lease with Mr. Haynes for Mr. Haynes to rent the entire Premises as of March 1, 2022.²
 9. On January 28, 2022, Mr. Stewart filed an ex parte complaint for a Harassment Prevention Order against Plaintiff, which was denied.
 10. On January 31, 2022, Plaintiff sent an email to Mr. Stewart reminding him that his lease ended that day and that Plaintiff would be entering his unit the next day to get it ready for the next occupant. Mr. Stewart rejected the request to enter and informed Plaintiff that he would have to go to court to remove him.
 11. On February 3, 2022, Plaintiff filed the instant no cause eviction case as a result of Mr. Stewart holding over after expiration of his lease.
 12. On February 10, 2022, the police were called as a result of an altercation between the parties arising out of one of Mr. Stewart's guests allegedly blocking the driveway with her car.
 13. On February 14, 2022, Mr. Haynes filed an application for an Abuse Prevention Order ("APO") against Mr. Stewart, alleging an assault on February 12, 2022. The APO was granted on an ex parte basis through February 23, 2022, during which time Mr. Stewart was barred from the Premises.

² Plaintiff acknowledges that he erred in leasing the Premises to Mr. Haynes before it was vacant, and he cancelled the house lease on February 2, 2022 and instead rented Mr. Haynes a bedroom.

14. On February 23, 2022, the APO was modified to allow Mr. Stewart to return to the Premises, but requiring him to stay two yards away from Mr. Haynes. The APO was extended for one year.
15. On the same day, February 23, 2022, Plaintiff opened a new case in this court (22H79CV0123) requesting an emergency order requiring Mr. Stewart to vacate immediately, citing the February 10, 2022 police call as the reason. A hearing was scheduled for March 7, 2022.
16. On February 25, 2022, Plaintiff heard drilling and other noises coming from the Premises, which turned out to be Mr. Haynes erecting barricades to prevent entry by others.
17. Plaintiff inspected the main floor of the Premises on February 28, 2022 to inspect, and also entered Mr. Stewart's bedroom to change the locks.
18. On the same day, February 28, 2022, Mr. Stewart called the police after returning to the Premises to find the locks to his bedroom had been changed. With the acquiescence of the police, Mr. Stewart entered his room by kicking through the plywood that had been used to cover the broken window in this door.
19. On or about the same day, Plaintiff negotiated a "cash for keys" arrangement with Mr. Stewart, who would have until the end of the day to vacate and remove his belongings in exchange for the cash. The agreement was cancelled later that night when Plaintiff was not satisfied that Mr. Stewart would vacate as agreed.

20. On March 2, 2022, Mr. Stewart called the police because his door had been boarded up again. At the same time, Mr. Haynes called the police because he believed Mr. Stewart was violating the APO. The police did not enforce the APO because Mr. Stewart was in his own bedroom, not on the main level of the house where Mr. Haynes was staying. On the same day, Mr. Haynes returned to District Court to ask for a modification of the APO, claiming that Mr. Stewart had permanently vacated the Premises. The request for modification was scheduled for a two-party hearing on March 15, 2022, at which time the request for modification was denied.
21. On March 7, 2022, this Court entered an order in 22H79CV0123 that Mr. Stewart refrain from causing or threatening any harm to Plaintiff or the property.
22. On March 9, 2022, Mr. Stewart called the police claiming that Plaintiff was preventing him from entering his room, but Mr. Stewart apparently left prior to the arrival of the police approximately 20 minutes later.
23. On March 10, 2022, Plaintiff filed a motion in 22H79CV0123 claiming that Mr. Stewart had intentionally damaged the door to his bedroom.
24. On March 12, 2022, Mr. Stewart called the police because Mr. Haynes had locked everyone out of the Premises and boarded the doors shut.
25. On March 16, 2022, Mr. Stewart filed an application for an APO against Mr. Haynes because he had boarded up the doors. A two party hearing was scheduled for March 31, 2022, at which time Mr. Stewart failed to appear and his application was denied.

26. On March 28, 2022, the Court held a hearing on Plaintiff's complaint for contempt against Mr. Stewart for refusing access for repairs. The Court set a new schedule for Plaintiff to make repairs and required Mr. Stewart to allow access.

27. On April 5, 2022, the police were called to the Premises as a result of another altercation between the parties related to Plaintiff's controlled burn on the property.

Based on these and other facts, Mr. Stewart asserted numerous defenses and counterclaims in his answer to Plaintiff's complaint, including breach of quiet enjoyment, breach of the warranty of habitability, retaliation, discrimination and violations of the security deposit statute and the Massachusetts Consumer Protection Act, G.L. c. 93A ("Chapter 93A"). The Court will address each separately.

I. Breach of Quiet Enjoyment (G.L. c. 186, § 14)

Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ... " G. L. c. 186, § 14. This statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The statute does not require that the landlord act intentionally to interfere with a tenant's right to quiet enjoyment, but the tenant must show some

negligence by the landlord in order to recover under the statute. *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997). In analyzing whether there is a breach of the covenant, the Court examines the landlord's "conduct and not [its] intentions." *Doe*, 417 Mass. at 285.

Mr. Stewart alleges that Plaintiff interfered with his quiet enjoyment by locking him out of the Premises on several occasions.³ The first lockout occurred on February 28, 2022, when Plaintiff changed the locks to Mr. Stewart's room, claiming he did so because he needed a key for access and Mr. Stewart had previously changed the locks. After Mr. Stewart called the police because of the lockout, Plaintiff returned keys to Mr. Stewart and offered to pay him a substantial sum if he would vacate immediately. Mr. Stewart began packing to leave, but when he had not completely vacated by the early evening, Plaintiff retracted the offer out of concern that he would pay the money and that Mr. Stewart would not leave.

Mr. Stewart was subsequently locked out of the Premises on March 2, 2022. The Court finds that this lockout was the work of Mr. Haynes, who had moved into the Premises the previous month. Mr. Haynes and Mr. Stewart clashed soon after Mr. Haynes arrived. After Mr. Haynes obtained the APO against him on February 14, 2022, Mr. Stewart was forced to stay away from the Premises for ten days. It is not clear from the evidence when Mr. Stewart first attempted to reoccupy to the Premises after February 23, 2022, when the restraining order was modified to allow Mr. Stewart to return. Regardless, he regained access to his bedroom on February 28,

³ Mr. Stewart's testimony was not very clear on dates, and it appears that he may have conflated separate incidents, hence the Court creating a chronology by reference to other court cases.

2022, after the cash for keys agreement was rescinded. When Mr. Stewart arrived at the Premises on March 2, 2022, he found that the door and window of his bedroom had been boarded up. Mr. Stewart was able to break through the door to enter his bedroom. On March 12, 2022, Mr. Haynes changed the locks to the main entrance door to the Premises and boarded up the door at the top of the stairs connecting the lower level with Mr. Stewart's room and the second level where the kitchen and bathroom were. The evidence is unclear as to the actual date Mr. Stewart regained access to the main living area in the Premises.

Although Mr. Haynes may have been the person who locked Mr. Stewart out of the Premises in the two incidents in March 2022, Plaintiff indirectly interfered with Mr. Stewart's quiet enjoyment by creating the environment that led to the lockouts. He initially agreed to allow Mr. Haynes to rent the entire Premises, and even though that arrangement was subsequently revoked, Mr. Haynes may have had the impression that he had superior rights to his housemates. In any event, the Court finds that under the circumstances of this case, Plaintiff, as Mr. Stewart's landlord, is responsible for the inability of Mr. Stewart to have complete and uninterrupted access to the Premises during his tenancy.

Despite the separate incidents of being locked out of the Premises, the Court considers the incidents to be part of a continuing wrong arising out of the same course of conduct. The Court thus finds a single violation of G.L. c. 186, § 14. As a result of this violation, Mr. Stewart is entitled to the greater of his actual and consequential damages, or three month's rent, plus costs and attorneys' fees. Although Mr. Stewart testified to the humiliation associated with having to defecate

in a bucket because he could not gain access to the bathroom, the Court is not convinced that Mr. Stewart's actual damages are significant. The one time Plaintiff unlawfully changed the locks, on February 28, 2022, Mr. Stewart received keys the same day. The other lockouts were caused by Mr. Haynes, and Mr. Stewart bears some responsibility for the actions of his housemate given that a District Court granted Mr. Haynes' application for an APO against Mr. Stewart. Moreover, Mr. Stewart had some form of alternative housing because he was living elsewhere for the duration of the APO and perhaps even longer. Mr. Stewart did not make a compelling case that he had no choice but to remain at the Premises without access to a bathroom or kitchen for any considerable period of time. For these reasons, the Court declines to award actual damages and instead rules that Mr. Stewart is entitled to statutory damages in the amount of \$1,800.00, plus reasonable attorneys' fees.

II. Conditions of Disrepair

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).

Mr. Stewart claims that the house was infested with mice from the inception of his tenancy and that Plaintiff was aware of the issues but did little to address the problem. The evidence does not support Mr. Stewart's claim of a "massive" mice and rat infestation. Plaintiff admits he was informed of mice in the house in December 2020, prior to the commencement of Mr. Stewart's tenancy, and that he hired Braman Pest Control to exterminate the Premises. The Court credits Plaintiff's testimony that he was unaware of any continuing issue with mice until the Health Inspector's visit on September 20, 2021. The Health Inspector's report cites "dead mice observed in laundry area; professional bait traps (dated from 2020) found on ground floor but all appear empty of bait." Plaintiff concedes that he removed two dead mice following the Health Inspector's visit and one more in June 2022.

Plaintiff claims that he should not be held responsible for failing to do enough to eradicate the mice when no one informed him that the problem was on-going. Mr. Stewart admits that he was stoic about conditions issues for the most part. He testified that he "dealt with it" and "could live with it." He has no texts or other written evidence that he told the Plaintiff about the problem prior to the Health Inspector's visit, nor is there any evidence of complaints after the Health Inspector's second visit on October 18, 2021. Without more, the Court does not find that the mice

issue rises to the level of a substantial violation of the State Sanitary Code or that it materially impaired the rental value of the Premises.

Mr. Stewart also testified that he had inadequate heat from his baseboard heater and that he had to purchase and use his own space heaters to keep warm. The Health Inspector identified that the thermostat needed batteries, which could have been the reason it was not calling for heat in the room. Other than the thermostat, the Health Inspector did not cite any other heating problems in the Premises. Mr. Stewart presented no evidence that he notified Plaintiff of any problems with the heat. The Court finds that Plaintiff did not have any notice of heating problems beyond the need for new batteries in the thermostat and thus is not liable for breach of warranty relative to lack of heat.⁴

With respect to leaks, the evidence shows that the Health Inspector noted a heavy water drip from the bathroom into the laundry area adjacent to Mr. Stewart's room in his September 2021 inspection, and that, at his reinspection on October 18, 2021, the Health Inspector found that the sink's drain line had separated from the sink and was allowing water to escape into the lower level. The evidence also shows a substantial leak from the same bathroom in February 2022, which Mr. Stewart captured on video. The Court does not find Mr. Stewart's testimony that the leaks were continuous from September 2021 to February 2022 to be credible. The Court credits Plaintiff's testimony that he promptly repaired both of the leaks in 2021. With

⁴ This finding is bolstered by a text from Mr. Stewart to Plaintiff in February 2021 when Mr. Stewart informed Plaintiff of a tripped circuit. Given that Mr. Stewart had only recently moved into the Premises and it was still the middle of the winter, the Court believes that Mr. Stewart would have informed Plaintiff if he had insufficient heat at that time.

respect to the 2022 leak, Mr. Stewart testified that Mr. Haynes repaired it in early February prior to their altercation that led to the APO.

The warranty of habitability does not incorporate a fault element and incorporates a strict liability standard. See *Goreham v. Martins*, 485 Mass. 54, 62-63 (2020). The Court finds that each of the three leaks lasted no more than a few days before being repaired. When the leaks were active, the collecting water in the laundry room impacted Mr. Stewart as the water would soak the carpets in his part of the Premises. Accordingly, the Court finds that during the time of active water leaks, the rental value of the Premises for Mr. Stewart was diminished by 20%. The Court will award 10 days of rent abatement. At a per diem rate of \$20.00, the total abatement is \$160.00. A breach of the warranty of habitability is deemed to be an unfair and deceptive practice pursuant to 940 CMR 3.17(1). Accordingly, the Court will treble the damages under Chapter 93A and award Mr. Stewart \$480.00, plus reasonable attorneys' fees.⁵

III. Violations of G.L. c. 186, § 15B

The Court finds that Mr. Stewart paid a security deposit in the amount of \$600.00 as well as a last month's rent deposit of \$600.00. Pursuant to Section 15B(1)(e), "a security deposit shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the lessor, and shall not be subject to the claims of any creditor of the lessor." Moreover, a landlord must give a

⁵ The evidence does not support a finding that Plaintiff was negligent in causing or repairing the leaks. Accordingly, the Court rules that the breach of warranty does not rise to the level of a violation of G.L. c. 186, 14.

receipt to the tenant “within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit.”

G.L. c. 186, § 15B(3)(a). A violation of these provisions entitles the tenant to damages in an amount equal to three times the amount of such security deposit. G.L. c. 186, § 15B(7). Plaintiff does not deny that he mishandled the security deposit, but claims he offered to return it on May 12, 2022 prior to the first hearing in this case. Pursuant to the statute, the prompt return of a security deposit upon demand can eliminate the multiple damages penalty. The Court has no corroborating evidence, however, that Plaintiff did offer to return the security deposit in a timely manner. Accordingly, the Court finds that Plaintiff violated the security deposit law and awards Mr. Stewart three times the deposit, or \$1,800.00, plus reasonable attorneys’ fees.

Moreover, G.L. c. 186, § 15B(2)(a) requires Plaintiff to pay interest on the last month’s rent at the rate of 5% each year that he holds the deposit. Here, Mr. Stewart is entitled to \$30.00 of interest (as of February 1, 2022). The Court will award treble damages of \$90.00 pursuant to 940 C.M.R. (4)(c), plus reasonable attorneys’ fees.

IV. Retaliation

Pursuant to Massachusetts law, where a tenant raises a defense of retaliation pursuant to G.L. c. 239, § 2 or an affirmative claim for reprisal under G.L. c. 186, § 2A in a no fault eviction case, the tenant is entitled to a presumption of retaliation if the landlord takes an adverse action against the tenant within six months after the tenant reports bad conditions to an inspectional service. Here, it is not clear that

Mr. Stewart is the tenant who contacted the Health Inspector,⁶ particularly in light of his testimony that he was generally stoic about conditions and did not complain. Moreover, Plaintiff did not actually terminate Mr. Stewart's tenancy; instead, he filed a summary process complaint only after Mr. Stewart's lease expired and he did not vacate. The Court infers from the totality of the circumstances that the complaint to the Health Inspector was not the motivating factor in deciding not to renew Mr. Stewart's lease. The Court finds that Plaintiff expected Mr. Stewart and the other tenants would vacate at the end of their leases, which is why he made the ill-fated decision to rent the entire Premises to Mr. Haynes as of March 1, 2022. In light of these findings, the Court rules in favor of Plaintiff on Mr. Stewart's claim of reprisal/retaliation.

V. Chapter 93A

Pursuant to 940 C.M.R. 3.17(6)(a), a landlord may not impose a penalty for late payment of rent unless such payment is 30 days overdue; here, the lease provides for a late fee if payment is not received within fifteen days of the due date. There is no evidence that the late fees were ever charged or paid, however, and so Mr. Stewart is only entitled to nominal damages for this violation in the amount of \$25.00. Mr. Stewart did not argue for Chapter 93A liability on other grounds.

⁶ From other cases of which the Court took judicial notice, the Court understands that an individual named David Goldberg lived in the Premises at the time of the initial call to the Health Inspector, and Mr. Goldberg was involved in a dispute with Plaintiff over the condition of the Premises.

VI. Housing Discrimination

Pursuant to G.L. c. 151B, § 4(7B), it is lawful “[f]or any person to make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of multiple dwelling, contiguously located, publicly assisted or other covered housing accommodations that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender identity, sexual orientation which shall not include persons whose sexual orientation involves minor children as the sex object, national origin, genetic information, ancestry, children, marital status, public assistance reciprocity, or handicap or an intention to make any such preference, limitation or discrimination except where otherwise legally permitted.” Pursuant to 42 U.S.C. s 3604(c), it is unlawful “[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.”

The Court finds that, after Mr. Stewart fell behind in his rent in April 2021, Plaintiff’s relationship with Mr. Stewart deteriorated. On more than one instance, Plaintiff became upset at Mr. Stewart relating to the behavior of his guests and, in particular, where they parked. In one particular instance, Plaintiff chided Mr. Stewart in front of his guests, telling them that he was not paying his rent. The Court finds that conversation became heated and Plaintiff made a comment about Mr. Stewart, who identifies as a Black man, as being a “monkey.” The Court finds that one of

Mr. Stewart's guests then said to Plaintiff words to the effect of "Do you think we are [n****s?]" Plaintiff did not use the word himself but answered in the affirmative, essentially adopting the statement. Witness testimony corroborates Mr. Stewart's testimony that weeks later, Plaintiff apologized to Mr. Stewart for calling him a "monkey" and said that it was "just business."

The Court rules that Plaintiff's use and adoption of racial slurs violates G.L. c. 151B, § 4(7B) and 42 U.S.C. § 3604(c). Plaintiff's conduct is offensive and inexcusable. Such language has a dehumanizing effect on a person and warrants an assessment of damages. The Court awards Mr. Stewart \$5,000.00 in damages, plus reasonable attorneys' fees, as a result of Plaintiff's unlawful discriminatory conduct.

The Court declines to award multiple damages pursuant to Chapter 93A under the circumstances presented in this case. It was Mr. Stewart's friend, with whom Plaintiff had no business relationship, who used the "n-word" that was adopted by Plaintiff. The incident took place when Mr. Stewart and his friend were sitting outside and the parties had a conflict over parking. This circumstances did not involve the provision of or refusal to provide housing accommodations. The exchange happened to take place outside of the Premises, but could have occurred anywhere. "(The) basic policy (of Chapter 93A) is to ensure an equitable relationship between consumers and persons engaged in business." *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 624 (1978). Where certain conduct is already unlawful under another statute, the Court does not apply Chapter 93A automatically to authorize a duplicative recovery for the wrong under both statutes.

Moreover, the circumstances of this case do not warrant the imposition of punitive damages. “To sustain an award of punitive damages under G. L. c. 151B, § 4, a finding of intentional discrimination alone is not sufficient. An award of punitive damages requires a heightened finding beyond mere liability and also beyond a knowing violation of the statute. Punitive damages are warranted where the conduct is so offensive that it justifies punishment and not merely compensation.” *Haddad v. Wal-Mart Stores, Inc.* 455 Mass. 91, 110 (2009). The Court rules that, upon consideration of the *Haddad* factors, punitive damages are not warranted.

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

1. Mr. Stewart is entitled to a monetary judgment in his favor in the amount of \$9,195.00, plus reasonable attorneys’ fees.⁷ Judgment will not enter at this time, however.
2. Even though this case was commenced on a no fault basis, in order to avoid the need for further proceedings between these parties, the Court will determine the amount of use and occupancy due Plaintiff and offset this amount against the money judgment in favor of Mr. Stewart prior to entering final judgment. The Court requests that the parties to stipulate to the amount of use and occupancy that is owed and submit the stipulation to the Court. If they cannot so stipulate, Plaintiff shall schedule a hearing for

⁷ This figure is calculated by adding together damages for quiet enjoyment (\$1,800.00), breach of habitability (\$480.00), security deposit (\$1,800.00), last month’s rent interest (\$90.00), c. 93A (\$25.00) and discrimination (\$5,000.00).

that purpose. Because this judgment will address the amounts due from Mr. Stewart related to his use and occupancy of the Premises, the Court will dismiss the pending small claims case against Mr. Stewart (22H79SC0043).

3. Defendant's counsel shall have fifteen days to submit a petition for attorneys' fees and Plaintiff shall have fifteen days thereafter to file any opposition, after which time the Court will assess attorneys' fees without need for further hearing, unless the Court so requests.
4. After the use and occupancy owed Plaintiff has been used as an offset against the award to Mr. Stewart, and after attorneys' fees have been established, the Court will enter final judgment.

SO ORDERED.

DATE: 10/31/2022

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

cc: Court Reporter

OR

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. et al.,

Defendants.

ORDER

After conducting a case management conference on October 25, 2022, at which the plaintiff appeared through counsel and the defendants appeared *pro se*, the following order shall enter:

1. The plaintiff's request to have leave to complete a process of subpoenas to further investigate the title issues in this matter and then file either a motion for summary judgment or a motion to reconsider the court's summary judgment ruling is allowed.

2. The plaintiff shall share all documents that she obtains through her "keeper of the records" subpoenas and shall file and serve its motion by no later than December 12, 2022.
3. The defendants shall have until December 30, 2022, to file and serve their opposition.
4. A hearing shall be scheduled on said motion and for further case management on January 6, 2023, at 3:00 p.m. by Zoom. The court's Zoom platform can be reached with Meeting ID: 161 638 3742 and Password: 1234.

So entered this 31st day of October, 2022.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21sp3190

Beacon Residential Management Limited
Partnership,

Plaintiff,

v.

Barbara Eberhart, Umeka Eberhart, Marcus
Eberhart

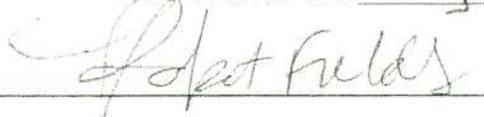
Defendants.

ORDER

After review on October 28, 2022, at which the plaintiff appeared and defendants appear and the Guardian Ad Litem and a representative from TPP appeared, the following order is to enter:

1. Parties shall continue to process the defendant's application for Marcus Eberhart to be in the live-in aide at the premises.
2. The GAL shall continue to obtain medical records and will submit proposed order for authority to issue subpoenas for same.
3. Earlier orders regarding behavioral protocols shall remain in place.
4. This matter is continued for further review on **December 9, 2022, at 2:00pm** on zoom. Zoom meeting ID 161 638 3742 password 1234.

So entered this 1st day of November, 2022.



Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0095
AND 22-SP-0423

IRMA MARTINEZ,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
JOSE ROLON,)	
)	
DEFENDANT)	

These consolidated cases came before the Court on June 15, 2022 for an in-person bench trial. Both parties were represented by counsel. This consolidated case involves a dispute over Plaintiff's right to purchase a single family home located at 30 Lynwood Terrace, Springfield, Massachusetts (the "Property") where she currently resides (the civil action), and Defendants right to possession of the Property (the summary process action).

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

Defendant owns the Property. In 2016, he moved out of the Property and entered into an agreement with his sister, the Plaintiff, whereby in exchange for allowing Plaintiff to live there, she would assume all financial responsibility for the Property, including making Defendant's monthly mortgage loan, real estate tax escrow and insurance payments and paying for utilities and maintenance.

On October 13, 2016, the parties executed an Offer to Purchase Real Estate (“OTP”). Pursuant to the contract, Plaintiff offered to buy the Property for \$126,827.14, the current outstanding balance of Defendant’s mortgage loan. Plaintiff paid an earnest money deposit in the amount of \$538.41. According to the OTP; Plaintiff would “pay the money of the Mortgage including taxes, Insurance to [Defendant] in a money order or check every month and that will be credited for the purchase of the home.” The OTP required Plaintiff to close on the transaction no later than October 15, 2020, essentially giving Plaintiff four years to buy the Property. If Plaintiff did not buy the Property by the deadline, Defendant would refund “all money putting [sic] into the property for those four years.” Defendant expressly accepted the OTP on the same day it was executed.

The parties subsequently entered into a Purchase and Sale Agreement (“PSA”) effective June 7, 2017, which, despite the terms of the OTP giving Plaintiff the right to purchase the Property for the remaining balance of the mortgage (which would have been an amount less than \$126,827.14), recites a purchase price of \$150,000.00. The PSA provided for a closing date of July 28, 2017 and gave Plaintiff until July 14, 2017 to obtain a loan commitment. The loan commitment deadline was subsequently extended to September 8, 2017 pursuant to the addendum to the PSA. The PSA makes no reference to the OTP and does expressly terminate it or recite that it merges into the PSA. The PSA does, however, contains a single sentence reciting that “[t]his Agreement ... sets forth the entire agreement between the parties.”

Plaintiff did not obtain a loan commitment by September 8, 2017. Pursuant to section 13 of the PSA, if Plaintiff could not obtain a loan commitment by the

deadline, she had the right to so advise the broker¹ in writing and terminate the contract. There is no evidence that she gave notice in writing to anyone, and pursuant to section 13, her failure to do so caused her to “be bound to perform [her] obligations” under the PSA.²

There is no evidence that Defendant demanded that Plaintiff complete the purchase even without financing, or that he declared a default or otherwise gave notice that his obligations under the PSA were terminated.³ On May 18, 2020, nearly three years after the execution of the PSA, Plaintiff sent an email to Defendant stating that she was prepared to perform under the OTP (“2020 Offer”). She did not tell Defendant that she was ready to perform under the yet-to-be-terminated PSA, so the Court infers that she believed the PSA was no longer enforceable. Likewise, Defendant did not respond to Plaintiff’s 2020 Offer by informing her that the PSA had superseded the OTP and that she had no right to purchase the Property given her failure to close the 2017 transaction.

Instead, the conduct of the parties demonstrates that they believed the OTP remained the operative agreement between them. First, in response to Plaintiff’s 2020 Offer, Defendant provided her with the loan payoff figure (as would have been necessary to establish the purchase price under the terms of the OTP). Second, from

¹ It is unclear whether a broker was involved in this family transaction, but it would be reasonable to substitute the word “seller for “ broker” if no broker was involved.

² A loan contingency benefits the buyer, as the buyer presumably would not want to proceed with the transaction without financing. There is no legal reason that a buyer could not waive this contingency and proceed with a cash purchase.

³ The failure of either party to terminate the PSA, and the absence of a “time is of the essence” provision in the PSA, leaves open the possibility that it remains an enforceable contract. The Court concludes, however, that the passage of time following the contractual closing date without either side taking steps to pursue the transaction renders the PSA unenforceable.

the execution of the OTP through at least the trial date, Plaintiff continued to pay and Defendant continued to accept Plaintiff's monthly loan and escrow payments and applied them to the mortgage. Third, when Defendant rejected Plaintiff's 2020 Offer, he said that he would refund the money Plaintiff had invested in the Property, which is what he agreed to do under the terms of the OTP if Plaintiff was unable to close a deal. Based on the parties' course of conduct, then, the Court concludes that the parties themselves thought the OTP remained in effect at the time of the 2020 Offer.

If the OTP was, in fact, still an enforceable agreement in May 2020, the Court could order specific performance and require Defendant to sell the Property to Plaintiff.⁴ Imposing this extraordinary equitable relief upon the parties leads to several problems, however. For example, ordering specific performance would require the parties to negotiate the specific terms of the transaction. The Court could order that the parties proceed using the terms agreed upon in the PSA. The PSA, however, called for a different purchase price than the OTP, and the law, title standards and other procedures and practices regarding residential real estate transactions may have changed in the past five years. To require the parties to proceed under the terms of the PSA would impose an undue hardship on Defendant, particularly given that the parties negotiated an alternative outcome should Plaintiff be unable to purchase the Property. The Court thus declines to grant specific

⁴ "Specific performance of a contract to sell real property is appropriate where one party to that contract, either a buyer or seller, has shown that "(a) there is a binding contract to sell property, (b) the agreed time for performance has arrived, and (c) the party seeking performance has performed (or is prepared to perform) his or her end of the bargain." See *Niziak v Daniels*, 2021 WL 6013961, at *7 (Mass. Land Ct. 2021), citing *McCarthy v. Tobin*, 429 Mass. 84, 87-88 (1999).

performance. See *Quinn v. Mar-Lees Seafood, LLC*, 69 Mass. App. Ct. 688, 704 (2007) (a judge has a reasonable range of discretion to grant or deny specific performance).

It would likewise be inequitable to Plaintiff to excuse Defendant from his obligation under the OTP to refund Plaintiff's investment in the Property. Defendant has avoided all obligations of a landlord under Massachusetts law for the past six years as Plaintiff has acted as the owner of the Property, and he would be unjustly enriched if he was able to simply take back the Property without compensating Plaintiff.

The doctrine of promissory estoppel applies in this scenario to enforce Defendant's contractual obligation to comply with his end of the bargain. Promissory estoppel "consists simply of a promise that becomes enforceable because of the promisee's reasonable and detrimental reliance. *Suominen v. Goodman Indus. Equities Mgmt. Group, LLC*, 78 Mass. App. Ct. 723 (2011). The Supreme Judicial Court has outlined three elements to a claim for promissory estoppel: (1) a representation intended to induce reliance on the part of a person to whom the representation is made; (2) an act or omission by that person in reasonable reliance on the representation; and (3) detriment as a consequence of the act or omission. *Anzalone v. Admin. Office of the Trial Court*, 457 Mass. 647 (2010).

Here, Defendant made an unambiguous promise to Plaintiff that he would return her investment in the Property if she could not purchase it, and she reasonably relied on his promise to continue to pay down Defendant's mortgage loan and pay all real estate taxes, insurance and maintenance costs - which he accepted - even after the purchase agreement from 2017 did not close. If she had believed that she had no right to purchase the home after September 2017, she likely would not have

continued to make payments and improvements as though she would be the eventual homeowner instead of a long-term tenant. Given that she does not own the Property at this time, she has suffered detriment as a consequence of continuing to rely on Defendant's promise to sell her the Property.

The Court will, therefore, craft an equitable remedy that attempts to give each party the basic benefit of the bargain they made in 2016. The Court enters the following order:

1. The parties shall attempt to agree on the fair rental value of the Property for each year or partial year from 2016 to the present. If the parties are unable to agree, they shall each submit their proposed fair rental value figures with one or more supporting affidavits establishing the value. If either party wishes to schedule an evidentiary hearing, they shall submit the request with their proposal and the Court will schedule the hearing. If neither side makes a request for hearing, the Court will determine fair rental value after considering each side's submissions.
2. The parties shall attempt to agree on the grand total of all money Plaintiff paid in relation to the Property from October 15, 2016 to the present. This figure should include all mortgage, tax and insurance payments, improvements, water and sewer charges, repairs and maintenance. Consumable utilities (such as electricity, heat and internet) may be excluded. If the parties cannot agree on the amount of money paid by Plaintiff in relation to the Property or the categories of expenses to be

reimbursed, they shall follow the same procedure to schedule an evidentiary hearing as set out in the previous paragraph.⁵

3. Defendant shall repay Plaintiff the net amount of all payments Plaintiff made in relation to the Property less use and occupancy payments owed to Defendant, as calculated by the fair rental value of the Property.⁶ If the parties are unable to agree on the amount of use and occupancy payments, the determination shall be made by the Court.
4. Beginning on November 15, 2022, Plaintiff must pay use and occupancy each month and Defendant shall be responsible for all costs of the Property except for the consumable utilities described in item 2. As of that date, Defendant shall have all responsibilities of a landlord under Massachusetts law.
5. With respect to Defendant's summary process eviction case, the Court will deem the three month notice served on Plaintiff as a legally adequate notice to terminate the tenancy effective November 15, 2022. Because the Court has ordered an equitable resolution to the issue of ownership, that resolution will eliminate any legal defenses through the date that the Court enters the payment from Defendant to Plaintiff. The order does not eliminate legal defenses that might arise after November 15, 2022.

⁵ The Court notes that the parties agreed on the number of \$60,148.25, but it is not clear to the Court precisely what that figure includes. The fact that the parties were able to agree on this number gives the Court hope that they will be able to agree on the numbers that the Court seeks.

⁶ Understanding what the Court intends to order, the parties are invited to simply agree on the ultimate dollar figure that Defendant will pay Plaintiff and report it to the Court.

6. The parties shall appear for further hearing in-person at 9:00 a.m. on November 10, 2022, at which time the Court shall conduct hearings (if needed) as to (a) fair market value, (b) Plaintiff's investment in the Property and (c) the net payment order, and shall conduct a case management conference to schedule the summary process trial and address any pre-trial issues.

SO ORDERED.

DATE: 11.1.22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Clerk's Office (for scheduling hearing)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2125

JUAN RODRIGUEZ,

Plaintiff,

v.

JENNIFER SANCHEZ,

Defendant.

ORDER

After hearing on October 27, 2022, on review in accordance with G.L. c.239, s.9, at which both parties appeared without counsel, the following order shall enter:

1. The tenant was required pursuant to the last court order (dated October 11, 2022) to pay her use and occupancy and to document her diligent housing search and provide a copy of said documentation to the landlord prior to the court date. The tenant failed to do both and with insufficient reason for said failures.

2. The tenant has also not applied for Way Finders, Inc. RAFT funding for rental arrearage.
3. The landlord and his wife have conveyed credibly that they require the premises for her family who are suffering in a foreign country and are arriving on December 1, 2022.
4. Though there are compelling reasons to both issue and stay further the entry of judgment, and consistent with the discretionary authority granted the court in accordance with G.L. c.239, s.9, judgment shall enter for the landlord for possession and execution shall issue in due course upon the filing *and service* of a Rule 13 Application.
5. There shall be a stay on the levying on the execution for possession until December 2, 2022.

So entered this 1st day of November, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

ANGEL TORRES,

Plaintiff,

v.

EUNICE DOCKERY,

Defendant.

ORDER

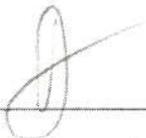
After hearing on October 27, 2022, on review of this matter at which the parties appeared without counsel and a representative from the Tenancy Preservation Program (TPP) appeared but for which the Guardian Ad Litem (GAL) was unable to appear, the following order shall enter:

1. The tenant shall continue to work cooperatively with TPP and the GAL.
2. The latest report of the GAL percolated the issue of whether the tenant's son, Tyrone Dockery, would be willing to work with TPP and the GAL and Greater

Springfield Senior Services towards being appointment in a Probate and Family Court proceeding as Guardian for his mother. Mr. Dockery indicated on the record that he was willing to do so and will work with these resources towards that end.

3. TPP is going to investigate and work with the tenant to secure Social Security benefits and for now has obtained Cash Assistance from the Commonwealth as well as food stamps for the tenant.
4. TPP will continue to work with the tenant's health care providers to have her evaluated for purposes of eligibility for SSA benefits as well as for improved health care.
5. TPP shall continue to work with the tenant to seek RAFT benefits. The landlord reports that September and October, 2022 use and occupancy have not been paid (@\$900).
6. The GAL shall file a next report by no later than November 29, 2022, which shall include a plan of action in this matter aimed at, among other things, securing the tenant more appropriate housing so that she can vacate the premises.
7. This matter is scheduled for further review on **December 1, 2022, at 3:00 p.m.** at the Springfield Session of the court.

So entered this 1st day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION No. 19CV334
21CV772

TOWN OF ORANGE BOARD OF HEALTH,
Plaintiff

v.

DENNIS VELARD and BARBARA VELARD ("Owners"),
MARK VELARD, and DEREK and KRYSTAL EAGLES ("TENANTS")
Defendants

Re: 89 West Main Street, Orange, MA ("Property")

**INTERIM ORDER ON
APPOINTMENT OF A RECEIVER**

After a hearing on October 28, 2022, at which Plaintiff, and the Receiver appeared through counsel, Tenant(s) appeared pro se and Mortgagee and Owners DID NOT appear after having received notice, the following ORDER is to enter:

1. After hearing on January 14, 2022 at which all parties other than Mark and Dennis Velard and Krystal Eagles and mortgagee appeared, and at which Attorney Peter Mulcahy (the Velards' bankruptcy attorney in Pennsylvania graciously joined), the Receiver was appointed by this Court.
2. The subject premises are currently occupied by the Tenants, Derek and Krystal Eagles.
3. The Owners were given notice of the filing of the within petition on December 20, 2021 by mailing a copy of same to the Owners' counsel, Carla Alonah Halpern, Orange, MA. (Counsel has since disappeared from this matter.) Since that date the owners have appeared

in this Court, they have not objected to the Petition or the Receiver's Reports filed to date. But rather have objected to their being the owners of the property.

4. The mortgagee was given notice of the filing of the within petition on December 20, 2021 by mail, postage pre-paid. Mortgagee has not appeared to date.
5. In addition to Owners appearing in this matter, Attorney Peter Mulcahy, Owner's Bankruptcy Attorney is now receiving curtesy copies of all filings and has appeared at several of the hearings.
6. Owners, Atty Muleahy, Mortgagee and Tenants have been given notice of all court filings and court dates since December 20, 2021.
7. The Receiver filed proof of insurance with the Court on February 1, 2022.
8. At the hearing on February 11, 2022, the Receiver's Motion to Establish Rehab Plan was allowed. The total cost of the rehabilitation, as set out in that original approved rehabilitation plan was estimated to be \$71,000 – \$80,900 plus the cost of maintenance and management of the property and legal costs. Receiver costs are estimated at \$10,000 - \$13,600 for maintenance and management and \$4,500 for legal costs.
9. The Receiver will be filing a Motion to Amend the Rehabilitation Plan and To Extend time for completion. The new cost of rehabilitation, as set out in the anticipated proposed rehabilitation plan is estimated to be between \$123,000 - \$142,900, plus cost of maintenance and management of the property and legal costs. The reason for the increase in the cost of the rehabilitation plan is detailed in the Receiver's Report dated October 17, 2022 and includes replacement windows, roof repairs, siding repairs, and floor replacement in certain areas of the dwelling. The Motion to Extend Time for Completion and to Amend the Rehabilitation Plan shall be filed in this Court no later than **November 18, 2022** by the Receiver.

10. The Receiver filed its latest status report with this court and served the same on all parties on October 24, 2022. The latest report was reviewed and analyzed for accuracy and reasonableness of cost by petitioners. The receiver has requested an extension to complete the rehabilitation of the property to February 10, 2023 (Please note typographical error in report submitted citing date as February 10, 2022).
11. The total of the Receiver's asserted lien as of the October 15, 2022 report is \$41,480.64, plus attorney fees. Rent received as of July 27, 2022 from the tenants was \$2,400.00 and is anticipated to continue monthly from here on out. Rent received from tenants since July was not reported.
12. The Town conducted a comprehensive re-inspection of the subject property, on October 24, 2022 accompanied by the Receiver and the Tenant. The Town Health Agent agrees with the Receiver that the additional repairs reported in this most recent report are reasonable and necessary for compliance with the State Sanitary and Housing Codes and these repairs were included in the Board of Health May 26, 2022 Comprehensive Inspection Report and Order to Correct.
13. The Receiver shall file with the Court and serve upon all parties and lienholders a copy of the next receiver's report with a detailed account of funds received and funds expended. This report shall be filed no later than **seven (7) days prior to the next Court date**. Copies shall also be sent to all parties to this action and shall be accompanied by a certificate of service documenting that the reports have been forwarded as called for in the order appointing the Receiver to this property.
14. Additionally, the Court orders that the Owners of the property Dennis and Barbara Velard update the court at the next court hearing regarding ownership of the property.
15. A review of the receivership shall be heard on **December 9, 2022 at 9:00 am in the Franklin County Western Division Housing Court at Greenfield.**

So entered this 1st day of November 2022.



Honorable Justice
Western Division Housing Court

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

After conducting a pretrial conference on October 25, 2022, at which counsel for the parties appeared, the following order shall enter:

1. **Procedural Background:** On June 29, 2022, the Court ordered entry of default on liability against Manuel Gomes and Manuel Pereira ("Defendants") pursuant to Mass. R. Civ. P. 37 as sanction for failure to comply with multiple orders for discovery compliance dating back to June 2019. It did so after significant attempts by plaintiffs' counsel to acquire compliance with discovery, including a multitude of motions to compel which resulted in orders from the court. It

became very clear to the court that given all the time in the world, the defendants would continue to fail to comply with discovery orders.¹ As instructed by court order, the parties were to file motions *in limine* for hearing at the pretrial conference. The plaintiffs' several such motions which will be addressed below. The defendants did not file any motions *in limine*.

2. **Plaintiffs' Motion for Sanctions / Bench Trial:** The plaintiffs are seeking the extreme sanction of converting this jury trial to a bench trial based on the continued malfeasance of the defendants in the discovery and pretrial process and their intention to ignore the entry of judgment on liability and other court orders.
3. Counsel for the defendants made it clear in his October 24, 2022, pleading and throughout the October 25, 2022, pretrial conference that he intends to present a case at trial on liability, ignoring the court's entry of judgment on same. The defendants' attorney also repeatedly asserted during the conference that he believes that he complied with all discovery demands, does not understand how he or his clients were malfeasant or upon what basis a judgment was entered against them for liability. Additionally, he intends to provide documents that "substantiate the truth" even if they are ones subject to discovery and not provided.
4. **Discussion:** As the undersigned judge indicated during the conference, the court holds the right to a jury as near sacrosanct a right as there exists in

¹ See Rule 37 provides in part that "[i]f a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: . . . (C) An order . . . rendering judgment by default against the disobedient party.

litigation. That said, there are situations where it is required for the “full and effective administration of justice”. *Beit v. Prob. & Fam. Ct. Dept.*, 385 Mass. 854 (1982).

5. Where a defendant defaulted after asserting a jury claim by his attorney’s failure to appear for trial, the motion to remove default was left to the discretion of the trial judge, and the Appeals Court held, “[t]here was no error in the judge’s refusal to allow a jury to assess damages because a party’s right of trial by jury on assessment of damages following a default judgment is available only when and as required by statute” (quotations omitted). *Silkey v. New England Tel. & Tel. Co.*, 9 Mass. App. Ct. 816 (1980). See *Desjardins v. Bongiorno*, 101 Mass. App. Ct. 1119 (2022) (appellant failed to cite any constitutional provision or any case “suggesting that *Silkey*, supra, was wrongly decided. In the absence of sustained appellate argument on this point, see *Custody of Kali*, 439 Mass 834, 838-839 (2003), we decline to depart from established precedent”); *Noroian v. Matevosyan*, 101 Mass. App. Ct. 1104, review denied sub nom. *Noroian v. Renault*, 490 Mass. 1102 (2022) (“[t]here is likewise no merit in the defendant’s claim that the award of damages -- following an evidentiary hearing that she refused to attend -- was error because she was entitled to a jury trial on damages”).
6. Article 15 of the Massachusetts Constitution provides that:

In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners’ wages, the legislature shall hereafter find it necessary to alter it. Mass. Const. Pt. 1, art. XV.

7. Nevertheless, “[i]t is familiar law that the right of trial by jury must be sedulously guarded against every encroachment, yet it may be regulated as to the mode in which the right shall be exercised so long as such regulation does not impair the substance of the right.” *H.K. Webster Co. v. Mann*, 269 Mass. 381, 385 (1929). For instance, “failure to answer interrogatories may result in loss of a jury trial without denial of any constitutional right.” *Fratantonio v. Atl. Ref. Co.*, 297 Mass. 21, 24 (1937).
8. “The [Housing] Court has the inherent power to enforce its own orders, to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases. It has long been understood that courts have the power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates” (citations and quotations omitted). *Sommer v. Maharaj*, 451 Mass. 615, 621 (2008).
9. A judge has wide latitude to make such orders in regard to the failure [to comply with a discovery order] as are just. Willful noncompliance was eliminated in 1984 as a prerequisite to the imposition of sanctions to increase compliance with discovery orders, by making it easier for parties to achieve, and judges to award, sanctions for the failure to comply with a discovery order. *Atlas Tack Corp. v. Donabed*, 47 Mass. App. Ct. 221, 224 (1999).
10. “Appellate review of discovery sanctions, including defaults, is governed by the well-established abuse of discretion standard.” *Short v. Marinas USA Ltd. P’ship*, 78 Mass. App. Ct. 848, 852 (2011). “We do not consider [a judge’s] discretion abused unless its exercise has been characterized by arbitrary determination,

capricious disposition, whimsical thinking, or idiosyncratic choice.” *Greenleaf v. Massachusetts Bay Transp. Authy.*, 22 Mass. App. Ct. 426, 429.

11. When imposing sanctions for violations of court orders, the SJC has stated “[a]mong the pertinent considerations in determining whether conduct warrants dismissal are the severity of the violation, the legitimacy of the party's excuse, repetition of violations, the deliberateness *vel non* of the misconduct, mitigating excuses, prejudice to the other side and to the operations of the court, and the adequacy of lesser sanctions” (quotations omitted). *Sommer*, 451 Mass. at 621.
12. Striking of a jury claim is a familiar sanction in the Housing Court (though never before with the undersigned judge), often applied for failure to pay court ordered use and occupancy pending trial in summary process actions. Such sanctions have been upheld. See *Kargman v. Dustin*, 5 Mass. App. Ct. 101, 110 (1977) (“[a]n order that a tenant pay rent during the pendency of the appeal is a reasonable limitation on the right to a jury trial where the tenant remains in possession of the premises”); *Chandler v. Johnson*, 78 Mass. App. Ct. 1120 (2011) (“we discern no abuse of discretion in the judge's imposition of that sanction for the continued disobedience of the court's order, over a period of more than nine months”).
13. Without finding any authority to the contrary, there is no right to a jury trial in a damages hearing post default judgment on liability. *Silkey v. New England Tel. & Tel. Co.*, 9 Mass. App. Ct. 816 (1980). Otherwise, and despite the sacred right to a jury trial conferred by Article 15 of the Massachusetts constitution, trial court judges have wide latitude to make such orders in regard to the failure to comply

with a discovery order, *Atlas Tack Corp*, 47 Mass. App. Ct. at 224, and the striking of a jury demand has been upheld as a sanction for the continued disobedience of a court order over a period of many months. *Chandler v. Johnson*, 78 Mass. App. Ct. 1120 (2011). Defendants here have been found to be in continuous violation of court orders regarding discovery, resulting in the finding of default against them, and have since continued to show disregard for the judgment of the Court. Defendant has no right to a jury trial on damages following default, and if they did, the Court would be within its discretion to strike the demand as further sanction for violation Court orders.

14. Sanction: As noted above, the defendants' counsel in this matter has made it clear that he believes that the upcoming trial is his opportunity to challenge liability in total disregard for the court's order entering judgment on liability. He has also made it clear that he intends to attempt to introduce documents that were sought for in discovery and not provided. This approach to the upcoming trial, in total defiance of the law of this case as made clear by earlier orders, will make a trial unmanageable if not impossible if tried before a jury. It is anticipated that all the corrective instructions to a jury will not correct the continued malfeasance intended by defendants' counsel and it is foreseeable that the matter would result in a mistrial.²

² During the October 25, 2022, pretrial conference when asked why the defendants' counsel did not file any of the required pleadings (including: proposed jury instructions, additional *voire dire* questions for the jury venire, a proposed verdict form, and a case description to be read to the jury venire, he stated that he did not think it was appropriate to do so prior to the trial, even though it was in a court order. Counsel has made it repeatedly clear that he will act in a manner that suits him even if contrary to the court's orders.

15. Based on the foregoing, the court finds that all the factors cited above in *Sommer*, 451 Mass. At 621, are met in this instance and the court hereby converts this trial to a bench trial.
16. **Motion to Exclude Testimony and Evidence:** The plaintiffs' motion to exclude testimony and evidence that is outside the scope of a trial for damages is allowed.
17. **Motion to Exclude Documents Not Produced in Discovery:** The plaintiffs' motion to exclude documents at trial that would otherwise be responsive to their discovery demands is allowed.
18. **Motion to Preclude Introduction of "Discovery Documents":** The plaintiffs' motion to preclude the defendants from introducing or referring to "discovery documents" is denied, without prejudice, as the court does not understand what is being sought therein.
19. **Schedule:** This matter is scheduled for trial on **November 7, 8, and 9, 2022**, beginning at 9:00 a.m. in the Springfield Session of the court. As noted above, it shall be conducted as a bench trial.

So entered this 2nd day of November, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0733-743

MARIA D. GONZALEZ,)
)
 PLAINTIFF)
)
 v.)
)
 LUZ CASTILLO,)
)
 DEFENDANT)

ORDER

This civil restraining order case came before the Court on November 2, 2022 for an in-person hearing on Plaintiff's request for an emergency order. Both parties appeared self-represented.

Plaintiff resides at 74 Beech Street, #3, Holyoke, Massachusetts. Defendant, the homeowner, lives on the first floor. Plaintiff claims she has been without hot water in the past and perhaps other utilities. She admits that everything is working currently. She has a Section 8 subsidy and the Section 8 administrator just recently completed an housing inspection. In light of these findings, the Court enters the following order:

1. Defendant shall not intentionally interfere with any utilities (water, light, heat) serving Plaintiff.
2. To the extent that the Section 8 inspector orders one or both parties to make repairs, that party shall promptly make the required repairs.
3. The parties shall limit communication to the minimum necessary related to address landlord/tenant issues.

4. Each party shall respect the rights of the other to the peaceful enjoyment of their homes.
5. If either party wants to obtain a restraining order, she must apply at Holyoke District Court.

SO ORDERED.

DATE: 11/3/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2348

_____)	
SPRINGFIELD HOUSING AUTHORITY,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
ERNESTO VAZQUEZ,)	
)	
DEFENDANT)	
_____)	

This summary process case came before the Court on November 2, 2022 for an in-person bench trial. Plaintiff appeared through counsel. Defendant appeared self represented. Ms. Cintron from Tenancy Preservation Program (“TPP”) observed.¹ Plaintiff seeks to recover possession of 500 Hancock Street, G4, Springfield, Massachusetts (the “Premises”).

Based on the evidence and reasonable inferences drawn therefrom, the Court finds as follows:

1. Plaintiff operates a 60-unit income-based public housing development known as Johnny Appleseed.
2. Defendant took tenancy of the Premises in 2007. He reports his age as 65.
3. In recent years, Defendant has suffered from significant medical conditions

_____.

¹ TPP has only recently opened a case with Defendant.

4. Defendant refuses to allow representatives of Plaintiff enter the Premises for any reason. He provided no rational basis for his refusal.
5. Plaintiff suspended inspections in 2020 and 2021, and thus has not inspected the Premises for several years. It is obligated to conduct annual inspections, do preventative maintenance and make repairs pursuant to HUD requirements.
6. Defendant has a broken window that requires repair.
7. Defendant must have his hard-wired smoke detectors inspected and possibly replaced, but has refused access to the vendor Plaintiff uses for this purpose.
8. Defendant smokes cigarettes in the Premises.
9. The property complex where Defendant resides has a no-smoking policy.
10. Plaintiff requested an emergency order that Defendant allow it access to the Premises. See 22H79CV000392. On June 8, 2022, the Court ordered Defendant to allow Plaintiff's staff to make repairs, including of the broken window. The Court also ordered that he cease smoking on the property and made a referral to TPP.
11. Plaintiff filed a complaint for contempt when Defendant failed to comply with the Court's order. After a hearing on June 30, 2022, at which time Defendant was represented by counsel appearing on a limited assistance basis, the Court allowed Defendant another chance to comply. Defendant also failed to comply with the contempt order.

12. Plaintiff is willing to forego a move-out if Defendant would comply with the lease and allow it to enter the Premises upon 24 hours' advance notice for inspections and repairs.

The Court finds that Plaintiff has satisfied its burden of proof that Defendant is in material breach of his lease by refusing access for repairs and by smoking in the Premises. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]² the Court is concerned about the safety and well-being of Defendant and other tenants. In light of the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff. Execution shall issue only upon motion.
2. Defendant shall cooperate with TPP to coordinate with management for inspections and repairs in his unit. He shall also accept any recommendations TPP may have about smoking.

3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

² [REDACTED]

[REDACTED]

4. The case shall be scheduled for an in-person review and possible issuance of the execution on December 1, 2022 at 9:00 a.m.

SO ORDERED.

DATE: 11/3/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: TPP of Pioneer Valley
Court Clinic
Court Reporter

Court must consider “the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389. The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. See *Heller*, 376 Mass. at 629.

With respect to Counsel’s hourly rate, Attorney Ordorica petitions for an hourly rate of \$200.00. A judge may discern, from his own experience as a judge and expertise as a lawyer, the rate for which an attorney should be paid. *Heller*, 376 Mass. at 629. Based on the undersigned’s background and experience, the Court deems the rate of \$200.00 to be reasonable given the market value for legal services in Housing Court matters in Western Massachusetts.¹

The petition seeks compensation for 73.3 hours of work. In this matter, Plaintiff prevailed on her claims for breach of the implied warranty of habitability with respect to lack of heat and water intrusion, as well as breach of the covenant of quiet enjoyment based on the conditions and her claim under G.L. c. 93A. She did not prevail on her claim for retaliation, nor for breach of warranty relating to failure to furnish heat or cross-metering. Typically, counsel’s time spent litigating unsuccessful claims should be excluded from the calculation of an attorneys’ fees award.

¹ Defendant contends that the fee petition did not disclose that the representation of Plaintiff was through a government-funded referral program with its own compensation. Although that may be true, there is no exception to the fee-shifting statutes in the landlord-tenant context in such circumstances. See *Darmetko v. Boston Housing Authority*, 378 Mass. 758, 763-764 (1979).

Moreover, Defendant argues that the hours Plaintiff's counsel expended in this matter are excessive because, among other reasons, the claims were "garden variety" and the number of hours devoted to trial preparation are unwarranted.

After taking into account all of the relevant circumstances, the Court rules that, despite the multiple continuances of trial, Attorney Ordorica trial preparation hours should be reduced by 10. The Court further reduces the number of hours by 20% to account for unsuccessful claims. The result is 50.6 hours at a rate of \$200.00 per hour for a total ward of \$10,128.00. The award of attorneys' fees is without interest. *See Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

In light of the foregoing, final judgment shall enter for Plaintiff in the amount of \$6,732.00 in damages and \$10,128.00 in attorneys' fees.²

SO ORDERED.

DATE: 11/4/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter ✓

² Plaintiff did not petition for costs.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2629

ABEL FERNANDES,

Plaintiff,

v.

RANDI YOUNG,

Defendant.

ORDER

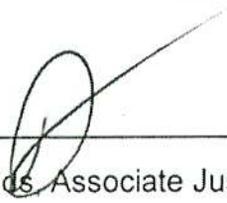
This matter came before the court November 4, 2022, for trial at which both parties appeared without counsel and the following order for judgment shall enter:

1. For the reasons more spelled out on the record by the judge, judgment shall enter for the tenant as the landlord's basis for this *cause* eviction.
2. The landlord's case is based on allegations that the tenant illegally re-entered the premises after supposedly relinquishing possession in September 2021. The

landlord, however, waived such a basis for eviction by acceptance of many months of intervening rent.

3. Accordingly, judgment for possession shall enter for the tenant.

So entered this 4th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0638

HOLYOKE HIGH REALTY CORP.,)

PLAINTIFF)

v.)

JOSE RODRIGUEZ,)

DEFENDANT)

ORDER ON DEFENDANT'S
MOTION TO DISMISS

This case brought pursuant to G.L. c. 139, § 19 came before the Court in-person on November 3, 2022 on Defendant's motion to dismiss. Both parties appeared through counsel. Plaintiff seeks to recover possession of Defendant's apartment, #204, located within a multi-family apartment complex at 164 High Street, Holyoke, Massachusetts (the "Property").

G.L. c. 139, § 19 ("Section 19") permits a lessor to "annul and make void the lease" if (in relevant part) "a tenant or household member of a housing authority or federal or state assisted housing commits an act or acts which would constitute a crime involving the use or threatened use of force or violence against the person of an employee of the housing authority or of state or federally assisted housing or against any person while such person is legally present on the premises of a housing authority or on the premises of federal or state assisted housing." Section 19 is a powerful private remedy in the nature of an eviction that permits a landlord, in certain limited circumstances, to recover possession of an apartment in an expeditious fashion.

Glendale Assoc. v. Harris, 97 Mass. App. Ct. 454, 464 (2020); see also *New Bedford Housing Auth. v. Olan*, 435 Mass. 364, 368 (2001).

Defendant contends that Section 19 cannot be used by Plaintiff because he does not reside in housing that is state or federally assisted¹ and, therefore, the complaint must be dismissed for failure to state a claim upon which relief can be granted. Plaintiff argues that because the complaint alleges that Defendant's rent is subsidized pursuant to the Section 8 Mobile Housing Choice Program, Plaintiff is "state or federally assisted housing" for purposes of Section 19 and, therefore, the motion to dismiss should be denied.

The question presented in a motion to dismiss is whether the allegations in the complaint plausibly suggest an entitlement to relief. See *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). See also *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995) ("[w]e take as true 'the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff's favor..."). In its complaint, Plaintiff alleges that it owns the Property, but is silent as to whether the Property receives any direct state or federal assistance. The only reference to state or federal assistance is the allegation that Defendant "receives Section 8 Tenant Based Assistance, pursuant to Section 8 of the U.S. Housing Act of 1937, administered by Holyoke Housing." Complaint, ¶ 5 and ¶ 20.

The Court rules that Defendant's possession of a mobile Section 8 housing voucher does not establish the Property as "the premises of federal or state assisted housing." A

¹ There is no question that Plaintiff is not a housing authority.

mobile voucher is administered by a local public housing agency and subsidizes the tenant's rent wherever that tenant resides. The Court is persuaded by the reasoning in the Housing Court decisions attached to Defendant's memorandum in support of its motion to dismiss, in particular paragraphs numbered 6 through 9 of the case attached as Appendix D, *Gordon H. Mansfield Veterans Cooperative Corp. v. Miller*, Western Housing Court, No. 21-CV-0024 (October 29, 2021)(Fields, J.), in which the court examines the legislative history of the relevant language in Section 19. The decision provides a compelling basis to conclude that the phrase "federal or state assisted housing" used in Section 19 is intended to include multi-family housing that receives the benefit of subsidy in the form of project-based Section 8 assistance or that are owned or held by HUD as mortgagee-in-possession, not any private housing where a tenant with a mobile voucher resides.²

For the reasons stated herein, Count I and Count III of the complaint are hereby dismissed. Count II is dismissed to the extent that it seeks relief under G.L. c. 139, § 19. Based on the verified facts alleged in the complaint, however, the Court rules that Plaintiff is entitled to injunctive relief of a different sort. The Court is convinced that failure to issue an injunction in this case would subject Plaintiff to a substantial risk of irreparable harm that outweighs the risk of irreparable harm to Defendant if the injunction is granted. Therefore, the following order shall enter as a preliminary injunction:

² By Plaintiff's reasoning, the Property is considered "federal or state assisted housing" if it has one resident with a mobile housing voucher, but it is no longer considered "federal or state assisted housing" if that one resident moves out. The Court finds it illogical that Section 19 is so conditional.

1. Defendant shall not visit the management office in person and shall have no contact with any members of management or maintenance at the Property.
2. Defendant shall mail (as opposed to hand delivering) his rent, and all contact with management or maintenance shall be by phone or through counsel.
3. Defendant stated no repairs are needed in his unit at this time, but if repairs become necessary, Defendant must leave the Property while any repairs are being made in his unit.
4. This preliminary injunction shall remain in effect for twelve months or until further order of this Court.

SO ORDERED.

DATE: 11/4/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

HOMESAVERS COUNCIL OF
GREENFIELD GARDENS, INC.,

Plaintiff,

v.

DOCKET NO. 22CV00702

ROBERT BLAKE,

Defendant.

ORDER

This matter came before the court on November 4, 2022 for a hearing on the plaintiff-landlord's emergency motion for removal of a moped from the subject rental premises. The plaintiff appeared through its attorney. The defendant-tenant appeared and was self-represented. The hearing was conducted via Zoom.

The parties entered into an Agreement in this case on October 21, 2022 with the assistance of the Housing Specialist Department.¹ One of the terms of the Agreement was that the landlord could change the locks to Mr. Blake's apartment located at 31 Pray Drive #2-01 in Greenfield, Massachusetts on October 25, 2022. When the landlord did so, the workers noticed a moped inside the apartment. The landlord is concerned that the moped and any fuel stored in it is a fire and safety hazard. On the record of the Zoom hearing today, the parties agreed to the removal of the moped from the apartment.²

¹ Also on October 21, 2022, the parties entered into an Agreement in a related eviction case in this court, no. 22SP02701. By the terms of both agreements, Mr. Blake will not be returning to the premises, even if he is released from custody.

² The court notes that the parties were prepared to enter into a written Agreement on these terms, but the limitations of the conferencing equipment in the lock-up area prevented them from doing so. The parties agreed on the record that these terms would enter as an order of the court.

By assent of the parties the following Orders will enter:

1. The landlord will remove the moped from the premises forthwith.
2. The landlord will store the moped on the property in a maintenance area for a reasonable period of time.
3. If it becomes impossible for the landlord to store the moped on the property in a maintenance area, it may dispose of the moped as it sees fit.

In addition, the court enters the following orders:

4. A reasonable period of time for the landlord to store the moped on the property will expire when the execution is issued by the court if one is requested by the landlord in eviction case no. 22SP02701.
5. The defendant may have his authorized agent remove the moped from the property by giving written notice to the landlord of the name of the person who will retrieve the moped and the day and time the authorized person will do so.
6. If the landlord must dispose of the moped, it will give the defendant prior seventy-two hour notice that it intends to do so.

The \$90 injunctive relief fee pursuant to G.L. c. 262 §4 is waived by the court.

4 November 2022

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

answer to counterclaims that is objectionable or beyond the typical denials of a party's claims. To the extent Defendant is concerned that the statements about her failing to pay rent (which she denies) could inhibit her search for housing, the Court will address the concern by striking it from the record. In light of the foregoing, the following order shall enter:

1. Defendant's motions to amend the Agreement, reopen the case or otherwise obtain relief from judgment are denied.
2. Judgment for possession only shall enter in favor of Plaintiff.²
3. The execution (eviction order) shall issue by application after expiration of the ten-day appeal period.
4. Use of the execution is stayed through November 30, 2022.
5. Plaintiff's answer to Defendant's counterclaims entered on the docket on June 3, 2022 shall be stricken from the record of this case.
6. Plaintiff shall provide a neutral reference including dates of tenancy, amount of monthly rent and the amount of unpaid rent, which at this time should be \$0.00 pending any further Court order for use and occupancy.

SO ORDERED.

DATE: 11/4/22

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

cc: Court Reporter

² By the terms of the agreement, all use and occupancy was waived through October 1, 2022. If Plaintiff seeks use and occupancy after October 1, 2022, he may file and serve a motion to amend the judgment, which will be scheduled for hearing.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-694

TALAJA SMITH,

Plaintiff,

v.

TROUNG NYGUYEN,

Defendant.

ORDER

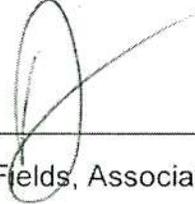
After hearing on October 27, 2022, at which both parties appeared without counsel, the following order shall enter:

1. The defendant landlord shall continue to have Orkin exterminate the entire building on a regular basis until the infestation of mice and/or cockroaches is eradicated.
2. The landlord shall reach out to Orkin immediately and inquire as to whether there are specific recommendations as to actions that can be taken to improve Orkin's

chances of eliminating the infestation. As one example, the plaintiff tenant asserted that Orkin informed her that there is some tape that can be removed in the third-floor unit. The landlord shall also follow Orkin's recommendations on this and other ways to reduce the infestation including an increase in frequency of treatments (if that is recommended).

3. This matter shall remain open for six months from the date of this order noted below. During that time, either party may appear after properly filing and serving a motion to be heard which contains a description of what is being sought by the party.

So entered this 4th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1446

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

NATAE TYLER,

Defendant.

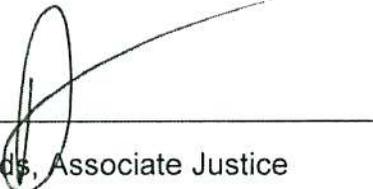
ORDER

After hearing on September 14, 2022, on the defendant tenant's motion to vacate the default entered after the tenant failed to appear at the July 12, 2022, the following shall enter:

1. For the reasons stated at length by the judge at the end of the hearing, the default entered on July 13, 2022, against the tenant shall be vacated and the plaintiff is instructed to return the execution to the court.

2. This matter shall be scheduled for a Case Management Conference by Zoom with the judge as noted below. The undersigned judge had ruled from the bench that the matter was to be return for scheduling of a Tier 1 event, but the court has changed its policy and matters in this posture will be scheduled for a Case Management Conference (instead of a Tier 1 event).
3. As was discussed by the parties, the tenant has leave to file an Answer and Discovery Demand up to three days prior to the Case Management Conference.
4. This matter shall be scheduled for a Case Management Conference on **December 2, 2022, at 3:00 p.m. by Zoom.** The court's Zoom platform can be reached with Meeting ID: 161 638 3742 and Password: 1234.

So entered this 7th day of November, 2022.



Robert Fields, Associate Justice

CC: Paul Schack, Esq. (LAR Counsel)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

CARABETTA MANAGEMENT COMPANY,

Plaintiff,

-v.-

DOCKET NO. 22-SP-00548

MYRNA ROBLES,

Defendant.

ORDER

This matter came before the court on November 4, 2022 for hearing on the plaintiff's motion to issue the execution and for relief from the stay of the execution. The plaintiff-landlord appeared through its attorney, together with property manager Tiffany Cross. The defendant-tenant appeared with her attorney.

In this case, the landlord seeks possession of the subject rental premises located at 193 Worthington Street #205 in Springfield, Massachusetts based on allegations of cause. The apartment is part of a ninety-one unit building which provides subsidized housing for elders and people with disabilities. On August 26, 2022 the attorneys for both parties filed an Agreement with the court. Paragraph 1 of the Agreement provides that execution would be stayed pending the tenant's compliance with paragraph 2.¹ In paragraph 2 the tenant agreed to work with her son, Ismael Garcia, to have him move out of the apartment by September 30, 2022 and to have him stay out of the premises for a period of twelve months. Mr. Garcia was an unauthorized occupant of the premises. Ms. Robles had applied to have him be her live-in aide in late 2021,

¹ A default Judgment against the defendant entered on April 25, 2022. On August 8, 2022 she filed motions to remove the default and to stay the execution. Counsel filed the Agreement at issue here on the day the motions were scheduled to be heard. Paragraph 6 of the Agreement provides that the default Judgment would be removed and the case dismissed on February 28, 2023 if no motions had been filed alleging a violation of the Agreement.

but the landlord denied the request based on concerns that Mr. Garcia had been involved in observed drug transactions in the building.

The landlord filed this motion alleging a violation of paragraph 2 of the Agreement on the grounds that Mr. Garcia was observed via closed circuit television at the premises on October 7, 2022. Ms. Robles conceded that she had allowed her son to be in her apartment that day to take a shower. However, her attorney argued that it was not a material breach of the Agreement. The court disagrees. A violation so soon after the parties entered into the Agreement is not to be taken lightly.

The concern regarding the breach of the Agreement must be tempered by considerations of the tenant's disability and the efforts of her attorney to address the underlying issues. Ms. Robles is represented by JRI Health Law Institute, which addresses both the medical and legal issues of its clients. Since the program began representing Ms. Robles in August 2022, she has received supportive services and is being assisted to find alternative housing. Counsel has reached out to the Tenancy Preservation Program (TPP). The court finds that although the tenant's action on October 7, 2022 was a material violation of the Agreement, execution should not issue at this time based on the continuing efforts to address her disability issues to bring her into compliance with the terms of her tenancy and the August 26, 2022 Agreement.

Ms. Robles' testimony shows that she is concerned that her forty-four year old son Ismael Garcia is not with her. She expressed concerns about the upcoming holidays. She reported that her son had problems, but now is "doing fine". Her attorney argued that she needs a personal care attendant because of her deteriorating health conditions and that Ms. Robles does not trust other people. Even if all of that is correct, the reality is that Mr. Garcia cannot be his mother's live-in aide at this time. Ms. Robles is urged to work with her attorney and the supportive services that are being put into place to focus on how she can maintain her current subsidized tenancy until she is able to find alternative housing.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion to issue the execution and for relief from the stay of the execution is **DENIED** at this time. The plaintiff may renew its motion if there is a further material breach of the Agreement.

2. The case is referred to the Tenancy Preservation Program (TPP) to determine what further supportive services TPP can provide for Ms. Robles to supplement the services provided through JRI Health Law Institute.
3. All terms of the parties' August 26, 2022 Agreement remain in full force and effect.

7 November 2022

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec)

ML.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

HIGHLAND WARE ASSOCIATES, LP,

Plaintiff,

v.

DOCKET NO. 22CV00794

JENNIFER BROWN,

Defendant.

ORDER

This matter came before the court on November 4, 2022 for a hearing on the plaintiff's request for injunctive relief. The plaintiff-landlord appeared through its attorney. The defendant-tenant did not appear.

The defendant is a tenant of the plaintiff at 26D Highland Village in Ware, Massachusetts. The occupancy agreement governing the subsidized tenancy requires the tenant to complete a recertification process annually and to maintain and pay for the electricity in her apartment. Ms. Brown failed to recertify in October as she was required to do. Her failure to recertify will lead to disqualification for the subsidy and a substantial increase in her rent to market rate. Based on past recertifications, the landlord is concerned that Ms. Brown would not be able to pay market rent for the apartment. Furthermore, the landlord has learned that Ms. Brown does not have electric service in her apartment. This has led to concerns about food spoilage and unsanitary conditions in the apartment which will ultimately affect other apartments and residents.

The landlord seeks an order that Ms. Brown complete the recertification process and restore the electric service to her apartment. Ms. Brown has been a tenant at the premises for several years. The landlord does not wish to evict her at this time, but instead wants the tenant to communicate with the management about any issues she has with complying with her occupancy

agreement and to work to resolve those issues. At the landlord's request, the court will refer this case to the Tenancy Preservation Program (TPP) to determine if Ms. Brown's recent violations of her occupancy agreement are related to a disability and if there are steps which can be taken so that Ms. Brown can come into compliance with her occupancy agreement and preserve her subsidized tenancy.

The court finds that the landlord's concerns are legitimate and that it is likely the landlord would prevail on the merits. Furthermore, the court finds that the tenant would benefit from compliance. Therefore, without opposition, the plaintiff's motion for injunctive relief is **ALLOWED** as follows:

1. The defendant will complete her recertification process for her rent subsidy immediately.
2. The defendant will restore and maintain the electric service to her apartment immediately. If she is having financial difficulty paying her electric bill, she is urged to call the housing specialist department at the court for referrals to agencies which could assist her financially.
3. The case is referred to the Tenancy Preservation Program (TPP). A TPP clinician is asked to contact Ms. Brown immediately to determine if there is a disability which is impacting her ability to comply with her occupancy agreement and, if so, to work with her to design a plan to address and resolve the issues.
4. The plaintiff will have a copy of this order served on the defendant forthwith.

The \$90 injunctive relief fee pursuant to G.L. c. 262 §4 is waived by the court.

November 7, 2022

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CC: TPP

3. Defendant must repair the back door to the Property on or before November 7, 2022. If the back door has not been repaired by this date, beginning November 8, 2022, Defendant shall pay Plaintiff \$100.00 each day as a penalty. Defendant shall document the repair to the door by photograph or video in the event a dispute arises as to whether and when the repair was made.
4. Defendant must have a licensed exterminator begin treatment for rodents throughout the Property no later than November 11, 2022.
5. No further hearings shall be scheduled at this time. Plaintiff may file a motion for further relief if necessary.

SO ORDERED.

DATE: 11/7/22

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

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

PIONEER CO-OP OF FRANKLIN COUNTY,

Plaintiff,

v.

PRINCESS RAMIREZ,

Defendant.

ORDER FOR ENTRY OF
JUDGMENT FOR LANDLORD

After hearing on September 23, 2022, on the plaintiff landlord's motion for entry of judgment and issuance of the execution, the following order shall enter:

1. **Relevant Procedural History:** The parties entered into an Agreement on May 27, 2022, which established protocols under which the tenant could remain at the premises until moving out at some point no later than December 1, 2022. One of the terms regarded the tenant's brother's (Oscar Ramirez) presence at the premises. More specifically, paragraph #4 of the Agreement stated:

Oscar Ramirez will be allowed on the property only for purposes of picking up the tenant, dropping off the tenant, and assisting the tenant in carrying items to her apartment. Mr. Ramirez will not stay at the property for more than 20 minutes in these instances.

2. Paragraph 9 of the Agreement stated:

Oscar Ramirez will be allowed to be at the property in order to clean up any oil spills caused by tenant or their guests.

3. Paragraph 11 of the Agreement stated:

Oscar Ramirez will not store/garage his vehicle at the property.

4. **Discussion:** It is clear from the evidence admitted at the hearing, and also admitted by the tenant, that Mr. Ramirez has been at the premises in violation of the terms noted above.
5. Moreover, his presence at the property was frequent enough and for long enough periods of time (and on many occasions) that the court finds and so rules that the defendant tenant's violations of the Agreement are material and substantial.
6. **Conclusion and Order:** Based on the foregoing, judgment for possession shall enter for the plaintiff landlord and against the defendant tenant. The execution shall issue in due course after the appeal period and upon the filing *and service* of a Rule 13 Application.

So entered this 7th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-984

PYNCHON TOWNHOMES,

Plaintiff,

v.

ANGELICA ROMAN,

Defendant.

ORDER

After hearing on October 19, 2022, on the defendant tenant's motion to stay the execution, the following order shall enter:

1. The parties agree that the total amount of outstanding use and occupancy through October 31, 2022, is \$6,643.54 plus \$125 in costs for the service of the 48-hour notice, bringing the total outstanding balance to \$6,768.54.
2. The tenant's motion is allowed contingent upon her compliance with the following payment terms.

3. The tenant shall pay \$376.03 per month in addition to her monthly rent until the arrearage is paid in full. This represents the total arrearage divided by 18 months (which is the tenant's requested time period).¹
4. Additionally, the tenant shall pay half of her 2022 Tax Returns after receipt of same towards the arrearage.

So entered this 7th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

¹ The court makes this ruling after landlord did not provide a sufficient basis for wanting the payment plan to be 12 months and not 18 months and given the tenant's inability to make payments at any higher rate than is provided herein, and also given the possibility of a loss of an MRVP subsidy.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2409

_____)	
JOSEPH BLANKS,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
SELENA HILL,)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court on November 3, 2022 for an in-person bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of a residential unit (a manufactured home) located at 93 Grochmal Avenue, Lot 66, Indian Orchard, Massachusetts (the "Premises").

Plaintiff testified that he purchased the Premises for \$73,000.00 in 2016 and produced a bill of sale and settlement statement reflecting the transaction. Plaintiff filed the notice to quit used to terminate the tenancy as part of the entry package when he filed this case in District Court.¹ The notice to quit was served on Defendant on April 25, 2022 and terminated the tenancy as of June 1, 2022. Defendant did not challenge the sufficiency or service of the notice to quit. She continues to reside in

¹ Defendant transferred the action to Housing Court on July 15, 2022.

the Premises. Accordingly, the Court finds that Plaintiff established his prima facie case for possession.

Defendant's defense to the Plaintiff's claim for possession is that she is the actual owner of the Premises. She believes that Plaintiff purchased the Premises for her. She pays all of the bills related to the Premises, but for the monthly lot fees, which are paid by Plaintiff. She contends that Plaintiff gave her the Premises in part because she was the caretaker of Plaintiff's niece and in part because he filed charges against her in the past that caused her to have a criminal record, compromising her chances of finding housing. She believes that the only reason he now wants to evict is because he had a fight with her daughter.

The Court infers from the evidence that much of what Defendant claims is true. The Court finds that Plaintiff did, in fact, purchase the Premises to provide a place for Defendant to live. However, the Court does not find that Plaintiff sold, gifted or otherwise conveyed the Premises to Defendant. There is no documentation to support her claim that she owns the Premises.² Pursuant to G.L. c. 259, § 1, "a contract of the sale of lands, tenements or hereditaments or of any interest in or concerning them" must be in writing in order to be enforceable. The manufactured home at issue here constitutes a tenement, even though it is technically moveable. For all practical purposes, however, the home is not mobile. See *The Attorney*

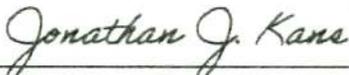
² Pursuant to G.L. c. 259, § 1, "a contract of the sale of lands, tenements or hereditaments or of any interest in or concerning them" must be in writing in order to be enforceable. The manufactured home at issue here qualifies as a tenement, even though it is technically moveable. For all practical purposes, however, the home is not mobile. See *The Attorney General's Guide to Manufactured Housing Community Law*, pp. 1-2 (Nov. 2017) ("Once placed on a lot, a manufactured home is essentially immobile [and] as a result, it is usually very difficult, if not impossible, to sell a manufactured home if it is not on a lot").

General's Guide to Manufactured Housing Community Law, pp. 1-2 (Nov. 2017)
("Once placed on a lot, a manufactured home is essentially immobile [and] as a result, it is usually very difficult, if not impossible, to sell a manufactured home if it is not on a lot"). Even if the statute of frauds does not apply to the purchase of this manufactured home, the Court finds, based on the totality of the evidence, that Plaintiff has been the owner of the Premises at all times from 2016 to the present.

Although the Court rules that Plaintiff is entitled to entry of judgment for possession, in no-fault eviction cases, the Court has discretion to stay entry of judgment and issuance of execution pursuant to G.L. c. 239, §§ 9-11. In this case, Defendant testified that he is disabled, which may entitle her to a stay of up to twelve months from June 1, 2022, the date the tenancy was terminated. If Defendant seeks a statutory stay, she may file a motion asking for same. In order to allow time for Defendant to file a motion pursuant to G.L. c. 239, § 9, the Court hereby stays entry of judgment until November 30, 2022. If Defendant has not filed a motion for stay by that date, judgment for possession will enter in favor of Plaintiff on December 1, 2022. If a motion for stay is pending as of November 30, 2022, the stay shall remain in effect until the hearing on Defendant's motion.

SO ORDERED.

DATE: 11/8/22


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 179

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS LP (owner),
BEZAIDA CORREA (tenant), and
ANTONIO MATOS (tenant)

Defendants

Re: Premises: 34 Salem Street, Springfield, Massachusetts

ORDER

(Hampden County Registry of Deeds Book/Page: #23038/217)

After a hearing on November 4, 2022, for which a representative of the Plaintiff appeared, Defendant SPRINGFIELD GARDENS LP appeared by counsel Richard Herbert, Defendant BEZAIDA CORREA appeared and Defendant ANTONIO MATOS appeared, the following order is to enter:

1. Defendants ANTONIO MATOS and BEZAIDA CORREA and their respective household members must vacate the above said premises, FORTHWITH, and not re-occupy until such time as the condemnation has lifted or by leave of Court.
2. Defendant SPRINGFIELD GARDENS LP shall provide alternative housing for Defendants ANTONIO MATOS and BEZAIDA CORREA and their respective household members at the above property until such time as the condemnation has lifted or by leave of Court.
 - a. Defendant SPRINGFIELD GARDENS LP has returned \$985.00 of rent previously paid by ANTONIO MATOS and BEZAIDA CORREA to ANTONIO MATOS and BEZAIDA CORREA.
 - b. If alternative housing provided by SPRINGFIELD GARDENS LP does not include kitchen/cooking facilities, ANTONIO MATOS and BEZAIDA CORREA can use the \$985.00 of returned rent to pay for food in lieu of a food stipend through November 25, 2022. After November 25, 2022, Defendant SPRINGFIELD GARDENS LP shall provide ANTONIO MATOS and BEZAIDA CORREA with a \$75.00 per day food stipend in the event they are still being alternatively housed.

3. This matter shall be up for review with the Court on November 18, 2022 at 9:00 a.m.
Failure of the Defendants to appear on said date may result in the issuance of a capias for their arrest or the filing of a complaint for contempt.

So entered this 8th day of NOV, 2022.

Jonathan J. Kane
Jonathan J. Kane, First Justice
Western Division Housing Court

the amount of the judgment; namely \$11,163.78.¹ The bond shall also be conditioned to pay Plaintiff all use and occupancy that has accrued since trial, as well as monthly installment payments for his use and occupation of the Premises for the duration of the appeal.

In determining the amount of use and occupancy, the Court considers the monthly rent (\$850.00) and any reasons that the amount of use and occupancy should vary from the previously agreed-upon rental amount. Because at trial, the Court found that Plaintiff's elimination of access to the vestibule to the building where Defendant's doorbell is located was a serious interference with Defendant's tenancy that impaired the character and value of the Premises, the Court shall set use and occupancy at the rate of \$700.00 per month until Plaintiff finds a way to restore visitors' access to a doorbell to Defendant's unit.²

Based on the figure of \$700.00 per month, Defendant must pay Plaintiff for his use and occupation of the Premises for September 2022 (the first month post-trial), October 2022 and November 2022, in the aggregate amount of \$2,100.00. This payment must be made no later than November 18, 2022. Beginning in December 2022 and continuing for the duration of the appeal, Defendant shall pay to Plaintiff \$700.00 per month by the 5th of each month.

Within fourteen days, Defendant must request the audio recordings of the

¹ Defendant did not move to waive the bond based on indigency.

² If Plaintiff provides a doorbell or other method for visitors to alert Defendant to their presence, Plaintiff may move to amend the amount of use and occupancy.

relevant proceedings and must then order a transcription of those proceedings.³ If Defendant fails to make the required payments or timely prosecute his appeal, Plaintiff may file a motion in this Court to dismiss the appeal.

SO ORDERED.

DATE: 11/8/22

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

cc: Court Reporter

³ The Court is extending the standard deadline of 14 days following filing the notice of appeal given that Defendant is self-represented and because the hearing on the appeal bond was significantly delayed.

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

SO ORDERED.

DATE: 11.9.22



Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 18-SP-4846

FANNIE MAE,

Plaintiff,

v.

MICHAEL J. MARTOWSKI, et al.,

Defendants.

ORDER

After hearing on September 14, 2022, on the plaintiff's motion for summary judgment, the following order shall enter:

1. The motion is allowed and shall be the basis for Judgment entering for the plaintiff for possession based on the finding that the plaintiff has met its burden of proof on its *prima facie* case and on the doctrine of *res judicata* in accordance with the Superior Court ruling that the defendant is not the owner of the property.

2. Given that the plaintiff also has a claim for use and occupancy, final judgment shall not yet enter, and this matter shall be scheduled for case management with the Clerk's Office to establish if the plaintiff continues to seek that claim for use and occupancy and, if so, the scheduling of a hearing on that matter.
3. Should the plaintiff dismiss its claim for use and occupancy and file same with court (and upon service to the defendant), final judgment awarding possession to the plaintiff may enter without further hearing.

So entered this 9th day of November, 2022.



Robert Fields, Associate Justice

CC: Michael Doherty
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2375

JANET L. MORGAN,

Plaintiff,

v.

AMY and CAROL PLOURD,

Defendants.

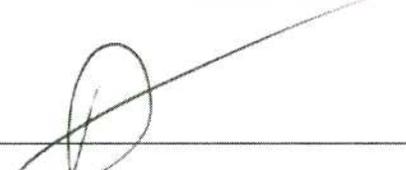
ORDER

After hearing on November 3, 2022, on review of this matter in accordance with G.L. c.239, s.9, at which all the parties appeared without counsel, the following order shall enter:

1. The defendant tenants may not reside at the premises until they have oil put into their heating system and restore heat to the premises.
2. They are prohibited from using space heaters as the sole means for heating their apartment.

3. The tenants shall pay their monthly rent by paying \$325 today and for four consecutive weeks each month while they are possession of the unit.
4. The stay on the entry of judgment imposed in accordance with G.L. c.239, s.9, shall be lifted after March 1, 2023. Thus, if the tenants pay their monthly rent going forward and maintain sufficient oil in the heating system so as to support heat in the dwelling at all times, they have until March 1, 2023, to vacate the premises. They may, of course, vacate at any time beforehand should they be able to secure alternate housing accommodations.

So entered this 9th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0767

SPRINGFIELD GARDENS 12-20, LP,)

PLAINTIFF)

v.)

SUSAN GORMAN,)

DEFENDANT)

ORDER FOR ACCESS

This matter came before the Court on November 8, 2022 on Plaintiff's motion for an emergency order. Defendant failed to appear after notice.

After hearing, the following order will enter:

1. Ms. Gorman shall allow Plaintiff's representatives access to her unit upon 24 hours' advance written notice for inspection and repairs.
2. Ms. Gorman shall not interfere or obstruct any inspection or repairs of her unit.
3. Plaintiff shall use licensed contractors for work that requires it (for example, plumbing and electricity). Work that does not need licensed contractors (for example, general carpentry) can be performed by Plaintiff's maintenance staff or third party contractors. Ms. Gorman may not dictate who can perform the work; if she believes the work is not being done properly, she may contact the City's Code Enforcement Department or file a motion with the Court.

SO ORDERED.

DATE: 11.9.22


Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-CV-222

GINA TYK,

Plaintiff,

v.

GREGORY HILL and MICHELLE HILL,

Defendants.

ORDER

After hearing on October 28, 2022, on motion to withdraw filed by the plaintiff's attorney, the following order shall enter¹:

1. Plaintiff's counsel is seeking withdrawal of his representation based on a "breakdown of the attorney-client relationship".
2. The defendants oppose the motion and seek for the judge to use his discretion to deny it and require plaintiff's counsel to remain in the case through the jury trial now scheduled for March 6 and 7, 2023.

¹ Counsel for the parties both attended, as well as defendant Michelle Hill. The plaintiff, Gina Tyk, did not appear after notice was given to her by her attorney by "in-person delivery by [counsel's] agent to her last and usual address, electronic mail, and U.S. Regular Mail."

3. Plaintiff's counsel asserts that any greater detail for his reasons for having to withdraw should be heard by the judge *ex parte*.
4. After consultation with the Rules of Professional Conduct, which give guidance as to what circumstances an attorney may disclose confidential information to a court and perhaps a mechanism for a judge to hear same *ex parte*, the court has determined that it need not engage those rules and protocols as the motion shall be allowed on its face.
5. Though the court can appreciate the bases asserted by the defendants in their opposition to the motion and their urging that the court use its discretion to deny the motion, it is the court's determination that the moving attorney is in good standing in this court and his assertion that there is an irretrievable breakdown in his relationship with his client, in addition to the fact that the trial is not scheduled for another four months, is sufficient for the motion to be granted in this instance.
6. Accordingly, the motion to withdraw is allowed and, until subsequent counsel files an appearance, the plaintiff shall proceed *pro se*.
7. A Case Management Conference with the judge shall be scheduled for **November 30, 2022, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 9th day of November, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0600

VERONA GILL AND ROBERTO GRANT,)

PLAINTIFFS)

v.)

SPRINGFIELD GARDENS,)

DEFENDANT)

ORDER

This matter came before the Court for review on November 10, 2022. Plaintiffs appeared self-represented. Defendant appeared through counsel. The property in question is located at 116 Spring Street, Springfield, Massachusetts (the "Property").

After hearing, the following order will enter:

1. Defendant's obligation to provide alternative housing is terminated.
2. Defendant's agent shall meet with Plaintiffs at the Property forthwith to provide Plaintiffs with a working key to the rear door.
3. Defendant shall complete all repairs in Plaintiffs' unit forthwith and in a workmanlike manner. To that end, Defendant's agents shall have access to Plaintiffs' unit, Apt. 1D, on November 11, 2022 at 9:00 a.m. to complete the repairs regarding electrical outlets and wiring. Plaintiffs have agreed to provide access at this time.
4. Defendants shall provide Plaintiffs with an air purifier for use in their unit. The air purifier need not be any particular brand or model, so long as it has a capacity (measured by square footage) appropriate for the unit.

SO ORDERED.

DATE: 11/10/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0879

STAN GRINTER,

)

)

PLAINTIFF

)

v.

)

ORDER DISMISSING APPEAL AND
ORDER FOR ISSUANCE OF EXECUTION
WITH STAY ON USE

)

JOSEPH SAVAGEAU AND
JENNIFER HOLMES,

)

)

DEFENDANTS

)

)

This case came before the Court on November 9, 2022 for a hearing on Plaintiff's motion to dismiss the appeal. Plaintiff was represented by counsel. Defendants appeared self-represented.

By way of background, judgment entered in Plaintiff's favor on August 26, 2022. Defendants filed a notice of appeal on August 30, 2022. The Court scheduled a motion to set or waive the appeal bond for September 22, 2022 and enclosed a form financial affidavit with instructions, and gave Defendants until September 19, 2022 to file and serve it on Plaintiff.

Defendants did not file or serve a financial affidavit prior to the September 22, 2022 hearing. Despite Defendants' failure to file the affidavit in advance, the Court allowed them to complete it at the hearing and accepted it as proof of indigency. Defendants never made a request to waive the appeal bond, but the Court allowed them to request a waiver orally in Court on the day of the hearing.

Moreover, although Defendants could not articulate a basis for their appeal in their notice of appeal or at the bond hearing, and over Plaintiff's objection, the Court found that Defendants had a non-frivolous defense.¹ The Court waived the appeal bond but ordered use and occupancy payments during the pendency of the appeal. Defendants have made the installment payments, but when Defendants failed to take any further steps to perfect the appeal, Plaintiff filed the instant motion to dismiss for Defendants' failure to either designate dates of the hearings requested for transcription or certify that no lower court proceedings were relevant to the appeal as required under Rule 8 of the Massachusetts Rules of Appellate Procedure.

The Court is very familiar with the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants approved by the Supreme Judicial Court in April, 2006, which instruct that "Judges shall apply the law without regard to the litigant's status as a self-represented party and shall neither favor nor penalize the litigant because that litigant is self-represented. Judicial Guidelines, § 1.4. The Court also acknowledges the oft-cited quote that "[w]hile judges must apply the law without regard to a litigant's status as a self-represented party, see *Mmoe v. Commonwealth*, 393 Mass. 617, 620 (1985) . . . , our courts have recognized that self-represented litigants must be provided the opportunity to meaningfully present claims and defenses. See *Morse v. Ortiz-Vazquez*, 99 Mass. App. Ct. 474, 479 (2021).

¹ Although after trial the Court found that Defendants stopped paying rent due to their financial struggles and not a sump pump failure five months earlier, and despite the fact that Defendants provided no evidence at trial to show that the sump pump failure substantially impaired the character or rental value of the premises, the Court inferred that Defendants were contesting the Court's findings and therefore concluded that they had a non-frivolous defense.

In light of the leniency often allowed for self-represented litigants, dismissal of the appeal may seem like a harsh consequence for failing to designate dates of minutes. In this case, however, Defendants have failed to take any of the required steps toward perfecting their appeal without the prompting of the Court, and nine weeks have now passed since they filed their notice of appeal. Based on the totality of the circumstances, the Court believes that Defendants' objective in filing the appeal is getting more time to move,² and their failure to take steps to move the appeal along is consistent with this goal.³ The Court has previously excused Defendants' failure to comply with the rules, but their continuing failure to take action to perfect their appeal is depriving Plaintiff of possession to the rental property he owns. Accordingly, after balancing the interests of the parties, the Court enters the following order:

1. The appeal is hereby dismissed.
2. The execution (eviction order) shall issue forthwith.
3. Because Defendants paid use and occupancy for November, 2022, use of the execution will be stayed through November 30, 2022.

SO ORDERED.

DATE: 11/10/22

Jonathan J. Kane
Jonathan J. Kane, First Justice

² At the hearing on the instant motion, Mr. Savageau stated that he and his co-defendant were trying to move but had yet to find another apartment.

³ Defendants did not provide a coherent reason why, after receiving Plaintiff's motion served on October 24, 2022, they did not contact the Court or take any other steps to understand what they needed to do to avoid dismissal of the appeal. The Court offers litigants a "Housing Appeals Guide" which provides the telephone number for the Appeals Court Clerk's Office (and a link to the "Virtual Appellate Clerk") and to the Court Service Center and the local legal services agency.

AR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-807

JOSE MAS and MARISOL VAZQUEZ,

Plaintiffs,

v.

JARMIN GARCIA COLON,

Defendant.

ORDER

After hearing on November 9, 2022, on the plaintiff tenants' motion for alternate accommodations as a result of the condemnation of their rental unit, at which all parties appeared without counsel, the following order shall enter:

1. The defendant landlord shall provide hotel accommodations beginning November 9, 2022, through November 15, 2022.

2. If said accommodations do not have cooking facilities, the landlord shall provide a daily food stipend of \$75 in advance of each day beginning November 10, 2022.
3. The tenants shall have access to the condemned unit but are not permitted to reside therein until the condemnation is lifted by the City.
4. This matter shall be scheduled for further hearing on **November 15, 2022, at 10:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 10th day of November, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2132

LYNETTE MORENO-PAGAN,

Plaintiff,

v.

CESAR RODRIGUEZ, KATHLEEN
RODRIGUEZ, ZAY RODRIGUEZ,

Defendants.

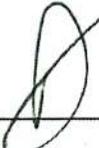
ORDER

After conducting a pretrial conference on November 4, 2022, at which all parties appeared through counsel, the following order shall enter:

1. The parties shall file a joint pretrial memorandum by no later than November 11, 2022.
2. The defendants shall respond to outstanding discovery by no later than November 11, 2022.

3. The defendants shall pay plaintiff's counsel \$100 in attorney's fees for the costs of her filing a motion to compel discovery by no later than November 11, 2022.
4. The parties shall file proposed jury instructions, proposed verdict form, proposed *voire dire* questions to be asked of the jury *venire*, and a joint proposed description of the case to be read to the jury *venire* by no later than February 1, 2023.
5. The parties have until February 1, 2023, to file and serve any motions *in limine* to be heard at the pretrial conference noted below.
6. This matter shall be schedule for another pretrial conference on February 10, 2023, at 9:00 a.m.
7. This matter is scheduled for two-day jury trial on February 27 and 28, 2023 beginning each day at 9:00 a.m. with a jury of six, by agreement, with no alternates. A Polish language interpreter is requested for the trial.

So entered this 10 day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-753

NIKITA PERKINS,

Plaintiff,

v.

JAMES PERRIN,

Defendant.

ORDER

After hearing on November 3, 2022, at which both parties appeared *pro se*, and at which the landlord, Felix Nunez, appeared though not a party, the following order shall enter by agreement of the parties:

1. The defendant James Perrin shall not communicate with the plaintiff Nikita Perkins directly or indirectly and shall not enter her unit.

2. The only exception is if Mr. Perrin in his duties as property manager or maintenance man may text or email Ms. Perkins regarding a water shut off at the premises.
3. Mr. Nunez, the landlord, stated that he understood that if maintenance is required in the plaintiff's unit, he will need hire someone other than Mr. Perrin to effectuate such repairs as the defendant is not permitted inside the plaintiff's unit.

So entered this 10th day of November, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-452

ASHLEIGH YOUNG,

Plaintiff,

v.

STILLWATER PROPERTIES, LLC,

Defendant.

ORDER

After hearing on October 28, 2022, at which the plaintiff appeared *pro se* and the defendant appeared through counsel, the following order shall enter:

1. The defendant landlord shall inspect the heat situation at the premises later on the date of this hearing at 1:00 p.m. and effectuate necessary repairs by a licensed technician as soon thereafter as practicable.
2. The landlord shall have the radiator in the hallway immediately repaired by a licensed technician.

3. Should there be any citations issued by the DPH inspection anticipated for next week, the landlord shall promptly address same. Any such repairs, shall be effectuated by licensed professionals and proper permits where required.

So entered this 10th day of November, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0716

JUAN CRUZ,)

PLAINTIFF)

v.)

SPRINGFIELD GARDENS,)

DEFENDANT)

ORDER

This matter came before the Court for review on November 10, 2022. Both parties appeared through counsel. The property in question is located at 112 Spring Street, Springfield, Massachusetts (the "Property").

After hearing, the following order will enter:

1. Plaintiff reports today that there is an active leak occurring above his bathroom ceiling. Defendant shall investigate the source of the leak and effectuate repairs forthwith.
2. Defendant shall open Plaintiff's bathroom ceiling and leave it open for at least 48 hours to determine if there are any continuing leaks. Both parties may document the presence of discoloration and/or mold-like substances inside the ceiling to bring to the next hearing.
3. Once the leak has been repaired, Defendant shall repair Plaintiff's bathroom ceiling so that his unit, Apt. 1A, can pass a Section 8 inspection.

4. If at the next hearing the Court determines that the condition inside the ceiling warrants further investigation or remediation, it will enter an order for such work at that time.
5. Defendant shall have its exterminator treat the Property and Plaintiff's unit for rodents tomorrow, November 11, 2022, and Plaintiff shall allow access for same. Going forward, the exterminations shall continue every other week on Mondays, Tuesdays or Wednesdays until the problem has been resolved.
6. The parties shall return for review on **December 1, 2022 at 9:00 a.m.** Defendant shall bring a witness to testify as to the work done in Plaintiff's unit since the hearing today, along with documentation and photographs to show the work done.

SO ORDERED.
DATE: 11/14/2022

Jonathan J. Kane
Jonathan J. Kane, First Justice

Court to show cause why the Court should not allow Plaintiff to remove them and reclaim possession of the Premises.

2. Plaintiff shall serve a copy of this order at the Premises forthwith.
3. If the occupants fail to appear for the next hearing, the Court shall allow Plaintiff to consider them as trespassers pursuant to G.L. c. 266, § 120 and have them removed from the Premises by a law enforcement officer as of November 30, 2022. Any belongings remaining in the Premises at the time the occupants are removed shall be stored in a manner consistent with the requirements of G.L. c. 239, § 4.
4. After the occupants have been removed from the Premises, Plaintiff may change the locks and retake possession of the Premises.

SO ORDERED.

DATE: _____

11/14/2022

By: _____

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

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0814

SPRINGFIELD GARDENS,)
)
) PLAINTIFF)
v.)
)
JOHN PRETEROTTI, KATRINA SWEETMAN,)
FELIX FELIPE ROMAN, AND)
JAVIER CALDERON,)
)
) DEFENDANT)

ORDER

This case came before the Court on November 10, 2022 on Plaintiff's emergency motion for an order to remove unknown occupants. Plaintiff appeared through counsel. Defendants appeared self-represented. The property in question is located at 683 State Street, Apt. 1, Springfield, Massachusetts (the "Premises").

Mr. Preterotti was the only lawful tenant of the Premises under a lease with Plaintiff. Last week, the parties entered into a cash-for-keys agreement in Court, and Mr. Preterotti returned the keys in exchange for a payment. When Plaintiff went to the Premises to recover possession, it found that the Premises were occupied by Ms. Sweetman, Mr. Roman and Mr. Calderon (the "Occupants").

Ms. Sweetman testified that, approximately four months ago, she and Mr. Roman (her fiancé) rented a room from Mr. Preterotti pursuant to an oral agreement by which they agreed to pay \$360.00 per month for one bedroom, plus \$125.00 monthly for the light bill. In October 2022, Mr. Calderon answered an advertisement and rented the other bedroom from Mr. Preterotti for \$400.00 per month by oral

agreement. Mr. Preterotti never informed them that he was giving up possession of the Premises.

Even if the Occupants are bona fide subtenants of Mr. Preterotti, their rights to occupy the Premises cannot be greater than those of Mr. Preterotti. Once Mr. Preterotti surrendered the keys and accepted cash, the Occupants rights to possession of the Premises terminated. Although they have been placed in a bad predicament, their recourse is against Mr. Preterotti. They do not gain tenancy rights under these circumstances.

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

1. Ms. Sweetman, who expressed a desire to lease the Premises, may apply for tenancy and Plaintiff has agreed to consider the application.
2. Unless they have entered into a written agreement with Plaintiff or obtained a further extension from this Court, the Occupants shall vacate the Premises no later than the end of the day on November 30, 2022.
3. If the Occupants fail vacate as required herein, the Court shall allow Plaintiff to consider them trespassers pursuant to G.L. c. 266, § 120 and have them removed from the Premises by a law enforcement officer. Any belongings remaining in the Premises at the time the Occupants are removed shall be stored in a manner consistent with the requirements of G.L. c. 239, § 4.
4. After the Occupants have been removed from the Premises, Plaintiff may change the locks and retake possession of the Premises.

SO ORDERED.

DATE: 11/14/2022

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