

Western Division Housing Court
Unofficial Reporter of Decisions

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(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:

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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.

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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.

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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.

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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.

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⁴ The date is not stated in the decision but has been confirmed.

⁵ The date shown in the decision has been confirmed as a typo.

⁶ The date shown in the decision has been confirmed as a typo.

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Hon. Jeffrey Winik, Associate Justice (Recall)

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3099

HORAIDA CARDONA,

Plaintiff,

v.

LEINA LOZADA,

Defendant.

ORDER OF DISMISSAL

This matter came before the court for trial on December 1, 2022, at which both parties appeared without counsel. As a preliminary matter, the tenant was heard on her Motion to Dismiss, and the following order shall enter:

1. The termination notice filed with this summary process action was for non-payment of rent and dated September 1, 2022. The notice gave the tenant until October 1, 2022, to pay all outstanding rent or vacate.

2. The landlord commenced this summary process action with service of the summons on the tenant on September 10, 2022, and entry in the court on September 13, 2022.
3. The tenant's motion seeks dismissal of this action based on the landlord's commencement of the court action prior to the expiration of the termination notice, as well as because she alleges she was never given the termination notice.
4. It is clear from the record that the summary process action was commenced (September 13, 2022) prior to the expiration of the termination notice (October 1, 2022).
5. In her opposition, the landlord provided another termination notice, this one dated August 1, 2022, and claimed that she served the tenant said notice on that date. Though the tenant denies ever receiving that notice, the court finds and so rules that the subsequent notice (the one originally filed with the court dated September 1, 2022) overrode the notice allegedly given on August 1, 2022, by granting the tenant another 30 days to pay or vacate.
6. Accordingly, the motion to dismiss is allowed and the matter is DISMISSED.

So entered this 6th day of December, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION NO. 22H79CV000571

_____)
STEVEN GOOD MAN,)
)
Plaintiff)
)
vs.)
)
LISE GOTTWALD)
)
Defendant)
_____)

**Order On Plaintiff's (1) Application for a Preliminary Injunction and
(2) Motion for Order to Provide Heat and Alternate Housing**

This matter came before the court on December 21, 2022, Winik, J. presiding, for a hearing on Plaintiff's (1) application for issuance of a preliminary injunction and (2) motion for an order to provide heat and alternate housing. I shall treat both as requests for injunctive relief. At the injunction hearing the plaintiff's attorney represented that the plaintiff was seeking injunctive relief only with respect to the alleged inadequate heat condition and his request for alternate housing based on that one alleged condition.

Based upon the testimony and documentary evidence presented at the hearing the Court issues the following preliminary ruling.

The plaintiff, Steven Good Man ("tenant"), resides as a tenant at 368 West Street, in Mount Washington, Massachusetts. The property includes one residential building and out-buildings. The plaintiff operates an animal farm at the property. The defendant, Elsie Gottwald ("landlord"), owns the property and is the plaintiff's landlord. The tenancy commenced in 2016.

The tenancy agreement provided that in lieu of rent the tenant would pay the landlord's monthly mortgage payments (the exact amount of the monthly mortgage payment obligation is unclear; the tenant testified that it is between \$2,200.00 and \$3,000.00).

The landlord served the tenant with a notice to quit for nonpayment of rent on April 29, 2021. The landlord commenced a summary process action against the tenant in August 2021.¹ The claim is based upon nonpayment of rent. The landlord has alleged that in January 2021 she learned that in May 2000 the tenant, acting without the landlord's knowledge, had the lending bank place the landlord's mortgage loan in forbearance under provisions of the Cares Act. The landlord has further alleged that the tenant failed to make the monthly mortgage payments due for a number of months prior to May 2000, and that the tenant has not made any rent payments to the landlord directly (or payments to the lender on the mortgage in lieu of rent) since May 2020 (and earlier).

The summary process trial is scheduled to commence on January 23, 2023.

When evaluating a request for a preliminary or interim injunctive relief, this court must assess the likelihood of success on the merits of the plaintiff's claim of injury, and whether the failure to issue an injunction order will subject the plaintiff to the risk of irreparable harm that cannot be repaired or compensated by a remedy at law. The court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the defendant. In balancing these factors, "[w]hat matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. . . . Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 616-617 (1980).

There is insufficient evidence to demonstrate a likelihood that between 2016 and early 2021 the tenant made any complaints about the adequacy of heat to the landlord or to the Town of Mt. Washington health agent.

In May 2021 the tenant, after receiving the April 29, 2021 notice to quit, for the first time complained to the Town of Mt. Washington health agent, Eleanor Dawson Lovejoy, about the conditions in his home.

I credit the testimony of health agent Lovejoy. She made six visits to the property and prepared five health reports between May 2021 and November 2022.

¹ The landlord commenced the summary process action in the Southern Berkshire District Court (No. 2129SU00012). The case was scheduled for trial on June 9, 2022. On April 4, 2022 the tenant had the case transferred from the District Court to the Housing Court, Western Division (No22H79SP001536).

Health agent Lovejoy inspected the property for the first time on May 6, 2021. The May 6, 2021 health report does not identify any sanitary code violations pertaining to heat. The health agent visited the property ten months later on March 10, 2022. The March 10, 2022 health report does not identify any sanitary code violations pertaining to heat.

The health agent inspected the property on November 10 and 11, 2022. The radiant heating system was operational. In the November 10, 2022 health report, the health agent reported that the temperature in the living registered at 60 degrees F and 59 degrees F in the bedroom, both below the 68-degree F minimum set forth in the state sanitary code requirement. However, the health agent reported that the entry door to the dwelling and several windows were open, both upstairs and downstairs. The health agent returned the next day to recheck the heating measurements. In the November 11, 2022 health report, the health agent reported that the temperature in the living room registered at 68 degrees F, and 67.5 degrees F in the upstairs right bedroom. The temperature in upstairs second bedroom registered at 67 degrees F. However, the health agent reported that two windows in that bedroom were open. The health agent returned to the property on November 16, 2022. In the November 16, 2022 health report, the health agent reported that the temperature in the living room registered at 50 degrees F, and 54 degrees F in one of the bedrooms. At the time of the inspection the thermostat was set at 70 degrees F. However, questioning the reliability of the readings because of the stark difference with the measurements she made on November 10 and 11, the health agent returned to the property most recently on November 30, 2022. The November 30, 2022 health report prepared by the health agent reported that the temperature in the living room registered at 60 degrees F, registered at 54 degrees F. in bedroom 1, and registered at 55 degrees F in bedroom 2 and 3. However, the health agent reported (and testified) that at the time she took her measurements she observed that the thermostat was set at below 54 degrees F. It appears that the tenant was the only person with access to the thermostat immediately before the health inspector's visits to the property on November 10, 11, 16 and 30, 2022.

I rule, based upon the limited testimony and evidence presented at the preliminary injunction hearing, that the tenant has not shown there is a reasonable likelihood he will be able to prove at trial that the temperatures reported by the health agent resulted from inadequate or defective heating facilities or equipment. There is evidence, if found credible by the jury at the trial on the merits, that could be construed to show that the inadequate heat the tenant claims has

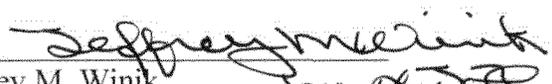
existed in the premises since 2016 either did not constitute a violation of the state sanitary code or resulted in whole or in part from the tenant's own actions or misconduct.

While there is some evidence that secondary sources of heat in the home may not have been working, based upon the totality of the circumstances I rule that the tenant has not made a sufficient showing that he would suffer irreparable harm if the injunctive relief he requested were not granted. These circumstances include that the radiant heating system has worked from the time the tenancy commenced in 2016 to the present; that the tenant did not complain about the heat in 2016, 2017, 2018, 2019, 2020 or until he received the landlord's notice to quit in April 2021; that the evidence presented by the tenant to date is insufficient to support his contention that the radiant heating system is inadequate to heat the rooms on the first and second floors; and that the Mt. Washington health inspection reports support an inference that some of the temperature readings taken in November 2022 were unreliable due to the tenant's actions.

I conclude that the tenant has an adequate remedy at law in that he will be able to present his heat-based claims as an affirmative defense under G.L. c. 239, 8A and as part of his counterclaims at the summary process trial scheduled to commence on January 23, 2023, one month from this date.

Accordingly, I rule that that the tenant's application for a preliminary injunction is **DENIED**, and his motion to provide heat and for alternative housing is **DENIED**.

SO ORDERED at Western Housing Court this 22nd day of December, 2022.


Jeffrey M. Winik
Associate Justice (Recall Appt)



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),
ANTONIO MATOS (tenant),
BETZAIDA CORREA (tenant),
JESSE CRUZ (tenant),
NYDIA OLMEDA (tenant),
SHARESE MURCHISON (tenant) and
FEDERAL NATIONAL
MORTGAGE ASSOCIATION (mortgagee)

Defendants

Re: Premises: 34 Salem Street, Springfield, Massachusetts

ORDER

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

After a hearing on December 19, 2022, for which a representative of the Plaintiff appeared, Defendant SPRINGFIELD GARDENS LP appeared by counsel Carlyne Pereira, ANTONIO MATOS appeared, BETZAIDA CORREA appeared, JESSE CRUZ appeared, NYDIA OLMEDA appeared, SHARESE MURCHISON appeared and FEDERAL NATIONAL MORTGAGE ASSOCIATION by counsel Brian Mulcahy, the following order is to enter:

1. Defendants ANTONIO MATOS, BETZAIDA CORREA, JESSE CRUZ, NYDIA OLMEDA and SHARESE MURCHISON and their respective household members must vacate their respective units at the above said premises FORTHWITH, and not re-occupy until such time as the condemnation has been lifted or by leave of Court.
2. Defendant SPRINGFIELD GARDENS LP shall provide alternative housing for Defendants ANTONIO MATOS, BETZAIDA CORREA, JESSE CRUZ, NYDIA OLMEDA and SHARESE MURCHISON and their respective household members at the above property until such time as the condemnation is lifted or with leave of court. Said alternative housing shall include cooking facilities.

3. Defendants SPRINGFIELD GARDENS LP, ANTONIO MATOS, BETZAIDA CORREA, JESSE CRUZ, NYDIA OLMEDA and SHARESE MURCHISON shall work with a court mediator to identify appropriate alternative housing accommodations. The accommodations provided to Defendant tenants to date at the Super 8 in West Springfield and the Springfield Inn in West Springfield are unacceptable, and the burden has shifted to SPRINGFIELD GARDENS LP to demonstrate that said accommodations are acceptable.
4. If unable to provide alternative housing accommodations with cooking facilities, Defendant SPRINGFIELD GARDENS LP shall provide Defendants ANTONIO MATOS, BETZAIDA CORREA, JESSE CRUZ, NYDIA OLMEDA and SHARESE MURCHISON with a daily food stipend, paid in advance for 7 (seven) days, that can be obtained at 203 Dickinson Street, Springfield, Massachusetts every Monday. The daily amount of the food stipend will be as follows:
 - a. \$100.00 (one hundred dollars and 00/100) per day for Defendants ANTONIO MATOS and BETZAIDA and their household residing in 34 Salem Street, Unit 1B;
 - b. \$50.00 (fifty dollars and 00/100) per day for Defendant JESSE CRUZ and her household residing at 34 Salem Street, Unit 2A;
 - c. \$25.00 (twenty-five dollars and 00/100) per day for Defendant NYDIA OLMEDA residing at 34 Salem Street, Unit 2B; and
 - d. \$25.00 (twenty-five dollars and 00/100) per day for Defendant SHARESE MURCHISON residing at 34 Salem Street, Unit 3A.
5. Defendant SPRINGFIELD GARDENS LP shall provide Defendants ANTONIO MATOS, BETZAIDA CORREA, JESSE CRUZ, NYDIA OLMEDA and SHARESE MURCHISON with monthly bus passes.
6. Defendants ANTONIO MATOS, BETZAIDA CORREA, JESSE CRUZ, NYDIA OLMEDA and SHARESE MURCHISON shall cease payment of rent until further order of the Court, and Defendant tenants shall track the amount of any rent already paid.
7. Defendant SPRINGFIELD GARDENS LP shall secure the property at the above premises, including securing the backdoor and any broken/missing windows, FORTHWITH, and in any event before December 21, 2022 at 9:00 a.m., and further shall maintain the property in a vacant and secured condition until such time as all emergency violations have been corrected or by leave of Court.
8. Defendant SPRINGFIELD GARDENS LP shall not allow anyone to occupy the above said premises, including any vacant units at the property, until such time as the condemnation has lifted or with leave of this Court.
9. Defendant SPRINGFIELD GARDENS LP shall hire a licensed plumber to open and close a permit to restore heat to all units at the subject property, FORTHWITH, and in any event, no later than January 13, 2023 at 1:00 p.m. All work is to be done in a workmanlike manner and by licensed professionals with permits pulled as required by law.
10. Defendant SPRINGFIELD GARDENS LP shall allow the Plaintiff access to the subject property the purpose of re-inspection on January 13, 2023 at 1:00 p.m. to verify compliance with this order.

11. This matter shall be up for review with the Court on January 20, 2023 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 27th day of December, 2022.

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0904

WANDYS LASSENDS,)	
)	
PLAINTIFF)	
)	
v.	)	ORDER FOR ALTERNATIVE
	)	HOUSING
RAFAEL PEREZ,)	
)	
DEFENDANT)	

This matter came before the Court on December 19, 2022 and again on December 23, 2022. Both parties appeared self-represented. The premises in question are located at 32 Acushnet Ave., 3d Floor, Springfield, Massachusetts (the “Premises”).

After a fire in a neighboring house, Defendant elected to remove Ms. Lassends and her family to undertake renovations. The City of Springfield Code Enforcement Department did not condemn the Premises. Defendant claims that the insurance process is taking time and he cannot determine when Ms. Lassends will be able to return to the Premises.

On December 19, 2022, the Court entered an order, which order was continued after hearing on December 23, 2022. The order is as follows:

1. Defendant shall provide alternative housing for Ms. Lassends and her family in the form of a hotel beginning on the night of December 19, 2022 and continuing until the next Court date. If the hotel does not offer a kitchenette, Defendant shall

pay a daily food stipend of \$65.00.¹ Going forward, he shall pay the food stipend in one week intervals, in advance, for each week Ms. Lassends is housed in a hotel.

2. Ms. Lassends shall be provided access to the Premises by appointment if she needs to retrieve any of her possessions. Defendant, or his property manager if he hires one, shall communicate directly with Ms. Lassends by text message to arrange for access.
3. Defendant shall complete the repairs to the Premises forthwith so that Ms. Lassends and her family can return to their home promptly.

SO ORDERED.

DATE: 12/27/22

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

¹ Defendant has not paid any stipend as of today, and he must pay \$260.00 (representing 4 days of the stipend) to Ms. Lassends by 5:00 p.m. today by leaving it at the hotel front desk of the Hampton Inn on Columbus Avenue, which is where Ms. Lassends and her family are currently staying. Defendant is not permitted to condition payment on receipts being provided by Ms. Lassends. This is a daily stipend intended to compensate Ms. Lassends because she is unable to prepare meals in a kitchen.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-317

TOWN OF CUMMINGTON,

Plaintiff,

v.

SAUL CASDIN,

Defendant.

ORDER

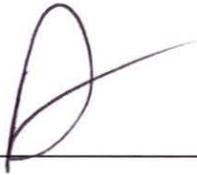
After hearing on December 19, 2022, on the plaintiff town's motion for appointment of a Receiver at which the plaintiff town appeared through counsel and the defendant property owner appeared without counsel, the following order shall enter:

1. It appears to the court after a lengthy evidentiary hearing that the parties agree more than they disagree relative to this code enforcement dispute.
2. The parties agree that much progress has been made by the defendant property owner as he has removed a great deal of debris and other items from sections of

- the property, even constructing edifices to house some of his belongings, and that there are still items that require removal or improved storage.
3. During the hearing, it became clear that some items cited for removal by the town's health agent are not by themselves inherently debris or unsafe or harborage for animals. Instead, in some instances, it is the aggregate nature of the defendant's items that cause a hazard or are otherwise subject to citation.
 4. That said, there are some items, and perhaps the way they are being used on this residential land that must be removed.
 5. It is the court's appreciation of the situation at this juncture that the parties would benefit from the following towards resolving this code enforcement action:
 - a. Immediate removal of the pile of appliances;
 - b. A walk-through with the town officials of the defendant's property wherein the inspector points out each item that requires removal, or storage inside a structure, or another manner of storage;
 - c. As the judge stated during the hearing, the parties shall engage in a "horse trading" discussion regarding whether some items may be permitted to remain if others are removed.
 6. The town's inspector, Charles Kaniecki, indicated that this walk-through may not be able to take place until the snow clears.
 7. If the parties are not able to agreeably resolve this matter, the town may file a motion for further enforcement. Said motion shall include an update on the history of actions and inactions of the parties and a very specific list of items it seeks to have removed or stored.

8. Based on the foregoing, the town's motion for appointment of a Receiver is denied without prejudice and may be renewed if necessary by the town at a future date in these proceedings.

So entered this 27th day of December, 2022.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-933

EDGAR ROGERS and SHARAY SALTERS,

Plaintiffs,

v.

**ESTATE OF REED D. HOSTEN, JR., SHEENA
WHITE, and NEW PENN FINANCIAL, LLC
d/b/a SHELLPOINT MORTGAGE SERVICING,**

Defendants.

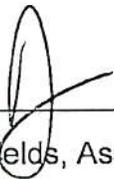
ORDER

After hearing on December 29, 2022, the following order shall enter:

1. Melphy Antuna is hereby dismissed from this matter.
2. The Estate of Reed d. Hosten, Jr. and Sheena White shall be added as party-defendants as the apparent owners and persons in control of the subject premises located at 38-40 Longhill Street in Springfield, Massachusetts.

3. New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing shall be added as a party-defendant as it appears that it was the mortgage-in-possession in a related code enforcement action, 20-CV-61.
4. The subject premises have been condemned by the City of Springfield on December 28, 2022, after pipes burst and the water being shut off.
5. If the subject premises is currently owned by the Estate of Reed D. Hosten, Jr. it shall be severely and jointly liable to provide alternate accommodations to the plaintiffs and their family members in a hotel or motel with cooking facilities (and if such accommodations do not have cooking facilities, then a daily food stipend of \$100 in addition to the accommodations).
6. If New Penn Financial, LLC is the mortgagee-in-possession it shall be severely and jointly liable to provide alternate accommodations to the plaintiffs and their family members in a hotel or motel with cooking facilities (and if such accommodations do not have cooking facilities, then a daily food stipend of \$100 in addition to the accommodations).
7. This matter shall be scheduled for further review on **January 6, 2023, at 9:00 a.m.** at the Springfield Session of the court located at 37 Elm Street.

So entered this 29 day of December, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2288

CITY VIEW COMMONS II,

Plaintiff,

v.

KEEANA M. CRUZ-COLON,

Defendant.

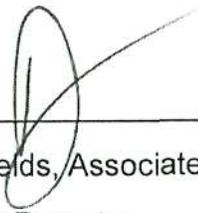
ORDER

This matter came before the court on December 27, 2022, for a review of an agreement at which the landlord appeared through counsel and the tenant appeared without counsel. After hearing, the following order shall enter:

1. As a result of the colloquy, the tenant withdrew her assent to the agreement presented to the court.
2. The parties agreed to discard the agreement and have the landlord's motion rescheduled by the court.

3. The tenant is encouraged to reach out to Community Legal Aid which can be reached at 855-252-5342 or 413-781-7814 and are located at 1 Monarch Place in Springfield and on-line at **communitylegal.org** for legal representation or assistance in advance of the hearing scheduled below.
4. The landlord's motion for entry of judgment shall be rescheduled for **January 24, 2023, at 2:00 p.m.**

So entered this 30th day of December, 2022.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-3213

ENOCH JENSEN,

Plaintiff,

v.

JOHANNA WHITNEY,

Defendant.

ORDER

After hearing on December 23, 2022, on the landlord's motion for entry of judgment at which both parties appeared without counsel¹, the following order shall enter:

¹ The landlord appeared by Zoom after his motion to appear in that manner due to his living out of state was allowed. The tenant appeared in-person in the courtroom.

1. **Background:** The plaintiff landlord purchased the subject three-unit dwelling in April 2021 with the intention of renovating all three units. The defendant tenant was already living in one of the units, Apt. 1, at the time of the landlord's purchase. In July 2021, the landlord served the tenant with a no-fault eviction stating that he was scheduling renovation to begin in her unit on October 1, 2021. The landlord moved the renovation start date for the tenant's unit back to November 1, 2021, but when the tenant had not vacated, he commenced a summary process eviction action in court.
2. In January 2022, the parties entered into a written court agreement which anticipated the tenant vacating the unit by July 1, 2022. The agreement also allowed for the tenant to seek additional time to vacate upon filing a motion.
3. In July 2022 the tenant filed such a motion and after hearing, and upon finding that the tenant had been diligently searching for alternate housing, the court granted the tenant's request for additional time to secure alternate housing.
4. On November 18, 2022, the landlord filed this instant motion for entry of judgment.
5. **Reasonable Accommodation:** The tenant testified that she suffers from Multiple Sclerosis (MS) and must use a wheelchair. She is seeking a reasonable accommodation from the landlord to be granted additional time to relocate.
6. The Fair Housing Act, 42 U.S.C. s.3601 (2006), and M.G.L. c.151B (2000) prohibit discrimination in housing based on handicap. The term "handicap" is defined as "(1) a physical or mental impairment which substantially limits one or more of [a] person's major life activities, (2) a record of having such an

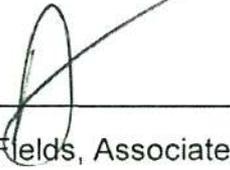
impairment, or (3) being regarded as having such an impairment." 42 U.S.C. s.3602(h); M.G.L. c. 151B, s.1. Discrimination prohibited by both statutes includes the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. s.3604(f)(3)(B); M.G.L. c. 151B, s.4(7A)(2). A "reasonable accommodation" is one which would not impose an undue hardship or burden on the entity making the accommodation. *Andover Housing Authority v. Izrah and Shkolnik*, 443 Mass. 300, 307 (2005), citing *Peabody Props., Inc. v. Sherman*, 418 Mass. 503, 608 (1994). "The mandate for reasonable, but not onerous, accommodations strikes 'a balance between the statutory rights of the handicapped...and the legitimate interests of federal grantees in preserving the integrity of their programs.'" *Andover Housing Authority*, 443 Mass. at 307, quoting *City Wide Assocs. v. Penfield*, 409 Mass. 140, 142 (1991).

7. **Discussion:** The tenant appears to be an elderly disabled person, confined to a wheelchair with MS. She is current with her monthly rent. She has been extensively searching for alternate housing and has kept scrupulous records of same, which include hundreds of entries. The court has reviewed hundreds if not thousands of housing search logs and finds this tenant's accounting to be the most extensive it has seen. The tenant has also reached out to the Franklin County Housing Authority---the office that administers her rental subsidy---to put herself in the best position to seek an increase in her subsidy should she find a place that has a rent hire than the amount set by the Department of Housing and

Urban Development (HUD). The tenant has also filed paperwork with that agency's RAFT program so that she'll be in the best position possible to receive funds to assist with her relocation.

8. The tenant also credibly testified to having reached out to State Representatives and State Senators as well as agencies such as STAVROS, Lifepath, and Way Finders, Inc. for assistance with her housing search.
9. The tenant explained that she must limit her search for housing that can accommodate her disability---and specifically her mobility using a wheelchair---with or without modifications to the structure of the entrance or interior of such a place.
10. At the hearing, the landlord argued that the extended period of time since he first served the tenant with the notice to quit, and the further delays issued by the court, are the bases for his motion for entry of judgment. The landlord did not mention renovations as a factor---as he has in the past---in his written motion nor his oral argument, so the record does not indicate whether he still needs the tenant to vacate in order to renovate her unit.
- 11. Conclusion and Order:** Based on the foregoing, the tenant's request for additional time to relocate while she continues to pay her use and occupancy each month as well as continue to diligently search for housing and maintain a log of same is allowed as a reasonable accommodation to her disability. As such, the landlord's motion is denied without prejudice. Additionally, the landlord and the tenant shall engage in a reasonable accommodations dialogue with one another moving forward.

So entered this 30 day of December, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2555

A BETTER WAY, LLC,

PLAINTIFF

v.

JULIE DIFLUMERA, PEACHES CHESTER AND
CHARLENE HARRISON,

DEFENDANTS

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ORDER

This summary process case came before the Court on January 3, 2023 on Charlene Harrison's motion to intervene and postpone a physical eviction scheduled for January 6, 2023. Plaintiff appeared through counsel. Defendants Diflumera and Harrison appeared self-represented.

The Court concludes that Ms. Harrison has lived at the subject premises for some period of time as a subtenant of Ms. Diflumera. Based on principles of equity, given that she was unaware of the pending eviction, the Court is willing to allow more time for Ms. Harrison to relocate, subject to payment for her use and occupancy. The stay does not apply to the other defendants, however, and the Court leaves it to the Sheriff's Office to determine whether to move forward with the eviction of Defendants Diflumera and Chester only on January 6, 2023 or to wait until it receives a new execution that includes Ms. Harrison's name.

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

1. Charlene Harrison's motion to intervene is allowed. She shall be added to this case as a defendant.
2. The physical eviction scheduled for January 6, 2023 need not be cancelled, provided, however, that as to Charlene Harrison only, she shall not be evicted prior to March 1, 2023 so long as she pays \$1,000.00 by January 9, 2023 for her use and occupancy of the subject premises in January 2023 and \$1,000.00 by February 6, 2023 for her use and occupancy of the subject premises in February 2023.
3. If Charlene Harrison does not make a payment required hereunder, or if Charlene Harrison makes the payments but fails to vacate as of March 1, 2023, Plaintiff may apply for a new execution that includes Charlene Harrison's name and reschedule the levy.

SO ORDERED.

DATE: _____

1/3/2023

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

mfr.

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss

TRIAL COURT OF MASSACHUSETTS
HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22CV0916

_____)
Beacon Residential Management Limited)
Partnership (Lessor) and managing agent)
for BC Berkshire Peak LLC (Owner))
	Plaintiff,)
vs.)
)
Amanda Stevens,)
	Defendant)
_____)

PRELIMINARY INJUNCTION ORDER

On December 28, 2022, this case came before the Court for a hearing on the plaintiff's application for injunctive relief. The plaintiff appeared through counsel, along with its Property Manager, Lorraine Jones and Resident Services Coordinator, Vernetta Marra. Defendant, Amanda Stevens failed to appear.

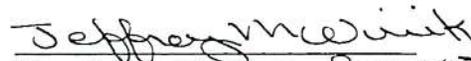
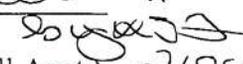
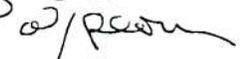
The plaintiff owns a multi-unit subsidized residential development in Pittsfield, Massachusetts. The defendant, Amanda Stevens, is a residential tenant of the plaintiff, and resides at 341 West Street, Apartment 1009, Pittsfield, Massachusetts.

After conducting a hearing, and based on the uncontested facts set forth in the verified complaint, there is a reasonable likelihood that the plaintiff will prevail on its claim that defendant Amanda Stevens has engaged in conduct that includes (1) defacing and/or damaging her apartment, the common areas and the development grounds, (2) misusing her bathroom shower curtain causing flooding, (3) failing to prepare her apartment for scheduled exterminations and (4) refusing the plaintiff's maintenance workers to enter her apartment to perform scheduled maintenance. There is no adequate remedy at law to address the defendant's conduct. Without the grant of preliminary injunctive relief, the plaintiff (and other tenants) will be exposed to the risk of suffering irreparable harm should further damage or infestation result from the defendant's conduct. The defendant will not suffer harm if the requested injunctive relief is granted.

Accordingly, a preliminary injunction shall enter in favor of the plaintiff and against the defendant. It is **ORDERED** that Defendant Amanda Stevens:

1. Shall refrain from destroying, defacing and/or damaging any part of her apartment, the common areas and/or the development grounds;
2. Shall refrain from improperly using uses the fixtures and appliances in her apartment in a way that causes damage to the premises, including, but not limited to, failing to close the shower curtain inside the bathtub while the shower is in use, allowing water to spill onto and/or accumulate on the floor of the bathroom; and
3. Shall refrain from failing to cooperate with the plaintiff's efforts to make repairs and/or exterminations in the premises, including, but not limited to: properly preparing the premises for extermination in accordance with instructions that she receives either from the plaintiff and/or its exterminator and/or allowing access to the premises, after being given prior notice of the need for such access, allowing such access even if the Defendant chooses not to be present.

SO ORDERED this 3rd day of January, 2023.


Hon. Jeffrey M. Winik 
Associate Justice (Recall Appt.) 

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2489

CLARA BUNN,

Plaintiff,

v.

EMMA RODRIGUEZ,

Defendant.

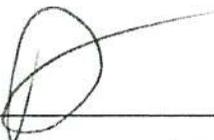
ORDER FOR ENTRY OF
JUDGMENT

After hearing on December 28, 2022, on further review of this matter in accordance with G.L c.239, s.9, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared without counsel, the following order shall enter:

1. The landlord reported that the perspective buyer of the subject premises requires the tenant's unit to be vacant.
2. The parties agreed that albeit late, the tenant paid use and occupancy for December 2022.

3. The landlord does not want to accept RAFT payments because the property is scheduled to be sold and she does not want to continue this tenancy.
4. The tenant failed to provide the landlord with a log of her housing search and it was not readily available at the time of the hearing.
5. The tenant reported that she is not keeping oil in the tank and not using the house's heating system because the house is drafty and she does not wish to incur the costs of using oil.
6. Based on the balancing of harms and needs between the parties and given the length of time that the sale of the property has been delayed and given the lack of a housing search log that was required to be provided by the tenant, judgment shall enter for possession only for the landlord¹.
7. The tenant shall pay her January 2023, use and occupancy by no later than January 14, 2023. If paid, the landlord shall not schedule the physical eviction to occur prior to February 2, 2023.

So entered this 3rd day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

¹ The outstanding balance was not brought up at the hearing so the judgment shall be for possession only and the landlord may file and serve a motion to amend the judgment to include use and occupancy.

RF

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2311

ROBERT CAUDLE,

Plaintiff,

v.

CASSANDRA CAPPAS,

Defendant.

ORDER

After hearing on December 29, 2022, on the landlord's motion for entry of judgment at which only the landlord appeared, the following order shall enter:

1. The basis for the landlord's motion was the tenant's failure to obtain RAFT funds and a failure to pay December 2022 rent which were requirements of the Agreement of the Parties filed in the court on September 20, 2022 (hereinafter, "Agreement").

2. At the time of the hearing (12-29-22) the RAFT application had been approved and the outstanding rent was paid by the state to the landlord and the tenant paid her December 2022 rent, albeit late.
3. The only outstanding balance owed the landlord is for court costs of \$183.58.
4. The terms of the Agreement at paragraph 2a required the landlord to include these court costs in a ledger to be provided to Way Finders, Inc. so that it would be paid by RAFT. The landlord failed to do so.
5. Accordingly, the parties shall seek the RAFT program to pay the court costs of \$183.58. They may attempt to do so by emailing the ledger with the costs to RAFT to maescalation@nanmckay.com . It may be that the parties will be informed that a new RAFT application is required for the payment of said court costs.
6. Given that the rental balance has been reached other than court costs which should have been submitted by the landlord as part of the RAFT application, judgment shall enter for the tenant for possession.
7. If the landlord is not made whole on these court costs, he may file a post-judgment motion in this action for an order regarding payment of those costs, but possession has already been awarded tenant.

So entered this 3rd day of January, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

MR.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0792

CENTURY PACIFIC HOUSING PARTNERSHIP X,)

PLAINTIFF)

v.)

FELISHA SYRETT,)

DEFENDANT)

ORDER

This matter came before the Court on December 19, 2022 for further hearing regarding unsanitary conditions in Defendant's unit. Defendant has not appeared for any hearing in the case, despite notices to appear. Defendant is not cooperating with Tenancy Preservation Program ("TPP"). Plaintiff's counsel reports that Plaintiff is in the process of renovating the property and that Defendant is scheduled to be relocated within the next month. In light of the foregoing, the following order shall enter:

1. Defendant shall comply with all future exterminations and requests by Plaintiff to relocate to a different unit.
2. Defendant shall meet and cooperate with TPP and follow any of the recommendations provided.
3. The parties shall return on January 17, 2023 at 2:00 p.m. for further hearing consistent with the orders entered in this case.

SO ORDERED.

DATE: 1/3/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

MR.

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 22-CV- 783

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

SPRINGFIELD GARDENS 238-262 LP (owner),
BENNITA WATFORD (tenant),
KEVIN LOPEZ (tenant) and
LOUBSAN MORALES (tenant)

Defendants

Re: Premises: 250-260 Union Street, Springfield, Massachusetts

ORDER

(Hampden County Registry of Deeds Book/Page: #23737/535)

After a hearing on December 19, 2022 for which a representative of the Plaintiff appeared, SPRINGFIELD GARDENS 238-262 LP appeared by counsel Carolyn Pereira, BENNITA WATFORD appeared with counsel Daniel Ordorica, KEVIN LOPEZ appeared and after having been given notice of said hearing a representative of the Defendant LOUBSAN MORALES did not appear, the following order is to enter:

1. Defendant SPRINGFIELD GARDENS 238-262 LP shall hire a licensed electrician to open an electrical permit to correct all State Electrical Code violations at 248 Union Street, Unit 1D, FORTHWITH, and in any event, no later than December 23, 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.
2. Defendant SPRINGFIELD GARDENS 238-262 LP shall correct all non-functioning common hallway security lights, FORTHWITH, and in any event, no later than December 28, 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.
3. Defendant SPRINGFIELD GARDENS 238-262 LP shall secure all exterior doors to the subject property, FORTHWITH, and in any event no later than December 28, 2022 at 9:30 a.m. All exterior doors shall be secured to withstand entry from broken glass. If SPRINGFIELD GARDENS 238-262 LP fails to appropriately secure all exterior doors, the

court shall order SPRINGFIELD GARDENS 238-262 LP to hire a security company to provide security personnel to monitor the subject building between the hours of 4:00 p.m. and 8:00 a.m.

4. Defendant SPRINGFIELD GARDENS 238-262 LP shall sanitize the common hallways, FORTHWITH, and in any event no later than December 28, 2022 at 9:30 a.m., and further shall maintain all common areas in a sanitary condition.
5. Defendant SPRINGFIELD GARDENS 238-262 LP shall to hire a licensed exterminator to provide extermination treatment to eradicate the infestation of cockroaches and mice at all of the subject units at the property. Said extermination treatment shall commence on December 28, 2022 at 10:00 a.m.
6. Defendant SPRINGFIELD GARDENS 238-262 LP shall correct all windows in 258 Union Street Unit 2D, FORTHWITH, and in any event no later than December 28, 2022 at 9:30 a.m. If SPRINGFIELD GARDENS 238-262 LP is unable to correct windows due to backorder of parts and/or windows, SPRINGFIELD GARDENS 238-262 LP shall provide temporary seals to windows to make windows weathertight pending replacement parts and/or windows by December 28, 2022 at 9:30 a.m.
7. Defendant SPRINGFIELD GARDENS 238-262 LP shall hire a licensed plumber to open a permit to correct all leaks at 256 Union Street, Unit 2B and 248 Union Street, Unit 1D by January 4, 2023 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.
8. Defendant SPRINGFIELD GARDENS 238-262 LP shall hire a licensed mold specialist to inspect the subject units and test for mold if necessary. If mold is found at the subject units, Defendant SPRINGFIELD GARDENS 238-262 LP shall commence mold remediation treatment before the next review date, January 9, 2023 at 9:00 a.m.
9. Defendant SPRINGFIELD GARDENS 238-262 LP, BENNITA WATFORD, KEVIN LOPEZ and LOUBSAN MORALES shall allow the Plaintiff access to the common area and their respective units of the subject property the purpose of re-inspection on December 28, 2022 at 9:30 a.m. to verify compliance with this order.
10. The Plaintiff shall inspect the property to verify compliance with this order on December 28, 2022 at 9:30 a.m.
11. This matter shall be up for review with the Court on January 9, 2023 at 9:00 a.m. Failure of the Defendants to appear on said date may result in the issuance of a writ of habeas corpus for their arrest or the filing of a complaint for contempt.

So entered this 3rd day of JANUARY, 2023

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

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-352

PIERRE W. JOSEPH,

Plaintiff,

v.

XAVIER CINTRON,

Defendant.

ORDER

This matter came before the court for trial on December 28, 2022, at which both parties appeared without counsel. After consideration of the evidence admitted at trial, the following order shall enter:

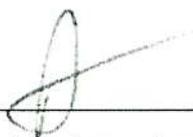
1. Background: The plaintiff, Pierre W. Joseph (hereinafter, "Joseph"), is the former landlord in a tenancy in which the defendant, Xavier Cintron (hereinafter, "Cintron"), was the tenant at premises located at 114 Bellevue Avenue in Springfield, Massachusetts. Cintron rented a room at that premises for a number

of years and in November 2021, Joseph terminated his tenancy with a no-fault eviction notice and then commenced an eviction action in the Housing Court. In mid-May 2021 Cintron vacated the premises and eviction action was transferred to the civil docket so that Joseph could pursue his rent claims. Subsequently, Joseph's motion to amend his complaint to include alleged property damages was allowed. Cintron was given an opportunity to file an Answer which could have included counterclaims, but he did not do so and a trial was held.

2. **Claim for Property Damage:** After consideration of Joseph's testimony and review of the photographs that were admitted into evidence, the court finds and so rules that they depict what is considered normal "wear and tear" after several years of a tenancy. As such, Joseph did not meet his burden of proof that Cintron caused compensable damage to the property.
3. **Claim for Unpaid Use and Occupancy:** The court finds Joseph credible that Cintron failed to pay use and occupancy for the months of December through mid-May 2022. Each month's use and occupancy was \$600, bringing the total of unpaid use and occupancy to \$3,300.
4. At the commencement of the tenancy, Cintron paid Joseph \$1,200 for last month's rent. Cintron argues that those funds should have been put towards his last two months in occupancy and Joseph states that those funds were used for June and July 2021. Without any accounting for said funds, whatsoever, the court finds and so rules that said funds shall be applied to the \$3,300 outstanding, bringing the total of unpaid rent, use, and occupancy to \$2,100.

5. **Conclusion and Order:** Based on the foregoing, a judgment shall enter for the plaintiff, Pierre W. Joseph against the defendant, Xavier Cintron, in the amount of \$2,100.

So entered this 3rd day of January, 2022.



Robert Fields, Associate Justice

CC: Court Reporter

hotel does not offer a kitchenette, Defendant shall pay a daily food stipend of \$65.00 for each day that Plaintiff is residing in the hotel. Defendant shall pay for the hotel room and any food stipend in advance for the period through the next Court date.

3. Within 24 hours of the hearing date, Defendant shall pay \$292.70 to Plaintiff to reimburse her for the for two hotel rooms she paid for out of pocket.
4. The food stipend and the reimbursement funds, and any other monies paid to Plaintiff pursuant to this order, shall be paid in cash, bank check or money order and provided to Plaintiff at the front desk of the hotel at which she is staying.
5. The previous orders regarding access to the Premises by appointment shall remain in effect so long as Plaintiff has belongings in the Premises.
6. The parties shall return for review of this order and for further order on **January 23, 2023 at 9:00 a.m.**

SO ORDERED,

DATE: _____

1/3/2023

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3270

VINCENT M. O'CONNELL,

Plaintiff,

v.

JAMES MITCHELL,

Defendant.

ORDER

After hearing on December 22, 2022, on the defendant tenant's motion to vacate the default at which both parties appeared without counsel, the following order shall enter:

1. It was explained to the parties that this case is to be dismissed based on the landlord's use of a no-fault notice to quit and a for-fault summons and complaint.
2. Equipped with this information (that the court would otherwise dismiss this action), the tenant has another home all set up and has agreed to waive any

procedural claim regarding the notice and summons (explained above) and shall vacate the premises by no later than February 1, 2023. The motion to vacate the default was withdrawn by the tenant.

3. The tenant also plans to apply to Way Finders, Inc. for monies owed to the landlord the parties agreed to cooperate with that application.
4. If the tenant does not vacate by February 1, 2023, and the landlord is seeking possession at that time, he must first file and serve a motion for issuance of the execution.

So entered this 3rd day of January, 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-1829

PHILLIPS STREET GREENFIELD REALTY,
LLC,

Plaintiff,

v.

GRETCHEN EMERSON and SHANE DEMING,

Defendants.

ORDER

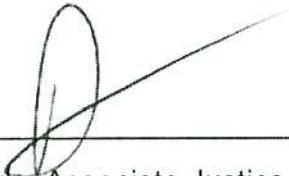
After hearing on December 30, 2022, at which the plaintiff appeared through counsel and the defendants appeared without counsel, the following order shall enter:

1. Judgment shall enter for the landlord for possession. Execution may issue in due course after the statutory appeal period upon the filing *and service* of a Rule 13 application.
2. The landlord shall stay use of the execution until March 2, 2023, so long as the tenants pay \$600 today (December 30, 2022), \$550 prior to January 16, 2023

(for half of January 2023 use and occupancy) and \$1,100 by February 3, 2023

(for February 2023 use and occupancy) and then vacate by March 1, 2023.

So entered this 3rd day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1690

IHSAN SALMON,

Plaintiff,

v.

OLGA CRUZ,

Defendant.

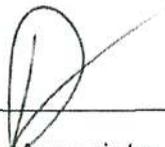
ORDER

After hearing on December 28, 2022, on the tenants' motion to stop a physical eviction at which all parties appeared without counsel, the following order shall enter:

1. The landlord shall FORTHWITH inspect and make any necessary repairs to the heating unit in the tenant's bedroom.
2. The tenants shall pay the landlord use and occupancy for December 2022 by today (December 28, 2022).

3. By agreement of the landlord, if the tenants pay use and occupancy for December 2022 today, he will postpone the physical eviction (currently scheduled for January 4, 2023) and hold off on rescheduling it until February 2, 2023, or thereafter with proper notice.
4. If the tenants do not make said payment today, the landlord does not have to cancel the physical eviction currently scheduled.

So entered this 3rd day of January, 2023.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-692

ESTHER SANCHEZ,

Plaintiff,

v.

ALBA CASTRO,

Defendant.

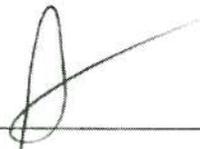
ORDER

After hearing on December 29, 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 shall continue to pay her use and occupancy of \$1,300 as long as she occupies the subject premises.
2. The tenant shall vacate by no later than April 1, 2023.

3. The landlord has instructed the tenant to not apply for RAFT to pay her the outstanding arrearage but instead to apply for RAFT funds to assist her in moving to a new home.
4. If the tenant does not move out by April 1, 2023, and the landlord still seeks possession of the premises, she may file a motion for entry of judgment and issuance of the execution.

So entered this 3rd day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

mr

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0792

WILMARIE SANTIAGO,)
)
 PLAINTIFF)
)
 V.)
)
 CENTURY PACIFIC HOUSING PARTNERSHIP X,)
)
 DEFENDANT)

RULING ON MOTION FOR
INJUNCTIVE RELIEF

This matter came before the Court on December 22, 2022 on Plaintiff's application for injunctive relief. Plaintiff appeared self-represented. Defendant appeared self-represented.¹

After hearing, the following order shall enter:

1. Defendant shall provide alternative housing to Plaintiff through the night of December 28, 2022, during which time Defendant shall exterminate Plaintiff's unit to eradicate the infestation of rodents. The requirement for alternative housing is necessary because Plaintiff has three young children, including a newborn, who should not be exposed to the chemicals used to treat the infestation.
2. If the hotel does not have a kitchenette, Defendant shall provide a daily food stipend of \$75.00. Defendant shall pay for the hotel room and any

¹ The case was brought against the property manager, Jessenia Mendez, but the Court deems the proper defendant to be the property owner and substitutes the owner as defendant.

daily food stipend in advance.

3. Defendant shall have unobstructed access to Plaintiff's unit during the time Plaintiff is staying in the hotel.

SO ORDERED.

DATE: 1/3/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-882

DWAYNE FISHER,

Plaintiff,

v.

ZHENG'S 168 GROUP, LLC, and HUICHUAN
CHEN,

Defendants.

ORDER

After hearing on January 3, 2023, on the plaintiff tenant's emergency motion at which the tenant appeared with counsel and the defendant property manager/lessor Huichuan Chen did not appear and the property owner LLC also did not appear, the following order shall enter:

1. The court's last order issued after a December 30, 2022, hearing shall remain in full force and effect.

2. The plaintiff reports that he will file a contempt complaint due to the defendants' failures to comply with the court's order.

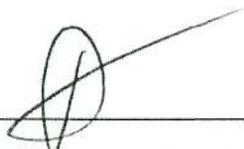
So entered this 4th day of January, 2022.

Robert Fields, Associate Justice

CC: Court Reporter

2. Accordingly, this matter shall be continued to the date noted below and in the interim the tenant shall pay her portion of the monthly rent.
3. If the tenant become aware that the anticipated unit at 413 Main Street, Apt. 2 in Springfield is going to not work out or be delayed, she must convey this information to the landlords (Lafemine).
4. A review hearing shall be scheduled for **March 15, 2023, at 2:00 p.m.**

So entered this 4th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

SUZANNE RATAJ,

Plaintiff,

v.

RAQUEL VELAZQUEZ,

Defendant.

ORDER FOR ENTRY OF
JUDGMENT

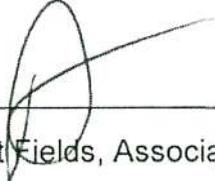
After hearing on January 3, 2023, on review of this matter in accordance with G.L. c.239, s.9 and the court's earlier order dated December 7, 2022, at which the landlord appeared through counsel and the tenant appeared without counsel, the following order shall enter:

1. The tenant failed to pay use and occupancy for December 2022, and failed to timely provide the landlord with documentation of her housing search. The

tenant also does not currently have a RAFT application pending for the \$7,554.83 outstanding through January 4, 2023¹.

2. As such, it would be too prejudicial against the landlord to continue to stay the judgment in this matter.
3. Accordingly, judgment shall enter for the plaintiff landlord for possession and for \$7,554.83 (representing use and occupancy through January 4, 2023). The execution shall issue in due course after the filing *and service* of a Rule 13 Application (Uniform Summary Process Rules).

So entered this 4th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

¹ The monthly use and occupancy is \$1,200. The court found and ruled that \$6,200 was outstanding through the month of trial (November 2022) and now December 2022 plus four days of January 2023 are outstanding, bringing the balance to \$7,554.83.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-236

TAMEKA REEVES,

Plaintiff,

v.

CLIVE and MARLENE RYAN,

Defendants.

ORDER

After hearing on January 3, 2023, at which the plaintiff tenant appeared without counsel and the defendant landlords appeared with counsel, the following order shall enter:

1. The tenant reports that the city inspectors are returning to the premise on January 4, 2023. The tenant shall, among other things, point out to the inspectors her concern that there continues to be electrical service in the basement and the

hallway and porch that she claims are attached to her meter and the toilet leak she asserts has continued or restarted.

2. The landlords will repair all items cited by the city inspectors, if any. Any and all such repairs that require a licensed person and city permitting shall be effectuated in that matter.
3. The landlords shall also forthwith hire an electrician to inspect and make any necessary repairs to the tenant's thermostat.
4. By agreement of the parties, this civil action shall be consolidated into the current summary process matter between the parties, 22-SP-2528.

So entered this 4th day of January, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-2875

VIABILITY, INC. AND DICKINSON STREET)
MANAGEMENT, LLC)

PLAINTIFFS)

V.)

DAVID THERRIEN, SR.,)

DEFENDANT)

RULING ON VIABILITY'S MOTION
TO DISMISS COUNTERCLAIM AND
WITHDRAW AS A PLAINTIFF

This matter came before the Court on December 22, 2022 on Viability Inc.'s motion to dismiss and on Dickinson Street Management, LLC's motion for leave to file crossclaims against Viability, Inc. All parties appeared through counsel.

By way of background, Viability, Inc. ("Viability") filed this for-cause summary process action against David Therrien, Sr. ("Therrien") on October 21, 2021. Prior to his termination, Therrien had been a participant in a supportive housing program operated by Viability. Therrien occupied a dwelling unit located at 452 Dickinson Street, Apt. 3R, Springfield, Massachusetts (the "Premises") as a sublessee of Viability pursuant to a lease between Viability and the property owner, Dickinson Street Management, LLC ("Dickinson Street").

Viability terminated Therrien's enrollment in the supportive housing program for alleged violations of program rules, and sought to evict him from the Premises in this action. During the pendency of this case, Viability discontinued its housing

program and disclaimed any further right to possession of the Premises. Viability argues that, because it has voluntarily surrendered possession of the Premises, it should be dismissed from this case and Therrien's counterclaim is now moot.

Therrien is no longer living in the Premises but claims that he has never surrendered possession and should be permitted to reside in the Premises pending a court order that he vacate. Dickinson Street seeks to recover legal possession of the Premises and wishes to assert claims against Viability under the lease between the parties that expired in October 2020.

This case presents a number of legal issues related to the right to possession. Dickinson Street had a lease with Viability but had no landlord-tenant relationship with the sublessee, Therrien. It is axiomatic that a sublessee cannot have rights greater than the sublessor, and, therefore, when Viability surrendered its right to possession, Therrien became a tenant at sufferance with respect to Dickinson Street. In order to recover possession from Therrien (if in fact Therrien is in possession of the Premises), Dickinson Street must file an action against Therrien. Dickinson Street cannot step into Viability's shoes as the plaintiff in the instant summary process case without an assignment of rights, because this eviction case is premised upon claims that Therrien violated Viability's program rules and Dickinson Street was not a party to the contractual relationship between Viability and Therrien. Accordingly, in light of Viability's abandonment of its claim for possession against Therrien, Viability's affirmative case for possession must be dismissed.

The dismissal of Viability's claim for possession against Therrien does not render Therrien's counterclaim moot, however. If Therrien has viable claims against

Viability, he retains the right to seek remedies. Therefore, the counterclaim brought by Therrien in this matter shall not be dismissed but shall proceed in a separate civil action.

If Dickinson Street believes it is necessary to obtain a court order to recover possession from Therrien, it must file a separate summary process action.¹ If Dickinson Street believes it has monetary claims against Viability related to the landlord-tenant relationship between them, it may bring such claims in a separate civil case.

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

1. Viability's motion to dismiss the instant summary process case is allowed.
2. Therrien's counterclaim against Viability shall be transferred to the civil docket and the caption changed to reflect Therrien as the plaintiff and Viability and the defendant.
3. Dickinson's motion for leave to file cross-claims against Viability is denied without prejudice to be filed in a separate civil action.

SO ORDERED.

DATE: 1/4/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ Because Therrien is a tenant at sufferance in relation to Dickinson Street, Dickinson Street is not required to serve a notice to quit but may instead simply serve and file the complaint pursuant to the Uniform Rules of Summary Process.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1833

SERGEANT ARMS APARTMENTS,

Plaintiff,

v.

EDISON ESTEVEZ,

Defendant.

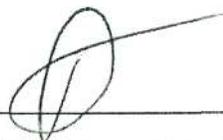
ORDER

After hearing on January 5, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared without counsel, the following order shall enter:

1. The landlord reports that the tenant paid his use and occupancy each month since the August 9, 2022, agreement of the parties, albeit each payment was received late.

2. The tenant had some issues/confusion regarding his application for RAFT and will reapply forthwith.
3. The parties shall cooperate with the RAFT application process and the landlord shall include all monies owed in its ledger including court costs.
4. The tenant shall pay his use and occupancy for January 2023 forthwith and for February 2023 by no later than the 7th of that month.
5. There shall be further hearing on the landlord's motion scheduled for **February 9, 2023, at 9:00 a.m.**

So entered this 5th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-11

SERVICENET, INC.,

Plaintiff,

v.

LISA SIMONIN,

Defendant.

ORDER

After a Zoom hearing on January 4, 2023, on the plaintiff's complaint and motion for injunctive relief, at which the plaintiff appeared through counsel and the defendant appeared without counsel but accompanied by a representative from Clinical & Support Options (CSO), the following agreed upon order shall enter:

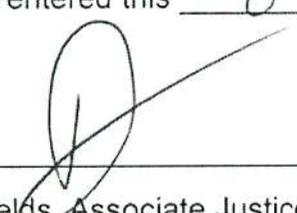
1. At the commencement of the hearing the court voiced several concerns about proceeding with the hearing. First, the defendant may be facing criminal charges arising out of the same allegations upon which this instant matter is based, and

she has appeared without the benefit of counsel---of particular concern regarding her constitutional rights against self-incrimination. Second, that the hearing was by Zoom at commenced with very little time left in the day.

2. The parties have agreed to continue this motion hearing until the date noted below.
3. Beginning tonight (January 4, 2023) and continuing until further court order or written agreement of the parties, the plaintiff shall provide hotel or motel accommodations with cooking facilities for the defendant. If such accommodations do not have cooking facilities, the plaintiff shall provide the defendant with a daily food stipend.
4. The plaintiff shall either store the defendant's food in a refrigerator and/or freezer on their premises or (if the temporary accommodations have cooking facilities) transfer same to the defendant at her hotel room.
5. The defendant shall not be at the subject premises located at 88 East Main Street in Orange, Massachusetts, until further order of the court or by express permission of the plaintiff.
6. The defendant is referred to Community Legal Aid (CLA) for legal assistance. CLA can be reached by phone at 855-252-5342 or 413-781-7814 and on-line at www.communitylegal.org .
7. Should the defendant be arraigned on criminal matters she is urged to inform her criminal defense counsel about these proceedings and ask that s/he accompany her to the hearing scheduled below.

8. This matter is also referred to the Tenancy Preservation Program. There was no time left after the hearing to connect the parties to the Housing Specialist Department or to the Tenancy Preservation Program (TPP) so the Housing Specialist Department is requested to reach out to TPP to make the referral. They can ascertain contact information for the defendant through the plaintiff's counsel, Peter Lane.
9. This matter is scheduled for hearing on the plaintiff's motion for injunctive relief on **January 20, 2023, at 9:00 a.m.** in the Greenfield Session of the court.

So entered this 6th day of January, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist
Tenancy Preservation Program
Community Legal Aid
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

DIANEMARIE TORO,

Plaintiff,

v.

PYNCHON TOWN HOMES & EDGEWATER
TOWERS,

Defendant.

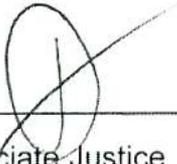
ORDER

After hearing on January 5, 2023, on review of this matter at which the plaintiff tenant appeared without counsel and the defendant landlord appeared through counsel, the following order shall enter:

1. The landlord has not completed all the repairs cited by the city code enforcement and shall do so forthwith.

2. The landlord shall have a mold expert investigate whether there is additional work required above the closet to further remediate mold. The report of said expert shall be IMMEDIATELY shared with the tenant¹.
3. The tenant has brought to the landlord's attention since the last extermination that she believes the infestation is worsening. The landlord shall investigate and take necessary steps to eradicate the infestation.
4. The parties shall cooperate in arranging for the city code enforcement office to reinspect.
5. This matter shall be scheduled for further review and for any properly marked motions on **February 16, 2023, at 2:00 p.m.** The tenant reported that she has surgery scheduled in March 2023 which may require future hearings to be held by Zoom. This issue will be addressed at the next hearing noted herein. If the tenant's surgery is moved up and she requires a Zoom hearing for the above noted hearing in February 2023, she shall communicate with the landlord's attorney and the clerks' office to make such arrangements.

So entered this 6th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

¹ The court's last order required the mold expert report being shared with the tenant and it was not (until today's hearing) even though said report was generated in November 2022.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

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

BELCHERTOWN HEIGHTS ALF LTD)
D/B/A CHRISTOPHER HEIGHTS OF)
BELCHERTOWN,)

PLAINTIFF)

v.)

KENNETH BRAICA,)

DEFENDANT)

ORDER OF DISMISSAL OF APPEAL

In this summary process case in which Defendant filed a notice of appeal on July 25, 2022, the Court imposed a deadline of December 8, 2022 for Defendant to identify and order transcripts or certify none were needed.¹ At a hearing on November 25, 2022, the Court made clear to Defendant that his appeal would be dismissed if Defendant did not comply with the deadline.²

Pursuant to an affidavit of Plaintiff's counsel filed on December 16, 2022, Defendant did not comply with the Court's order. Moreover, the Court has no record of Defendant identifying and ordering transcripts or certifying that no transcripts were needed. Defendant did, however, file another notice of appeal, which is a

¹ Plaintiff moved to dismiss the appeal on November 16, 2022, and on November 25, 2022, in light of Defendant's status as a self-represented litigant, the Court allowed Defendant an additional ten days to identify and order transcripts or certify that none were needed.

² The Court stated this on the record at the hearing and put it in a marginal endorsement on Plaintiff's motion to dismiss the appeal.

nullity under the circumstances. Defendant also filed a motion seeking various remedies, including a request that the Court dismiss the case. Based on the foregoing, the Court enters the following order:

1. Defendant's appeal is hereby dismissed.
2. The execution (eviction order) shall issue forthwith.
3. The Court denies the relief requested in the motion filed by Defendant on December 9, 2022.³

SO ORDERED.

DATE: _____

1/9/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

³ If Defendant's intent in filing the motion was to seek a stay of execution, he must file a separate motion seeking such relief.

Together, Defendant's counsel seeks an award of \$6,325.00, calculated by multiplying 25.3 hours by an hourly rate of \$250.00.² Plaintiff filed an opposition, arguing that the total hours expended in this cause should be significantly less than the 23.1 hours sought in the related trial with docket number 22H79SP000370.

Plaintiff posits that a reasonable attorneys' fee award in this case is \$3,150.00.³

"While the amount of a reasonable attorney's fee is largely discretionary, a judge should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC*, supra, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993). The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. See *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 629 (1978). A judge is "not required to review and allow or disallow

² Defendant has not sought an award of costs.

³ The Court calculated this figure by adding the hours Plaintiff deemed reasonable for Attorney DeBartolo (5.6) and Attorney Manzanares (7.0) and multiplying by \$250.00, an hourly rate Plaintiff does not challenge.

each individual item in the bill, but [may] consider the bill as a whole." *Berman*, 434 Mass. at 303.

After considering the time expended, counsel's level of expertise and experience, the difficulty of the case, the results achieved (taking into account the reduced hours for unsuccessful claims), and the fees customarily charged for similar work, and further considering the number of hours expended in the case with docket number 22H79SP000370 involving Defendant's roommate, the Court concludes that a fair and reasonable attorneys' fee award in this case is \$4,500.00.

Accordingly, the Court awards Defendant attorneys' fees of \$4,500.00.⁴

SO ORDERED.

DATE: 1/10/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

⁴ The award of attorneys' fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0370

MICHAEL BEN-CHAIM,)
)
) PLAINTIFF)
v.)
)
HAKIM STEWART,)
)
) DEFENDANT)
_____)

RULINGS ON PETITION FOR
ATTORNEY'S FEES

This summary process eviction case is before the Court on Plaintiff's post-trial petition for an award of attorney's fees following a two-day bench trial. After trial, the Court determined that Defendant prevailed on claims for breach of quiet enjoyment, warranty of habitability, security deposit and last month's rent, G.L. c. 93A and discrimination, all of which entitle Defendant to an award of attorney's fees.¹

Defendant's counsel, David DeBartolo, who represented Defendant on a Limited Assistance Representation basis, submitted a petition for an award of attorney's fees in the amount of \$5,775.00 consisting of 23.1 hours at a rate of

¹ The Court did not award damages on Defendant's claim for retaliation, which was one of five major claims in the case. Counsel excluded time entries related exclusively to the retaliation claim and further subtracted 20% from the total hours billed to reflect his best estimate of time spent on that claim.

\$250.00 per hour.² Plaintiff filed an opposition asking that the petition be reduced by one-third.

"While the amount of a reasonable attorney's fee is largely discretionary, a judge 'should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.'" *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC*, supra, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993). The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. See *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 629 (1978). A judge is "not required to review and allow or disallow each individual item in the bill, but [may] consider the bill as a whole." *Berman*, 434 Mass. at 303.

The Court has reviewed Defendant's petition and supporting materials and considered the factors set forth in *Twin Fires* and *Linthicum*. After considering the time expended, counsel's level of expertise and experience, the difficulty of the case,

² Defendant has not sought an award of costs.

the results achieved (taking into account counsel's deductions for the unsuccessful retaliation claim), and the fees customarily charged for similar work, the Court concludes that the requested attorney's fees are fair and reasonable.

Accordingly, the Court awards Defendant attorney's fees of \$5,775.00.³

SO ORDERED.

DATE: 1/10/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

³ The award of attorneys' fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0733

_____)	
RALPH COCCHI,)	
)	
PLAINTIFF)	
v.	)	RULING ON PETITION FOR
	)	ATTORNEY'S FEES
TIFFANY WILLIAMS,)	
)	
DEFENDANT)	
_____)	

This summary process eviction case is before the Court on Plaintiff's post-trial petition for an award of attorneys' fees and costs. Following a bench trial, the Court entered an order dated September 2, 2022 awarding Plaintiff judgment for possession and Defendant judgment for monetary damages in the amount of \$15,980.00, along with costs and reasonable attorney's fees, on her counterclaims.¹ Defendant's counsel, Savannah Parker, submitted a petition for such attorney's fees and Plaintiff filed an opposition asking that the petition be denied altogether.

"While the amount of a reasonable attorney's fee is largely discretionary, a judge 'should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.'" *Twin*

¹ The Court notes that, although permitted to do so, Defendant has not sought an award of costs.

Fires Inv., LLC v. Morgan Stanley Dean Witter & Co., 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC*, supra, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993). The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. See *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 629 (1978). A judge is "not required to review and allow or disallow each individual item in the bill, but [may] consider the bill as a whole." *Berman*, 434 Mass. at 303.

The Court has reviewed Defendant's petition and supporting materials and considered the factors set forth in *Twin Fires* and *Linthicum*. The petition seeks \$8,502.25, which includes all of the hours counsel spent preparing for and conducting the one-day bench trial. The Court, however, limits its award to the reasonable fees incurred successfully litigating counterclaims with fee shifting provisions, which here are G.L. c. 186, § 15B and G.L. c. 186, § 14. After considering the time expended, counsel's level of expertise and experience, the difficulty of the case, the results achieved on the counterclaims with fee shifting provisions, and the fees customarily charged for similar work, the Court concludes that a reasonable attorney's fee award in this case is \$4,500.00.

Accordingly, the Court awards Defendant attorney's fees of \$4,500.00.²

SO ORDERED.

DATE: 1/10/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

² The award of attorney's fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985)

R

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
ARRUFATT,

Defendant.

ORDER

This matter came before the court for trial on November 28, 2022, at which all parties appeared without counsel and for which Ms. Rice's Guardian Ad Litem appeared. After consideration of the evidence admitted therein, the following findings of fact, conclusions of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Timothy Dobek (hereinafter, "landlord") owns a single family home located at 44 Colonial Avenue in Agawam, Massachusetts (hereinafter, "premises"). The defendants, Gabriel Cedres, Darcie Lewandowski,

and Gabriel Cedres Arrufatt (hereinafter, "tenants") all reside at the premises. Caroline Rice (hereinafter, "Rice") was also a tenant at the premises until August 29, 2022, when she relocated to a residence elsewhere. The landlord terminated the tenancy for no-fault and then commenced this instant summary process action. The tenants have filed Answers with counterclaims and defenses.

- 2. The Landlord's Claim for Possession and for the Account Annexed:** The court finds that the tenants received the no-fault Notice to Quit dated April 26, 2022, which had the effect of terminating the tenancy by the end of the day on May 31, 2022. The parties stipulate that they have not paid rent, use, and occupancy for the past fourteen months totaling \$21,000. The parties also stipulate that the landlord received \$5,500 at the commencement of the tenancy on June 1, 2021, through the RAFT program which represents first and last month's rent plus security deposit *and* one extra month stipend. Thus, the landlord's claim for outstanding use, occupancy, and rent is reduced by the "extra" month paid by RAFT bringing the total claim to **\$19,500**.
- 3. The Tenants' Claim for Violation of the Security Deposit Law:** At the commencement of the tenancy, the tenants paid the landlord \$1,000 for a security deposit. Thereafter, the landlord failed to comply with each and every aspect of the security deposit laws at G. L. c.186, s.15B. The landlord even admitted that he used said funds for expenses related to the subject premises. Early in the tenancy, the tenants asked for information regarding the security deposit and the landlord admits that he did not respond, explaining that he was under some form of restraining order and not allowed to communicate with Ms.

Lewandowski at that time. The tenants also asserted a violation of the security deposit law in their Answer dated September 1, 2022, which shall be treated by the court as a demand for its return due to the landlord's failure to comply with the law.

4. Based on the foregoing findings, the court rules that the landlord violated the security deposit law and then did not return it to the tenants upon their demand. Accordingly, the tenants shall be awarded three times the deposit of \$1,000, totaling **\$3,000**.

5. The Tenants' and Rice's Claim for Breach of the Covenant of Quiet

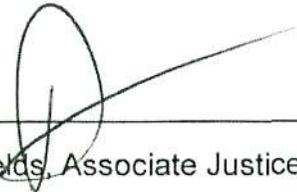
Enjoyment: The terms of the tenancy included that the utilities would be the responsibility of the landlord, though it may be that the tenants had agreed to pay \$100 in addition to rent each month towards the electric bill. Nevertheless, at some point in time the landlord was unable to pay the electric and gas bills, and both ended up being curtailed for non-payment. After the tenants went without heat for a week, they put the utilities in their own names and restored both the gas and electric.

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

7. Here, the landlord's failure to maintain the utility bills in his name and then the subsequent curtailment of the heat for a week violated the tenants' covenant of quiet enjoyment in violation of G.L. c.186, s.14 and award the tenants and Rice three months' rent (@\$1,500) totaling **\$4,500**.
8. **The Tenants' Claim for Breach of the Warranty of Habitability:** The tenants failed to meet their burden of proof on their claim of breach of the warranty of habitability.
9. **Conclusion and Order:** Based on the foregoing, the tenants have until ten days from the date of this order noted below to deposit with the court's clerk's office \$13,028.77. This represents the award of outstanding use and occupancy through November 2022 to the landlord of \$19,500 MINUS \$7,500 in award to the tenants and Rice (\$3,000 for security deposit violation and \$4,500 for breach of covenant of quiet enjoyment) plus court costs of \$ 176.00 and interest in the amount of \$ 852.77. If the tenants make said deposit, judgment for possession shall enter for them against the landlord and the funds so deposited shall be paid to the landlord by the court. If the tenants do not make said deposit, judgment shall enter for the landlord for possession plus \$12,000 plus court costs and interest.
10. **Rice's Possessions:** The Guardian Ad Litem reported that Rice wishes to collect her possessions (including furniture) from the premises. If this has not been completed, the Guardian Ad Litem shall assist the parties in achieving same or seek an order from this court. The Guardian Ad Litem shall file an

updated report directly after Rice is able to retrieve her personal items or upon filing of a motion for same, should one be necessary.

So entered this 10th day of January, 2023.



Robert Fields, Associate Justice

CC: Shawn Mansfield, Guardian Ad Litem
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-3103

PAUL GAUTHIER,

PLAINTIFF

v.

HANNA A. WACHIRA,

DEFENDANT

FLAGSTAR BANK FSB,

THIRD PARTY DEFENDANT

RULING ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

This post foreclosure summary process matter came before the Court on November 9, 2022 on Plaintiff's motion to for summary judgment. The parties, all of whom were represented by counsel, submitted legal memoranda together with affidavits and documents. After reviewing the summary judgment record and considering the respective arguments of the parties, Plaintiff's summary judgment motion is DENIED.

The standard for review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible evidence, including deposition testimony, answers to interrogatories, admissions, documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is

entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). “Any doubts as to the existence of a genuine issue of material fact are to be resolved against the party moving for summary judgment.” *Lev v. Beverly Enters-Mass., Inc.*, 457 Mass. 234, 237 (2010).

Based upon the facts set forth in the summary judgment record, the Court concludes that there exists a genuine issue of material fact with respect to the face-to-face meeting required in relation to federally-insured mortgages.¹ Although it is undisputed that Third Party Defendant Flagstar Bank FSB (“Flagstar”) sent a certified letter to Defendant concerning her right to schedule a face-to-face meeting in August 2019, the facts are disputed as to whether Defendant subsequently contacted Flagstar to schedule a face-to-face meeting and was directed instead to submit an application for a loan modification. Moreover, a factual issue exists as to when and for what purpose Flagstar’s agents visited the Property in 2018.² Given that doubts as to the existence of a genuine issue of material fact are to be resolved against the party moving for summary judgment, the Court rules that the claims and defenses in this case must be decided by the fact-finder at trial. The Clerk’s Office is requested to schedule this case for an in-person bench trial.

SO ORDERED.
DATE: 11/10/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ Federal regulations require a mortgage lender to take reasonable steps to arrange for a face-to-face meeting with a defaulting borrower before foreclosing on the federally-insured mortgage. See 24 C.F.R. § 203.604(b). “A reasonable effort to arrange a face-to-face meeting with the mortgagor shall consist at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched. Such a reasonable effort to arrange a face-to-face meeting shall also include at least one trip to see the mortgagor at the mortgaged property.” *Id.* at § 203.604(d).

² The dates are particularly important because this Court voided Flagstar’s previous foreclosure by order dated July 31, 2018.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2846

JACOB BARRETO GONZALEZ,)

PLAINTIFF)

v.)

LEEANN MULERO,)

DEFENDANT)

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER

This summary process action was before the Court for an in-person bench trial on December 2, 2022. Plaintiff seeks to recover possession of 46 Burr Street, Springfield, Massachusetts (the “Premises”) from Defendant based on alleged lease violations. Plaintiff appeared through counsel. Defendant appeared at trial self-represented.

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

Plaintiff is the step-brother of Defendant. They have the same father and different mothers. Plaintiff owns the Premises, a side-by-side duplex that is not owner-occupied, with his wife, Ms. Pacheco. Defendant is a tenant at will who has lived in the Premises since 2019. Monthly rent is \$1,000.00. Plaintiff’s complaint makes no demand for monetary damages. Plaintiff had a rental period notice to quit,

dated June 29, 2022, served on Defendant, who acknowledges receipt of the notice to quit by mail, although she does not recall having it left at her home. Defendant did not vacate on July 31, 2022, as demanded in the notice to quit, and continues to reside at the Premises.

In order to establish his prima facie case for possession, Plaintiff has the burden of proving the allegations in his complaint which, in this case, incorporate the reasons set forth in the notice to quit. The alleged lease violations include Defendant repeatedly denying access for repairs, allowing occupation by an unauthorized adult, parking an inoperable car in the rear yard, and failing to maintain the landscaping. Defendant did not file an answer, but contends that Plaintiff does not have sufficient grounds for eviction.

The parties' lease permits Plaintiff to terminate the rental agreement if "any default is made in the payment of rent or any other lawful terms, conditions, covenant, obligations, or agreement expressed herein or implied hereunder...." See Ex. 1, ¶ 17. In its notice to quit, which forms the basis of the claims asserted in this case, asserts various lease violations; namely, failure to allow access for repairs, failure to maintain the landscaping, unauthorized occupants and storage of an inoperable vehicle in the back yard. The Court will address each allegation in sequence.¹

¹ Although at trial Plaintiff cited Defendant's failure to pay the entire security deposit at move in as a lease violation, this allegation is not part of this case as it was not referenced in the complaint.

With respect to allegations that Defendant failed to permit access for repairs in violation of the lease, the notice to quit cites one instance in June 2022 when the parties agreed on a date and time for access and Defendant did not allow access at that time. Plaintiff testified that he knocked on the door several times and the door was not opened. The parties presented conflicting evidence whether Defendant heard them knocking and whether they also had a text exchange at this time. In any event, as of the date of the termination of tenancy, this is the only instance that Defendant denied access, and the evidence did not establish that her failure to allow access on that occasion was intentional or unreasonable.² Accordingly, the Court rules that Plaintiff did not sustain its burden of proof with respect to this lease violation.

Next, Plaintiff contends that Defendant failed to maintain the landscaping as she agreed to do in the lease, and that Plaintiff has had to repeatedly cut the lawn, remove leaves and do other chores. Defendant concedes that she stopped mowing the lawn and shoveling the snow when she got pregnant, but the critical question is whether her failure to do so violates the lease. Section 10 of the lease recites that Defendant shall not “obstruct or litter” or “destroy, deface, damage or remove” any parts of the grounds or common areas. A handwritten addition required Defendant to maintain “maintain “del patio, en verano e invierno” (which the Court interprets as requiring Defendant to maintain the yard). The lease is not specific as to lawn mowing or snow shoveling, and in any event the Premises is a duplex and the lease does not

² Ms. Pacheco testified as to another incident when Plaintiff sought access in early August 2022 and that he received no response. This occurred after service of the notice to quit, and thus cannot support a claim that her denial of access is a reason for terminating the tenancy.

clearly make Defendant responsible for maintaining and shoveling the entire yard for both apartments.

Moreover, the Court infers from the testimony that the parties agreed that their father verbally agreed to maintain the yard as a way of reducing the amount Defendant would have to pay in rent, and that he stopped doing so when he fell ill. Given the family relationship between the parties, and in light of the corroborating testimony of Defendant's mother (who was present at the lease signing), the Court finds that the parties understood that their father would help Defendant care for the yard. Given these circumstances, and because the lease is less than clear regarding Defendant's responsibilities regarding landscaping, the Court finds that Plaintiff did not sustain his burden of proving a material lease violation based on Defendant's failure to take care of the yard.

Regarding the allegation of an illegal occupant, the Court finds that the evidence does not support the allegation that Defendant violated the lease by allowing an unauthorized occupant to reside in the Premises or stay for more than 15 days. Although Defendant may have a regular visitor at the Premises, the burden rests with Plaintiff to produce credible evidence that the visits constitute a material violation of the lease, and such evidence was lacking.³

³ Moreover, the Court does not find the provision regarding unauthorized occupants to be enforceable. The provision requires Defendant to pay an additional \$100.00 for a guest who stays more than 15 days, but it does not specify if this amount would be charged per day, per week, per month or per year, nor does it indicate the time period within which the 15-day period had to take place (for example, in a twelve-month period).

Lastly, Plaintiff contends that, about eight months ago, Defendant placed a car on blocks in the back yard and that the car was there for about two months. The lease prohibits storage of an unregistered or inoperable vehicle on the property. Although Defendant admits that a car was placed on blocks temporarily, she had it removed upon receipt of the notice to quit and it is undisputed that she has not had a car on blocks since that time. The Court rules that this lease violation does not constitute a material violation justifying eviction.

During the trial, Plaintiff and Ms. Pacheco testified that the reasons the notice to quit was served primarily because of Defendant's failure to pay rent, her disrespectful behavior and her failure to allow inspections of the Premises. The clear implication is that Plaintiff wanted to evict his sister for not paying rent, but was unable to do so when the RAFT program agreed to pay the rent arrears on her behalf and a three-month rent stipend through the end of July 2022. Given that the rent stipend would end on July 31, 2022, and believing that Defendant would not be able to pay rent thereafter, Plaintiff decided to send a notice to quit to terminate the tenancy at the same time as the stipend would end. In order to have a reason other than non-payment for eviction, Plaintiff alleged various lease violations. Simply alleging the lease violations, however, is not enough: Plaintiff had the burden of proving that the violations were sufficiently substantial to warrant eviction, and he did not sustain his burden.

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 Defendant.
2. Plaintiff shall repair the broken tiles in the Premises within 30 days.⁴
3. Defendant shall not unreasonably deny access for repairs.

SO ORDERED.

DATE: 1/10/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

⁴ Defendant testified about cracked tiles in the Premises that are dangerous for her children, but she did not file any counterclaims and, in any event, defective conditions are not a defense to possession in a cause-based eviction case. Nonetheless, the Court is convinced that the tiles require repair.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2021

PHOENIX SOUTH CITY, LLC,

Plaintiff,

v.

JAMIE DUFAULT,

Defendant.

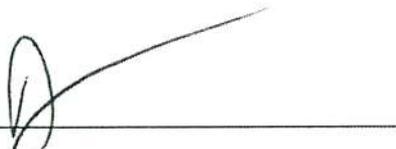
ORDER

After hearing on January 9, 2023, on the tenant's emergency motion to stop a physical eviction at which the tenant appeared without counsel and the landlord appeared by counsel, the following order shall enter:

1. The physical eviction currently schedule for January 10, 2023, shall be cancelled by the landlord.

2. The tenant shall drop a check of with the landlord today (January 9, 2023) in the amount of no less than \$1,600. It is understood that it will be a personal check from the tenant's mother-in-law.
3. The tenant understands that she is to forthwith investigate and communicate with all relevant agencies and people the status of her subsidy, a RAFT application, and recertification/rent recalculation.
4. The tenant should reach out to Community Legal Aid (CLA) to see if they might be able to provide legal assistance in this matter as well as the other efforts noted above. CLA can be reached at 855-252-5342, 413-781-7814, and at <http://communitylegalaid.org>
5. The tenant indicated during the hearing that she has [REDACTED] in her household. This matter will be referred to the Tenancy Preservation Program (TPP) which can be reached at 413-358-5654. The tenant should reach out to TPP. The tenant's telephone number is listed on the tenant's motion to stop the physical eviction.
6. This matter shall be scheduled for review and for any properly marked motions on January 24, 2023, at 9:00 a.m. at the Springfield Session of the court.

So entered this 10th day of January, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist (for referral to TPP)
TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2328

BEVERLY E. SHOWELL AND
TYRELL ADEYEMI,

PLAINTIFFS

v.

RONALD SHOWELL,

DEFENDANT

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER FOR JUDGMENT

This no fault summary process case came before the Court on December 7, 2022 for an in-person bench trial. The parties appeared self-represented. Plaintiff seeks to recover possession of a single family house located at 961 Roosevelt Avenue, Springfield, Massachusetts (the "Premises").

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

Plaintiff Beverly Showell and Defendant Ronald Showell are siblings. The Premises are the family home. In April 2022, their father conveyed the Premises to Plaintiffs, reserving for himself a life estate.¹ Defendant believes Plaintiffs exerted undue influence over his father to get him to deed them the Premises. This issue is beyond the scope of this case. Plaintiffs have demonstrated that the recorded deed is

¹ The father passed away on May 27, 2022.

in their name, and, therefore, they have a superior right to possession in relation to Defendant.

By notice dated May 4, 2022, Plaintiff purported to terminate Defendant's tenancy with a rental period notice expiring on June 30, 2022. Defendant, who claims that he was residing in the Premises to help take care of his parents,² placed the gas and electricity accounts in his name and claims that he paid for these utilities in lieu of paying rent.³ Plaintiffs have been paying real estate taxes, water and sewer and insurance since the Showell's father passed away. Plaintiffs are at risk of their insurance being cancelled due to the conditions in the home.

The Court rules that Defendant has no legal defenses to Plaintiffs' claim to possession. Because this case was brought for no fault, the Court has the discretion pursuant to G.L. c. 239, § 9 to stay use of the execution (eviction order) for a period of time to allow Defendant an opportunity to search for other housing. The statute requires Defendant to search diligently for housing during the period of stay, and to pay for his use and occupancy of the Premises. In light of this law, and based on the findings at trial, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiffs.
2. No execution shall issue without further Court order.
3. Defendant shall immediately begin searching for replacement housing, and he shall keep a log of all efforts made to find replacement housing.

² The siblings' mother passed away in 2021.

³ This financial relationship is sufficient to form a landlord-tenant relationship, and thus the rental period notice was appropriate. Had no landlord-tenant relationship been formed between Defendant and his father, he would have been entitled to a three-month notice to quit pursuant to G.L. c. 186, § 12.

4. Defendant shall pay for the gas and electricity consumed at the Premises during the stay in lieu of periodic use and occupancy payments.⁴
5. Defendant shall provide Plaintiffs with a set of keys to the Premises by December 9, 2022 by leaving them in the mailbox for Plaintiffs to pick up.
6. Defendant shall remove all grills (except for one small grill for personal use) from the property and shall dispose of all trash on the exterior of the property within 30 days.
7. The parties shall return for further hearing on January 31, 2023 at 9:00 a.m. at which time the Court will review Defendant's compliance with the terms of this order and will consider the conditions of any further stay on use of the execution.

SO ORDERED.

DATE: 1/10/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

⁴ If Plaintiffs seek a specific order for use and occupancy payments, they shall file a motion for same and the Court shall schedule an evidentiary hearing pursuant to which the Court will consider an appropriate monthly amount for Defendant's use and occupancy.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SU-6

TRACY and DAVID CROSBY,

Plaintiffs,

v.

SHELLY and JESSIE KAIGLE,

Defendants.

ORDER

After hearing on January 11, 2023, at which the plaintiff Tracy Crosby and both defendants appeared, the following order shall enter:

1. The financial statements provided by the defendants shall be impounded in accordance with Trial Court rule VIII: Uniform Rules on Impoundment for twenty years from the date of this order, noted below.
2. The plaintiff may not share, copy, publish, show, or otherwise provide the contents of the financial statements with anyone outside this litigation.

3. Based on the record before the court, the court finds that the defendants are indigent and unable to make any payments towards the debt at this time.
4. Should either defendant win a lottery or inherit funds, they must report same to the plaintiffs forthwith.
5. All parties must update the court during the pendency of this case each and every time their mailing address changes, if ever.
6. This matter shall be scheduled for review on **August 16, 2023, at 9:00 a.m.** at the Pittsfield Session of the court.

So entered this 13th day of January, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2793

_____)	
CHRIS ROLANDINI,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
MICHELLE RAYMOND,)	
)	
DEFENDANT)	
_____)	

This summary process case brought for non-payment of rent came before the Court for an in-person bench trial on November 18, 2022. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 478 Kings Highway, 2d Floor, West Springfield, Massachusetts (the "Premises").

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

Plaintiff owns the Premises, which are part of a two-family, non-owner occupied home. Plaintiff entered into a written lease with Hilary Perdue and her son for a one-year term commencing on November 1, 2019. The agreed-upon rent was \$1,200.00 per month. The rent was increased to \$1,250.00 as of January 1, 2022 and the increased rental amount was paid for three months. Therefore, the Court

concludes that the rent increase was accepted and the current rental amount is \$1,250.00 per month. The last rent payment received was in March 2022. The balance of unpaid rent through trial is \$10,000.00. The Court finds that Plaintiff served and Defendant received a 14-day notice to quit on July 21, 2022.

The tenant on the lease, Ms. Perdue, vacated sometime after March 2022 and before June 2022. Defendant, who had moved in without being added to the lease in or about October 2021, continued to occupy the Premises after Ms. Perdue vacated. Defendant admits that she never paid rent directly to Plaintiff. She claims that she paid rent to Ms. Perdue, although she provided no evidence to support this claim. The Court finds that there was no meeting of the minds between Plaintiff and Defendant for Defendant to become a tenant, and therefore no landlord-tenant relationship was formed. Defendant was, at most, a subtenant of Ms. Perdue and, therefore, relative to Plaintiff, she has the rights only of a tenant at sufferance.

Tenants at sufferance have the right to enforce the State Sanitary Code and live in a habitable dwelling. Defendant made numerous allegations at trial about defective conditions that existed in the Premises during the time Ms. Perdue lived there and after she vacated. She claims that she endured months without heat and hot water; however, she provided no evidence to corroborate her bare assertions of conditions of disrepair. Her testimony was rambling and disorganized, and laden with inadmissible hearsay. She had no direct communication with Plaintiff about conditions at the Premises while Ms. Perdue lived there. Ms. Perdue was not present to testify at trial about any notice she may have given Plaintiff about the need for repairs.

After Ms. Perdue moved out, it is unclear when and for what time periods

Defendant actually resided at the Premises, given her testimony that she was living with her ex-boyfriend elsewhere for periods of time. The Court finds that Defendant did not sustain her burden of proving that defective conditions existed at the Premises for which Plaintiff is liable.

Although the Court believes that some of the events about which Defendant testified occurred, such as having her belongings removed from the Premises and being locked out of the Premises for periods of time, the evidence is insufficient to show that Plaintiff is responsible. Defendant concedes that it was Ms. Perdue who changed the locks during her tenancy. A witness, Melissa Vanwart, who resides in the apartment below the Premises, testified credibly that she personally observed Hilary's cousin, William Dempsey, removing Defendant's belongings from the Premises and placing them in the yard. It is clear to the Court that Defendant had a tumultuous relationship with Ms. Perdue and her effort to place the blame on Plaintiff is misplaced.¹

Defendant, as a tenant at sufferance, is liable to pay rent during the period of occupancy. Although Defendant testified that she did not live at the Premises for long periods of time, there is no evidence from which the Court can conclude when Defendant actually occupied the Premises and when she lived elsewhere.

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

1. Judgment for possession and damages in the amount of \$10,000.00 in unpaid use and occupancy shall enter in favor of Plaintiff.

¹ Plaintiff did change the locks after Ms. Perdue; however, the Court finds no negligence on the part of Plaintiff. After Ms. Perdue vacated, she (or someone acting on her behalf) removed substantially all of the items from the Premises and therefore it was not unreasonable for Plaintiff to conclude that the Premises had been abandoned and for him to change the locks.

2. Judgment shall enter for Plaintiff on Defendant's counterclaims.²
3. The execution (eviction order) shall issue in accordance with Uniform Summary Process Rule 13.

SO ORDERED.
DATE: 1/17/2023

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

² To the extent Defendant has filed small claims cases against Plaintiff, her claims should be dismissed if they arise out of the same facts litigated as part of this trial.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 18-CV-0228

TONY ZEBROWSKI, ET AL.,)
)
 PLAINTIFFS)
 v.)
)
 HAYASTAN INDUSTRIES, INC., ET AL.,)
)
 DEFENDANTS)

RULING ON PETITION FOR
ATTORNEY'S FEES

As the prevailing parties in this case, Plaintiffs, pursuant to G.L. c. 93A ("c. 93A"), seek an award of reasonable attorney's fees of \$56,920.00 and costs of \$1,645.00. Defendants oppose the amount of fees, and counter that a reasonable fee is \$28,460.00.

"While the amount of a reasonable attorney's fee is largely discretionary, a judge 'should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.'" *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC*, supra, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtac Corp.*, 415 Mass. 309, 324 (1993). The standard of reasonableness depends not

on what the attorney usually charges but, rather, on what his services were objectively worth. See *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 629 (1978). A judge is "not required to review and allow or disallow each individual item in the bill, but [may] consider the bill as a whole." *Berman*, 434 Mass. at 303.

In considering what constitutes a reasonable attorney's fee in this case, the Court notes that, although this class action involves a single cause of action brought under c. 93A, it requires an understanding of a convoluted procedural history involving two G.L. c. 30A administrative appeals and appeals to the Massachusetts Appeals Court and Supreme Judicial Court. It also involves the unique provisions of the Manufactured Housing Act and the interplay between this law and G.L. c. 186, § 12. For these reasons and others, including the extensive motion practice that has taken place since 2018, this case is very different from the "garden variety" landlord-tenant disputes that dominate the Housing Courts dockets.

The Court also takes into account that this case never reached trial. The Court entered an order on Plaintiffs' motion for partial summary judgment on August 7, 2020 ruling that Plaintiffs were entitled to single damages under c. 93A and deferred to subsequent proceedings the determinations both as to the precise amount of single damages and the question of whether those damages should be multiplied under c. 93A. Thereafter, the parties stipulated to the amount of single damages (\$222,238.00), as well as the facts to be relied upon by the Court in its ruling on whether damages should be multiplied. The Court ultimately doubled the amount of damages to \$444,476.00 pursuant to c. 93A.

After reviewing Defendant's petition and supporting materials and Plaintiff's opposition, and after considering the factors set forth in *Twin Fires* and *Linthicum*, the Court concludes that a reasonable award of attorney's fees in this matter is \$44,720.00. In reaching its decision, the

Court finds that the time expended was not excessive¹ and that, in light of counsel's level of expertise and experience, the difficulty of the case, the results achieved, and the fees customarily charged for similar work, an hourly rate of \$325.00 is appropriate. The Court deems to costs of \$1,645.00 to be reasonable, and Plaintiff does not oppose the award of these costs.

Accordingly, the Court awards Plaintiffs reasonable attorney's fees and costs in the amount of \$46,365.00.²

SO ORDERED.

DATE: 1/17/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ The Court does not award attorneys' fees for the 4.7 hours counsel spent drafting supporting affidavits for other attorneys.

² The award of attorney's fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3100

PIERRE BAIYEE,

Plaintiff,

v.

JACKIE LOVING,

Defendant.

ORDER

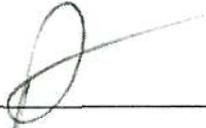
After hearing on January 17, 2023, on the landlord's motion for entry of judgment, at which the landlord appeared through counsel and the tenant appeared without counsel, the following order shall enter:

1. The tenant has until January 20, 2023, to pay her use and occupancy (\$1,000) for January 2023.

@ 2:00pm

2. This matter shall be scheduled for review on January 24, 2023, to ensure that said payment was made. If it was, counsel for the landlord has agreed to inform the court that the matter need not be heard at that time.
3. The tenant reports that she has secured housing, but it will not be ready for four months. The tenant shall provide the landlord with paperwork (even a letter from the new landlord).
4. The tenant shall continue to pursue a RAFT application and the landlord will cooperate with same for the rental arrearage.
5. The motion for entry of judgment is denied without prejudice in accordance with G.L. c.239, s.9.
6. This matter shall be scheduled for March 9, 2023, at 2:00 p.m. for status.

So entered this 18th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0271

<hr/>)	
CITY OF CHICOPEE,)	
)	
PLAINTIFF)	
)	
v.	)	ORDER REGARDING ALTERNATIVE
	)	HOUSING AND STORAGE FEES
DALTON ALEXIS, ET AL.,)	
)	
DEFENDANTS)	
<hr/>)	

This receivership matter came before the Court on January 17, 2023 for further proceedings with respect to the placement of former tenants of a multifamily residential building located 18 Bemis Street, Chicopee, Massachusetts (the “Property”). Counsel appeared for Plaintiff, the receiver, Alfred Shattelroe (the “Receiver”), the owner, Dalton Alexis (the “Owner”), the mortgagee, City National Bank (the “Mortgagee”) and four of the six families that formerly resided at the Property (“Tenants”).¹

After hearing, the following order shall enter:

1. The Tenants shall be permitted to remain in their current alternative housing arrangements through March 31, 2023.
2. The Tenants shall apply for rental assistance funds through Way Finders, Inc. for payment of use and occupancy for February 2023 and March 2023

¹ Counsel represented that the two households that are not represented by counsel have settled their claims.

(January 2023 use and occupancy is included in the Receiver's lien). Any funds received for use and occupancy shall be payable to the Owner as the Receiver is no longer in control of the Property. If funds are not received for use and occupancy, the issue of unpaid use and occupancy for February and March 2023 will be addressed at the Court hearing on March 30, 2023.

3. The Owner shall arrange for the storage units accounts to be transferred to the respective Tenants. Each of the Tenants shall be responsible for payment of their respective storage fees effective January 20, 2023.
4. If the Owner is holding any security deposits, such security deposits shall be returned to the Tenants forthwith. If there is a dispute over whether the Owner is holding security deposits, the parties involved in the dispute shall be prepared to present evidence at the March 30, 2023 hearing to determine the existence and amounts of such security deposit.
5. To the extent that Receiver, Owner and Mortgagee can agree on the amount of the Receiver's lien, they shall present a stipulation to the Court so that the Court can enter an order establishing the lien amount. If the lien amount cannot be negotiated by agreement, Receiver may ask the Court to reschedule the evidentiary hearing to establish the lien.
6. All parties (except for former residents of the Property who have executed settlement agreements) shall return to Court for review and further orders, if necessary, on March 30, 2023 at 9:00 a.m.

SO ORDERED.

DATE: 1.18.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-941

VICTOR MARTINEZ,

Plaintiff,

v.

SPRINGFIELD GARDENS,

Defendant.

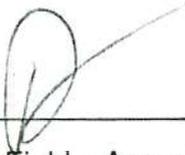
ORDER

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

1. The person who filled out the request for an emergency order and appeared at court was the son of the tenant for whom the complaint was filed.
2. The request was denied, and the cases dismissed, because the son who appeared is not an attorney and, as was explained on the record, the father who lives in the Springfield Gardens unit must be the person who appears (or his attorney) for hearing.

3. All were also informed that if the father is non-ambulatory coordination may be able to be accomplished with the Clerk's Office for a hearing by Zoom should the father re-file a complaint.

So entered this 18th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

OCEAN PROPERTY MANAGEMENT,

Plaintiff,

v.

GREG MYERS,

Defendant.

ORDER

After hearing on January 17, 2023, on the G.A.L.'s motion to stay use of the execution once issued, at which the landlord appeared through counsel, the G.A.L. appeared, and the representatives from CHD joined, the following order shall enter:

1. The motion did not seek to stay the issuance of the execution but to seek coordination between the landlord, the G.A.L., and the tenant's healthcare providers regarding the levy of the execution.

2. That motion is allowed by assent of all present and the landlord shall send a copy of the Rule 13 Application it files with the court with the tenant, the G.A.L., TPP, and CHD.
3. Additionally, the landlord shall send copies of the "48-hour" notice when it is served upon the tenant to the G.A.L, TPP, and CHD.
4. The landlord shall also send a copy of this order to CHD.

So entered this 18th day of January, 2023.

Robert Fields, Associate Justice

CC: TPP

G.A.L.

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1440

_____)	
R.Y. 2002 NOMINEE REALTY TRUST,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
SUHAIL M. NEGRON,)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court for an in-person bench trial on January 18, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 17-C Locust Street, 2d Floor Right, Springfield, Massachusetts (the "Premises").

Plaintiff served Defendant with written discovery, including requests for admission. When Defendant failed to respond, Plaintiff filed a "Motion to Strike and/or Dismiss Defendant's Defenses and/or Counterclaims, or, in the Alternative, to Compel Responses to Discovery." The Court treated the request as a motion to compel and ordered Defendant respond by December 22, 2022.

Defendant did not respond to any of the discovery requests and Plaintiff renewed its motion, asking that the Court to deem the admissions admitted, thereby establishing its prima facie case for possession. Defendant does not dispute Plaintiff's prima facie case, stipulating that Plaintiff is the owner, that she received the notice

of non-renewal of her lease, that she has not vacated, and that she has not paid the monies Plaintiff claims are unpaid. She agrees that, as of the trial, she owes \$2,728.00 in rent arrears but stated that she could pay this sum immediately. Defendant rent is subsidized through the Section 8 program, and her monthly share is \$261.00.

Because Defendant did not file and answer, the Court rules that Plaintiff is entitled to judgment for possession. Because this case was brought for no fault, Defendant's payment of the rent arrears would not reinstate the tenancy. Pursuant to G.L. c. 239, § 9, however, a tenant in a no-fault summary process action is entitled to a stay on the execution of up to six months¹ provided that she satisfies the conditions set forth in the statute. The tenancy ended as of May 1, 2022, over eight months ago. Defendant, therefore, is not entitled to a statutory stay. Because she has a mobile Section 8 voucher that could be terminated if she is evicted, in lieu of a statutory stay, the Court will impose a short-term equitable stay on use of the execution on the following terms:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Plaintiff may apply for issuance of the execution (eviction order) after the 10-day appeal period, but it shall not be used prior to March 1, 2023 so long as Defendant:
 - a. Pays Plaintiff \$2,728.00 by 4:00 p.m. on January 19, 2023, and
 - b. Pays Plaintiff \$261.00 by 4:00 p.m. on February 3, 2023.

¹ Defendant acknowledged that she is a "handicapped person" as that term is defined in G.L. c. 239, § 9 and that no one 60 years or older resides in the Premises.

3. Defendant will conduct a diligent housing search and will provide proof of same if requested.
4. The parties shall return for review on February 23, 2023 at 9:00 a.m.

SO ORDERED.
DATE: 1.18.23

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

of

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2272

ANTHONY ZHOU,

Plaintiff,

v.

JOSE PEDRAZA and ELISHA RIVERA,

Defendants.

ORDER

After hearing on January 12, 2023, on review of this matter, at which the landlord appeared but the tenants did not appear the following order shall enter:

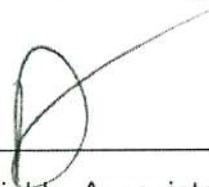
1. The landlord reported to the court that RAFT paid him \$8,700 in mid-December 2022, bringing the balance to \$0.
2. In the parties' second agreement, entered on December 9, 2022, the parties agreed in this no-fault eviction, that if RAFT paid all outstanding monies the case would remain open for an additional two months.

3. The landlord reports that the tenants have failed to pay their use and occupancy for January 2023.

4. The agreement requires the landlord to file a motion for entry of judgment.

Having not yet done so, no judgment shall enter at this time and the landlord may mark up a motion for entry of judgment should he not receive use and occupancy payment(s).

So entered this 18th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2575

THE COMMUNITY BUILDERS, INC.,

Plaintiff,

v.

EMILY RODRIGUEZ,

Defendant.

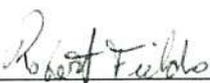
ORDER

After hearing on January 12, 2023, at which the parties appeared through counsel and a representative from the Tenancy Preservation Program, the following order shall enter:

1. The record is sufficient, for the purposes of today's order, to find that the tenant suffers from [REDACTED] and that there may be a nexus between her [REDACTED] and her non-compliance with the terms of the Agreement between the parties. Additionally, there may be a nexus between her [REDACTED] and the loss of her rental subsidy.

2. Attorney Bernocco of Community Legal Aid (CLA) reported to the court that she is also representing the tenant in her efforts to have the Holyoke Housing Authority (which administers the subsidy for the premises) reinstate her subsidy.
3. The TPP representative has opened a case and is ready, willing, and able to assist the tenant in obtaining her state identification from the Registry of Motor Vehicles. TPP is also committed to assisting the parties in the tenant providing access to her home for an inspection by the landlord.
4. The landlord shall coordinate with TPP and the tenant for a time for access for said inspection.
5. The tenant shall cooperate with TPP's efforts to assist, including regarding any referrals for health care.
6. Given the extreme effect on the tenant and her family should she be evicted from a subsidized unit and given the efforts of TPP and CLA to have the tenant's subsidy reinstated and TPP efforts to assist the parties to grant the landlord access for an inspection as well as referrals for greater health care, the landlord's motion shall be denied without prejudice.
7. This matter shall be heard on **February 23, 2023, at 9:00 a.m.** live and in-person in the Springfield Session on review and for any properly marked motions.

So entered this 19th day of January, 2023.



Robert Fields, Associate Justice ^(RM)
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 ON PLAINTIFF'S
COMPLAINT FOR CONTEMPT

This matter came before the Court on December 14, 2022 and December 15, 2022 for hearing on Plaintiff's complaint for contempt. Both parties appeared through counsel. The property in question is located at 112 Spring Street, Springfield, Massachusetts (the "Premises").

Plaintiff seeks an order holding Defendant in contempt for failing to comply with an agreement of the parties entered on the docket on October 26, 2022 which became a court order upon signature by a judge ("Agreement") and a court order entered on November 14, 2022 ("Order").¹ Pursuant to the Agreement, Defendant agreed "to complete any outstanding repairs to the Tenant's unit no later than

¹ For context, the Property failed a Section 8 inspection in June 2022, and the City of Springfield Department of Code Enforcement cited the Property for multiple violations following inspections on September 28, 2022 and October 7, 2022. The City cited, among other items, water damage on the bathroom ceiling from an unknown leak, evidence of a mice/rat infestation and broken kitchen cabinets. On October 12, 2022, the parties worked with a Housing Specialist to reach an agreement whereby Defendant agreed to repair the leak in the bathroom "as soon as possible" and exterminate for rodents "immediately."

November 4, 2022 as long as reasonable access is granted.” The Order required Defendant to:

1. Investigate the source of the leak above his bathroom ceiling and effectuate repairs forthwith;
2. Open the bathroom ceiling and leave it open for at least 48 hours to determine if there are any continuing leaks;
3. After addressing the leak, repair the bathroom ceiling so that his unit can pass a Section 8 inspection; and
4. To return for review on December 1, 2022 with evidence to show the work done.

When the parties returned to Court for review on December 1, 2022, the work described in the Agreement and the Order was not completed and Defendant did not provide witnesses with direct knowledge of the repairs. This contempt complaint is limited to the failure of Defendant to complete the work by December 1, 2022, the deadline set in the Order.

In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re: Birchall*, 454 Mass. 837, 852-53 (2009). Here, Plaintiff has established both. Here, the Agreement and Order are unambiguous and there is no dispute that Defendant failed to comply. The Court rules that the facts warrant a finding of contempt.

The purpose of civil contempt is to induce compliance and “secur[e] for the aggrieved party the benefit of the court’s order.” See *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). In addition to coercive orders, compensatory

orders are appropriate remedies in civil contempt proceedings. See *Labor Relations Comm. v. Fall River Educators' Assn.*, 382 Mass. 465, 475-476 (1981).²

Based on the evidence presented at the contempt trial, the Court finds that, although there is no evidence of an on-going rat infestation inside the Premises, the infestation under and around the building had gone unaddressed as of December 1, 2022. Videos from Thanksgiving show rats walking on Plaintiff's porch and gathering in the yard area directly adjacent to the steps to the Premises. The videos also show rats coming and going from underneath the building in which the Premises are housed. Because of the rat infestation, Plaintiff's children are kept inside when they are at home. They no longer play outside because of the prevalence of the rats, when prior to the infestation they played outside regularly with friends. Given the disturbing images of numerous large rats gathering right behind the building, Defendant cannot be excused from making any effort to address the rat problem simply because no rats have been seen inside the Premises.

The Court further finds that, as of December 1, 2022, the leak above the ceiling in Plaintiff's bathroom was not repaired. A large hole remained directly above the shower, and Plaintiff could see light coming through from the unit above, leaving him with the impression that anyone in the unit above could look down upon anyone using the shower. Liquid came through the ceiling whenever the neighbor above used the water. Plaintiff testified credibly about the strain he felt due the prolonged period of time during which he had to shower with his ceiling open to the unit above.

With respect to the cabinets, as of December 1, 2022, the Court finds that the

² Because the City of Springfield has an open code enforcement case involving this property (22H79CV000866), the coercive element of the contempt matter will be set aside and addressed in that case. In this order, the Court will focus only on the compensatory remedies for contempt.

work to repair cabinets and other items in the kitchen was not done.³ Defendant testified credibly that the state of the kitchen, and the bathroom as well, caused him to avoid having visitors as the state of the Premises was embarrassing.

Based on these findings, the Court rules that Defendant is in contempt of the Agreement and the Order and that, as a sanction for contempt, Defendant is entitled to compensatory damages for the 35-day time period between October 26, 2022 and December 1, 2022.

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

1. Judgment for contempt shall enter in favor of Plaintiff.
2. As a sanction for contempt, Defendant shall pay damages in the amount of \$5,000.00 plus reasonable attorney's fees associated with the contempt proceeding.
3. The payment of damages shall be delivered to Plaintiff's counsel within ten (10) days of receipt of this order.
4. Plaintiff shall serve and file a petition for attorney's fees, including an affidavit of counsel and supporting documentation, within ten (10) days of receipt of this order. The attorney's fees shall be limited to the drafting of the contempt complaint and attending the contempt hearings on December 14, 2022 and December 15, 2022.
5. Defendant will have ten (10) days after receipt of the attorney's fees petition to file any opposition. The Court will enter an award of reasonable attorneys' fees without additional hearing.

³ The evidence shows that work in the kitchen began on December 5, 2022.

SO ORDERED.
DATE: 1/20/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2722

_____)	
JANE SACKETT,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
CAMERON MITCHELL,)	
)	
DEFENDANT)	
_____)	

This summary process action was before the Court for an in-person bench trial on November 28, 2022. Plaintiff seeks to recover possession of Unit 6A, Winston Court, Amherst, Massachusetts (the “Premises”) from Defendant based on alleged lease violations. Plaintiff appeared through counsel. Defendant appeared at trial self-represented.

Plaintiff owns the Premises, which are managed by Pipeline Properties, LLC. Defendant moved in to the Premises pursuant to a written lease. Paragraph 41(i) of the lease requires the noise level to be “turned down to a level of sound that does not annoy or interfere with the neighbors.” The lease also incorporates the rules and regulations of the condominium association to which Unit 6A belongs.

By letter dated May 24, 2022, Plaintiff notified Defendant that she was terminated his lease as of the end of June 2022 due to noise complaints from neighbors from August 2021 and thereafter. Defendant has not vacated.

In support of its claims against Defendant, Plaintiff called her neighbor, Linda Cole, who has lived next to the Premises for twelve years. She testified that she first met Defendant in August 2021 when she knocked on his door at 10:45 p.m. to ask him to lower the volume of his music. She testified that the offensive noise level continued many nights thereafter, and that she kept a journal from mid-November 2022 onward. She kept track of the numerous times after 11:00 p.m. when she was bothered by the noise level in the Premises. The Court finds her log to be credible evidence of the amount of times she was disturbed by noise from Defendant's unit.

Defendant testified that he felt disrespected by Plaintiff, Plaintiff's agent Dan Feldman from Pipeline Properties, condominium management, and Ms. Cole. He expressed great displeasure that various people contacted his co-signor to complain about him.¹ He claimed that he was under constant surveillance, including instances when he saw Ms. Cole photographing his activities, and that such scrutiny felt dehumanizing. Defendant claimed that the close scrutiny of his behavior was based on racism.

Defendant asserted that numerous individuals associated with Winston Court, such as Mr. Feldman, representatives of the condominium association, Ms. Cole and other residents in the complex questioned him about his Rastafarian culture and that their questions establish blatant systemic racism. Despite his strong opinions about the motivations of those supporting his eviction, Defendant produced no witness testimony or other credible evidence at trial to support them.

¹ Plaintiff and Ms. Cole testified credibly that Defendant's co-signor willingly offered his assistance in addressing complaints against Defendant. This individual was not a witness at trial, however, so the Court cannot make a finding as to whether the contact was welcome or not.

Beyond claiming that he is a victim of racism, Defendant offered little in defense of Plaintiff's case beyond a general denial that he disturbed his neighbors with excessive noise. He testified about conditions of disrepair in his unit (for example, dead flies, a heating system that cycled on and off and the smell of sewage when the pipes were repaired), but conditions-based claims cannot defeat a claim for possession. *See* G.L. c. 239, § 8A. He also claimed problems with mail delivery, but did not tie these allegations to the underlying grounds for the eviction.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that Plaintiff sustained her burden of demonstrating a material violation of the lease and that Defendant prove any legal defenses to Plaintiff's claims. To the extent Defendant's answer can be interpreted to asserts counterclaims, the Court finds in favor of Plaintiff on such counterclaims. Accordingly, based on the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of execution (eviction order) shall be stayed until March 31, 2023 on the condition that Defendant not violate the noise provisions of his lease.²
3. If Plaintiff contends that, after receipt of this order, Defendant has violated the noise provisions of his lease, it may mark up a motion for entry of judgment, providing the dates and times of the alleged violations and any witness that will testify at the hearing.

² The Court recommends that Defendant invest in headphones so that no noise emanates from his television or any other device in his household during the stay period.

4. If the Court determines that Defendant has violated the lease term, the execution shall issue.

SO ORDERED.

DATE: 1-20-23

Jonathan J. Kane
Jonathan J. Kane, First Justice

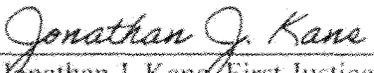
"No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC*, supra, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993). The standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth. See *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 629 (1978). A judge is "not required to review and allow or disallow each individual item in the bill, but [may] consider the bill as a whole." *Berman*, 434 Mass. at 303.

In light of the foregoing, the Court reviewed Defendants' petition and supporting materials and considered the factors set forth in *Twin Fires* and *Linthicum*. After considering the time expended, counsel's level of expertise and experience, the difficulty of the case, the results achieved, and the fees customarily charged for similar work,¹ as well as Plaintiff's opposition memorandum, the Court concludes that a fair and reasonable attorneys' fee award is \$10,000.00.²

Because the parties have stipulated to the amount of damages and are seeking a ruling only on the amount of attorneys' fees, no judgment will enter at this time. Judgment shall only enter upon motion.

SO ORDERED.

DATE: 1.20.23


Jonathan J. Kane, First Justice

¹ The Court finds the hourly rate of \$250.00 to be reasonable under the circumstances presented.

² Defendants did not seek an award of costs.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3103

PATRICIO ALMANZAR,

Plaintiff,

v.

BRYANA JACOBS and SHANICE MORRIS,

Defendants.

ORDER OF DISMISSAL

After hearing on January 13, 2023, at which the landlord appeared without counsel and the tenants appeared with the assistance of Lawyer for the Day counsel Stella Gnepp, the following order shall enter:

1. Thought the matter was scheduled for trial, the tenants were heard on their motions to vacate the default and to dismiss.
2. The tenants' motion to vacate the default is allowed. The tenants were in premature labor, delivering their baby, within days before the Tier 1 event and

due to their non-attendance were defaulted. Additionally, they have asserted counterclaims and defenses regarding conditions of disrepair and security deposit violations.

3. The tenants' motion to dismiss the case due to both the failure of the notice to quit to provide a full rental period notice and the inconsistency of the summons and complaint, as well as his accepting monies over various months without any reservation of rights, is allowed. Accordingly, this matter is dismissed without prejudice.
4. This matter is hereby dismissed, and the landlord is instructed to cancel the physical eviction currently scheduled and to return the execution to the court.

So entered this 23rd day of January, 2023.



Robert Fields, Associate Justice

CC: Stella Gnepp, Esq., Lawyer for the Day (Community Legal Aid)
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

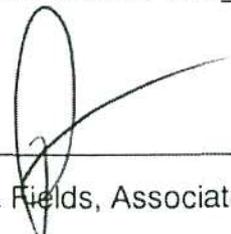
After hearing on January 23, 2023, on the landlord's motion for issuance of the execution at which both parties appeared, the following order shall enter:

1. The landlord's attorney was able to ascertain from the entity that administers RAFT funding that the tenant's application was denied due to it being more than 90 days since the notice to quit.
2. The hearing was joined by Ms. Ortega from Way Finders, Inc. who clarified that because of the posture of this court case, that "90-day since notice to quit" rule

does not apply. Thus, the tenant's original application for RAFT was erroneously denied.

3. The tenant was going to meet with RAFT over the court's Zoom directly after the hearing and shall pursue RAFT funds diligently.
4. The tenant shall pay \$237.50 each week for four weeks (rent is \$950 monthly) to the landlord towards his balance.
5. The tenant is also going to seek other sources of funds to pay his rent balance because it is higher than the \$10,000 limit set by RAFT.
6. This matter shall be scheduled for review and on the landlord's motion for issuance of the execution on *February 13, 2023, at 9:00 a.m.* in the Hadley Session of the court.

So entered this 23rd day of January, 2023.



Robert Fields, Associate Justice

CC: Lucien Ortega, Way Finders, Inc.

Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-42

DAVID PERKINS,
 Plaintiff,
 v.
 JIMMY EFANTIS,
 Defendant.

ORDER

After hearing on January 23, 2023, on the plaintiff-tenant's request for an emergency order at which both parties appeared without counsel, the following order shall enter:

1. The defendant-landlord Jimmy Elfantis shall FORTHWITH restore the tenant to his tenancy and immediately take all steps necessary so that the tenant can use his key (or a newly provided key) to access his room.

So entered this 23rd day of January, 2023.

Robert Fields
 Robert Fields, Associate Justice *Am.*
 CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2757

POAH COMMUNITIES, LLC,

Plaintiff,

v.

JOLEEN BARRETT,

Defendant.

ORDER

After hearing on January 19, 2023, on the tenant's emergency motion to cancel the eviction and motion to vacate the default judgment, the following order shall enter:

1. For the reasons stated on the record, the default judgment shall be vacated and the physical eviction cancelled.
2. A representative from Way Finders, Inc. joined the hearing and indicated that according to her records, the tenant may be eligible for as much as \$6,899.81 in rental arrearage funds and the tenant shall IMMEDIATELY apply for RAFT.

3. The tenant shall pay February 2023 use and occupancy timely and in full.
4. The landlord shall provide the tenant with an invoice for the costs associated with the cancelation of the physical eviction. The tenant shall be responsible for those costs.
5. This matter was referred to the Tenancy Preservation Program (TPP). Ms. Pabon from TPP joined the hearing and was going to meet with the tenant directly after the hearing on Zoom.
6. The parties agree that the tenant paid the outstanding judgment (including fees and interest) and the balance is for November, December 2022, and January 2023 use and occupancy.
7. This matter shall be scheduled for status hearing on **February 27, 2023, at 9:00 a.m.** at the Hadley Session of the Housing Court.

So entered this 23rd day of January, 2023.

Robert Fields, Associate Justice

CC: TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

NURAY and STEVE OZCELIK,

Plaintiffs,

v.

KELLY SULLIVAN,

Defendant.

ORDER

After hearing on January 23, 2023, on the tenant's motion to stay the use of the execution at which the landlords appeared through counsel and the tenant appeared through Lawyer for the Day Counsel, the following order shall enter:

1. For much of the reasons highlighted at the hearing by the tenant's attorney, including issues around tenant's medical conditions during this eviction matter, the motion is allowed. The physical eviction currently scheduled for January 25, 2023, shall be cancelled. The landlord shall provide the invoice for the costs

incurred by the scheduling and cancelation of the physical eviction to the tenant and said sums shall be part of the debt to be paid.

2. Community Legal Aid and the Tenancy Preservation Program have committed to working with the tenant to assist her in her RAFT application, as well as applications for other sources of funding.
3. To the extent that there are sums outstanding above and beyond the amounts that can be paid by RAFT, the parties shall negotiate a reasonable payment plan.
4. This matter shall be scheduled for review on **February 13, 2023, at 9:00 a.m.** at the Handley Session of the court.

So entered this 24th day of January, 2023.

Robert Fields, Associate Justice

CC: Jennifer Cunningham-Minnick, Esq., Lawyer for the Day (CLA)

TPP

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-2321

CITY VIEW COMMONS II,

Plaintiff,

v.

LANNISHA M. TAYLOR,

Defendant.

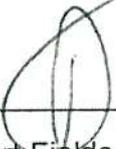
ORDER

After hearing on January 24, 2023, on the landlord's motion for entry of judgment at which only the landlord's attorney appeared, the following order shall enter:

1. The landlord's motion shall be continued for hearing as noted below. The landlord shall bring a witness competent to speak to the tenant's rent ledger.
2. Lucien Ortega from Way Finders, Inc. joined the hearing and reported that a RAFT application has recently "timed out".

3. If the tenant is interested in keeping her tenancy, she should re-apply for RAFT through Way Finders, Inc. immediately and the parties should cooperate with such efforts.
4. This matter is scheduled for **February 23, 2023, at 11:00 a.m.** for hearing on the landlord's motion for judgment and for review at the Springfield Session of the court.

So entered this 25th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2288

CITY VIEW COMMONS,

Plaintiff,

v.

KEEANA M. CRUZ-COLON,

Defendant.

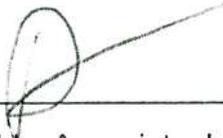
ORDER

After hearing on January 24, 2023, scheduled for the landlord's motion for entry of judgment, at which the landlord's attorney appeared and for which the tenant failed to appear, the following order shall enter:

1. The landlord did not have a witness to provide supportive evidence of the tenant's violation of the terms of the agreement filed by the parties on September 19, 2022.

2. Accordingly, this matter shall be rescheduled for hearing on the landlord motion for entry of judgment as noted below.
3. This matter is scheduled for **February 23, 2023, at 11:00 a.m.** for hearing on the landlord's motion for entry of judgment.

So entered this 25th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-0770

EDBERT VENTURES, LLC,)
)
 PLAINTIFF)
)
v.)
)
LYNDA MCINTOSH,)
)
 DEFENDANT¹)

ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

This matter came before the court on January 19, 2023 on Plaintiff's motion for summary judgment. Both parties appeared through counsel.

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

¹ A second tenant, Choyce McIntosh, was originally named as an additional defendant, but her May 17, 2022 answer indicates that she has not resided at the Edbert Street apartment for over five years, and subsequent filings by both parties omit her name. Accordingly, the summary process case is hereby dismissed as against Choyce McIntosh.

This is a summary process case between Edbert Ventures, LLC (“Plaintiff”) and its tenant, Lynda McIntosh (“Defendant”), who receives a Section 8 housing subsidy. Plaintiff served a no-fault notice to quit on Defendant, stating an intention to renovate the unit and rent it out at a higher rate. When Defendant did not vacate the property, Plaintiff initiated this summary process action.

In her answer to the summons and complaint, Defendant made a counterclaim of discrimination based on her receipt of public assistance, in violation of G.L. c. 151B, § 4(10). The answer alleged that Plaintiff served four no-fault notices to quit on tenants with Section 8 vouchers; that the motivation behind the evictions was based on the tenants’ receipt of the rental vouchers; and that Plaintiff had no plans to initiate no-fault evictions against tenants without vouchers. Defendant claimed that other tenants were given the opportunity to negotiate a new lease at a higher rental rate with the Plaintiff, but she was not. Defendant also counterclaimed a violation of G.L. c. 93A, § 2, based on the same set of facts set forth in her discrimination counterclaim.

Plaintiff filed a motion for summary judgment in September of 2022. In its motion, Plaintiff denies that its eviction of Defendant was discriminatory or motivated by Defendant’s receipt of a Section 8 voucher. Plaintiff states that it also served no-fault notices to quit on several non-subsidized tenants. Plaintiff further states that Defendant has not demonstrated either direct or indirect discrimination by Plaintiff and that its stated reason for the eviction is not pretextual. Rather, Plaintiff emphasizes that the renovation of apartments is part of its business model, which involves purchasing multi-unit properties that have not been renovated in some time, making improvements to the properties, and then leasing them for higher than previous rental rates.

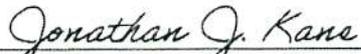
Defendant has filed an opposition to the motion for summary judgment, arguing that Plaintiff has failed to meet its burden of demonstrating that there are no genuine issues as to any material facts. It is important to recognize that “[s]ummary judgment is a disfavored remedy in the

context of discrimination cases based on disparate treatment.” *Blare v. Husky Injection Molding Systems Boston, Inc.*, 419 Mass. 437, 439 (1995). In such cases, there is a three-stage order of proof mirroring the federal courts’ stages. *Id.* at 440. In the first stage, the party alleging discrimination must show by a preponderance of the evidence a prima facie case of discrimination. *Id.* at 441. In the second stage, the burden then shifts to the opposing party to show a legitimate, nondiscriminatory reason for its actions. *Id.* If the opposing party meets this burden, then in the third stage, the party alleging discrimination must show that the opposing party’s stated reason was merely pretext. *Id.* at 442-3. If the party alleging discrimination meets its third stage burden, then summary judgment is inappropriate. *Id.* at 445.

Here, the Court concludes that there exists a genuine issue of material facts pertaining to Plaintiff’s motivation for terminating Defendant’s tenancy, whether Defendant was offered the same opportunities to negotiate terms of a new lease as non-subsidized tenants, and whether the terms of Defendant’s subsidy program would have allowed her to pay the higher rent sought by Plaintiff. These matters must be decided on the merits at trial. Accordingly, Plaintiff’s motion for summary judgment is DENIED.

The Clerk’s Office shall schedule a case management conference (along with 22SP0779) for the purpose of scheduling a trial on the merits.

SO ORDERED this 25th day of January, 2023.


Hon. Jonathan J. Kane, First Justice

no-fault notice to quit on Defendant, stating an intention to renovate the unit and rent it out at a higher rate. When Defendant did not vacate the property, Plaintiff initiated this summary process action.

In her answer to the summons and complaint, Defendant made a counterclaim of discrimination based on her receipt of public assistance, in violation of G.L. c. 151B, § 4(10). The answer alleged that Plaintiff served four no-fault notices to quit on tenants with Section 8 vouchers; that the motivation behind the evictions was based on the tenants' receipt of the rental vouchers; and that Plaintiff had no plans to initiate no-fault evictions against tenants without vouchers. Defendant claimed that other tenants were given the opportunity to negotiate a new lease at a higher rental rate with the Plaintiff, but she was not. Defendant also counterclaimed a violation of G.L. c. 93A, § 2, based on the same set of facts set forth in her discrimination counterclaim.

Plaintiff filed a motion for summary judgment in September of 2022. In its motion, Plaintiff denies that its eviction of Defendant was discriminatory or motivated by Defendant's receipt of a Section 8 voucher. Plaintiff states that it also served no-fault notices to quit on several non-subsidized tenants. Plaintiff further states that Defendant has not demonstrated either direct or indirect discrimination by Plaintiff and that its stated reason for the eviction is not pretextual. Rather, Plaintiff emphasizes that the renovation of apartments is part of its business model, which involves purchasing multi-unit properties that have not been renovated in some time, making improvements to the properties, and then leasing them for higher than previous rental rates.

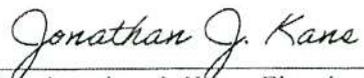
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material facts. It is important to recognize that “[s]ummary judgment is a disfavored remedy in the context of discrimination cases based on disparate treatment.” *Blare v. Husky Injection Molding Systems Boston, Inc.*, 419 Mass. 437, 439 (1995). In such cases, there is a three-stage order of proof mirroring the federal courts’ stages. *Id.* at 440. In the first stage, the party alleging discrimination must show by a preponderance of the evidence a prima facie case of discrimination. *Id.* at 441. In the second stage, the burden then shifts to the opposing party to show a legitimate, nondiscriminatory reason for its actions. *Id.* If the opposing party meets this burden, then in the third stage, the party alleging discrimination must show that the opposing party’s stated reason was merely pretext. *Id.* at 442-3. If the party alleging discrimination meets its third stage burden, then summary judgment is inappropriate. *Id.* at 445.

Here, the Court concludes that there exists a genuine issue of material facts pertaining to Plaintiff’s motivation for terminating Defendant’s tenancy, whether Defendant was offered the same opportunities to negotiate terms of a new lease as non-subsidized tenants, and whether the terms of Defendant’s subsidy program would have allowed her to pay the higher rent sought by Plaintiff. These matters must be decided on the merits at trial. Accordingly, Plaintiff’s motion for summary judgment is DENIED.

The Clerk’s Office shall schedule a case management conference (along with 22SP0770) for the purpose of scheduling a trial on the merits.

SO ORDERED this 25th day of January, 2023.


Hon. Jonathan J. Kane, First Justice

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2432

SERGIO NASCIMENTO,

Plaintiff,

v.

BRIANNA POWELL,

Defendant.

ORDER

After a Zoom hearing on January 24, 2023, on the tenant's emergency motion to stop a physical eviction, the following order shall enter:

1. The motion is allowed, and the currently scheduled physical eviction shall be canceled. The landlord shall so inform the constable and moving company.
2. The landlord's motion to appoint his constable for special process service is denied. Though the motion seeks approval for civil process, the landlord is actually seeking the court's approval for the constable to levy on the execution

through a physical eviction. This is not process, and there was insufficient information on the record to ascertain if the landlord's constable is bonded and approved to conduct a physical eviction in the Town of Orange. Additionally, the moving and storage company chosen by the landlord is outside of the court's service area and 30% further than the moving and storage company within the court's service area and there was no basis asserted for use of the further location.

3. Additionally, I credit the tenant's testimony about the reasons for her default and lack of engagement in this process which included that she honestly believed from her conversation with the landlord that he was not proceeding with the eviction (even if that believe was based on a misunderstanding). Accordingly, the default shall be vacated and matter shall be scheduled for trial on the merits of the landlord's "cause" eviction. The landlord is instructed to return the execution to the court.
4. This matter shall be scheduled for trial on **February 24, 2023, at 2:00 p.m** live and in-person at the Greenfield Session of the court.

So entered this 25th day of January, 2023.

Robert Fields, Associate Justice
CC: Court Reporter

likelihood of recovering judgment against Defendant for damages of \$50,000.00 and obtaining an award of attorneys' fees and costs of \$18,000.00. The Court will offset the unpaid rent through December 2022.

In light of the forgoing, Defendant's motion for prejudgment attachment is ALLOWED in the amount of \$62,375.00.

SO ORDERED.

DATE: 1/25/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

CR

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 January 24, 2023, on review of this matter, at which the parties appeared along with her son [REDACTED], a representative from the Tenancy Preservation Program (TPP), and the Guardian Ad Litem Shawn Mansfield (GAL), the following order shall enter:

1. Through the efforts of the tenant and her family and TPP, the tenant is now actively in the Mercy Life program. All are working with Mercy Life to secure

alternate housing at Hillside but will also pursue a transitional arrangement at St. Luke Rest Home.

2. Same all are all working towards obtaining SSA benefits for the tenant.
3. Given the length of time that the judgment has been stayed (in accordance with G.L. c.239, s.9) and given the landlord's need to have his ailing mother move into the tenant's first floor unit because of his mother's difficulty with stairs, the court rules that the tenant must vacate by no later than April 1, 2023.
4. Accordingly, as long as the tenant continues to pay her monthly use and occupancy while she is in occupancy, she may remain until April 1, 2023. Of course, the tenant may vacate sooner and will only be responsible for the days that she is in occupancy.
5. If the tenant has not vacated by April 1, 2023, the landlord may file a motion for entry of judgment, serving the tenant and TPP and the GAL.

So entered this 25th day of January, 2023.

Robert Fields, Associate Justice

CC: TPP

GAL, Shawn Mansfield

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-19

AMANDA VARGAS,

Plaintiff,

v.

ABIGAIL'S RENTALS, LLC

Defendant.

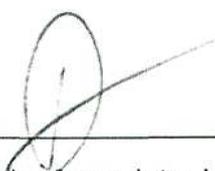
ORDER

After hearing on January 20, 2023, on the plaintiff tenant's request for an order to make repairs, at which the tenant appeared without counsel and the defendant appeared through its agent, the following order shall enter:

1. The defendant landlord shall appear at the next and all subsequent court hearings through counsel, as it is an LLC.
2. The landlord shall make all repairs necessary at the premises by using licensed professionals and obtaining all necessary permits.

3. The landlord shall provide the tenant with at least 24 hours advance written notice of when it requires access for inspection or repair, providing a time and date. Access shall not be unreasonably denied.
4. This matter shall be scheduled for review on **February 8, 2023, at 9:00 a.m.** at the Springfield Session of the court, live and in-person.

So entered this 25th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NUMBER 22-SP-3625

CEDAR INVESTMENT GROUP LLC,)
)
 PLAINTIFF)
)
 V.)
)
 TARIN CHARTIER AND NATHAN CHARTIER,)
)
 DEFENDANTS)

ORDER FOR JUDGMENT

This matter came before the Court on January 26, 2023 for an in-person bench trial. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 420 Britton Street, Chicopee, Massachusetts (the “Premises”) based on non-payment of rent.

Defendants stipulate to Plaintiff’s prima facie case and agree that they owe \$9,750.00 in rent arrears through the date of trial. They filed no answer and assert no defenses. They do not have a pending application for rental assistance and have received the maximum amount of benefits to which they are entitled.

Accordingly, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession and \$9,750.00 in damages, plus court costs.

2. Execution may issue by application pursuant to Uniform Summary Process
Rule 13.

SO ORDERED.

DATE: 1.27.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-761

CITY OF SPRINGFIELD, CODE
ENFORCEMENT DEPARTMENT,

Plaintiff,
v.
SPRINGFIELD GARDENS, LP and BRENDA
EVANS,

Defendants.

AGREED UPON ORDER

After hearing on January 9, 2023, at which all parties appeared the following agreed upon order shall enter:

1. The parties report that this matter shall be dismissed upon the severing of the tenant (Brenda Evan's) crossclaims against the property owner (Springfield Gardens, LP).

2. Accordingly, Ms. Even's claims shall be severed and transferred to the civil docket into a new action entitled *Brenda Evans v. Springfield Gardens, LP*. Upon such transfer, this instant matter shall be dismissed.
3. A Case Management Conference shall be scheduled in that new civil action.

So entered this 22th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

videotape any third party contractors entering her unit to make repairs without further Court order.

3. Defendant may have two individuals (inclusive of a representative of ownership) accompany the Ludlow code enforcement officials during any inspection or reinspection. Plaintiff may videotape the inspection on the same terms as in the preceding paragraph.
4. Plaintiff shall not unreasonably deny access for inspections and repairs, notice of which must be given at least 24 hours' in advance.
5. Plaintiff must keep her heat on to avoid damage to the pipes. If Plaintiff believes the heating system is causing an unpleasant odor, she may contact the Ludlow health inspector or fire department, and if required to do so by an authorized municipal official, Defendant shall address the odor.

SO ORDERED.

DATE: 1-17-23

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

cc: TPP Pioneer Valley

At this time, the Court will also consider any firm plans Defendants have regarding a date that they will be able to vacate the Premises voluntarily. If Defendants are going to seek a further stay, they must have evidence of the efforts they have made to find other housing.

3. The parties shall appear for further hearing consistent with this order on February 28, 2023 at 9:00 a.m.

SO ORDERED.

DATE: 1.27.23

By: 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-3522

_____)	
HURRICANE PROPERTIES LLC,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
JOHN ARACENA,)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court for an in-person bench trial on January 26, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented.¹ Plaintiff seeks to recover possession of residential premises located at 988 Chicopee Street, Third Floor, Chicopee, Massachusetts.

Defendant stipulated to Plaintiff's prima facie case for possession. He filed no answer and raised no defenses at trial. His monthly Social Security Disability Income is significantly less than the monthly rent and he cannot afford to pay use and occupancy during any stay period. The Court rules that Defendant is not entitled to a statutory stay under G.L. c. 239, § 9.

¹ A default previously entered against Defendant Monica Schneider.

Accordingly, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Plaintiff may apply for issuance of the execution (eviction order) after the 10-day appeal period.

SO ORDERED.
DATE: 1.27.23

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SU-4

LUKE LESZCZYNSKI,

Plaintiff,

v.

TINA JOHNSON,

Defendant.

ORDER

After hearing on January 24, 2023, on review of this supplemental proceeding, at which only the plaintiff appeared, the following order shall enter:

1. The monthly payment due from the defendant shall be increased to \$600 beginning in February 2023.
2. The plaintiff informed the court that the wage assignment was refused by the defendant's employer. Thus, the obligation to pay the monthly amount of \$600 will need to be paid by the defendant without garnishment.

3. The defendant is reminded that the interest on the debt in this matter increases by 12% per annum by statute.

So entered this 27th day of January, 2023.

Robert Fields, Associate Justice
CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3555

MOHAMMAD BSHARAT, et al.,

Plaintiffs,

v.

RICHARD HENRY and ONIKA FLEMMING,

Defendants.

ORDER

This matter came before the court for trial on January 26, 2023, at which a plaintiff landlord appeared with counsel and the defendant tenants appeared self-represented. After consideration of the evidence admitted at said trial, the following findings of fact and rulings of law and order shall enter:

1. **Background:** The plaintiffs, Mohammad Bsharat and Hanan Bsharat (hereinafter, "landlords") own a condominium which they rent to the defendants, Richard Henry and Onika Flemming (hereinafter, "tenants"). The tenants were

residing in said unit, located at 101 Mulberry Street, Unit 319, in Springfield, Massachusetts (hereinafter, "premises") when the landlords purchased it from the tenants' former landlord on January 31, 2022. On or about May 19, 2022, the landlords had the tenants served with a "no fault" termination notice. Thereafter, the landlords commenced this instant summary process action. The tenants filed an Answer with Counterclaims, asserting claims of retaliation, security deposit Law violations, breaches of the warranty of habitability, breach of the covenant of quiet enjoyment, and are seeking time to relocate under G.L. c.239, s.9.

2. **Landlords' Claim for Possession and for Account Annexed:** The court finds and so rules that the landlords met their *prima facie* elements of their claim for possession, to wit, service of the notice to quit and the summons. The parties stipulate that **\$8,250** is outstanding in use and occupancy through January 2023. What remains for the court's adjudication are the tenants' counterclaims and as much as they act as defenses to the landlords' claim for possession.
3. **The Tenants' Claim for Breach of the Covenant of Quiet Enjoyment:** Very soon after purchasing the premises, the landlord Mohammed Bsharat visited the tenants at their unit. This occurred both on February 5, 2022, when he visited with Ms. Flemming and then again on February 15, 2022, when he visited with Mr. Henry. At each such occasion, the tenants showed and discussed with the landlord several conditions of disrepair including lack of sufficient heat, electrical problems that led to the lack of power in outlets (including the one for the refrigerator which would power off repeatedly), leaks, and water stains. In fact, when the landlord visited the premises and met with Mr. Henry, he had an

electrical panel in his hands. Though Mr. Bsharat denies being told about conditions of disrepair and being at the premises with an electrical panel, the court does not find him credible. Additionally, these conditions pre-existed this tenancy and the landlord is imputed with the knowledge of them when he purchased the premises.

4. On the heels of his first visit to the premises, the landlord texted to the tenants requesting that they send him photographs of the circuit-breaker panel. Additionally, the City of Springfield Code Enforcement Housing Division inspected the premises on February 22, 2022, and cited leaks and/or water damage in both the bathroom and kitchen.
5. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, at 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *AIZiab v. Mourgis*, 424 Mass. 847, at 851 (1997). The court finds that the landlords' failure to remedy the conditions of disrepair listed above until December 2022 (though not the heat problem, which continues), almost an entire year of learning about them, impaired the enjoyment of the premises and shall award the tenants three months' rent in accordance with G.L. c.186, s.14, totaling **\$2,475**.
6. **Security Deposit Law:** The tenants gave their former landlord a security deposit at the commencement of their tenancy totaling \$412.50. At the time of

the transfer of the ownership of the premises the landlords "assume liability for payment of the security deposit to the tenant" in accordance with G.L. c.186, s.15B, even if the former landlord failed to transfer said fund to the new landlords. Though the landlords are permitted under that statute to fulfill their obligations by crediting it towards the rent, by failing to return it to the tenants upon their demand the landlords forfeit their right to said funds. Accordingly, the tenants are awarded **\$412.50**.

7. **Retaliation:** Given that the landlord's no-fault notice to quit was served upon the tenants within six months of their complaining to the City's Code Enforcement Housing Division, there is a rebuttable presumption that this eviction was retaliatory. The landlords, however, were able to overcome that presumption showing that they first served the tenants with a notice to quit in February 22, 2022. Though they did not act on said notice, the landlords have shown the court that even before any complaint to Code Enforcement they had the intention of terminating the tenancy. According, the tenant failed to make their claim for retaliation.

8. **Conclusion and Order:** Based on the foregoing, and in accordance with G.L. c.239, s.8A, the tenants shall have until ten days after the date of this order noted below to deposit \$ 5,806.62 with the court. This sum represents the outstanding rent through January 2023 of \$8,250 MINUS the amounts awarded to the tenants totaling \$2,887.50 plus court costs and interest. If the tenants make such deposit in full and timely, judgment shall enter for them for possession and said sums shall be disbursed by the court to the landlords. If

the tenant fail to make this deposit with the court, the landlord shall be awarded possession plus \$5,362.50 plus court costs and interest.

9. **G.L. c.239, s.9:** The tenants are also asserting G.L. c.239, s.9 and asking for time to relocate. If the tenants timely pay the sums described in the preceding paragraph, and judgment for possession enters for them, there is no need for further hearing. If the tenants fail to make such deposit, the court shall schedule further hearing on the tenant's request for protections under G.L. c.239, s.9.

So entered this 30th day of January, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-2615

GOULDING-HUANG PROPERTIES,

Plaintiff,

v.

MONAY MILLER and ANDREA BROWN,

Defendants.

ORDER

After hearing on January 17, 2023, at which the parties all appeared by counsel,
the following order shall enter:

1. The plaintiff's motion for use and occupancy pending trial is taken under advisement.
2. By agreement of the parties, the court shall seek administrative transfer to the Superior Court and request for the case to remain with this judge.

3. Attorney Herbert's motion to withdraw is allowed. This moots the landlord's motion to have Attorney Herbert withdraw based on its allegation that he will be a fact witness at trial.
4. The tenants' motion to continue the trial date is allowed, to afford the tenants to secure new counsel. They anticipate new counsel filing an appearance within 30 days.
5. The new trial dates shall be June 20 through 22, 2023, beginning at 9:00 a.m.
6. The court shall schedule a final pretrial conference for a date in May 2023. The parties shall file a joint pretrial memorandum by the day before that final pretrial conference.

So entered this 30th day of January, 2023.



Robert Fields, Associate Justice *RM*

CC: Richard Herbert, Esq. (withdrawn counsel)
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1270

LUDLOW HOUSING AUTHORITY,

Plaintiff,

v.

SCOTT MCDANIEL,

Defendant.

ORDER

After hearing on December 27, 2022, on the landlord's motion for entry of judgment, at which the landlord appeared through counsel and the tenant appeared without counsel and with [REDACTED], the following order shall enter:

1. **Background:** On December 2, 2021, the landlord served the tenant with a *for cause* termination notice that stated in relevant part:

Ludlow Housing Authority has received many complaints from other tenants that you are threatening, harassing, loud noises and causing other tenants to

feel unsafe in their apartments. On December 2, 2021 Ludlow Housing Authority received a call from a tenant at you are still "blowing nutties" which are loud noises, yelling, banging, threatening and smoking near the apartments and windows. On November 29, 2021 a tenant in the next building told you to keep the noise down and you yelled back "Do you want to die?" On August 28, 2021 you called the office and said "those are lies in the paper and you were not going to put up with it. The lies you were referring to were other tenants complaints about the noises and smoking going on in your apartment. On August 25, 2021 you still continued with screaming profanities and banging and the noises have gotten worse. At that time Ludlow Housing Authority sent you a Case & Desist letter advising you that the behavior must stop. On March 9, 2021 you were screaming and throwing a fit and yelling "I wanna die". I contacted your brother Rick McDaniels on March 10, 2021 to let him know what was going on and to do a well check on you. There have been numerous calls from other tenants to the Ludlow Police Department of problems and complaints.

2. Thereafter, the landlord commenced this for-cause eviction proceeding and on the date of the parties' Tier 1 event, at which the landlord appeared through counsel and the tenant appeared *pro se*, entered into an Agreement with the following terms:

- 1) Mr. McDaniel acknowledges that his threatening behavior is a serious violation of the lease, however judgement will not enter today;
- 2) Mr. McDaniel agrees to a referral to the Tenancy Preservation Program and agrees to follow their recommendations including but not limited to [REDACTED];
- 3) Mr. McDaniel is currently involved in [REDACTED] and he agrees to continue to engage with the treatment providers there;
- 4) Mr. McDaniel agrees that he will communicate with staff and residents in a calm, respectful and non-threatening manner;
- 5) If there is an alleged violation of this agreement, the plaintiff may mark a motion for entry of judgment with 5 days' notice to the defendant. The motion shall include dates, details, names and contact information for any witness(es) to each alleged violation(s) of any alleged violation;
- 6) If this case is not brought forward by either party it will dismiss automatically in 6 months, February 15th, 2023.

3. On November 28, 2022, the landlord filed a motion for entry of judgment stating in relevant part:

Plaintiff (landlord) alleges that Mr. McDaniel has violated this agreement on many occasions and specifically on November 14, 2022, by screaming obscenities for five hours straight, disturbing and upsetting his neighbors including Darlene Fekeris who has made recordings of the disturbances.

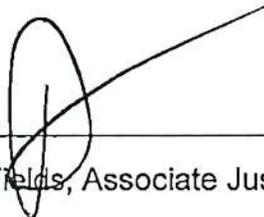
4. **Discussion:** At trial, the landlord's main witness was the tenant's direct neighbor Darlene Fekeris. Ms. Fekeris testified about incidents in mid-November 2022 when the tenant could be heard screaming inside his apartment for hours at a time. Though the recordings played during the hearing did not make it clear, the court credits Ms. Fekeris' testimony that the tenant uses profanities when he is screaming. The court also credits Ms. Fekeris' testimony that this behavior is very disturbing to her---especially given its volume in the very next unit to her's with which she shares walls.
5. The landlord also had its maintenance supervisor Colin Rogers testify about an incident when he was in a neighboring unit and could hear the tenant inside his own apartment yelling and swearing on the telephone.
6. As described above, this matter was commenced with a notice to quit describing behavior that included banging, threats, smoking near other tenants' windows, and calling the office in a menacing manner. The agreement states that the tenant "will communicate with staff and residents in a calm, respectful and non-threatening manner." Now the landlord is before the court alleging none of those enunciated behaviors, alleging instead that his yelling inside his apartment violates the agreement. This behavior, described credibly by the landlord's witnesses, though very disturbing is not an explicit violation of the agreement of the parties.

7. That said, the tenant's behavior clearly violates the underlying termination notice and is extremely problematic for Ms. Fekeris. It is behavior that needs to be curbed if the tenant is going to remain as a tenant.
8. **Reasonable Accommodation:** The tenant appears to be disabled [REDACTED]. [REDACTED]. Though the self-represented tenant has not produced a great deal of evidence in support of such a court finding, along with [REDACTED] the tenant has made at least a colorable claim that [REDACTED] disability. In accordance with Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. 794, the tenant's disability must be reasonably accommodated so as to avoid his being "...denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance..."
9. The initial accommodation is to deny the landlord's motion and stay these eviction proceedings to allow the parties to engage in a reasonable accommodations dialogue. [REDACTED]
[REDACTED]
[REDACTED]. It may be that the accommodation sought by the tenant might also include alterations to the walls of his apartment that he shares with his neighbors, or the like. See, *City Wide Associates v. Eleanor Pennfield*, 409 Mass. 140 (1990).
10. **Referral:** The Tenancy Preservation Program is asked to work with the parties with their reasonable accommodations dialogue and to work with the tenant in a

referral to the Fair Housing Center (57 Suffolk Street in Holyoke, 413-539-9796) and Community Legal Aid to assist with this eviction matter and the possible accommodations to avoid the loss of housing for the tenant.

11. Conclusion and Order: The parties shall engage in a reasonable accommodations dialogue. Either party may mark this matter for further review hearing.

So entered this 30th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

TPP

██████████

████████████████████

████████████████████

4. Defendant shall reapply for RAFT program funds. Plaintiff shall work diligently to have DHCD reissue the check for \$4,800.00 so that it can get paid and so that the RAFT program may pay the balance owed.
5. The Court requests that a representative of DHCD appear at the next hearing if the check cannot be reissued and sent to Plaintiff prior to the next Court date.
6. The parties shall return on Plaintiff's motion to issue the execution (no additional motion needs to be filed) on February 9, 2023 at 9:00 a.m.

SO ORDERED.

DATE: 1.30.23

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

cc: Clerk's Office (to contact Dept. Housing and Community Development)

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-9

MINH VU,

Plaintiff,

v.

JEAN BARR-STEVENSON,

Defendant.

ORDER

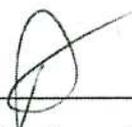
After hearing on January 13, 2023, on the plaintiff's motion for injunctive relief, the following order shall enter:

1. Without any evidence being admitted at the hearing, nor any admissions being made, the parties instead agree to the following:
2. The landlord shall not enter the tenant's unit without his permission or touch any of his personal items until she is permitted to do so through a court order or until

she has obtained legal possession through summary process or, of course, if the plaintiff has relinquished possession.

3. The parties stipulate that there is an active anti-harassment Order issued by the District Court pursuant to G.L. c.258E.
4. During the pendency of that Order, Mr. Vu's access to the premises is controlled by that Order.

So entered this 30th day of January, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-3358

JEROME MACZKA,

Plaintiff,

v.

BELINDA RODRIGUEZ,

Defendant.

ORDER

After hearing on the January 23, 2023, on the landlord's motion for entry of judgment, at which the landlord appeared with counsel and the tenant appeared with LAR counsel, the following order shall enter:

1. The terms of the agreement filed by the parties in May 2022 required the tenants to vacate the subject premises on January 1, 2023. They have not yet vacated, despite their efforts to secure alternate accommodations. They have paid their use and occupancy through January 2023.

2. To the extent that the tenants are moving the court to find that the parties have renewed their tenancy by the landlord's acceptance of January 2023 rent and as such waived his right to evict in this case, that motion is denied. The plain language of the agreement filed with the court requires them to pay their use and occupancy until they vacate.
3. The parties agree that the tenants may remain an additional two months (February and March 2023) contingent upon their paying \$1050 per month for those two months. This is a sum that is \$100 higher than the current use and occupancy, by agreement.

So entered this 31st day of January, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-26

JOSHUA SALAS,

Plaintiff,

v.

15-17 NOBLE AVE HOLDING, LLC, and
JESSICA PRIMERO,

Defendants.

ORDER

After hearing on January 13, 2023, by Zoom, on the plaintiff tenant's motion for injunctive relief, at which the tenant appeared without counsel and the defendant property owner appeared through counsel, the following order shall enter:

1. The defendant landlord, 15-17 Noble Ave Holding, LLC, shall forthwith replace the oil tank at the premises with proper licensure and town permits. The landlord reports that it is scheduled for January 18, 2023, starting at 8:30 am.

2. The tenant shall not unreasonably deny access for repairs upon reasonable notice from the landlord.
3. The landlord shall also immediately provide the tenant with portable heaters that are safe for use as the sole source of heat and for use with the tenant's pets until the heating system is restored.
4. This matter shall be scheduled for review on **February 1, 2023, at 9:00 a.m.** in the Pittsfield Session.

So entered this 31st day of January, 2023.

Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-0572

CITY OF SPRINGFIELD, CODE ENFORCEMENT)
DEPARTMENT,)

PLAINTIFF)

v.)

ORDER ON PLAINTIFF'S
COMPLAINT FOR CONTEMPT

LANCE S. CHAVIN, ESQ. AS TRUSTEE ON)
BEHALF OF 197-199 MASSACHUSETTS)
AVENUE REALTY TRUST,)

DEFENDANT)

This code enforcement case came before the Court on January 23, 2023 for a hearing on Plaintiff's complaint for contempt. Plaintiff appeared through counsel. Although the Trustee appeared, because Defendant is a trust, it must appear through counsel and counsel did not appear for the hearing.¹ The property in question is located at 197-199 Massachusetts Avenue, Springfield, Massachusetts (the "property").

This matter has been pending since September 2020. Following a hearing on April 25, 2022, the Court ordered Defendant to open and close a building permit for the roof repairs that had been made without a permit no later than June 30, 2022. Defendant did not comply, and, as of the date of the instant hearing, Defendant has not filed a building permit application nor has it been issued a permit.

¹ Defendant has been represented by counsel at previous hearings, but counsel was allowed to withdraw from this case in December 2022 and no substitute counsel has appeared, nor did Defendant make a motion to continue to allow additional time to retain counsel.

In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re: Birchall*, 454 Mass. 837, 852-53 (2009). Plaintiff has established both.

A primary purpose of civil contempt is to induce compliance and “secur[e] for the aggrieved party the benefit of the court’s order.” See *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). However, compensatory orders are also appropriate. See *Labor Relations Comm. v. Fall River Educators’ Assn.*, 382 Mass. 465, 475-476 (1981) (both compensatory and coercive orders are appropriate remedies in civil contempt proceedings).

In this case, given Defendant’s continuing failure to comply with the Court’s order, and further given its failure to appear through counsel at the hearing today, the following order shall enter:

1. A judgment of contempt shall enter in favor of Plaintiff.
2. Defendant shall have until February 28, 2023 to open and close a building permit for the roof repairs. If Defendants fail to comply, daily fines of \$50.00 shall accrue beginning on March 1, 2023 until compliance is achieved.
3. Plaintiff may file a petition for attorneys’ fees and costs as a sanction for contempt. The Court will award Plaintiff its reasonable attorneys’ fees associated with filing the complaint for contempt and attending the contempt hearing. The Court will also award reasonable costs for any inspections conducted at the property with respect to roof repairs after

June 30, 2022, if any, and any other reasonable costs directly attributable to Defendant's contemptuous conduct.

SO ORDERED.)

DATE: 8/2/23

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0637

GRAHAM'S CONSTRUCTION, INC. ET AL.,)

PLAINTIFFS)

v.)

ENA SALOME GRAHAM,)

DEFENDANT)

ORDER ON PLAINTIFF'S
COMPLAINT FOR CONTEMPT

This summary process case came before the Court on January 31, 2023 for hearing on contempt.¹ The parties essentially concede that there is little dispute about the underlying non-compliance with the Agreement of the Parties dated November 3, 2022 (the "Agreement"), at least with respect to Defendant's failure to make certain payments required by the Agreement. The Agreement recites that, upon an allegation of non-compliance, a party could schedule a court hearing. It does not include a term that provides notice that judgment for possession could enter as a result of non-compliance.

At the hearing today, Defendant tendered \$1,500.00, representing the three missed monthly payments of \$500.00 contemplated in paragraph 6 of the Agreement. Plaintiff provided Defendant with a document to be filed in the county registry of deeds to reflect the establishment of a life estate for Defendant.

¹ Plaintiff previously brought motions for entry of judgment. The Court ordered that the motions would serve as the basis for a hearing on contempt at which the Court would take evidence if appropriate.

In order to establish a civil contempt, the burden is upon the complainant to demonstrate, by clear and convincing evidence, (1) a clear and undoubted disobedience (2) of a clear and unequivocal command. *In re: Birchall*, 454 Mass. 837, 852-53 (2009). A primary purpose of civil contempt is to induce compliance and “secur[e] for the aggrieved party the benefit of the court’s order.” See *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997).

Given the complex family dynamics at play in this case, the Court will allow Defendant one more opportunity to demonstrate she is willing and able to comply with the terms of the Agreement. In order to ensure that both parties are clear about the consequences of material noncompliance, the following order shall enter:

1. The terms of the Agreement are hereby incorporated into this order.
Material noncompliance with this order shall entitle Plaintiff to move for entry of judgment.
2. All payments to be made by Defendant pursuant to paragraph 4 of the Agreement shall be made within fifteen days of receipt of the invoice. For any payments currently overdue, such payments shall be made within fifteen days of Defendant’s receipt of this order.
3. If Plaintiff alleges material noncompliance with this order, it shall serve and file a motion that includes the nature of the alleged violation, along with relevant dates and witnesses, if any, that it intends to call as witnesses at the evidentiary hearing on its motion.
4. Defendant must not unreasonably deny access for inspections provided notice is given in writing at least 24 hours in advance.

SO ORDERED.

DATE: 2/2/2023

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

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

_____)	
APPLETON CORPORATION,)	
)	
PLAINTIFF)	
v.	)	ORDER
)	
BEVERLY A. PLEITER)	
)	
DEFENDANT)	
_____)	

This summary process case came before the Court on February 1, 2023 on Plaintiff’s emergency motion for access. Both parties appeared with counsel.

By way of background, judgment for possession entered in favor of Plaintiff on October 27, 2022. Plaintiff sought issuance of the execution by motion that was heard on December 28, 2022. At that hearing, the motion was denied and Plaintiff was invited to file a motion for access in the event it continued to receive complaints about smoking in Defendant’s apartment. After hearing, the following order shall enter:

1. If Plaintiff’s agent receives complaints about smoke odors coming from 176 Columbus Avenue, Unit 105, Pittsfield, Massachusetts (the “Premises”), the property manager shall have the right to enter the Premises for inspection, provided that:

- a. She is accompanied by another representatives of Plaintiff who will be a witness to the inspection, and
 - b. She knocks loudly as Defendant is hard of hearing.
2. If, despite loudly knocking, Defendant does not answer the door, Plaintiff's property manager will have the right to enter the Premises, and she shall loudly announce her presence upon entering the Premises.
3. Plaintiff may schedule a motion for issuance of the execution if the evidence shows that Defendant or others are smoking in the Premises. The motion shall include the dates and times when evidence of smoking was found, along with the name of any witnesses. A courtesy copy of the motion shall be provided to Angelina Morisi, Esq. at Community Legal Aid.

SO ORDERED.

DATE: 2/1/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Angelina Morisi, Esq., Community Legal Aid

Further complicating matters, in the second District Court case, Docket No. 22SU0018, the parties entered into an agreement for judgment whereby Defendants were to vacate by September 1, 2022. Based on the agreement for judgment, the District Court entered judgment for possession in favor of Plaintiff on May 19, 2022. The existence of a judgment for possession was not brought to the attention of the Housing Court prior to trial in this case.

Given that a judgment for possession has already entered in favor of Plaintiff, he is entitled to issuance of the execution upon application to the Housing Court Clerk's Office. Because the parties proceeded to trial on December 22, 2022 at which time the Court took evidence of the parties' respective claims for damages, this order addresses only the issue of monetary damages.

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

Plaintiff owns the Premises. He rented the Premises to Defendants jointly on January 1, 2019. Monthly rent is \$1,150.00. Rent has not been paid from August 2022 through the date of trial. Defendants dispute Plaintiff's right to collect the unpaid rent. They claim that the City of Springfield Code Enforcement Department inspected the Premises and determined that Mr. Gladden was residing in an illegal third-floor apartment and had to vacate. The evidence shows that Plaintiff did not rent the illegal third-floor unit but instead rented one dwelling unit to Mr. Wilkerson and Mr. Gladden collectively, consisting of both the second and third floors of the house. He is therefore due the monthly rent of \$1,150.00 from Defendants, jointly and severally. The total amount of unpaid rent through December 2022 is \$5,750.00.

Turning to Defendants' claims, they can be categorized into those alleging defective conditions and those alleging interference with the covenant of quiet enjoyment. The evidence relating to conditions amount to a claim for breach of the warranty of habitability, which 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 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). A landlord who violates the warranty is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). The typical measure of damages in a warranty of habitability case is the difference between the rental value of the premises as warranted less the fair value of the premises in their defective condition. *Id.*, 363 Mass. at 203. Damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) ("While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference.").

Here, the City of Springfield Code Enforcement Department cited Plaintiff for numerous violations after an inspection in December 2021. Defendant was on notice of the conditions of disrepair no later than the date of the City inspection, but the evidence shows that he became aware of certain of the defective conditions approximately six months prior. The City cited water damaged ceilings, an infestation

of vermin, defective kitchen facilities, among other issues. The Court rules that the defective conditions in the Premises as described at trial and confirmed in the City inspection report constitute a material breach of the implied warranty of habitability. The Court finds that these conditions reduced the fair rental value of the Premises by 15% for an 18-month period for a total rent abatement of \$3,105.00.

With respect to claims for breach of the covenant of quiet enjoyment, 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.” The Court finds that Plaintiff entered the Premises without permission on more than one occasion and that the basement was left unsecured, allowing unwelcome individuals to slept there. The Court finds that these factors resulted in a serious interference with Defendants’ quiet enjoyment of the Premises in violation of G.L. c. 186, § 14.² Damages for breach of the covenant of quiet enjoyment consist of actual and consequential damages or three month’s rent, whichever is greater. Because Defendants did not plead actual and consequential damages, the Court will award three month’s rent, or \$3,450.00.³

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

1. Plaintiff is entitled to issuance of the execution (eviction order) by application based on the judgment that entered on May 19, 2022.
2. Defendants are entitled to damages in the amount of \$6,555.00.

² A serious interference is an act or omission that impairs the character and value of the leased premises. *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 284-285 (1994); *Lowery v Robinson*, 13 Mass. App. Ct. 982 (1982); see also *Al-Zaib v Mourgis*, 424 Mass. 847, 850-851 (1997).

³ To the extent Defendants raised any other claims, the evidence is insufficient to warrant a finding of liability in their favor.

3. Through the date of trial, Plaintiff is entitled to unpaid rent in the amount of \$5,750.00.
4. After offsetting the damages awards, Defendants are entitled to damages in the amount of \$805.00. However, given that the trial was in December 2022, if Defendants continued to reside at the Premises after December 2022, they owe additional use and occupancy charges. In order to determine the final amount of damages, the Court requires the parties to appear for further hearing on **February 16, 2023 at 9:00 a.m.** in person in the Springfield session, at which time the Court will enter a final judgment with respect to monetary damages.

SO ORDERED.

DATE: 2/8/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0072

SPRINGFIELD HOUSING AUTHORITY,)
)
 PLAINTIFF)
)
 V.)
)
 KIMBERLY DALESSIO,)
)
 DEFENDANT)

ORDER

This matter came before the Court on February 9, 2023 on Plaintiff's verified complaint for civil restraining order and other relief. Both parties appeared through counsel. Defendant resides at Plaintiff's Sullivan Development Complex on Nursery Street in Springfield, Massachusetts (the "Property").

Plaintiff claims that Defendant or her household members or guests are causing smoke odors and excessive noise during overnight hours to disturb the quiet enjoyment of her downstairs neighbor, Mr. Washington. Plaintiff seeks a preliminary injunction enjoining Defendant from, among other conduct, smoking and causing excessive noise during overnight hours.

In considering a request for preliminary injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would

create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. See *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Here, based on the facts alleged in the verified complaint and the testimony of Booker T. Washington III, a tenant who lives in an apartment at the Property located directly below that of Defendant, the Court finds that Plaintiff has established a reasonable success of likelihood on the merits of its claim that smoke odors are emanating from her apartment and that Mr. Washington, who has COPD and asthma, is at substantial risk of irreparable harm if an injunction is not granted. The risk of irreparable harm to Defendant is negligible if the injunction is granted.

With respect to excessive noise, the Court finds that the noise during overnight hours is caused by Defendant's three-year old son who is experiencing anxiety around the recent transition to this new apartment and who often wakes up in the middle of the night. Based on the preliminary evidence presented at the hearing, the likelihood of success at trial of Plaintiff establishing that Defendant is intentionally or negligently causing excessive noise during overnight hours is low. Nonetheless, Mr. Washington testified credibly that the excessive noise from Plaintiff's apartment between the hours of 11:00 p.m. and 4:00 a.m. is interfering with his sleep.

Based on these findings, the following order shall enter as a preliminary injunction:

1. Defendant and all members of her household and guests are hereby prohibited from smoking on the Property.
2. Defendant shall take reasonable steps to limit the noise emanating from her apartment between 11:00 p.m. and 7:00 a.m.
3. The \$90.00 legislative fee (G.L. c. 262, § 4) for injunctions is waived.

SO ORDERED.

DATE: _____

2/13/2023

Jonathan J. Kane

Jonathan J. Kane, First Justice

may apply his or her own experience as a judge and expertise as a lawyer in determining the amount that the attorney should be paid. See *Heller v. Silverbranch Construction Corp.*, 376 Mass. 621, 629 (1978).

Here, the Court finds the number of hours (9.7) expended with respect to the contempt proceeding to be reasonable. Counsel petitions for a rate of \$400.00 per hour, supporting his rate with numerous affidavits. Applying the undersigned's own experience as a judge and practitioner, the Court finds the rate to be higher than the "usual price charged for similar service by other attorneys in the same area." *Twin Fires Inv.*, 445 Mass. at 430, citing *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). In light of counsel's extensive training and experience, and considering the additional affidavits filed in support of his rate, and further considering that the contempt trial involved no disputed issues of law but instead consisted primarily of an examination of Plaintiff, the Court concludes that a reasonable hourly rate for this counsel in this case is \$300.00.

Accordingly, the Court awards reasonable attorney's fees in the amount of \$2,910.00. As a result, final judgment on Plaintiff's complaint for contempt shall enter in favor of Plaintiff in the amount of \$7,910.00.

SO ORDERED.
DATE: 2/14/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3513

HOLYOKE HOUSING AUTHORITY,

Plaintiff,

v.

LUZ REYES AND JARVIS RIOS,

Defendants.

ORDER

After a review hearing on February 13, 2023, at which only the plaintiff landlord appeared (through counsel) and a representative from the Tenancy Preservation Program joined, the following order shall enter:

1. The landlord's attorney reported to the court that the defendant Luz Reyes has not relocated to a permanent nursing facility and that her adult son defendant Jarvis Rios has taken over the tenancy.

2. The landlord is concerned about Mr. Rios' capacity to comply with the requirements of the tenancy and is going to make a referral to the Tenancy Preservation Program¹.
3. TPP shall work with Mr. Rios and assess him for assistance. Additionally, the landlord reports that use and occupancy payments through February 2023 totals \$804 (rent is now \$279 per month) plus court costs of \$201.25. Among other things, TPP shall make a referral to Community Legal Aid for Mr. Rios as it is unclear what amount of these funds, perhaps all, are Mr. Rios' responsibility and whether or not the matter should be dismissed as it was based on a failure of Mr. Reyes to recertify and landlord counsel reports that recertification has been accomplished.
4. Mr. Rios is urged to work with TPP when they contact him. He can also reach out to its Program Director, Jake Hogue at 413-358-5654, even before TPP reaches out to him.
5. This matter shall be scheduled for further review on March 3, 2023, at 9:00 a.m. at the Springfield Session of the court at 37 Elm Street.

So entered this 14th day of February, 2023.



Robert Fields, Associate Justice

CC: Jake Hogue, Tenancy Preservation Program
Court Reporter

¹ The referral made to TPP as part of the December 8, 2022, Agreement of the Parties does not seem to have been successful as the TPP representative reported that there is no information at her agency regarding this referral.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

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

_____)	
KATIE JONES AND BENJAMIN LAFLAMME,)	
)	
PLAINTIFFS)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
PAIXAO PROPERTIES, INC.,)	
)	
DEFENDANT)	
_____)	

This civil damages action came before the Court for a bench trial on January 4, 2023. Plaintiff Katie LaFlamme (a/k/a Katie Jones) and Defendant’s president, Sam Paixao, appeared with counsel. Plaintiff Benjamin LaFlamme did not appear.

This case began as a summary process action brought by Defendant to recover possession of a single family house located at 111 Bondsville Road, Ware, Massachusetts (the “Premises”) from Plaintiffs. Defendant filed the summary process case in District Court, which case was transferred as of right to Housing Court (Docket No. 19H70SP4883). After Plaintiffs vacated, the issue of possession became moot and the Court transferred the case to the civil docket. Plaintiffs assert claims for breach of warranty, breach of quiet enjoyment, cross-metering, retaliation and violation of G.L. c. 93A (“c. 93A”). Defendant asserts counterclaims for breach of contract based on both non-payment of rent and removal of a fence.

Prior to trial, the parties agreed upon the following facts:

1. Defendant owns the Premises.
2. Plaintiffs were tenants of Defendant and resided in the Premises.
3. Monthly rent was \$1,150.00, due on the first of the month pursuant to a written agreement.
4. Plaintiffs vacated in March, 2020.

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

Plaintiffs signed a lease for the Premises with a two-year term commencing on September 1, 2018. They resided in the Premises with their two children. The relationship was amicable at the outset. Defendant gave permission for Plaintiffs to install fencing by the river and a fence for privacy, which they did at their own expense.

In November 2018, Plaintiffs began complaining about the circuit breaker tripping, as well as other issues such as a cracked window and floor in need of repair. The most significant rupture in the relationship occurred in late December 2018 over a broken propane stove, which Plaintiffs claim caused their electric bills to soar. Defendant ultimately decided to remove the stove altogether.

Over the course of 2019, it appears tensions were simmering. In September 2019, a dispute erupted over the rent payment. Plaintiffs claim they left the September rent check for Defendant, but Defendant did not receive it. Plaintiffs subsequently replaced the check, but deducted \$150.00 from the amount, claiming the difference would be used to pay any stop payment fees. Ms. Jones also texted: "if I had

written it for any more it would have bounced anyway.” Soon thereafter, Plaintiffs called the Board of Health to inspect the Premises. The inspector found several conditions of disrepair. Defendant claims to have completed the repairs by October 2, 2019, and when Plaintiffs did not pay October rent, Defendant served Plaintiffs with a notice to quit by letter dated October 16, 2019.

Implied Warranty of Habitability Claim

Plaintiffs did not return the statement of conditions at the outset of the tenancy in September 2018. Around the time of the move-in, however, Ms. Jones texted Mr. Paixao that “the only thing I wanted to bring to your attention is the bathroom sink ... it doesn’t need to be fixed, just want you to be aware.” Soon thereafter, she sent text messages mentioning a cracked bedroom window and issues with the deck railings.

The cracked window was not corrected for approximately one year. Plaintiffs claim that it is one of the reasons that their heating bill was so high. The leaky sink and deck were apparently not repaired until after the Board of Health inspection on September 17, 2019. The health inspector also cited a stove vent plugged with a towel that needed to be boarded up and an exposed gas pipe sticking out of the ground, as well as a broken floor, rotting wood in a window frame and a broken door threshold. The inspector also made a referral to the electrical inspector.

Defendant credibly claimed to have repaired all items cited by the Board of Health by October 2, 2019, and the Board of Health issued a compliance letter on October 15, 2021.

The Court finds and rules that the cracked window, leaking sink and damaged deck existed for one year from the inception of the tenancy and were substantial

conditions of disrepair that reduced the value of the Premises. See *Boston Housing Authority v. Hemingway*, 363 Mass. 184 (1973). A landlord who violates the warranty is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). The typical measure of damages in a warranty of habitability case is the difference between the rental value of the premises as warranted less the fair value of the premises in their defective condition. *Id.*, 363 Mass. at 203. Here, the conditions of disrepair reduced the rental value of the Premises by 5% for twelve months, resulting in damages of \$690.00. The items cited by the health inspector reduced the value of the Premises by an additional 5% for a period of one month for an additional \$57.50. The total damages for the breach of warranty, then, is \$747.50, plus reasonable attorney's fees.¹

Breach of Quiet Enjoyment Claim

The quiet enjoyment statute, G.L. c. 186, § 14, provides that a landlord may be liable to its tenant where it engages in conduct that results in a serious interference with the tenant's quiet enjoyment of the dwelling unit. A serious interference is an act or omission that impairs the character and value of the leased premises. *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 284-285 (1994); see also *Al-Zaib v. Mourgis*, 424 Mass. 847, 850-851 (1997).

The Court finds that Defendant rented the Premises to Defendants with a propane stove in the living room. The house was otherwise heated by electricity. The evidence shows that Plaintiffs expected to be able to use the propane to provide some heat to reduce the electrical bill. In November 2018, Plaintiffs complained that the

¹ Plaintiffs did not satisfy the Court that they gave notice to Defendant of other significant conditions of disrepair prior to the Board of Health inspection, and the Court declines to find Defendant liable for these conditions.

stove was not working, and Mr. Paixao promised he would have someone look at it. Plaintiffs got the stove working by late December 2018, at which time Mr. Paixao decided unilaterally that the stove had to be removed it because Plaintiffs had done repairs themselves and because, as he wrote in a text message, “it is best to remove [the stove] because [it is] not safe if sleeping in there.” He produced no evidence at trial to support his conclusion that the stove was unsafe under the circumstances.

The Court finds and rules that Mr. Paixao’s unilateral decision to remove the stove, leaving Plaintiffs with no alternate source of heat other than electrical, constitutes a breach of quiet enjoyment as it seriously impaired the character and value of the Premises. Damages for breach of quiet enjoyment are “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. Plaintiffs introduced evidence of their electrical bills, but these bills, without more, do not provide a basis for damages because they cannot demonstrate what amount is attributable to the increased electrical costs due to the absence of the propane stove and how much they would have had to pay for propane. Therefore, the Court finds and rules that the appropriate measure of damages is three times the rent, or \$3,450.00, plus reasonable attorney’s fees.²

² Plaintiffs also complained that the electrical panel kept tripping and that they had to crawl on their hands and knees through the crawl space under the house to reach and reset the circuit breakers. The Board of Health accepted a letter from a licensed electrician indicating that the electrical system was operating properly and did not further cite Defendant. The retired licensed electrician called as a witness did not convince the Court that the electrical panel was defective. Accordingly, the Court declines to find that the electrical system performance constitutes a breach of the covenant of quiet enjoyment.

Cross-Metering Claim

Plaintiffs allege that Defendant required them to operate a sump pump in the basement as well as a small electrical heater than was necessary to prevent the sump pump system from freezing. The evidence was insufficient for the Court to find that the sump pump and heater used an excessive amount of electricity. Mr. Paixao testified credibly that the heater was controlled by a thermostat and did not operate constantly, and there was no credible evidence that the sump pump had to run regularly year-round. The Court finds and rules that the sump pump and heater do not constitute cross-metering in a single family home where these devices were disclosed and agreed upon at the outset of the tenancy.

Retaliation Claim

The Board of Health inspected the Premises on September 17, 2019. The notice to quit is dated October 16, 2019. Because this case was commenced for non-payment of rent, Plaintiffs would have to demonstrate that Defendant knew or should have known that no money was owed at the time of the notice to quit. Here, they failed to pay September 2019 rent in full and thus were already behind in rent when they contacted the Board of Health. Plaintiffs' testimony that they was withholding \$150.00 from the September rent to cover possible bank charges was not credible. There was no credible evidence that Plaintiffs informed Defendant that they were withholding October 2019 rent. Accordingly, the Court finds and rules in favor of Defendant on Plaintiffs' retaliation claim.³

³ Plaintiffs also made a claim under G.L. c. 93A. The Court rules that they did not present sufficient evidence to warrant a finding of liability under this statute.

Defendant's Claims

When Plaintiffs vacated, they had not paid rent for six months and still owed \$150.00 for September 2019, for a total of \$9,150.00.⁴ Upon vacating, they removed a vinyl privacy fence that they had installed with Defendant's permission after moving into the Premises. Pursuant to the lease, "Unless otherwise agreed, any fixture installed in the Premises with permission of the Landlord shall become the property of the Landlord upon termination of the lease." Although Plaintiffs paid for the fence, and installation included cement footings installed in the ground. One end of the fence attached to the house. Plaintiffs violated the lease by removing the fence. Mr. Paixao testified that the cost of installing the fence was "\$3,500 to \$4,500, I would think." Defendant did not pay for the installation of the fence, however, so the pertinent question is whether removal of the fence caused damage or caused him to expend money to repair or replace it. There was no evidence that Defendant replaced the fence or that it spent money repairing the ground where cement footings were installed or the house where the fence had been attached. Accordingly, the Court has no basis to award damages to Defendant as a result of the fence removal.

Attorneys' Fees

The lease contains a provision whereby Plaintiffs must pay Defendant its reasonable attorneys' fees and costs incurred if it "reasonably requires services of an attorney to enforce the terms of the Lease or to seek to recover possession or damages...." Pursuant to Massachusetts law, the Court considers the attorneys' fees

⁴ Plaintiffs did not pay any deposits in advance.

provision in the lease to be reciprocal. See G.L. c. 186, § 20.⁵ Accordingly, both parties shall be entitled to seek reasonable attorneys' fees and costs associated with this litigation.

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

1. Plaintiffs are entitled to judgment on their claims for breach of the implied warranty of habitability and breach of the covenant of quiet enjoyment in the amount of \$4,197.50.
2. Defendant is entitled to judgment on its claim for breach of contract (unpaid rent) in the amount of \$9,150.00
3. After setting off Plaintiffs' damages against Defendant's damages, Defendant is entitled to judgment in the amount of \$4,952.50.
4. No judgment shall enter at this time. Each party shall have fifteen (15) days from the date of this order to file petitions for reasonable attorney's fees and costs, along with supporting documentation. Each party shall then have fifteen (15) days from receipt of the other party's petition to file any opposition, after which time the Court will assess attorneys' fees without need for further hearing, unless the Court so requests.

⁵ Chapter 186, Section 20 recites: "Whenever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorneys' fees and expenses incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. Any waiver of this section shall be void as against public policy."

5. After the attorneys' fees have been established, the Court will enter final judgment.

SO ORDERED.

DATE: 2/14/2023

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-4275

_____)	
ANTONIO PIRES,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
DARRIN PAVONI,)	
)	
DEFENDANT)	
_____)	

This summary process case based on non-payment of rent came before the Court for a bench trial on February 9, 2023. Both parties appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 98 Springfield Street, Three Rivers, Massachusetts (the “Premises”). The Court finds the following facts:

Defendant resides in the Premises. The agreed-upon monthly rent is \$1,100.00. Plaintiff’s complaint seeks the sum of \$2,818.00 in unpaid rent.¹ Defendant does not contest that he owes the rent claimed in the complaint, and he did not file an answer or assert any defenses at trial. The Court finds that he received the 14-day notice to quit dated October 26, 2022 and that he continues to reside in the Premises. Because he has no legal defenses to Plaintiff’s claim, Plaintiff is entitled to judgment.²

¹ A party is limited to the amount of rent requested in the complaint unless it asks for use and occupancy arising after the complaint is filed or files a motion to amend the complaint. Plaintiff may move to amend the judgment if he seeks unpaid rent in excess of what he requested in the complaint.
² Defendant provided no evidence of a pending application for rental assistance and thus he is not protected by St. 2020, c. 257, as amended.

Based on the evidence presented at trial and the reasonable inferences drawn therefrom, and in light of the governing law, the following order shall enter:

1. Judgment for possession and \$2,818.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. The execution (eviction order) shall issue ten days after the date the judgment is entered.

SO ORDERED.

DATE: 2.14.23

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

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

GINA TYK,

Plaintiff,

v.

GREGORY and MICHELLE HILL,

Defendants.

ORDER FOR ENTRY
OF JUDGMENT

After hearing on February 13, 2023, on the defendants' motion for the entry of a default judgment, at which only the moving parties appeared and at which the plaintiff failed to appear, the following order shall enter:

1. For the reasons outlined by the defendants' counsel in his written brief and oral argument, a default judgment shall enter against the plaintiff on her claims against the defendants.

2. Additionally, a judgment on liability shall enter for the defendants in their counterclaims against the plaintiff and a Damages Hearing by jury shall be scheduled for March 6 and 7, 2023¹.
3. The parties shall have until **March 2, 2023**, to file and serve a description of the case to be read to the jury *venire*, proposed jury instructions, and a proposed jury verdict form.

So entered this 14th day of February, 2023.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Amy Martin, Sessions Clerk
Court Reporter

¹ If the plaintiff Gina Tyk fails to appear for the damages hearing, counsel for the defendants reported to the court that the defendants will pursue the Damages Hearing jury waived.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-1253

_____)	
WELLS FARGO BANK, N.A. AS TRUSTEE)	
FOR OPTION ONE MORTGAGE LOAN TRUST)	
2007-4, ASSET-BACKED CERTIFICATES,)	
SERIES 2007-4,)	
)	
PLAINTIFF	)	RULING ON PLAINTIFF'S MOTION
v.	)	FOR SUMMARY JUDGMENT
)	
SARAH COULSEY AND BENJAMIN COULSEY,)	
)	
DEFENDANTS)	
_____)	

This post foreclosure summary process matter came before the Court on January 13, 2023 on Plaintiff's motion to for summary judgment. Plaintiff appeared through counsel; Defendants appeared self-represented. The parties submitted legal memoranda together with affidavits and documents. After reviewing the summary judgment record and considering the respective arguments of the parties, Plaintiff's summary judgment motion is ALLOWED.

The standard for review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible evidence, including deposition testimony, answers to interrogatories, admissions, documents, and

affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). “Any doubts as to the existence of a genuine issue of material fact are to be resolved against the party moving for summary judgment.” *Lev v. Beverly Enters-Mass., Inc.*, 457 Mass. 234, 237 (2010).

In a summary process action for possession after foreclosure by sale, Plaintiff must make a prima facie showing that it obtained a deed to the subject property and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded. See *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011); see also *Fed. Nat’l Morg. Ass’n v. Hendricks*, 463 Mass. 635, 642 (2012) (in a summary process action a foreclosure deed and statutory form [affidavit] constitute prima facie evidence of the right of possession).

The Court adopts the facts set forth under roman numerals I and II in Plaintiff’s Motion for Summary Judgment and Incorporated Memorandum of Law in Support Thereof. The Court finds the facts stated therein to be undisputed and further finds that Plaintiff recorded the foreclosure deed and affidavit of sale, showing compliance with statutory foreclosure requirements, in the Franklin County Registry of Deeds on January 10, 2022.

In their answer, Defendants claim that the foreclosure was void for failing to comply with the power of sale, unfair treatment related to loan modifications, unfair pre-foreclosure notices and predatory lending. These claims were dismissed by this Court by order dated October 4, 2022 based on the doctrine of res judicata. Accordingly, Defendants have no viable defenses or counterclaims relating to the

foreclosure.

On or about March 14, 2022, Plaintiff caused to be served a 72 hour notice to quit upon Defendants. Defendants do not dispute receipt of the notice but contend that they should have been afforded a 90-day notice to quit. The Court finds the notice is legally sufficient on its face. Defendants are tenants at sufferance and are not entitled to a 90-day notice to quit.¹ Defendants did not vacate.

The recorded foreclosure documents, together with the notice to quit served upon and received by Defendants, and the summary process summons and complaint, which was timely served and filed, entitle Plaintiff to a judgment for possession of the subject premises. See *Adjartey v. Central Div. of Housing Court*, 481 Mass. 830, 834-835 (2019). Accordingly, the Court rules as a matter of law that Plaintiff has established its claim to possession.

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

1. Judgment enters for Plaintiff and against Defendants on Plaintiff's claim for possession;
2. Execution for possession shall issue ten (10) days from the date on which judgment enters.

SO ORDERED.

DATE: 2.14.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ This Court is not bound by, and expressly declines to follow, the case of *Lenders Commercial Finance LLC v. Pestilli*, Southeast Housing Court Docket No. 16H83SP03779 (Feb 2, 2017), cited by Defendants in support of their assertion that they are entitled to a 90-day notice to quit.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3203

BARBARA ZABINSKI,
PLAINTIFF

v.

PATRICK DEITNER AND
JENNIFER HERNANDEZ,¹

DEFENDANTS

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER FOR JUDGMENT

This no fault summary process case came before the Court on January 17, 2023 for an in-person bench trial. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of a residential rental unit located at 42 Ferry Street, First Floor, Chicopee, Massachusetts (the "Premises").

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

Plaintiff owns the Premises, which are part of a 3-unit residential building this is not owner occupied. Pursuant to the parties' month-to-month rental agreement, the tenancy began on August 1, 2019, although Defendants began moving in during July 2019. By letter dated July 29, 2022, Plaintiff served Defendants with a rental period notice, terminating Defendants' tenancy as of September 1, 2022. The notice was

¹ A third named defendant, Vincent Deitner, passed away and Plaintiff has agreed to dismiss him from this case.

received by Defendants, who did not vacate and who continue in possession of the Premises. The agreed-upon monthly rent is \$1,000.00. Although the case was not brought for non-payment of rent, Plaintiff claims rent is due from August 2022 through the date of trial in the aggregate amount of \$6,000.00. Plaintiff has established its prima facie case.

Defendants filed an answer asserting defenses and/or counterclaims. Their claims involving conditions of disrepair fall short of the standard necessary to find a breach of the warranty of habitability. The Court finds that the Premises were in good condition when they moved in and that they did not live with any substantial defects. They testified about an inspection by the City of Chicopee Health Department in early 2020 that resulted in an order for repairs, but Defendants admitted they did not notify Plaintiff of the need for repairs prior to the inspection, and they further admit that Plaintiff completed the repairs within the timeframe provided by the City. The Court rules that the conditions of disrepair do not constitute a material breach of the implied warranty of habitability. See *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973).

Defendants also testified about Plaintiff's improper behavior; namely, they allege that she entered the Premises on at least two occasions without their permission and that she made demands for payments of rent at times when they believed rent was not owed. They provided no evidence to support their testimony. The Court rules that Defendants did not show that the conduct complained of constituted a serious interference with Defendants' quiet use and enjoyment of their tenancy within the meaning of the quiet enjoyment statute, G.L. c. 186, § 14.

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

1. Judgment for possession and \$6,000.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue ten days after the date judgment enters.
3. This case having been brought for no fault of Defendants, Defendants may file a motion pursuant to G.L. c. 239, §§ 9-11 for a stay on the execution.

SO ORDERED.

DATE: 2-14-23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1631

_____)	
CARRIE BANKS,)	
)	
PLAINTIFF)	
v.	)	ORDER ON APPEAL BOND
)	
PAULETTE SMITH,)	
)	
DEFENDANT)	
_____)	

This summary process case came before the Court on January 19, 2023 for a hearing to set or waive the appeal bond. Plaintiff appeared with counsel. Defendant appeared self-represented. The subject property is located at 44 Longview Street, 2d Floor, Springfield, Massachusetts (the “Premises”).

Judgment for possession of the Premises entered in favor of Plaintiff on December 15, 2022. Defendant did not file a notice of appeal with this Court. She did, however, file a motion in the Appeals Court on December 20, 2022 pursuant to Mass. R. A. P. 6(a).¹ A justice of the Appeals Court denied the motion as premature but ordered the Housing Court to consider her motion to stay a notice of appeal filed on December 21, 2022.

¹ In her motion, Defendant asserted that she filed a notice of appeal in the Housing Court on December 20, 2022. She did not and has never filed a notice of appeal in the Housing Court. Defendant also represented that, prior to filing the motion, she filed a motion to stay in the Housing Court. This representation is also false.

Upon receiving the order from the Appeals Court, this Court scheduled a hearing on the appeal bond pursuant to G.L. c. 239, § 5(e), even though neither party made a motion. At the hearing, Defendant made an oral motion to waive the appeal bond. Based on Defendant's financial affidavit signed under the penalties of perjury, the Court finds that Defendant meets the standards of indigency set forth in G.L. c. 261, § 27A. Although Defendant did not articulate any particular error of law, the Court infers from her statements at the hearing that that she will argue on appeal that the Court's findings were clearly erroneous. The Court therefore finds that Defendant has a non-frivolous defense and waives the requirement of an appeal bond. See *Adjarney v. Central Div. of Housing Court*, 481 Mass. 830, 859 (2019) (a "determination that a defense is frivolous requires more than the judge's conclusion that the defense is not a winner; frivolousness imports futility -- not 'a prayer of a chance'").

General Laws c. 239, § 5(e) further mandates that "[t]he court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver." In this case, Defendant remains in possession of the Premises. The last agreed-upon monthly rent amount is \$1,300.00. Defendant did not ask the Court to reduce the amount of monthly use and occupancy. Accordingly, the following order shall enter:

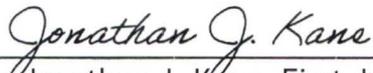
1. The Court waives the requirement of a bond for the reasons stated herein.
2. Defendant is ordered to pay to Plaintiff \$1,300.00 each month for her continued use and occupation of the Premises during the appeal. Payments

are due on the 1st day of the month beginning in March 2022.

3. The Court informed Defendant at the hearing today that she would need to pay Plaintiff \$1,300.00 for use and occupancy for February 2023. If she has not already made the payment, it shall be paid to Plaintiff within seven (7) days of the date of this order.
4. Plaintiff may move to dismiss the appeal if Defendant fails to pay the installments of use and occupancy as required herein. See G.L. c. 239, § 5(h); see also *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 137 n. 19 (2018) (“the statute permits dismissal of an appeal ... when a tenant fails to post the ... use and occupancy payment”).

SO ORDERED.

DATE: 2/15/2023



Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

PITTSFIELD, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3340

_____)	
MARCIA CABRERA,)	
)	
PLAINTIFF)	
v.	)	ORDER ON APPEAL BOND
)	
MICHELE PLESSNER,)	
)	
DEFENDANT)	
_____)	

This summary process case came before the Court on February 1, 2023 for a hearing to set or waive the appeal bond. Plaintiff appeared with counsel. Defendant appeared self-represented. The subject property is located at 35 Herie Avenue, Pittsfield, Massachusetts (the "Premises").

Judgment for possession of the Premises and \$8,252.67 in damages entered in favor of Plaintiff on January 3, 2023. Defendant filed a timely notice of appeal on January 13, 2023. Based on Defendant's financial affidavit signed under the penalties of perjury, the Court finds that Defendant meets the standards of indigency set forth in G.L. c. 261, § 27A. Turning to the defenses raised by Defendant, she stated the following bases for her appeal:

- (1) Plaintiff said she was not seeking past-due rent, yet a judgment entered for unpaid rent;
- (2) The Court's decision incorrectly recited (a) that she had been unemployed

for more than five months when in fact she was unemployed by only four months, and (b) that she had one-year lease with the prior owner of the Premises;

(3) At the time of trial, she had just started a new job and was feeling overwhelmed and not as prepared as she could have been, and therefore did not present evidence about her ownership of the lawnmower and payment of a security deposit.

None of these reasons present a non-frivolous defense on appeal. First, the Court allowed Plaintiff to amend her complaint to include damages for unpaid rent. Second, the facts that she cites as being erroneous are insignificant and irrelevant to the outcome of the trial. Third, the fact that she did not bring evidence to trial because she was not as prepared as she could have been does not provide grounds for an appeal. Accordingly, despite the low bar, the Court rules that Defendant does not have a non-frivolous defense.¹

Pursuant to General Laws c. 239, § 5(c), “the bond shall be conditioned to pay to Plaintiff ... all rent accrued at the date of the bond, all intervening rent, and all damage and loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession.” Here, the monthly rental amount is \$1,000.00 and, as of the date of the bond hearing in January 2023, no rent had been paid for nine months. Accordingly, the following order shall enter:

¹ The Court is familiar with the standard to be applied for frivolousness. The standard was recently summarized in *Adjartey v. Central Div. of Housing Court*, 481 Mass. 830, 859 (2019) (a “determination that a defense is frivolous requires more than the judge’s conclusion that the defense is not a winner; frivolousness imports futility -- not ‘a prayer of a chance’”).

1. Before Defendant's appeal is allowed, she shall give bond in the amount of \$9,000.00, which sum shall be made payable to Plaintiff and filed with the Court within seven (7) days of the date of this order.
2. At the hearing, the Court ordered that Defendant pay \$1,000.00 for her use and occupancy for February 2023 by February 3, 2023. Defendant represented that she would make this payment. If she did not make the payment, she shall make this payment to Plaintiff within seven (7) days of the date of this order.
3. Beginning on March 3, 2023 and continuing on the third of each month thereafter during the pendency of the appeal or until she vacates the Premises, whichever first occurs, Defendant shall pay \$1,000.00 to Plaintiff for her use and occupation of the Premises.²
4. Plaintiff shall fix the electrical and plumbing issues cited by Defendant at the appeal bond hearing forthwith, and Defendant shall not unreasonably deny access for said repairs.
5. The parties shall communicate only in writing and shall limit their communications to necessary landlord/tenant issues such as repairs.
6. Plaintiff may move to dismiss the appeal if Defendant fails to pay the installments of use and occupancy as required herein. See G.L. c. 239, § 5(h); see also *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121,

² In determining the monthly amount, the Court considered the fact that the Premises are an owner-occupied two family home and Plaintiff has no other rental properties. She depends upon the monthly rent to pay her bills, and she is facing immense financial distress due to Defendant's failure to pay any rent since August 2022. Defendant claims that she used the money that would have otherwise been used to pay the rent for other purposes, but that should not be a reason to discount the amount of the bond or use and occupancy payments going forward.

137 n. 19 (2018) (“the statute permits dismissal of an appeal ... when a tenant fails to post the ... use and occupancy payment”).

SO ORDERED.

DATE: 2/15/2023

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

Defendant was more successful with respect to the portion of the trial devoted to her affirmative claims for damages. The claim for damages for a violation of the security deposit is very straightforward and resulted in statutory damages, as did the claim for breach of quiet enjoyment. Approximately half of the recovery was based on the excess payments made by Defendant that were prohibited under the Section 8 rules, and the amount of the damages for this violation were not the subject of much dispute. Once Defendant established that she made excess monthly payments, the only question was to calculate the amount of those payments.

The Court therefore concluded that a reasonable amount of attorney's fees for this matter was \$4,500.00, taking into account the Plaintiff's successful claim for possession and what the Court considered excessive time in preparing for trial (approximately 15 hours for a trial that lasted less than 3 hours).¹ The undersigned judge also applied his own experience as a judge and expertise as a lawyer in determining the amount that the attorney should be paid. See *Heller v. Silverbranch Construction Corp.*, 376 Mass. 621, 629 (1978).

Counsel raises some valid points in her motion for reconsideration. The Court reviewed the exhibits again and accepts counsel's argument that her representation of Defendant in this matter required two motions to compel to obtain discovery and that the scope and volume of the exhibits were beyond the ordinary for simple summary process eviction cases. In light of these factors, the Motion to Reconsider Ruling on Attorney's Fees is allowed.

¹ In its ruling, the Court did not explicitly identify the number of hours it would have anticipated for trial preparation, nor is it required to do so. *Berman v. Linnane*, 434 Mass. 301, 303 (2001).

After reconsideration, the Court awards Defendant attorney's fees of
\$6,500.00.

SO ORDERED.

DATE: 2/15/2023

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-3408

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

This summary process eviction case brought for non-payment of rent came before the Court for a bench trial on January 12, 2023. Plaintiff appeared through counsel. Defendant Yolinda Guess, who resides at 44 Grosvenor Street, Springfield, Massachusetts (the “Premises”), appeared self-represented. Two adult children who reside in the Premises, Ameerah Curry and Aliyah Curry, appeared for trial self-represented and assented to Plaintiff’s oral motion that they be added to this case.¹ A third adult child, Khairi Guess, also resides at the Premises but was not named in this case and did not appear for trial.

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

The Premises are one side of a non-owner occupied duplex that is not part of a larger housing development. Monthly rent is \$2,116.00. Defendant owes \$15,678.00 in

¹ They shall not be added as party defendants at this time, in accordance with this order.

rent arrears. In June 2022, Defendant received rental assistance through Way Finders in the amount of \$5,377.00, but Way Finders mistakenly paid the benefit twice, so it is likely that \$5,377.00 will be recouped by Way Finders, which would increase the rent arrearage by the same amount.² Since the payment from Wayfinders, Defendant has made only partial rent payments for the months of July 2022 through November 2022, when she stopped paying rent altogether. Defendant's household income is over the limit for occupancy at the Premises.³ Defendant does not currently have a pending application for rental assistance.

Defendant does not dispute receipt of the notice to quit and does not claim that she made any payments for which Plaintiff did not account. In her answer, Defendant claims that she notified Plaintiff orally about poor conditions in her unit and that Defendant brought this eviction case in retaliation of her complaints. She claims that the Premises has mold, electrical problems, heat problems and other issues that warrant a rent abatement and constitute interference with quiet enjoyment.

The Court finds insufficient evidence from which to conclude that Defendant is entitled to damages under any legal theory. Plaintiff's property manager testified credibly that, at the last annual inspection of the Premises on May 1, 2022, only a few items were noted, including a door latch, a drawer in the kitchen that needed adjustment, and a mold-like substance on the bathroom ceiling that was deemed the tenants' responsibility to clean. The property manager introduced into evidence an

² Way Finders already recouped \$2,784.00 that was paid to Plaintiff in error. This amount is included in the \$15,678.00 balance.

³ The household income is approximately \$85,000, well in excess of the limit of \$69,750.00 for public housing.

inspection report that supports her testimony. Since the inspection date, Defendant put in only three work orders for repairs: one for a plugged kitchen sink that was leaking, one for a broken handle on the toilet, and one for a leak from the second floor into the kitchen below, sparking outlets in the kitchen, a stuck bedroom window and a toilet that would not flush. If substantial sanitary code violations existed at the Premises as Defendant alleges, the Court infers that they would have been noted during the 2022 annual inspection and, with respect to conditions of disrepair arising after the inspection, that Defendant would have made requests for repairs beyond the few items noted in the work orders initiated after this case was filed.

The evidence that Defendant introduced to support her claims of poor conditions is unconvincing. She provided two handwritten notices from 2019 listing items to be repaired, and she offered pictures that could not be placed in time.⁴ Defendant asserts that she recently called the City of Springfield Code Enforcement Department, but she had no evidence to support her assertion.⁵ Defendant's daughter testified about water coming in through loose windows when it rains, but she concedes that she did not notify management and that she assumes someone else in the household may have done so.

The Court finds and holds that Defendant and her witnesses did not establish with credible evidence that the conditions in the Premises constitute a material breach of the implied warranty of habitability, see *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973) or a serious interference with quiet enjoyment within the meaning of the quiet enjoyment statute, G.L. c. 186, § 14.

⁴ Defendant testified that one was taken about 2021 and another two to three years ago.

⁵ Defendant sought to introduce inspection reports from four or five years ago, which the Court excluded as being irrelevant as to the condition of the Premises during periods relevant to this case.

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

1. Plaintiff is entitled to judgment for possession and damages in the amount of \$15,678.00.
2. Plaintiff is entitled to judgment on Defendant's counterclaims.
3. Entry of judgment will be stayed to allow Defendant the opportunity to move voluntarily without any of her children being named in this Court case.
4. On or after March 1, 2023, if Defendant has not vacated, Plaintiff may serve and file a motion to for judgment to enter against Defendant, Ameerah Curry and Aliyah Curry.⁶
5. On or after March 1, 2023, if Defendant has not vacated, Plaintiff may serve and file a separate motion for entry of judgment for possession against Khairi Guess, an immediate family member who reached the age of majority during the pendency of this action. Plaintiff must have the motion served by sheriff or constable.
6. All motions and related hearings in this case shall be assigned to the undersigned judge.

SO ORDERED.

DATE: _____

2/15/2023

Jonathan J. Kane
Jonathan J. Kane, First Justice

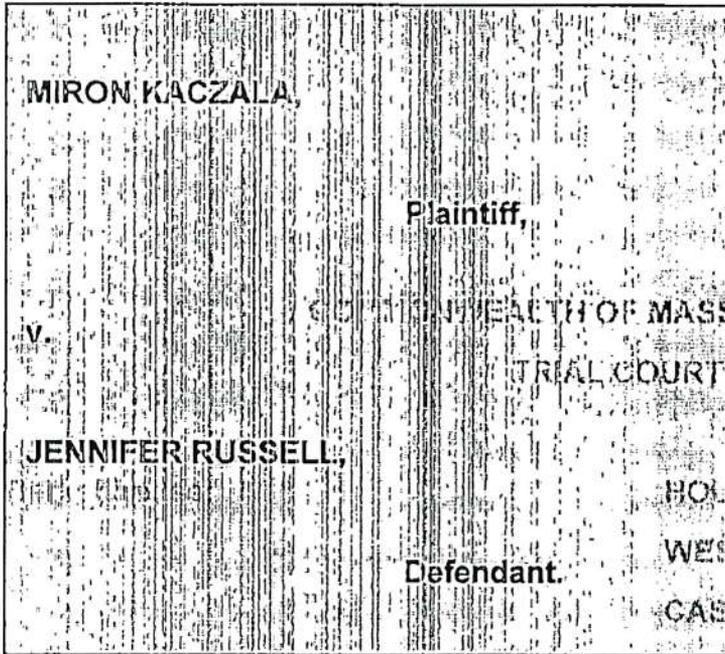
⁶ Ameerah Curry and Aliyah Curry assented on the record to being named in the judgment.

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3898



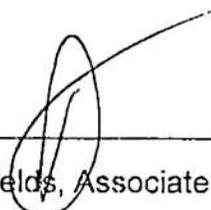
ORDER

After hearing on February 15, 2023, at which all parties appeared without counsel, and at which a representative for the RAFT program joined, the following order shall enter:

1. This is a no-fault eviction and the tenant is requesting additional time to relocate in accordance with G.L. c.239, s.9.

2. After consideration of both parties' positions, the court shall grant the tenant additional time to seek housing contingent upon her complying with the following terms:
3. The tenant shall pay her use and occupancy of \$950 per month beginning for February 2023 to be paid today.
4. The tenant shall apply for RAFT and the landlord shall cooperate with said application including provision of a ledger which includes all outstanding use and occupancy and court costs.
5. The tenant shall provide documentation of her son's disability to the landlord and the landlord shall not share any information therein or copies of such documentation without leave of court.
6. The tenant shall diligently search for alternate housing and shall keep a log documenting such efforts and shall provide a copy of same to the landlord by no later than April 10, 2023.
7. This matter shall be scheduled for further review on **April 12, 2023, at 9:00 a.m.** at the Pittsfield Session of the court.

So entered this 16th day of February, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3579

_____)	
FAYE SHAYTON,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER FOR JUDGMENT
HENRY GRIMES AMD YVETTE ANDERSON, ¹)	
)	
DEFENDANTS)	
_____)	

This summary process eviction case came before the Court for a bench trial on January 20, 2023. Plaintiff appeared through counsel. Defendant Yolinda Anderson (“Ms. Anderson”) appeared self-represented. Plaintiff seeks to recover possession of the first floor of a duplex located at 540 Union Street, Springfield, Massachusetts (the “Premises”) from Ms. Anderson.

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

In 2016, Ms. Anderson’s father, Henry Grimes, entered into a lease agreement with Carl Turner, the then-owner of the Premises. Plaintiff purchased the Premises in 2018. Plaintiff’s property manager, William Blatch, testified that, on April 11, 2022, Mr. Grimes and his wife, Marion Grimes, notified him that they were moving to Florida

¹ Henry Grimes did not appear for trial. Henry Grimes and Henry L. Grimes are the same person. Yvette Anderson was formerly known as Yvette Grimes. The caption shall be modified accordingly.

and would be vacating the Premises shortly. Mr. Grimes informed Mr. Blatch that his daughter, Ms. Anderson, should be contacted if he needed access to the apartment. He said that his daughter would like to be considered for tenancy. Mr. Blatch indicated that he needed to end the current tenancy before he would enter into a tenancy with his daughter.

On May 3, 2022, Mr. Grimes informed Mr. Blatch that he and his wife had vacated. When Mr. Blatch went to the Premises, Ms. Anderson was at the Premises. Mr. Grimes never surrendered the keys and no new tenancy was established. No rent or use and occupancy has been paid from February 2022 to the present. The last agreed-upon rental amount was \$1,050.00. Through the date of trial, \$12,600.00 is owed.

Ms. Anderson did not raise any legal defenses to the payment of rent. Although she claimed that only \$7,000.00 is owed in unpaid rent, she had no evidence to show that she made payments since February 2022. She testified that she moved into the Premises in 2018 to help take care of her family. Around the time her parents were moving to Florida, Ms. Anderson contacted Mr. Blatch and asked for a rental application so she could apply for tenancy herself. Despite believing that Mr. Blatch was willing to allow her to apply, he never provided her with an application for tenancy and she never submitted one.² She acknowledges receipt of the notice to quit and continues to reside at the property.

² Ms. Anderson was unable to provide any evidence that there was a meeting of the minds between her and Plaintiff (or Mr. Blatch) to establish a new tenancy separate from that of her parents. Ms. Anderson testified that she paid rent a few times to relieve her parents of the burden, but her testimony that she made these payments as a tenant in her own right is not credible. The evidence does not support a finding that she was ever a tenant at the Premises.

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

1. Plaintiff is entitled to judgment for possession and \$12,600.00 in damages, plus court costs, against Defendant Henry Grimes and Ms. Anderson.
2. No judgment shall enter prior to February 28, 2023 so long as Ms. Anderson pays use and occupancy of \$1,050.00 for February 2023.
3. If Defendant fails to make the use and occupancy payment by February 6, 2023 or if she fails to vacate on or before February 28, 2023, Plaintiff may move for entry of judgment retroactively to the date of this order.

SO ORDERED.

DATE: 2/16/2023

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-4004

BEEKMAN PLACE ESTATES, ET AL.,)
)
 PLAINTIFFS)
)
 v.)
)
 ELIZABETH COELLO, ET AL.,)
)
 DEFENDANTS)

ORDER FOR TEMPORARY
ALTERNATIVE HOUSING

This matter came before the Court on February 16, 2023 on Defendant's emergency motion for alternative housing. Plaintiff Beekman Place Estates ("Beekman") appeared through counsel. Defendant Coello ("Ms. Coello") appeared self-represented. The Town of Agawam did not appear but Ms. Coello provided a notice of condemnation for her unit at 45 Beekman Drive, Agawam, Massachusetts (the "Premises") due to lack of heat and hot water.

After hearing, the following order shall enter:

1. The owner of record, Albert Kofi Panford, is hereby ordered to restore heat and water forthwith. Until the heat and water are restored, the owner is responsible for providing alternative housing to Ms. Coello, her daughter and two grandchildren.

2. Because the owner is not named in the summary process action, and because Beekman is the entity that commenced the instant eviction action,¹ the Court orders that Beekman provide alternative housing beginning immediately and continuing five nights through Monday, February 20, 2023, or until heat and water are restored to the Premises, whichever first occurs. The housing shall be in the form of a hotel room in the West Springfield vicinity. If the hotel room does not have cooking facilities, Beekman shall pay Ms. Coello \$100.00 per day as a food stipend for her family. Payment for the hotel and food stipend, if any, shall be made in advance.
3. The unit owner, Albert Kofi Panford, and Plaintiffs, Beekman and Margaret Mulero, are ordered to appear in-person in the Springfield session of the Housing Court at 9:00 a.m. on Tuesday, February 21, 2023 for further proceedings. Ms. Coello shall also be present at this hearing.²

SO ORDERED.

DATE: 2.17.23


Jonathan J. Kane, First Justice

¹ The Court takes no position at this time as to the propriety of Beekman commencing a summary process case against the tenant of a unit owner. Counsel should be prepared to address this issue at the next hearing.

² Counsel for Beekman shall arrange for personal service of this order upon Margaret Mulero and Albert Kofi Panford by any means calculated to provide actual notice. Email or other electronic service is acceptable so long as it is combined with service by a deputy sheriff or a person over 18 who provides an affidavit confirming the time and means of service.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2519

BUZZARDS BAY LNM, LLC,

Plaintiff,

v.

ANNETTE PROVOST and DWAYNE YOUNG,

Defendants.

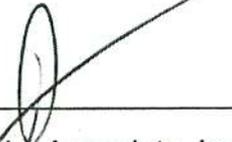
ORDER

After hearing on February 13, 2023, on review scheduled by Judge Gonzalez in his order issued on January 19, 2023, at which the landlord appeared through counsel and the defendant tenant Annette Provost appeared *pro se*, the following order shall enter:

1. Given the history of this matter and the significant amount of outstanding use and occupancy (exceeding \$24,000), and given that the tenant has no real prospects

of alternate housing on the horizon, an execution shall issue upon the December 27, 2022 judgment for monies and for possession.

So entered this 17th day of February, 2023.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

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

DEUTSCHE BANK NATIONAL TRUST COMPANY,)	
AS TRUSTEE OF THE HOME EQUITY MORTGAGE)	
LOAN ASSET BACKED TRUST SERIES INABS 2006-C,)	
HOME EQUITY MORTGAGE LOAN ASSET-BACKED)	
CERTIFICATES SERIES INABS 2006-C UNDER)	
POOLING AND SERVING AGREEMENT DATED)	
JUNE 1, 2006,)	
)	
PLAINTIFF	)	ORDER
v.)	
)	
BRENDA CORBIN, DAVID MARTOWSKI,)	
MICHAEL MARTOWSKI AND SHERRI MARTOWSKI,)	
)	
DEFENDANTS)	

This post-foreclosure summary process case came before the Court on Plaintiff's motion for summary judgment. Plaintiff appeared through counsel. Defendants Brenda Corbin ("Ms. Corbin"), David Martowski and Sherri Martowski appeared self-represented.

At the outset of the hearing, Ms. Corbin claimed that she had not received adequate notice of the proceedings and that she wanted to have a lawyer represent her. The Court file contains returned mail addressed to Ms. Corbin at the wrong address. At some point during the proceedings, the address was corrected. Because a default judgment entered against Ms. Corbin on November 21, 2022 at a time when she may not have been getting mail from the Court, Ms. Corbin made an oral motion

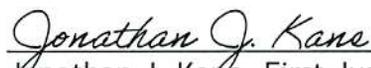
to vacate the default judgment. The Court concludes that due process principles requires that Ms. Corbin be given the opportunity to participate in this case given the reasonable likelihood that she did not get notice of the initial Court event on November 17, 2022.

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

1. Ms. Corbin's oral motion to vacate the default judgment is ALLOWED.
2. No later than March 31, 2023, Defendants shall file and serve Plaintiff's counsel with oppositions to Plaintiff's motion for summary judgment.¹
3. Plaintiff shall file and serve any reply brief and materials by April 11, 2023.
4. The hearing on the motion for summary scheduled for today shall be continued to April 13, 2023 at 2:00 p.m.
5. Plaintiff's agents shall not change the locks or take any other actions to interfere with Defendants' ongoing occupancy without Court order.²

SO ORDERED.

DATE: 2.17.23


Jonathan J. Kane, First Justice

¹ In the case of Michael Martowski, he shall file any supplement to his opposition by the same date.

² There is no evidence that Plaintiff's agents have taken any such action, but given the unsubstantiated allegations of Defendant Sherri Martowski, the Court agreed to insert this provision.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NUMBER 22-SP-4062

MIKHAIL YEVSYUK AND)
ALEXANDRA YEVSYUK,)
)
 PLAINTIFFS)
)
v.)
)
MELISSA HUERTAS SANTIAGO AND)
JOSEPH ANTHONY SANCHEZ,)
)
 DEFENDANTS)

ORDER FOR ENTRY OF JUDGMENT

This no fault summary process case came before the Court on February 15, 2023 for an in-person bench trial. Plaintiffs appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 212 School Street, Chicopee, Massachusetts (the “Premises”).

Defendants stipulate to Plaintiffs’ prima facie case for possession and unpaid rent in the amount of \$7,000.00. They did not file an answer. They filed an application with Way Finders to pay the back rent they owe, but Plaintiffs are unwilling to reinstate the tenancy because they wish to sell the Premises. Defendants cannot pay any use and occupancy going forward, which is a requirement of a stay under G.L. c. 239, § 9. They will apply for shelter, but they may need the eviction order to demonstrate their need for priority placement.

Based on the foregoing, the following order shall enter:

1. Judgment shall enter in favor of Plaintiffs for possession and \$7,000.00 in damages, plus court costs.
2. Execution may issue by application pursuant to Uniform Summary Process Rule 13.
3. The 48-hour notice required in G.L. c. 239, § 3 may be served by the levy may not take place before March 15, 2023.

SO ORDERED.

DATE: 2.17.23



Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-31

ACG REAL ESTATE HOLDINGS,

Plaintiff,

v.

WILLIAM R. WARNER and DESIREE
STAPLES,

Defendants.

ORDER

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

1. **Background:** This case was commenced by the landlord for *no-fault* and the parties entered into an agreement on June 6, 2022 (Agreement), which provided the tenants until October 6, 2022 to vacate the premises. When the tenant had not vacated the premises by that due date, the landlord filed a motion for entry of judgment for possession. At the hearing on that motion on November 16, 2022,

at which the tenants appeared with Lawyer for the Day Counsel, the tenants requested a reasonable accommodation to stay enforcement of the Agreement and the court required the parties to engage in a reasonable accommodations dialogue and a return date was scheduled for further hearing on November 28, 2022.

2. At that return hearing, the parties provided the court with copies of their correspondence which included a letter from the tenant's regarding their disabilities and their request to "stop the current eviction proceedings against us and allow us to continue our tenancy with additional supportive services to assist us, including from Way Finders, the Tenancy Preservation Program (TPP), and any other social services agencies that can offer assistance to tenants with impairments."
3. The landlord's letter in response dated November 28, 2022, denies the tenant's reasonable accommodations request asserting that it "is unreasonable, as it is likely to impose an undue financial and administrative burden on" the landlord. The landlord further stresses that the request is for an undetermined amount of time and that the history of the tenancy supports a conclusion that the tenants cannot afford the tenancy which is \$900 per month. The tenants paid \$10,800 outstanding rent in December 2021 for the ten proceeding months and now have a new balance of \$9,900 through November 2022. Additionally, the landlord asserts that the tenants failed to provide sufficient supporting medical documents to sustain the burden that the tenants are disabled and require accommodation based on their disabilities.

4. **Reasonable Accommodations Law:** The Fair Housing Act, 42 U.S.C. s.3601 (2006), and M.G.L. c.151B (2000) prohibit discrimination in housing based on handicap. The term "handicap" is defined as "(1) a physical or mental impairment which substantially limits one or more of [a] person's major life activities, (a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. s.3602(h); M.G.L. c. 151B, s.1. Discrimination prohibited by both statutes includes the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. s.3604(f)(3)(B); M.G.L. c. 151B, s.4(7A)(2). A reasonable accommodation is one which would not impose an undue hardship or burden on the entity making the accommodation. *Andover Housing Authority v. Izrah and Shkolnik*, 443 Mass. 300, 307 (2005), citing *Peabody Props., Inc. v. Sherman*, 418 Mass. 503, 608 (1994). "The mandate for reasonable, but not onerous, accommodations strikes 'a balance between the statutory rights of the handicapped...and the legitimate interests of' the landlord. *Andover Housing Authority*, 443 Mass. at 307, quoting *City Wide Assocs. v. Pennfield*, 409 Mass. 140, 142 (1991).
5. **Discussion:** The medical materials provided by the tenants suggest that Ms. Staples is a disabled person [REDACTED]. [REDACTED]. The medical documentation does not appear to address Mr. Warner's medical situation, but he testified [REDACTED].

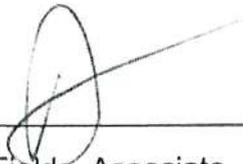
6. At the hearing the tenants asserted that they have applied again for RAFT funding for the rental arrearage and can pay their rent going forward. The tenants also asserted that they are solely looking for staying the eviction until they can safely secure alternate housing.
7. Given the written exchange thus far between the parties and the "updated" request made by the tenants for a delay in the eviction while the landlord is made whole on back rent and current rent and only until the tenants can secure safe alternate accommodations, there are more questions than answers and further dialogue between the parties is in order to determine what, if any, reasonable accommodation may be required. See, *Boston Housing Authority v. Emmitt Bridgewaters*, 452 Mass. 833 (2009).
8. **Conclusion and Order:**
 - a. The parties shall continue to engage in a reasonable accommodations dialogue.
 - b. The tenants shall reach out to Community Legal Aid 413-781-7814 and the Mass Fair Housing Center 413-539-9796 for assistance in this matter.
 - c. The tenants shall pursue their RAFT application and the parties shall cooperate with same.
 - d. The tenants shall pay their March 2023 rent.
9. This matter is referred to the Tenancy Preservation Program for an intake and for assessment and any further services they may provide. The tenants shall cooperate with TPP and shall also reach out to them if they have not yet been

contacted by calling 413-358-5654. The tenants can be reached at [REDACTED]

[REDACTED].

10. A review hearing is scheduled for **March 23, 2023, at 2:00 p.m.**, and the parties shall update the court on their reasonable accommodations dialogue. TPP is asked to join and also update the court.

So entered this 21st day of February, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist (for referral to TPP)

Christa Douaihy, (prior LFD counsel)

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-631

TOWN OF DALTON,

Plaintiff,

v.

RICHARD A. BRADLEY,

Defendant.

ORDER

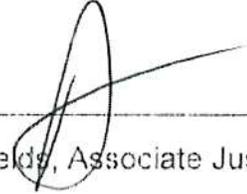
After a review hearing on February 15, 2023, at which the plaintiff town appeared through counsel, a representative from the Tenancy Preservation Program appeared, and the defendant's brother (but not the defendant) Robert Bradley appeared by Zoom, the following order shall enter:

1. The defendant's brother Robert Bradley informed the court that he has a Power of Attorney for his brother. Though this does not permit him to represent his brother in a court of law, it appears that Robert Bradley has assumed a very

active role in bringing the property into compliance with the town's orders and the orders of this court.

2. The defendant shall have the property inspected by a licensed asbestos inspector and shall serve the parties and the court with a copy of said inspector's report within 40 days of the date of this order noted below.
3. The Tenancy Preservation Program with work with the defendant to have him evaluated either privately, by the Veterans Administration, or the Court Clinic for competency to determine if a Guardian Ad Litem shall be appointed to him for the purposes of navigating and complying with these code enforcement proceedings.
4. This matter shall be scheduled for review on **March 21, 2023, at 11:00 a.m. by Zoom.**

So entered this 22nd day of February, 2023.



Robert Fields, Associate Justice

CC:

Robert Bradley, Defendant's brother

TPP

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-148

DEAN COCKERILL,

Plaintiff,

v.

ANNA RZASA and JOANNA RZASA,

Defendants.

ORDER

After hearing on February 23, 2023, at which the plaintiff appeared in person and the defendant property owner Anna Rzasa appeared by telephone (from out of state, Texas), but for which Joanna Rzasa did not appear, the following order shall enter:

1. The plaintiff Dean Cockerill shall appear at the premises located at 30 Carlton Street in South Hadley at 3:00 p.m. tomorrow, February 24, 2023, to retrieve his belongings. He shall be accompanied by a South Hadley Police Officer (as he reports to the court that he has made arrangements for police accompaniment).

2. The defendants shall not hinder Mr. Cockerill's access to retrieve his belongings.
3. That said, should there be any item that Mr. Cockerill proposed to remove whose ownership is challenged by the defendants, said item shall remain at the premises, the parties shall photograph same, and whether or not it will be retrievable by Cockerill will be determined by the court after hearing.
4. This matter shall be scheduled for review on **March 3, 2023, at 2:00 p.m.** at the Springfield Session of the court located at 37 Elm Street.
5. Mr. Cockerill has leave to attend by calling into the court's Zoom platform by calling 646-828-7666 and entering meeting ID: 161 638 3742 and password: 1234.
6. If Ms. Anna Rzasa is still out of state, she may also appear by phone as described above. The defendant Joanna Rzasa must appear in person.

So entered this 23rd day of February, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2470

WEST STREET PARTNERS, LLC,

Plaintiff,

v.

ARIEL CINTRON,

Defendant.

ORDER

After hearing on February 13, 2023, on the plaintiff landlord's motion for entry of judgment at which the landlord appeared through counsel and the defendant tenant appeared *pro se*, and at which a representative from Way Finders, Inc. joined, the following order shall enter:

1. The representative from Way Finders, Inc. reported to the court on the record that the tenant's RAFT application was closed out in November, 2022, based erroneously on the tenant's failure to provide proof of a housing crises that is

required from tenants in subsidized housing THOUGH THIS TENANCY IS NOT A SUBSIDIZED UNIT OR PUBLIC HOUSING.

2. Given that the RAFT application was closed by mistake of the RAFT program administrators, the tenant shall immediately reapply to RAFT and must do so no later than by February 17, 2023.
3. It is hopeful that the tenant will be eligible to cover all rental arrearage (which is currently at \$6,109 plus court costs) and he reported on the record that he has recently begun new employment and believes that this tenancy is viable.
4. This matter shall be scheduled for further review on **March 13, 2023, at 9:00 a.m.** at the Springfield Session of the court.

So entered this 23rd day of February, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2508

PINE VALLEY PLANATION,

)

PLAINTIFF

)

v.

)

ORDER REGARDING
RESTRAINING ORDER

MARK BELL,

)

DEFENDANT

)

This case came before the Court on February 25, 2023 on Defendant’s motion to vacate a order entered on January 12, 2023 pursuant to which Defendant was restrained from publishing, disseminating or otherwise sharing the information found in corporate minutes from closed and open meetings that do not specifically name Defendant.

A jury trial is scheduled to begin on May 1, 2023. Mr. Bell’s dissemination of personal information about other shareholders unrelated to the claims and defenses asserted in this case in the two months prior to trial could be used to intimidate or embarrass potential witnesses and have a chilling effect on their willingness to testify. Accordingly, the restraining order shall not be lifted until the conclusion of the trial.

If, prior to the conclusion of trial, Mr. Bell wishes to publish or otherwise disseminate information gathered from the corporate minutes produced in discovery, he may seek leave of Court prior to publication, which request for leave must include the actual text of the proposed publication.

SO ORDERED.

DATE: 2/27/2023

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

Commonwealth of Massachusetts

Hampshire, ss.

Western District Housing Court
Docket No. 23H79 CV 000005

Joel Pentlarge,
Plaintiff,

Vs.

David Watt,
Defendant.

PRELIMINARY INJUNCTION

The defendant David Watt is preliminarily enjoined from failing:

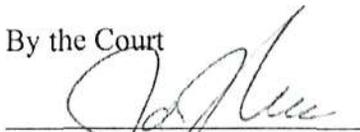
1. to maintain his apartment in a clean and neat condition free from trash, rubbish and obstructions to the exterior doors or the baseboard heating pipes;

2. to correct all of the violations listed in the Housing Code Inspection Report dated February 15, 2023 by Sainath Palani, MPH, Health Inspector for the Quabbin Health District by March 24, 2023,

3. to allow Mr. Palani or any other authorized Health Inspector of the Quabbin Health District to perform a re-inspection of the defendant's apartment on Tuesday, March 28, 2023, at 2:00 P.M.

This case is continued for hearing to Friday, March 31, 2023 at ~~9:00 A.M.~~ 2:00 P.M.

By the Court

 Justice.

Jonathan J Kane
First Justice

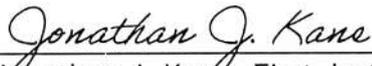
3/3/22

of a written evaluation.

2. Defendant shall cooperate with TPP, who may be able to assist in coordinating the evaluation and who can coordinate services in the event Defendant is discharged on short notice.
3. Defendant shall not be permitted to return to the Premises without further Court order.
4. Either party may move to bring this case forward for further hearing on short notice to the other party.

SO ORDERED.

DATE: 3.3.23



Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21CV0569

KIMBERLY HENDERSON,)
)
 PLAINTIFF)
)
 V.)
)
 STEPHEN BOSCO,)
)
 DEFENDANT)

POST-TRIAL BRIEFING
SCHEDULE

A jury in this matter returned a verdict on March 2, 2023. The Court reserved the issue of liability under G.L. c. 93A for itself. The Court invites the parties to submit post-trial briefs on the issue of c. 93A liability no later than March 23, 2023. The Court will thereafter enter an order without hearing, unless it so requests after reviewing the briefs.

SO ORDERED this 6th day of MARCH 2023.

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



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4512

WAY FINDERS, INC.,

Plaintiff,

v.

JAMES RICE,

Defendant,

v.

CENTER FOR HUMAN DEVELOPMENT,

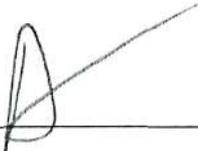
Intervening Party.

ORDER

After hearing on March 3, 2023, on review and on the Center for Human Development's (CHD) motion to intervene, at which the plaintiff and CHD appeared along with the Guardian Ad Litem, but for which the defendant tenant did not appear, the following order shall enter:

1. CHD's motion is hereby allowed.
2. The Guardian Ad Litem shall file and serve a proposed plan to address the unsanitary state of the tenant's apartment by March 17, 2023. He will also file and serve his report and a copy of the tenant's doctor's letter by no later than March 22, 2023.
3. A hearing shall be scheduled for **March 24, 2023, at 2:30 p.m.** by Zoom. A separate notice of the Zoom hearing shall be sent to the parties.

So entered this 6th day of March, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0023

_____)
Beacon Residential Management)
Limited Partnership (Lessor) as managing agent for)
BC Baystate Place LLC,)
Plaintiff,)
v.)
)
Ulises Ramirez, Jr.,)
Defendant)
_____)

PERMANENT INJUNCTION

This case came before the Court on February 8, 2023 for further hearing on Plaintiff's application for injunctive relief. Plaintiff appeared through counsel. Defendant appeared self-represented.

On January 26, 2023, the Court entered a preliminary injunction in favor of Plaintiff and against Defendant following a hearing at which Defendant failed to appear. After hearing at which Defendant did appear, the Court, for the same reasons set forth in the January 26, 2023 order, hereby converts the preliminary injunction into a permanent injunction. Accordingly, it is ORDERED that Defendant :

1. Refrain making noises or comments or engaging in any acts that will disturb the rights or comfort of other residents, their children or property management staff.
2. Refrain from speaking with property management staff unless it is necessary and relevant to his occupancy in the property, and if he must communicate with staff do so using the

telephone.

3. Refrain from standing and/or loitering by the property management office, children's bus stop, or in common areas in the building unless it is necessary and/or relevant to his occupancy at the property.
4. Refrain from following property management staff or other residents as they travel through the common areas and/or walk to their vehicle.

SO ORDERED.

DATE: 3-7-23



Hon. Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1616

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

MARNIQUE T. RIVERA,

Defendant.

ORDER

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

1. **The Plaintiff's Motion to Strike the Answer as Untimely:** This motion is denied for the reasons stated on the record. Essentially, the Answer deadline under the current Administrative Order of the court is three days before the Tier 1 event. The Tier 1 event was January 27, 2023, and the Answer was filed on January 24, 2023. Accordingly, the Answer was timely filed.

2. The Plaintiff's Motion to Strike the Defendant's Defenses and

Counterclaims: This motion is based on *res judicata*, arguing that the defendant asserted the very same challenges to the foreclosure asserted in this action in Berkshire Superior Court Case No. 17-222. The defendant asserts that the decision in the Superior Court matter is on appeal.

3. The parties have until April 3, 2023, to file and serve legal memoranda in support of their position of how the fact that the defendant's defenses and counterclaims arising out of the foreclosure are on appeal in the Superior Court effects these proceedings and particularly on its impact on *res judicata*.

4. **The Plaintiff's Motion for Leave to Propound Discovery:** Because this motion may be affected by the outcome of the plaintiff's motion to strike the defendant's defenses and counterclaims, it shall be addressed by the court at the time of its ruling on the motion to strike.

So entered this 7th day of March, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0068

HOUSING MANAGEMENT RESOURCES, INC.,)
AS LESSOR, AND TAPLEY COURT)
ASSOCIATES, LLC, D/B/A TAPLEY COURT)

PLAINTIFF)

v.)

DAWN CURTIS AND CONRAD CURTIS,)

DEFENDANTS)

ORDER

This matter came before the Court on February 21, 2023 on Plaintiff's motion for preliminary injunction. Plaintiff appeared through counsel. Defendants appeared self-represented.

Based on the facts set forth in the Verified Complaint and the evidence adduced at the hearing, the Court finds the following:

Defendants reside at 221 Bay Street, Apt. 110, Springfield, Massachusetts (the "Premises") in a residential housing development known as Tapley Court. The only occupant on the lease is Lillie Curtis, Defendants' mother. Lillie Curtis passed away in November 2022, and her Section 8 rent voucher, which is administered by Way Finders, was terminated as of November 30, 2022. The Premises are also subject to Federal Low Income Housing Tax Credit Program ("LIHTC") regulations.

As part of her subsidy and the LIHTC requirements, Lillie Curtis was required to complete annual paperwork certifying household composition and household income.

In the paperwork Lillie Curtis completed over the course of the past several years, including as recently as December 2021, she certified that she was the only person in the household, and that information is used to calculate her share of the rent and her qualification to live in a property with LIHTC support.

Plaintiff acknowledges that Lillie Curtis completed paperwork in 2018 seeking to add her daughter Dawn Curtis as a live-in aide, but a live-in aide is not a tenant. The aide's income is not considered in setting the rent. Although Dawn Curtis requested a letter from the subsidy provider, Way Finders, as to her interest in the subsidy, the letter simply recites what Dawn Curtis told Way Finders and is not evidence that Plaintiff accepted her as a tenant. In fact, the evidence is clear that neither Dawn Curtis nor Conrad Curtis are tenants and neither have the legal right to continue to reside in the Premises after their mother's death.

In light of the Court's finding that Defendants have no legal right to occupy the Premises, the risk of irreparable harm to Plaintiff if it allows unauthorized occupants to reside in a tax credit unit outweighs the irreparable harm to Defendants if the Court enters the preliminary injunction. Accordingly, the following order shall enter as a preliminary and a permanent injunction:

1. Defendants shall vacate the Premises no later than March 31, 2023.
2. If Defendants fail to so vacate, Plaintiff may seek further relief from this Court to recover possession.

SO ORDERED.

DATE: 3/17/23

Jonathan J. Kane
Jonathan J. Kane, First Justice

January 2022 leaving a balance of \$9,000.00 outstanding as of January 2023, and the notice to quit dated August 4, 2022 was received by Defendant.

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

Defendant moved into the Premises in June 2021. She claims that, during the course of her tenancy, she has suffered from various conditions of disrepair. The Court groups her complaints into three categories: a mice infestation, a defective hot water heater/boiler, and bathroom conditions, and will address each of these issues separately.

Mice: In August 2021, Defendant first complained about mice in the Premises. Plaintiff's property manager initially attempted to address the issue with snap traps, but when the problem was not resolved, he hired a professional exterminator in December 2021. The pest control company did treatments monthly from December 2021 through September 2022 and again in December 2022.² The witness testified that the company was not baiting the basement but was instead the focus was to prevent mice from entering the building, which posed challenges because the property is situated in a wooded area near a water source. He also testified that Defendant had dogs and dog food and excrement can attract mice.³ He characterized the mice infestation as mild and improving.

² The witness from the extermination company admitted that he "missed" October 2022 and said that Defendant did not allow access in November 2022.

³ After the Health Inspector visited in December 2021, Defendant placed all dog food in plastic containers.

The evidence shows that mice nested in Defendant's stove. Defendant testified that she has not used it for over a year because of the foul odor that it gives off when turned on. Plaintiff's property manager testified that he tested the operation of the stove but did not smell an odor after a few minutes. The Health Inspector did not cite a problem with the stove until a visit on December 20, 2022 (just weeks before the trial began), at which time he found it non-functioning. He ordered Plaintiff to repair the stove and also ordered Defendant to properly install the burners and pans.

Boiler: Beginning in September 2021, Defendant complained that she began hearing loud noises that sounded like small explosions coming from the basement below her apartment. She testified that she smelled the odor of natural gas and that alarms were sounding in her unit and throughout the basement "nightly." The Court finds her testimony about the frequency of the alarms to be exaggerated. She sent text messages to the property manager on September 17, 2021, October 9, 2021 and November 2021 (in which she said alarm went off twice that day). In January 2022, she said that she smelled an odor but did not mention the alarm. The evidence does not support her complaints that the alarms were sounding "nightly" or that the small explosions occurred "constantly" as she claimed.

At the end of November 2021, the boiler in the basement that heats hot water for 28 studio apartments in the building malfunctioned. It is this boiler than had been making the explosive noise and emanating a foul odor. On December 1, 2021, the utility company placed a "red tag" on it and ordered Plaintiff to have it repaired.

Plaintiff immediately sent a handyman to inspect it and then sent an HVAC technician to investigate further. Defendant decided to replace the boiler and ordered one from Boston. It was approximately 8 days before the new boiler could be installed and permitted.

Despite the boiler being off line for a period of time, Defendant was not without hot water altogether. Plaintiff had designed a bypass system whereby hot water from a different boiler in the building could be sent to the units serviced by the malfunctioning boiler. Although the Health Inspector found the temperature of the water coming from the kitchen sink and shower faucet to be 90 degrees, rather than the minimum of 110 degrees required under the State Sanitary Code.

The replacement of the boiler appears to have resolved the issues, although Defendant did send one text message in January that she smelled the odor again. The West Springfield Fire Department inspected and did not detect a gas odor, and Defendant at one point testified that the odor lasted about a minute, which is inconsistent with a gas leak. Instead, the Court infers that the odor was caused by an exhaust backdraft that occurred periodically when atmospheric pressures prevented it from completely venting to the outside.

Bathroom: Defendant complained about a mold-like substance in her bathroom and showed pictures of a portion of the ceiling crumbling in December 2022, just prior to trial. The Court notes that Defendant signed a statement of conditions at the outset of the tenancy acknowledging the absence of any conditions of disrepair. The Premises were inspected by the Town of West Springfield Health Department on

December 2, 2021, which inspection did not cite problems in the bathroom. The Court finds that these conditions did not exist until Defendant was behind in her rent and thus cannot constitute a defense to possession. Defendant addressed the issues in the bathroom within a few days, and found a slow leak from the upstairs unit that caused the problems with the ceiling.

Turning to Defendant's legal defenses and claims, the Court finds insufficient evidence of negligence on the part of Plaintiff, which is a prerequisite to damages under G.L. c. 186, § 14 for interference with quiet enjoyment. Although he did not hire a professional pest control company for several months after the first complaint of mice, the delay can be excused due to COVID-related delays in getting such companies to enter residences. Once the company was hired, he scheduled monthly treatments which have made a significant improvement to the stubborn problem.

With respect to the boiler, the Court finds that Defendant acted reasonably to ensure that it was operating safely and then replaced it when the problem persisted. The building had a bypass system so Defendant was never without hot water, even though the water was slightly below the minimum temperature requirements for a period of approximately eight days. With respect to the bathroom, Plaintiff made repairs promptly after notice. Accordingly, the Court finds that the evidence does not warrant a finding of liability under the quiet enjoyment statute.

The conditions in the Premises do, however, warrant a finding of liability for breach of the warranty of habitability. The warranty of habitability typically requires

that the physical conditions of a 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 does not incorporate a fault element and incorporates a strict liability standard. See *Goreham v. Martins*, 485 Mass. 54, 62-63 (2020) (the warranty is not intended to punish landlords for misbehavior but rather to ensure that tenants have a habitable place to live).

Here, the on-going infestation of mice and the problems with the boiler that led to repeated small explosions, foul odors and alarms reduced the value of the Premises. The Court finds that Plaintiff had notice of the infestation as of August 2021 and that the infestation has continued through the date of trial, albeit to a lesser degree. The Court finds that Plaintiff had notice of the problems with the boiler in September 2021 and that the issues were substantially corrected in December 2021.

Damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) ("While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference."). The Court finds that the infestation of mice warrant a rent abatement of 15% for 18 months (\$2,025.00), and the boiler issues warrant a rent abatement of

25% for four months (\$750.00).⁴

Although emotional distress damages may be recoverable in habitability cases (see *Simon v. Solomon*, 385 Mass. 91, 98-99 (1982)), the Court declines to award them in this case. Although Defendant testified that the small explosions and alarms caused by the boiler caused her great anxiety, and that she feared for her life, the Court did not find her testimony particularly credible, in part because of her exaggeration about the frequency of these events. The Court also finds some of her claims to be specious; for example, she testified that Plaintiff turned the boiler back on after it had been "red-tagged" but the evidence does not support her contentions. The lack of credibility throughout Defendant's testimony causes the Court to question the veracity of her testimony about the anxiety she suffered as a result of the conditions of disrepair in the Premises.

Because this case was brought for non-payment of rent, and because Defendant put Plaintiff on notice of the mice and boiler problems before she was in arrears in her rent, and because the Court finds that these issues were not caused by Defendant, Plaintiff is entitled to a defense to possession pursuant G.L. c. 239, § 8A. Accordingly, based on these findings and in light of the governing law, the following order shall enter:

1. Plaintiff is entitled to unpaid rent and use and occupancy through the date

⁴ The Court finds that the problems in the bathroom were short-lived and did not have a material effect on the value of the Premises. 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).

of trial in the amount of \$9,000.00.⁵

2. Defendant is entitled to damages in the amount of \$2,775.00.
3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date of this order to deposit with the Court a bank check or money order made out to Plaintiff in the amount of \$6,225.00, plus court costs in the amount of \$ 209.30 and interest in the amount of \$ 372.74, for a total of \$ 6,807.04.
4. If such payment is made, judgment shall enter for Defendant for possession.
5. If such payment is not made, judgment shall enter for Plaintiff for possession and unpaid rent of \$6,225.00, plus court costs and interest.

SO ORDERED.

DATE: 3.7.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

⁵ To the extent unpaid use and occupancy has accrued since the trial, Plaintiff is entitled to file an appropriate motion to add such amounts.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22 SP 2268

_____)	
QSE, LLC,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
BEATRICE MARRERO, ¹)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court for an in-person bench trial on March 2, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 697 Union Street, Springfield, Massachusetts (the "Premises").

Prior to the start of trial, Defendant stipulated to the facts necessary for Plaintiff to establish its prima facie case for possession and damages in the amount of \$16,500.00 in unpaid rent. Monthly rent is \$1,500.00.

Defendant did not file an answer. She testified she has been unable to pay rent since her spouse moved out, which, although credible, does not constitute a legal defense to possession. Accordingly, Plaintiffs are entitled to entry of judgment.

¹ Defendant represents that co-Defendant Lanos moved out and, based on that representation, will be dismissed from this case. A default judgment shall enter against him for failing to appear for trial if he subsequently asserts a claim of right to possession.

Ordinarily in a no fault eviction case, a tenant may ask for a stay on use of the execution. In this case, Defendant is entitled to a statutory stay of six months pursuant to G.L. c. 239, § 9, which period expired at the end of January 2023. Therefore, even if Defendant is able to satisfy the other criteria to be entitled to a statutory stay, it is not available to her.² Accordingly, the following order shall enter:

1. Judgment for possession and \$16,550.00 in damages shall enter in favor of Plaintiff.
2. Plaintiff may apply for issuance of the execution (eviction order) after the 10-day appeal period.

SO ORDERED.
DATE: 3.7.23

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

² The Court informed Defendant of her right to seek an equitable stay in the future.

4. Defendant agreed on the record to allow access to Defendant's agents on March 18, 2023 for purposes of working on the fire detection system.
5. Defendant shall not interfere with or obstruct Defendant's attempt to move to different housing.
6. The \$90.00 legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: 3.7.23

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3771

_____)	
ARIANA SUTY,)	
)	
PLAINTIFF)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER FOR JUDGMENT
EDWIN CRICHLAW,)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court on January 23, 2023 for an in-person bench trial. Plaintiff was represented by counsel; Defendant appeared self-represented. Plaintiff seeks to recover possession of a 46 Ridgeview Road, West Springfield, Massachusetts (the "Premises"). The parties stipulated to Plaintiff's prima face for possession, including receipt of the notice to quit that terminated Defendant's right to occupy the Premises as of September 30, 2022.

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

By warranty deed recorded in the Hampden County Registry of Deeds on May 25, 2022, Linda Suty conveyed the Premises to her daughter, Plaintiff Ariana Suty. Linda Suty passed away in August 2022. Over many years, Defendant had an on- and off-again relationship with Linda Suty, and he was residing in the house at the time of Linda's death. He did not pay rent to reside in the Premises with Linda Suty, and was not

responsible for paying expenses while she was alive (although Linda managed and had use of his money).

After becoming the owner of the Premises, Plaintiff has assumed financial responsibility for the home, including payment of real estate taxes, and she is still paying rent for the apartment where she now lives. She wishes to move into the home. Defendant has no legal defenses and in his answer simply requests additional time to move. Given that Defendant was never a tenant and has no legal basis for continue occupation of the Premises, he is not entitled to the statutory stay provided by G.L. c. 239, §§ 9 - 11.

Accordingly, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue ten days after the date judgment is entered upon written application.

SO ORDERED.

DATE: 3.7.23


Jonathan J. Kane, First Justice

September 30, 2022. Defendant did not vacate and continues in possession. Plaintiff has established his prima facie case for possession.²

Defendant filed an answer asserting defenses and counterclaims based on interference with quiet enjoyment, conditions of disrepair and retaliation.³ Defendant testified about other tenants in the building stealing packages and damaging his vehicle, interfering with his utilities, and verbally assaulting him, among other misconduct. Defendant did not convince the Court that Plaintiff was responsible for the actions of the other tenants or that he failed to take reasonable steps to address the issue once he was on notice.

The Court finds that Defendant's claims regarding Plaintiff's interference with his quiet enjoyment unconvincing. The evidence is insufficient to warrant a finding that Plaintiff violated G.L. c. 186, § 14, which requires some degree of negligence on the part of Plaintiff. Defendant offered no credible evidence to support his claims of bad conditions and retaliation. By his own testimony, Defendant wants to move but has not yet found a place to go.

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

1. Judgment for possession shall enter in favor of Plaintiff.⁴
2. Execution (eviction order) shall issue ten days after the date judgment enters.

² Plaintiff introduced evidence of property damage, but the Court disregards such evidence in this no-fault eviction case in which Plaintiff only seeks an order of judgment for possession.

³ Defendant filed the answer late, but the Court allowed an oral motion for leave to file the late answer and Plaintiff elected to proceed to trial.

⁴ Plaintiff made no claim for monetary damages in the complaint.

3. This case having been brought for no fault of Defendants, Defendants may file a motion pursuant to G.L. c. 239, §§ 9-11 for a stay on the execution.

SO ORDERED.

DATE: 3.7.23

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-2518

_____)	
JOAQUIM F. ZINA AND NATALINA ZINA,)	
)	
PLAINTIFFS)	
)	
v.	)	FINDINGS OF FACT, RULINGS OF
	)	LAW AND ENTRY OF JUDGMENT
JOHN MASCARO, ¹)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court for an in-person bench trial on March 2, 2023. Plaintiffs appeared through counsel. Defendant appeared self-represented. Plaintiffs seek to recover possession of residential premises located at 24-26 Berkshire Street, 2d Floor, Springfield, Massachusetts (the “Premises”).

Defendant failed to respond to Plaintiffs’ discovery requests and subsequently failed to comply with the Court’s order compelling him to respond to discovery. Because he failed to answer the requests for admissions, the facts set forth in the requests for admissions are conclusively admitted. Based on these admissions, which

¹ Defendant represents that William Gallagher moved out “a long time ago” and, based on that representation, will be dismissed from this case seeking possession.

he did not contest at trial, Plaintiffs have established their facie case for possession and damages in the amount of \$3,750.00.

In light of Defendant's failure to respond to Plaintiffs' discovery requests after being ordered to do so, Plaintiffs asked the Court to strike Defendant's defenses and counterclaims. The Court granted the request.² Plaintiffs are, therefore, entitled to entry of judgment.

Ordinarily in a no fault eviction case, a tenant may ask for a stay on use of the execution. In this case, Defendant is under 60 years old and asserts no disability that interferes with his ability to search for housing. The six-month statutory stay set forth in G.L. c. 239, § 9 expired at the end of January 2023. Therefore, even if Defendant is able to satisfy the other criteria to be entitled to a statutory stay, it is not available to him.³ Accordingly, the following order shall enter:

1. Judgment for possession and \$3,750.00 in damages shall enter in favor of Plaintiff.
2. Plaintiff may apply for issuance of the execution (eviction order) after the 10-day appeal period.

SO ORDERED.
DATE: 3.7.23

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

² Counterclaims are not compulsory in summary process cases, so Defendant is free to pursue any claims he has against Plaintiffs in a separate action for damages.

³ The Court informed Defendant of his right to seek an equitable stay in the future.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO.: 23 CV 166

BUY AND DEVELOP, INC.,
Plaintiff,

v.

JACOB GARCIA, and
KIANNA HARDRICK,
Defendants.

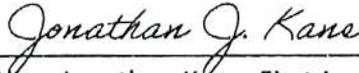
ORDER

After a hearing on March 8, 2023 on Plaintiff's Application for Injunctive Relief, for which Carolyne Pereira, counsel for Plaintiff, and Zachary Nunnally were present on behalf of Plaintiff and Defendants failed to appear, the following Order shall enter:

1. Effective immediately, Defendants shall:
 - a. Cease all interference with work and improvements at the subject property, 61-63 Draper Street, Springfield, Massachusetts;
 - b. Cease causing damage to parts and materials in the property and to the property itself;
 - c. Cease communication with Plaintiff's agents and contractors;
 - d. Provide Plaintiff and his agents and contractors access to the property upon twenty-four-hour notice by text message; and
 - e. Remove all unregistered vehicles from the property.

2. The legislative costs and fees for issuing this Injunctive Order are waived.

So entered on this March 8, 2023:



Hon. Jonathan Kane, First Justice
Western Division Housing Court

CP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3498

CITY VIEW COMMONS II,

Plaintiff,

v.

LUZ MALAVE,

Defendant.

ORDER FOR A COURT
CLINIC EVALUATION

This matter came before the court for trial and after hearing on February 24, 2023, at which both parties appeared and at which the tenant's son Joseph Mendoza joined the hearing, the following order shall enter:

1. During the hearing, the judge became very concerned that the tenant [REDACTED] [REDACTED] bring into question her competence to engage in these proceedings.

2. Accordingly, the Court Clinic is requested to conduct an evaluation of Ms. Luz Malave to determine if she requires the appointment of a Guardian Ad Litem in these proceedings.
3. During the delay in these proceedings, the tenant's son Joseph Mendoza shall not cause any disturbances nor unreasonably deny the landlord access to the subject unit for repairs.
4. If the landlord alleges that there has been a violation of paragraph #3 above, it shall file and serve a motion describing the alleged violation(s), including the date and time and the name of any witness.
5. The Tenancy Preservation Program was asked to join the hearing and its representative, Carmen Morales, agreed to assist the coordination between Ms. Malave and the Court Clinic so that she attends the evaluation. The tenant's telephone number was shared with Ms. Morales.
6. This matter shall be scheduled for a review hearing on **March 30, 2023, at 9:00 a.m.**

So entered this 8th day of March, 2023.



Robert Fields, Associate Justice

CC: Carmen Morales, TPP
Jenni Pothier, Chief Housing Specialist
Court Reporter

See *Federal National Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 637 (2012). These certified copies constitute prima facie evidence that the foreclosure was proper.

Plaintiff also submitted certified copies of the numerous subsequent conveyances that resulted in Plaintiff's ownership of the Premises as of May 2022. The Court finds that Plaintiff served Defendant with a thirty-day notice to quit on June 28, 2022¹ and timely filed and served the summary process summons and complaint. Defendant continues in possession of the Premises. Based on the foregoing, Plaintiff has established its prima facie case for possession. See *Adjartey v. Central Div. of Housing Court*, 481 Mass. 830, 834-835 (2019) (certified copies of the foreclosure deed and an affidavit of sale in statutory form, together with the notice to quit served upon and received by the defendant and the timely served and filed summary process summons and complaint, entitle the plaintiff to entry of judgment for possession).

At trial, Defendant attempted to attack the validity of the foreclosure by reading a prepared statement² asserting that the default letter accompanying the "90 Day Right to Cure" letter was misleading and not in compliance with Paragraph 22 of the mortgage. The Court does not credit his testimony and he produced insufficient admissible evidence to support his defense. The Court finds no basis to conclude that the foreclosure was flawed or fundamentally unfair.

Accordingly, based on the foregoing findings and rulings, the Court enters the following order:

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

¹ Defendant does not contest the sufficiency of the notice but claims he did not receive it. Plaintiff provided proof of service of the notice to quit by deputy sheriff, and Defendant provided no credible reason why he would not have received it.

² Defendant's denial that he was reading a statement prepared by others is not credible.

2. After expiration of the 10-day appeal period, Plaintiff may request issuance of the execution (eviction order) by written application.

SO ORDERED.

DATE: 3-8-23

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

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3310

BICH-THUY REED,

Plaintiff,

v.

RICKEY THOMAS,

Defendant.

ORDER

After hearing on February 17, 2023, for review under G.L. c.239, s.9, scheduled by the court in its December 30, 2022, Order and Decision, the following order shall enter:

1. This matter shall be continued in accordance with G.L. c.239, s.9 until the hearing date noted below.

2. The tenant explained to the court that he has obtained pre-approval from the Veteran's Administration to purchase a new home and he is actively seeking a home to purchase.
3. The tenant shall continue to diligently search for alternate accommodations and shall maintain a log of such efforts and shall provide a copy of the log to the landlord by March 22, 2023.
4. This matter shall be scheduled for further review on **March 24, 2023, at 9:00 a.m.** The tenant shall bring a copy of said log for the court.

So entered this 8th day of March, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1679

U.S. BANK TRUST, NA,

Plaintiff,

v.

LISA HAMEL, et al.,

Defendants.

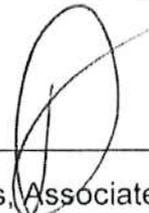
ORDER

After hearing on March 2, 2023, on the defendant tenant's motion to stay use of the execution at which the tenant appeared *pro se* and the plaintiff bank appeared through counsel, the following order shall enter:

1. The motion is allowed.
2. There shall be a stay on the use of the execution until May 1, 2023, contingent upon the tenant paying use and occupancy today for March and April 2023.
3. The defendant shall vacate by no later than May 1, 2023.

4. The plaintiff is seeking \$1,500 per month use and occupancy but use and occupancy shall be \$1,200 per month until all repairs are made by the plaintiff.
5. If said repairs are not made, the use and occupancy is \$1,200. Once repairs are made, the use and occupancy shall be \$1,500.
6. The tenants shall pay \$600 today towards March 2023 use and occupancy.
7. The defendant shall maintain a log of her housing search and shall provide a copy of same by email to Attorney Ayers by the end of March and April 2023.

So entered this 8th day of March, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

OP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-106

TIMOTHY BANCROFT,

Plaintiff,

v.

HECTOR SANCHEZ and CARABETTA
MANGEMENT,

Defendants.

ORDER

After hearing on March 1, 2023, on the plaintiff tenant's complaint and motion for injunctive relief at which all parties appeared, the following order shall enter:

1. Carabetta Management appeared through counsel and shall be added to this matter as a party-defendant.
2. The plaintiff explained to the court that for health reasons, he is required to have quiet prevail outside his unit at all times, to the extent possible.

3. Without any findings of any wrongdoing, and by agreement of the parties, the tenant Hector Sanchez and his family members will do their best to not speak loudly when passing by the plaintiff's apartment door.
4. The landlord shall investigate the installation of soundproofing and sound-reducing devices in the plaintiff's unit to further reduce sound from traveling from the hallway outside his unit into his unit.
5. The landlord shall also install a sign in the hallway to remind folks who are waling through the hallway on the tenant's floor to keep their voices down.

So entered this 9th day of March, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-170

BC PALMER GREEN,

Plaintiff,

v.

THOMAS HERD,

Defendant.

ORDER

After hearing on February 23, 2023, on review from the court's order dated October 14, 2022 (regarding a hearing on September 30, 2022), at which only the landlord appeared and at which a representative from the Tenancy Preservation Program (TPP) Carmen Morales joined, the following order shall enter:

1. The landlord reported that based on information and belief the tenant recently had a stroke.

2. TPP reported that their records do not indicate what came of the referral from the September 30, 2022, hearing even though TPP and the tenant were both present at that hearing. This is particularly troubling as not only has four months lapsed since that referral, but the October 14, 2022 order indicates that there was originally a referral to TPP by agreement of the parties on July 27, 2022.
3. This matter shall be continued to the date below to allow for TPP to reach out and meet with the tenant to determine what services, if any TPP may provide to him.
4. This matter shall be scheduled for further hearing on **March 22, 2023, at 2:00 p.m.**

So entered this 9th day of March, 2023.

Robert Fields, Associate Justice

CC: Carmen Morales, TPP
Court Reporter

AR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-117

FOH, LLC,

Plaintiff,

v.

ALEXIE MARTINEZ,

Defendant.

ORDER

After hearing on March 6, 2023, on further hearing on the plaintiff landlord's motion for injunctive relief at which the plaintiff appeared but for which the defendant did not appear, and which were joined by a representative from the Tenancy Preservation Program (TPP), the following order shall enter:

1. The previous order shall be extended.
2. The tenant shall work cooperatively with TPP which will assess and investigate resources to assist the tenant regarding his mental health and his housing.

Additionally, TPP is asked to make assist with a referral to Community Legal Aid and the Fair Housing Center (in Holyoke).

3. If the plaintiff is required to call for the police on any occasion, should the defendant appear at the premises without the plaintiff's permission, the plaintiff shall so notify TPP.

So entered this 9th day of March, 2023.

Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

CP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-438

PENELOPE HOSLEY, ARIANA KETCHAKEU,
and KALYANI KORTRIGHT,

Plaintiffs,

v.

7Q59 AMHERST, LLC and XIAN DOLE,

Defendants.

AGREED UPON ORDER

After hearing on March 8, 2023, on the plaintiffs' motion to compel discovery, at which all parties appeared through counsel, the following agreed upon order shall enter:

1. The defendants shall respond to all outstanding discovery by no later than March 24, 2023. This means that the plaintiffs' attorney shall be in receipt of said discovery responses by no later than 5:00 p.m. on that date.
2. If they fail to do so they shall pay the plaintiffs' attorney's fees at an hourly rate of \$200 for time expended in filing and prosecuting today's motion to

compel as well as for the plaintiffs' attorney's appearance at the next hearing noted below.

3. This matter shall be scheduled for hearing on **March 27, 2023, at 9:00 a.m.** | the Hadley Session of the court.

So entered this 27th day of March, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-156

ANNA RODRIGO,

Plaintiff,

v.

CIYARA YORK,

Defendant.

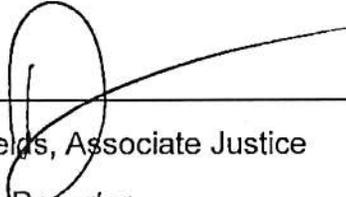
ORDER

After hearing on March 9, 2023, at which only the moving party appeared, the following order shall enter:

1. The plaintiff landlord has scheduled a plumber to work on the burst heating pipe in the defendant tenant's unit tomorrow, Friday March 10, 2023, from 8:30 a.m. to 10:00 a.m.
2. The tenant is instructed to allow the plumber access at that time for repairs.

3. Given the emergency nature of the repair and the concern that the tenant is using space heaters as the sole means of heat, if the landlord and plumber arrive and no one is home at the designated time above, they may enter to make the repairs.
4. The landlord shall provide a copy of this order to the tenant by hand delivery today (March 9, 2023) or by taping it to the tenant's door and placing one under the door.
5. This matter shall be scheduled for further hearing on **March 16, 2023, at 2:00 p.m.** at the Springfield Session of the court. If the repairs noted above are effectuated, neither party need appear at this follow up hearing.

So entered this 9th day of March, 2023.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0885

ANNA SMITH,)	
)	
PLAINTIFF)	
)	
v.	)	RULING ON PLAINTIFF'S PETITION
	)	FOR AWARD OF ATTORNEY'S FEES
SPRINGFIELD GARDENS 41-49 LP,)	
)	
DEFENDANT)	

By order dated October 17, 2022, this Court found Defendant in civil contempt for failing to comply with certain court orders to correct sanitary code violations. As a sanction for contempt, the Court ordered that Defendant pay reasonable attorney's fees "for appearing for hearings in this Court beginning on September 23, 2022 ... and for preparing and filing the contempt complaint."

Attorney Dan Ordorica seeks an award of \$3,540.00 based on 17.7 hours of work at a rate of \$200.00 per hour. In considering the petition, the Court applies the factors set forth in *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005) ("While the amount of a reasonable attorney's fee is largely discretionary, a judge should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.'"). A judge may apply his or her own experience as a judge

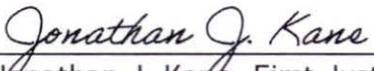
and expertise as a lawyer in determining the amount that the attorney should be paid. See *Heller v. Silverbranch Construction Corp.*, 376 Mass. 621, 629 (1978).

Here, the Court finds the hourly rate of \$200.00 to be reasonable under the circumstances. The number of hours (17.7) includes a significant amount of waiting time in the courthouse, but the Court acknowledges that counsel has no control over the time it takes to have his case called on a given day. On balance, the Court finds that the total number of hours expended on this matter is not unreasonable.

Accordingly, final judgment on Plaintiff's complaint for contempt shall enter in favor of Plaintiff in the amount of \$3,540.00.

SO ORDERED.

DATE: _____


Jonathan J. Kane, First Justice