

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 27

Sep. 25, 2023 — Nov. 3, 2023

ABOUT

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

WHO WE ARE

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

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

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

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

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

Raquel Manzanares, Esq., *Community Legal Aid*

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

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

OUR PROCESS

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

EDITORIAL STANDARDS

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

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

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

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

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

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

PUBLICATION

Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for those who wish to receive new volumes by e-mail when they are released. Those wishing to join the listserv can do so at <https://groups.google.com/g/masshousingcourtreports>, or by emailing Aaron Dulles (dulles@jd11.law.harvard.edu).

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0716

A.P. I LIMITED PARTNERSHIP,)	
)	
PLAINTIFF)	
)	
v.	)	ORDER TO ISSUE
	)	EXECUTION
LISA JENKINS,)	
)	
DEFENDANT)	

This matter came before the Court on September 25, 2023 for further hearing on Plaintiff's request for an emergency order. Plaintiff appeared through counsel. Defendant appeared self-represented.

After hearing, the Court finds that Ms. Jenkins has no legal right to occupy the unit at 213 Allen Park Road, Springfield, Massachusetts (the "Premises"). She moved to the Premises to assist her daughter and her children. Her daughter and children left the Premises and moved to Connecticut. Ms. Jenkins has not vacated and seeks to keep the apartment.

The Premises has a project-based subsidy attached in the nature of federal tax credits, which program requires each household to annually certify as to the identity of all occupants and sources of income, among other things. Ms. Jenkins' daughter, the authorized tenant, repeatedly disclosed to management that only she and her children resided in the Premises. Ms. Jenkins' daughter never sought to add her to the lease, and Ms. Jenkins has never been part of the subsidy attached to the Premises.

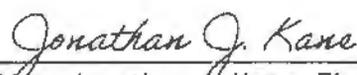
After Ms. Jenkins' daughter vacated, Ms. Jenkins filed a complaint with this Court requesting that she be recognized as a tenant. The motion was denied on August 10, 2023. The property has a lengthy wait list for two-bedroom apartments. Even if Ms. Jenkins qualified for a two-bedroom unit, which she does not, allowing her Jenkins to stay would circumvent the waiting list process and foreclose an opportunity for applicants who have been waiting a long time for affordable housing to become available. Because Ms. Jenkins is not and never was a tenant, and because the only authorized occupants of the Premises have surrendered possession and moved out of state, Plaintiff has the right to regain possession of the unit without filing a summary process action. *See Dacey v. Burgess*, 491 Mass. 311, 314 (2023) ("there may be some limited circumstances in which a landlord's recovery of possession of a leased property may arise outside the context of summary process pursuant to G.L. c. 239.")

The following order shall enter:

1. A judgment for possession shall enter in favor of Plaintiff.
2. An execution for possession may issue by application consistent with the process required by USPR 13 in summary process cases.

SO ORDERED.

SEPTEMBER 25, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

each month. Defendant contests the balance due and asserts defenses based on a security deposit law violation and bad conditions in the Premises.

Defendant failed to establish that she has had to live with material conditions of disrepair. She provided no evidence of the allegedly defective conditions, and her testimony was general and confusing. Defendant failed to carry her burden of proof that defective conditions exist. Accordingly, she is not entitled to any damages on this claim.

With respect to the rent arrears, the Court accepted rent receipts into evidence. Plaintiff did not keep accurate records, leaving the Court to piece together each receipt to determine what was paid and what is owed. Some of the receipts are contradictory with respect to the balance due following each payment. Plaintiff's hand-written rent ledger is not accurate. The evidence shows that Defendant paid \$500.00 on March 7, 2022 which, because it was not a full month, should have been prorated to \$383.00, resulting in an overpayment of \$117.00. On March 20, 2022, Defendant paid another \$500.00, which Defendant apparently accepted for March, despite the fact that Defendant had already paid for March,² giving Defendant a credit balance of \$617.00.

Rent for the months of April through December 2022 were each paid in full. On April 1, 2022, Plaintiff accepted \$50.00 and applied it toward the security deposit. On June 2, 2022, Defendant paid the full \$500.00 security deposit, adding another \$50.00 to her credit balance (to \$667.00). Defendant paid only \$50.00 for November 2022

² To the extent Defendant may claim that one of the payments were for another purpose, such as last month's rent or security deposit, the receipt clearly indicates that both payments were applied to March rent.

rent, reducing the credit balance to \$227.00. Defendant overpaid January 2023 rent by \$50.00, and, for some reason, in March 2023, Plaintiff applied another \$50.00 to January 2023, increasing the credit balance to \$327.00. Defendant has not paid for the six months from March 2023 through August 2023, the month of trial, for a total of \$2,000.00. Subtracting the credit, and the balance due is \$1,673.00.³

Plaintiff admits accepting a security deposit in the amount of \$500.00 and failing to comply with the law. Among other requirements, G.L. c. 186, § 15B mandates that a landlord hold the security deposit in a separate, interest-bearing account in a Massachusetts bank and that she provide the information about the bank location and account number to the tenant within 30 days of receipt. Plaintiff did not take these steps, nor did she pay interest on the first anniversary of payment of the security deposit as required by law. See G.L. c. 186, § 15B(3)(b). A landlord who fails to properly deposit such funds as required by law is liable for three times the security deposit, which in this case is \$1,500.00. Plaintiff is also liable for interest at a rate of 5% per annum, which equals \$25.00.

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

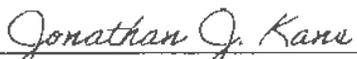
1. Defendant is entitled to \$1,525.00 in damages on account of her claims and defenses.
2. Plaintiff is entitled to unpaid rent in the amount of \$1,673.00 in unpaid rent, plus court costs and interest.

³ Plaintiff asserts that the checks purportedly mailed to her from Way Finders never arrived, and the Court has no evidence either that the checks were deposited or returned to Way Finders. Given the lack of any credible evidence, the Court does credit Defendant for those payments.

3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$148.00, plus court costs of \$~~182.76~~ and interest in the amount of \$~~7.89~~, for a total of \$~~338.65~~. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."
4. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
5. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiff for possession and damages in the amount of \$148.00, plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: September 25, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2212

_____)	
APPLETON CORPORATION,)	
)	
PLAINTIFF)	
v.	)	ORDER FOR ENTRY
	)	OF JUDGMENT
PAUL NIGHTINGALE,)	
)	
DEFENDANT)	
_____)	

This summary process case came before the Court on August 16, 2023 on Plaintiff’s motion for judgment based on a purported violation of the Agreement of the Parties entered into on June 30, 2023 (the “Agreement”). Plaintiff seeks to recover possession of 76 Maple Street, Unit 1006, Holyoke, Massachusetts (the “Premises”).

Pursuant to the Agreement, Defendant agreed to vacate on or before December 31, 2023, with the ability to seek a further extension. However, the stay was conditioned upon compliance with certain terms. In relevant part, Defendant agreed “to refrain from ... allowing his guest or/or visitor to remain unaccompanied in any common areas of the building ...; allowing an excessive amount of traffic in and out of his unit and/or more than one guest in the unit at any given time; ... giving his keys to the [Premises] to any other person and/or allowing any person to be in the premises when he is not there.” The Agreement also prohibited visitors between the hours of 10:00 p.m. and 7:00 a.m.

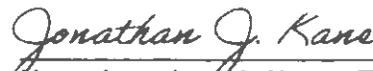
The evidence, which consisted mostly of eleven videos taken from the security cameras in the building housing the Premises, clearly shows that Defendant had unaccompanied visitors, often several at a time, entering the building with Defendant's keys after 10:00 p.m. on numerous occasions, including at times after 2:00 a.m. The Court draws an inference that a woman named "Sarah," characterized by Defendant as a "close friend," takes Defendant's key fob and comes and goes as she pleases. Defendant, who is 77 years old, testified that he is "in control" of the situation but admitted that he does not "always know what is going on."

It is clear to this Court that Defendant has substantially violated one or more material terms of the Agreement. Per the terms of the Agreement, judgment would enter nunc pro tunc (retroactively) in the event of a substantial violation. In light of the foregoing, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession, costs and interest nunc pro tunc to June 30, 2023.
2. Execution shall issue forthwith.
3. If it has not already done so, Plaintiff shall make a report to Greater Springfield Senior Services ("GSSS") of suspected elder abuse. The Court finds that Defendant is at substantial risk of financial exploitation by visitors who take his key fob and use the Premises at will.

SO ORDERED.

DATE: September 25, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3824

FEDERAL NATIONAL MORTGAGE ASSOCIATION,)

PLAINTIFF)

v.)

ANGELICA ROMAN,)

DEFENDANT)

ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

This post-foreclosure summary process case came before the Court on August 10, 2023 on Plaintiff's motion for summary judgment. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential premises in question are located at 1558-1560 North Main Street, Unit 1, Palmer, Massachusetts (the "Property"). Defendant is the ex-wife of the borrower, Carlos Rodriguez. Defendant did not sign a promissory note, but is included on the mortgage.

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).

For the reasons set forth in Plaintiff’s memorandum in of law in support of its motion,¹ and after review of the three affidavits (and the exhibits attached thereto) filed by Plaintiff therewith, the Court finds that Plaintiff is entitled to a judgment for possession of the Property. Defendant did not file a motion in opposition to summary judgment, and thus it is undisputed that Plaintiff is the record owner through the foreclosure deed, which was accompanied by an affidavit of sale showing compliance with the statutory foreclosure requirements. *Hendricks*, 463 Mass. at 637. Defendant did not counter Plaintiff’s prima facie case with any affidavits or acceptable alternatives. *Id.* at 642.²

¹ The Court notes that, at the hearing, Plaintiff’s counsel corrected a typographical error in paragraph 2 of the “Undisputed Material Facts” section of the memorandum of law. The loan was obtained on October 4, 2013, not January 26, 2007. The documentation submitted in support of the motion reflects the correct date.

² In her answer, Defendant alleges generally that the foreclosure is void due to failure to comply with the power of sale and that Plaintiff violated G.L. c. 93A. Without opposition, Plaintiff demonstrated

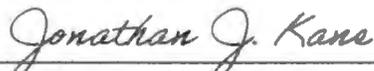
On September 1, 2022, Plaintiff served a 72-hour notice to quit on Defendant.³

Defendant did not deny receipt of the notice. She remains in possession of the Property. Based on all of the credible evidence submitted as part of the summary judgment record, and in light of the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff on Plaintiff's claim for possession.
2. Execution for possession shall issue upon written application ten (10) days from the date on which judgment enters.
3. Use of the execution shall be stayed through October 10, 2023 to allow Defendant additional time to attempt to negotiate a resolution with Plaintiff.

SO ORDERED.

DATE: September 25, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

strict compliance with paragraph 22 of the mortgage. See *Pinti v Emigrant Mortgage Co.*, 472 Mass. 226, 237 (2015). Accordingly, based on the record before the Court, Defendant's claim under G.L. c. 93A is without merit.

³ The notice is legally adequate and Defendants do not contest receipt.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1766

_____)	
HONORE, LLC,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER FOR
DEVON SOUTHERLAND,	)	ENTRY OF JUDGMENT
)	
DEFENDANT)	
_____)	

This summary process case came before the Court on August 17, 2023 for a bench trial. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 254 Worthington Street, Unit 3, Springfield, Massachusetts (the “Premises”) based on nonpayment of rent.

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

Plaintiff is the proper plaintiff and served a legally sufficient notice to quit, which Defendant acknowledges receiving. Defendant has not vacated. He does not dispute the rent arrears balance of \$15,800.00 but claims rent should be abated due to bad conditions. The Court finds that Plaintiff has established its prima facie case for possession and damages in the amount of \$15,800.00.

Prior to trial, the Court allowed Defendant’s motion to remove default and

gave him a deadline to file an answer. He did not do so. Nonetheless, at trial he testified about certain conditions of disrepair, and without objection, the Court agreed to consider his evidence as a defense to payment.

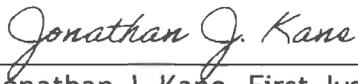
The issues about which Defendant testified include the stove, sink faucet and windows. The Court finds that the problems Defendant had with his stove and sink faucet were corrected promptly. Plaintiff concedes that there are some issues with certain windows in the Premises which Plaintiff is in the process of repairing or replacing. Defendant did not convince the Court that any of the defective issues in the Premises were significant or interfered with his ability to enjoy the Premises. In fact, despite many text message communications between the parties, Defendant did not mention any conditions of disrepair; instead, the text messages illustrate that Defendant was dealing with financial issues and that his failure to pay rent had nothing to do with the condition of the Premises.

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

1. Judgment for possession and damages in the amount of \$15,800.00 shall enter in favor of Plaintiff.¹
2. Execution shall issue in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: September 25, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant did not claim to have a pending application for rental assistance.

5. Defendant received the notice to quit;¹ and
6. Defendant has not vacated the Premises.

The stipulated facts establish Plaintiff's prima facie case for possession and damages. The Court must next adjudicate Defendant's defenses and counterclaims, which are based on conditions of disrepair, a water shut-off, retaliation, violation of the security deposit law, harassment, including race-based harassment, and intentional infliction of emotional distress. 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 relationship of the parties deteriorated in late December 2022, the second month of Defendant's tenancy, after water flooded the basement of the property. Plaintiff was out of town at the time, and Defendant had to figure out how to turn off the water entering the house, which was on Plaintiff's side of the basement. The water damaged some of his belongings and caused a musty odor that has lingered. The water was restored within 24 hours, but soon after this event, Defendant was without hot water for a brief time.

Around this time, Defendant's communications to Plaintiff changed significantly. Whereas in previous messages, he had been almost apologetic about asking for things to be addressed, such as dog hair in the unit and a kitchen sink that often clogged, beginning on December 31, 2022, he informed Plaintiff that he would

¹ Defendant agreed to waive a defect in pleading, namely Plaintiff's failure to file the Affidavit of Compliance required in nonpayment of rent cases, in exchange for Plaintiff's assent to the filing of a late answer.

be asserting his tenant rights and made certain demands, including “a 100% working sink with no problems, ... a 100% working stove with no issues ... and the apartment fully cleaned of all dog hair and grim[e].” He also informed Plaintiff that he would be purchasing three meals per day and submitting receipts for reimbursement, and said he would need to be put in a hotel if Plaintiff required him to leave the Premises during repairs.

Plaintiff responded defensively, saying that Defendant did not know the law and that he would not be reimbursing him for any food or placing him in a hotel. When Defendant did not pay rent on January 15, 2023, the relationship grew increasingly contentious. Defendant informed Plaintiff that he would not resume paying rent until the items about which he complained - dog hair, sink clogs, and an undisclosed issue with the stove - were fixed. When he did not pay February rent, Plaintiff served him with a notice to quit.

The Court will address each of Defendant’s claims and defenses separately:

I. RETALIATION

Pursuant to G. L. c. 239, § 2A,² a rebuttable presumption of retaliation arises if the landlord terminates a tenancy within six months of the tenant “reporting or complaining of [a violation of any health or building code] in writing to the landlord.” For the landlord to overcome the statutory presumption of retaliation, it must demonstrate by clear and convincing evidence that it would have sent the notice to quit in the same manner and at the same time regardless of whether such reports or

² G.L. c. 186, § 18 does not apply because Defendant’s tenancy was terminated for nonpayment of rent.

complaints were made. *Id.*; see also *South Boston Elderly Residences, Inc. v. Moynihan*, 91 Mass. App. Ct. 455, 468-469 (2015).

In this case, the termination notice was dated February 20, 2023 and it was served on Defendant by a deputy sheriff on February 27, 2023. Defendant's written communications at the end of December 2022, wherein he explicitly stated that he was exercising his tenant rights to repairs, occurred within the six-month period prior to the termination. Although Plaintiff testified that he sent the notice only after Defendant had failed to pay rent for the prior two months, Defendant was clear as to why he was not paying rent and the evidence is clear that Plaintiff was extremely irritated that Defendant was continuing to make demands despite his efforts to ensure the Premises were in good condition. Rather than ensuring that all issues in the Premises had been resolved, he elected to evict Defendant. Defendant has thus established a defense to the summary process action, and is entitled to a deduction of one month's rent, namely \$1,400.00, plus reasonable attorneys' fees.

II. QUIET ENJOYMENT

G.L. c. 186, § 14 provides that “[a]ny lessor or landlord of any building or part thereof occupied for dwelling purposes ... who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee” *G.L. c. 186, § 14*. The covenant protects a tenant from “serious interference with his tenancy – acts or omissions that impair the character and value of the leasehold” (citations omitted). *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994).

The Court finds that Plaintiff took actions that caused a serious interference with Defendant's tenancy. On February 26, 2023, on the day Plaintiff left for a one-week trip to Florida, he intentionally shut off Defendant's water at the source (located in the basement of Plaintiff's unit). The Court infers that Plaintiff's conduct was part of a pattern of conduct to harass and annoy Defendant as a result of his non-payment of rent and demands for repairs. The water was not restored until March 1, 2023, when Defendant entered Plaintiff's side of the basement and turned the water back on.³

Plaintiff's intentional conduct in depriving Defendant of water as he left town for a week, presumably expecting that Defendant would not be able to restore water until he returned,⁴ is a clear violation of G.L. c. 186, § 14 ("Any lessor or landlord ... who willfully or intentionally fails to furnish such water ... shall be liable for actual and consequential damages or three month's rent, whichever is greater..."). Defendant did not present evidence of actual or consequential damages related to the water shut off, and thus the Court awards statutory damages of three month's rent, namely \$4,200.00, plus costs and a reasonable attorney's fee.

III. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

To make out a claim of intentional infliction of emotional distress, Defendant is required to show (1) that Plaintiff intended, knew, or should have known that his conduct would cause emotional distress; (2) that the conduct was extreme and

³ Plaintiff interprets Defendant's action as breaking and entering; however, the Court excuses Defendant's entry into Plaintiff's side of the basement as a necessary step in order to restore water that had been shut off at the source.

⁴ The Court draws this inference from the number of times Plaintiff complained that Defendant should be charged with breaking and entering by turning the water back on in his part of the basement without first obtaining permission.

outrageous; (3) that the conduct caused emotional distress; and (4) that the emotional distress was severe. *See Howell v. Enterprise Publ. Co.*, 455 Mass. 641, 672 (2010). Conduct qualifies as extreme and outrageous only if it "go[es] beyond all possible bounds of decency, and [is] regarded as atrocious, and utterly intolerable in a civilized community." *Roman v. Trustees of Tufts College*, 461 Mass. 707, 718 (2012) (citation omitted).

The Court finds that, for several months beginning in February 2023, Plaintiff repeatedly banged loudly on the common wall between units, shouting racial epithets (Defendant is a Black man, Plaintiff is a White man), including the n-word, and statements such as "you are going to die," "this is my [expletive] house" and "I want my [expletive] money." This behavior was pervasive over a period of weeks and often occurred after midnight, depriving Defendant of peaceful and causing him to suffer emotional distress. Such emotional distress was a foreseeable consequence of Plaintiff's actions. Defendant's distress was severe, and was a major contributing factor in his girlfriend breaking up with him and friends not visiting him at the Premises. As damages for Plaintiff's unlawful conduct, the Court awards Defendant damages in the amount of \$5,000.00.

IV. BREACH OF WARRANTY OF HABITABILITY

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); *see Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State sanitary code. *See Davis v. Comerford*, 483 Mass. 164,

173 (2019). The warranty of habitability applies only to "substantial" violations or "significant" defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim). Damages for breach of the implied warranty of habitability are measured by "the difference between the value of the premises as warranted (the rent may be evidence of this value) and the value of the premises as it exists in its defective condition." *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994). 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.").

Defendant is entitled to an abatement of all rent for six days he was without water and/or hot water.⁵ The evidence is insufficient to find that the dog hair in the Premises constitutes a significant defect. Based on the evidence presented, the Court finds that Defendant's complaints about the stove and sink are not substantial violations of the State Sanitary Code and declines to award additional abatement damages. Accordingly, the damages for breach of warranty are \$280.00.⁶

V. SECURITY DEPOSIT

Plaintiff concedes that Defendant paid a security deposit in the amount of \$1,140.00 at the outset of the tenancy. Defendant put Plaintiff on notice of the

⁵ The Court finds that he was without water for one day when the pipe burst and five days when Defendant shut off the water.

⁶ Defendant did not contend that Plaintiff is subject to G.L. c. 93A. Given that the property in question is an owner-occupied two family and there is no evidence that Plaintiff was engaged in trade or commerce with respect to rental properties, the Court rules that G.L. c. 93A is inapplicable here.

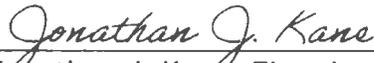
violation of security deposit law, G.L. c. 186, § 15B(2)(b) through (d) and (3)(a), and Plaintiff did not demonstrate that he complied with the law nor did he refund the security deposit. Accordingly, pursuant to G.L. c. 186, § 15B(7), the Court awards as damages three times the amount of the security deposit (\$3,400.00) plus reasonable attorneys' fees.

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

1. Plaintiff is entitled to unpaid rent through the date of trial in the amount of \$9,800.00.
2. Defendant is entitled to damages in the amount of \$14,280.00.
3. Pursuant to G.L. c. 239, § 8A, Defendant is entitled to judgment for possession and damages in the amount of \$4,480.00.
4. Before a final judgment enters including monetary damages, Defendant's counsel shall have fifteen (15) days from the date of this order to file a petition for reasonable attorneys' fees and costs, along with supporting documentation. Plaintiff shall then have fifteen (15) days from receipt of the petition to file any opposition, after which the Court will assess attorneys' fees without need for further hearing, unless the Court so requests.

SO ORDERED.

DATE: September 25, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

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

WCV’s property manager testified to the diligent efforts she made after the Order entered to find a licensed contractor willing to take the job. Despite the work not commencing within twenty-one days, the Court finds that Plaintiff did not establish that WCV clearly and undoubtedly disobeyed the Order with respect to retain a remediator or complete the work within 21 days. The Court finds that WCV used good faith efforts to comply but was stymied by circumstances outside of its control. The lack of availability of contractors delayed the signing of a contract until August 1, 2023, and the delayed execution of a contract then caused the work not to be completed within the original time frame. There is no evidence suggesting that WCV is responsible for the delay.

In fact, the Court finds that WCV’s employees devoted many hours to preparing the Premises for the remediation work, including pulling a voluminous number of staples from the floor. WCV also offered Plaintiff a different unit relatively close to the Premises so he could leave the hotel. Although Plaintiff was not obligated to move to another unit offered by the landlord, WCV’s offer illustrates its sincere efforts to ameliorate the impact of the delay on his housing situation. The Court finds no evidence

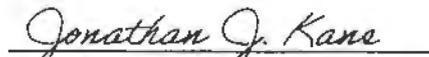
that WCV ignored its obligations under the Order, such as by failing to provide alternative housing or look for a remediation contractor.

Rather than seeking an order that WCV be held in contempt, Plaintiff could have first sought to enforce the Order, and, in that context, the Court could have identified the reasons why the work had not commenced and then entered additional orders. By immediately filing a complaint for contempt, Plaintiff apparently presumed that WCV was willfully disobeying the Order or not using best efforts to comply, and it did not allow for the possibility that it was being thwarted by factors beyond its control.

Based on the foregoing, the Court finds that Plaintiff did not prove clear and undoubted disobedience of the Order by clear and convincing evidence. Accordingly, Plaintiff's complaint for contempt is DENIED.

SO ORDERED.

DATE: September 25, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2657

ORLANDO RAMOS,)
)
)
) PLAINTIFF)
)
 v.)
)
)
) SALLY AMPELAKIS AND)
) PETER AMPELAKIS,)
)
) DEFENDANTS)
)

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

This no fault summary process case came before the Court on August 23, 2023 for a bench trial. Plaintiff appeared self-represented. Defendants appeared with counsel. Plaintiff seeks to recover possession of residential premises located at 66 Exposition Terrace, 2d Floor, West Springfield, Massachusetts (the “Premises”).

The parties stipulated to the following facts at the outset of trial:

1. The Premises are part of a two-family property;
2. Defendants reside at the Premises pursuant to a written tenancy at will agreement;
3. Defendants moved into the Premises in February 2018. Plaintiff purchased the Premises in April 2022;
4. Monthly rent is \$950.00 and there is no unpaid rent through the month of trial;

5. Defendants acknowledge receipt of the notice to quit; and
6. Defendants have not vacated the Premises.

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:

When Plaintiff purchased the Premises, the parties signed a rental agreement wherein Defendants agreed to vacate “at the end of the Term.” No rental term is stated in the agreement. It simply recites that Plaintiff “is presenting this lease to [Defendants] on April 26, 2022.” From the totality of the circumstances, and in light of the testimony of the parties, the Court finds that the lease term ended on April 25, 2023, one year following the date the agreement was signed. Because a notice to quit is not necessary to end a tenancy when it expires at the end of a lease term, the fact that the notice to quit in this case is defective is not fatal to Plaintiff’s claim for possession.¹

Defendants testified that the reason they have not vacated is their inability to find replacement housing. Defendants have engaged realtors to look for housing that they can afford on their Social Security Disability Income. They also have custody of their two-year old great grandson, but they receive no benefits for the child.

In their answer, Defendants referenced that they suffered with defective conditions. Mr. Ampelakis claims “mold and mildew” behind the wall in bathroom. He said that he has suffered breathing issues and sneezing, but he provided no scientific evidence to identify what the “mold and mildew” substance is and whether it is

¹ If the lease term had not expired by its own terms, the notice would have been ineffective to terminate a tenancy at will because it does not give a full rental period notice and it does not end on a day upon which rent is payable or at the expiration of the month immediately preceding the rent day.

harmful to human health, nor did he demonstrate any causal connection between the substance and any health issues he or other family members may have.

Mr. Ampelakis also testified that there are defective stair rails, items left in the yard not belonging to his family that prevents him from accessing the outside water spigot, and a hole in the ground covered by plywood where Plaintiff is installing a security system. He presented no photographic or other evidence (such as a code enforcement report) to support his claims and his testimony was inadequate to for the Court to find that the conditions about which he complains are substantial code violations or cause a series interference with their tenancy. Accordingly, the Court finds Defendants are not entitled to an award of damages on their counterclaims.

Because this is a no fault eviction case, Defendants are entitled to a stay of eviction of up to twelve months.² See G.L. c. 239, § 9. Based upon the credible testimony presented at trial, the Court finds that (i) the Premises are used for dwelling purposes, (ii) Defendants have been unable to secure suitable replacement housing, (iii) Defendants have used due and reasonable effort to secure other housing, and (iv) Defendants' application for stay is made in good faith and that they will abide by and comply with such terms and provisions as the Court may prescribe. See G.L. c. 239, §10.³ The stay is discretionary, however, and the Court must also consider the landlord's need to recover possession.

² Defendants receive SSDI, which establishes a disability that extends the standard six-month stay to twelve months.

³ To be eligible for the stay, Defendants must pay all unpaid use and occupancy or rent accrued prior to the period of the stay (which they have) and they must pay for their use and occupancy during the period of the stay. See G.L. c. 239, § 11.

Here, Plaintiff claims that he intends to use the Premises for a family member, and that the family member has been waiting for sixteen months to move into this Premises and is currently homeless (although he presented no evidence or witness to support this claim). Plaintiff's assertion that he plans to use the unit for a relative may be a reason to provide a stay that is less than the maximum allowed by law, but the Court does not need to reach the decision today.⁴

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

1. Judgment for possession shall enter for Plaintiff.
2. Issuance of the execution shall be stayed until further order of this Court.
3. Defendants shall continue to pay \$950.00 each month during the period of the stay. Payment shall be made by the 5th of each month beginning in October 2023.
4. Defendants shall continue to make reasonable efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which they have applied to, visited or made inquiry. The log shall include the address of the unit, date of contact and the result of contact. If Defendants are relying on real estate agents to search for housing, they must provide the names of all such agents, their employers, and a log of all locations they find, even if the apartment is unaffordable or otherwise unacceptable.

⁴ Plaintiff argued that the one-year period has already expired because he notified them at the time of signing the rental agreement that they had to vacate at the end of the lease term. However, the statute is silent as to the beginning of the stay period and, in this case, the Court determines that the stay period starts when the tenancy expired at the end of April 2023.

5. If at the next hearing Defendants seek a further stay of issuance of the execution, their motion must include the information required in the previous paragraph.
6. If Defendants fail to make the payments required hereunder, Plaintiff may file a motion to issue the execution.
7. The parties shall return for review of Defendants' housing search on **October 25, 2023 at 2:00 p.m.**

SO ORDERED.

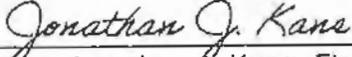
DATE: September 25, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

SO ORDERED.

DATE: September 25, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-3798

U.S. BANK TRUST NATIONAL ASSOCIATION,)
NOT IN ITS INDIVIDUAL CAPACITY, BUT)
SOLELY AS TRUSTEE OF CITIGROUP MORTGAGE)
LOAN TRUST 2018-B)

PLAINTIFF)

v.)

ANNETTE BARROWS AND DONALD GINGRAS,)

DEFENDANT)

ORDER

This matter came before the Court on August 29, 2023 on Plaintiff's motion for issuance of an alias execution for possession. Plaintiff appeared through counsel. Defendant Barrows and Donald W. Gingras appeared self-represented. The subject property is located at 22 Sargon Street, Springfield, Massachusetts (the "Premises").

Ms. Barrows entered into an Agreement for Judgment on March 9, 2023 wherein she agreed to vacate no later than May 1, 2023. She also indicated that "any other occupants" would vacate, although no other occupant is named as a defendant. She did not vacate, and on May 23, 2023, a judgment for possession entered in favor of Plaintiff. An execution issued, and when the constable appeared on the day of the scheduled levy, June 30, 2023, he was informed that Donald Gingras also resided at

the Premises.¹ Mr. Gingras was subsequently added to this case as a Defendant for purposes of issuing an execution. Plaintiff now seeks an alias execution that would allow it to evict Mr. Gingras along with Ms. Barrows.

At the hearing today, the Court learned that Mr. Gingras is actually a borrower on the note and co-signor of the mortgage to the Property, facts not presented to the Court when it agreed to add Mr. Gingras as a defendant. He has not had an opportunity to be served with notice to vacate, file and answer or challenge the foreclosure. To the extent the Court allowed him to be added as a defendant (under the impression that he was on the Premises under the authority of Ms. Barrows, not as a former homeowner), the Court reconsiders its decision. If Plaintiff seeks judgment for possession against Mr. Gingras, it must file a separate action.

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

1. Donald Gingras is hereby dismissed from this case.
2. Plaintiff's motion to issue execution is DENIED.

SO ORDERED.

DATE: September 25, 2023

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

cc: Court Reporter

¹ According to Plaintiff, the constable was also alerted to the presence of two other occupants, but Ms. Barrows represented that they do not live at the Premises.

Defendants are entitled to a waiver of the bond where they demonstrate both indigency as defined in G. L. c. 261, § 27A, and the existence of a nonfrivolous defense. See G. L. c. 239, § 5 (e). The Court finds that Defendants are indigent based on their affidavits. With respect to the existence of a nonfrivolous defense, this Court previously determined in its July 28, 2023 order that Defendants did not meet their burden of proof in articulating a defense. The Court finds that Defendants are not entitled to waiver of the appeal bond as they have no nonfrivolous defenses.¹ Their mother, who is now deceased, is the former homeowner. Defendants claim to be tenants, but they cannot have a bona fide lease or bona fide tenancy because they are children of the mortgagor. See G.L. c. 186A, § 1. Accordingly, Defendants are not entitled to a waiver of the appeal bond.

In a post-foreclosure summary process case, the condition of the bond shall be for entry of the action and payment to the plaintiff, if final judgment is in [its] favor, of all costs and a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff.” G.L. c. 239, § 6.

Plaintiff requests that the bond be set at the fair rental value of the Premises, which it asserts is \$2,300.00 per month based on an affidavit of a real estate broker, Michael DelGreco. Plaintiff contends that the fair market value is \$500.00 per month based on an affidavit of a different real estate broker, Michael Robie. Mr. Robie inspected both the exterior and interior of the Premises, and found that the Premises

¹ The Court notes that at the bond hearing, Defendants only asked for additional time and did not argue that they have a meritorious defense on appeal.

requires extensive interior and exterior remodeling, renovation and repair, including remediation. Mr. DelGreco based his estimate of fair rental value based on comparable sales and did not inspect the interior of the Premises. Given that none of the parties asked for an evidentiary hearing and appeared content to rely on the affidavits of real estate brokers, the Court is put in the position of determining which of the estimates of fair rental value should be used. Based on the fact that Mr. Robie did a comprehensive inspection, the Court sets the fair rental value at \$500.00 per month. Given that, by the time the bond is payable, ten months will have elapsed since the foreclosure on December 29, 2022, the amount of the bond shall be set at \$5,000.00.

As a condition of the bond, Defendants shall also pay for their use and occupancy of the Premises during the pendency of the appeal. *See Bank of NY Mellon v. King*, 485 Mass. 37, 38-39 (2020) (the postforeclosure defendant may be ordered to pay use and occupancy to the plaintiff based on all or any portion of the reasonable monthly values of the property). The Court shall use the same measure of fair rental value of \$500.00 as the amount of monthly use and occupancy to be paid to Plaintiff.

Based on the foregoing, the following order shall enter:

1. Defendant's motion to waive the appeal bond is denied.
2. Plaintiff's motion to set the appeal bond is allowed as follows:
 - a. Within fifteen days from the date of this order, as a condition for the entry of this action in the Appeals Court, Defendants shall deposit with the Clerk of Court such bond in the amount of \$5,000.00.

- b. As a further condition of the bond, beginning on November 1, 2023 and on the first day of each month thereafter during the pendency of this appeal, Defendants shall pay Plaintiff \$500.00 for their continued use and occupation of the Premises. These payments are to be made directly to Plaintiff.
3. Plaintiff may move to dismiss the appeal if Defendants fail to make the required payments. 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: September 25, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-0917

WILMINGTON SAVINGS FUND SOCIETY,)
FSB, AS OWNER TRUSTEE OF THE)
RESIDENTIAL CREDIT OPPORTUNITIES)
TRUST VI-A,)

PLAINTIFF)

v.)

GINA TRANGHESE, ET AL.,)

DEFENDANTS)

ORDER ON DEFENDANTS'
MOTION TO STAY EVICTION

This summary process case came before the Court on August 29, 2023 for a hearing on a motion for stay of execution. Plaintiff appeared through counsel.

Defendant Dino Tranghese appeared self-represented. Dino Tranghese stated that his sister Gina, a co-defendant, has special needs and cannot appear in court. The subject property is located at 96 Mayfield Street, Springfield, Massachusetts.

Dino and Gina Tranghese (“Defendants”) have appealed the denial of a motion for relief from the default judgment entered by this Court on July 28, 2023. Absent a court order, an execution may issue on the default judgment because an appeal from the order denying relief is not an appeal from the judgment itself, and therefore no automatic stay of an execution pending appeal is in place. *See* USPR 11(b); Mass. R. Civ. P. 62(d).

Given the circumstances articulated by Dino Tranghese in the Response to Plaintiff’s Motion in Opposition to Waive Appeal Bond filed on September 11, 2023,

the Court shall allow an equitable stay of execution. The purpose of the stay is to afford Defendants additional time to relocate, as they requested at the hearing. The stay is not intended to remain in place for the duration of the appeal, but shall only remain in effect through November 30, 2023 as further set forth below.

Based on the foregoing, the following order shall enter:

1. An execution for possession shall issue in favor of Plaintiff.
2. Use of the execution shall be stayed through November 30, 2023.
3. If the pending appeal is dismissed prior to November 30, 2023, Plaintiff may file a motion to lift the stay on use of the execution.
4. If Defendants have not vacated as of December 1, 2023, Plaintiff may use the execution to recover possession without further hearing.
5. The period of stay shall not count against the time that Plaintiff has to use the execution. If the original execution expires as a result of the court-ordered stay, Plaintiff may apply for an alias execution, which shall issue upon return of the original.

SO ORDERED.

DATE: September 25, 2023


Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

CA

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-258

SHAYNE FOLKES,

Plaintiff,

v.

ALYSSA O'BRIEN,

Defendant.

ORDER

This matter came before the court for trial on May 11 and 31, 2023, and June 2, 2023, at which the landlord appeared with counsel and the tenant appeared without counsel. The following findings of fact, rulings of law, and order for judgment shall enter¹:

¹ As a preliminary matter, landlord sought the restoration of a default judgment against the tenant because he did not receive the tenant's Answer timely given Judge Kane's prior order. For the reasons stated on the record, the landlord's verbal motion was denied.

1. **Background:** The plaintiff, Shayne Folkes, (hereinafter, "landlord") owns a two-family dwelling located at 13 Chilson Street in Springfield, Massachusetts (hereinafter, "premises" or "property"). The defendant, Alyssa O'Brien (hereinafter, "tenant") has resided on the second floor of the premises since May 18, 2020, at a monthly rent of \$1,200. On or about December 20, 2022, the landlord terminated the tenancy with a notice to quit for non-payment of rent and then thereafter commenced this eviction action. The tenant has filed an Answer with Counterclaims, asserting claims regarding conditions of disrepair at the premises, violations of the security deposit laws, and defenses arising out of the use of RAFT funds.
2. **The Landlord's Claim for Possession and for Rent:** The parties stipulated to the prima facie elements of the landlord's case for possession and for rent and agreed that the outstanding balance of unpaid rent through the month of the trial (June 2023) totals **\$15,600**.
3. **RAFT Compliance Issues:** The tenant alleged that the landlord failed to comply with the requirements of the RAFT program, arguing that had he complied he would have received RAFT funds and would not have had a basis to terminate the tenancy for non-payment of rent. In support of said allegations, the tenant shared screen shots on her cellphone but ultimately did not provide sufficient evidence that the landlord was at fault for any RAFT funds not being paid.
4. **Warranty of Habitability:** There have been conditions of disrepair at the premises for various lengths of time during the tenancy. Such has included a loose toilet which was propped up with plastic wedges that wore away over time,

broken bathroom tiles that were repaired very poorly by the landlord, a broken washer and dryer that the tenant had to have repaired at her own expense, a broken garbage disposal, faulty towel rack in bathroom that was not properly secured to the wall, and faulty stair railings that were not mounted properly to a wall stud and were always coming loose from the wall, and a non-functioning bathroom fan resulting in mold buildup.

5. The landlord's defense to these claims is three-fold. First, that they didn't exist. Second, that if they existed, it was caused by the tenant and/or her guests. The landlord was given great leeway to explore this theory, that the tenant routinely had guests and that some were aggressive in their manner with fights occurring between the tenant and her guests. Despite this leeway (even though this is a non-payment of rent case the court allowed "cause-type" testimony), the landlord was not able to provide sufficient evidence that the tenant or her guests caused any of the conditions of disrepair complained of by the tenant. Third, the landlord said he was not allowed by the tenant to enter the premise after the June 22, 2022, altercation described below in paragraph #8. Even though the court determined that there was not enough evidence for a finding that the landlord breached the tenant's quiet enjoyment as a result of that incident, this does not excuse him from not effectuating repairs. The last time the landlord made any repairs at the premises was in May 2022, and relies on the fact that the tenant would not permit him to enter her unit after the June 2022 incident as the reason that he has not addressed any other repairs. The landlord has a maintenance

man and was able to hire others to effectuate repairs but never dispatched these workers to make repairs.

6. The conditions listed above constitute a violation of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code, 105 C.M.R. 410.00 et seq. It is usually impossible to fix damages for breach of the implied warranty with mathematical uncertainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in the actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).
7. I find the fair rental value of the premises was reduced by 15% as a result of these conditions for ten months totaling **\$1,800** (\$1200 monthly rent X 15% X 10 months).
8. **Breach of Quiet Enjoyment, Harassment:** The tenant testified credibly that she suffers from Post Traumatic Stress Disorder and was a victim of domestic violence. She also testified that the landlord acted in an aggressive manner towards her, particularly during last year during the landlord's first attempt at an eviction. The parties also described an event at the premises (at the doorway of the landlord's mother's apartment on the first floor of the property) that took place on June 22, 2022. The testimony from each party controverts the other and the court finds and so rules that the tenant did not provide sufficient particulars or

other supporting evidence to support a finding that the landlord breached the tenant's quiet enjoyment as a result of that incident.

9. Breach of the Covenant of Quiet Enjoyment: Heating and Electrical Breaker

Failures: There have been heating issues and electrical breaker failures throughout the tenancy. After there was no heat at the premises in 2021 the tenant contacted the City Code Enforcement and the landlord responded and had it repaired. The tenant is not seeking damages for that occurrence. There has also been problems with the heat over the past two heating seasons. The living room and the tenant's son's room have not had heat. The landlord has been aware and provided space heaters but has not repaired the heating system.

There are also many occasions when the circuit breaker to the apartment is "tripped" and the power goes off. Though the landlord responds by "flipping the switch" and thus restoring electric power, he does not always do it promptly and it does not address the underlying problem.

10. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102, 431 N.E.2d 556, 565 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). I find that the landlord's failures to more promptly and more professionally make the repairs to the heating system and electrical system violated the tenant's covenant of quiet enjoyment and G.L.

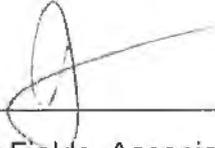
c.186, §14 and hereby award the tenant damages equaling three months' rent for this claim, totaling (\$1,200 X 3) **\$3,600**.

11. **Security Deposit:** The landlord required, and the tenant paid, a security deposit of \$1,200 at the commencement of the tenancy. The landlord may have initially deposited said funds in a bank account at Citizens Bank but there is no evidence that it is a proper account that is beyond the reach of his creditors, nor did he provide the account name nor number at any time, nor did he provide an annual accounting of said deposited in a manner consistent with the statute. G.L. c.186, s.15B. Accordingly, such failures resulted in the forfeiture of his right to hold the deposit. Furthermore, the claim asserted in the tenant's Answer "mishandling security deposit" is a demand for the return of same and based on the landlord's failure to return the security deposit upon demand when his act and omissions resulted in his forfeiture of his right to hold the funds, the court shall award the tenant three times the security deposit plus interest at an annual rate of 5%, totaling **\$3,660** (\$60 of which is interest).

12. **Conclusion and Order:** Based on the foregoing and in accordance with G. L. c.239, s.8A, the tenant has until ten days from the date of this order noted below to deposit with the Clerks Office of the court \$ 7,285.07. This represents the amount of rent outstanding through June 2023 of \$15,600 MINUS the damages awarded to the tenant totaling \$9,060 (\$6,540) plus court costs of \$ 205.00 and interest of \$ 540.07. If the tenant makes this deposit, judgment shall enter for her for possession and the funds deposited with the court shall be disbursed to the landlord's attorney. If the

tenant fails to make said payment to the court, judgment shall enter for the landlord for possession plus \$6,540 plus court costs and interest.

So entered this 26th day of September, 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-3755

<p>BOSTON ROAD MOBILE HOME PARK TENANTS ASSOCIATION, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>CHERYL GAMACHE,</p> <p style="text-align: center;">Defendant.</p>

ORDER

After hearing on September 22, 2023, on the landlord's motion for entry of judgment, the following order shall enter:

1. A referral shall be made today for the Tenancy Preservation Program and the tenant shall cooperate with TPP.
2. TPP is requested to work with the tenant to establish a financial money manager to assist in making her rent payments going forward. Also, to assist the tenant to renegotiate her electric utility payment plan which is currently at \$600 per month.

3. The tenant shall pay her use and occupancy for October and November 2023 timely and in full.
4. This matter shall be scheduled for further review on **November 28, 2023, at 9:00 a.m.** The tenant believes that she will pay off her entire balance by that date. Even is she has made such payments, the parties should appear for this return date.

So entered this 27th day of September, 2023.

Robert Fields, Associate Justice

CC: TPP

Court Reporter

1. A trial in this matter was scheduled for July 18, 2023. Ms. Ortiz failed to appear, apparently due to medical issues. Over Ms. Lubega's objection, the Court granted a continuance to August 15, 2023 at 9:00 a.m.
2. On August 15, 2023, due to technical difficulties with its recording system, the Court informed the parties that the docket had been significantly delayed by the technical difficulties and that they might want to pick a different trial date.
3. Counsel met with an Assistant Clerk Magistrate and selected a new trial date of August 29, 2023 at 9:00 a.m. The clerk, using a standard "Notice of Next Court Event" court form, handwrote the date and time of trial, erroneously listing it as September 29, 2023.
4. The mistake was noticed immediately and both counsel were notified of the mistake before leaving the courthouse. Ms. Ortiz had already left the building, but her counsel found her outside and told her of the change of date.¹
5. The day before the trial, August 28, 2023, Ms. Ortiz's lawyer sent her a text message to remind her about trial the next day, but she was in New Jersey and declined to return to Massachusetts for trial the next day.

¹ At argument on the instant motion, Attorney Chavin stated that he cannot recall if he informed Ms. Ortiz that the trial date was actually August 29, recalling only that he said that he would see her on the 29th. On August 29, 2023, however, he informed the Court that he did tell her specifically that the trial would take place on August 29, not September 29. The Court finds, based on the totality of the evidence, that Ms. Ortiz was made aware of the correct trial date before leaving the courthouse on August 15, 2023.

In relevant part, Rule 60(b) recites that a court may vacate a judgment for “(1) mistake, inadvertence, surprise, or excusable neglect; ... or (6) any other reason justifying relief from the operation of the judgment.”² After an evidentiary hearing, the Court finds that the clerk’s mistake of writing the date of September 29, 2023 instead of August 29, 2023, is not dispositive. The mistake was noticed immediately, before counsel left the courthouse, and corrected. Counsel was able to inform his client right away.³

The Court further finds that Ms. Ortiz’s failure to appear on August 29, 2023 was not a result of excusable neglect. She was informed of the correct trial date and her counsel freely admits that he knew the correct trial date. Counsel reminded Ms. Ortiz of the trial date the day before, and despite being four hours away (as her son represented), she chose not to make it a priority to return to Massachusetts for the next day’s trial. Moreover, the Court is not convinced that there is any other reason justifying relief from judgment. Any confusion about the trial date had been clarified, and Ms. Ortiz knew about the trial at least by the day prior. The Court rules that the specific circumstances presented here do not justify relief from judgment for possession.

² Ms. Ortiz seems to argue the “good cause” standard, which applies when default, but not judgment, has entered.

³ Although Ms. Ortiz used a Spanish interpreter at the hearing, she was accompanied by a daughter and son both on August 15, 2023, when the new trial date was scheduled, and at the hearing on the instant motion. Although the daughter claims not to speak English well, Ms. Lubega showed the Court a string of text messages she had with Ms. Ortiz’s daughter in which Ms. Ortiz’s daughter communicated well in English. The Court does not believe that a language barrier was the reason Ms. Ortiz failed to appear for trial.

Although the Court declines to vacate the judgment, Ms. Ortiz retains her monetary claims against Ms. Lubega. Ms. Ortiz's claims have not been adjudicated, and because counterclaims in summary process cases are permissive rather than compulsory, the Court will allow her to pursue her claims separately from the issue of possession.

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

1. The motion to vacate judgment is denied.
2. The civil matter, 23CV0195, shall be bifurcated from the summary process case, and the Clerk's Office is directed to schedule a case management conference to select a date for a trial on damages.

SO ORDERED.

DATE: September 27, 2023

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

cc: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 18-SP-4324

BANK OF NEW YORK MELLON FKA THE
BANK OF NEW YORK AS TRUSTEE ON
BEHALF OF THE CERTIFICATE HOLDERS OF
THE CWABS INC., ASST-BACKED
CERTIFICATES, SERIES 2005-7 ,

Plaintiff,

v.

GARY YARD, et al.,

Defendants.

ORDER

The following order regarding all pending motions shall enter in the above-captioned matter:

1. The plaintiff's motion to dismiss its action for possession based on the fact that it no longer has any ownership interest in the subject premises is allowed. The

plaintiff's claim for possession is hereby dismissed and the defendant Inglyanna Yard's counterclaims shall be severed and transferred to the Civil Docket in a new matter to be opened by the Clerk's Office entitled *Inglyanna Yard v. Bank of New York Mellon FKA The Bank of New York as Trustee on Behalf of the Certificate Holders of the CWABS Inc. Asset-Backed Certificates, Series 2005-* and scheduled for a Case Management Conference.

2. As a result of the allowance of the motion above, based on the plaintiff no longer having an ownership interest in the subject premises, the plaintiff's motion for Summary Judgment, its motion to strike defendant's late filings and motion for sanctions, and its motion to dismiss are denied, without prejudice.
3. The defendant's motion for Summary Judgment, for enlargement of time, and for attorney's fees are also denied, without prejudice.

So entered this 20th day of September, 2023.

Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-493

AIESHA JAWANDO and DENISE JAWANDO,

Plaintiffs,

v.

ROSEMARY THOMAS,

Defendant.

ORDER

The following order regarding the parties' pretrial motions and motions *in limine* shall enter:

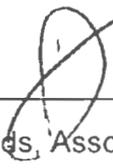
1. **Plaintiffs' Motion for Attorney Voire Dire:** Given that this is the undersigned judge's first time considering such a motion in any case, given the proximity of the trial date, and given the lack of specific questions proposed by moving party for the jury panel, this motion is denied.
2. **Plaintiffs' Motion to Admit Itemized Insurance Payout:** Denied.

3. **Defendant's Motion to Preclude Testimony of Daniel Atkins:** Denied.
4. **Defendant's Motion for Reconsideration Regarding Testimony About the Defendant's Sale of the Property in Violation of a Court Order:** Allowed.
The plaintiff may not elicit testimony regarding the fact that the defendant sold the premise in violation of a court order as it is not relevant to this claims being asserted herein.
5. **Defendant's Motion to Preclude Warrant Barnett as a Witness:** The motion is denied in part and allowed in part. Mr. Barnett may testify about his observations of the existence of the appearance of mold in the property and his observations about the condition of that mold when he purchased (e.g. painted over) but may not testify about whether the defendant failed to disclose same to him prior to his purchasing the property.
6. **Statement to be Read to the Jury Venire:** The following was proposed by the plaitniffs and no statement was proposed by the defendant. Accordingly, this will be read to the jury: The relevant real estate at 19 Caldwell Place, Springfield, Massachusetts, is a two-bedroom residential home. The Plaintiffs rented the premises for over two (2) years. The Plaintiffs herein are claiming sickness due to alleged exposure to mold at the premises, property damage, and lost wages. The Plaintiffs allege their injuries were caused by the negligent maintenance of the premises by the Defendant, which is denied. The Defendant denies that she did anything improper, denies that she was negligent, and denies that she caused or contributed to any of the Plaintiffs' alleged damages. The Defendant further contests the nature, extent, and

causal relationship of the Plaintiffs' alleged damages. The Defendant claims that any harm caused to the Plaintiffs was caused by their own actions. The Defendant claims the Plaintiffs failed to pay rent. The Plaintiffs claim they did not owe rent due to the conditions of the premises.

7. **Other Motions *In Limine*:** If any motion *in limine* previously filed was not addressed herein, the parties shall bring such information to the court's attention by no later than October 3, 2023, at 9:00 a.m.

So entered this 21st day of September, 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 RIGHTS
	)	TO POSSESSION AND CERTAIN
DALTON ALEXIS, ET AL.,	)	HOUSING COSTS
)	
DEFENDANTS)	
and)	
)	
OCEAN PROPERTY MANAGEMENT, ¹)	
)	
THIRD PARTY DEFENDANT)	
<hr/>)	

After hearing on September 29, 2023, at which counsel for the receiver, Alfred Shattelroe (the “Receiver”), certain former tenants of 18 Bemis Street, Chicopee, Massachusetts (“18 Bemis Street”)² and third party defendant Ocean Property Management (“OPM”) appeared, the following order shall enter:

1. The former tenants of 18 Bemis Street (“Former Tenants”), all of whom were initially provided emergency temporary housing by the Receiver due to the condemnation of 18 Bemis Street, are deemed to be licensees and their

¹ The Court previously indicated that it would add OPM as a third-party defendant, but it has not yet been added to the case caption.

² Four of the six displaced tenant families are represented by counsel in this case; namely the Rivera family currently residing at 41 Mosher Street, 2R, Holyoke, Massachusetts, the Caregena/Roman family currently residing at 50 West Street, 3R, Holyoke, Massachusetts, the Cartegena/Burgos family currently residing at 210 Suffolk Street, Holyoke, Massachusetts and the Aleman family, who recently vacated 171 Sargeant Street, 3R, Holyoke, Massachusetts.

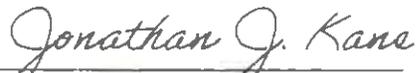
licenses to occupy their current residences has been revoked. Accordingly, all Former Tenants and their families who continue to reside in alternative housing the tenants shall vacate immediately. This order applies to:

- a. Angel Rivera and family currently residing at 41 Mosher Street, 2R, Holyoke, Massachusetts (“41 Mosher Street”);
 - b. Luis Cartegena and family currently residing at 50 West Street, 3R, Holyoke, Massachusetts (“50 West Street”);
 - c. Maria Aleman and family, most recently residing at 171 Sargeant Street, Holyoke, Massachusetts; and
 - d. Jessica Cartegena and family currently residing at 210 Suffolk Street, Holyoke, Massachusetts (“210 Suffolk Street”).
2. If the above-referenced Former Tenants do not vacate by October 10, 2023, OPM (in the case of 41 Mosher Street and 50 West Street) and the Receiver (in the case of 210 Suffolk Street), shall be entitled to entry judgment for possession nunc pro tunc to September 22, 2023. Executions shall issue upon written application on or after October 5, 2023; however, no levy on execution may occur before November 1, 2023.
 3. Any security deposits held by Defendant Dalton Alexis (“Owner”) shall be refunded to the Tenants forthwith. If any of the Tenants do not receive their security deposits within thirty days of this order, they may bring an action to recover their security deposit and, if they prevail, treble damages and attorneys’ fees pursuant to G.L. c. 186, § 15B.
 4. Because the Court relieved the Receiver of its obligation to provide alternative housing as of April 1, 2023, any rents unpaid by the former

tenants of 18 Bemis Street from April 1, 2023 through September 2023³ may be recoverable in an action by the Receiver against the Owner, whose failure to maintain the property at 18 Bemis Street is the reason for the condemnation, which led to the receivership, which in turn led to the Receiver placing the Tenants in temporary alternative housing.⁴

SO ORDERED.

DATE: October 2, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

³ In calculating unpaid rent, the Court notes that counsel for the Tenants represented that rent was paid for April and May 2023 for 50 West Street and that \$1,250.00 was paid in April 2023 for 41 Mosher Street. The occupants of 171 Sargeant Street paid in full for April and May 2023 and then vacated, and therefore no rent remains collectable for that unit.

⁴ The rents due through March 31, 2023 are the responsibility of the Receiver and included in the Receiver's priority lien as set forth in the Court's separate order establishing the priority lien.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0317

_____)	
TOWN OF CUMMINGTON,)	
)	
PLAINTIFF)	
)	
v.	)	ORDER TO COMPLETE CLEAN-UP
)	
SAUL CASDIN,)	
)	
DEFENDANT)	
_____)	

This code enforcement matter came before the Court on October 2, 2023 for review pursuant to a July 31, 2023 court order. The property in question is located at 216 Berkshire Trail Rt 9, Cummington, Massachusetts (the “Property”). Plaintiff appeared through counsel and Defendant appeared self-represented. After hearing, the following order shall enter:

1. Defendant shall complete the clean-up work described in items 1 through 4 on the inspection report from September 7, 2023 forthwith.
2. Plaintiff shall prepare, serve and file a motion for the appointment of a receiver to bring the Property into compliance with the State Sanitary Code, including without limitation 105 CMR 410.570 (“the owner of any parcel of land, vacant or otherwise, shall be responsible for maintaining such parcel of land in a clean, safe and sanitary condition and free from ... refuse [and] any other condition which affects the health, safety or well-being of the occupants of any resident or of the general public”). The motion shall be

withdrawn by Plaintiff if, by the time of the hearing on said motion, the Property is in compliance with the State Sanitary Code.

3. Plaintiff's motion for appointment of a receiver shall be scheduled for December 18, 2023 at 9:00 a.m. in the Hadley session. The motion and any supporting evidence (photographs, etc.) must be served and filed at least ten days prior to the hearing. Any evidence that Defendant intends to show the Court must also be served and filed at least ten days prior to the hearing.

SO ORDERED.

DATE: October 2, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

Plaintiff may enlist the assistance of law enforcement to remove Defendant and her household members from the Premises. Plaintiff may thereafter change the locks to prevent Defendant and her household members from reentering the Premises.

3. Any belongings left in the Premises at the time Defendant and her household members are removed shall be stored by Plaintiff in a secure location for no less than 60 days to allow Defendant to retrieve them.
4. Plaintiff shall pay the \$90.00 legislative fee for injunctive relief within twenty days of this order.

SO ORDERED.

DATE: October 5, 2023

cc: Court Reporter



Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1666

CENTURY PACIFIC HOUSING PARTNERSHIP
X,

Plaintiff,

v.

LUIS GARCIA-LORENZO

Defendant.

ORDER

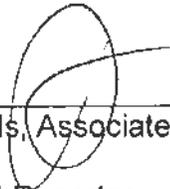
After hearing on August 31, 2023, on the defendant tenant's Motion to Dismiss, the following order shall enter:

1. **Background:** The underlying facts are essentially undisputed. The tenant resides at 15 Girard Avenue, Apartment 701, Springfield, Massachusetts in an apartment building owned and managed by the landlord, Century Pacific Housing Partnership. The tenant signed a lease for Apartment 405 to begin his tenancy approximately seven years prior. Subsequently, he was moved to Apartment 306 due to major reconstructive and rehabilitative maintenance work at the premises. In August 2023, the was moved again to Apartment 701, the apartment that he currently occupies. On January 27, 2023, the landlord served the tenant with a Notice to Quit for nonpayment of rent and

thereafter a summary process summons and complaint. The tenant filed a motion to dismiss (ad in the alternative to file late answer and discovery).

2. **The motion to Dismiss:** The basis for the motion to dismiss is that the landlord is seeking rent allegedly stemming from the tenant's occupancy of a previous apartment (Apartment 306) as the basis for the instant notice to quit and summons and complaint, but the tenant currently lives in Apartment 701.
3. Without a reservation of rights reserving the landlord's right to seek rent/use/occupancy from the prior tenancy, it cannot seek a non-payment of rent eviction based on the former tenancy—as is the case here. See, *Beacon Residential Mgmt. v. Pierre-Morisset*, Boston Housing Court No. 10-SP-0316 (Nov 9, 2010, Winik, J.)¹.
4. This does not mean that the landlord is left without remedy to seek such funds in another legal action such as small claims. It does mean however, that it may not pursue summary process for said funds.
5. **Conclusion and Order:** Accordingly, the motion to dismiss is allowed and this action is dismissed, without prejudice.

So entered this 6 day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

¹ Landlord counsel was given two weeks to file a serve proof of a reservation of rights which would purport to allow it to seek use and occupancy/rent from Apartment 306 in a summary process action once the tenant moved to Apartment 701. Counsel did not file any such document.

Defendant testified that he had intermittent problems with the heating system. In December 2022, he informed Plaintiff that he had no heat. The problem would get resolved and heat would return temporarily, but then it would stop working again. Defendant sent technicians to check on the system on one or more occasions. The evidence shows that the heating problems stemmed from two issues. First, the boiler required that water be added manually and, apparently, Defendant was having trouble with the process. Plaintiff, who lives out of town, used a video call on more than one occasion to instruct Defendant on the proper procedure for adding water. Even if Defendant did not follow the instructions properly, the Court finds that he cannot be held responsible given that the requirement of providing sufficient heat during heating system is solely the landlord's obligation.¹ Second, in the same time period that Defendant was having issues with the heat, Plaintiff testified that he had contractors working in the basement and debris from the construction interfered with the sensor on the heating system, which caused it not to work properly until the sensor was cleaned.

On February 5, 2023, water overflowed the bathtub on the second floor, causing the kitchen ceiling below to collapse and for water to flood the house. The City of Springfield Code Enforcement Department ("code enforcement") condemned the home on February 6, 2023. Records from code enforcement (which were admitted into evidence without objection) show that the Premises were reinspected on

¹ At some point over the winter, Plaintiff installed an auto-fill system, although he could not remember exactly when the work was done. The heating system has functioned properly since the installation.

March 3, 2023 and again on March 6, 2023, and that it failed the reinspection on both dates for lack of heat. Defendant testified that he was able to return to live in the home in the middle of March after the heat had been restored and the ceilings repaired; however, code enforcement records showed that the house failed inspection again on April 6, 2023 and did not pass inspection until April 27, 2023. Neither party testified about the April 6, 2023 inspection nor did any party call a witness from code enforcement, so the Court accepts Defendant's testimony that he was able to return to the Premises in mid-March.²

Conditions Claims

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); see *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State Sanitary Code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019) (citation omitted). Damages for breach of the implied warranty of habitability are measured by "the difference between the value of the premises as warranted (the rent may be evidence of this value) and the value of the premises as it exists in its defective condition." *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994). In this case, Defendants carried their burden of establishing certain conditions

² Plaintiff testified that the reason for delay in obtaining a passing inspection was Defendant's refusal of access. The code enforcement records show that access was denied on only one occasion, March 22, 2023. The Premises failed the reinspection on April 6, 2023, and the records do not show any further attempts to reinspect until April 27, 2023, when the house passed inspection.

of disrepair. Damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) (“While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference.”).

The absence of heat at times in December 2021 and January 2023, and the complete loss of heat from February 5, 2023 to mid-March 2023, during which time Defendant was unable to reside at the Premises, constitutes a breach of the warranty of habitability.³ Rent is abated completely for the period of time Defendant could not reside in the Premises, and 50% for the days in December and January with no heat. At a per diem rent of \$40.00, the Court awards \$2,000.00 in damages.

Plaintiff’s failure to furnish heat, as well as the substantial interference with Defendant’s quiet enjoyment by virtue of the condemnation, also constitutes a clear violation of the quiet enjoyment statute, G.L. c. 186, § 14. Damages for violations of § 14 are the greater of statutory damages (three times a month’s rent) and actual and consequential damages. In this case, because Plaintiff failed to provide alternative housing for the period of time that the Premises was condemned, the actual and consequential damages may be significant. However, Defendant provided no evidence to support an award of actual and consequential damages, so the Court awards

³ Plaintiff asks the Court to believe that Defendant is responsible for flood because the tub faucet was broken off. Defendant claims that the faucet broke off due to frozen pipes. Because there is insufficient evidence to find that Defendant intentionally broke the faucet, the responsibility for the flood, whether due to frozen pipes, a faulty faucet or something else, lies with Plaintiff.

statutory damages of \$3,600.00. Because this award is greater than the award for breach of warranty, and because both awards arise out of the same set of facts and circumstances, the Court awards only quiet enjoyment damages.⁴

Retaliation

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

The Court finds that Defendant contacted code enforcement on February 6, 2023 due to the absence of heat after the flood. Even if the March 2023 notice to quit for non-payment (which is not in evidence but which both parties acknowledge was sent) does not raise a presumption of presumption, Plaintiff served a no fault notice to quit on April 28, 2023, which is within the six month period for the presumption to arise. Plaintiff did not demonstrate that he would have served the notice to quit in the same manner and at the same time regardless of the complaint to code enforcement. In fact, Plaintiff testified that because of the long-standing relationship

⁴ To the extent Defendant made other conditions claims, such as lack of insulation, those claims were not supported by the evidence.

between his family and Defendant's family, he regularly worked cooperatively with Defendant when he fell behind in rent. The difference from previous instances when Defendant fell behind is that, in this case, Plaintiff expressed his displeasure that Defendant involved code enforcement. On Defendant's retaliation claim, the Court awards three month's rent; namely, \$3,600.00.

The damages to which Defendant is entitled must be compared to the amount found by the Court to be due to Plaintiff.⁵ The complaint avers that \$950.00 in arrears accrued through January 2023, and the parties agree that Defendant has made no payments since February 2023, a period of seven months. The total balance based on Plaintiff's testimony is thus \$9,350.00; however, Plaintiff admitted that this figure includes late fees of \$75.00 per month since January, so \$600.00 shall be deducted from the total, leaving \$8,750.00 due in rent arrears. Although Defendant testified that the amount should be less, he offered no evidence of any payments that would reduce that figure.

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

1. Defendant is entitled to \$7,200.00 in damages on account of his counterclaims.
2. Plaintiff is entitled to unpaid rent in the amount of \$8,750.00, plus court costs and interest.

⁵ To the extent Plaintiff contends that G.L. c. 239, § 8A cannot be used to defeat possession because Defendant was behind in the rent before complaining of conditions, Plaintiff did not adequately establish when Defendant was first behind on the rent.

3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$1,550.00, plus court costs of \$ 192.25 and interest in the amount of \$ 55.58, for a total of \$ 1797.83. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."
4. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
5. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiff for possession and damages in the amount of \$1,550.00, plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: October 6, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4802

SECRETARY OF VETERAN AFFAIRS,

Plaintiff,

v.

KENNETH JEKOT and ANGELIQUE JEKOT,

Defendants.

ORDER

After hearing on September 7, 2023, on the plaintiff's Motion for Appointment of Special Process Server Under Rule 4C, the following order shall enter:

1. The plaintiff's Motion for Appointment of Special Process Server is denied, for the reasons stated below, without prejudice.
2. **Discussion:** The steps of becoming a constable include completing a training, filling out an application, passing an investigation into your character a moral refute, acquiring a license, being appointed or elected and being bonded. For a

constable to levy an eviction, they must be appointed/elected, licensed and bonded *in the city of which the eviction is taking place* (emphasis added). To serve civil process, constables must keep accurate records and abide by the court's rules of service. Furthermore, constables must continue follow the procedures of G.L.A. ch.41 §91-95 on reporting income and sharing a percentage of profits with the city/town in which they are appointed/elected for the entirety of their terms.

3. Sheriffs and constables are the only people that can levy on a physical eviction provided that they give a 48-hour notice to the tenants. A constable is an "officer of a municipal corporation whose duties are similar to those of the sheriff; however, the constable's powers are fewer and the constable's jurisdiction is smaller." 80 C.J.S. Sheriffs and Constables §19. To be a constable in Massachusetts, one must apply, be elected or appointed, trained and bonded. In Massachusetts, if an applicant has less than three years of experience as a constable, they must complete a Constable training course to receive a certificate. With this certificate, applicants are able to apply for their constable license through the application process. An application must contain: reasons for desiring such appointment and such information as may be reasonably required by said authority relative to his fitness for said office. Such application shall also contain a statement as to the moral character of the applicant signed by at least five reputable citizens of the city or town of his residence, once of whom shall be an attorney-at-law. G.L. ch.41 §91B

4. Following an application, appointing authority then investigates further into the "reputation and character" of the applicant to make sure they are a "person of good repute and character and qualified to hold said office." *Id.* After a thorough investigation aided by public officers, constables are granted licenses and can be elected by the "selectmen in any town may from time to time appoint, for terms not exceeding three years" G.L. ch.41 §91A.
5. The final step in becoming a constable is to become bonded. Constables are able to serve or execute civil process if they are bonded *in the city or town in which the processes are to be served.* (Emphasis added) G.L. c.41 §92, which relates to service of civil process, states:

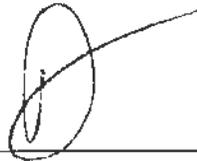
A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen endorsed thereon, with the town clerk, *may within his town serve...any writ or other process under chapter two hundred and thirty nine.*

6. Constables are also required to "periodically pay the city or town in which the constable is appointed or elected 25 per cent of all fees the constable collects for the service of civil process under the fee structure established in section 8 of chapter 262." G.L. ch.41 §95A. Additionally, after appointment a constable must "perform the duties of the office as prescribed by law." 80 C.J.S. Sheriffs and Constables §19. These duties include, but are not limited to, reporting their income to the town annual. A constable "shall annually on or before April 15 file with the city or town treasurer an account signed under the penalties of perjury of all fees and money received by him under section 8 of chapter 262 for the

service of civil process." G.L. ch.41 §95B. Such account must include "an itemization of all civil process fees charged by the constable's civil process office, all revenue received from said fees and all amounts paid by the constable to any city or town treasurer on account of such civil process fees." Id.

7. **Conclusion and Order:** Based on the foregoing, and given that the plaintiff is seeking the court to use its discretion under 4C to appoint a special process server, the court does not perceive a compelling purpose to make such an appointment---especially when there appears to be constables and Springfield-based constables and Hamden County sheriffs. Accordingly, the motion is denied without prejudice.

So entered this 6 day of October 2023.



Robert Fields, Associate Justice

CC: Court Reporter

MR.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1147

FREEDOM MORTGAGE CORPORATION,

Plaintiff,

v.

HAJI REED,

Defendant.

ORDER

After hearing on September 5, 2023, on the plaintiff's Motion for Appointment of Special Process Server Under Rule 4C, the following order shall enter:

1. The plaintiff's Motion for Appointment of Special Process Server is denied, for the reasons stated below, without prejudice.
2. **Discussion:** The steps of becoming a constable include completing a training, filling out an application, passing an investigation into your character a moral refute, acquiring a license, being appointed or elected and being bonded. For a

constable to levy an eviction, they must be appointed/elected, licensed and bonded *in the city of which the eviction is taking place* (emphasis added). To serve civil process, constables must keep accurate records and abide by the court's rules of service. Furthermore, constables must continue follow the procedures of G.L.A. ch.41 §91-95 on reporting income and sharing a percentage of profits with the city/town in which they are appointed/elected for the entirety of their terms.

3. Sheriffs and constables are the only people that can levy on a physical eviction provided that they give a 48-hour notice to the tenants. A constable is an "officer of a municipal corporation whose duties are similar to those of the sheriff; however, the constable's powers are fewer and the constable's jurisdiction is smaller." 80 C.J.S. Sheriffs and Constables §19. To be a constable in Massachusetts, one must apply, be elected or appointed, trained and bonded. In Massachusetts, if an applicant has less than three years of experience as a constable, they must complete a Constable training course to receive a certificate. With this certificate, applicants are able to apply for their constable license through the application process. An application must contain: reasons for desiring such appointment and such information as may be reasonably required by said authority relative to his fitness for said office. Such application shall also contain a statement as to the moral character of the applicant signed by at least five reputable citizens of the city or town of his residence, once of whom shall be an attorney-at-law. G.L. ch.41 §91B

4. Following an application, appointing authority then investigates further into the “reputation and character” of the applicant to make sure they are a “person of good repute and character and qualified to hold said office.” *Id.* After a thorough investigation aided by public officers, constables are granted licenses and can be elected by the “selectmen in any town may from time to time appoint, for terms not exceeding three years” G.L. ch.41 §91A.
5. The final step in becoming a constable is to become bonded. Constables are able to serve or execute civil process if they are bonded *in the city or town in which the processes are to be served.* (Emphasis added) G.L. c.41 §92, which relates to service of civil process, states:

A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen endorsed thereon, with the town clerk, *may within his town* serve...any writ or other process under chapter two hundred and thirty nine.

6. Constables are also required to “periodically pay the city or town in which the constable is appointed or elected 25 per cent of all fees the constable collects for the service of civil process under the fee structure established in section 8 of chapter 262.” G.L. ch.41 §95A. Additionally, after appointment a constable must “perform the duties of the office as prescribed by law.” 80 C.J.S. Sheriffs and Constables §19. These duties include, but are not limited to, reporting their income to the town annual. A constable “shall annually on or before April 15 file with the city or town treasurer an account signed under the penalties of perjury of all fees and money received by him under section 8 of chapter 262 for the

service of civil process." G.L. ch.41 §95B. Such account must include "an itemization of all civil process fees charged by the constable's civil process office, all revenue received from said fees and all amounts paid by the constable to any city or town treasurer on account of such civil process fees." *Id.*

7. **Conclusion and Order:** Based on the foregoing, and given that the plaintiff is seeking the court to use its discretion under 4C to appoint a special process server, the court does not perceive a compelling purpose to make such an appointment----especially when there appears to be constables and Springfield-based constables and Hamden County sheriffs. Accordingly, the motion is denied without prejudice.

So entered this 31st day of October 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NOS. 23-CV-0475
AND 23-CV-0552

CITY OF HOLYOKE,

Plaintiff

v.

JOEL ROJAS, ET AL.,

Defendants

ORDER TO CONTINUE PROVIDING
TEMPORARY ALTERNATIVE HOUSING

Re: 186 Suffolk Street, Holyoke, Massachusetts (the "Premises")

This case came before the Court on October 11, 2023 on Plaintiff's motion for the appointment of a receiver. Plaintiff appeared through counsel, Defendant owner Joel Rojas ("Mr. Rojas") and tenants Edgar Oliveros and Micol Burgos Serrano ("Tenants") appeared self-represented. Counsel for the proposed receiver, Patriot Property Management Group, also appeared.

After hearing, the following order shall enter:

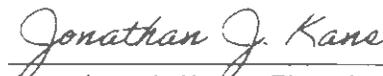
1. Because Mr. Rojas has made substantial efforts to have the condemnation lifted since the last court date, and because he has complied with the Court's order to provide Tenants with temporary alternative housing, the motion to appoint a receiver is continued to October 17, 2023 at 11:00 a.m.
2. Mr. Rojas shall open and close electrical, plumbing and building permits by 9:00 a.m. on October 17, 2023, and allow Plaintiff to inspect at that time.
3. Mr. Rojas shall continue to provide temporary alternative housing to Tenants through the next Court date. If he can locate a pet-friendly hotel in the same vicinity as the current hotel at roughly the same cost, he shall place Tenants (and

their daughter) there; otherwise, he shall continue the current hotel arrangement.

4. If Mr. Rojas fails to provide the alternative housing, or if he fails to take the necessary and appropriate actions to have the condemnation lifted by the next Court date, the Court will consider appointing Patriot Property Management Group as receiver.¹
5. Although the Court's primary focus is on ensuring that the condemnation gets lifted so that Tenants can return to the Premises, nothing in this order relieves Mr. Rojas from correcting all code violations within the time frames ordered by Plaintiff.
6. Tenants shall not reside at the Premises prior to the next court date and shall not prohibit Mr. Rojas and his agents from entering the Premises for the purpose of making repairs. If Mr. Rojas has changed locks to the Premises in order to gain entry, he shall immediately provide a key to Tenants.
7. Neither party shall make threats or engage in acts of intimidation or harassment toward the other.
8. The parties shall appear for review on **October 17, 2023 at 11:00 a.m.**

SO ORDERED.

DATE: October 11, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ The Court excused counsel for the proposed receiver from the next hearing.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

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

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

PLAINTIFF

v.

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

DEFENDANTS

ORDER DISMISSING APPEAL

This post-foreclosure summary process case came before the Court on October 11, 2023 on Plaintiff's motion to dismiss Defendant Michael Martowski's appeal pursuant to G.L. c. 239, § 6(g). Plaintiff appeared through counsel. Defendant Michael Martowski appeared self-represented. Defendant Sherri Martowski also appeared.

Judgment for possession entered against Defendants on July 13, 2023. Michael Martowski filed a timely notice of appeal on July 20, 2023. On August 31, 2023, after a hearing on Plaintiff's motion to set an appeal bond, the Court ordered Michael Martowski to deposit a bond in the amount of \$38,922.00, and, beginning on

September 5, 2023, to pay \$1,497.00 each month for his continued use and occupancy of the subject premises. Michael Martowski did not appeal the ruling.

After hearing, the Court finds that Defendant did not pay the bond and has not made any use and occupancy payments. Accordingly, the Court hereby dismisses the appeal.

SO ORDERED.

DATE: October 12, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

TRIAL COURT

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-CV-799**

**CITY OF SPRINGFIELD, CODE
ENFORCEMENT DEPARTMENT,**

Plaintiff,

v.

DONALD CHRISTENSEN,

Defendant.

ORDER

After Defendant Christensen submitted an Affidavit of Indigency on August 9, 2023 requesting compensation for installation of two smoke detectors to comply with a Court Order, the following order shall enter:

1. Defendant's Affidavit of Indigency for repayment of costs to install two smoke detectors to comply with the Court Order issued on July 17, 2023, is granted.

2. The underlying facts are undisputed. Defendant Donald Christensen was appointed a *guardian ad litem*, Ed Bryant, by the Court on May 8, 2023. Defendant Christensen's home was previously deemed uninhabitable due to conditions of disrepair. A Court Order on July 17, 2023, required, among other things, for Mr. Christensen to "install smoke detectors at the following locations at the property no later than July 31, 2023, at 9:00 a.m." Acting as his *guardian ad litem*, Ed Bryant installed two combination smoke detectors at the property on or around July 20, 2023, to comply with the Court Order. Ed Bryant, acting in his role of *guardian ad litem* for Donald Christensen, requests this Court to reimburse him for the cost of two smoke detectors in the amount of \$127.44 using an Affidavit of Indigency.
3. An Affidavit of Indigency is awarded to "level the playing field between indigent litigants and those of means with respect to fees and costs of litigation." *In re Edwards*, 464 Mass. 454 (2013). Affidavits of Indigency are governed by *G.L. ch. 261 §27A-F*. Here, Defendant Christensen asks the Court to grant the costs of smoke detectors under "extra fees and costs." *G.L. ch. 261 §27(C)(4)*. The pertinent parts of *G.L. ch.261 §27(C)(4)* state:

If the court makes a finding of indigency, it shall not deny any request with respect to normal fees and costs, and it shall not deny any request with respect to extra fees and costs if it finds the document, service or object is reasonably necessary to assure the applicant as effective a prosecution, defense or appeal as he would have if he were financially able to pay.
4. Furthermore, §27(A) defines "extra fees and costs" to "include, *but not necessarily be limited to*, the cost of transcribing a deposition, expert

assistance and appeal bonds and appeal bond premiums." *G.L. ch.261 §27(A)*. (Emphasis added)

5. The standard for granting requests of "extra fees and costs" to indigent litigants is one of "reasonableness." *Commonwealth v. Lockley*, 381 Mass. 156 (1980). Furthermore, the Supreme Judicial Court in *Lockley* elaborates that:

The test is not whether a particular item or service would be acquired by a [party] who had unlimited resources, nor is it whether the item might conceivably contribute some assistance to the defense or prosecution of the indigent person. [...] The test is whether the item is reasonably necessary to prevent the party from being subjected to a disadvantage in preparing or presenting his case adequately, in comparison with one who could afford to pay for the preparation which the case reasonably requires. *Id.*

6. Thus, *Lockley* establishes that questions related to whether or not the indigent party would be disadvantaged presenting or preparing for their case, not whether or not the person would have acquired it if they could have afforded it. *Id.* There are many considerations for a Judge to make when deciding whether to grant or deny extra fees or costs, such as the "cost of the requested item and its potential value." *In re Edwards*, 464 Mass. 454 (2013). The cost of the requested items here is not unreasonable, totaling \$127.44. Furthermore, its potential value greatly outweighs its cost.
7. When extra costs and fees relate to court proceedings, a Judge has the discretion to grant or deny the requests using a reasonable standard. There is no indication in *G.L. ch.261 §27A-F* was not meant to include costs relating to complying with a court order within reason. The installation of these smoke detectors allowed Springfield Fire Department to inspect and pass the

premises for habitability and has afforded, and will continue to afford, Mr. Christensen more time to adequately repair the premises to bring it up to code. Without the smoke detectors, Mr. Christensen was in jeopardy of failing to comply with a Court Order and his property remaining condemned by the city of Springfield for its code violations.

8. The court is afforded discretion under *G.L. ch.261 §27A-F* to grant or deny costs to indigent parties to ensure effective litigation. Furthermore, the court "shall not deny any request with respect to extra fees and costs if it finds the document, service or object is reasonably necessary." *G.L. ch.261 §27(C)(4)*. Accordingly, the court finds the costs of two smoke detectors totaling \$127.44 reasonably necessary to assure Mr. Christensen's compliance with a court order and ensure that he is not disadvantaged in these proceedings due to his impoverishment.
9. Accordingly, the motion is allowed, and the Commonwealth shall substitute the costs of the detectors at an amount of \$127.44.

So entered this 13th day of October, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1586

ERIKA COOPER,

Plaintiff,

v.

MELVIN BERRIOS,

Defendant.

ORDER

This matter came before the court for trial on September 5, 2023, at which the landlord appeared with counsel and the tenant appeared *pro se*. After consideration of the evidence admitted at trial, the following order shall enter:

1. **Background:** The plaintiff, Erika Cooper (hereinafter, "landlord") owns a two-family dwelling located at 87 Cedar Street in Springfield, Massachusetts (hereinafter, "premises" or "property"). When the landlord purchased the property in March 2023, the defendant, Melvin Berrios (hereinafter, "tenant") was residing in the second-floor unit. On or about December 30, 2022, the landlord had the tenant served with a no-fault notice to quit and thereafter

with a summons for a summary process eviction case which, among other things, stated that no rent would be accepted.

2. **The Landlord's Claim for Rent and for Possession:** The tenant was paying \$600 to the former landlord when the landlord first purchased the premises. The landlord attempted to raise the rent but there was no meeting of the minds on the rent amount until the parties were in court for a Tier 1 event on June 2, 2023, when the parties entered into an interim agreement and established the rent at \$1,000 per month. Since that time, the tenant has paid his rent (\$1,000) each month. Accordingly, the court finds that no rent, use, or occupancy is outstanding.
3. **G.L. c.239, s.9:** The tenant is seeking time to relocate pursuant to G.L. c.239, s.9. Based on the record before the court, the tenant shall be given further opportunity to find and secure alternate housing. The tenant shall continue to pay his rent (\$1,000 per month) and shall maintain a log of his housing search. The record also reflects that the tenant is disabled.
4. **Next Hearing:** This matter shall be scheduled for review on **October 31, 2023, at 2:00 p.m.** The parties shall review the tenant's housing search and the parties may be heard as to whether the court should grant and further time to relocate.

So entered this 13 day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO.: 22SP 2528

MARLENE RYAN, CLIVE RYAN
Plaintiffs¹

v.

TAMEEKA REEVES
Defendant²

FINDINGS OF FACT, RULINGS AND ORDER FOR ENTRY OF JUDGMENT

The Plaintiff brought the present matter alleging the Defendants materially breached the terms and conditions of their tenancy agreement. This matter was before the Court for an in-person trial held on April 20, 2023. Plaintiffs appeared represented by counsel. Defendant appeared self-represented. The Defendant filed an Answer and Counterclaim alleging violations of the state sanitary code, interference of quiet enjoyment and cross metering. Based on the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law, the Court makes the following findings:

FINDINGS OF FACT

The Plaintiffs are the owners and lessors 118 Cornell Street, First Floor, Springfield, MA ("Premises"). The Plaintiff commenced summary process in the present matter to recover possession of the Premises based on violations of the lease. In a Notice to Quit delivered to the Defendants on June 8, 2022, the Plaintiffs set forth the reasons alleging the Defendant substantially violated the terms and conditions of their tenancy agreement. (Exhibit 2).

The Plaintiff resides on the premises pursuant to a subsidized lease, administered by Catholic Charities. The contract rent is \$900.00 per month. Catholic Charity's share of the rent was \$180.00 per month, increasing to \$186.00 per month in April of 2023. The Plaintiff claims \$2,874.00 (January 2023 through March 2023 at \$720.00, April 2023 at \$714.00). Specifically, the Plaintiff claims the Defendants permitted her son to reside on the premises without permission

¹ As used herein, the term "Plaintiff" refers to all persons identified in the caption on the line marked "Plaintiff."

² As used herein, the term "Defendants" refers to all persons identified in the caption on the line marked "Defendants."

of the landlord, paid rent habitually late and changed locks to a bathroom window. The Plaintiff claimed \$2,874.00 in rent owed through the end of April based on Defendant's share of the rent. (Exhibit 1). The Plaintiff's claim the Defendant violated the Lease Agreement. (Exhibit 1).

The Plaintiff testified that she observed the Defendant's son on the premises because she lives on the second floor. Additionally, she has a home security system that records video surveillance but did not introduce any video indicating an unauthorized occupant. The Plaintiff testified the Defendant broke a lock on a window in the bathroom. However, the Plaintiff failed to provide any evidence in addition to her testimony. The Court credits the Plaintiff's testimony that the Defendant owes \$2,874.00 in rent.

The Defendant testified of conditions on the premises. The Defendant submitted proposed exhibits but never introduced the documents as evidence at trial. The Defendant testified that the City of Springfield cited the Plaintiff for two separate incidents of cross metering, that were corroborated by the Plaintiff. The Defendant denied her son lived on the premises without written permission of the Plaintiff or that she caused any damage to any windows on the premises. The Court credits the Defendant's testimony.

RULINGS OF LAW

Paragraphs 3,5, and 12 list the Defendants responsibilities. Under the terms of the tenancy, the Defendants agree to not assign or sub-let, make alterations or improvements without written permission, pay the rent by the due date, or make alteration to the premises without written permission of the landlord. *See Spence v. Gormley*, 387 Mass. 258 (1982); and *Hodes v. Bonefont*, 401 Mass. 693 (1987). The Court finds with the exception of the rent owed, the Plaintiff did not prevail on her claims the Defendant violated the terms of the lease by a preponderance of the evidence. *See Spence v. Gormley*, 387 Mass. 258 (1982); and *Hodes v. Bonefont*, 401 Mass. 693 (1987).

Generally, a Defendant cannot assert traditional counterclaims to defeat a claim for possession for violation of the lease. However, given the litigation posture in this case, the Court allowed the Defendant to testify regarding her claims on the basis of due process and judicial economy.

The Defendant claimed the Plaintiff allowed cross metering on the premises. The parties testified that the Plaintiff was cited on two separate occasions for cross metering by the City of Springfield. 105 CMR 410.354 prohibits cross-metering of utilities such as that which existed in

the premises. Based on all credible evidence at trial, the Court finds the Plaintiff acted at least negligently and breached the covenant of quiet enjoyment in violation of G.L. c. 186 §14 because of the two incidents of cross metering. The Court will award the Defendant \$2,700.00 (representing three months' rent at \$900.00) for said violation. Said \$2,700.00 shall be used as a set off against Plaintiff's claim for \$2,874.00 leaving a balance owed to Plaintiff in the amount of \$174.00 ($\$2,874.00 - \$2,700 = \174.00).

Therefore, judgment shall enter for possession for Defendant on Plaintiff's claim the Defendant materially breached a term of the tenancy agreement. Judgment shall enter for Plaintiff in the amount of \$174.00 in damages. Said amount shall not affect the Defendant's claim to possession as this is a fault-based summary process action.

ORDER FOR JUDGMENT

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

1. Judgment shall enter for the **Defendant** for possession.
2. Judgment shall enter for damages for Plaintiff in the amount of \$174.00.

SO ORDERED.

October 13, 2023

Sergio E. Carvajal
SERGIO E. CARVAJAL
JUSTICE, HOUSING COURT

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-CV-1088

TOWN OF EAST LONGMEADOW)	
HEALTH DEPARTMENT,)	
)	
PLAINTIFF)	
)	
v.	)	ORDER
)	
WILLIAM ROGERS, ET AL.,)	
)	
DEFENDANTS)	
)	

This code enforcement matter came before the Court on October 13, 2023 for review of an order entered on August 21, 2023. Plaintiff and Metropolitan Life Insurance Company (“Met Life”) appeared through counsel. Defendant William Rogers (“Mr. Rogers”) appeared self-represented. The property in question is located at 37 Thompson Street, East Longmeadow, Massachusetts (the “Property”). It is unoccupied.

Plaintiff contends that Mr. Rogers’ one-page rehabilitation plan is inadequate and unacceptable. Met Life contends that Mr. Rogers failed to provide interior access for inspection. Mr. Rogers contends that he has kept the Property clean and secure and has contractors lined up to demolish part of the structure. After hearing, the following order shall enter:

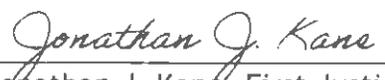
1. Mr. Rogers shall provide Plaintiff with a comprehensive rehabilitation plan for the Property no later than November 3, 2023. This plan must include a

detailed scope of work, timelines for beginning and completing the work, and costs for each step of the process, supported by signed estimates or contracts.

2. Mr. Rogers shall provide interior access to Met Life on October 20, 2023 for an internal and external inspection of the Property. If Mr. Rogers is not present at the scheduled time of inspection, and if he is not represented by an agent acting on his behalf, Met Life's inspectors may change the locks and conduct the inspection without Mr. Rogers being present. If it changes locks, Met Life must immediately provide Mr. Rogers with keys. The change of locks is for the sole purpose of doing the inspection, and it does not transfer ownership or possession to Met Life.
3. The parties shall return for review at 9:00 a.m. on November 10, 2023. All parties and counsel may appear by Zoom, provided that if an evidentiary hearing is necessary, the parties and counsel will have to appear in person.

SO ORDERED.

DATE: October 13, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2597

GINKGO HOLDINGS, LLC,

Plaintiff,

v.

KYLE HOLLAND and LINDA HOLLAND,

Defendants.

ORDER

This matter came before the court for trial on August 24, 2023, at which the plaintiff appeared through counsel and the defendants appeared *pro se*. After consideration of the evidence admitted at this trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Ginkgo Holdings, LLC (hereinafter, "landlord"), owns a 4-unit dwelling at 295 Beech Street in Holyoke, Massachusetts. The defendants, Kyle and Linda Holland (hereinafter, "tenants") have resided in Unit

1R at said property (hereinafter, "premises") for the past ten years. The landlord has owned the property since November 2021. On or about April 26, 2023, the landlord served the tenants with a 14-day notice to quit for non-payment of rent and there after commenced an eviction matter at the court. The tenants filed an Answer with defenses and counterclaims.

- 2. The Landlord's Claim for Rent and Possession:** The landlord is seeking unpaid rent from July 2022 through the month of trial of August 2023. The landlord seeks \$700 for the months of July through December 2022 and \$1,350 for the months of January through August 2023. The landlord basis these calculations on its position that it successfully raised the rent from \$700 to \$1,350.
- 3.** The record before the court, however, does not support a finding that there was ever an agreement to the higher rent nor any behaviors upon which said increase can be required by the court at any time during this tenancy. See, *Lena Street, LLC v. Savannah Berube*, 22-SP-2954, Western Division Housing Court No. 22-SP-2954 (Kane., FJ March 2023); *11 Everett St. Realty Trust v. Hynes*, 2002 Mass. App. Div. 10 (2002); *Pires v. Mendes, et al*, 09-SP-1631 Southeast Division Housing Court (Edwards, J. June 2009).
- 4.** Accordingly, the amount of outstanding rent, use, and occupancy through the month of trial (August 2023) equals 14 months @ \$700, totaling **\$9,800**.
- 5. Transfer of the Obligation to Pay for Utilities to the Tenants:** The tenants have always been responsible for their utilities. So, when the landlord purchased the property in November 2021 the tenants were paying for their utilities. That

said, the parties did not enter into a written lease by which the obligation for utilities were transferred to the tenants as required by law. It is well settled law in the Commonwealth, that damages for a landlord's transfer of utilities without a writing—standing alone with no claim that the premises were rendered defective or cost-excessive—are nominal, often a \$25 damage award pursuant to a Chapter 93A claim for violation of the State Sanitary Code 105 CMR 410.190, 410.201, and 410.354 and G.L. c.93A, §9(3) and 940 CMR 3.17(6)(g). The seminal case on that issue is *David Poncz v. James Loffin*, 34 Mass. App. Ct. 909 (1993). For the nearly quarter century following *Poncz*, there are many decisions (many from the Housing Court Department in all of its divisions) applying the tenets of *Poncz*.

6. 4. The logic of *Poncz* and its progeny is sound and compelling. It appreciates the reality that many landlords and tenants routinely enter into tenancies in which the parties understand that the utilities are not included in the rent and the tenants put the utilities in their names and pay said bills. *Poncz* holds that this arrangement is a violation of the Code of Massachusetts Regulations cited above and, if the landlord is in engaged in trade or commerce within the meaning of Chapter 93A, may be subject to nominal damages. For damages beyond nominal damages, however, a tenant is required to prove actual impact damages to entitle her to more than a nominal award.
7. Examples of actual damages could include proof that the landlord's failure to maintain the premises in good repair increased the cost that the tenant had to pay for utilities, or proof that the oral utility arrangement had a negative financial

impact on the tenant's use and enjoyment of the premises (such as proof that the tenant and the cost of utilities, together, were more than the fair rental value of the premises, or proof that the utility metering was improper. See, *Serge Lamare v. Josette Francois*, Boston Housing Court Docket No. 07-SP-5166 (Winik, J. 2008); *Poncz* at 911. Here, the tenants do not make any claims that the utility payment arrangement that continued from the tenancy with the original landlord caused such damages.

8. Additionally, there is a question of whether this arrangement is a *per se* violation of G.L. c.186, §14 and that the damages would be the cost of said utilities for the entirety of this tenancy. First off, the court finds the analysis and applicability of *Poncz* to be no different for when alleging that the oral agreement violates G.L. c.186, §14. Thus, the same facts that support a ruling that the damages do not include all the utility costs during the entire tenancy under warranty of habitability, the State Sanitary Code, and/or Chapter 93 also support the same legal result in a claim made pursuant to G.L. c.186, §14. Additionally, a review of the various prongs of that statute (G.L. c.186, §14) results in a conclusion that the mere fact that the utilities are transferred to a tenant without a writing—without proof of any other damages stemming from said transfer—does not violate the express terms of statute. G.L. c.186, §14 imposes liability upon landlords with respect to the provision of utilities in three (3) circumstances: First, any landlord of a residential dwelling "who is required by law or by the express or implied terms of any contract or lease or tenancy at will to furnish water, hot water, heat, light, power, gas...so any occupant..." violates §14 if he "...willfully or intentionally fails to

furnish...[such utilities]." Second, a landlord violates §14 if he "...directly or indirectly interferes with the furnishing by another of such utilities..." Third, a landlord violates §14 if he "...transfers responsibility for payment for any utility services to the occupant without his knowledge or consent..." Here, the arrangement was that the tenants were responsible for utilities dating back to the when the tenancy began. See also, *Youghal, LLC v. Entwistle*, 484 Mass. 1019 (2020).

9. Accordingly, on the tenants' claim for the landlord's failure to secure a written agreement that the tenants were responsible for the utilities the court awards them a nominal award of **\$50**.

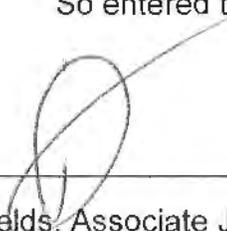
10. Warranty of Habitability: The tenants credibly testified with supporting documents that there was debris directly outside the premises and that the landlord was aware but did not remove same for three months (May through July 2023). This condition constituted a breach of the warranty of habitability for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v Patukonis*, 24 Mass.App.Ct. 907, (1987). The measure of damages for a breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). An abatement of 15% compensates the

tenants for the diminished rental value of the premises resulting from the condition of the debris-strewn outside of the premises for those three months, totaling \$315.

11. Other Claims Asserted by the Tenants: The court finds and so rules that the tenant failed to meet their burden of proof on any of their other claims including the allegations of lack of heat, infestation, and leaks.

12. Conclusion and Order: Based on the foregoing and in accordance with G. L. c.239, s.8A, the tenants shall have until ten days from the date of this order as noted below to deposit with the court's Clerks' Office the amount of \$9,435 plus interest in the amount of ~~\$391.10~~ plus court costs of ~~\$321.46~~ for a total amount of \$ 10,147.58. If said funds are so deposited, judgment shall enter for the tenants for possession and the deposited funds shall be disbursed to the landlord's counsel. If the tenants do not make said deposit, judgment shall enter for the landlord for possession plus \$9,435 plus interest plus court costs.

So entered this th 16 day of october, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-677

CITIZENS BANK, N.A.,

Plaintiff,

v.

SHANA FERRIGAN,

Defendant.

ORDER

After hearing on September 26, 2023, on setting the appeal bond, the following order shall enter:

1. **Background:** This is a post-foreclosure eviction action in which summary judgment entered for possession (no claim for use and occupancy) for the plaintiff bank on March 28, 2023, and a corrected judgment on April 25, 2023. After the court's denial of the defendant's motion for reconsideration on August 7, 2023, the defendant filed an appeal.

2. No motion to waive the appeal bond was filed by the defendant, and a bond hearing was scheduled.
3. **Discussion:** In accordance with G.L. c.239, s.5 and s.6 (hereinafter, "Section 5" and "Section 6"), the court conducted a hearing to determine the fair amount of monthly use an occupancy so as to be able to determine a bond under Section 6 and periodic monthly use and occupancy payments under Section 5.
4. To that end, the plaintiff called as a witness Glenn Stavens, a real estate broker from Connecticut. Mr. Stavens has been a real estate broker since 1989 and has been doing business in the "bordering towns" in Massachusetts for the past ten years. Mr. Stavens is not involved in "a lot of leasing" but mostly in sales. He has not been involved in a lease for rent for any properties in Massachusetts for the past twelve months, and it is not clear from his testimony that he has ever been involved in the leasing of property in Massachusetts.
5. What is clear from his testimony is that he is hired by the servicing agent for the plaintiff in this matter to oversee its REO properties, including the instant property which is the subject of these proceedings, and that if the defendant is evicted, he will market the property for sale and receive between 4% and 5% in commission from the sale.
6. Mr. Stavens has never been inside the property and only viewed it from a significant distance away from the street (as he described it being a significant "set back") and has only viewed it in that manner twice in the past year.
7. Mr. Stavens described his methodology of how he reached his conclusion of the fair market rent of the premises. He reviewed three websites: Zillow,

Realtor.com, and MLS. He did not describe with any detail what he found at those sites. Nor did he share any specific comparable rental listings upon which he based his conclusion. He explained that many or most sellers list their properties on Facebook but then did not indicate that he studied Facebook to form the basis of his conclusion.

8. **Conclusion and Order:** Based on the foregoing, there is an insufficient record upon which the court can ascertain an amount for use and occupancy in accordance with G.L. c.239, s.5 and s.6. Additionally, the plaintiff did not seek any other "cost" "damage" or "loss" as contemplated by Section 6. Accordingly, the court shall not at this time set a bond nor institute periodic "use and occupancy" payments.

So entered this 17th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1654

EDGEWATER TOWERS,

Plaintiff,

v.

ANGEL PEREZ VARGAS and MARILEAN
MIRANDA VELEZ,

Defendants.

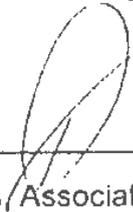
ORDER

This matter came before the court on September 27, 2023, for review of an Agreement by the judge. After said review, the following order shall enter:

1. The review of the agreement is continued to the date below.
2. The underlying motion for entry of judgment was denied, without prejudice.
3. A referral to the Tenancy Preservation Program (TPP) was made and the tenants remained at the courthouse after the hearing to meet with TPP.

4. The court grew increasingly concerned during the review that one or more of the tenants has disabilities that may be at the heart of this eviction matter.
5. The tenants shall pay October 2023 rent (use and occupancy) and work cooperatively with TPP.
6. This matter shall be scheduled for review and for any properly marked motions on **October 26, 2023, at 9:00 a.m.**

So entered this 17th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

PAUL R. PRENTICE,

Plaintiff,

v.

GENNADIY A. LISITSIN,

Defendant.

ORDER

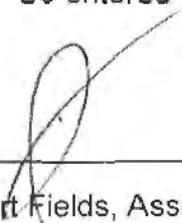
After review of the plaintiff's attorney fee petition, and opposition thereto, the following order shall enter:

1. The opposition, received by the court on September 13, 2023, shall be considered timely given the manner in which it was attempted to be served by petitioning counsel.
2. Due to the failure of plaintiff's counsel to identify what work was performed by counsel (and which counsel), by paralegals, and by a law clerk, and supporting

information regarding the fees of same, the court is unable to make a ruling on the petition at this time.

3. The plaintiff shall have until ten days after the date of this order to file and properly serve an updated petition and the defendant shall have ten days after receipt of same to file his opposition.
4. The court shall make a ruling on said fee petition and enter a final ruling after either receipt of same or at the completion of the time allotted for filing same.

So entered this 17th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2985

WALNUT PINE,

Plaintiff,

v.

SASHA LOPEZ,

Defendant.

ORDER

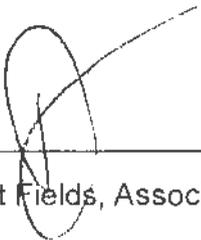
After hearing on October 16, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. There has been malfeasance by both parties relative to their agreement dated August 17, 2023. The landlord has not addressed the conditions of disrepair noted in said agreement including rodent infestation and repairs to the refrigerator and adjacent floor. And, the failed to make the payments required

under said agreement, having paid only \$1,000 since the agreement was signed by the parties.

2. The landlord explained that it has recently hired a new management company which is catching up on this case and eager to address the repair issues.
3. The tenant explained that she is not able to make full payments due to changes in her work schedule (less hours), but that she can make payments each month of rent plus \$200 by paying half by the 10th of the month and half by the 25th of the month.
4. Accordingly, the motion is denied, and the tenant shall make a \$700 payment by the 10th and \$700 by the 25th of each month beginning November 2023.
5. The landlord shall provide the tenant with no less than 48-hour advance notice in writing of the time and date that it wishes to have access for repairs. If the time and date do not work for the tenant, she is to immediately notify the landlord of the need to reschedule the time and offer the landlord alternate dates and times.

So entered this 17th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 18-SP-5447

PHOENIX DEVELOPMENT, INC.,

Plaintiff,

v.

PRINCE and TAMMY GOLPHIN,

Defendants.

BOND ORDER

After hearing on August 29, 2023, on the defendants' motion to waive the appeal bond¹, at which the plaintiff appeared through counsel and the defendant Prince Golphin (former mortgagor) appeared *pro se*, the following order shall enter:

¹ At the end of the hearing, counsel for the plaintiff argued that though the Notice of Appeal was timely filed, the motion to waive the appeal bond was not timely filed---as it was filed on the morning of the hearing. The court hereby enlarges the time for filing of the motion to waive appeal bond as the defendants are *pro se* and the court considers this an access to justice issue. See, *Tamber v. Desrochers*, 45 Mass.App.Ct. 234 .

1. The court determines that the defendant has non-frivolous defenses² and that he is indigent³.
2. In accordance with G.L. c.239, s.5 and s.6, the court shall therefore waive the appeal bond other than the periodic payments that shall become due each month pending appeal.
3. The plaintiff is seeking \$1,500 per month for use and occupancy, that amount having been found by this court as the reasonable fair market rental value in its order of judgment dated August 7, 2023.
4. The defendants argue that due to their financial hardship, living solely on monthly disability benefits totaling \$1,366.34, the court should not require them to pay more than \$400 per month⁴.
5. **Discussion:** Pursuant to G.L.c.239, s.5(e):

The 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 rent* which shall become due after the date of the waiver. (emphasis added) A court shall not require the person to make any other payments or deposits.

6. The statute provides for the exercise of discretion by the judge in setting use and occupancy payments and in exercising such discretion, the court should attempt to achieve a fair balancing of both parties' interests. *Bank of N.Y. Mellon v. King*, 485 Mass. 37, 51 (2020). While a similar balancing test is applied when

² Though the court ruled against the defendants in their defenses, the court finds that they have at least "a prayer of a chance" and, as such, have non-frivolous defenses.

³ After review of the defendants' Affidavit of Indigency, plaintiff counsel assented to a finding that the defendants are indigent within the meaning of G.L. c.261, ss. 27A-27G.

⁴ Mr. Golphin explained to the court that the mortgage used to be \$1,200 per month when he was working at Walmart and earning \$4000 per month income. He also explained that his wife, Tammy Golphin [REDACTED] and that their combined income is from disability benefits.

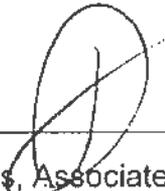
determining a use and occupancy order pending trial [See, *Davis v. Comerford*, 483 Mass. 164 (2019)], *King* provides that where a former owner remains in possession post-foreclosure, the factors the court may consider include, "the fair rental value of the property, the merits of the defense, the amount per month on the mortgage, the number of months that no money has been paid on the mortgage, the real estate taxes on the property, the expected duration of the litigation, and the respective financial conditions of the parties." 485 Mass. At 51.

7. After *King*, the Appeals Court has heard several cases in which the financial hardship of the defendant was the basis for the court's denial of a higher monthly rate being sought by the plaintiff when setting of the periodic payments in accordance with G.L. c.239, s.5. In *Duran v. Rivera*, No. 2021-J-0037, 2021 WL 3701800 (Mass. App. Ct. July 30, 2021) the court lowered the use and occupancy from the fair market rent value of \$900 to \$400. The judge in that case stated that [w]hile I am sympathetic to the plaintiff's position, including having to accept less than half of the fair market value for the premises for an indeterminate time while the defendant's appeal is decided..." [the periodic payments should not be set at the higher fair market value] "in light of the defendant's precarious financial position." In *21st Mortgage Corp. v. DeMustchine*, 100 Mass. App. Ct. 792 (2022), the court held in a review of a use and occupancy order issued pursuant to G.L. c.239, s.5, that the "determination of [the] appropriate amount of use and occupancy payments [is] to be made on 'case-by-case' basis, considering nonexclusive list of factors

including circumstances calling for payment of less than full rental value of property, citing *Davis v. Comerford*, 483 Mass. 164 (2019).

8. Although factually diverse from the instant matter, these cases, along with the holding in *Bank of N.Y. Mellon v. King*, 485 Mass. 37, make it clear that the “financial condition” of the defendant is a factor for the court’s consideration when establishing a periodic use and occupancy amount pursuant to G. L. c.239, s.5.
9. **Conclusion and Order:** Based on the record before the court and particularly on the defendants’ financial condition, the court shall set the periodic payments at \$400⁵.
10. The defendants shall pay \$400 by the last day of each month beginning on the last day of October 2023, for use and occupancy as periodic payments in accordance with G.L. c.239, s.5 pending appeal. Said payments shall be paid to the court’s Clerk’s Office.

So entered this 15th day of October, 2023.



Robert Fields, Associate Justice

Cc: Maria Pereira, Housing Court Western Division Office Manager
Court Reporter

⁵ The plaintiff did not put into evidence any factors regarding the plaintiff’s financial situation nor seek any monies other than the judgment and periodic payments of \$1,500.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

BRIAN KELLY,

Plaintiff,

v.

MICHAEL ROACH,

Defendant.

No. 23-CV-176

MICHAEL ROACH, III,

Plaintiff,

v.

BRIAN KELLY,

Defendant.

No. 23-SP-2192

RULING ON ATTORNEY FEE PETITION AND ENTRY OF FINAL JUDGMENT

These matters, consolidated for trial, came before the court for trial on July 26, 2023, and the court issued a written decision on July 28, 2022, in which the tenant, Brian Kelly (hereinafter, "tenant") was the prevailing party in his claims for breach of the covenant of quiet enjoyment pursuant to G.L.c. 186, §14. As a prevailing party on said claims, he was afforded the opportunity to petition the court for reasonable attorney's fees per that statute. After consideration of the petition for such fees and after consideration of the opposition filed, the following order shall enter:

1. Reasonable Attorney's Fees: The determination of reasonable attorney's fees is within the discretion of the judge. *Fontaine v Ebtec Corp.*, 415 Mass. 309, 324 (1993). In ruling on a petition for statutory attorney's fees, a court "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." *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). Time spent on unnecessary work, duplicative work, or claims on which the party did not prevail, should be excluded. *Simon v. Solomon*, 385 Mass. 91, 113 (1982).

2. Hourly Rate: Counsel for the tenant, Patrick Nicoletti, has petitioned for an hourly rate of \$300 and this court finds these amounts to be reasonable. Attorney Nicoletti has been practicing in this division of the Housing Court for a decade and the court is quite familiar with the high quality of his litigation preparation and presentation and finds that \$300 per hour is reasonable. The opposition correctly points out that it is preferred to

have a petition for fees accompanied by supporting affidavits from local attorneys but failing to do so is not fatal to the petition¹.

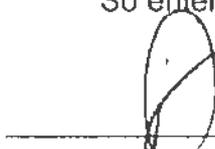
3. Number of Hours: The petition seeks compensation for \$6,210, representing 20.7 hours of work in this matter.

4. Analysis of Hours: Although the legal issues were not unusually complex, the factual evidence was considerable and, among other things, the litigation involved two separate court actions consolidated for trial. The court finds, as does opposing counsel, that the number of hours expended are reasonable and it is not moved from that position by the opposition's argument that it should be reduced overall because the tenant only "prevailed on 3.5 of the 5 total claims."

5. Award of Attorney Fees: Based on the foregoing, counsel for the tenant, Patrick Nicoletti, shall be awarded \$6,210 in attorney's fees².

6. Conclusion and Order: In accordance with the above, as well as the court's July 28, 2023, trial decision, the following final judgment shall enter: Judgment for possession and for \$3,575 in damages plus \$6,210 in attorney's fees shall enter for the tenant, Brian Kelly.

So entered this 19th day of October, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

¹ Attorney Nicoletti is urged to accompany any future petitions for fees with such affidavits.

² The tenant's petition for reasonable attorney's fees did not seek costs.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-846

JO LANDERS,

Plaintiff,

v.

MARTA ABELY,

Defendant.

ORDER

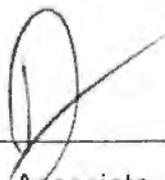
After hearing October 12, 2023, at which only the landlord appeared after very short notice delivered to the premises on October 11, 2023, the following order shall enter:

1. These same parties are also in a Summary Process action (23-SP-2834) currently scheduled for trial on November 27, 2023.
2. By this motion for injunctive relief, the landlord is seeking to have access to check on the basement to ensure that mattresses or other items are not leaving

on the furnace, and that the recently installed smoke detectors are still functioning, and that the lawn overgrowth is mowed.

3. The motion is allowed as follows:
 - a. The tenant shall mow the yard within 48 hours of the date of this order. If the tenant fails to do so, the landlord may mow the lawn. If the landlord mows the lawn she'll do so after 48 hours written notice and the tenant shall not interfere with same.
 - b. The tenant shall allow the access upon 48 hours written notice to the landlord to inspect the furnace and the smoke detectors. The tenant shall not interfere with the landlord effectuating this inspection.
4. Because this matter was scheduled with such short notice, it shall be scheduled for further hearing on **October 31, 2023, at 2:00 p.m.**

So entered this 19th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-4345

JOSUE PULOLS,

Plaintiff,

v.

DIONNA WILLIAMS,

Defendant.

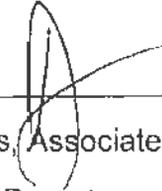
ORDER

After hearing on October 18, 2023, on an emergency motion filed by the tenant for access to the third floor of the premises, at which the landlord appeared by zoom and his wife appeared by telephone and the tenant appeared live, the following order shall enter:

1. The landlords shall turn off the electricity to the third floor and shall maintain the third floor secure and vacant until further order of the court or by written agreement of the parities.

2. This matter is scheduled for a First Tier event and, if needed, a review hearing on **November 16, 2023, at 9:00 a.m.** The Clerk's Office is requested to issue a Habeas Corpus for Josue Pulols from MCI-Shirley for this event.

So entered this 14th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3403

BEACON RESIDENTIAL,

Plaintiff,

v.

TIMOTHY SCOTT, SYLVIA SCOTT, and
FREDERICK SCOTT,

Defendants.

ORDER

After hearing on September 7, 2023, on various motions filed by both parties, the following order shall enter:

1. **Defendant's Motion to Dismiss:** The defendants, through this motion, are challenging sufficiency of service of the Notice to Quit. The court has determined that this motion shall be scheduled for another date so that the parties' witnesses can be present and time will be allotted for an evidentiary hearing. The parties were to meet with the scheduling Clerk at the Clerk Station in the hallway directly after this instant hearing.
2. **Plaintiff's Motion to Dismiss:** The motion is allowed in part by assent and denied in part as follows. The tenants' claims for damages are not for any time prior to June 23, 2023. This said, the tenants may bring into evidence alleged

events and conditions of disrepair that pre-date June 23, 2023, but shall not seek nor be awarded damages from prior to that date.

3. **Plaintiff's Motion to Strike and Dismiss:** The landlord argues that the tenants were in rental arrearage prior to conditions of disrepair and therefore, pursuant to G.L. c.239, s.8A, the tenants may not raise claims as a defense to possession. The tenants dispute the underlying assumption and will attempt to prove that the landlord was aware of conditions of disrepair prior to the tenants being behind in their rent. As there appears to be questions of material fact, this motion is denied and may be renewed at trial.
4. **Plaintiff's Motion for Use and Occupancy:** The landlord seeks an order that the tenants pay their use and occupancy pending trial and argues that because the tenants have made a jury demand this matter will not be heard for some time. The landlord did not present any evidence regarding the factors in Davis v. Comerford or relative to the court's general equity powers.
5. Given the multitude of claims being asserted by the tenants including alleged conditions of disrepair, no knowledge of when the jury trial date will be, and given the significant size of the landlord (dozens if not over 100 units) and the fact that it continues to receive over \$400 each month from the subsidized portion of the rent, the motion is denied without prejudice.

So entered this 20th day of October, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2479

SPRING MEADOW APARTMENTS,

Plaintiff,

v.

YAMARIES RIVERA,

Defendant.

ORDER

After hearing October 12, 2023, on cross motions by the parties, the following order shall enter:

1. The landlord asserts that the arrearage through October 12, 2023, is \$8,560.54 and the court costs are \$201.25.
2. The tenant disputes these amounts. The tenant also asserts that her rent is based on her son living with her but he no longer lives with her but he will not

sign any documents to take himself off the lease. The parties are instructed to discuss this issue to determine if it effects the amount of outstanding rent.

3. The landlord did not have a witness available to provide testimony at this hearing.
4. Ms. Luna from Way Finders, Inc. joined the hearing and verified that the tenant has begun the process of applying for RAFT but has not completed same. The tenant will immediately apply for RAFT and both parties shall diligently comply with the requirements of that program. The tenant is urged to seek assistance with her application, particularly because she lives in subsidized housing and will need to provide "hardship" documentation. Ms. Luna also explained that if the tenant is eligible for RAFT she should be eligible for six months of her portion.
5. This matter shall be scheduled for further review on **October 31, 2023 at 9:00 a.m.**

So entered this 21st day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-666

CHRISTOPHER VIALE,

Plaintiff,

v.

TA & TO HOLDINGS, LP,

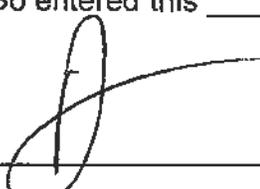
Defendant.

ORDER

After hearing on September 22, 2023, at which both parties appeared through counsel, the following order shall enter:

1. This matter shall be taken under advisement by the undersigned judge.
2. By agreement of the parties, the defendant shall postpone its foreclosure of the subject property until after December 1, 2023, to allow the court time to issue a decision on the plaintiff's injunctive request to put a permanent stay on the foreclosure.

So entered this 20th day of October, 2023.


Robert Fields, Associate Justice

CC: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-86

BASSAM YACTEEN,

Plaintiff,

v.

NEOMI REYES,

Defendant.

ORDER

After hearing on September 21, 2023, at which the landlord appeared and a representative from the Tenancy Preservation Program (Ms. Whitfield, TPP) appeared but for which the tenant did not appear, the following order shall enter:

1. Ms. Whitfield from TPP reported that after initially meeting with the tenant they did not meet again and that she learned yesterday (September 20) that the tenant is in a rehabilitation facility.

2. The landlord reported that the tenant paid her September 2023 use and occupancy (\$1,200 of the \$1,203 rent) which was also required under the terms of the last court order.
3. The landlord reported that the rent arrearage through September 2023 is \$2,677.96. The landlord also reported that RAFT paid \$5,064 on June 30, 2023.
4. TPP is requested, among other things, to meet with the tenant at her rehabilitation program, provide her with a copy of this order (one will also be mailed to the parties), and make a referral to Community Legal Aid, and assist the tenant with a RAFT application.
5. The tenant shall pay her use and occupancy for October 2023.
6. This matter shall be scheduled for further hearing and review on **November 2, 2023, at 9:00 a.m.** PLEASE NOTE: This date is different than the date given on the record at the end of the hearing.

So entered this 20th day of October, 2023.

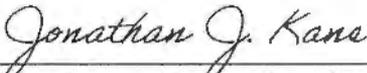
Robert Fields, Associate Justice

CC: Taquoia Whitfield, TPP
Court Reporter

2. Defendants shall pay \$800.00 by the 5th of each month for their continued use and occupation of the Premises, starting with October 2023. Plaintiff may file a motion for entry of judgment if a payment is not made.
3. Defendants shall make diligent efforts to locate and secure replacement housing and shall keep a log of their efforts. The housing search log shall be provided to the Court at the review hearing.
4. For the duration of the stay, the parties shall not communicate except in the case of emergency or relating to the move out process.
5. Defendants shall remove their camera from the Premises.
6. The parties shall return for review of Defendants' housing search on November 28, 2023 at 2:00 p.m.

SO ORDERED.

DATE: October 22, 2023



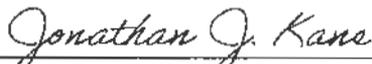
Jonathan J. Kane, First Justice

cc: Court Reporter

2. Defendant shall pay \$1,500.00 on or before October 13, 2023 (representing October use and occupancy) and \$1,500.00 on or before November 3, 2023 (representing November use and occupancy).
3. Defendant shall vacate voluntarily on or before December 1, 2023.

SO ORDERED.

DATE: October 22, 2023



Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

WESTERN HOUSING COURT
Docket No. 23H79CV000794

KEMPTON POLLARD,)
Plaintiff)
v.)
JOEL ANDREWS,)
Defendant)
_____)

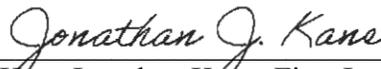
ORDER

After an emergency hearing on this matter on October 23, 2023, the Court issues the following orders:

1. The Defendant and his guests are ORDERED to vacate and stay away from the third floor and stairway from the second floor to the third floor after 4:00 PM on October 25, 2023 until the condemnation is lifted.
2. The Defendant and his guests are ORDERED to immediately remove all padlocks from all doors inside 15 Cedar Street, Apartment 2.
3. The Defendant and his guests are ORDERED to remove their belongings from the third floor at 15 Cedar Street no later than 4:00 PM on October 25, 2023.
4. After 4:00 p.m. on October 25, 2023, the Plaintiff may install a locked door at the entrance to the stairway from the second floor to the third floor at 15 Cedar St, Apartment 2 and prevent all residents, guests, and unauthorized persons from gaining entry to the third floor without permission. After installing the lock, the Plaintiff shall allow the Defendant access to retrieve personal belongings by appointment during business hours.
5. This order shall be served upon the Defendant by 4:00 p.m. on October 24, 2023.

SO ORDERED

October 23, 2023

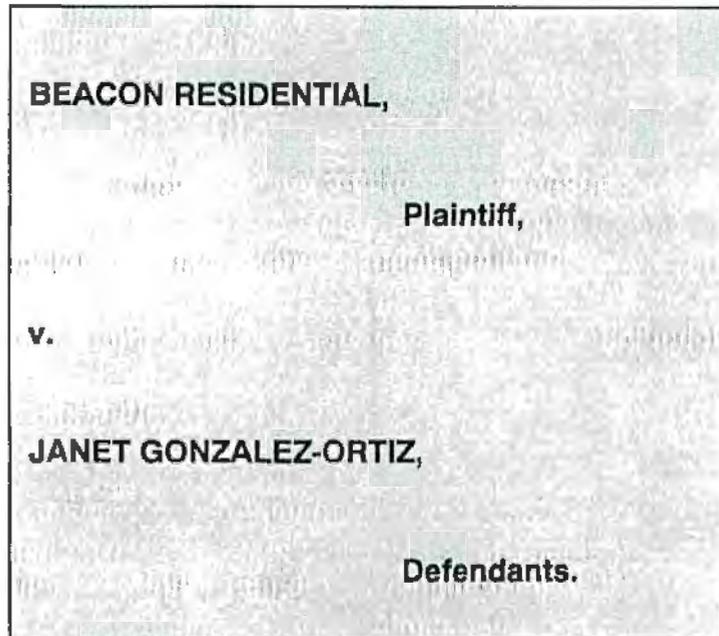


Hon. Jonathan Kane, First Justice

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4606**



ORDER

After hearing on October 19, 2023, on the landlord's motion for entry of judgment the following order shall enter:

1. After the hearing began the court recessed to allow the tenant to meet with the Tenancy Preservation Program (TPP).
2. After recommencing the hearing, TPP reported that it met with the parties and made a determination to "open" a case in this matter and to work close with the tenant. There is a colorable claim that the tenant has suffered from domestic

violence and also mental health issues that may be at the core of her inability to make her rent payment on time and in full and thereafter to comply with the terms of the agreement(s) in this case.

3. TPP has agreed to follow up on these issues and investigate the use of a representative payee.
4. The tenant shall pay here rent for November 2023 and shall work closely with TPP.
5. The landlord shall forthwith provide a ledger to TPP.
6. The landlord's motion is continued to the date and time noted below.
7. This matter shall be scheduled for further hearing on **November 16, 2023, at 9:00 a.m.**

So entered this 24th day of October, 2023.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0857

JOAN FITZPATRICK DIVER,)

PLAINTIFF)

v.)

WILLIAMSTOWN ELDERLY)
HOUSING CORP., ET AL.,)

DEFENDANTS)

FINAL PRETRIAL ORDER

The following order shall enter with respect to the jury trial scheduled in this matter on October 30, 2023:

1. The parties agree to have the case heard by a jury of six, with one alternate. The parties agree that the alternate, if not seated on the jury, may also deliberate. If the alternate juror deliberates, agreement of 6/7 of the jury members shall be sufficient to render a verdict. If a juror is excused during the trial, agreement of 5/6 of the jury members shall be sufficient to render a verdict.
2. Each party shall have two peremptory challenges.
3. With the assent of the parties, the Court shall permit witnesses from the Williamstown Police Department, members of the Williamstown Select Board and town employees to appear for trial over Zoom.
4. Neither party shall submit additional evidence to the other party prior to the day of trial to allow the parties time to prepare.

5. The parties shall each have a maximum of 10 minutes for openings and closings.

SO ORDERED.

DATE: 10.24.23

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

cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-796

ANGELA FERRER,

Plaintiff,

v.

ANTONY MASSOP, as TRUSTEE OF THE
ANTHONY MASSOP 2019 DECLARATION
TRUST,

Defendant.

ORDER

After hearing October 17, 2023, at which the plaintiff tenant appeared *pro se* and the defendant landlord appeared with counsel, the following order shall enter:

1. The landlord shall repair all of the conditions cited by the City in its October 6, 2023, Notice of Violations.

2. In advance of any access for said repairs, the landlord's attorney will email the tenant with at least 24 hours advance notice. Each such notice shall include a specific time and date and a description of the anticipated work.
3. Access shall not be unreasonably denied by the tenant. That said, if the time delineated in the email notice is problematic for the tenant, she must respond explaining that and offering alternate dates and times for said repairs.
4. Any and all repairs that require a licensed professional and/or a permit to be obtained from the city shall be done in that manner. The landlord, Anthony Massop, shall not do the repairs himself nor shall he enter the premises.
5. Any and all repairs shall not be scheduled earlier than 9:00 a.m. nor after 5:00 p.m. unless agreed to by the parties in writing.
6. The caption of this matter shall be amended to reflect the following: the defendant property owner shall be listed as Anthony Massop, as Trustee of the Anthony Massop 2019 Declaration Trust.

So entered this 24th day of October, 2023.

Robert Fields, Associate Justice

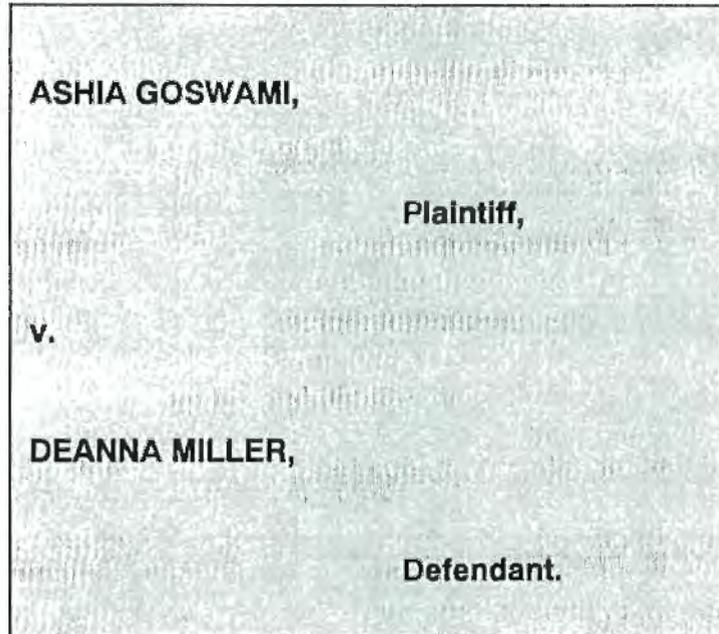
CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3880



ORDER

After hearing September 26, 2023, on the tenant's motion to vacate the default judgment, the following order shall enter:

1. The tenant's motion to vacate the default is continued to the date and time noted below.
2. The amount of outstanding use and occupancy through September 2023 is \$12,400. Additionally, \$212.40 is owed in court costs.

3. The tenant has been in the hospital with [REDACTED] (and was in fact in the hospital on the date the default order entered). The tenant is heading back to work and is working with her employer, Baystate Hospital, to recover monies for dates she was unable to work (known as "Aflec" payments) and is also working with Way Finders, Inc. on RAFT funds (Way Finders was not available at the time of the hearing to join by Zoom). The tenant is also returning to work next week.
4. The tenant shall pay her October and November 2023 rent plus \$200 each month.
5. This matter shall be scheduled for hearing on **November 14, 2023 at 9:00 a.m.**

So entered this 24th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3300

LILLIAN MILLER REVOCABLE TRUST,

Plaintiff,

v.

VERA and RORY MCDONALD,

Defendants.

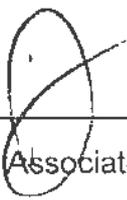
ORDER

After hearing on October 17, 2023, at which the landlord appeared through counsel and the tenants appeared pro se, the following order shall enter:

1. The parties entered into an agreement dated September 19, 2023, in which they agreed that the tenants would vacate the premises by October 15, 2023. The agreement also scheduled this current hearing and allowed for the landlord to request entry of judgment for possession without having to file any such motion in writing.

2. The landlord's motion for entry of judgment for possession is allowed. The landlord may file and serve a timely Rule 13 Application for issuance of the execution.
3. The tenants' motion for a stay on the use of the execution until January 1, 2024, is also allowed contingent upon paying their use and occupancy as follows:
 - a. \$462.50 by November 3, 2023;
 - b. \$925 by November 17, 2023;
 - c. \$925 by December 1, 2023.
 - d. All such payments are to be mailed to the landlord and postmarked by the dates described above.
4. Though there is a stay on the levy of the execution, the landlord may schedule the eviction for January 2, 2024, or after, and it may have the tenants served with notice of same but the levy itself may not occur prior to January 2, 2023, UNLESS THE TENANTS FAIL TO PAY THE MONIES DESCRIBED ABOVE.

So entered this 24th day of October, 2023.



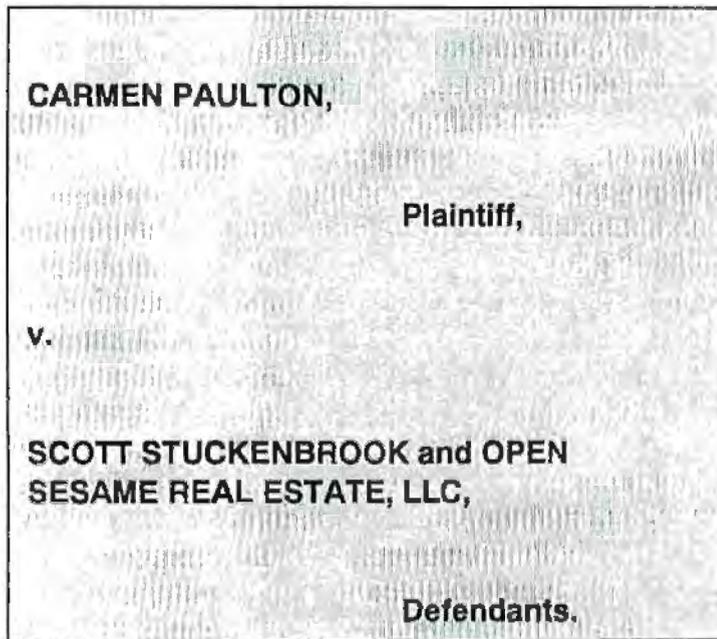
Robert Fields, Associate Justice
CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-890



ORDER

After hearing October 23, 2023, at which the plaintiff tenants appeared in person and the defendant property owner appeared by telephone, the following order shall enter:

1. The caption shall be amended to reflect the defendant's proper name, Scott Stuckenbrook.

2. Additionally, the owner of the property Sesame Real Estate, LLC, with a mailing address of P.O. Box 708, East Longmeadow, MA, shall be added as a defendant in these proceedings.
3. The defendants, jointly and severely, shall provide alternate housing accommodations to the tenants at the Copper Lantern Motor Lodge in West Brookfield, MA until the next court hearing or until the Town of Ware issues a written order that the subject premises are safe for occupancy.
4. These accommodations have cooking facilities and are pet-friendly.
5. This matter shall be scheduled for further hearing on **October 30, 2023, at 9:00 a.m.** at the Hadley Session of the court.

So entered this 24th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-3339

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

MELISSA SEERY,

Defendants.

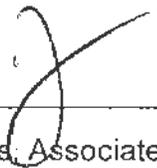
ORDER

After hearing on September 21, 2023, on the tenant's motion to stop the physical eviction scheduled for September 22, 2023, the following order shall enter:

1. The tenant appeared with her mother, Karen Devins. The tenant stated that she appreciates that she "dropped the ball" on complying with the terms of the underlying agreement. That said, the tenant [REDACTED] [REDACTED] has recently been hospitalized. The tenant also has been diagnosed with [REDACTED].

2. Ms. Devins committed to paying \$2,000 tomorrow morning towards the arrearage and debt of \$9,654 in rent arrearage, court costs of \$199.25, and cancellation fees of \$700.
3. The tenant will make a RAFT application forthwith and both parties shall follow up diligently with the requirements of that program.
4. Ms. Devins will become her daughter's Representative Payee and will pay the tenant's rent plus \$300 each month.
5. This matter shall remain open for one year from the date below even if the balance is brought to \$0.
6. Based on the foregoing, the eviction shall be cancelled if Ms. Devins pays \$2,000 tomorrow by 10:00 a.m. to the landlord.

So entered this 27th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-853

<p>VALLEY OPPORTUNITY COUNCIL,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JANIE LIMA,</p> <p style="text-align: center;">Defendants.</p>
--

ORDER

After hearing October 19, 2023, at which the plaintiff appeared through counsel and the tenant appeared with LAR counsel, the following order shall enter:

1. The LAR counsel's motion to have the tenant evaluated by the Court Clinic is allowed. In order to determine if Ms. Lima is an "incapacitated person" as that term is defined in G.L. c.c. 190B, ss.510 (9), the court hereby orders that she undergo a forensic psychological evaluation with the Court Clinic. The court requests that the clinician evaluate Ms. Lima with respect to her decision-making capacity, her ability to comply with court orders regarding her housing, and her ability to understand the legal proceedings and participate meaningful therein.

The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a *guardian ad litem* for Ms. Lima and additionally to assist Community Legal Aid in determining the extent of its representation.

2. Additionally, a referral was made to the Tenancy Preservation Program (TPP) and a representative from TPP was present at the hearing and agreed to meet with the tenant directly following the hearing.
3. TPP and Attorney Fonseca are requested to assist with the scheduling of the Court Clinic evaluation and with the tenant's attendance.
4. The tenant shall not have any contact with the landlord other than in an emergency circumstance.
5. The landlord, likewise, shall not interact with the tenant other than in an emergency.
6. Counsel for the parties shall communicate regarding the tenant's completion of her annual recertification.
7. This matter shall be scheduled for review on **November 30, 2023, at 2:00 p.m.**

So entered this 24th day of October, 2023.

Robert Fields, Associate Justice

CC: Court Clinic

TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2881

68 JAMES STREET REALTY TRUST,

Plaintiff,

v.

DALILA and MARQUIS SKINNER,

Defendants.

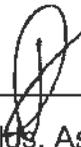
ORDER

After hearing September 28, 2023, for review and the following order shall enter:

1. The tenants did not deposit the sums required by the court's Section 8A decision dated June 28, 2023, but thereafter paid their back rent through RAFT funding which sent the landlord funds for all back rent in July 2023. The tenants then paid rent in August 2023.

2. As a no-fault eviction matter, the tenants shall be granted additional time to relocate by paying their rent and diligently search for housing in accordance with G. L. c.239, s.9.
3. The tenants shall pay \$1,100 for September 2023 rent by tomorrow, September 29, 2023.
4. The tenants are applying to RAFT for October 2023.
5. The tenants shall maintain a housing search log and be prepared to share it with the landlord and the court at the next hearing noted below.
6. The tenant shall also be reasonable for November 2023 rent.
7. By agreement of the landlord shall have access to the premises on October 6, 2023, from 11:00 a.m. to 12:00 p.m. to effectuate repairs.
8. A review hearing shall be scheduled for **November 16, 2023, at 9:00 a.m.**

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3051

PHILIP ALARIE and KATHERNANN
WATERMAN,

Plaintiffs,

v.

GARY GEBBIE,

Defendant.

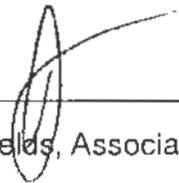
ORDER

After hearing on October 12, 2023, on a final pretrial conference with the undersigned judge, at which all parties appeared through counsel, the following order shall enter:

1. The following pleadings shall be filed with the court no later than October 23, 2023:
 - a. A statement about the case to be read to the jury *venire*;
 - b. Proposed additional *voire dire* questions for the jury *venire*;

- c. Proposed jury instructions;
 - d. Proposed verdict form;
2. The parties agreed to a jury of six with one alternate and if all jurors are available to deliberate then all seven will deliberate and they will have a verdict if six of the seven (5/6) reach a verdict.
 3. The jurors will have pad and pencils for note taking during witness testimony and shall be afforded the opportunity to submit questions to be asked of a witness by the judge (if the judge agrees after consultation at side-bar with counsel).
 4. The jury trial shall begin at 9:00 a.m. on November 1, 2023. All parties shall be present in the courtroom at that time.

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice

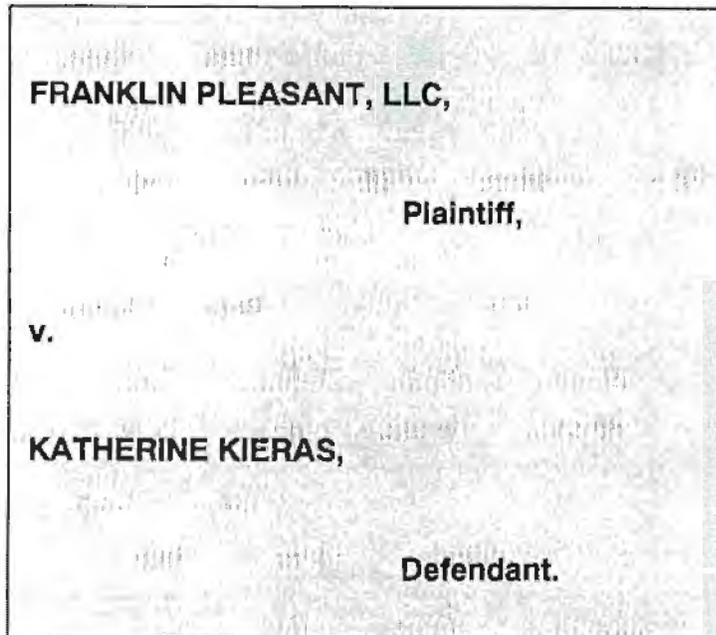
CC: Court Reporter

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2189



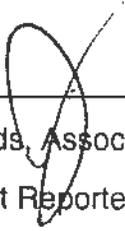
ORDER

After hearing October 23, 2023, the following order shall enter:

1. The tenant's motion for cancelation of the physical eviction scheduled for October 24, 2023, is allowed contingent upon payment of \$200 to the landlord today (in cash, or money order, or bank check). This represents a payment towards the \$389.58 which the landlord will incur by cancelling the move out.
2. If said payment is made and the landlord cancels the eviction, it may immediately reschedule and re-serve the tenant with notice in accordance with G.L. c.239.

3. As a way of the tenant gaining extra time until she is able to secure shelter, the tenant shall pay \$835 for use and occupancy for November 2023 if she is in occupancy on November 20, 2023. The tenant shall also pay \$189.58 (which represents the remaining portion of the cancelation fees) by November 20, 2023. If the tenant has already vacated the premises prior to November 20, 2023, she shall only be required to pay for the number of days she was in occupancy in November 2023.

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-891

RAMON GARCIA,

Plaintiff,

v.

RAYMOND REYES,

Defendant.

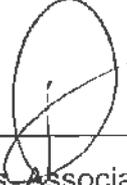
ORDER

After hearing on October 24, 2023, at which only the plaintiff tenant appeared and for which the defendant landlord did not appear after telephonic and email notice from the court, the following order shall enter:

1. The landlord shall immediately investigate the tenant's complaint of cross-metering of his electricity to the attic. If cross-metering exists, the landlord shall immediately put the tenant's electric service in his name until the cross-metering is corrected.

2. The tenant is referred to the Department of Public Utilities (DPU) regarding the cross-metering. The DPU can be reached at 617-305-3500.
3. The landlord shall have the premises exterminated for rodents by a licensed professional forthwith.
4. The landlord shall investigate the premises and make all necessary repairs.
5. All such repairs that require a license shall be effectuated by a licensed professional.
6. The landlord shall provide the tenant with no less than 48-hour advance written notice for access to repairs. Such notices shall include the date and time (and estimated window of time) and a description of the anticipated work.
7. Access shall not be unreasonably denied by the tenant.
8. All communication between the parties shall be in writing (texts included).
9. The landlord shall be aware that the tenants have a newborn child so any work in the home shall be done with extreme care for limiting dust and dirt and in the utmost of workmanlike fashion.
10. This matter shall be scheduled for further hearing on **November 14, 2023, at 9:00 a.m.**

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-824

PAUL MARQUEZ and JENNIFER MARQUEZ,

Plaintiffs,

v.

LAUDALINA ORTIZ,

Defendant.

ORDER

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

1. The defendant tenant shall be able to keep her current dog.
2. Upon the demise of said dog, the tenant may not have another dog without the landlord's permission.
3. If it should arise, after the demise of the current dog named "Izzy", that the tenant wishes to have a new dog for health reasons and is seeking a reasonable

accommodation, the parties shall engage in a reasonable accommodations dialogue. If after such dialogue the landlord denies having the dog, the tenant is still permitted to bring an action in court.

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2049**

MCP UNLIMITED, LLC,

Plaintiff,

v.

LYSANDRA RIVARD,

Defendant.

ORDER

After hearing on October 24, 2023, the following order shall enter:

1. The landlord's motion for issuance of the execution is allowed. Execution shall issue for the landlord for possession plus \$6,347.75 in use and occupancy through October 2023 and for \$217.25 in court costs.
2. There shall be a stay on the use of the execution contingent upon the tenant paying \$550 today, and \$475 each of the following days: October 31, November 6, November 13, and November 20.

3. If any of these payments are not made, the landlord may levy on the execution.
4. The tenant explained that she is meeting with Valley Opportunity Council to see if she is eligible for any rental arrearage funds and that she is hoping to begin new employment which will make this tenancy viable.
5. This matter shall be scheduled for review on **November 30, 2023 at 9:00 a.m.**

So entered this ^{PM} 25 day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-872

MAYSELA RIVIE,

Plaintiff,

v.

STACEY ROLLER,

Defendant.

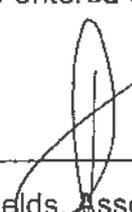
ORDER

After hearing on October 24, 2023, at which the plaintiff tenant appeared but for which the defendant landlord did not appear, the following order shall enter:

1. The landlord shall make all repairs listed by the Springfield Housing Authority in its September 15, 2023, correspondence regarding violations of Housing Quality Standards.
2. All such repairs that requires a licensed person shall be effectuated in that manner.

3. The landlord shall provide the tenant with at least 24 hours advance notice for access for repairs. All such notices shall provide a description of the anticipated work, the date and time for access, and an approximate window of time for the repair work.
4. Access shall not be unreasonably denied by the tenant.
5. All communication between the parties shall be in writing (which may include texts).
6. This matter shall be scheduled for further hearing on **November 14, 2023, at 9:00 a.m.**

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-939

IVRIE THOMPSON,

Plaintiff,

v.

BETSY SANCHEZ,

Defendant.

ORDER

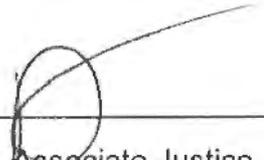
This matter came before the court for hearing on October 16, 2023, on a motion to bring the matter back on for review, but for which none of the parties appeared. The property managers appeared and explained that Mr. Thompson is now living in a nursing home in New York. The court explained to the property managers that they can not represent Mr. Thompson in these proceedings.

It was suggested that they speak with Mr. Thompson and the nursing home in which he resides about having Mr. Thompson file a motion and make arrangements

with the Clerk's Office to appear by Zoom as a possible way for these proceedings to move forward.

For now, the motion is denied without prejudice.

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-819

TOWN OF ERVING BOARD OF HEALTH,

Plaintiff,

v.

DANIEL WILLOR and BRITTINI JOHNSON,

Defendants.

ORDER

After hearing on October 20, 2023, on the plaintiff town's motion for emergency order to vacate at which the plaintiff appeared through counsel and the defendant each appeared *pro se*, the following order shall enter:

1. This matter follows a condemnation of the premises, which are owned by Mr. Willor. The defendant Johnson is Mr. Willor's tenant. Mr. Willor has failed to comply with orders to vacate and repair the premises as issued by the plaintiff and both defendants have failed to comply with the order to vacate.

2. Based on the evidence presented today, the Court finds that urgent health and safety violations exist at the premises.
3. Mr. Willor and Ms. Johnson (and all persons holding under them) shall vacate the premises forthwith and shall not reside at the Premises until the order of condemnation is lifted (this is not an eviction and the tenant is not required to relinquish possession at this time).
4. Mr. Willor must provide Ms. Johnson and her family comparable, suitable housing commencing on October 20, 2023, until such time as the plaintiff deems the premises suitable for habitation or until further order of the court.
5. Such alternate accommodations shall be in a motel or hotel with cooking facilities. If such accommodations do not have cooking facilities, Mr. Willor shall also provide Ms. Johnson with a daily cash food stipend of \$125.
6. Mr. Willor shall correct all violations cited by plaintiff in its Correction Order dated June 14, 2023, within thirty (30) days and shall correct all violations cited in the Condemnation Order dated August 31, 2023, prior to re-occupation of the house or until the Town re-inspects and finds that sufficient repairs have been completed to lift the Condemnation Order.
7. Mr. Willor shall provide Plaintiff with access to the Premises for the purposes of inspection upon 24 hours' advance written notice.
8. Ms. Johnson will have access to the premises for purposes of accessing her possessions that remain on the property.

9. Town Counsel with work with Mr. Willor and the Tax Collector/Treasurer to resolve the unpaid taxes on the property in order to allow Mr. Willor to apply for and receive permits necessary for the work to be performed on the property.
10. The Parties shall appear in the Western Division Housing Court sitting in Greenfield on **October 27, 2023, at 9:00 a.m.** for further hearing on this matter.

So entered this 25th day of October, 2023.



Robert Fields, Associate Justice *A.M.*

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1534

<p>CENTURY PACIFIC HOUSING PARTNERSHIP X, LP,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>ESTER GONZALEZ,</p> <p style="text-align: center;">Defendant.</p>
--

ORDER

After hearing on October 19, 2023, on review per the court's earlier (8/30/23) order, the following order shall enter:

1. The landlord reported that Unit 212---which the tenant shall hopefully be restored to---is presently but temporarily occupied as a result of an emergency order from Judge Kane of this court.
2. It was also reported that despite the court's earlier order (Earlier Order), the parties have not engaged in a Reasonable Accommodations dialogue.

3. Also despite the court's Earlier Order, at which time the court made a referral to the Tenancy Preservation Program (TPP), Ms. White of TPP appeared and reported that no referral was received by TPP.
4. TPP did meet with the tenant this day and has agreed to open the case at their agency. TPP also met with Community Legal Aid and will follow up with them regarding assisting the tenant with her side of the Reasonable Accommodations Dialogue which may include a reasonable accommodations request. TPP will also assist the tenant with her RAFT application.
5. The landlord agreed that after RAFT makes a payment, they will enter into a repayment agreement with the tenant.
6. The parties' intention is to figure out the rent repayment and then move the tenant back to Unit 212.
7. This matter shall be scheduled for further review on **November 16, 2023, at 9:00 a.m.**

So entered this 26th day of October, 2023.

Robert Fields, Associate Justice

CC: TPP

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-896

NEVEA, JENNIFER, and RAYMOND TORRES,

Plaintiffs,

v.

MARLENE JOUBERT,

Defendant.

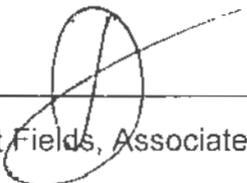
ORDER

After hearing October 25, 2023, at which two of the plaintiff landlords appeared (Nevea and Raymond) and at which the defendant tenant appeared, the following order shall enter by agreement of the parties:

1. The landlord may have access to the tenant's basement for purposes of examining the circuit breaker box that controls the non-tenant side of this two-family dwelling. Such access shall be on October 26, 2023, between 9:00 a.m. and 12:00 p.m.

2. Thereafter the landlords shall provide the tenant with no less than 48 hours advance notice when they wish to have further access for any repairs to the circuit breaker box. Additionally, any such work shall be performed by a licensed electrician.
3. The landlords may install, again after proper notice noted above, a digital camera that is focused SOLELY on their circuit breaker box AND NOTHING MORE and such camera shall not have the capacity to record or detect sound in any way.
4. The tenant shall not deny access unreasonably. If there is a time when access is requested and it is inconvenient, the tenant shall immediately respond and provide alternate time for access.
5. All communications between the parties shall be in writing (which includes texting).

So entered this 26th day of October, 2023.



Robert Fields, Associate Justice
CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-CV-212

TIMOTHY SCOTT, et al.,

Plaintiffs,

v.

RACE STREET PROPERTIES, LLC, et al.,

Defendants.

ORDER FOR SUMMARY
JUDGMENT ON LIABILITY

After hearing on September 5, 2023, on the plaintiffs' motion for reconsideration of the summary judgment motion, the following order shall enter:

1. **Standard of review:** 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)).

2. **Motion for Reconsideration of the Court's Ruling Denying Summary**

Judgment on Liability: By this motion, the plaintiffs are seeking reconsideration of the court's denial of their motion for summary judgment, arguing that based on undisputed fact ascertained in the pre-trial record it is clear that the defendants forfeited the right to sell the plaintiffs' property due to their failure to comply with the law which regulates the defendants' rights to store and sell the plaintiffs' personal property. For the reasons stated herein, the Court reconsiders its earlier ruling and finds for the plaintiffs on their motion for summary judgment on liability.

3. **Discussion:** When an execution is served for possession that requires removal of personal items from the property, G.L. c.239 §4 governs the storage, lien, and sale of such personal property. Furthermore, for a warehouse to enforce its lien against personal property, it must comply with both G.L. c.239 §4 and G.L. c.106 §7-210. Failing to comply with the requirements of both statutes results in the "forfeiture of his lien." G.L. ch.239 §4(e). Such lien against personal property acquired from an execution "shall not be enforced by the sale or disposal of the property until it has been kept in storage for at least six months" and appropriate procedures have been taken prior to disposal or sale. *Id.* After six months, warehouses are able to sell or dispose of such personal property if they have a valid lien. The defendants failed to comply with the requirements of G.L. c.239 §4 and G.L. c.106 §7-210. As a result, the defendants did not have a valid lien and did not have the authority to sell the plaintiffs' property at public auction on October 27, 2018.

- 4. Monthly Statements in Accordance with G. L. c.239 §4(b)(8):** When a warehouse acquires personal property, it must “send by first class mail to the defendant’s last and best-known address monthly statements of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest pursuant to this section.” G.L. c.239 §4(b)(8). The requirement of warehouses to keep personal property in storage for “at least six months” should mean that the plaintiff was sent at least six monthly statements. G.L. c.239 §4(e). The defendant David White, answering on behalf of Race Street Properties, admits in the interrogatories that the defendants only sent monthly receipts three times. In the interrogatories, the plaintiff asked the defendant: “How often did you send these notices?” Def. Inter. Q3. Defendant responded: “Three times – each statement has the amounts due broken down by month.” Id. The defendants were in possession of plaintiffs’ property from March 21, 2018 until October 27, 2018. To comply with G.L. c.239 §4(b)(8), the defendants were required to send the plaintiffs seven monthly receipts. By sending only three such receipts, the defendants failed to comply with G.L. c.239 §4(b)(8).
- 5. Required Receipt in Accordance with G.L. c.239 §4(d)(3):** Additionally, the defendants were required to issue a warehouse receipt that follows the specific requirements of G.L. c.239 §4 and G.L. c.106 §7-202 to the plaintiffs. G.L. c.239 §4(d). The defendants violated G.L. ch.239 §4(d)(3) because it requires a warehouse receipt to include, “a conspicuous statement that the defendant should notify the warehouse in writing at the business address listed in the notice of any change in the defendant’s mailing address.” G.L. c.239 §4(d)(3).

The defendants do not have any language in their statement that could be regarded as a “conspicuous statement” on their monthly receipts they sent to the plaintiffs. The plaintiffs, in fact, sent a change of address notification to the defendants on April 5, 2018 to the business address listed on the original receipt, 460 Race Street, Holyoke, MA 01040. Id.

6. The defendants’ failure to comply with the requirements of G.L. c.239 §4 “shall result in the forfeiture” of their lien against the plaintiffs’ property. G.L. c.239 §4(e). As a result, the defendants did not have the authority to sell off Plaintiff’s property.
7. **Notice of Sale to the Plaintiffs, G.L. c.106 §7-210:** Even arguing that the defendants had a valid lien when they sold the plaintiffs’ property, they failed to comply with the requirements of G.L. ch.106 §7-210 to “enforce [their] lien on goods.” A warehouse is “liable for damages caused by failure to comply with the requirements for sale under this section.” G.L. c.106 §7-210(i). To enforce a lien, warehouses may proceed with “public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods.” G.L. c.106 §7-210. The defendants did not satisfy this requirement.
8. The defendants failed to notify the plaintiffs of the sale on October 27, 2018. A notification under G.L. c.106 §7-210(c) requires a notification to “include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale.” Additionally, G.L. c. 106 §7-210(b)(2) requires a notification of sale to include:

- a description of the goods subject to the lien,
- a demand for payment within a specified time, not less than 10 days after receipt of the notification,
- and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

9. The defendant, David White, answering on behalf of Race Street Properties, was asked: "Did you or anyone under your control sell the plaintiffs' property after October 26, 2018? If your answer is yes, please state the following: [...] c. Were the plaintiffs given written advance notice of the sale" Def. Inter. Q8. The defendant answered: "Yes – by Superior Court Order." Moreover, in the same deposition, the defendant stated, "We sent you a notice of the dates when the auction was to be scheduled, and the court extended it for another 30 days." White Dep. 58:6-8. The notification mentioned by defendant White does not satisfy the requirements of G.L. c.106 §7-210(b)(2) or (c). The defendant alleges that the Superior Court order's granting a preliminary injunction to stop the "defendant from selling plaintiff's personal property held in storage at Defendants premises [...] until October 26, 2018, at 4:30 p.m." was sufficient notice. Furthermore, the defendant White alleges that the monthly receipt was enough to satisfy this requirement. Neither the Court order nor the monthly receipt includes "the amount due, the nature of the proposed sale [or] the time and place of any public sale" as required. G.L. c.106 §7-210. Moreover, neither includes any language about allowing "10 days after receipt of notification" to pay the balance before "the goods will be advertised for sale and sold by auction." Id. The

documents, therefore, that the defendants allege satisfies these requirements are inadequate.

10. Notice of Sale, 106 §7-210(b)(5): The defendants also failed to adequately advertise the sale of the plaintiffs' property in compliance with G.L. c.106 §7-210(b)(5) which states:

After the expiration of the time given in the notification, an advertisement of sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than 6 conspicuous places in the neighborhood of the proposed sale.

11. The defendants must wait for the termination of the notification period, which extends 10 days, and then must place an advertisement of the sale "once a week for 2 consecutive weeks in a newspaper of general circulation where the sale is to be held." G.L. ch.106 §7-210(b)(5). In the defendants' answers to interrogatories, the plaintiff asked: "Did you place an ad in the newspaper regarding the sale of the plaintiff property?" Def. Inter. Q9. Defendant answered: "No, used alternative postings at 7 local locations." In David White's deposition, he was asked, "Did you place an ad in the newspaper regarding the plaintiff's property. Your answer was no, you used alternative postings at seven locations. Is that your answer today?" White. Dep. 29:5-8. Again, White answered in the affirmative. Mr. White admits that Race Street Properties never placed an ad in the newspaper regarding the sale. The language of G.L. ch.106 §7-210 clearly states "an advertisement of sale must be published once a week for 2 consecutive weeks in a newspaper of general

circulation.” It is only where there “is no newspaper of general circulation” that the defendants may choose to use alternative means of “not fewer than 6 conspicuous places in the neighborhood of the proposed sale.” Id.

12. The plaintiffs clearly establish that there exists a newspaper of general circulation in the town of the proposed sale. Exhibit 8 of the Memorandum in Support of Plaintiff’s Motion for Summary Judgment is an email from Lisa Darragh of the Republican to Plaintiff Scott on February 12, 2020. The email clearly states: “There are approximately 7,200 readers in Holyoke on Sunday and 5,300 on Thursday.” Memo in Support of Summary Judgment, Ex. 8. Advertisements, in the nature proffered by the defendants do not satisfy the requirements of G.L. c.106 §7-210(b)(5) when a newspaper of general circulation exists in the town the proposed sale will take place. Accordingly, the defendants did not comply with the requirements of G.L. c.106 §7-210 and the defendants are “liable for damages cause by failure to comply with the requirements for sale under this section.” G.L. ch.106 §7-210(i).

13. Conclusion: Based on the foregoing, summary judgment shall enter for the plaintiffs against the defendants on liability. A Damages Hearing shall be scheduled by the court after the Case Management Conference currently scheduled for **October 26, 2023, at 2:00 p.m.**

So entered this 26th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-748

DALE BADI,

Plaintiff,

v.

CLAYTON GOODROW,

Defendant.

ORDER

After hearing October 27, 2023, at which only the plaintiff appeared and at which the defendant failed to appear after notice of hearing was sent by the court, the following order shall enter:

1. The court finds the plaintiff (tenant) credible in her description of those things that the defendant (landlord) was ordered to do (by the agreed upon order of the court dated September 15, 2023) but failed to do.

2. These include cleaning up the outside of the premises, installing a lock on the garage, and having the 2nd and 3rd floors of the dwelling exterminated for bedbugs.
3. The landlord shall effectuate all such repairs forthwith and have the extermination performed by a licensed professional exterminator.
4. Additionally, the landlord shall not threaten to nor curtail heat or hot water at the premises.
5. The tenant reported that some one has contacted her who claims to be an agent of the defendant. If the defendant is authorizing an agent to communicate on his behalf and/or act as a property manager, he must first provide written notice to the tenant.
6. This matter shall be scheduled for further hearing on the tenant's motion for enforcement on **November 17, 2023, at 9:00 a.m.** The parties shall appear at that time and if the landlord fails to appear, the court may issue a *capias* (civil arrest warrant) for the landlord's physical apprehension to secure his presence at the court.

So entered this 27th day of October, 2023.

Robert Fields

Robert Fields, Associate Justice ^{Am}

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-652

OLUWAKEMI CRAYTON,

Plaintiff,

v.

BRITNEE SMITH,

Defendant.

ORDER

After hearing on October 11, 2023, at which both parties appeared, the following order shall enter:

1. The defendant's motion to vacate the default judgment is hereby ALLOWED.
2. The defendant has vacated the premises and the issue of possession is moot.

This matter shall be transferred to the Civil Docket and the Clerks' Office is requested to schedule a Case Management Conference.

3. The defendant's new address is [REDACTED]
[REDACTED].

So entered this 27th day of October, 2023.



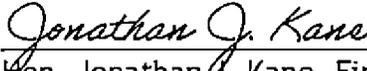
Robert Fields, Associate Justice

CC: Court Reporter

4. The Palmer Board of Health shall reinspect the Premises on or after November 16, 2023. A representative of Defendant may be present at the inspection to observe, but the representative shall not contest the findings at the time of the inspection.¹
5. Plaintiff may seek further remedies if violations are found upon reinspection. It may request the assessment of attorneys' fees and costs for the hearing held on this day as well as for any subsequent hearing seeking repairs for violations previously cited by the Board of Health and not corrected.

SO ORDERED.

DATE: October 27, 2023



Hon. Jonathan G. Kane, First Justice

cc: Palmer Board of Health
Court Reporter

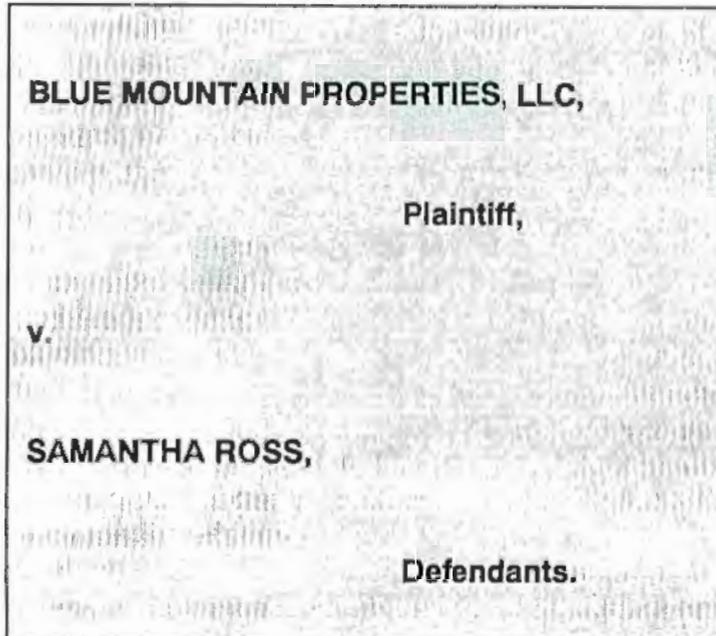
¹This order does not preclude Defendant from pursuing its rights to a hearing before the Board of Health if it wishes to challenge any findings.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3262



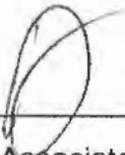
ORDER

After hearing on October 23, 2023, the following order shall enter:

1. Judgment shall enter for the landlord for possession plus \$11,650 in rent through October 2023. The execution may issue upon the timely filing and service of a Rule 13 application.
2. There shall be a stay, however, on the use of the execution so long as the tenant pays her regular rent in full and timely for November and December 2023 and for January 2024.

3. In addition, the use of the execution shall be stayed if the tenant applies for RAFT in November 2023 (with anticipated RAFT benefits of \$1,900) and then again in January 2024 (with anticipated RAFT benefits of \$5,100) and with an additional payment in January 2023 of \$4,650.
4. The payments above should pay for ongoing use and occupancy as well as payment of the arrearage and the matter shall be closed upon a \$0 balance.

So entered this 30th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2652

DEAN T. KIBBE,

Plaintiff,

v.

DAVID and SAKAIA HEMMINGS,

Defendants.

ORDER

This matter came before the court for trial on September 6, 2023, at which the plaintiff landlord appeared with counsel and the defendant tenant (Sakaia Hemmings) appeared *pro se*. After consideration of the evidence admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Dean T. Kibbe (hereinafter, "landlord") owns a two-family dwelling located at 69 Clayton Street in Springfield. The defendants, David and Sakaia Hemmings (hereinafter, "tenants"), have resided in the 2nd floor unit (hereinafter, "premises" or "property") since March 2014. On or about April

28, 2023, the landlord sent the tenants a Thirty-Day Notice to Quit for no fault and there after commenced this instant eviction action.¹

2. **The Landlord's Claim for Rent and Possession:** The parties stipulated at the beginning of the trial to the landlord's prima facie elements of his claims for outstanding rent through the month of trial totaling \$5,950 (7 months @\$850) and for possession. What remained for the court to adjudicate were the tenants' claims against the landlord and as much as those claims act as a defense to the landlord's claim for possession in accordance with G.L. c.239, c.8A.
3. **The Tenants' Claim of Breach of the Covenant of Quiet Enjoyment:** As for the tenants' claim alleging breach of the covenant of quiet enjoyment, this claim centered around a "black substance on the ceiling and walls" of the only bathroom in the premises. The tenants submitted into evidence photographs recently taken prior to the September 6, 2023, hearing, and two photos from February 2023 of the black substance. The photographs display extensive mold build-up in the bathroom and the tenant credibly testified that this condition has existed in the bathroom and that they have complained about it to the landlord since 2021.
4. The State Sanitary Code requires property owners of rental property to maintain premises in a manner that does not cause chronic dampness that leads to mold. See 105 CMR 410.500 and 410.020. There is no question that the presence of mold in the bathroom violates the State Sanitary Code and that the landlord was

¹ These same parties were engaged in an earlier eviction action (22-SP-4075) which resulted in a trial decision by Judge Kane that entered on March 21, 2023, and which issued a G.L. c.239, s.8A order providing a statutory period for the tenants to pay the difference between their award of damages and the award of outstanding rent. The tenants did make that payment and judgment for possession entered for the tenants in that earlier matter.

obligated to remedy same. Though the landlord testified that he was not aware of the mold problem, this makes no sense given that it was the subject of the February 16, 2023, trial involving this tenancy.

5. Under G.L. c. 186 s.14, any landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises" shall be liable for "actual or consequential damages or three month's rent, whichever is greater . . ." Further, a landlord violates G.L. c. 186, s.14 where he had notice of, or reason to know of, the condition affecting the tenant's use of the apartment and failed to take appropriate corrective measures. *Al Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). In the instant case, it is evident that the Landlord acted negligently by willfully disregarding the black substance, despite being cognizant of the condition of the sole bathroom in the premises (at least since the February 2023 trial) and admittingly that he has not been in the property since the last trial. Further, the court finds the tenant credible in her testimony that she and her husband have been complaining to the landlord since 2021 about the mold. The landlord's counsel's argument as part of his closing that the mold (which is extensively displayed by the admitted photographs) is due solely to the tenants' neglect is not persuasive. Such argument is based solely on the landlord's one statement that when he was inside the bathroom in December 2022, to repair or replace a sink, he said the bathroom was "grimy". With no other facts upon which to base such an argument, it falls flat as it is more likely that the black substance is a mold consistent with a lack of sufficient air ventilation than with "grime".

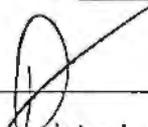
6. The tenants having not asserted actual damages, and the court being satisfied that the condition preexisted rental arrearage, an award of three months' rent is warranted for a total of **\$2,550**.

7. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A, the tenants shall have until ten (10) days from the date of this order as noted below to deposit with the court's Clerks' Office the amount of \$3,400² plus interest in the amount of \$ 153.25 plus court costs of \$ 248.30 for a total amount of \$ 3,801.55.

If said funds are so deposited, judgment shall enter for the tenants for possession and the deposited funds shall be disbursed to the landlord's counsel. If the tenants do not make said deposit, judgment shall enter for the Landlord for possession plus \$3,400.00 plus interest plus court costs.

8. **G.L. c. 239 §§ 9- 10: If the tenants do not make the deposit described above**, and in light of the tenants' request for additional time to relocate---and since the tenancy was terminated without fault---this matter shall be scheduled for a hearing in accordance with G.L. c.239, ss. 9 & 10, on **November 16, 2023, at 2:00 p.m.** If the tenants have kept records of their housing search, they should bring a copy of same with them for the hearing.

So entered this 30th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

² This sum represents the award of \$5,950 in use and occupancy MINUS the award to the tenants for their quiet enjoyment claim of \$2,550.

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-76

SHP MANAGEMENT CORP. and WILBRAHAM
COMMONS,

Plaintiffs,

v.

ELIZABETH O'NEILL,

Defendant.

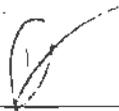
ORDER

After hearing October 26, 2023, on the landlord's motion for entry for issuance of the execution, the following order shall enter:

1. Though the tenant did not strictly adhere to the terms of the May 25, 2023, Agreement of the Parties, she has each month since paid her base rent and substantial payments towards arrearage, but she has still not eliminated arrearage which the landlord reports is currently \$8,570 (plus court costs).

2. Attorney Gordon Shaw, LFD counsel from Community Legal Aid (CLA), joined the hearing and has agreed to ensure that CLA conducts an intake to consider representation of the tenant in this matter and with her RAFT application. CLA is requested that if CLA can not represent the tenant in these proceedings, that it refer her to an attorney on their pro bono referral panel.
3. The tenants shall have the father of her children pay \$3,000 to the landlord by no later than November 3, 2023, by money order.
4. The tenant shall pay her current rent in full and timely and, hopefully with CLA's assistance, reapply for RAFT.
5. This matter shall be scheduled for further hearing on the landlord's motion and for review on **November 16, 2023, at 9:00 a.m.**

So entered this 20th day of October, 2023.



Robert Fields, Associate Justice

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

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-585

SPRINGFIELD GARDENS,

Plaintiff,

v.

LIZMARIE MEDINA,

Defendant.

ORDER

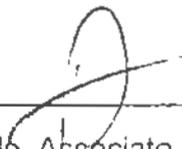
After hearing on October 19, 2023, on the tenant's motion to stop a physical eviction scheduled for October 20, 2023, at 10:00 a.m., the following order shall enter:

1. The parties entered into a new Rental Payment Agreement on October 17, 2023, that was produced by the tenant. Its states that there is an open RAFT application and that if the tenant pays her full rent for the months going forward that the landlord will waive portions of the rent after every two months until all the

rent beyond what RAFT pays will be waived. The specifics beyond that were not in the written agreement.

2. Accordingly, the physical eviction is cancelled.
3. The tenant shall pay her rent going forward.
4. The parties shall cooperate with the RAFT program requirements.
5. This matter shall be scheduled for further hearing on **December 7, 2023, at 2:00 pm.**

So entered this 30th day of October, 2023.



Robert Fields, Associate Justice
CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3830

WILMINGTON SAVINGS FUND SOCIETY FST,

Plaintiff,

v.

BETHANIE L. HUME and MATTIE L. EASTON,

Defendants.

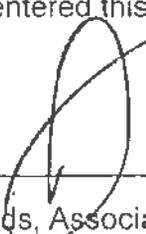
ORDER TO VACATE
THE PREMISES

After hearing on October 27, 2023, on the plaintiff's motion for issuance of the execution for possession, the following order shall enter:

1. The motion is allowed in a manner consistent with the terms of this order.
2. The defendants may remain in occupancy of the premises until January 2, 2024, contingent upon paying \$500 in the first week of November and December 2023.
3. The defendants' request for more time to relocate beyond January 2, 2024, is denied.

4. If the defendants fail to make any such payment or portion thereof or fail to vacate the premises by January 2, 2024, the plaintiff may send a letter to the Clerk's Office (copied to the defendants) attesting to the fact that the defendants have not vacated, and the Clerks Office may issue an execution for possession only forthwith.

So entered this 20th day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-882

<p>BENEZA COLON,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>LUIS T. ROSA,</p> <p style="text-align: center;">Defendant.</p>

ORDER

After hearing on October 26, 2023, at which the defendant did not appear after short notice, the following order shall enter:

1. The defendant, and his agents, shall provide the plaintiff with no less than 24 hours advance notice in writing (including by cell phone texting) of when the landlord seeks to access the premises to show to prospective renters or buyers.
2. This matter shall be scheduled for further hearing on **November 9, 2023, at 9:00 a.m.** at the Springfield Session of the Housing Court.

So entered this 31st day of October, 2023.



 Robert Fields, Associate Justice

CC: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-2161

LEONARDO PERDOMO,

Plaintiff,

v.

MARIELIS ADAMS,

Defendants.

ORDER

This matter came before the court for trial on September 21, 2023, at which both parties appeared without counsel.

1. **Background:** Leonardo Perdomo (hereinafter "Landlord") purchased the three-family property at 254 Orange Street in Springfield in September 2022 from Luis Rodriguez (hereinafter "Former Landlord") who was present and also testified in this trial. Marielis Adams (hereinafter "Tenant") has lived on the second floor unit since December 2021, and thus was residing therein at the time that the landlord purchased the property. In March 2023, then landlord served the tenant a Notice to Quit for a no-fault eviction and thereafter commenced this summary process eviction matter. The tenant filed an answer, asserting both defenses and counterclaims. The tenant claims breach of implied warranty of habitability, breach of quiet enjoyment, violation of security law and ineffective notice.¹

¹ At trial, the tenant did not proceed with the ineffective notice claim.

2. **Landlord's Claim for Possession and Use and Occupancy:** The parties stipulated at the commencement of the trial that through the month of the trial (September 2023) the outstanding balance of unpaid rent, use and occupancy totaled \$7,200. Additionally, the parties agreed to the service of a notice to quit for no-fault and with the summary process filing. What remains for adjudication by the court are the tenant's claims and the landlord's defenses to the same. Each will be addressed in turn below.

3. **Implied Warranty of Habitability:** The tenant raises the defense and counterclaim, pursuant to Mass. Gen. Laws c. 239 s.8A, that the landlord knew or should have known about the past and present problems in and around the tenant's home including the cockroaches, other insects, mice or rats, a water leak, and plumbing problems. The court finds the tenant credible in her testimony that just prior to the landlord purchasing the property, the former landlord brought him to the premises and the tenant showed him the conditions of disrepair at the premises including the infestation. The tenant also submitted texts and photos supporting her position that the former landlord knew of the mice and cockroaches and failed to remedy the situation. Thus, when the landlord purchased the property, knowledge of these conditions were imputed to him.

4. In *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973), the Supreme Judicial Court held that "in a rental of any premises for dwelling purposes, under a written or oral lease, for a specified time or at will, there implied warranty that the premises are fit for human occupation." This means that at the inception of the rental there are no latent [or patent] defects in facilities vital to the use of the premises

for residential purposes and that these essential facilities will remain during the entire term in a condition which makes the property livable." *Berman & Sons, Inc. v. Cynthia Jefferson*, 379 Mass. 196, 203 (1979). Some factors the court may consider to determine if a breach of habitability is material are (1) the seriousness of the claimed defects and their effect on the dwelling's habitability; (2) the length of time the defects persist; (3) whether the landlord or his agent received written or oral notice of the defects; (4) the possibility that the residence could be made habitable within a reasonable time; and (5) whether the defects resulted from abnormal conduct or use by the tenant. *Hemingway*, 363 Mass. at 200-201.

5. Here, the landlord's breach of warranty was made clear through the testimony and evidence presented during trial. First, from the inception of the tenancy, there existed serious problems with mice and cockroaches. These defects regularly interfered with the tenant's ability to use her apartment. The tenant was unable to store perishable food because mice would eat through the bags and contents. Second, the tenant has had to deal with the mice issues for a period prior to the landlord's purchase of the premises so shall be considered to have existed for the entirety of this instant tenancy between the landlord and the tenant.

6. The tenant is entitled to damages as a result of the breach of the implied warranty of habitability. The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991). The court finds that the fair rental value of the premises was reduced by 20% on average because of these conditions of disrepair from September 2022 (the time of the

landlord's purchase of the premises) through September 2023 (the month of trial). Accordingly, the court awards \$2,880 for said warranty of habitability damages, representing a 20% reduction in rent for a 12-month period.

7. **Violation of Security Deposit Law:** The tenant claims that the landlord has violated the Security Deposit Laws for not taking responsibility for the security deposit she paid to the former landlord. The former landlord admitted during his testimony that after taking the tenant's security deposit of \$1200 at the commencement of the tenancy he failed to comply with any of the requirements of G.L. c.186 s.15B when he sold the property to the landlord. Given that the former landlord did not pass the security deposit funds to the current landlord it can be assumed that he only became aware that the tenant had paid a security deposit to the old landlord when she put a claim for same in her Answer. Thereafter, the statute obligated the landlord to either offer the tenant one month's rent free or place one month's rent into a security deposit bank account and then otherwise comply with the statute's requirements. By failing to do either of these options, the statute at Section (7) imposes a trebling penalty on the security deposit.

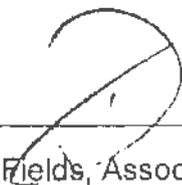
8. Accordingly, the landlord became liable for three times the security deposit in accordance with G.L. c.186, s.15B (7) and thus the tenant shall be awarded three times the security deposit totaling \$3,600.

8. **Breach of Quiet Enjoyment:** The landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent 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). The court finds that the landlord's failure to address the mice infestation and other problems at the premises (as detailed above) violated the tenant's covenant of quiet enjoyment and G.L. c.186 s.14. The Court hereby awards the tenant damages equaling three months' rent for this claim of breach of quiet enjoyment, totaling (\$1200 x 3 months) **\$3,600.**²

9. **Conclusion and Order:** Based on the foregoing, and in accordance with G.L. c.239, §8A, the tenant is awarded judgment for possession. Neither party shall be awarded any damages as the award of damages above reflect an award for the landlord (\$7,200 in rent) is cancelled out by the award of damages to the tenant on her claims for that same amount (\$7,200).

So entered this 31st day of October, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

² Because the damage award under G.L. c.186, s.14 is higher than the damages under a warranty of habitability award, the tenant shall be awarded under the theory of breach of quiet enjoyment only so as to avoid duplicative awards. See, *Wolfberg v. Hunter*, 383 Mass. 390 (1982).

CA

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3968

BENSON MS REALTY, LLC,

Plaintiff,

v.

**CAROL and JOHN (aka JONATHAN)
BENSON,**

Defendants.

ORDER

After hearing on October 30, 2023, on the defendants' motion for leave to file a late answer and discovery demand, the following order shall enter:

1. The motion is allowed. LAR counsel, Joseph E. Szawlowski, Sr., for the defendants agreed to extend his LAR representation to assisting the defendants with the filing and serving of an answer and discovery demand by no later than November 3, 2023.
2. The plaintiff shall have until November 27, 2023, to file and serve its discovery demand and to serve responses to the defendants' discovery demand.

3. If the plaintiff serves a discovery demand by that date, the defendants shall have until December 15, 2023, to respond to said discovery.
4. Due to the issues of the defendant's capacity to navigate these proceedings being percolated during the hearing, and in order to determine if Mrs. Carol Benson is an "incapacitated person" as that term is defined in G.L. c.c. 190B, ss.510 (9), the court hereby orders that she undergo a forensic psychological evaluation with the Court Clinic. The court requests that the clinician evaluate Mrs. Benson with respect to her decision-making capacity, her ability to comply with court orders regarding her housing, and her ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a *guardian ad litem* for Mrs. Benson and additionally to assist counsel with his representation should he chose to extend his LAR representation. LAR counsel agreed to assist the defendants with scheduling an evaluation with the court Clinic.
5. A Case Management Conference shall be held at the Hadley Session of the court on **December 18, 2023, at 9:00 a.m.**

So entered this 15th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Clinic

Josheph E. Szawlowski, Sr., LAR Counsel for the defendants

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2761

GFE REAL ESTATE, LLC and FARAI
HATIDANI,

Plaintiff,

v.

STEPHANIE MARSHALL and TYKIE M.
GREENE, JR.,

Defendants.

ORDER

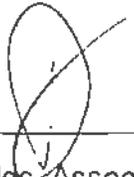
After hearing on October 26, 2023, the following order shall enter:

1. The parties report that the tenants were found eligible for their VOC application for \$3,000 but the landlord has not yet received said funds.
2. The tenants have re-applied for RAFT and that application is currently pending.
Ms. Luna from Way Finders, Inc. joined the hearing and verified that the tenants

will be eligible to apply for RAFT funds up to \$4,700 on November 1, 2023, and \$2,300 additional funds on December 1, 2023.

3. The tenants also have been given a Section 8 Voucher and the parties are interested in entering into a Section 8 tenancy. The tenants shall contact the Springfield Housing Authority and give permission to communicate with the landlord in the hope of leasing with her under Section 8.
4. Though the tenants did not make their rent payments in accordance with the court's order but the parties report that all rent for September and October 2023 has been paid.
5. The rental arrearage as of this date totals \$4,049 plus court costs.
6. The tenants shall pay \$1,250 by November 13, 2023, and another \$1,250 by November 27, 2023, for November 2023 rent and then again on December 11 and 27. All dates apply to either mailing or entry for an on-line payment.
7. If either party files a subsequent motion the plaintiff Farai Hatidani has permission to appear by Zoom for that hearing.

So entered this 1st day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

28

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-811

<p>SETH GRIFFIN,</p> <p>Plaintiff,</p> <p>v.</p> <p>LUIS BEVERAGGI,</p> <p>Defendant.</p>
--

ORDER

After hearing on November 1, 2023, at which only the plaintiff tenant appeared, the following order shall enter¹ :

1. The defendant Luis Beveraggi shall have a licensed electrician inspect the premises to determine if there exists any cross-metering at the premises and if cross-metering exist either have it remedied immediately or have the electric bill for the tenant transferred to the name of the property owner. If the electrician finds no cross-metering, the defendant shall have the electrician appear at the next hearing to testify. This is due to the fact that the tenant produced a

¹ The court received an email from the defendant property manager/landlord that he was in the Emergency Room in North Adams. Given the seriousness of the plaintiff's situation and the concern of possible utility shut off, the court allowed the hearing to proceed.

statement at the TRO hearing from Peter Milesi, electrician (License #109770B) which indicates cross metering.

2. Mr. Beveraggi shall also investigate and make necessary repairs to the following complaints listed by the tenants and supported by photographs put into evidence:
 - i. Windows;
 - ii. Stove;
 - iii. Mold in the bathroom;
 - iv. Roof (continues to leak despite tarp);
 - v. Rodent infestation;
 - vi. Outside garbage container overflow;
3. No person with COVID or COVID-like symptoms may enter the tenant's unit as the tenant has a pregnant partner.
4. All work that requires a license and /or a permit shall be effectuated by a licensed professional and with the property permit applied for with the city/town.
5. In addition to the court mailing copies of this order to the parties, it shall also send copies of same by email this day to the respective parties.
6. **This matter shall be scheduled for further hearing on November 8, 2023, at 9:00 a.m. at the Pittsfield Session of the Housing Court.**

So entered this 1st day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
NO.: 23-CV-879

TEN DEWEY AVENUE, LLC

Plaintiff

v.

ALLEGED DAUGHTER OF ED SUTTON,
AND ALL OTHER OCCUPANTS,

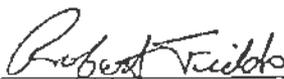
Defendants

ORDER

After hearing on November 1, 2023, on the plaintiff's motion for an injunctive order, at which only the property owner plaintiff appeared, the following order shall enter:

1. Plaintiff, Ten Dewey Avenue, LLC shall recover the premises and change the locks effective November 9, 2023, accompanied by a County Sheriff, subject to the Court's further Order after the hearing to be held on November 8, 2023.
2. Plaintiff and Defendant and all other occupants shall appear for further hearing on November 8, 2023 at 9:00 am at the Pittsfield Session of the Housing Court, to address this Order and any defenses that may be raised by defendants. The defendants/other occupants may be heard if they believe they have possessory claims to the premises.
3. Plaintiff shall seek the assistance of the Public Administrator for Berkshire County to take possession of and remove personal property from the premises subsequent to November 9, 2023.

So entered this 1st day of November 2023.


Robert Fields, Associate Justice 

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0446

KATHERINE DANT, ET AL.,)
)
Plaintiffs)
)
v.)
)
CITY OF CHICOPEE MOBILE HOME)
RENT CONTROL BOARD,)
)
Defendant)
)
M & S BLUEBIRD, INC., AGENT FOR)
GR REALTY 2, LLC)
)
Intervenor)
_____)

RULING ON CROSS MOTIONS FOR
JUDGMENT ON THE PLEADINGS

This appeal from a decision of the City of Chicopee Mobile Home Rent Control Board (the “Board”) to allow a rent increase for the Bluebird Acres Mobile Home Park (the “Park”), brought under G.L. c. 30A, came before the Court on July 7, 2023 on cross motions for judgment on the pleadings. Plaintiffs, residents of the Park, move for judgment on the pleadings, asking the Court to set aside the Board’s decision approving the rent increase petition filed by the Park’s owner, M & S Bluebird, Inc. (the “Owner”). The Board and the Owner seek judgment affirming the Board’s decision authorizing a rent increase.

On January 11, 2022, the Owner submitted a rent increase proposal of \$120.00 per month, from \$296.00 to \$416.00. The Board accepted evidentiary submissions and

held hearings on April 27, 2022 and May 4, 2022. The Board issued a written decision on May 18, 2022. The Board made findings and approved the rent increase in three increments of \$40.00, with the first increase beginning on July 1, 2022, the next on January 1, 2023 and the third on July 1, 2023.¹ Plaintiffs filed this c. 30A appeal on June 28, 2022.² The Owner's motion to intervene in the case was allowed on January 27, 2023.

I. FACTUAL BACKGROUND

The basic facts are not in dispute. The Park was built in the 1970s with a septic system that served the 170 manufactured home lots. In 1995, the Massachusetts Department of Environmental Protection ("DEP") promulgated Title V regulations that required a manufactured housing communities of the size of the Park to tie into a municipal sewer system. The Park did not do so, and in September 2017, the DEP entered into a Consent Order with the Owner pursuant to which the Owner agreed to convert from septic to municipal sewer.

By connecting to the sewer system in the City of Chicopee (the "City"), the Owner contends that it will incur annual sewer fees of \$156,310.00.³ Moreover, in order to bring waste from the Park to its sewer system, the City had to build a pumping station at a cost of approximately \$2,200,000.00. The City assessed the Park half the cost of the construction as a "betterment fee" and agreed to accept a twenty-year payment plan for the \$1,100,000.00 fee. The Owner seeks to recoup the cost from the Park tenants at a rate of \$55,000.00 each year for twenty years, but

¹ The rent increase does not include the \$6.00 monthly excise tax to the City of Chicopee.

² None of the parties has challenged the timeliness of the appeal.

³ The Owner estimates monthly sewer fees based on the meter reading of water passing through the system. See Record, pp. 9 & 10.

does not seek to pass on the interest charges it will pay over the amortization period. The record shows that the Owner is not seeking to recoup related any capital expenses necessary to connect to the municipal sewer system such as the costs of excavating, laying pipe, connecting pipes to individual home lots and resurfacing roads within the Park.⁴

II. LEGAL FRAMEWORK

The Legislature approved Chapter 596 of the Acts of 1977 (the “Act”) authorizing the city of Chicopee to adopt an ordinance to “regulate rents for the use and occupancy of mobile home park accommodations in the city [and] establish a rent control board for the purpose of regulating rents.” Act, § 2. In 1978, Chicopee adopted an local rent control law known as the Mobile Home Park Rent Control Ordinance (the “Ordinance”), which established the Board. See Chicopee Code, Part II, Chapter 195.

Pursuant to the Ordinance, the Board was empowered to adjust rents for manufactured housing communities in the city “on levels which yield to owners a fair net operating income for such units.” See Ordinance, § 195-5(A). The Ordinance defines “fair net operating income” as “that income which will yield a return, after all reasonable operating expenses, on the fair market value of the property,⁵ equal to the debt service rate generally available from institutional first mortgage lenders or

⁴ The Owner claims that it will also incur approximately \$875,000.00 for such infrastructure improvements. See Record, p. 7.

⁵ “Fair market value” is defined as “the assessed valuation of the property or such other valuation as the Board, on the basis of evidence presented before it, deems more appropriate to the circumstances of the case.” See § 195-5(C).

such other rates of return as the Board, on the basis of evidence presented before it, deems more appropriate to the circumstances of the case.” *Id.* at § 195-5(B).

Plaintiffs argue that the Attorney General’s regulations governing manufactured housing communities, 940 C.M.R. 10.03 (the “Regulations”), prohibit the Owner from including the sewer-related expenses when calculating its reasonable operating expenses. They contend that the Regulations make it an unfair or deceptive act or practice “to seek to recover costs or expenses resulting from any legal obligation of the operator to upgrade or repair sewer ... systems to meet minimum standards required by law, unless such standards first become effective after a tenant has initially assumed residency in a manufactured housing community and unless such costs are recovered as capital improvements [specifically listed in the occupancy agreement].” *See* Regulations at §§ 10.03(2)(m) and (2)(l).

III. DISCUSSION

In a proceeding pursuant to G.L. c. 30A for judicial review of an agency decision,⁶

“[t]he court may affirm the decision of the agency, or remand the matter for further proceedings before the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party may have been prejudiced because the agency decision is—

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or

⁶ The Act established that the Board would be subject to c. 30A as if the Board were an agency of the commonwealth. Act, § 4.

- (c) Based upon an error of law; or
- (d) Made upon unlawful procedure; or
- (e) Unsupported by substantial evidence; or
- (f) Unwarranted by facts found by the court on the record as submitted or as amplified under paragraph (6) of this section, in those instances where the court is constitutionally required to make independent findings of fact; or
- (g) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.”

G.L. c. 30A, § 14(7).

The primary issues in this case are: (A) whether the Owner can consider the costs associated with bringing the Park into compliance with Title V regulations as reasonable operating expenses, (B) whether the inclusion of \$13,000.00 for bad debt expenses and \$120,120.00 in payroll expenses in the calculation of reasonable operating expenses was supported by the evidence, and (C) whether the Board acted unlawfully by refusing to accept Plaintiff’s written legal arguments after the close of the public hearing and by failing to address issues raised by Plaintiffs and other tenants during oral testimony. Each of these issues will be addressed separately.

A. Inclusion of Sewer Upgrade Costs

The question of whether sewer upgrade costs can be included as reasonable operating expenses turns on whether the Regulations limit the Board’s authority to adjust rents pursuant to the Act and the Ordinance. As they apply to rent increases, the Court rules that the Regulations do not apply to manufactured housing communities located in municipalities that have adopted rent control laws pursuant to a Special Act of the Legislature. See Regulations, § 10.02(7) (“It shall be an unfair

or deceptive act or practice ... for an operator ... to impose, where the community is under the jurisdiction of a duly promulgated rent control statute, ordinance, by-law, or regulation, any rent increase ... except as permitted pursuant to such rent control law") (emphasis added). See also Regulations, § 10.02(8) ("It shall be an unfair or deceptive act or practice ... for an operator ... to increase a tenant's rent or other fee ... except as permitted (a) under the occupancy agreement, (b) under M.G.L. c. 186, § 12 with respect to a tenancy at will, or (c) in accordance with any applicable rent control law") (emphases added). In defining the term "fair market rental rates," the Regulations recite that, with respect to manufactured housing communities that are subject to rent control, the definition it is not intended to replace or supersede any applicable rent control laws and that "fair market rental rates" shall mean the rates established pursuant to such laws." See Regulations, § 10.01.

Neither the Act nor the Ordinance specifies what operating expenses constitute "reasonable" operating expenses. Neither law prohibits the inclusion of the cost of sewer upgrades as part of reasonable operating expenses. Therefore, the Court finds that the Board did not abuse its discretion or act arbitrarily or capriciously in permitting the Owner to include such costs as part of the reasonable operating expenses of the Park.

With respect to the dollar amount of the sewer-related costs included in the calculation of reasonable operating expenses, the Court finds that the Board was presented with substantial evidence to support the annual sewer charges and the annual expense the Park will incur over the next twenty years in paying the betterment fee charged by the City for installing a pump house. The record shows

that the betterment fee is not a capital expense of the Park; instead, it is required payment made to the City to defray the cost of constructing the City-mandated pumping station. The Court finds that the amounts that the Board allowed the Owner to include as reasonable operating expenses related to the sewer project are warranted and supported by the substantial evidence, and not unlawful for any of the reasons set forth in G.L. c. 30A § 14(7).

B. Bad Debt and Payroll Expenses.

First, the Court addresses the Board's approval of \$13,000.00 for bad debt expenses. The record shows that the Board was presented with two documents and no testimony on the issue of bad debt. The only evidence presented was a ten-month profit and loss statement from 2021 showing bad debt expense of \$2,416.00⁷ (see Record p. 13) and a 2020 tax return that includes bad debt expenses of \$16,713.00. See Record, p.16. These two data points are an inadequate sample size to substantiate an estimate of annual bad debt expenses. The 2020 bad debt tax deduction may have been caused by extraordinary circumstances, and the 2021 figure may be more representative of uncollectable debt in a given year. The Court cannot draw its own conclusions based on the limited information in the record. The Court finds that the Board's decision to allow \$13,000.00 in bad debt expenses as part of reasonable operating expenses is unsupported by substantial evidence. To avoid

⁷ Extrapolated over twelve months, the figure would be approximately \$2,900.

prejudice to the rights of the Park's tenants, the Court shall modify the Board's decision to eliminate the line item for bad debt expenses.⁸

Second, regarding payroll expense, the record shows the payroll costs were calculated by adding together the weekly gross pay for three employees. Documentary evidence was provided supporting the wages. Plaintiffs argue that the payroll figure seems high in relation to the management fees charged at other manufactured housing communities, although they provided no evidence of typical management fees. The Board heard testimony that other parks use management companies that pay subcontractors to do much of the work that the employees of the Park do in-house. The record shows that the Owner includes in its operating expenses a relatively small amount for subcontractors.⁹ Therefore, the Court finds that the record adequately supports the Board's findings as to the reasonableness of the payroll expense item and, further, that the Board did not act arbitrarily or capriciously in adopting the payroll records as evidence of payroll expenses.

C. Post-Hearing Submissions

The Plaintiffs contend that the Board abused its discretion and acted arbitrarily or capriciously by refusing to allow Plaintiffs to submit written legal argument into the record and failing to address any of the tenant's concerns raised at the public hearings. The Court rejects this argument. The records shows that the Board

⁸ It would not be in the interests of justice to set aside the Board's decision altogether or remand the matter for further hearing given that bad debt is less than 2% of the total of reasonable operating expenses.

⁹ For example, the Owner includes \$3,000 annually for casual labor and \$30,000 for various repair and maintenance tasks. *See* Record, pp. 8-10.

conducted a fair hearing that allowed all interested parties to be heard. The Board's refusal to accept what counsel described as "a written version of our argument ... just a summary of the points made based upon documents already submitted by the owner" (email from Joel Feldman to Christine Pikula, April 28, 2022) is not a reason to set aside the Board's decision. Plaintiffs addressed the legal issues at the public hearing, and a summary of the legal argument in writing was not necessary for the Board to make its findings. Moreover, there is no basis to find that "not a single argument raised by the tenants was addressed in the Board's decision," as suggested by Plaintiff's counsel. The record includes two letters from tenants and numerous tenants spoke at the public hearing about complaints they had with the operation of the Park. The Board was under no obligation to specifically reference comments made by tenants in its decision.

IV. CONCLUSION AND ORDER

In light of the foregoing, the Court affirms and modifies the Board's decision as set forth in the following order:

1. Plaintiff's motion for judgment on the pleadings is DENIED.
2. The motions for judgment on the pleadings filed by City of Chicopee Mobile Home Rent Control Board and M & S Bluebird, Inc. are ALLOWED, subject to the modifications set forth herein.
3. The Court modifies the Board's decision by eliminating the \$13,000 line item for bad debt expense from the total amount of reasonable operating

expenses, thereby reducing the expense figure to \$664,171.00 and the total rental fee income to \$835,856.00.

4. The Court modifies the Board's decision by finding that the proper rent increase based on the record is \$114.00 (excluding the \$6.00 monthly excise tax).¹⁰
5. Accepting the Board's decision to allow rent increases in three phases, each six months apart, the Court modifies the Board's decision by implementing the rent increase as follows:
 - a. Beginning January 1, 2024: \$334.00
 - b. Beginning July 1, 2024: \$372.00
 - c. Beginning January 1, 2025: \$410.00
6. Accepting the Board's decision to prohibit a rent increase for one year from the last rent increase, the Court modifies the Board's decision to prohibit the Owner from requesting a rent increase until after January 1, 2026.

SO ORDERED.

DATE: November 2, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

¹⁰ The monthly rent increase is calculated by dividing the total park rental fee income by 170 lots and then dividing the quotient by 12 months.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-86**

BASSAM YACTEEN,

Plaintiff,

v.

NEOMI REYES,

Defendant.

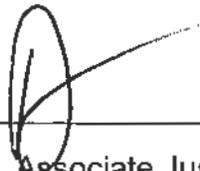
ORDER

After hearing on November 2, 2023, on further review of this matter at which both parties and the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. TPP and the tenant finally have accomplished an intake and TPP has agreed to open the case and assist the tenant with efforts including her RAFT application and a referral to Community Legal Aid (CLA) to assist with having her Section 8 Voucher restored.

2. The tenant paid \$1,000 this day and will pay another \$800 the day after the hearing (November 3).
3. The tenant shall also make a \$1,000 payment to the landlord on November 17, 2023, and \$500 on December 1, 2023.
4. The tenant shall work with TPP on her RAFT application and the landlord shall cooperate with same.
5. The tenant shall also work with TPP for a referral to CLA to have her Section 8 Voucher restored.
6. This matter shall be scheduled for further hearing on **December 28, 2023, at 9:00 a.m.**

So entered this 3rd day of November, 2023.



Robert Fields, Associate Justice

CC: Taquoia Whitfield, TPP
Court Reporter