

Western Division Housing Court
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ABOUT

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

WHO WE ARE

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

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OUR PROCESS

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

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

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

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

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Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for those who wish to receive new volumes by e-mail when they are released. Those wishing to 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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Hon. Jeffrey Winik, Associate Justice (Recall)

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-933

MARISOL GALAVIZ,

Plaintiff,

v.

MARGARITA MULERO,

Defendants.

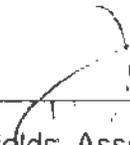
ORDER

After hearing on November 3, 2023, at which both parties appeared without counsel, the following order shall enter:

1. The defendant landlord shall provide hotel or motel accommodations for the plaintiff and her family until the boiler is restored and the City of Springfield confirms that the boiler is working and that the work was done properly by a licensed professional.

2. Said hotel accommodations shall have cooking facilities or the landlord shall provide the tenant with a daily food stipend of \$125.

So entered this 6th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

112

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

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

ERIC MARKS,

Plaintiff,

v.

DANIEL CARTHON and ALYCAR
INVESTMENTS, LLC,

Defendants.

ORDER

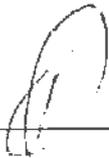
After hearing on November 3, 2023, at which the plaintiff and the defendant Daniel Carthon appeared, the following order shall enter:

1. Alycar Investments, LLC, is the owner of the premises (with the same mailing address and Mr. Carthon) and shall be added as a defendant and shall be represented by counsel in these proceedings.
2. The defendants shall provide hotel accommodations for Mr. Marks until the Town of Montague lifts the condemnation of the premises. Such accommodations shall

be located in a location that is agreed to by Mr. Marks and shall have cooking facilities. If there are not cooking facilities, the defendants shall provide the tenant with a daily food stipend of \$75.

3. This order shall remain in effect until the Town lifts the condemnation or until further order of the court.
4. This matter shall be scheduled for further hearing on **November 10, 2023, at 9:00 a.m.** in the Greenfield Session of the court.

So entered this 6th day of November, 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-2828

MILL STREET REALTY TRUST,

Plaintiff,

v.

ANTHONY SARNO,

Defendant.

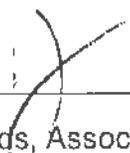
ORDER

This matter came before the court for trial on October 24, 2023, at which the plaintiff appeared through counsel and the defendant appeared *pro se*, and at which a representative from the Tenancy Preservation Program (TPP) also appeared, the following order shall enter:

1. The parties agree to the landlord's *prima facie* case for rental arrearage of \$1,753 through October 2023 and for possession.

2. The tenant reported and provided documentation that beginning November 3, 2023, he will be receiving SSI (or SSDI) benefits each month in the amount of \$1,639. He also anticipates receiving retroactive benefits from the Social Security Administration but does not know when he will receive those funds.
3. Given that the tenant has suffered from ill health which has included hospitalizations and has prevented him from working, and given that he now will have sufficient income from SSI or SSDI, the following order shall enter as a reasonable accommodation and equitable order:
4. Entry of judgment shall be stayed contingent upon the tenant paying his rent of \$710 plus \$200 towards the arrearage (noted above plus court costs). The tenant will pay towards any remaining arrearage upon his receipt of his retroactive benefits. If the tenant's rent is increased at any time while there continues to be arrearage, the parties shall negotiate in good faith a payment plan and then reduce those terms to writing and file with the court and if unable to do so shall mark the matter up for further hearing at that time. This matter shall be dismissed upon the tenant reaching a \$0 balance.
5. The tenant shall continue to work with TPP.

So entered this 6th day of November, 2023.



Robert Fields, Associate Justice

CC: Alisha White, TPP

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,

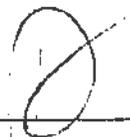
Defendants.

ORDER

After hearing on November 3, 2023, on the defendants' motion to amend the courts bond/use and occupancy order, the following order shall enter:

1. The motion is allowed.
2. The defendants' next installment payment is due on December 5, 2023, and shall continue by the fifth of each month thereafter pending appeal while they occupy the premises.

So entered this 6th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-801

RONALD S. MECK,

Plaintiff,

v.

JUSTIN and MEGAN VEZINA,

Defendants.

ORDER

After hearing October 20, 2023, on the plaintiff's motion for injunctive relief and the defendants' motion to dismiss, the following order shall enter:

1. **Background:** The plaintiff, Ronald Meck (hereinafter, "Meck") owns and lives at the property located at 12 Birch Drive in Shutesbury. He reports that he has resided therein for 34 years. The defendants, Justin and Megan Vezina (hereinafter, "the Vezinas") live in the adjacent property located at 34 King Road, a home that they own and report that they have resided in for 4 years. The

Vezenas own and raise chickens and roosters on their property. Meck has filed this injunctive complaint alleging that the noise produced by the roosters is a nuisance which causes excessive noise. The Vezenas' position is that they are permitted to raise roosters and that the noise is not excessive.

2. **Application for Injunctive Relief:** To succeed in an action for a preliminary injunction, a plaintiff must show (1) the likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction. *Tri-Nel Mgmt. v. Board of Health*, 433 Mass. 217, 219, (2001), citing *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).
3. Meck argues that the sound of the roosters permeates his home, interferes with his work, and is relentless particularly in the early hours of the day. Meck cites the town's by-laws which he believes is being violated by the Vezenas. It is unclear upon the current record before the court if the Vezenas' roosters are violating the town's by-laws. In fact, each side of this dispute point to Article #4 of the by-laws to support their own positions. That provision states:

No person(s) shall create, assist in creating, continue to allow to continue any excessive, unnecessary or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the Town of Shutesbury.

4. The parties testified that though Meck has complained to the town officials and to the town police, the town nor the police have taken any steps to require the

Vazinas to do anything, nor have they indicated that the Vezinas are violating the town's by-laws.

5. At this juncture, based on the record currently before the court, the court finds that the plaintiff has failed to meet the standards for an injunctive order having not met his burden of proof that the roosters are causing irreparable harm or that he has a likelihood of success on the merits.
6. Equally, the record does not support that Meck's complaint must be dismissed as a matter of law.
7. As such, both motions are denied without prejudice.
8. The parties shall engage in the discovery process and shall have 20 days from the date of this order noted below to propound discovery and 45 days after receipt of said discovery to provide responses.
9. A Case Management Conference is requested to be scheduled by the Clerk's Office.

So entered this 7th day of November, 2023.



Robert Fields, Associate Justice

CC: Clerks Office for scheduling of a Case Management Conference
Court Reporter

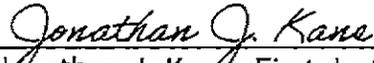
reasonable inferences drawn therefrom, the Court finds and rules that § 15 does not apply in this case because Defendant's financial hardship resulted from the conduct of his co-tenant, Torrance Keith Johnson.¹ Mr. Johnson caused severe damage to the Premises during a mental health breakdown, leading to the condemnation of the Premises for no fault of Plaintiff. Defendant stopped paying rent because he needed to use his funds to reside in a hotel after the condemnation. The tenancy could not be preserved simply by paying back rent to Plaintiff given the extensive damage to the Premises; thus, the Court is not constrained by § 15.

The Court finds that Plaintiff established its prima facie case for possession and unpaid rent in the amount of \$5,600.00 through September 2023 based on monthly rent of \$1,400.00. Defendant failed to establish a legal defense to eviction. Because the broken sink and stove were operable prior to being damaged by Mr. Johnson, Plaintiff is not responsible for replacing these items. Defendant's counterclaim for financial contribution to relocation costs fails for lack of merit. Accordingly, based upon the foregoing, and in light of the governing law, the following order shall enter:

1. Judgment for possession and \$5,600.00 in damages, plus court costs, shall enter for Plaintiff.
2. Issuance of the execution shall be governed by Uniform Summary Process Rule 13.

SO ORDERED.

DATE: November 10, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Default judgment entered against Mr. Johnson due to his failure to appear at the First Tier Event.

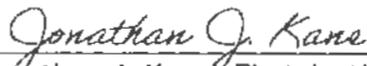
she has exhausted the \$7,000.00 maximum benefit and is not entitled to reapply until April 2024.

Defendant raised no legal defenses to Plaintiffs' claim for possession at trial.¹ Accordingly, based upon all the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that;

1. Judgment for possession and \$9,050.00, plus court costs, shall enter in favor of Plaintiffs.
2. Execution shall issue upon written application ten days after the date judgment enters.

SO ORDERED.

DATE: November 10, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant made a legal argument that she was entitled to a longer notice period under the CARES Act. The Court does not have to reach the question of whether the CARES Act applies as Defendant provided no evidence as to why the CARES Act would apply in this case.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0939

ERIC MARKS,)
Plaintiff)

v.)

DANIAL CARTHON AND ALYCAR)
INVESTMENTS, LLC,)
Defendants)

ORDER

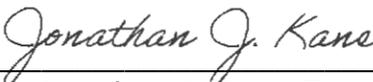
This matter came before the Court on November 10, 2023 on Plaintiff's motion to issue execution. All parties appeared. After hearing, the following order shall enter:

1. Defendants shall provide alternative housing to Plaintiff from today through Friday night, November 17, 2023, along with the daily food stipend of \$75.00 as previously ordered. Plaintiff will have a friend provide the identification necessary for him to check into the hotel.
2. Plaintiff shall allow Defendants' agents access to the property for purposes of inspection on Tuesday, November 14, 2023 at 2:00 p.m. Plaintiff shall use the time to pack his belongings.
3. After November 14, 2023, Defendants shall employ licensed and bonded movers to move Plaintiff's belongings to a secure warehouse to allow the unit to be renovated.
4. The parties shall communicate by text message going forward.

5. The parties shall return for further review on **November 17, 2023 at
10:00 a.m.**

SO ORDERED.

November 10, 2023.



Hon. Jonathan J. Kane, First Justice

law requires a landlord to pay for utilities unless responsibility is transferred to the tenant in a written agreement. See State Sanitary Code, 105 Code Mass. Regs. 410.200. Plaintiff testified that, although he told Defendant at the outset of the tenancy that electricity was not included in the rent, he did not put the requirement in writing. Defendant did not assert that he was deprived of power, however, or that he was charged for more electricity that he actually used.

Given that Defendant paid only for the electricity he consumed, the lack of a written agreement for payment of electricity did not interfere with his quiet enjoyment of the Premises. See *Poncz v. Loftin*, 34 Mass. App. Ct. 909, 910-911 (1993). The transfer of utilities to the tenant without a written agreement is, however, an unfair or deceptive act or practice. See Attorney General's Regulations, 940 Code Mass. Regs. § 3.17. For this violation of law, Defendant is entitled to nominal damages of \$25.00. Because Plaintiff is in the trade and commerce of renting residential properties,¹ the damages will be trebled.²

Pursuant to Massachusetts law governing evictions, "[t]here shall be no recovery of possession [by the landlord] if the amount found by the court to be due the landlord equals or is less than the amount found to be due the tenant or occupant by reason of any counterclaim or defense under this section." See G.L. c. 239, § 8A. Here, although Plaintiff testified at trial that Defendant owed two months of rent, Defendant denied that he was behind in rent. Plaintiff made no claim for rent in his complaint, nor did he ask for use and occupancy arising after the date of the

¹ The evidence shows that he owns at least two rental units in a building that is not owner-occupied.

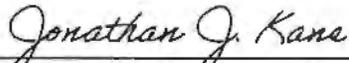
² Defendant did not prove by a preponderance of the evidence the violation of any other law.

complaint. Accordingly, Plaintiff has not established that he is entitled to any unpaid rent through the date of trial.

Based upon the foregoing, and in light of the governing law, judgment for possession and \$75.00 shall enter in favor of Defendant.

SO ORDERED.

DATE: November 10, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

thus owes rent for the months of May through October in the total amount of \$4,500.00.

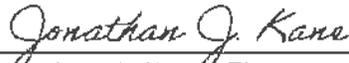
In the previous case, Defendant was awarded \$2,700.00 in damages for cross-metering. She claims that the cross-metering continued after the trial in April 2023, and thus she is once again entitled to damages. Ms. Ryan testified that she had an electrician correct the problem and showed pictures of the repairs that were made. Defendant could provide no evidence that the cross-metering continued after April 2023. She complained about having to pay an electric bill, but her lease requires her to pay for her own electricity usage. Defendant raised no other legal defenses to payment, and did not demonstrate to the Court's satisfaction a pending application for rental assistance.

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

1. Judgment for possession and \$4,500.00, plus court costs, shall enter in favor of Plaintiffs.¹
2. Execution shall issue upon written application ten days after the date judgment enters.

SO ORDERED.

DATE: November 10, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant claims to have filed an application for rental assistance the day prior to trial. Defendant presented no reason beyond having to pay for electricity (which is her responsibility under the lease) that explains why she has not paid any rent since the last trial in April 2023. Accordingly, the Court finds that G.L. c. 239, § 15 is not applicable for lack of proof of financial hardship. If Defendant is approved for rental assistance, she may file a motion to stay use of the execution.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-3677

_____)	
SPRINGFIELD CV1, LLC,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER FOR
KEITH SHAVER,	)	ENTRY OF JUDGMENT
)	
DEFENDANT)	
_____)	

This summary process case came before the Court on October 5, 2023 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 64 Lawton Street, Unit 6, Springfield, Massachusetts (the “Premises”) from Defendant alleging that Defendant materially breached the terms of the tenancy agreement by continually paying is rent late. Defendant did not file an answer but was permitted to raise defenses at trial.

Based on the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, the Court makes the following findings of fact and rulings of law:

Defendant moved into the Premises in 2011. Rent was \$1,030.00 per month until March 2023, at which time it increased to \$1,130.00. Defendant owes \$8,006.40

in rent arrears through October 2023.¹ Plaintiff served and Defendant received a legally sufficient notice to quit and Plaintiff timely served and filed this case.

Defendant signed a lease (that has since expired) requiring rent to be paid by the first of each month. The rent ledger shows that, prior to the RAFT payment in February 2023, Defendant had failed to pay rent several times. Since April 2023, he has made no payments. Given Defendant's lack of payment for many months, it is technically correct to say that Defendant has consistently failed to pay rent on time; however, the case is more appropriately one for non-payment of rent. The distinction is important, given the tenant protections set forth in G.L. c. 239, § 15 and statutory cure rights in cases brought for non-payment of rent.

Even if, however, Plaintiff brought this case for lease violations instead of non-payment to circumvent G.L. c. 239, § 15, the difference is without a meaningful distinction because Defendant has no pending application for rental assistance, likely because he has exhausted his benefits. Moreover, Defendant testified that he made no effort to cure the arrears after receiving the notice to quit, nor the financial ability to do so. Accordingly, because Defendant did not file an answer and raised no legal defenses to possession at trial,² Plaintiff is entitled to judgment.

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

1. Judgment for possession and \$8,006.40, plus court costs, shall enter in favor of Plaintiff.

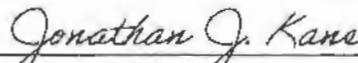
¹ The rent ledger shows a negative balance as of February 2023 after a RAFT payment was received. Defendant owed \$96.40 in March 2023, and has not paid rent for the seven subsequent months.

² Defendant began listing bad conditions in the Premises, but admitted that he did not inform management about them because he does not like the way this new owner is treating the tenants.

2. Execution shall issue upon written application ten days after the date judgment enters.

SO ORDERED.

DATE: November 10, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0819

TOWN OF ERVING BOARD OF HEALTH,

Plaintiff

v.

DANIEL R. WILLOR AND BRITTNI JOHNSON,

Defendants

ORDER TO VACATE, REPAIR,
PROVIDE ACCESS AND APPEAR

Re: 5 West High Street Erving, Massachusetts (the "Premises")

This case came before the Court on November 10, 2023 for review. Plaintiff appeared through counsel, and Defendant Willor ("Mr. Willor") appeared, along with his brother Stephen. Defendant Johnson ("Ms. Johnson") did not appear.

After hearing, the following order shall enter:

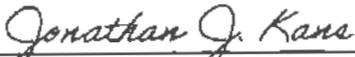
1. Mr. Willor shall pull and close all necessary permits within 30 days.
2. The Board of Health and Building Department will conduct a joint inspection of the subject premises, and Mr. Willor shall allow them access for this purpose.
3. Neither Ms. Johnson nor her family are allowed to enter the property until further court order, or until the condemnation is lifted, whichever first occurs. Mr. Willor may change the locks to prevent unauthorized entry; however, he must reasonably allow Ms. Johnson access to retrieve personal belongings. Appointments for access will be arranged through Mr. Willor's brother Stephen. This order governs access only during the period of time that the condemnation order is in effect, and is not intended to return legal possession to Mr. Willor.
4. Mr. Willor shall continue to provide alternative housing accommodations to Ms.

Johnson until further court order.

5. The parties will return for review on 1/18/23.

SO ORDERED.

DATE: November 10, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4321

_____)	
SUSAN WALKER,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
NANCY KENT AND MARY AUBREY,)	
)	
DEFENDANTS)	
_____)	

This no fault summary process case came before the Court on November 10, 2023 for a bench trial. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 60 Depot Rd, Studio Apt, Leverett, Massachusetts (the “Premises”).

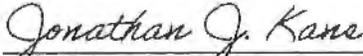
Based on all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Defendants stipulated to Plaintiff’s prima facie case for possession. They are current with the rent. Because it is a no fault eviction case, they are entitled to the benefit of G.L. c. 29, §§ 9 et seq. Plaintiff concedes that Defendants qualify for the 12-month statutory stay based on disability. One of the defendants is suffering with a very serious illness, so it has been impossible to personally conduct a diligent housing search, but they are relying of friends and LifePath for housing search assistance. In light of the foregoing, the following order shall enter:

1. No judgment shall enter at this time.
2. Defendants shall continue to pay use and occupancy of \$1,000.00 each month, which is due on the first.
3. Defendants shall keep record of their efforts to find replacement housings, and efforts made by others on their behalf.
4. Entry of judgment shall be stayed through February 16, 2024.
5. The parties shall appear for review of Defendants' housing search efforts on February 16, 2024 at 9:00 a.m. Defendants may appear by Zoom; however, if they intend to have any witnesses testify as to their housing search efforts on behalf of Defendants, such witnesses must appear in person along with Plaintiff and her counsel.

SO ORDERED.

DATE: November 10, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-854

HUBERT P. CAMPBELL,

Plaintiff,

v.

ELVIS OLIVERAS VASQUEZ,

Defendant.

ORDER

After hearing on November 13, 2023, at which the parties and the plaintiff Hubert Campbell's Probate Court appointed Guardian Joan Cropper appeared, the following order shall enter:

1. The court is satisfied by the Probate Court paperwork (Case No. HD23P2046GD) that Ms. Cropper is Mr. Campbell's Guardian and can act on his behalf in collecting his belongings.

2. The parties shall meet at the subject premises located at 48 Abermarle Street in Springfield, MA, on November 14, 2023, at 3:00 p.m. to allow Ms. Cropper to enter the subject premises and identify any and all items that she claims is Mr. Campbell's. Any such item that the defendant contests may be photographed by the parties.
3. Ms. Cropper and as much as four helpers shall appear at the premises to remove any and all non-contested items from noon to 3:00 p.m. on November 18, 2023.
4. The landlord shall provide a professional technician to detach the gas stove from its connection so that it may be removed on this date (11/18/23).

So entered this 13 day of November, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET 23H79CV0000943

LIVE PLEASANT LIMITED PARTNERSHIP
(Plaintiff)

v.

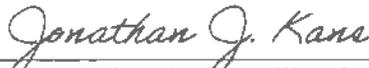
BRIAN COMER
(Defendants)

ORDER OF THE COURT

The Parties appeared before the court on November 13, 2023. The Plaintiff appeared through counsel with property manager Alexandra Dulude. The Defendant appeared self-represented. Daniella Grimaldi with Clinical and Support Options ("CSO") was present.¹ The parties reached agreeable terms to resolve this matter, which terms will enter as a court order:

1. The Defendant will continue to be excluded from his apartment located at 155 Pleasant Street, Unit 210, Northampton MA 01060, and the entire property of Live Pleasant Limited Partnership ("Live 155") pending the termination of the tenancy.
2. The parties agree that Defendant's tenancy and right to occupancy will terminate as of midnight on November 30, 2023. On December 1, 2023, property management will retake full possession of the unit and any remaining belongings will be considered abandoned property.
3. CSO and/or Defendant will be allowed access to the property on November 14, 2023, at 11:00 a.m. to retrieve any items that the Defendant wishes to remove at that time.
4. CSO and/or the Tenant will be allowed access at a date and time coordinated between CSO and property management for the final move out of the Defendant's remaining belongings.

So entered this 13th day of November 2023.



Hon. Jonathan J. Kane, First Justice

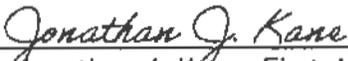
¹ Prior to appearing in the courtroom, Defendant consulted with Community Legal Aid.

assistance is unavailable, Defendant shall propose a payment plan that brings her to a zero balance in a reasonable period of time.

4. A referral was made to the Tenancy Preservation Program (TPP) today. Defendant shall cooperate with TPP and follow any of its recommendations.
5. The parties shall appear for review on **January 8, 2024 at 9:00 a.m.**

SO ORDERED.

DATE: November 13, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

served by a deputy sheriff.¹ Defendant has not surrendered possession of the Premises, and has paid no rent since a partial payment in January 2023.

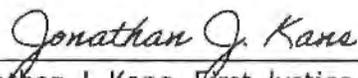
Defendant asserts that there is a mice infestation in the Premises, which testimony is supported by the evidence. The Court finds that Plaintiff instructed Terminex, who was already treating the Premises for roaches, to also treat for mice. Defendant could provide no evidence that he informed Plaintiff that the mice infestation continued or grew increasingly severe. Therefore, the Court has insufficient evidence to find Plaintiff liable for failing to address the rodent infestation.²

Accordingly, 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 in favor of Plaintiff for possession and \$13,575.00 in unpaid rent, plus court costs.
2. Execution (eviction order) shall issue upon written request by Plaintiff ten days after the judgment enters on the docket.

SO ORDERED.

DATE: November 17, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant initially denied receipt, but then said he had no memory either way. The Court therefore presumes receipt based on the sheriff's return.

² Defendant's other line of defense is that Plaintiff failed to cooperate with the RAFT program. This case is not, however, a nonpayment of rent case, and Plaintiff was under no legal obligation to work with the RAFT program to accept rental assistance.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-4546

FREEDOM SPIRE HOLDINGS, LLC,

Plaintiff,

v.

MARGARITA COLON,

Defendant.

ORDER

After hearing November 16, 2023, directly following a Tier 1 conference at which the plaintiff appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The landlord's counsel's motion to have the tenant evaluated by the Court Clinic and for the appointment of a Guardian Ad Litem—if recommended—is allowed. In order to determine if Ms. Colon 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. Colon 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. Colon to assist her in navigating these proceedings and her dire housing situation.

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 and assist in the coordination of the Court Clinic evaluation.
3. TPP is requested to assist with the scheduling of the Court Clinic evaluation and with the tenant's attendance and to inform the Court Clinic that Ms. Colon does not speak English.
4. If the Court Clinic evaluation recommends the appointment of a Guardian Ad Litem, the Court shall appoint one and will schedule this matter for review thereafter. If the evaluation does not support the need for such an appointment, this matter shall be scheduled for a review at that time.

So entered this 17th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Clinic

TPP

Jenni Pothier, Chief Housing Specialist (to ensure receipt by the Court Clinic)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4087

_____)	
GREG GARDENER,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND 8A ORDER
AMBER RENAUD,)	
)	
DEFENDANT)	
_____)	

This summary process case brought for non-payment of rent came before the Court on November 16, 2023 for a bench trial. Both parties appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 24 Adams Street, Unit 2, Springfield, Massachusetts (the "Premises") from Defendant.

Based on the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, the Court makes the following findings of fact and rulings of law:

Plaintiff owns the Premises, served a notice to quit that Defendant received, and timely served and filed this summary process action. Monthly rent is \$2,300.00 and Defendant does not dispute that she has not paid rent in the total amount of \$10,700.00. Defendant has exhausted her RAFT benefits and has no pending application for rental assistance.

Defendant filed an answer asserted various defenses and counterclaims. At

trial, Defendant limited her testimony to conditions of disrepair. She demonstrated that she suffered a leak from her upstairs bathroom into the floor below at the time she moved in, and although Plaintiff immediately repaired the leak, he failed to complete interior repairs by not replacing a ceiling tile. Moreover, Defendant concedes that he never repaired the lever in the second floor bathroom shower that allows water to reach the showerhead (it only comes out of the tub faucet). The shower in Defendant's other bathroom operated properly.

Defendant also testified that Defendant stacked various unused items, such as old radiators, behind her back door. Plaintiff admits that he stored such items on the porch, but they did not prevent the back door from opening fully. Defendant did not prove by a preponderance of the evidence that the items on the porch created an unsafe condition. Defendant admits that she did not notify Plaintiff of other issues about which she testified, such as mice and broken heater covers.

The Court finds that the missing ceiling tile and inoperable shower lever, as well as items stacked on the porch, are relatively minor defects. Nonetheless, these conditions slightly reduce the fair rental value of the Premises. The Court finds that these conditions existed for approximately nine months. Based on the totality of the circumstances, the Court finds that the fair rental value of the Premises was reduced by \$50.00 per month for the nine months, for a total abatement of \$450.00.

Accordingly, based upon all the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that;

1. Plaintiff is entitled to unpaid rent in the amount of \$10,700.00, plus court costs and interest.

2. Defendant is entitled to an offset of \$450.00 on account of her claims and defenses.
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 \$10,250.00, plus court costs of \$ 182.76 and interest in the amount of \$ 283.27, for a total of \$ 10,716.03. 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 \$10,250.00, plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: November 17, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1514

LORD JEFFREY APARTMENTS,

Plaintiff,

v.

BRANDY FULLER,

Defendant.

ORDER

After hearing on November 15, 2023, on the tenant's emergency motion to stop a physical eviction, at which a representative from the Tenancy Preservation Program (TPP)¹ and a representative from Way Finders, Inc. joined by Zoom, the following order shall enter:

¹ A referral was made to TPP and phone numbers shared during the hearing as Mr. Richtell was going to call the tenant directly after the hearing.

1. The court is persuaded that the tenant's failures in this matter (non-payment, delayed recertification, and lack of engagement in the proceedings) may stem from [REDACTED].
2. The physical eviction scheduled for November 16, 2023, shall be cancelled.
3. The tenant shall work with TPP's Mike Richtell on a RAFT application² and shall cooperate with TPP regarding its other recommendations.
4. Anticipating that RAFT funds will greatly reduce the arrearage and the tenant shall henceforth pay her rent plus \$25 towards the arrearage until the balance is \$0.
5. Though the RAFT process will not likely be complete, the parties agreed to return to court on the date below for a review to better ensure that the tenant is working with TPP and the RAFT application is being processed.
6. This matter shall be scheduled for review in the Hadley Session of the court on **December 11, 2023, at 9:00 a.m.**

So entered this 17th day of November, 2023.

Robert Fields, Associate Justice

CC: Mike Richtell, TPP

Court Reporter

² Way Finders, Inc. confirmed that an earlier RAFT application timed out due to the lack of documents required by the landlord. It appears that Way Finders, Inc. had an incorrect email address for the landlord which was corrected during the hearing.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0939

ERIC MARKS,)
Plaintiff)
)
v.)
)
DANIAL CARTHON AND ALYCAR)
INVESTMENTS, LLC,)
Defendants)

FURTHER ORDER REGARDING
ALTERNATIVE HOUSING

This matter came before the Court on November 17, 2023 for review of the Court's November 10, 2023 order on Plaintiff's motion for injunctive relief. All parties appeared through counsel. The residential premises in question are located at 96 3rd Street, Turners Falls, Massachusetts (the "Premises"). After hearing, the following order shall enter:

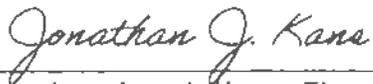
1. Defendants shall provide alternative housing to Plaintiff from today through the night of December 1, 2023. Plaintiff will be responsible for providing a form of identification necessary for him to check into the hotel.
2. Defendants shall pay \$1,050.00 for the food stipend previously ordered from November 10 to November 17, and for the period of November 24, 2023. Defendants have \$700.00 in court today, and shall pay the balance of \$350.00 by end of business today at the hotel. For the week of November 24, 2023 to December 1, 2023, Defendants shall pay \$525.00 for the food stipend accruing at a rate of \$75.00 per day, unless Defendants place

Plaintiff in housing with cooking facilities, in which case the food stipend is not required.

3. The previous order requiring Defendants to employ a licensed and bonded mover to move Plaintiff's belongings from the Premises to a secure warehouse remains in place. For purposes of scheduling this temporary move of Plaintiff's belongings, counsel for the respective parties shall communicate to make the necessary arrangements.
4. The Montague Board of Health and/or Building Department shall appear at the next court date to report on the status of inspections and correction orders related to the Premises.
5. The next court date in this matter shall be **December 1, 2023 at 9:00 a.m.** for further review and hearing. Either party may file and serve motions by November 28, 2023 to be heard at the next court date.
6. Any provision of the Court's prior order that has not been modified by this order shall remain in place.

SO ORDERED.

November 17, 2023.



Hon. Jonathan J. Kane, First Justice

cc: Town of Montague Board of Health
Town of Montague Building Department

12

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3149

SERGEANT WEST II APARTMENTS,

Plaintiff,

v.

JAYSON SANCHEZ,

Defendant.

ORDER

After hearing on November 14, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared *pro se*, and at which representatives from the Tenancy Preservation Program (TPP) and Way Finders, Inc. joined, the following order shall enter:

1. The motion shall be continued to the date noted below.
2. The tenant shall pursue a RAFT application, hopefully with the assistance of TPP and the parties shall cooperate with said application.

3. The tenant shall pay \$500 towards arrearage on November 17, 2023. The tenant shall also pay his rent on time and in full for December 2023, and then an additional \$500 towards arrearage on December 17, 2023.
4. If there is a balance above what RAFT can pay, the tenant shall continue to pay his rent plus \$500 per month in the manner detailed above.
5. This matter shall be scheduled for **December 21, 2023, at 9:00 a.m.** for further hearing.

So entered this 17th day of November, 2023.



Robert Fields, Associate Justice

CC: TPP

Court Reporter

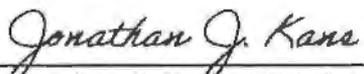
asserted that they have endured mice in the Premises and have not had a mailbox for six months. They also claim that "drug users" are on their porch, making them feel unsafe. With respect to the mice, Defendants did not convince the Court that they gave adequate notice of the issue to Plaintiff, even though they have used the on-line tenant portal for other purposes. Plaintiff provided new keys to the mailbox, and management was not made aware that the problem persisted.¹ Although Defendants may have had incidents with neighbors or non-residents that make them feel unsafe at the Premises, they were unable to prove that Plaintiff was aware of the issue and failed to take appropriate actions.

Accordingly, based upon all the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that;

1. Judgment for possession and \$5,950.00, plus court costs, shall enter in favor of Plaintiff.
2. Execution shall issue upon written application ten days after the date judgment enters in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: November 17, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

¹Defendants claim they told maintenance personnel about the mailbox and other issues, but have nothing in writing to demonstrate notice was given to Plaintiff nor any corroborating evidence.

Defendant rented a room from a subtenant of the former owner of the Premises. He has no landlord-tenant relationship with Plaintiff. Plaintiff never accepted any money or entered into any agreement, written or oral, for Defendant to rent a room. Because of the lack of a landlord-tenant relationship, Plaintiff served a 90-day notice to quit upon Defendant, which Defendant acknowledges receiving. The notice to quit was served on April 4, 2023, shortly after Plaintiff's previous claim for possession in 22H79SP001984 was dismissed.

Defendant did not file an answer. At trial, he claimed that he was unaware that the case today was for eviction. He has been part of a code enforcement case in the past, and because the first floor of his building (not the floor on which he resides) was recently condemned, he claims he thought he was coming to court on the code enforcement matter. The Court does not credit his testimony that he was unaware that he was to appear today for trial, given that he appeared for a Housing Specialist Status Conference two weeks ago on October 10, 2023, at which time the trial in this summary process case was scheduled.¹

At the end of trial, he said that, had he known he was coming for trial, he would have looked for a lawyer and been better prepared. The Court finds that Defendant simply seeks further delay. He did not articulate a viable defense and is under the erroneous impression that Plaintiff cannot seek to evict him while the appeal on his damages claim is on appeal. The Court finds that further delay would

¹ Defendant claims to be confused by statements made by code enforcement officials, which are inadmissible hearsay.

result in significant prejudice to Plaintiff. Plaintiff has lived at the Premises for nearly two years since the initial notice to quit was served in the previous case, and he has never paid Plaintiff for his use and occupation of the room. Given that Defendant has not asserted any legal defenses or counterclaims, Plaintiff is entitled to recover possession of the Premises.

Accordingly, the following order shall enter:

1. Judgment for possession shall enter for Plaintiff.
2. Execution shall issue pursuant to Uniform Summary Process Rule 13.
3. Defendant is entitled to seek a stay pursuant to G.L. c. 239, § 9 by motion.

SO ORDERED.

DATE: November 20, 2023

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

cc: Court Reporter

3. Use of the execution is stayed through November 30, 2023 pursuant to G.L. c. 239, §§ 9, et seq.
4. The parties shall return for further review on November 28, 2023 at 2:00 p.m.

SO ORDERED.

DATE: November 20, 2023

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

cc: Court Reporter

2. Execution shall issue pursuant to Uniform Summary Process Rule 13.
3. Should Defendant seek a stay on use of the execution, he may file a motion with the Court.

SO ORDERED.

DATE: November 20, 2023

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

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-4091

NGUYEN NHUNG,

Plaintiff,

v.

JEFF PELKEY,

Defendant.

ORDER

This matter came before the court for trial on November 16, 2023, at which both parties appeared without counsel. After the trial, the following order shall enter:

1. **Preliminary Matter:** As a preliminary matter, the tenant's motion to file a late Answer was allowed for the reasons stated on the record, notably that the tenant was not aware until he appeared for trial that he could assert defenses and counterclaims. After consulting with the court's Lawyer for the Day Program, he filed said motion and proposed Answer.

g

2. Given that the Answer asserted claims against the landlord, the landlord was afforded the opportunity to have the trial scheduled for a different day so that she may be possibly more prepared. The landlord declined and the trial was conducted.
3. **Landlord's Claim for Possession and for Unpaid Rent:** The parties stipulated to the landlord's case-in-chief for a no-fault summary process action and for \$1,200 in unpaid rent, use, and occupancy.
4. **Tenant's Warranty of Habitability Claim:** The ceiling fan in the bathroom has not been functioning for approximately two months and mold has begun to accumulate in the bathroom. The landlord was aware of the problem and believed that she had made arrangements for another tenant in the subject premises to fix same. Such repair was never made.
5. Even though the landlord believed that she had addressed the non-functioning fan because she made arrangements for a tenant to make the repair, the claim of breach of warranty of habitability is one of *strict liability* as opposed to the standards applied in a breach of the covenant of quiet enjoyment claim (G.L. c.186, s.14) which require willfulness or recklessness or at-least negligence.
6. The condition of the non-functioning bathroom fan is 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. The Court finds that the fair rental value of the premises was reduced by 20% as a result of the non-functioning fan and the resultant mold for two months. The tenant's damages for the landlord's breach of the warranty of habitability was therefore \$240 ($\$600 \times 20\% = \$120 \times 2 \text{ months} = \240).
8. **The Tenant's Claim for Breach of the Covenant of Quiet Enjoyment:** In approximately April 2023, the son of the landlord entered the tenant's unit early in the morning using his own key without any forewarning and without even knocking. The landlord's son was filming with his smart phone as he entered the unit and awoke and startled the tenant and his girlfriend who were still in their bed.
9. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of her acts or inactions cause a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c, 186, s. 14: *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). The Court finds that the actions by the landlord's son, an agent of the landlord who could only have keys to the premises through the landlord, as described above.

violated G.L. c.186, s.14 and the Court shall award the tenant three months' rent for this claim totaling \$1,800.

10. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, 8A, judgment shall enter for possession plus \$840 in damages to the tenant, Jeff Pelkey.

So entered this 20th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

ck

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

MAYSELA RIVIE,

Plaintiff,

v.

STACEY ROLLER,

Defendant.

ORDER

After hearing November 14, 2023, at which both parties appeared without counsel, the following order shall enter:

1. The defendant landlord shall complete all the remaining conditions cited by the Springfield Housing Authority forthwith in the manner described by the court's earlier order dated October 25, 2023.
2. Upon notice given by the landlord for access for repairs, if the tenant has a conflict she must respond promptly and offer other dates and times for access.

3. The landlord shall have access directly following today's (November 14, 2023) court date for inspection and repairs.
4. The tenant shall not interfere with the landlord or any other workers while performing inspections or repairs.

So entered this 20th day of November, 2023.

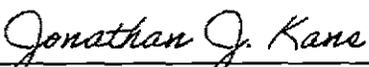


Robert Fields, Associate Justice
CC: Court Reporter

1. Plaintiff shall complete all work listed in the October 16, 2023 agreement by November 30, 2023. Work must begin no later than November 17, 2023. Defendant may not unreasonably deny access.
2. Both parties shall document the condition of the Property as of November 30, 2023 with photographs.
3. With respect to servicing the heating system, Plaintiff must provide business records by a licensed HVAC technician demonstrating the date of service and the work completed.
4. Subject to availability, the Palmer Board of Health will reinspect the Property prior to the next court date and provide both parties with an inspection report.
5. If the work is not substantially complete by November 30, 2023, Defendant may seek sanctions at the next hearing.
6. The parties shall return for further in-person hearing on **December 8, 2023 at 2:00 p.m.**

SO ORDERED.

DATE: November 21, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

BLUE MOUNTAIN PROPERTIES, LLC,

Plaintiff,

v.

SAMANTHA ROSS,

Defendant.

ORDER

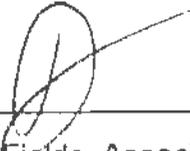
After hearing on November 20, 2023, at which both parties appeared, the following order shall enter:

1. The tenant's motion to amend the court's October 30, 2023, order ("Order") is allowed.
2. The tenant shall send a bank check in the amount of \$500 today to go towards November 2023 use and occupancy.

5

3. The tenant shall pay use and occupancy in full and timely for December 2023, and January 2024, and shall otherwise comply with the terms of the earlier Order.
4. After the current RAFT application is fully processed and closed, and if there is no new RAFT application pending, the landlord may file and serve a Rule 13 Application for issuance off the execution based on the underlying judgment but shall be stayed from using same as long as the tenant complies with the terms of this order and the earlier Order.

So entered this 21st day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

NR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-40

EDBERT VENTURES, LLC,

Plaintiff,

v.

DEBRA LOCKHEART,

Defendant.

ORDER

After hearing on November 13, 2023, on a motion for appointment of a new Guardian Ad Litem (G.A.L.), the following order shall enter:

1. The motion, filed by the tenant's son who has been appointed as a Guardian for the tenant by the Probate and Family Court, is allowed.
2. The Clerk's Office is requested to issue an order of appointment for a new G.A.L. in this matter, as Attorney Mansfield can no longer accept his current appointment.

3. The tenant and her son, Darrien Gordon, shall continue to work with the Tenancy Preservation Program (TPP), whose representative joined the hearing, to increase the tenant's personal care attendance hours.
4. The parties, and the soon-to-be-appointed G.A.L. shall communicate with Western Mass. Elder Care (Amy Carr) to secure their presence at the next hearing to update the court on its efforts to assist the tenant.
5. The tenant shall, along with TPP and Mr. Gordon and the G.A.L., make every effort to curtail the tenant's behavior that may be violating her neighbor's rights to quiet enjoyment.
6. This matter shall be scheduled for review on **December 21, 2023, at 9:00 a.m.**

So entered this 27th day of November, 2023.



Robert Fields, Associate Justice

CC: Alicia White, TPP
Amy Carr, Western Mass. Elder Care (4 Valley Mill Rd., Holyoke)
Kara Cunha, Esq., Assistant Clerk Magistrate
Court Reporter

12/18

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3304

NATALIE LOPES,

Plaintiff,

v.

EVELYNN MUNN,

Defendant.

ORDER

This matter came before the court on November 17, 2023, at which the plaintiff landlord appeared with counsel and the defendant tenant appeared *pro se*. The following order shall enter:

1. Before the trial could begin, it became clear to the judge that the tenant may be suffering from mental health issues that may render her unable to navigate these proceedings without the assistance of a Guardian Ad Litem.
2. As such, the Court on its own motion shall ask the Court Clinic to conduct evaluation of the tenant, Evelynn Munn. In order to determine if Ms. Munn 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. Munn 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. Munn to assist her in these proceedings.

3. Chief Housing Specialist has agreed to assist in the scheduling and coordination of said evaluation and shall communicate with both Ms. Munn and the Court Clinic to effectuate same.
4. If the Court Clinic recommends the appointment of a Guardian Ad Litem, the court shall identify and appoint a Guardian Ad Litem and will thereafter schedule this matter for review.
5. If the Court Clinic does not recommend the appointment of a Guardian Ad Litem, this matter shall be scheduled for trial.

So entered this 21st day of November, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist

Court Clinic

Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-965

FMH REAL ESTATE, LLC,

Plaintiff,

v.

ALEXIS ARTEGA and JULIETTE GONZALEZ,

Defendants.

ORDER

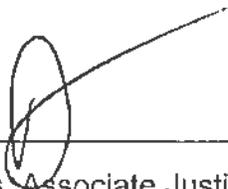
After hearings on November 17 and 21, 2023, at which the parties appeared along with Dallas Kifer on Zoom, the following order shall enter:

1. The Court has determined that the defendants were sub-tenants of Mr. Kifer and had no landlord-tenant relationship with the plaintiff property owner.
2. Mr. Kifer having relinquished possession of the premises at 281 Main Street, 3R, in Indian Orchard, MA, the defendant sub-tenants no longer have possessory

rights—other than those agreed to by the parties and made into this instant order by the court.

3. The defendant may remain at the premises for as much as three months contingent upon their paying the plaintiff \$1,200 per month by the tenth of each month beginning December 2023.
4. The plaintiff shall FORTHWITH inspect and make all necessary repairs to the heating system at the premises.
5. If the defendants fail to make any of the payments listed above timely or in full, or if after March 1, 2023, they do not vacate the premises, the plaintiff may file a motion for an order to have sheriffs remove them without the need for Summary Process.
6. Nothing in this order effects the defendants' ability to bring claims against Mr. Kifer (in a separate civil action).

So entered this 22nd day of November, 2023.



Robert Fields, Associate Justice

CC; Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3927

SPRING MEADOW,

Plaintiff,

v.

ROBERTA BENNETT,

Defendant.

ORDER

After hearing October 31, 2023, on the plaintiff landlord's motion for entry of judgment, at which both parties and a representative from the Tenancy Preservation Program appeared, the following order shall enter:

1. The tenant reported the Department of Children and Family Services informed her that if she didn't get a driver's license the state would take her children away from her.

2. She further explained that that she had to use \$3,500 to pay the Registry of Motor Vehicles for outstanding excise taxes (that she said her former husband accrued) in order to get her license.
3. TPP reported that Boston Childrens Hospital is ready to pay the landlord \$2,000 towards the rental arrearage. TPP and the landlord shall follow up and submit necessary documents in order to receive these funds.
4. The tenant shall pay her rent in full and on time in November and December 2023.
5. If the Boston Childrens Hospital pays the landlord \$2,000 the arrearage shall be reduced to \$1,446.87 and the tenant shall pay that arrearage down at monthly installments of \$50 beginning in December 2023.
6. The tenant shall continue to work with TPP on all recommendations and with the follow up with the Childrens Hospital.
7. This matter shall be scheduled for review on December 13, 2023, at 2:00 p.m.

So entered this 32nd day of November, 2023.

Robert Fields, Associate Justice

CC: TPP

Court Reporter

soon return to work and wishes to enter into a payment agreement. Plaintiff is not willing at this time to make such an agreement.

Accordingly, in light of the foregoing, the following order shall enter:

1. Judgment for possession and \$4,912.88, plus \$236.54 in court costs, shall enter in favor of Plaintiff.
2. Execution shall issue by written application after expiration of the appeal period.

SO ORDERED.

DATE: November 24, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4093

BLUE RIVER PROPERTIES, LLC,

PLAINTIFF

v.

MICHAEL BANASZEK,

DEFENDANT

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)
)
)
)

FINDINGS OF FACT, RULINGS OF
LAW AND 8A ORDER

This summary process case came before the Court for a bench trial on November 2, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of a residential dwelling unit located at 7 Charbonneau Terrace, Unit 3, Chicopee, Massachusetts (the "Premises") from Defendant based on non-payment of rent.

The parties stipulated to Plaintiff's prima facie case for possession and damages in the amount of \$6,000.00. Monthly rent is \$1,000.00. Defendant acknowledges receipt of the notice to quit and has not moved out. Defendant has exhausted his eligibility for RAFT funds.

Although Defendant did not file an answer, the Court permitted him to assert defenses to payment of rent at trial. Based on the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Defendant testified that leaks have caused damage in the bathroom. Instead of addressing the leak, he said Defendant has only replaced ceiling tiles and that, at present, ceiling tiles are missing. He also claims that, when it rains, the attached porch leaks and has caused damage in his daughter's bedroom. He said the leaks have not been completely fixed. Defendant did not provide evidence that the Court could accept, but he showed pictures on his phone that purport to support his testimony. He testified that he provided notice of the leaks through the tenant portal and by text message, although he offered no text messages into evidence.

Plaintiff's property manager could not recall claims that Defendant never reported the leaks through the tenant portal, as Defendant claims he did.¹ Nonetheless, the manager conceded that he was aware of "a couple of issues" in the Premises and that he sent his on-site maintenance person to make repairs. He said he told Defendant to contact him if there were any additional problems, and said Defendant did not do so.² The repairperson who completed the work did not testify, and the property manager had no first-hand knowledge of what work was actually completed in the Premises. Plaintiff's witness assumed the work was done because he did not hear back from Defendant after his maintenance employee made repairs.

The Court finds that the evidence supports Defendant's claim that he has suffered with on-going leaks in the Premises. The Court further finds that the leaks

¹ Defendant asserts that the tenant portal has the incorrect address for his unit, which is why the property manager may not have received his complaints.

² Plaintiff testified that the on-line portal automatically sends him an email when a tenant reports the need for repairs, and that he never received an email regarding the Premises. Defendant further testified that Defendant has his contact information.

have not had a material adverse effect on Defendant's tenancy, but they do constitute a breach of the implied warranty of habitability. The Court finds that the value of the Premises was reduced by 5% for the months of May 2023 through October 2023, for a total abatement of \$300.00.

Accordingly, based upon all the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that;

1. Plaintiff is entitled to unpaid rent in the amount of \$6,000.00, plus court costs and interest.

2. Defendant is entitled to an offset of \$300.00 on account of his claims and defenses.

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 \$5,700.00, plus court costs of \$ 211 54 and interest in the amount of \$ 150 02, for a total of \$ 6,061 50. 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 \$5,700.00, plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: November 24, 2023

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO: 23H79SP003626

MARY CRAWFORD
(Plaintiff)

v.

JENNIFER LADNER
(Defendant)

ORDER OF THE COURT

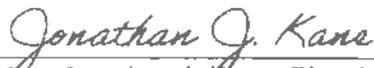
This no fault summary process case is before the Court on Plaintiff's motion to strike Defendant's demand for a trial by jury. The parties argued the motion on October 13, 2023, and post-motion briefs were submitted by October 27, 2023. Both parties appeared with counsel.

Plaintiff filed this case on August 14, 2023. A first-tier court event was scheduled on September 15, 2023, and continued to September 29, 2023. Defendant filed her answer and jury demand on September 28, 2023. Pursuant to Housing Court Standing Order 1-23, to be considered timely, the answer was due three days prior to the first-tier court event. Given the absence of any prejudice to Plaintiff, the Court, in its discretion, rules that the answer shall be considered timely.

Plaintiff contends that, despite the answer being deemed timely, the jury demand should be stricken because the relief requested in this matter is primarily equitable in nature, and that equitable claims are the province of the judge, not a jury. This case, however, is more than a case seeking equitable relief. At its core, this is a summary process case in which Plaintiff seeks to recover possession of residential property from Defendant. In her defense, and by counterclaim, Defendant asserts claims of discrimination, breach of contract and violation of G.L. c. 186, § 22.

all of which have remedies at law. The fact that Defendant also seeks equitable relief (for example, a constructive trust) does not invalidate Defendant's right to a trial by jury on all claims so triable. The Court may reserve certain claims for equitable relief for itself, and it shall consider such claims based on the facts adduced at trial. The Court is not willing to take away Defendant's fundamental right to a trial by jury simply because equitable relief is requested in addition to claims at law. Accordingly, Plaintiff's motion to strike Defendant's jury demand is DENIED.

So entered this 24th day of November 2023.



Hon. Jonathan J. Kane, First Justice

¹ It is not uncommon in landlord-tenant matters for the Court to send certain claims to the jury while reserving a determination of liability under G.L. c. 93A for itself.

rent was waived. Accordingly, the Court finds that rent has been unpaid from November 2022 through October 2023, the date of trial.

Defendant claims that he has two separate applications with Way Finders, one for the RAFT program to pay Plaintiff the unpaid rent, and one for moving costs. He claims that Defendant refused to accept money from the RAFT program. Defendant was unable to provide any evidence that he filed an application that was closed due to Plaintiff's inaction or that he currently has a pending application for rental assistance that would pay the landlord. Therefore, the Court rules that G.L. c. 239, § 15 does not apply.

Based on the foregoing, and the failure of Defendant to file an answer or raise any legal defenses at trial, the following order shall enter:

1. Judgment shall enter in favor of Plaintiff for possession and \$4,235.00 in unpaid rent, plus court costs.
2. Execution shall issue by written application ten days after the date judgment enters.

SO ORDERED.

DATE: November 24, 2023

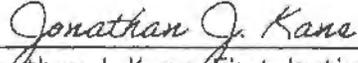
By: Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

As of today, the balance of unpaid rent is \$5,438.00 and court costs are \$218.00. Because Defendants have a rental subsidy, if they are able to show good cause for failing to pay their rent, they would be entitled to a maximum of \$4,530.00 in rental assistance based on their current share of monthly rent of \$755.00. In light of the foregoing, the following order shall enter:

1. Defendants shall cooperate with TPP and follow its recommendations. They shall file a new RAFT application as soon as possible.
2. Defendants shall pay their monthly rent in full going forward.
3. The parties shall return to court for further review on *December 19*, 2023 at 9:00 a.m. This date was provided to the parties at the hearing today.

SO ORDERED.
DATE: November 24, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

Defendant asserts that he performed home improvement services for Plaintiff at the Premises and other rental properties owned by Plaintiff. Some of the work was done without charge as a favor to Plaintiff, but as he became busier with paid jobs, he could not provide the services requested by Plaintiff. He believes that Plaintiff terminated the tenancy in retaliation for his refusal to continue do home improvement work for Plaintiff. The Court rules that the circumstances described by Defendant do not constitute a legal defense under G.L. c. 239, § 2A nor a counterclaim under G.L. c. 186, § 18 for reprisal or retaliation.¹

Defendant also claims that he is owed money by Plaintiff for some of the home improvement work he provided at her request; however, he provided no receipts or any other credible evidence to support his claim that he agreed to perform services in exchange for payment, or that he performed work with the expectation of payment. In fact, Defendant candidly admitted that he was not actually seeking payment from Plaintiff, but instead simply wanted additional time to move.

Because this case was brought for no fault of Defendant, pursuant to G.L. c. 239, §§ 9 et seq., Defendant is entitled to a stay (delay) of the eviction if he pays all rent unpaid prior to the period of the stay and pays for his use and occupancy during the stay at a rate of \$1,300.00 per month. See G.L. c. 239, § 11. Accordingly, based

¹ Defendant articulated a possible alternative basis for a retaliation claim; namely, contacting the Board of Health within six months of receiving the notice to quit. However, the Health Inspector's report is dated June 18, 2023, three days after the date of the notice to quit, and although Defendant claims he contacted the Board of Health "a couple of weeks" prior to the inspection, he had no evidence to support this contention. Therefore, the Court finds that Defendant did not establish a presumption of retaliation.

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

1. Judgment shall enter for Plaintiff for possession and unpaid rent in the amount of \$3,900.00, plus court costs, through the date of trial.

2. Plaintiff may apply for the execution (eviction order) ten days after the date that judgment enters.

3. If Defendant seeks additional time to move, he may file a motion for stay with the court. He may be entitled to a statutory stay through January 31, 2024, provided that (a) he is prepared to pay all rent unpaid prior to the period of the stay, (b) he can pay for his use and occupancy during the stay at a rate of \$1,300 per month, and (c) he demonstrates to the satisfaction of the Court that he has made, and continues to make, reasonable efforts to locate and secure replacement housing.

SO ORDERED.

DATE: November 24, 2023

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

cc: Court Reporter

\$1,100.00 in June 2023; they disagree, however, as to how the payment should be applied. Defendant asserts that he paid May rent to the prior owner, and thus Plaintiff should give him credit for June's rent. Plaintiff asserts that it did not receive any money from the prior owner on account of Mr. Nepus, and thus applied the June payment to May 2023.²

Based on the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds that Defendant paid the prior owner \$1,100.00 in rent for May 2023 prior to the transfer of the Premises. Because he paid rent for the month of May, he is entitled to a credit of \$709.68 (20 days of May 2023) toward the balance due. Given the unpaid balance owed of \$6,599.25, after the credit, Defendant owes \$5,889.57 in rent through the date of trial.³

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

1. Plaintiff is entitled to unpaid rent in the amount of \$5,889.57, plus court costs and interest after accounting for Defendant's defenses.

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 \$5,889.57, plus court costs of \$245.77 and interest in the amount of \$129.82, for a total of \$6,265.16. The deposit shall be made by money order or bank

² The fact that Plaintiff did not receive funds from the prior owner for Mr. Nepus does not mean that he did not pay the prior owner. Moreover, Plaintiff did not own the property until May 11, 2023, so in no event should it have taken a full month's rent from Mr. Nepus. The amount in dispute is \$709.68, the amount due for the 20 days of May under Plaintiff's ownership.

³ Defendant was not charged a separate "move-in" charge by Plaintiff. Although described as such on the ledger, this payment was simply the first month's rent due to Plaintiff after it purchased the Premises.

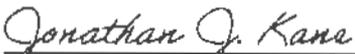
check payable to the "Commonwealth of Massachusetts."

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 \$5,889.57, plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: November 24th, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1374

EDGEWATER TOWERS, LLC,

Plaintiff,

v.

NAESHKA CRUZ,

Defendant.

ORDER

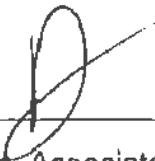
After hearing October 31, 2023, the following order shall enter:

1. The landlord's motion for entry of judgment was based on the tenant's failure to make her "extra" \$100 payments that were required under the Agreement of the Parties (Agreement) dated June 13, 2023.
2. Though the tenant paid her base rent, she did not pay her additional \$100 payments. The Court finds the tenant credible that she did not pay the additional \$100 per month out of confusion due to communications with the management

company after the Agreement for which she provided emails from the management company for the court's review which substantiated that she would have to wait until court to work on a payment plan. Based on the tenant's reasonable confusion from the management's emails, the motion is denied.

3. The tenant shall pay the landlord \$100 today, representing the additional \$100 for October 2023.
4. The tenant shall continue to pay her rent in full and timely plus \$100 extra by the 20th of each month shall resume in November 2023.
5. The landlord shall forthwith make all repairs listed in the Agreement that have not yet been addressed

So entered this 27th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-972

REBECCA KATSOULIS,

Plaintiff,

v.

POOJA VERMA,

Defendant.

ORDER

After hearing on November 20, 2023, on the plaintiff Rebecca Katsoulis' motion for injunctive relief, the following order shall enter:

1. Background: The defendant is the property owner of 11 Conway Street in Greenfield (premises), after purchasing same on or about October 6, 2023. The court finds the plaintiff credible that she has lived at the premises since the commencement of the tenancy with her boyfriend Corey Allen in April 2023. Mr. Allen passed in a car accident.

2. Since the death of Mr. Allen, the defendant, or her agents, have been treating the plaintiff as either a trespasser or someone who has no rights to be present at the premises.
3. The defendant reported to the court at this hearing that she will utilize Summary Process if she wishes to dispossess the plaintiff.
4. Accordingly, the parties shall communicate solely in writing from here on in. If the defendant requires access for inspection and repairs, she shall provide the plaintiff with no less than 48-hour advance notice in writing which provides the date and time for the needed access and a description of what is to be inspected or repaired during that time.
5. The plaintiff shall not deny access unreasonably. If she is not able to allow access at the time sought by the defendant, she shall immediately provide alternate dates and time for said access.

So entered this 31st day of November, 2023.



Robert Field, Associate Justice

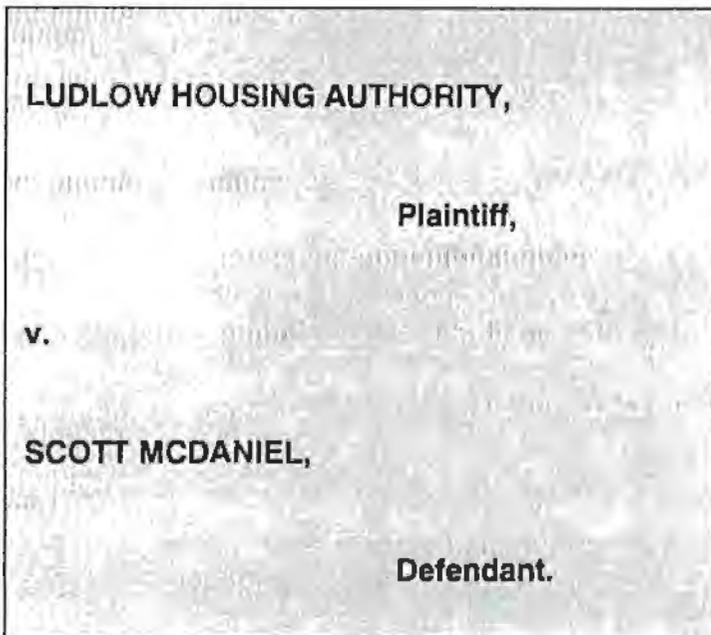
CC: Court Reporter

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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



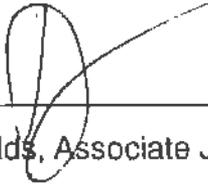
ORDER

After hearing November 2, 2023, at which the parties and the tenant's nurse, Melissa Perry as well as a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. The landlord's motion to dismiss the tenant's appeal of the entry of judgment for possession is allowed. Judgment entered for the landlord for possession on July 7, 2023, and the notice of appeal was filed October 18, 2023. Accordingly, it was well beyond the appeal period on the entry of judgment for possession.

2. That said, the court shall treat the tenant's appeal as an appeal of the court's October 13, 2023, order lifting the stay on the execution and the parties are responsible to comply with the timelines of the Rules of Appellate Procedure.
3. TPP reported that the tenant has a pending mobile HUD VASH (rental subsidy voucher for veterans) application and that there is a meeting next week regarding this voucher. It is the hope and goal of the tenant and those working with him that obtaining a VASH voucher will make it possible for the tenant to relocate to appropriate and safe housing.
4. TPP also reported, with support from the tenant and Ms. Perry, that if the tenant should land in Soldier On's individual homeless shelter he would very quickly be unable to comply with its behavior requirements and likely be removed from that shelter. As such, the main focus of the tenant, Ms. Perry, and TPP and now working collaboratively with the tenant's siblings so as to avoid what they all perceive will be a harmful situation for the tenant should he be forced to reside in the Soldier On individual homeless shelter.
5. The landlord is free to schedule a physical levy on the execution in accordance with G.L. c.239 but shall not schedule the levy for a date prior to January 2, 2024.
6. The tenant is reminded of the behavioral restrictions imposed upon him by prior court orders.

So entered this 27th day of November, 2023.



Robert Fields, Associate Justice

CC: Ms. Bryant, TPP

Nurse Perry, River Valley Counseling Center, P.O. Box 781, Holyoke, MA 01040

Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-595

SHAWN LYNCH and LISA GREER,
Plaintiffs,
v.
MITCHELL NADEAU,
Defendant.

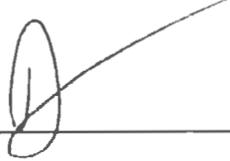
ORDER

After hearing November 16, 2023, on the defendants' motion to strike claims at which the plaintiffs appeared *pro se* and the defendant appeared through counsel, the following order shall enter:

1. The motion was treated as a motion to compel discovery and the plaintiff shall file their responses to the defendant's discovery demand by December 16, 2023.
2. This matter shall be scheduled for a status hearing on **January 23, 2024, at 2:00 p.m.**

3. A one-day trial is scheduled in this matter for **January 31, 2024, at 9:00 a.m.**

So entered this 27th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3092

SHAWN MEGRATH and CINDY PENNIMAN,

Plaintiffs,

v.

MARYANN H. MEGANN,

Defendant.

ORDER

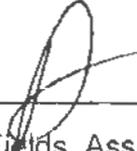
After hearing on November 3, 2023, the following order shall enter:

1. This matter was scheduled by the court on October 6, 2023, for review in the judge's endorsement of that date.
2. The tenant was required to make certain payments and with today's payment in hand has met that requirement.
3. The tenant is working with local recourses to obtain rental arrearage funding and is also seeking additional time to relocate in this no-fault eviction.

4. The tenant shall continue to work with local resources to apply for rental arrearage funds.
5. The tenant shall pay the landlord \$800 for use and occupancy for December 2023.
6. When considering the tenant's request for additional time to relocate the landlord's opposition was based in the length of time since the termination notice *and also* that there have been complaints by other tenants about this tenant's disturbances and that these tenants have indicated that would look for other housing due to these disturbances.
7. The tenant explained that the disturbances, as well as the failures to pay rent, were due to domestic violence involving her former partner who is now incarcerated. Because the tenants is asserting possible claims under the Violence Against Women Act (hereinafter, "VAWA") 34 U.S.C. s.12291 et seq., the court shall refer this matter to Community Legal Aid as it is this judge's understanding that CLA has a grant to represent tenants who are victims of domestic violence.
8. VAWA lays out how information regarding domestic violence is shared and addresses the burdens regarding said information and the nexus between those assertions and the underlying eviction matter, but for now the court is satisfied that it has been timely raised and that it is a basis for allowing additional time for the tenant to vacate. See, *Boston Housing Authority v. Y.A.*, 482 Mass. 240 (2019).

9. This matter shall be scheduled for further review on **December 29, 2023**, at **9:00 a.m.**

So entered this 27th day of November, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist (for the referral to Community Legal Aid)
Court Reporter

SO ORDERED.
DATE: November 27, 2023

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-4267

NORTHERN HEIGHTS, LP,

Plaintiff,

v.

MARIA GARAY, et al.,

Defendants.

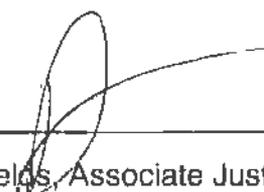
ORDER

After hearing on October 31, 2023, at which the plaintiff appeared through counsel and the tenant Maria Garay appeared with Limited Appearance Representation counsel, the following order shall enter:

1. This matter was scheduled for this day for a Tier 1 event but was heard on LAR counsel's motion for a Court Clinic evaluation of co-defendant tenant Alfredo Guadalupe.

2. The motion is allowed, without opposition, and all deadlines (including regarding discovery) are suspended.
3. In order to determine if Mr. Guadalupe is an "incapacitated person" as that term is defined in G.L. c. 190B, s.510 (9), the court hereby orders that she undergo a forensic psychological evaluation with the Court Clinic. The court requests that the clinician evaluate Mr. Guadalupe with respect to his decision-making capacity, his ability to comply with orders regarding his housing, ad his ability to understand the legal proceedings ad participate meaningfully therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a *Guardian Ad Litem* for Mr. Guadalupe.
4. LAR counsel, Attorney Margolis, agreed to assist with the scheduling of Mr. Guadalupe's Court Clinic evaluation.
5. By agreement of the parties, this matter shall be scheduled for a Tier 1 event on **December 21, 2023, at 9:00 a.m.**

So entered this 31st day of November, 2023.



Robert Fields, Associate Justice

CC: Court Clinic

Jenni Pothier, Chief Housing Specialist (to follow up with Court Clinic evaluation)

Court Reporter

NR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-541

ANNA RODRIGO,

Plaintiff,

v.

DARCELL BURTON,

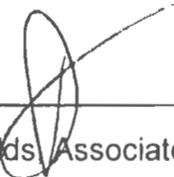
Defendant.

ORDER

After hearing on October 31, 2023, the following order shall enter:

1. The landlord has not completed the repairs cited by the Town of Ludlow in its August 2023 citation and their follow up orders/citations and must do so forthwith.
2. These include further work for the windows, fireplace, heater, rugs, and water temperature and any other items listed by the Town.
3. The Court's repair order dated October 19, 2023, which includes communication and access protocols for the parties, shall remain in effect. Additionally, all communication between the parties shall be in writing.

So entered this 31st day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

ck

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3470

BOSTON ROAD MOBILE HOME PARK
TENANTS ASSOCIATION, INC.,

Plaintiff,

v.

MARK LANE,

Defendant.

ORDER

After hearing on November 2, 2023, at which the plaintiff and the G.A.L. Scott Hibbert appeared, the following order shall enter:

1. The G.A.L. reported that the defendant, Mark Lane, is residing in a long-term nursing facility and has no plan on ever returning to the subject premises manufactured home. He has lived there for the past 1.5 years and has not paid his lot fees in that time.

2. Mr. Lane's court appointed Conservator has emptied the contents of the manufactured home.
3. Upon the filing of a non-military affidavit by the plaintiff, a judgment shall enter for the plaintiff for possession and for \$5,917.41 plus court costs.
4. The G.A.L. has agreed to work with the Conservator (Robin Therrien) during the post-judgment phase to sell the manufactured home and pay the judgment with proceeds from the sale.
5. The G.A.L. shall file a report in this court on March 2, 2023, or beforehand if the judgment is satisfied.

So entered this 22th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

NR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-534

NORTHAMPTON HOUSING AUTHORITY,

Plaintiff,

v.

ALIANA ROSA,

Defendant.

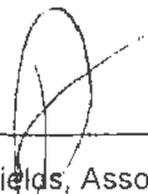
ORDER

After hearing on November 27, 2023, on the tenant's motion to vacate the default judgment at which the tenant was represented by LAR counsel Uri Strauss and the landlord appeared through counsel, the following order shall enter:

1. The tenant's motion to vacate the default is allowed. The tenant, with the assistance of LAR counsel shall file and serve an Answer by no later than December 8, 2023.

2. The tenant shall continue to work with Community Legal Aid and with Veteran Services to apply for rental arrearage funds as well on her completion of her recertification.
3. This matter shall be referred to the Tenancy Preservation Program (TPP) as LAR counsel Strauss put on the record that the reason for the default as well as the underlying failures to pay rent and recertify stem from the tenant's mental health issues including [REDACTED].
4. This matter shall be scheduled for a Status Hearing on **December 18, 2023, at 9:00 a.m.**

So entered this 20th day of November, 2023.



Robert Fields, Associate Justice

CC: Uri Strauss, Esq., Community Legal Services (LAR Counsel for the tenant)
Michael Richtell, TPP
Christine Aviles, HSD
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3790

EBONY WIGGINS,

Plaintiff,

v.

LATOYA DAVIS,

Defendant.

ORDER

After hearing November 2, 2023, on further hearing on the tenant's motion to extend the date by which she must relocate in this no-fault eviction and the landlord's motion for entry of judgment at which both parties appeared along with Olga Cecilio from the MRC Statewide Head Injury Program, the following order shall enter:

1. The tenant (who holds a Section 8 rental assistance voucher) continues, with the assistance of two housing search case workers, a very diligent search for alternate housing. Her search is extensive and covers essentially the entirety of

the state (geographically). The tenant is wheelchair bound and is limited to handicap accessible units on a first floor or in a building with an elevator.

2. Ms. Cecilio is very actively assisting the tenant in her housing search and reported to the court the tenant's status on various waiting lists (she is #1 on the housing in Westfield and close to the top at a property in Revere) as well as results of the search overall.
3. The landlord testified that she is trying to return to reside with her two young children at the premises from her current home in North Carolina.
4. The tenant and her caseworkers shall continue their diligent housing search and keep documentation of same.
5. This matter shall be scheduled for further review on **December 28, 2023, at 9:00 a.m.** Ms. Cecilio is urged to appear again to update the court.

So entered this 28th day of November, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

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**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3576**

ANWAR PROPERTIES, LLC,

Plaintiff,

v.

NEFTALI OTERO and LAUREL BELLO,

Defendants.

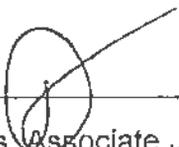
ORDER

After hearing November 13, 2023, the following order shall enter:

1. An occupant of the premises, Laurel Bello, filed a motion to stop the physical eviction scheduled for later this day (11/13/23). For the specific reasons stated by the judge on the record, the court finds Ms. Bello is a tenant of these premises and shall be added as an indispensable party-defendant.
2. Ms. Otero reported that Neftali Otero is presently incarcerated.

3. The physical eviction currently scheduled shall be cancelled by the landlord forthwith.
4. This case may be dismissible due to the lack of notice to the tenant, Laurel Bello, but the parties are first referred to the Housing Specialist Department for a mediation session.
5. The Chief Housing Specialist, Jenni Pothier, is requested to schedule a mediation with the parties. If the parties are not able to resolve the matter, the case should be scheduled for review and possible dismissal with the undersigned judge.

So entered this 29th day of November, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

CASE NO. 23SP364

**Berkshire Housing Services, Inc. As Agent
for Crossway Village Apartments,**

Plaintiff,

v.

Joel Sturz,

Defendant.

**ORDER TO A GUARDIAN AD
LITEM**

This non-payment of rent based summary process matter came for the Court on November 29, 2023, on the plaintiff's motion for issuance of execution. Although the plaintiff had already received an execution in which a moveout was scheduled for July 31, 2023. The defendant filed a motion requesting a stay on the levy, which was Allowed based on conditions that the defendant pay \$3,000 to management by 2pm on July 27, 2023. The defendant was also ordered to pay monthly rent+\$ 335 Each month beginning in August until remaining balance of \$1,332,12 has been paid. The defendant

made the payment of \$335, however did not make any payments following. Subsequently, the plaintiff filed motion requesting another execution, which was scheduled for November 29, 2023, due to the non-compliance of payment as ordered. Plaintiff appeared on November 29, 2023, and defendant did not appear. During the hearing the plaintiff stated that the defendant is currently in [REDACTED], and they are unaware the nature or length of stay and also was unaware of the name or location of facility. In light of this information, the lack of payment from the defendant and the unknow nature of the location and status of the stay at [REDACTED], the court determines the appointment of Guardian ad Litem (G.A.L) is necessary. The defendant is at risk of being evicted.

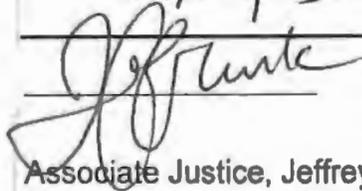
Because of the complexity of this case and the potential risks involved, the following order shall enter:

1. GAL shall be appointed for defendant. The appointment shall be made as soon as possible.
2. The GAL is authorized to investigate the nature of the [REDACTED] and the financial status of the defendant and assist defendant, if necessary, in securing rental assistance or other assistance as needed.
3. The GAL shall communicate with the plaintiff the findings of the investigation.
4. The plaintiff shall provide information of the name and location of [REDACTED] [REDACTED], if possible, as soon as feasible.
5. The plaintiffs' motion for execution shall be continued for further hearing and status hearing shall be held on January 10, 2024, at 9am In Pittsfield Session

to give time for the GAL to meet with defendant and determine financial information and the nature of the [REDACTED].

SO, ORDERED:

DATE: 11/29/23



Associate Justice, Jeffrey Winik

cc. Kara Cunha, Assistant Clerk Magistrate (for GAL appointment)

So entered this 1st day of December, 2023

agreement to relinquish possession of the dwelling unit, the Court concluded that an argument could be made that Plaintiff's recovery of possession without making full payment to Defendant was part of the consumer relationship between landlord and tenant.¹ For this reason, the Court found that the c. 93A counterclaim would not be dismissed as a matter of law.²

Although Plaintiff did not make the argument in its motion, the Court rules that the c. 93A counterclaim should be dismissed on other grounds; namely, the established legal principle that a mere breach of a contract, even if deliberate, does not amount to a c. 93A violation. See *Brewster Wallcovering Co. v. Blue Mountain Wallcoverings, Inc.*, 68 Mass. App. Ct. 582, 605 (2007) (breach contract alone does not amount to a violation of c. 93A). A breach of contract would only violate c. 93A if "the nature, purpose, and effect of the challenged conduct is coercive or extortionate." *Diamond Crystal Brands, Inc. v. Backleaf, LLC*, 60 Mass. App. Ct. 502, 507 (2004). "In the absence of conduct having that quality, a failure to perform obligations under a written [contract], even though deliberate and for reasons of self-interest, does not" violate c. 93A. *Atkinson v. Rosenthal*, 33 Mass. App. Ct. 219, 226 (1992) (no c. 93A violation where tenant deliberately abandoned and thereby breached commercial lease). The settlement agreement is, at its core, a contractual obligation, and Defendant's counterclaim does not aver coercive or extortionate conduct or

¹ To the extent that Defendant rests her c. 93A claim on Plaintiff's counsel's actions in filing a small claims case and various motions in that case and this case, these actions were clearly undertaken in a litigation context and cannot form the basis of a c. 93A claim.

² The primary case cited by Plaintiff are inapposite. In *Morrison v Toys 'R' Us, Inc.* 441 Mass 451 (2004), the issue before the court was whether a self-insured corporate defendant not subject to G.L. c. 176D could be held liable under c. 93A for bad faith settlement practices. Moreover, the footnote in the case indicating that bad faith conduct during the discovery process does not subject a party to liability under c. 93A is distinguishable from this case, where the conduct alleged did not occur during litigation but after the case had been resolved by agreement

intentional misrepresentations by Plaintiff in connection with entering into the settlement agreement. Accordingly, the Court rules that the counterclaim based on c. 93A does not state a claim upon which relief can be granted.

For the foregoing reasons, Plaintiff's motion to reconsider is ALLOWED and the counterclaim for liability under G.L. c. 93A is dismissed.

SO ORDERED.

November 29, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

legally adequate. Defendants do not deny receipt of the notice.¹ In March 2023, Defendants were awarded \$5,100.00 in rental assistance from the RAFT program, but the payment did not bring the balance to zero.² Plaintiff claims that Defendants owe a balance of \$13,293.00 in unpaid rent and use and occupancy based on monthly rent of \$1,350.00.

Defendants do not deny that they owe rent and did not demonstrate any payments that were not accounted for by Plaintiff. Defendant Figueroa testified that Defendants fell behind in rent when he was laid off from work but seeks a rent abatement due to conditions of disrepair in the Premises. He showed photographs of numerous dead mice and claims that he has caught approximately fifteen mice over the past four to five months. He did not convince the Court, however, that he gave sufficient notice to management that his unit needed additional treatment beyond the quarterly mice and roach treatments conducted by the pest control service contracted by the management company. Likewise, although Defendants testified about broken kitchen cabinets and issues in the bathroom, they were unable to carry their burden of proof on their defenses and counterclaims.

Accordingly, based upon all the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that;

1. Judgment for possession and \$13,293.00 in damages, plus court costs, shall enter in favor of Plaintiff.

¹ Delivery of the notice to quit by deputy sheriff is presumptive evidence of service.

² Defendants did not demonstrate to the satisfaction of the Court a pending application for rental assistance.

2. Execution shall issue upon written application ten days after the date judgment enters in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: November 29, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-4698

SHP MANAGEMENT CORP.,

Plaintiff,

v.

VICTOR RETYNSKY,

Defendant.

ORDER

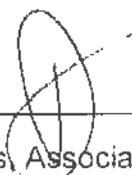
After hearing on November 28, 2023, the following order shall enter:

1. This matter came before the undersigned judge for review of an agreement. In the process of the review and accompanying colloquy, the court become very concerned that the tenant has cognitive challenges and may be in need of a Guardian Ad Litem.
2. In order to determine if Mr. Retynsky is an "incapacitated person" as that term is defined in G.L. c.c. 190B, ss.510 (9), the court hereby orders that he undergo a forensic psychological evaluation with the Court Clinic. The court requests that the clinician evaluate Mr. Retynsky with respect to her decision-making capacity, his ability to comply with court orders regarding his housing, and his ability to

understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a Guardian Ad Litem for Mr. Retynsky and additionally to assist Community Legal Aid (CLA) in determining the extent of its representation (a referral to CLA is noted below).

3. A referral was made today to the Tenancy Preservation Program (TPP) and Ms. White was present for the hearing. TPP is requested to reach out to Springfield Senior Services (with whom the tenant reports he has been working), investigate the tenant's electric bill so as to having the utility restored, coordinate if possible deep cleaning of the tenant's apartment, and refer the tenant to Community Legal Aid (CLA).
4. The tenant reports that he is currently residing at the Rescue Mission in Springfield while his electricity is off. Until the utility is restored, the tenant may not reside at the unit during nighttime hours.
5. This matter shall be scheduled for review on **December 14, 2023, at 9:00 a.m.**

So entered this 21st day of November, 2023.



Robert Fields, Associate Justice

CC: Court Clinic

TPP

Michael Roche, Deputy Chief Housing Specialist (for referral to the Court Clinic)

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-844

LIZARDO VEGA, JR.,

Plaintiff,

v.

447 STATE STREET, LLC, and THOMAS
NAPOLITANO,

Defendants.

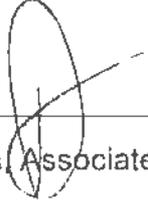
ORDER

After hearing November 28, 2023, at which the plaintiff tenant appeared *pro se* and the defendants appeared with and through counsel, the following order shall enter:

- 1 The court's earlier Order dated October 26, 2023, shall remain in full force and effect.
2. The court finds that the defendants have failed to comply with the court's earlier Order.

3. The defendant shall complete all repairs in the manner described in the earlier Order by no later than December 28, 2023.
4. The landlord shall take all necessary precautions so that errant dust or construction debris is not air born or left strewn about due to the tenant having a newborn baby in the house.
5. This matter shall be scheduled for review on **January 4, 2024, at 2:00 p.m.**

So entered this 28th day of November, 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-0666

CHRISTOPHER VIALE and AMY VIALE,

Plaintiffs,

v.

TA & TO HOLDINGS, LP,

Defendants.

ORDER

This matter came before the Court on September 22, 2023 on Christopher Viale and Amy Viale's ("Plaintiffs") Motion for Preliminary Injunction seeking to enjoin the the defendant from scheduling a foreclosure sale for the property located at 15 Brimfield Way, Westfield, Massachusetts ("premises" or "property"), at which both plaintiffs and TA & TO Holdings, LP ("Defendant") appeared through counsel, and the following order shall enter¹:

¹ At the conclusion of the hearing, the defendant agreed to not schedule a foreclosure sale until after December 1, 2023.

1. **Background** ²: The plaintiffs' income was significantly reduced throughout 2014 – 2015, all while the plaintiffs were acting as the sole provider for multiple sick family members. As a result, the plaintiffs fell behind on their mortgage payments. Just prior to the former bank foreclosing on the plaintiffs, they were approached by a financial consultant, Safeguard Credit Counseling Services, Inc. to sell the property in a short sale for \$575,000 with an option to purchase agreement. On August 30, 2018, the sale occurred, and the plaintiffs agreed to and paid monthly rent in addition to a \$25,000 fee to reserve the right to purchase the property back. In January 2019 Safeguard Credit Counseling Services conveyed the property to High Point Holdings, LLC (formerly known as High Point Finance, LLC) pursuant to a Quitclaim Deed.
2. Shortly thereafter, the plaintiffs were made members of High Point Holdings, LLC in an operating agreement in addition to signing a Power of Attorney authorizing Jesus Lim to act on the organization's behalf. The operating agreement listed the plaintiffs as investor members and required a \$720,000 contribution. The plaintiffs were informed the option to purchase was included in the short sale between Safeguard Credit Counseling Services, Inc. and High Point Holdings, LLC, and that there would be no issues in repurchasing the property when the plaintiffs were in a better position financially. Meanwhile, the plaintiffs continued to pay rent to High Point Holdings, LLC.³ After participating in this agreement for 29 months, the Plaintiffs notified Jesus Lim they were in a position to repurchase the premises. Jesus Lim informed the plaintiffs he would not be honoring the option contract and the price has increased from the original agreed upon price of \$575,000. The plaintiffs filed a civil complaint in

² These averments were made by Christopher Viale in his Verified Complaint.

³ Plaintiffs paid \$4,960.00 a month for 12 months, then \$5,400.00 a month for 17 months.

this court (21-CV-845) in 2021 requesting the Court to award title of the Premises to Plaintiffs. Sometime later, the plaintiffs learned the property was being foreclosed on by TA & TO Holdings. The plaintiffs paid and deferred the foreclosure as TA & TO Holdings sent a notice of default and acceleration as of 9/20/2022. The plaintiffs soon learned that the defendant never paid any closing costs and the entirety of the 2018 mortgage, a single payment was never made by High Point Holdings, LLC.

3. Standard for Preliminary Injunction: The well-established standard for issuance of a preliminary injunction requires that the plaintiff show a likelihood of success on the merits and a substantial risk of irreparable harm in the absence of injunctive relief. The court must then balance the risk of harm to the moving party against any similar risk of harm to the opposing party associated with granting the injunction. "Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617, 405 N.E.2d 106, 112 (1980). Also, "...[w]here the balance of relative hardships tips decidedly toward the [moving party], the [moving party] need not show as robust a likelihood of success on the merits." *Republic of Philippines v. Marcos*, 818 F.2d 1473, 1477-78." Additionally, "monetary damages are typically not considered irreparable harm as a basis to grant a preliminary injunction." *Packaging Indus. Group Inc. v. Cheney*, 380 Mass. 609, 621 (1980).

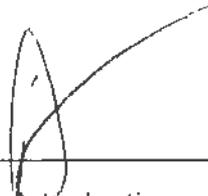
4. Plaintiffs' Motion for Preliminary Injunction: The plaintiffs have made a satisfactory showing of the likelihood of success on the merits given the strong indication of improprieties by the defendant relative to their failures to make payments towards closing costs and real estate taxes, as well as concerns that the transactions

conducted by the defendant in acquiring the property and changing terms of its sale back to the plaintiff and real questions about whether it is actually an arm's length mortgagee. Furthermore, uncontested allegations that it never collected closing costs and failing to pay property taxes for years.

5. Additionally, the plaintiffs have made a satisfactory showing of both irreparable harm and a balancing of harms in their favor. If the foreclosure is not enjoined, or at least preliminarily so, the plaintiffs will likely lose their home---all the while indicating that they are in a position to repurchase the property in line with the contracts they signed.
6. Finally, though public policy considerations are not often an issue in requests for injunctive relief, if the plaintiffs' averments and their counsel's arguments turn out to be true that the defendant is part of a scheme to obtain a title to this property in an unconscionable manner, there are significant public policy concerns at stake if the foreclosure is not enjoined.
7. **Actions Consolidated:** Additionally, the plaintiffs seek to consolidate this matter with 21-CV-845 for full and final adjudication. As both actions involve common questions of law and fact, and all claims arise out of the same set of transactions, that request is allowed and the two matters (21-CV-845 and 23-CV-666) shall be consolidated.
8. **Administrative Transfer:** Given that the focus of this litigation, by way of contract claims for specific performance or otherwise, is focused on clarifying title, the court is concerned about its jurisdiction over these consolidated actions and shall seek administrative interdepartmental transfer pursuant to G.L. c.211B, s.10 and a separate letter seeking same shall be sent to the Chief Justice of the Housing Court Department and copied to the parties.

9. Conclusion and Order: Based on the foregoing, the motion for preliminary injunction seeking to enjoin the foreclosure sale is granted and the defendant is prohibited from scheduling a foreclosure on the property indefinitely without leave of court and also prohibited from transferring, selling, gifting, or otherwise encumbering any new financial interest on the subject property. Additionally, these matters (21-CV-845 and 23-CV-666) shall be consolidated into the Civil Action Case No. 21-CV-845.

So entered this 29th day of November 2023.

A handwritten signature in black ink, consisting of a large, stylized loop that starts at the bottom left, goes up and around, and then curves down to the right, crossing itself.

Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2478

A.P. II,

Plaintiff,

v.

ANNSABEL GARCIA,

Defendant.

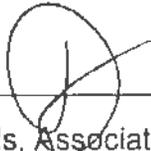
ORDER

After hearing on November 20, 2023, the following order shall enter:

1. The physical eviction scheduled for December 1, 2023, shall be cancelled by the landlord.
2. The parties agreed that the crux of the problem in this tenancy is that the Springfield Housing Authority (which administers the tenant's rental subsidy) includes the tenant's mother's income as part of the household income but the mother will not make any contribution to the monthly rent.

3. The tenant explains that both her mother and her believe that the mother is a "foster adult" whose income should not be considered in establishing the rent as determined by the housing authority.
4. This matter shall, by agreement of the parties, be referred to Community Legal Aid. The tenant is also urged to apply for assistance by Community Legal Aid and TPP (which was present for the hearing and says they already have a referral) agreed to assist with the CLA referral.
5. In the meantime, the tenant shall pay her rent for December 2023.
6. This matter is scheduled for review on **December 28, 2023, at 9:00 a.m.**

So entered this 30th day of November, 2023.



Robert Fields, Associate Justice

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

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3238

HOUSING MANAGEMENT RESOURCES, INC.,

Plaintiff,

v.

LEE-ONA HUGHES,

Defendant.

ORDER

After hearing on November 13, 2023, on the landlord's motion for issuance of an execution, the following order shall enter:

- 1 As confirmed with a representative from Way Finders, Inc. during the hearing, the tenant is potentially eligible for \$5,000 in RAFT funds and the most recent RAFT application was "timed out" due to the lack of landlord-side documentation. It was determined during the hearing that this may have been due the use of an

email address that was not ideal for the landlord, so an updated correct address was provided to Way Finders, Inc. during the hearing.

2. The tenant shall pay \$1,000 to the landlord on November 17, 2023, and then an additional \$1,000 on November 24, 2023.
3. The tenant shall reapply for RAFT forthwith.
4. This matter shall be scheduled for further review on **December 15, 2023, at 9:00 a.m.**

So entered this 30th day of November, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1593

IMPERIAL APTS.,

Plaintiff,

v.

NATHAN JONES,

Defendant.

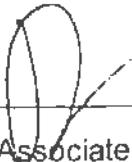
ORDER

After hearing on November 21, 2023, at which the plaintiff appeared through counsel and the defendant appeared *pro se* and at which a representative from Way Finders, Inc. joined, the following order shall enter:

1. There is a pending RAFT application, and Way Finders, Inc. is waiting for "hardship" documents from the tenant.
2. The tenant will diligently follow up on the RAFT application.

3. The tenant shall pay \$800 by the 10th of each month going forward of which the first \$338 shall be accepted as use and occupancy and the remainder towards the arrearage. The next payment is due no later than December 10, 2023.
4. While RAFT is pending, and the tenant is making the payments noted above, the landlord may not use the current execution.
5. If RAFT is "timed out" or otherwise denied on this date (November 21, 2023) or if the tenant fails to make the payments described above, the landlord may use its execution without leave of court.
6. If the RAFT funds are not otherwise committed to the landlord, the landlord may file a motion for a lift of the stay on the use of the execution.
7. A representative from the Tenancy Preservation Program (TPP) was present for the entire hearing and a referral shall be made to TPP. The tenant is urged to cooperate with TPP's efforts.

So entered this 30th day of November, 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-974

KATE LEPORE,

Plaintiff,

v.

ANAMARIA IVAN,

Defendant.

ORDER

After hearing on November 29, 2023, the following order shall enter:

1. As explained on the record by the judge, a landlord may not unilaterally change a substantial term of a tenancy. Here, though the plaintiff tenant used the driveway freely for the entirety of her tenancy, the landlord unilaterally curtailed the use of the driveway.

2. Accordingly, the defendant landlord shall immediately make the driveway available for the tenant's use in a manner that she has used it for the entirety of her tenancy.
3. Only by agreement of the parties, or in accordance with the law, may the tenant's use of the driveway be curtailed going forward.

So entered this 30th day of November, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

CP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-957

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

JOSHUA EMMANUAL CANCEL,

Defendant.

ORDER

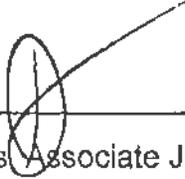
The parties appeared for a hearing on the landlord's motion for injunctive relief, at which the plaintiff appeared through counsel and the tenant appeared *pro se* but was accompanied by his criminal defense attorney who represents the tenant in the related criminal matter. Prior to any evidentiary hearing, the parties entered into an Agreement. As a result of the colloquy with the judge, the parties only agreed to a portion of the terms of the Agreement (that will be listed here) but continued the matter for review at the date below to determine if the remainder of that Agreement is agreed to.

Thus, by agreement, the following terms shall be in effect:

1. Tenant agrees to pay his monthly use and occupancy on time and in full.
2. Tenant agrees to not have any guests or visitors in his unit.
3. Tenant agrees to not have any drugs on the premises or in his unit and agrees not to create any disturbances on the property.

This matter shall be scheduled for review on **December 1, 2023, at 9:00 a.m.**

So entered this 1st day of December, 2023.



Robert Fields Associate Justice

CC: Trevor Maloney, Esq, (Tenant's Criminal Defense Counsel)

CPCS, 1350 Main Street, Springfield, MA 01103

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2378

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

SONIA KILPATRICK,

Defendant.

ORDER

After hearing on November 30, 2023, on the landlord's motion for issuance of the execution, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The tenant's portion of the rent is currently \$0 and she has been paying the agreed upon \$150 each month towards the arrearage.
2. The outstanding balance of rental arrearage through November 2023, is \$7664.88.

3. A representative from Way Finders, Inc. joined the hearing and confirmed that the tenant is eligible to apply for RAFT funds.
4. The tenant shall forthwith apply for RAFT funds. The tenant was urged to go to Springfield Partners for assistance with her RAFT application, particularly regarding "hardship documents".
5. The tenant shall pay \$150 for December 2023 and again for January 2024.
6. The landlord's motion shall be continued to **January 25, 2023, at 2:00 p.m.**
This date was picked to provide time for the RAFT application process.

So entered this 6th day of December, 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-1004

AMBER DEVINE,

Plaintiff,

v.

LONGHILL GARDENS NORTH BROOKLYN
MANAGEMENT,

Defendant.

ORDER

After hearing on December 1, 2023, at which both parties appeared with counsel and Inspector Charles Kaniecki, Health Agent, also appeared, the following order shall enter:

- 1 The defendant shall provide hotel accommodations for the plaintiff and her household a hotel with cooking facilities beginning tonight (December 1, 2023) and each night until Inspector Kaniecki approves the premises for reoccupancy.

2. If the hotel accommodations do not have cooking facilities, the landlord shall provide the plaintiff with a daily food stipend of \$100.

So entered this 4th day of December, 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

This matter came before the court for trial and the court issued a written decision on July 24, 2023, in which the plaintiff, Paul R. Prentice (hereinafter, "plaintiff") was the prevailing party in his claims for breach of the covenant of quiet enjoyment pursuant to G.L.c. 186, §14 and violation of the security deposit laws as well as a claim for breach of the warranty of habitability. As a prevailing party on the quiet enjoyment and security deposit law violations 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 Ebtac 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: Lead counsel for the plaintiff, Christopher Pierson, has petitioned for an hourly rate of \$275 and \$285 and this court finds these amounts to be reasonable. Attorney Pierson is also seeking fees for other attorneys and paralegals in his office that worked on this matter with hourly rates acceptable by the court.¹

3. Total Award Being Sought: The petition seeks compensation for \$11,200.

4. Analysis of Hours: Although the legal issues were not unusually complex, the factual evidence was considerable. Though the court would have preferred a breakdown of hours for each person identified in the petition, the court finds that the number of hours expended are reasonable.

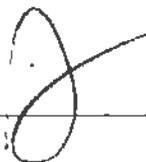
¹ The defendant's opposition to the fee petition focused on the plaintiff's failure to identify which work was performed by which attorney or paralegal. The court agreed and ordered the plaintiff to resubmit his petition clarify who performed the work and their hourly rate. The court finds that this supplemental filing address those concerns and the defendant did not file an opposition to the Supplemental Petition.

5. **Costs:** The petition also seeks \$1,639.85 in costs. The petition lists costs that appear standard and appropriate and the defendant did not oppose them.

6. **Award of Attorney Fees and Costs:** Based on the foregoing, counsel for plaintiff shall be awarded \$11,200 in attorney's fees and \$1,639.85 in costs ².

7. **Conclusion and Order:** In accordance with the above, as well as the court's July 24, 2023, trial decision, the following final judgment shall enter: Judgment for the plaintiff for \$4,871.75 in damages plus \$11,200 in attorney's fees and \$1,639.85 in costs shall enter.

So entered this 4th day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

² Though there is no single format for petitions for attorneys' fees and costs, plaintiff counsel is urged in the future to include affidavits from attorneys (not at his firm) who are knowledgeable in both the petitioning attorney's work as well as the hourly rate generally charged in the community.

repairs to the bedroom wall, she admits that, at most, he made two attempts to gain access. The Court finds Plaintiff's efforts to be inadequate. Although the Court was provided little evidence from which to determine when Plaintiff became aware of the squirrel issue, the Court finds that the squirrel issue has existed for one year. This condition reduced the fair rental value of the Premises by 10% for twelve months. Based on monthly rent of \$1,400.00, Defendant is entitled to a rent abatement in the amount of \$1,680.00.

The Court finds that Defendant did not prove with credible evidence that she suffered an infestation of mice. Although Defendant informed Plaintiff that she saw roaches in the Premises, Plaintiff hired an exterminator who inspected in July 2203 and found no evidence of a roach problem. Defendant has the burden of proof on her defenses and counterclaims, and she failed to provide sufficient evidence to warrant a finding of liability against Plaintiff with respect to rodents and roaches.

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

1. Judgment shall enter for Plaintiff for possession and unpaid rent in the amount of \$2,520.00, plus court costs, through the date of trial. The judgment amount is the balance remaining after deducting \$1,680.00 on account of Defendant's defenses from the \$4,200.00 of unpaid rent.

2. 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 \$2,520.00, plus court costs of \$ 180.76 and interest in the amount of \$ 75.45.

for a total of \$ 2,776.21. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

3. 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. 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 \$2,520.00, plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

4. Within 30 days, Plaintiff shall make arrangements to remove the squirrels from the Premises and repair the bedroom wall.

5. For the duration of Defendant's occupancy at the Premises, the parties shall limit their contact to necessary landlord-tenant matters (such as arranging for repairs with at least 24 hours' advance written notice) and neither party shall cause significant disturbances at the Premises.

SO ORDERED.

DATE: December 15, 2023

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

cc: Court Reporter

CP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-2535

RICHARD GIBBONS,

Plaintiff,

v.

TERESA FOOTE,

Defendant.

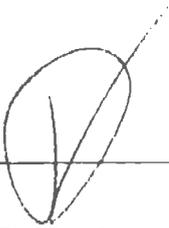
ORDER

After hearing on November 30, 2023, on the landlord's motion for judgment, the following order shall enter:

1. The tenant has essentially vacated the premises and only needs two days to remove her laundry and to sweep up the unit.
2. The tenant shall vacate completely and hand the keys over to the landlord on December 2, 2023, at 4:00 p.m. At the time of the tenant returning the keys and the parties walk through the unit, the landlord shall give \$1,425 to the tenant.

3. These funds represent the \$2,000 agreed upon in the October 4, 2023, Agreement MINUS \$575 for use and occupancy for half of November 2023.
4. If the tenant fails to vacate in accordance with this order, the landlord may file a motion for entry of judgment upon a *notice of short order*.

So entered this 17th day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2776

_____)	
MARK SALGUEIRO,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND 8A ORDER
DEBORAH CHANDLER,)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court on September 11, 2023 for a bench trial. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 75 Hadley Village Rd., Apt. C, South Hadley, Massachusetts (the “Premises”).¹

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

1. The Premises are a unit owned by Plaintiff within a condominium complex of approximately 180 units;
2. Defendant moved into the Premises in December 2014. The original one-year lease expired and the tenancy became month-to-month thereafter;
3. Monthly rent is \$710.00. The parties agree that rent has not been paid for five months, but Plaintiff applied last month rent deposit for May 2023, and

¹ The parties agree that the deed references the Premises as located at 540 Granby Heights, Unit 75C, South Hadley.

thus the amount of \$2,840.00 is unpaid through trial, subject to Defendant's counterclaims and defenses;

4. Defendant received the notice to quit, which informed her that she was required to vacate by May 31, 2023; and
5. Defendant has not vacated the Premises.

Defendant filed an answer² asserting defenses and counterclaims for discrimination, retaliation, conditions of disrepair, breach of quiet enjoyment and violation of G.L. c. 186, § 15B regarding the last month rent deposit.³ 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 with respect to each of Defendant's defenses and counterclaims:

Discrimination

Defendant asserts that Plaintiff seeks to evict her based on her disabilities, which include [REDACTED] chemical sensitivities. There is little evidence to support a claim that Plaintiff discriminated against Defendant or failed to accommodate her disabilities. Defendant's strongest claim involves events from November 2022, when the condominium association ("HOA")⁴ painted hallways outside the Premises. When Defendant complained that the paint being used was triggering her chemical sensitivities, the HOA accommodated Defendant by switching to "no VOC" paint. Although Defendant claims that the paint

² Prior to trial, the Court allowed Defendant's motion for leave to file a late answer.

³ Defendant also checked the box claiming that Plaintiff violated G.L. c. 93A, but she never raised this claim at trial, and this claim is hereby dismissed.

⁴ Defendant repeatedly referenced the homeowners' association, even though there is no evidence that the condominium complex had one. For simplicity, the Court adopts Defendant's terminology.

continued to affect her, the Court is satisfied that the HOA did in fact accommodate Defendant by changing the paint it was using. Based on the credible testimony of the witness, the Court finds in favor Plaintiff on Defendant's counterclaim for disability discrimination.

Retaliation

Defendant asserts that she was labeled a "problem tenant" by complaining about various issues at the complex, including snow removal. Defendant sent Plaintiff an email on August 14, 2022, complaining the HOA. Within minutes of receiving the text, Plaintiff informed Defendant that he would be selling the apartment and that she would have to move. On February 2, 2023 and February 5, 2023, Defendant wrote to Plaintiff that the water shut off in her unit. On February 6, 2023, Plaintiff sent Defendant a notice to quit.

The timing of Plaintiff's actions (within six months of the notice to quit) raises a presumption of retaliation pursuant to G.L. c. 186, § 18 and G.L. c. 239, § 2A. The burden thus shifts to Plaintiff to demonstrate by clear and convincing evidence that his termination of the tenancy was not a reprisal against Defendant and that he had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of Defendant's complaints. Plaintiff offered no evidence to rebut the presumption, and therefore, the Court finds in favor of Defendant on her claim for retaliation and awards her damages in the amount of one month's rent.

Conditions

Defendant failed to demonstrate that she had to endure significant conditions

of disrepair in her unit. She testified about two to three instances of a brief interruption of water in February 2023, and she testified about issues with her baseboard heat. Most of Defendant's testimony around conditions involved her concerns about who Plaintiff sent to make the repairs and not the degree to which the conditions diminished the value of the Premises. The Court has insufficient evidence from which to conclude that Plaintiff is liable for breach of the implied warranty of habitability.

Quiet Enjoyment

In order to find Plaintiff liable for interfering with her quiet enjoyment, the Court must find some negligence by the landlord. *See Al- Ziab v. Mourgis*, 424 Mass. 847, 850 (1997). Moreover, the events must cause a "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994).

Here, Defendant failed to show any negligence by Plaintiff and did not prove that the character and value of the Premises was impaired. With respect to the water interruptions, Defendant testified that they did not affect her much at all. She testified that a neighbor caused a disruption in her tenancy by making loud noises and using cannabis, but HOA removed him from the complex upon being put on notice of his behavior. Regarding Defendant's testimony that the HOA removed the common porch or stairs to her building and painted the common area hallways without advance notice, the evidence was contradictory. Defendant did not convince the Court that she had no notice at all, and in any event, the work was done in a matter

of a few days. Given Defendant's failure to show negligence on the part of Plaintiff, the Court finds for Plaintiff on her claims for breach of quiet enjoyment.

Last Month Rent Deposit

The evidence shows that Plaintiff applied the last month rent deposit to unpaid rent, but there is no evidence that he paid Defendant the interest she was due. Had Plaintiff credited accrued interest to Defendant's balance, she would owe less than the \$2,840.00 claimed as of the date of trial. The Court infers that interest was not paid and therefore finds that Defendant is entitled to damages in the amount of \$284.00.⁵

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

1. Plaintiff is entitled to unpaid rent in the amount of \$2,840.00, plus court costs and interest.
2. Defendant is entitled to damages in the amount of \$994.00 on account of her claims and defenses.
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 \$1,846.00, plus court costs of \$ 219.10 and interest in the amount of \$ 100.21, for a total of \$ 2,165.31. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

⁵ This figure is calculated by using the 5% interest rate required by statute for the eight full years Defendant held the deposit.

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 \$1,846.00 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: December 8, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-844

THE COMMUNITY BUILDERS, INC.,

Plaintiff,

v.

KAYLIN LIGON,

Defendant.

ORDER

After hearing on November 20, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day Counsel, the following order shall enter:

1. The parties entered into an Agreement of the Parties on April 26, 2023 (Agreement), in which the tenant agreed "to make best efforts not to smoke on the property." (para. 4)
2. The landlord's motion is based on an allegation that the tenant smoked inside her apartment around September 14, 2023.
3. Though the landlord did not provide the name of the witness to the alleged violation (para. 7), the tenant admitted that though she smokes almost every time

outside she has smoked on three or four occasions since the April agreement in her unit.

4. The tenant's support systems (e.g. Department of Mental Health, ServiceNet) had a recent drastic personnel change which understandably caused a great deal of added stress for the tenant.
5. A representative from ServiceNet testified that the tenant could apply for the services of a smoking secession specialist and that he would assist her with said application. The tenant agreed to try it.
6. Given what has been proffered by the parties' counsel (in lieu of an evidentiary hearing), the fact that she smokes multiple times per day and that over the seven months since the Agreement she has smoke only three or four times in her unit and that she'll now meet with a smoke cessation specialist and continue to use her best efforts to not smoke in the unit, the court finds that the tenant has not breached the terms of the Agreement which requires her "to make her best efforts not to smoke on the property".
7. The terms of the Agreement shall remain in full force and effect.

So entered this 8th day of December, 2023.



Robert Fields, Associate Justice

Cc: David DeBartolo, Esq., Lawyer for the Day

Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3537

KARL BAXTER and SHONETTE TOMLINSON,

Plaintiffs,

v.

SADIE VARGAS,

Defendant.

ORDER

This matter came before the court for trial on October 12, 2023, at which the landlord, Shonette Tomlinson, appeared *pro se* and the tenant Sadie Vargas also appeared *pro se*. After consideration of all the credible testimony, the other evidence presented at trial, and the reasonable inferences drawn therefrom, the following order for judgment shall enter:

1. **Background:** The plaintiffs, Karl Baxter and Shonette Tomlinson (hereinafter, "plaintiffs" or "landlords") purchased the four-unit premises located at 86 Fernwold Street, Springfield, Massachusetts (hereinafter, "premises") in April of 2022. The defendant, Sadie Vargas (hereinafter, "defendant" or "tenant") has resided in the

premises under a written tenancy with the former landlord since January 2018. Upon the expiration of defendant's lease in January 2023, the parties entered into a written month-to-month tenancy at will.¹ On or about April 17, 2023, the landlords had the tenant served with a "Notice to Terminate Tenancy at Will" notice. Thereafter, the landlords commenced this instant summary process action. The tenant filed an Answer with Counterclaims, asserting claims of discrimination, harassment/threat, intentional infliction of emotional distress, breaches of the warranty of habitability, breach of the covenant of quiet enjoyment, and seeking time to relocate under G.L. c.239, s.9.²

2. **The Landlord's Claim for Possession:** The plaintiffs seek to recover possession of the premises as part of their plan to renovate the entire building one unit at a time. The parties stipulated to the landlord's *prima facie* case for possession. The tenant agrees to service of the no fault notice to quit. The parties also agree that monthly rent is not in dispute at \$1,400 a month and at the time of this trial, there was no claim for unpaid rent. What remains for the court's adjudication are the tenant's counterclaims.

3. **The Tenant's Claim for Breaches of the Warranty of Habitability:** The City of Springfield Code Enforcement Department (hereinafter, "the City") cited the landlords for numerous violations after an inspection on October 3, 2023. A citation from the City

¹ Ms. Tomlinson is the Property Manager, is a signer of the lease and the termination notice and the summons.

² At the commencement of the trial, the tenant's motion to file a late Answer which contained a counterclaim of discrimination was allowed. The landlord was offered an opportunity to have the trial conducted at a later date given the late filed Answer but declined and asked that the matter go forward. After the tenant was heard on her defenses and counterclaims it was clear from her testimony and documentary evidence (Board of Health report and texts between the parties) that she was asserting claims that included breach of quiet enjoyment and a breach of the warranty of habitability. The judge paused the proceedings and afforded the landlord to the opportunity to have the trial recessed until a later time that same day or another date so that she could defend such claims and the landlord again declined and asked to proceed.

exemplifies a violation of the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. The City cited concerns pertaining to building and structural elements, installation and maintenance responsibilities in the bathroom of the Premises, as well as the elimination of a mouse infestation and building and structural elements in the overall dwelling unit of the Premises. As evidenced by the landlord's testimony at trial, the landlord was on notice of the condition of vermin at the premises prior to the City's inspection.

4. It is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability irrespective of the landlord's good faith efforts to repair the defective condition. *Berman & Sons, Inc., v Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass. App. Ct. 907, (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). This court finds that these defective conditions at the premises as described at trial and confirmed in the City's inspection report reduced its fair rental value by 20% for a 2-month period for a total rent abatement of \$460.

5. **The Tenant's Claim for Breach of the Covenant of Quiet Enjoyment:** At trial, the tenant alleged that the plaintiffs withheld lawn care for one month, allowing the height of the lawn to extend to her knees. There were occasions where the tenant was

unable to use the outdoor space at the premises in the months of June and July. The tenant further testified that the lawn of the neighboring units of the premises were maintained. The court finds the defendant's testimony credible notwithstanding the plaintiffs' assertions that the maintenance of the defendant's premises was hindered by the presence of her dog on the property or by the alleged intimidation by the defendant toward the individual responsible for property care.

6. Additionally, in June 2023, the landlord texted the tenant informing her that the next move for the landlord is to hire the sheriffs to remove the tenant and her family (and their property) from the premises without the need for court. Below is the text exchange:

Tenant: Ok. I guess the next step is court? I'm not sure what you want me to do or what I'm supposed to do. I have no place and this is what wayfinder provide for me to move forward. I'm just not having any luck. But if that's the next step then ok. I'm not sure what else to say atm. Ttyl

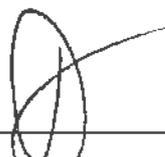
Landlord: The next step is not court you do not have a LEASE. You were on a MONTH TO MONTH Agreement. The next step would be me bringing the Sheriff to vacate you from the property. We have been extremely accommodating and can only extend to the date mentioned above. We are operating a business this is not personal. You not being able to find an apartment is not your Landlord's concern, especially if you were already issued a notice to vacate. What is the confusion?

7. 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 and so

rules that the landlord's behavior above regarding the threat to have sheriffs move the tenant out without use of a court process, as well as the lack of lawn care during June and July 2023, violated the tenant's covenant of quiet enjoyment and G.L. c.186, s.14. Damages for breach of the covenant of quiet enjoyment consist of actual and consequential damages or three month's rent, whichever is greater. Because defendant did not assert actual and consequential damages, the Court will award three month's rent, or \$4,200.³

8. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the tenant for possession and for an award of \$460 plus \$4,200, for a total amount of \$4,660 shall enter. With respect to the counterclaims brought by the defendant concerning alleged discrimination, harassment/threat, and infliction of emotional distress the court finds that the defendant failed to introduce sufficient evidence, testimonial or otherwise that would support their counterclaims against the plaintiffs.⁴

So entered this 12th day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

³ The landlord testified that she misunderstood the law when informing the tenant that the next step was a sheriff move-out and not court action, and shortly thereafter learned of the requirement for Summary Process, but then never followed up with the tenant to clarify her mistake.

⁴ Although the court explored the tenant's claim under G.L. c.239, s.9 at the end of the trial, that issue was made moot given the judgment for possession entering for the tenant.

Premises repeatedly following the October 4, 2023 order. Accordingly, Plaintiff is entitled to entry of judgment nunc pro tunc to September 29, 2023 and immediate issuance of the execution.

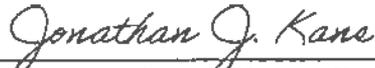
With respect to consideration of a stay pursuant to G.L. c. 239, § 9 et seq., Defendant's counsel asked for a stay through December 8, 2023, which date has now passed. Given Defendant's violation of a material term of the October 4, 2023 order, the Court is not willing to further extend the stay.

The following order shall enter:

1. Judgment for possession shall enter nunc pro tunc to September 29, 2023.
2. The execution shall issue forthwith.
3. There shall be no further stays on use of the execution.

SO ORDERED.

DATE: December 12, 2023



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-596

SERGEANT WEST II APARTMENTS,

Plaintiff,

v.

HILDA ROLON,

Defendant.

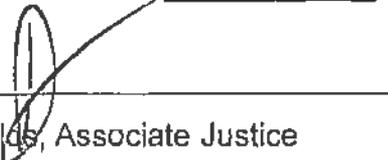
ORDER

After hearing on December 12, 2023, on the tenant's motion, the following order shall enter:

1. The physical eviction scheduled for December 15, 2023, shall be cancelled by the landlord and the costs associated with same shall not be passed on to the tenant.
2. The default judgment entered on August 7, 2023, shall be vacated and the landlord shall return the execution to the court.
3. These remedies are appropriate because of several extraordinary factors that came to light during the hearing. First, the motion for judgment and execution filed with the court on July 17, 2023, was based on erroneous information regarding the tenant's compliance with the Agreement of the Parties (dated April 12, 2023) and was sent by the landlord's counsel to the wrong address.

4. This case was commenced by the landlord for dispossession of property located at E. Dwight Street, but the tenant was relocated to the premises located at 164 Sargeant Stret. Though the landlord filed a motion early in these proceedings to amend the complaint for the proper subject premises and the court's administrative allowance of same, both the court and landlord counsel continued to send correspondence to the old non-working address.
5. Additionally, the tenant had been complying with the Agreement but was instructed by the landlord to put the old E. Dwight Street address on her money orders and the landlord was accepting all payments but not linking them to the tenant's current address on Sargeant Street. Thus, the motion alleging non-compliance with the payment terms of the Agreement was not accurate as the tenant was in fact complying. The order of the court on said motion, at which the tenant did not appear because both the landlord and the court sent the motion and notice of same to an incorrect address, was based on false information.
6. The tenant complied with the terms of the Agreement until November and December 2023 and will pay her rent plus the additional \$350 per month for both of those months by today.
7. Hereafter, the tenant shall pay her rent plus \$350 until the balance is \$0 at which time the case shall be dismissed.

So entered this 6th day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

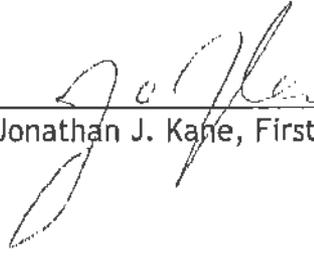
excessive trash to build up in the yard. The Court accepts Defendant's testimony that the issues around unsafe living conditions and trash in the yard date back to prior years and have been substantially corrected, and therefore finds that Plaintiff is not entitled to a judgment based on these particular claims. With respect to violations of the pet policy, the Court finds that, although Defendant is not in compliance with the rules regarding pets, she could correct these violations with relative ease.

The aspect of Plaintiff's case that Defendant cannot overcome, however, is the consistent late payment of rent. Defendant admits that the Premises are unaffordable without the financial contributions of her son, who moved out in April 2023. She has not paid rent in full or on time in over 18 months. The only reason the rental arrears are not significantly higher is that Plaintiff has received rental assistance through the RAFT program in the total amount of \$10,000.00 in the past year. The Court finds that Plaintiff established her burden of proving, by a preponderance of the evidence, that Defendant's failure to pay rent in full and on time constitutes a substantial violation of a material term of her rental agreement.

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

1. Judgment for possession and damages in the amount of \$7,095.49 shall enter in favor of Plaintiff.
2. Execution shall issue by written application ten (10) days after judgment enters.

SO ORDERED.
DATE: December 13, 2023
cc: Court Reporter



Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3690

A BETTER WAY, LLC,

Plaintiff,

v.

WINDELL WESTBROOK,

Defendant.

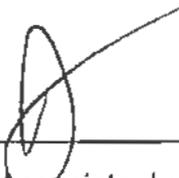
ORDER

After hearing on December 7, 2023, on the tenant's emergency motion to stop a physical eviction at which both parties appeared along with the tenant's daughter, Daniel Hillman, the following order shall enter:

1. Ms. Hillman reported to the court that her father has [REDACTED] and that it is a condition that relatively recent and worsening with time.

2. For the reasons stated on the record, the eviction scheduled for December 8, 2023, shall be cancelled and the landlord is instructed to notify the sheriffs and the moving company off the cancellation.
3. The Clerk's Office is asked to identify an appoint a Guardian *Ad Litem* for Mr. Westbrook.
4. Ms. Hillman has agreed to work with her dad to see if he can pay December 2023 rent and will continue to work with Greater Springfield Senior Services.
5. The landlord has authority to speak directly with Ms. Hillman at any time about her father's tenancy without such being considered a breach of Mr. Westbrook's privacy.
6. This matter shall be referred to the Tenancy Preservation Program. Said referral shall include Ms. Hillman's contact information.
7. This matter shall be scheduled for review on **December 27, 2023, at 9:00 a.m.**

So entered this 14th day of December, 2023.



Robert Fields, Associate Justice

CC: Kara Cunha, Esq., Assistant Clerk Magistrate (for G.A.L. appointment)
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3085

B.G. MASSACHUSETTS,
Plaintiff,
v.
KETZY VEGA,
Defendant.

ORDER

After hearing on December 7, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. Because the tenant disputes the amount asserted by the landlord, stating that she has made payments that the landlord does not agree were paid, the motion is continued to the date noted below so that the landlord can bring a witness to testify to the rent ledger.

2. The motion shall be continued for hearing on **December 21, 2023, at 2:00 p.m.**

So entered this 14th day of December, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-3174

_____)	
CHICOPEE HOUSING AUTHORITY,)	
)	
PLAINTIFF)	
)	
v.	)	ORDER FOR ENTRY OF JUDGMENT
)	
FRANCIS FRODEMA,)	
)	
DEFENDANT)	
_____)	

This summary process matter came before the court on December 14, 2023 on Plaintiff's motion for entry of judgment for possession. The motion is based on alleged violations of the August 31, 2023 agreement of the parties. Plaintiff appeared by counsel; Defendant appeared self-represented.

The Court finds numerous material violations of the August 31, 2023 agreement of the parties. At the last inspection conducted by Plaintiff on December 8, 2023, Defendant's unit continued to be in an unsanitary state. Defendant claims that he's made significant progress in cleaning over the weekend. There is no evidence that any cleaning has occurred.

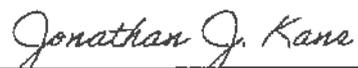
Moreover, the Court finds that Defendant has disrupted the quiet enjoyment of other occupants of the Housing Authority property by making intimidating and threatening comments, obstructing hallways with items that make occupants with walkers or other assistive devices from passing, and not maintaining acceptable

personal hygiene. He has repeatedly failed to cooperate with interviews by the Tenancy Preservation Program (TPP). In light of these findings, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Defendant shall cooperate with TPP and follow its recommendations. TPP may make an elder-at-risk report given Defendant's imminent homelessness.
3. Defendant may not leave anything in the hallways outside of his unit.
4. Defendant must take steps to ensure that his personal hygiene does not disturb other residents.
5. Defendant may not make any threats or intimidate other residents or anyone legally on the property.
6. Defendant shall continue to clean out his unit to bring it into a safe and sanitary condition. Plaintiff may reinspect Defendant's unit to confirm that he has made significant progress toward this goal, as he represented.
7. Plaintiff may schedule a motion for issuance of the execution after expiration of the appeal period. The Court requires the execution to issue by motion in order to give Defendant the opportunity to demonstrate that he has complied in full with the terms of this order.

SO ORDERED.

DATE: December 14, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

CP
COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

TIMOTHY DOBEK,

Plaintiff,

v.

GABRIEL CEDRES, et al.,

Defendants.

ORDER OF DISMISSAL OF
THE APPEAL

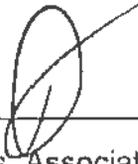
After hearing on December 7, 2023, on the plaintiff's motion to dismiss the appeal, the following order shall enter:

1. The plaintiff is seeking the dismissal of the defendants' appeal on two grounds. First, the defendants (appellants) failed to make any payments in accordance with the Order Setting the Appeal Bond. Second, the defendants have failed to comply with any of the requirements of the Rules of Appellate Procedure even

after the court directed them to the court's *Housing Appeals Guide and Summary Process Appeals Frequently Asked Questions*.

2. The landlord agrees that the other defendants vacated the premises in the beginning of April 2023 (which was the first month that the bond payments became due) but that Gabriel Cedres did not vacate until October 2023.
3. The court is satisfied that Mr. Cedres was utilizing the subject premises and had not returned possession to the landlord until at October 2023.
4. Based on the foregoing, which included the failure to prosecute the appeal and pay the bond, the appeal is dismissed.

So entered this 14th day of December, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-290

GREENFIELD HOUSING AUTHORITY,

Plaintiff,

v.

RICHARD HASTE,

Defendant.

ORDER

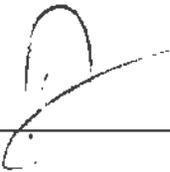
After hearing on December 8, 2023, on the tenant's motion to stop a physical eviction, the following order shall enter:

1. The physical eviction scheduled for December 19, 2023, is hereby cancelled.
The landlord shall so notify the sheriff and the moving company.
2. The tenant shall pay his rent of \$264 for December 2023 at some point before the end of the month of December 2023 and thereafter pay \$264 towards each

month at the beginning of the month beginning in January 2024. There shall be a stay on the use of an execution as long as the tenant makes these payments.

3. The tenant and his "bookkeeper" shall work with the landlord to see if they can satisfy the requirements for the landlord to calculate the tenant's rent. They shall have sixty (60) days to present documentation to establish the tenant's income for said recalculation.
4. If after this process the landlord wishes to pursue this eviction, it shall file a motion to lift the stay on the execution.

So entered this 14th day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

12

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3108

IRONSIDES SUMNER, LLC,
Plaintiff,
v.
TODD ARCHIBLE,
Defendant.

ORDER

After hearing on December 7, 2023, on the tenant's emergency motion to stop a physical eviction, the following order shall enter:

1. For the reasons stated on the record having to do with the lack of emergency shelter availability, the tenant's motion is allowed, and the physical eviction scheduled for December 8, 2023, shall be cancelled by the landlord.

2. The costs of scheduling and cancelling the physical eviction shall be added to the outstanding balance owed by the tenants. The landlord shall provide invoices to the tenants.
3. The tenants shall pay their rent plus \$100 for December 2023.
4. The tenants shall pursue a RAFT application diligently and forthwith, and the landlord shall cooperate with same. A representative from Way Finders, Inc. joined the hearing and reported that the most the tenants may be able to access in RAFT funds at this time is \$2,800 and then will not be eligible until mid-March 2024, and only as much as \$4,200.
5. Amounts outstanding, if any, after a payment by RAFT shall be paid in monthly installments of \$100.
6. This matter shall be scheduled for review on **December 28, 2023, at 9:00 a.m.**

So entered this 14th day of December, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

Plaintiff established her prima facie case for possession. Defendants did not file an answer and raised no legal defenses at trial. They simply seek additional time to find replacement housing. However, Plaintiff purchased the Premises for use by her family, including her disabled mother who cannot climb stairs. Currently, seven members of Plaintiff's family are residing on the second floor until the first floor unit becomes vacant. After weighing the equities, the Court finds that Plaintiff is entitled to recover possession of the first floor unit without further delay. Accordingly, in light of the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Plaintiff may apply for the execution (eviction order) ten days after the date that judgment enters.

SO ORDERED.

DATE: December 15, 2023

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4381

GAIL KAPPER,

)

)

PLAINTIFF

)

v.

)

)

ASHLEY MANN,

)

)

DEFENDANT

)

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

This summary process case came before the Court for a bench trial on November 30, 2023. Both parties appeared self-represented. Plaintiff seeks to recover possession of a residential dwelling unit located at 70 Borford Avenue, Fl 2, West Springfield, Massachusetts (the "Premises") from Defendant based on non-payment of rent. The Premises are on the second floor of an owner-occupied three-family house.

The parties stipulated to Plaintiff's prima facie case for possession. Defendant acknowledges receipt of the notice to quit and has not moved out. Defendant agrees that monthly rent is \$1,000.00 and that she has not made a payment since moving in on or about June 1, 2023, a period of six months. Defendant did not file an answer, but at trial asserted defenses to Plaintiff's claim for \$6,000.00. Based on the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Defendant had been a caretaker for Plaintiff's husband prior to moving into the

Premises. Plaintiff allowed her to move in without payment up front. In June 2023, the parties cooperated on an application for rental assistance through Way Finders. The initial application timed out due to a missing document from Plaintiff. Plaintiff had been away from home and did not know that the document was missing until the deadline for submitting it had passed.

The relationship deteriorated, largely over issues involving the presence of Defendant's boyfriend at the Premises. Before serving the notice to quit, Plaintiff confirmed that Defendant did not have a pending application for rental assistance. After getting the notice to quit, Defendant reapplied in September, but by then, Plaintiff had decided not to work with Defendant to receive funds. The Court finds Plaintiff's testimony credible that the number of disturbances justified her decision not to seek rental assistance funds. Requiring Plaintiff to participate in a new RAFT application would be an injustice in this case.

Defendant claims that she should be credited for work she did for Plaintiff, such as taking care of the yard and the cat when Plaintiff and her husband were away. The Court finds that this was not an agreed-upon term of the tenancy but instead a friendly gesture between the homeowner and a tenant to whom they offered a safe place to live when it was needed. Plaintiff assisted Defendant financially at the outset of the tenancy, and Defendant reimbursed Plaintiff for such expenses, which is further evidence of the amicable relationship at the outset. The Court has no evidence or legal basis to find that this arrangement warrants a credit toward the amount of rent owed.

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

1. Plaintiff is entitled to judgment for possession and damages in the amount of \$6,000.00.
2. Execution may issue upon written application ten days after the date judgment enters.

SO ORDERED.

DATE: December 15, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0939

ERIC MARKS,)
Plaintiff)
v.)
DANIAL CARTHON AND ALYCAR)
INVESTMENTS, LLC,)
Defendants)

ORDER

This matter came before the Court on December 15, 2023 for a status review. Plaintiff appeared with counsel; Defendant Carthon appeared self-represented. Defendant Alycar Investments, LLC (“Alycar”) initially appeared through counsel. At the outset of the review hearing, Alycar’s counsel’s motion to withdraw was allowed and Alycar was ordered to obtain new counsel in order to considered present at future hearings.

By way of background, Plaintiff’s rental unit, located at 96 3rd Street, Turners Falls, Massachusetts (the “Premises”) is owned by Alycar and managed by Alycar’s principal, Mr. Carthon. The Premises were condemned by the Montague Board of Health on October 19, 2023. The Court ordered Defendants to provide Plaintiff with alternative housing and a food stipend. The Court held hearings on November 3, 2023, November 10, 2023, November 17, 2023, December 1, 2023 and December 15, 2023.

The condemnation has not been lifted and the parties agreed that Defendants would move Plaintiff’s belongings to a new unit located nearby at 106 3rd Street, Turners Falls, Massachusetts (the “new unit”), provided it was habitable. The new

unit failed inspection by the Board of Health, however, and Defendants extended the alternative housing through December 16, 2023. In light of the foregoing, the following order shall enter:

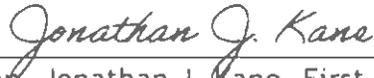
1. Defendants shall provide alternative housing to Plaintiff continuously through Saturday, December 23, 2023 at the same location where he is currently staying. Defendants shall continue to pay a daily food stipend of \$75.00, with payment through December 23, 2023 to be made today in cash delivered to the hotel.
2. Mr. Carthon represented that the gas company will return to the new unit early next week to inspect the replacement stove, and Defendants will thereafter schedule a reinspection of the new unit by the Board of Health. If it passes inspection, Defendants will forthwith employ licensed and bonded movers to move Plaintiff's belongings to the new unit. Upon completion of the move and the provision of keys to Plaintiff, Defendants obligation to provide alternative housing and a food stipend shall cease. Mr. Carthon and Mr. Marks shall communicate directly (by text) to make the necessary arrangements for the move.
3. If the new unit has not passed inspection by December 20, 2023, daily fines in the amount of \$100.00 will be assessed against Defendants, jointly and severally, until the new unit passes inspection.
4. If Plaintiff has not been relocated to the new unit by December 23, 2023,
 - (a) daily fines in the amount of \$100.00 will be assessed against Defendants, jointly and severally, until Plaintiff is relocated to the new unit, and

(b) Defendants must extend the hotel reservation through December 30, 2023 and pay Plaintiff, in advance in a lump cash payment, the daily food stipend of \$75.00 through the same date.

5. The Montague Board of Health, which this Court ordered to appear on December 1, 2023 and December 15, 2023, is not required to appear in court for the December 22, 2023 hearing, but it shall provide the parties with written reports of all inspections conducted after December 15, 2023 in advance of the hearing.
6. Plaintiff may file a supplemental petition for attorneys' fees in consideration of Defendants' failure to move Plaintiff to the new unit prior to December 8, 2023 as anticipated.
7. The parties shall appear for review by Zoom on **December 22, 2023 at 9:00 a.m.** Plaintiff may appear in person at the Franklin County Justice Center to use a Zoom station.

SO ORDERED.

December 15, 2023.



Hon. Jonathan J. Kane, First Justice

cc: Town of Montague Board of Health , 1 Avenue A, Turners Falls, MA 01376

Program. He also contends that the Court made an error in granting judgment of possession to Defendant.

The Court discerns no change of circumstance nor a demonstrable error in the original ruling. This case was entered on June 5, 2023, and the first-tier event was scheduled for July 2023. Defendant failed to appear and a default entered. At a hearing on August 30, 2023, the default was vacated and Defendant was given until September 6, 2023 to file and serve an answer, with trial scheduled September 21, 2023. Defendant failed to file a timely answer, and at the outset of trial, despite having six weeks to speak to a lawyer, was granted permission to speak to Community Legal Aid. The Court had little difficulty understanding Defendant at the hearing. Moreover, counsel provided limited assistance representation in representing Defendant at the hearing, and was not participating in the Lawyer for the Day Program (“LDP”), as the Court erroneously noted in its prior order.¹

With respect to the substantive argument that the Court erroneously considered Defendant an unauthorized occupant, Defendant essentially seeks a judicial change of heart. The Court weighed the credibility of the witness as the prior hearing, and Defendant essentially asks the judge to repeat the same mental process underlying the original decision, arguing for a different outcome based on the same evidence. None of the criteria set forth in Rule 60(b) have been met, and the grounds for the Rule 59(a) motion are the same.

¹ The LDP is a particular program that serves all pro se litigants in the Housing Court, tenant or landlord, on a first-come, first-served basis.

For the reasons set forth herein, the motion is DENIED.

SO ORDERED.

DATE: December 17, 2023

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

cc: Court Reporter

Based on the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, the Court makes the following findings of fact and rulings of law:

Defendant contacted the Springfield Code Enforcement Department in February 2023 due to lack of heat. Plaintiff was aware of the complaint to code enforcement and in a related case for injunctive relief brought in this Court, Plaintiff agreed to and did make repairs.

Because this is a no fault eviction case, under G.L. c. 186, § 18, Defendant's complaint to code enforcement in February 2023 creates a rebuttable presumption that the notice to quit served in May (within six months) is a reprisal against her for complaining to the authorities. Plaintiff can rebut the presumption only by clear and convincing evidence that his action was not a reprisal against the tenant and that he had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken had Defendant not contacted code enforcement.¹ Although Plaintiff implied that he served the new notice to quit because of Defendant's past payment history, he knew in March 2023 that RAFT was likely to pay the arrears. Therefore, it was incumbent upon Defendant to prove that he independent justification for serving a no fault notice to quit when he did. He did not do so. Accordingly, the Court finds in favor of Defendant on her claim for retaliation and awards her damages of \$1,200.00 (one

¹ The parties were involved in an earlier non-payment summary process action (23SP0141) that was dismissed after RAFT cured the arrears. In that case, the parties made an agreement in March 2023 for repairs to be made, which they were, but Defendant could not have raised a retaliation defense given that she received the notice to quit in that case prior to contacting code enforcement. Because counterclaims are not compulsory in summary process cases, see Uniform Summary Process Rule 5, Defendant is not barred from asserting the claim in this case.

month's rent).

Given that Defendant did not assert any other counterclaims at trial,² and based upon all the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that;

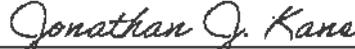
1. Plaintiff is entitled to unpaid rent in the amount of \$6,000.00, plus court costs and interest.
2. Defendant is entitled to damages in the amount of \$1,200.00 on account of her counterclaim.
3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$4,800.00, plus court costs of \$ 223.52 and interest in the amount of \$ 251.09, for a total of \$ 5,274.61. 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

² Defendant claims to have a child with elevated lead levels in her blood, but this claim will be severed from this case without prejudice to bring a separate case for lead liability. See USPR 5 (claims are not considered waived for the purpose of a separate civil action or actions if not asserted in a summary process action). Given that Defendant does not have a lawyer and may have a significant personal injury claim, it would be manifestly unjust to deem the claim waived simply because she made a passing reference to it in her form answer.

of \$4,800.00 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: December 17, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

threatening voicemails on a neighbor's phone. She's called tenants of color "cannibals" and complains about tenants who play "black music." Tenants have complained to management about Defendant using the "n word" and making derogatory comments about immigrants, people from other cultures and LGBT people. A neighboring tenant testified that Defendant entered her home without permission and has made threats, leading the neighbor to get a harassment protection order against her. Another tenant testified that who lives above Defendant asserts that, since October 2022, Defendant has been making threats toward her and has used an offensive term referring to the tenant's [REDACTED] six-year old daughter and has caused her daughter to be in fear. Defendant has thrown delivery packages at her, leading her to get a harassment prevention order. The Court finds Plaintiff's witnesses credible regarding Defendant's behavior,

Defendant denies all allegations. She testified that she's disabled and ill, although he provided no evidence to support her claims. She said that the witnesses who testified simply do not like her and that these allegations are essentially petty conflicts between neighbors. She admits she's had conflicts with other tenants about packages and yelled at others about smoking. She admits saying the "n word" but said she it was not directed at a particular person. Defendant's testimony lacked credibility. She offered no witnesses and no credible evidence in defense of Plaintiff's claims.

Defendant's argument that she was not given adequate warning by management about her behavior before terminating her tenancy is without merit. In 2021, she signed an agreement for judgment that required her to refrain from making

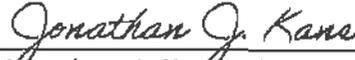
any vulgar, offensive or racist statements of any kind. Defendant clearly had notice that her behavior would not be tolerated.²

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue ten (10) days after judgment enters.

SO ORDERED.

DATE: December 17, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter
Jayme Parent, Highland Valley Elder Services

² Defendant's argument that Plaintiff reinstated her tenancy by completing recertification paperwork after terminating her tenancy fails. The notice to quit states "... participation in any paperwork ... will not waive this Notice to Quit or re-establish your tenancy unless specifically state so [sic] in writing by this office or management."

to quit dated July 11, 2023. Defendant asserted defenses and counterclaims based on conditions of disrepair in the Premises.

The Court finds that the bad conditions in the Premises were primarily caused by Defendant and his guests. The Premises are part of a duplex newly constructed in 2021. Defendant is the first tenant to reside in the Premises, although the property manager lived there herself for a period of time prior to renting to Defendant. His rear door was damaged when the fire department kicked down the door to check on an alarm sounding while Defendant was asleep in the unit.

Much of Defendant's testimony involved Plaintiff's failure to make repairs to damaged doors and broken windows. The Court heard conflicting testimony as to why repairs were not made. Plaintiff's witness testified credibly that Defendant refused to allow access and kept an aggressive dog in the Premises. Defendant claims to have texts (which he did not produce) showing that he was willing to allow access. Without any other evidence, the conflicting testimony leads the Court to find that Defendant did not carry his burden of proving his defenses and counterclaims by a preponderance of the evidence.¹

Accordingly, based upon all the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that;

1. Judgment for possession and \$17,550.00 in damages, plus court costs, shall enter in favor of Plaintiff.²

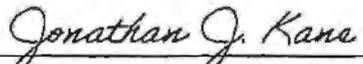
¹ Likewise, the Court took conflicting testimony about people attempting to break into the Premises, the need for a trespass order against a neighbor and improper entry by the property manager, but Defendant failed to sustain his burden of proof on any of these claims.

² Defendant did not demonstrate that he had a pending application for rental assistance, and therefore G.L. c. 239, § 15 does not apply.

2. Execution shall issue upon written application ten days after the date judgment enters in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: December 17, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1660

CENTURY PACIFIC HOUSING PARTNERSHIP
X, LP,

Plaintiff,

v.

WHITNEY B. ARNOLD,

Defendant.

ORDER

After hearing on December 7, 2023, on the defendant's motion for partial summary judgment, the following order shall enter:

1. **Background:** The underlying facts are essentially undisputed. The tenant currently resides at 15 Girard Avenue, Apartment 95, Springfield, Massachusetts ("subject premises") in an apartment building owned and managed by the landlord, Century Pacific Housing Partnership X, LP. On or about August 14, 2009, when the tenant first moved to the apartment complex, he resided at

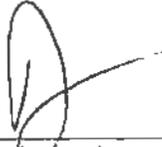
Apartment 412 and signed a lease for same. Subsequently, he was moved to Apartment 306 due to major reconstructive and rehabilitative maintenance work at the premises. In November 2018 the landlord moved him to an apartment located at 33 Girard Avenue and he resided therein until May 2023 when he was moved by the landlord to the subject premises located at 15 Girard Avenue, Apartment 95.

2. On January 24, 2023, the landlord served the tenant with a Notice to Quit for nonpayment of rent and thereafter a summary process summons and complaint seeking rent, use, and occupancy from March 2021 to the present time.
3. **Motion for Partial Summary Judgment:** Through his motion for partial summary judgment the tenant is seeking an order from the court making a ruling that the landlord may not seek to collect any rent, use, and occupancy for the occupancy of any prior units before the current subject premises.
4. Without a reservation of rights reserving the landlord's right to seek rent, use, or occupancy from the prior tenancies, it cannot seek a non-payment of rent eviction based on the former tenancies—as is the case here. See, *Beacon Residential Mgmt. v. Pierre-Morisset*, Boston Housing Court No. 10-SP-0316 (Nov 9, 2010, Winik, J.); see also, *Century Pacific Housing Partnership X v. Luis Garcia-Lorenzo*, Western Div. Hsg. Ct. No. 23-SP-1666 (Fields, J. September 2023) [Same landlord as in the instant matter].
5. The landlord's argument that it can seek rent, use, or occupancy—even without a reservation of rights--- from prior tenancies because the unit transfers were part of a relocation plan and that the tenancy is a *regulated tenancy* does not carry

the day on its own. The landlord does not proffer nor point to any regulation or law or document that supports its position that the nature of the transfers leading up to the current subject premises allowed for attributing unpaid rent from the earlier units to the current one for purposes of bringing an eviction action for those monies. Though the landlord cites G.L c.79A (Massachusetts Relocation) and its regulations at 760 CMR 27.00, neither provide any language which would allow the landlord to seek unpaid rent, use, and occupancy from the prior units through a summary process action seeking possession for the current unit.

6. As the judge expressed on the record, the landlord could have easily generated a form (or included language in a letting agreement) for the parties to sign to indicate an agreement to apply outstanding rent, use, and occupancy from prior units to the next one. This was not done.
7. 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.
8. **Conclusion and Order:** Accordingly, the motion for partial summary judgment is allowed ruling that the landlord may not seek rent, use, or occupancy from the tenant's prior units as the basis for an eviction for non-payment of rent in the current subject premises.
9. At the request of the moving party, this matter shall be scheduled for the below Status Hearing prior to any judgment entering as a result of this ruling.
10. This matter shall be scheduled for a Status Hearing on **January 5, 2024, at 9:00 a.m.**

So entered this 19th day of December, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-CV-513

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

Plaintiff,

v.

SPRINGFIELD GARDENS, LP, et al.,

Defendants.

ORDER

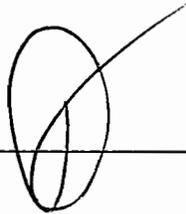
This matter came before the court for a contempt trial on December 18, 2023, at which both parties appeared through counsel. After hearing, the following order shall enter:

1. The court finds the defendant property owner, Springfield Gardens, LP (hereinafter, "defendant"), in contempt of several orders of the court in which the defendant was required to obtain and close electrical permits for electrical repair for Unit 5C at the subject premises.

2. Defendant's counsel and witness, Property Manger Ms. De Jesus, asked for a continuance asserting the to the court that the electrical work had been done but the only item not completed was for its electrician to schedule an inspection with the City to close out the permit.
3. The court, seeing the difference between the work not being performed and performed but without a permit being closed, recessed the matter for the parties to have the City electrical inspector to inspect.
4. Upon the parties' return before the court, the parties agreed that the work had not been completed for Unit 5C.
5. Having found the defendant in contempt of the court's order that required it to complete the electrical work in Unit 5C, the court orders the following:
 - a. The defendant shall pay a \$100 daily fine from November 20, 2023 to December 18, 2023. This term is suspended pending the outcome of the next hearing noted below;
 - b. The defendant shall be responsible for a daily fine of \$200 for each day after December 21, 2023, until the electrical work for Unit 5C is completed and permit closed for same.
 - c. The defendant is responsible for reasonable attorneys' fees incurred in the preparation and hearing of this complaint for contempt. The City shall have two weeks from the date of this order to file and serve its petition for such fees and the defendant shall have two weeks from date of receipt of same to file any opposition thereto;

6. This matter shall be scheduled for further hearing on **December 22, 2023, at 9:00 a.m.** The defendant's property manager and electrician have permission to appear by Zoom.

So entered this 19th day of December, 2023.

A handwritten signature in black ink, consisting of a large, stylized loop with a diagonal stroke through it, positioned above a horizontal line.

Robert Fields, Associate Justice

Cc: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4862

HART PROPERTY MANAGEMENT SERVICES,)
)
 PLAINTIFF)
 v.)
)
 EVELYN TALAVERA,)
)
 DEFENDANT)

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

This summary process case came before the Court for a bench trial on December 19, 2023. Plaintiff was represented by counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of a residential dwelling unit located at 1193 Worcester Street, 2L, Springfield, Massachusetts (the "Premises") from Defendant based on non-payment of rent.

The parties stipulated to Plaintiff's prima facie case for possession. Defendant acknowledges receipt of the notice to quit and has not moved out. Defendant agrees that monthly rent is \$900.00. Defendant did not file an answer, but at trial contends that she made a payment of \$695.00 for which Plaintiff has not given her credit.

Based on the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, the Court credits Defendant for this payment and finds that the amount of unpaid rent (and use and occupancy) is \$6,145.00. Although Defendant offered to pay more than two times the monthly rent each month

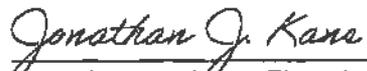
until the arrears are paid, Plaintiff was unwilling to take a payment agreement and the Court will not force it to do so.¹

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

1. Plaintiff is entitled to judgment for possession and damages in the amount of \$6,145.00, plus court costs.
2. Execution may issue upon written application ten days after the date judgment enters,

SO ORDERED.

DATE: December 19, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant exhausted available RAFT funds in August 2023 and will not be eligible again until September 2024.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-3535

ENRIQUE SANTIAGO,

Plaintiff,

v.

KRYSTAL BRADLEY,

Defendant.

ORDER

This matter came before the court for trial on October 12, 2023, at which each party appeared without counsel. After hearing, the following rulings of law and findings of fact and order for judgment shall enter:

1. **Background:** The plaintiff, Enrique Santiago (hereinafter, "landlord") owns a two-family house located at 163 Leyfred Street in Springfield (hereinafter, "premises"). The defendant, Krystal Bradley (hereinafter, "tenant") resides in the second-floor unit at said premises, having moved in in April 2019. The monthly rent is \$2,200 and on May 1, 2023, the landlord had the tenant served with a

termination notice for non-payment of rent and thereafter commenced this instant eviction action. The tenant filed a timely Answer and asserts defenses and counterclaims arising out of alleged conditions of disrepair.

2. **The Landlord's Claim for Rent:** Though the landlord was unable to persuade the court of how much rental arrearage was owed, the tenant admitted that she owes \$8,600 through the month of trial, October 2023.
3. **Tenant Claim: Quiet Enjoyment:** Prior to commencement of the tenancy, moving in if there was an infestation problem and was told by the landlord that there was not, she began noticing an infestation of cockroaches immediately after moving into the premises. She told the landlord, who hired a professional exterminator but the infestation continued. The tenant notified the landlord that the cockroach infestation continued. Though the landlord used a professional exterminator, he only hired them for the minimal treatment.
4. Additionally, there is mold in the tenant's son's bedroom. The mold was initially caused by the steam from the room's radiator which was spraying water on the walls. The landlord replaced the steam valve and painted over the mold. The tenant informed the landlord that the mold issue was persisting, but the landlord failed to properly address it. The mold, noted by the City's Code Enforcement Department in its October 5, 2023, Notice of Violations had continued unabated to the extent that the tenant does not allow her son to reside in his bedroom.
5. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of

the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 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 more effectively and thoroughly address the cockroach infestation and the mold in the son's bedroom 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 of breach of quiet enjoyment, totaling (\$2,200 X 3) **\$6,600**.

6. **Tenant Claim: Warranty of Habitability:** Since the commencement of the tenancy there have been several other conditions of disrepair including a hole in the floor in the stairwell, bathroom tiles falling off the wall, and defective electrical outlets. On or about October 5, 2023, the City's Code Enforcement Department issued a Notice of Violations to the parties which list all of these conditions. The court finds the tenant credible that all three of these conditions existed at the commencement of the tenancy and were only repaired in October 2023 after the City's notice.
7. Said conditions had a predictable and negative effect on the tenant's use and enjoyment of the premises and constituted violations of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code. 105 C.M.R. 410.00 et seq. for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar

figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonist*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).

8. The court finds that the fair rental value of the premises was reduced by 5% as a result of these conditions which existed from the commencement of the tenancy in April 2019 through October 2023. Damages, therefore, for breach of the warranty
9. of habitability in the amount of **\$5,940** will be awarded the tenant, representing 5% of the rent (\$2,200) for fifty-four months.
10. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the tenant for possession plus **\$3,940**. This represents the award to the tenant of \$12,540 MINUS the award to the landlord for unpaid rent in the amount of \$8,600.

So entered this 19th day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4329

WILMINGTON SAVINGS FUND SOCIETY, FSB)
NOT IN ITS INDIVIDUAL CAPACITY BUT)
SOLELY AS OWNER TRUSTEE OF THE)
CASCADE FUNDING MORTGAGE TRUST HB7,)

PLAINTIFF)

v.)

STEPHEN KAPLAN, ET AL.,)

DEFENDANTS)

ORDER ON DEFENDANT'S
MOTION TO DISMISS

This post-foreclosure summary process case came before the Court on December 18, 2023 for a hearing on Defendant Stephen Kaplan's motion to dismiss. Plaintiff appeared through counsel. Defendant Kaplan appeared self-represented. No other defendant appeared. The subject property is located at 90 Fox Farms Road, Florence, Massachusetts (the "Premises").

Defendant Kaplan seeks dismissal of this action based on a defective notice to quit. As a former owner in possession, Defendant Kaplan is a tenant at sufferance with no right to possession of the Premises. There is no evidence that Plaintiff created a tenancy at will after acquiring the Premises. A notice to quit is not required to terminate a tenancy at sufferance (because no tenancy ever existed); instead, the occupant is entitled to simple notice to leave the property in a reasonable amount of time prior to the commencement of a summary process action. *See Bank of New York*

Mellon v. Morin, 96 Mass. App. Ct. 503, 514-515 (2019). Here, the Court finds that the seventy-two hour notice dated February 17, 2023 is adequate. *See id.* at 515.¹

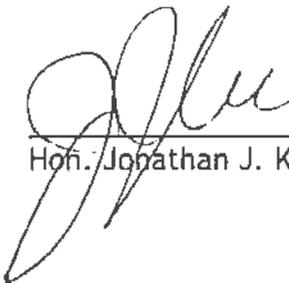
Defendant Kaplan's argument that this case should be dismissed based on statutory protections for tenants set forth in G.L. c. 186, § 31 and G.L. c. 239, § 15² fail, as these statutes govern tenancies terminated for nonpayment of rent. G.L. c. 186A applies to bona fide tenants of former homeowners post foreclosure, not the former homeowners themselves, and therefore is inapplicable in this case.

For the foregoing reasons, Defendant Kaplan's motion to dismiss is DENIED.

SO ORDERED.

DATE: December 19, 2023

cc: Court Reporter



Hon. Jonathan J. Kane, First Justice

¹ The Court notes that, although the 72-hour notice period expired in February 2023, this case was not filed until September 2023, which allowed Defendant Kaplan approximately seven months to vacate prior to the commencement of the eviction action.

² In light of G.L. c. 239, § 15, the sessions laws cited by Defendant Kaplan (e.g., Stat. 2020, c. 257) are no longer operative and, in any event, only apply to nonpayment of rent cases.

CP

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1655

CENTURY PACIFIC HOUSING PARTNERSHIP
X, LP,

Plaintiff,

v.

PAULETT ALSTON,

Defendant.

ORDER

After hearing on December 7, 2023, on the defendant's motion for partial summary judgment, the following order shall enter:

1. **Background:** The underlying facts are essentially undisputed. The tenant currently resides at 15 Girard Avenue, Apartment 606, Springfield, Massachusetts ("subject premises") in an apartment building owned and managed by the landlord, Century Pacific Housing Partnership X, LP. In 2005, when the tenant first moved into the apartment complex, she resided at 53 Girard Avenue and signed a lease for same. Subsequently, in August 2018 she was moved to 15 Girard Avenue, Apartment 312. In December 2022 the landlord moved her to the subject premises at Apartment 606 at 15 Girard Avenue where she currently resides.

2. On January 24, 2023, the landlord served the tenant with a Notice to Quit for nonpayment of rent and thereafter a summary process summons and complaint seeking rent, use, and occupancy from November 2018 to the present time.

3. **Motion for Partial Summary Judgment:** Through his motion for partial summary judgment the tenant is seeking an order from the court making a ruling that the landlord may not seek to collect any rent, use, and occupancy for the occupancy of any prior units before the current subject premises.

4. Without a reservation of rights reserving the landlord's right to seek rent, use, or occupancy from the prior tenancies, it cannot seek a non-payment of rent eviction based on the former tenancies—as is the case here. See, *Beacon Residential Mgmt. v. Pierre-Morisset*, Boston Housing Court No. 10-SP-0316 (Nov 9, 2010, Winik, J.); see also, *Century Pacific Housing Partnership X v. Luis Garcia-Lorenzo*, Western Div. Hsg. Ct. No. 23-SP-1666 (Fields, J. September 2023) [Same landlord as in the instant matter].

5. The landlord's argument that it can seek rent, use, or occupancy---even without a reservation of rights---from prior tenancies because the unit transfers were part of a relocation plan and that the tenancy is a regulated tenancy does not carry the day on its own. The landlord does not proffer nor point to any regulation or law or document that supports its position that the nature of the transfers leading up to the current subject premises allowed for attributing unpaid rent from the earlier units to the current one for purposes of bringing an eviction action for those monies. Though the landlord cites G.L. c.79A (Massachusetts Relocation) and its regulations at 760 CMR 27.00, neither provide any language which would allow the landlord to seek unpaid rent, use, and

occupancy from the prior units through a summary process action seeking possession for the current unit.

6. As the judge expressed on the record, the landlord could have easily generated a form (or included language in a letting agreement) for the parties to sign to indicate an agreement to apply outstanding rent, use, and occupancy from prior units to the next one. This was not done.

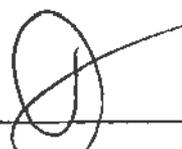
7. This does not mean that the landlord is left without remedy to seek such funds in another legal action such as small claims. It does mean however, that it may not pursue summary process for said funds.

8. **Conclusion and Order:** Accordingly, the motion for partial summary judgment is allowed ruling that the landlord may not seek rent, use, or occupancy from the tenant's prior units as the basis for an eviction for non-payment of rent in the current subject premises.

9. At the request of the moving party, this matter shall be scheduled for the below Status Hearing prior to any judgment entering as a result of this ruling.

10. This matter shall be scheduled for a Status Hearing on **January 5, 2024, at 9:00 a.m.**

So entered this 21st day of December, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

FANNIE MAE,

Plaintiff,

v.

MICHAEL J. MARTOWSKI, et al.,

Defendants.

ORDER

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

1. First off, the court apologizes for the delay in issuing this order. It mistakenly believed that the appeal in this matter had been dismissed but just now learned that the dismissal was in another case between these same parties (22-SP-3268) which apparently regards a different subject premises.
2. Accordingly, the ruling regarding the defendant Michael Martowski's request for waiver of fees and costs is as follows:

- a. the request for waiver of the filing fee at the Appeals Court is denied without prejudice as that request is for the Appeal Court to decide;
- b. to the extent (that the court is presently not aware) that there are any injunctions that have been issued in favor of Mr. Martowski in this court, the statutory fee for same are waived;
- c. the request for substitution and waiver for costs of all recordings in this matter and for a transcript for same is allowed.

- 3. A Determination Regarding Fees and Costs form has been completed and signed by the judge.
- 4. Mr. Martowski shall have 45 days from the date of this order to comply with his obligations required under the Rules of Appellate Procedure.

So entered this 21st day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 23-SP-4632

M & S BLUEBIRD, INC.,

Plaintiff,

v.

CHRISTOPHER PATTEN,

Defendant.

ORDER

After hearing on December 7, 2023, the following order shall enter:

1. The defendant shall have until December 18, 2023, to file and serve an Answer and Discovery Demand.
2. The plaintiff shall have until December 18, 2023, to propound discovery upon the defendant.
3. The parties shall respond to discovery demand(s) by December 28, 2023.
4. The parties have until January 29, 2024, to file a Summary Judgment motion and until February 12, 2024, to file opposition thereto.
5. A Summary Judgment hearing shall be scheduled for **February 20, 2024, at 9:00 a.m.**

6. The parties shall file a Joint Pretrial Memorandum and any motions *in limine* shall be filed by March 18, 2024. The joint pre-trial memorandum shall contain the following information:
 7. Agreed upon issues of fact in a form suitable for the record.
 8. Contested issues of fact and the positions of the parties on those issues.
 9. Agreed upon issues of law.
 10. Contested issues of law and the positions of the parties on those issues.
 11. Exhibits that the parties have stipulated may be introduced at trial (Those exhibits are to be marked with consecutive numbers).
 12. Exhibits upon the admissibility of which the parties cannot agree and the reasons therefore (Those exhibits are to be marked for identification with consecutive letters).
 13. The name and address of each witness to be called by each party, a brief statement of the nature and subject matter of his/her testimony, and an estimate of the amount of trial time he/she will consume.
 14. The name, address, and qualifications of each expert witness the parties intend to call, together with the subject matter on which the expert is expected to testify, the substance of all facts and opinions to which the expert is expected to testify, a detailed summary of the grounds for each expert's opinion, and an estimate of the amount of trial time he/she will consume.
 15. PLEASE NOTE THAT THE ESTIMATES OF TIME REQUIRED FOR EACH WITNESS IS AN IMPORTANT COMPONENT IN THE DETERMINATION OF TRIAL TIME. THIS INFORMATION WILL BE REVIEWED WITH THE TRIAL

JUDGE AT THE FINAL PRETRIAL CONFERENCE, AND IF THE TRIAL JUDGE DECIDES THAT THE TIME HAS NOT BEEN ESTIMATED ACCURATELY, THE TRIAL DATE SCHEDULED BELOW MAY BE SUMMARILY CANCELED AND THE TRIAL RESCHEDULED.

16. Any request for the services of an interpreter at trial.
17. As an attachment, for each party represented by counsel, a copy of a completed Uniform Counsel Certification for Civil Cases in compliance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolutions (SJC Rule 1:18).
18. A joint proposed description of the case for the jury venire.
19. Proposed jury instructions.
20. Proposed jury verdict form.
21. PLEASE NOTE: THE PRETRIAL MEMORANDUM IS NOT A SUBSTITUTE FOR OR AN ALTERNATIVE TO DISCOVERY. ALL PARTIES ARE BOUND BY DISCOVERY RULES AND DEADLINES. DEFECTS OR OMISSIONS FROM DISCOVERY MAY NOT BE CURED BY INCLUDING INFORMATION IN THE PRETRIAL MEMORANDUM.
22. If the joint pre-trial memorandum is not filed by the date specified above, the case may be removed from the trial list by either the Clerk-Magistrate or an Assistant Clerk-Magistrate. In addition, if any party and/or attorney fails to participate in good faith and in a timely manner in preparing the memorandum, the court may dismiss the action with prejudice, may accept the memorandum from the other party as establishing the facts and/or law of the case, or may

impose sanctions upon that party and/or its attorney as provided for failure to obey discovery orders pursuant to Mass. R. Civ. P. 37(b).

23. An agreed upon description of the case to be read to the jury *venire*. If the parties can not file an agreed description, they shall each file (and serve) one separately.

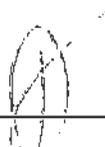
24. Proposed jury instruction and a proposed verdict form.

25. IF ANY PARTY ALLEGES THAT THE OTHER PARTY HAS NOT COMPLIED WITH THE SCHEDULE OUTLINED IN THIS PRE-TRIAL ORDER, THE PARTY WHO MAKES THE ALLEGATION MUST FILE THE APPROPRIATE MOTIONS FOR COMPLIANCE OR SANCTIONS (INCLUDING BUT NOT LIMITED TO, MOTIONS TO COMPEL) WITHIN TEN DAYS OF THE ALLEGED VIOLATIONS, OR THE OBJECTION SHALL BE WAIVED.

26. A final pretrial conference shall be scheduled for **March 20, 2024, at 9:00 a.m.**

27. A three-day jury trial has been scheduled with Judge Robert Fields for **April 8, 9, and 10, 2024 beginning at 9:00 a.m. each day.**

So entered this 21st day of December, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-3568

MAS PROPERTIES,

Plaintiff,

v.

DEE GARDINER,

Defendant.

ORDER

This matter came before the court on November 1, 2023, at which the landlord appeared through counsel and the tenant appeared *pro se*. After consideration of the evidence admitted therein, the following findings of fact and rulings of law shall issue:

1. **Background:** The plaintiff, MAS Properties (hereinafter, "landlord") owns a single-family home located at 243 Robbins Avenue in Pittsfield, Massachusetts (hereinafter, "premises"). The defendant, Dee Gardiner (hereinafter, "tenant") has resided at the premises since May 2021.

2. The landlord served the tenant with a *for cause* Notice to Quit on or about June 30, 2023, and subsequently commenced this summary process eviction action.
3. The basis for the eviction, as stated in the Notice to Quit, asserts:

Your tenancy is being terminated due to your violation of Paragraph 22 of your Lease Agreement, failing to allow access to the premises after proper notice. This includes refusing access to the Property Manager and refusing access to your Landlord's real estate agents, May Jane Dunlop and Celeste Cano for the purposes of conducting an inspection in anticipation for the sale of the premises.

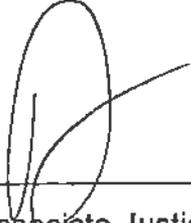
4. **Access Issues:** It is clear from the evidence at trial that the landlord has met its burden of proof that the tenant has not permitted access for inspections or for the real estate agent.
5. It is not so straightforward, however. The tenant has satisfied the court for purposes of this order that she has very serious [REDACTED] which has become heightened simultaneously with the events surrounding this eviction matter and has significantly contributed to the lack of access for the landlord. The tenant explained sufficiently for the court that she very much wants to cooperate with the landlord to allow for access to the premises. She explained how she was in a car accident around the time the landlord was seeking access and that it "triggered" her [REDACTED] as she was in a previously in a very serious car accident. She also explained that the landlord's former property manager of On-Point Management made what she believed was a rude comment when in her home that further "triggered" her further.
6. **Reasonable Accommodations:** The tenant suffers from [REDACTED] [REDACTED]. The tenant provided a note from her treating physician verifying same. The Fair Housing Act, 42 U.S.C. s.3601 (2006), and M.G.L. c.151B (2000)

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

7. As an accommodation to the tenant's disability no judgment shall enter at this time and the matter shall be referred to Jeff Peck from the Tenancy Preservation Program to work with the parties to work out arrangements for the landlord to access the subject premises for inspections, repairs, and for Real Estate Agent Mary Jane Dunlop to list the property for sale. The parties should be prepared to fashion accommodations that keep in focus the severity of the tenant's [REDACTED]

8. The parties shall work closely with Mr. Peck (from TPP) who will assist in communications and scheduling so that access is accomplished.
9. **Conclusion and Order:** As stated above, no judgment shall enter at this time and the parties shall engage in reasonable accommodations dialogue with the assistance of the Tenancy Preservation Program. If the parties require further court orders, either may mark up a motion. If neither party brings this matter before the court prior to December 19, 2024, the case shall be dismissed.

So entered this 21st day of December, 2023.



Robert Fields, Associate Justice

Cc: Jeff Peck, Tenancy Preservation Program

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

TOWN OF CUMMINGTON,

Plaintiff,

v.

SAUL CASDIN,

Defendant.

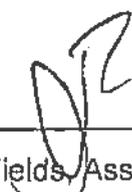
ORDER

After hearing on December 18, 2023, on review and on the plaintiff town's motion for appointment of a Receiver, the following order shall enter:

1. It appears that Mr. Casdin has accomplished some of the removal of items from his property that was the focus of the court's last order dated October 2, 2023.
2. The town's motion to appoint a Receiver shall be continued to the date below to afford Mr. Casdin a opportunity to complete the work. An additional factor in continuing the motion is the town's failure to abide by the court's order to provide all materials (including photographs) to Mr. Casdin and the court no less than ten days before the hearing.

3. The materials provided at the hearing of Inspector Kaniecki's November 9, 2023, inspection were very helpful in clarifying the main work to be accomplished before the next hearing.
4. More specifically, Mr. Casdin is to remove from his property the items in the photographs in that report as follows:
 - a. Page 2, top photograph
 - b. Page 3, top and bottom photographs
 - c. Page 5, cement pile
5. Such work is to be completed by no later February 4, 2024.
6. Inspector Kaniecki shall take photographs of Mr. Casdin's property the week of February 5, 2024. If he determines that the town will be seeking appointment of a Receiver at the next hearing, he shall schedule with the prospective Receiver (Dukes, LLC) and Mr. Casdin for a walk-through of the property with the prospective Receiver to take place the week of February 12, 2024. If said "walk-through" occurs, Dukes will then generate a written plan for the removal of the cited items from Mr. Casdin's property with dates and cost estimates. Said report shall be available for the next hearing noted below.
7. This matter shall be scheduled for further hearing on **February 20, 2024 at 9:00 a.m.** in the Springfield Session of the court.

So entered this 21st day of December, 2023.



Robert Fields, Associate Justice

Cc: Court Reporter

MR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-1051

SAITHE WINSPEARE,

Plaintiff,

v.

DION WOODS and NEXIUS, LLC,

Defendant.

ORDER

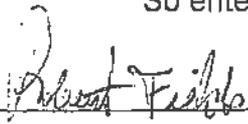
After hearing on December 22, 2023, on the plaintiff tenant's motion for a
injunctive relief to provide sufficient heat to the premises, the following order shall enter:

1. At the end of the hearing, it became known by the court that the entity that owns the premises is Nexius, LLC which shall be added as an indispensable party-defendant. Nexius, LLC, shall appear through counsel in this matter.
2. The defendants, jointly and severally, shall provide hotel accommodations at the Holiday Inn on State Street (where the tenant is currently staying) until further

order of the court or until the City reinspects the premises and determines that there is sufficient heat being retained at the premises.

3. This matter shall be scheduled for a review hearing on **December 28, 2023, at 9:00 a.m.** Mr. Woods has permission to appear by Zoom as he is out of state. Thus, the plaintiff and defendants' counsel shall appear live in the courthouse but Mr. Woods may appear by Zoom.

So entered this 26th day of December, 2023.



Robert Fields, Associate Justice ^{DM}

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1397

_____)	
MATTHEW JOHN JOHNSON,)	
)	
PLAINTIFF)	
)	
v.	)	RULING ON PETITION FOR
	)	ATTORNEYS' FEES AND
DARRICK MILLER-HALL,	)	ENTRY OF FINAL JUDGMENT
)	
DEFENDANT)	
_____)	

The Court considers Defendant's post-trial petition for an award of statutory attorneys' fees and costs. In calculating the amount of an award of attorneys' fees, a court should normally use the "lodestar" method. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorneys' fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorneys' fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual

price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389.

Defendant's petition seeks compensation for 14 hours of time. As set forth in his affidavit in support of the petition, Attorney DeBartolo did not bill for time on June 9, 2023 or July 7, 2023, and further reduced his time to a total of 14 hours. In light of the adjustments made by Attorney DeBartolo, the Court finds that the request for 14 hours of time to be reasonable.

With respect to the hourly rate, a judge may discern, from his own experience as a judge and expertise as a lawyer, the rate for which an attorney should be paid. *Heller*, 376 Mass. at 629. Defendant's counsel petitions for an hourly rate of \$250.00 per hour. The Court deems this rate to be reasonable in light of this judge's experience as a judge and lawyer. Accordingly, after consideration of the *Linthicum* factors, the Court finds the petition seeking \$3,500.00 to be reasonable. Defendant does not seek an award of costs.

In light of the foregoing, final judgment shall enter in favor of Defendant for damages in the amount of \$5,280.00, plus \$3,500.00 in attorneys' fees.

SO ORDERED.

DATE: December 28, 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. 23-SP-2189

FRANKLIN PLEASANT, LLC,

Plaintiff,

v.

KATHERINE KIERAS,

Defendant.

ORDER

After hearing on December 27, 2023, on the plaintiff's Motion to Appoint a Special Process Server Under Rule 4C, the following order shall enter:

1. The plaintiff's Motion to Appoint a Special Process Server is denied, for the reasons stated below, without prejudice¹.
2. **Discussion:** The steps of becoming a constable include completing a training, filling out an application, passing an investigation into your character a moral

¹ Contrary to the plaintiff's motion, the court 'of late has not been restricting levies on Executions for Possession to occur exclusively through the county sheriff's department'. The court has, however, made a case-by-case determination of whether there are compelling reasons set forth by the plaintiff to not use constables or sheriffs who are approved to levy on executions in any particular town or county.

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. Accordingly, the motion is denied without prejudice².
8. Additionally, whether the motion was allowed to appoint a special process server or not, the plaintiff requires a new execution to issue as the current one expires on January 3, 2023. Though the plaintiff has not filed a motion for issuance of a new execution, the court is satisfied that there was sufficient tolling of the use of the current execution so that a new one should be issued. Accordingly, upon the return of the current execution to the Clerk’s Office, a new execution shall issue to the plaintiff.

So entered this 29th day of December 2023.



Robert Fields, Associate Justice

CC: Court Reporter

² Plaintiff’s counsel stated on the record that he thinks that there was only one constable approved to levy on Summary Process executions in Easthampton, MA, and that he passed away leaving no one other than the County Sheriffs. There was not affidavit attesting to this attached to the motion and the court could not rely on what counsel believes or thinks is the case---as stated on the record. The denial of the motion *with prejudice* will allow for the plaintiff to file another such motion (with a supporting affidavit) in the future should it choose to do so---and should it believe that it has compelling bases to move the court to use its discretion to allow a 4C appointment.

repairs, (3) blocking the driveway, (4) improperly using the basement, (5) failing to pay rent timely, (6) violating the no smoking provision and (7) causing disturbances after midnight.

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:

Defendant's 8-year old daughter painted graffiti on a retaining wall using washable party paint during a birthday party. It washed away in the rain soon after it was painted. The Court finds that this conduct does not constitute a material violation of the lease.

When Plaintiff needed to make repairs in the Premises, Defendant initially failed to allow Plaintiff access, causing Plaintiff to file an emergency motion with this Court. By the time the case came before a judge, Defendant had permitted access and some of the repairs had been made. Because Section 8 resumed payment of its portion of the rent after the repairs were made, Plaintiff suffered no significant monetary harm. Although Defendant should have allowed access for repairs when requested with proper advance notice, the Court finds Plaintiff's conduct does not warrant an eviction.¹

Defendant's family members and guests parked improperly in the driveway at times. Plaintiff's adult daughter, who resides with her mother, was blocked from her parking spot on more than one occasion. Defendant claims that she lives on a busy street and sometimes a household member or visitor will temporarily park in the

¹ Plaintiff's related allegation that Defendant was intentionally causing damage by leaving a faucet open was refuted by Defendant, who claimed the water came from a running toilet. Plaintiff has the burden of proof as to her claim that Defendant caused damage intentionally, and she failed to sustain her burden.

driveway to drop off or pick up someone or something. Although the improper parking is a lease violation, it does not rise to the level of a material violation unless it happens repeatedly. So long as Defendant and her household members and visitors cease and desist from blocking cars belonging to Plaintiff and her household members, the violation does not warrant judgment for possession.

Defendant is prohibited in the lease from using the basement. While Defendant was away, her family members entered the basement to use the laundry machines belonging to Plaintiff and took clothing belonging to Plaintiff and/or her daughter. Defendant admits the incident or incidents occurred, but testified that she failed to tell her visitors that the basement was off-limits and that, because she had access to do laundry in previous tenancies, they assumed they could use the laundry in this property. Defendant took steps to ensure that the clothing taken by her family members was returned and offered to pay for the detergent use. Without additional evidence that the entry to the basement and removal of items belonging to Plaintiff and her family was more than an isolated incident, the Court finds that the conduct does not warrant eviction.

Defendant admits that her daughter's father smoked in the Premises and/or elsewhere on the property in violation of the no-smoking policy. She testified credibly that she has insisted that he no longer smoke in the Premises, and Plaintiff did not introduce evidence showing that the smoking is a continuing problem. Without more, the Court declines to enter judgment for possession as a result of the violation of the no-smoking provision in the lease.

Defendant admits that her daughter caused excessive late-night noise when having a sleepover with friends. She claims the noise is not an on-going problem, and Plaintiff admitted that the situation has improved, although she continues to complain about slamming doors. Although Plaintiff and her household members should not have to endure repeated late-night disturbances, the evidence does not show that the problem is pervasive. Therefore, the conduct does not warrant eviction.

Defendant paid January rent in February 2023 along with February rent, and she paid March rent in April 2023 with the April rent. She admits that she has failed to pay her portion of the rent since April 2023. She claims that she tried to pay rent after April, but that Plaintiff's daughter refused to allow Plaintiff to accept it. Not paying rent is a violation of the lease, but there is a separate legal process to seek to evict tenants for nonpayment of rent which process gives tenants certain statutory rights to cure the arrearage, raise defenses and assert counterclaims, and seek rental assistance. Plaintiff cannot circumvent these tenant rights by dressing up a nonpayment of rent case as a lease violation case. If Plaintiff seeks to collect unpaid rent, it should commence a nonpayment of rent case.

In sum, Plaintiff has not sustained her burden of proving, by a preponderance of the evidence, that the allegations described in the notice to quit constitute substantial violations of material provisions of the lease. Much of the evidence presented came from Plaintiff's daughter, who is not the landlord.² It is clear that Plaintiff's daughter wants Defendants to vacate and has documented every possible

² The daughter claims that she helps her mother manage the rental relationship, but there is no evidence that she has any formal role in property management.

lease infraction on video; however, to warrant eviction, the lease violations must be significant or, in the case of minor violations, repeated.

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

1. Defendant is entitled to a judgment for possession; however, because Plaintiff demonstrated a number of relatively minor lease violations that could warrant eviction if repeated with regularity, the case will stay open for 90 days.
2. During the 90-day period, Defendant and her household members and guests shall not:
 - a. block the driveway and the parking areas reserved for use by Plaintiff's household;
 - b. smoke in the premises;
 - c. use the basement, or
 - d. cause significant disturbances late at night.
3. If Plaintiff alleges that Defendant has materially violated the terms of this order, she may file a motion to enter judgment based on the repeated lease violations without having to commence a separate case.³
4. If Plaintiff has not filed a motion within the 90-day period, judgment for possession shall enter in favor of Defendant.

SO ORDERED.
DATE: December 29, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

³ Plaintiff must file a separate action if she wishes to evict Defendant for nonpayment of rent.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4650

MACARTHUR TERRACE LLC C/O)	
DIMEO PROPERTIES,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER
SARAH LACOMBE AND MAURICE DUKES,)	
)	
DEFENDANTS)	

This summary process case came before the Court on December 12, 2023 for a bench trial. Plaintiff appeared with counsel. Defendant Lacombe failed to appear. Defendant Dukes appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 70 Broadway, Unit 196, Chicopee, Massachusetts (the “Premises”) based on Defendants’ failure to complete and sign their annual paperwork. The parties agree that monthly rent is \$1,140.00 and that \$5,039.00 is owed through the date of trial.

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

Pursuant to the lease, because the property participates in the Low Income Housing Tax Credit Program, Defendants are required to complete and file with management each year a recertification form providing accurate information as to household income, employment and composition. Plaintiff timely sent Defendants the

required notices for them to provide all documents necessary to complete the recertification due December 1, 2022 (“2022 Recertification”).¹ Pursuant to the lease, failure to submit the required recertification information permits management to require residents to pay the approved market rent, implement rent increases without providing the usual thirty day notice or terminate the tenancy for failure to recertify. Plaintiff elected the last option in this case.

Defendant Dukes testified that he did not receive the reminder notices sent by Plaintiff because the mailbox is broken. Even if true, in September 2022, as part of a non-payment of rent case (docket number 23H79SP003220), Defendants agreed to complete the recertification within ten days, which they did not do. Defendant Dukes testified that he provided Plaintiff with certain documents after the September 2022 court date and thought all necessary documentation had been provided. He testified credibly that he was confused as to what documents were still needed. Defendant Lacombe was not present to explain her understanding of the process.

Plaintiff claims that Defendant Lacombe, as head of household, has failed to supply information about her Chime bank accounts. She provided the necessary paperwork regarding her checking account, but Plaintiff noted transfers to or from a related account for which no statements were provided.² Moreover, Defendant Lacombe informed Plaintiff in the nonpayment case that she had started a job, yet she failed to supply updated employment information. Because all documents have

¹ Because the recertification due on December 1, 2022 was not completed, Plaintiff has been unable to begin the process for recertification due December 1, 2023.

² Plaintiff’s recertification clerk presumed the transfers indicated the existence of a savings account. Defendant Dukes testified that the transfers involved a prepaid credit card, not a savings account.

not been supplied, Plaintiff has not been able to have Defendants sign the 2022 Recertification.

Because the Court accepts Defendant Dukes' testimony that he was willing to produce all necessary documents to complete the recertification but was genuinely confused as to what information was missing, the Court will give Defendants additional time to provide the statements regarding Defendant Lacombe's prepaid credit card account and employment information. The Court recognizes that the 2022 Recertification is now past the deadline for correction, the lease does allow consequences other than eviction. Once the 2022 Recertification is complete, Plaintiff can charge Defendants' market rent rather than seek eviction, and with the 2022 Recertification completed, Plaintiff can then process the recertification due December 1, 2023 ("2023 Recertification).

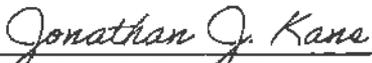
Based upon the foregoing, and in light of the governing law, the following order shall enter:

1. The Court finds sufficient evidence to enter judgment in favor of Plaintiff for Defendant's failure to complete the recertifications required under their lease. No judgment shall enter at this time, however.
2. From the bench, the Court ordered Defendants to provide the missing information to Plaintiff by December 19, 2023. The Court further permitted Plaintiff's counsel to submit an affidavit as to whether the necessary documentation was provided. As of the date of this decision, no affidavit has been filed, so the Court is uncertain whether the 2022 Recertification is complete.

3. If the 2022 Recertification has not been completed by the date of this order, or if it was completed but Defendants have failed to complete the 2023 Recertification, Plaintiff may file a motion for entry of judgment. At the hearing on Plaintiff's motion, the Court will determine whether the circumstances warrant any further delay in the entry of judgment for possession based on the failure to recertify.
4. Plaintiff shall promptly investigate Defendant Dukes' assertion that his mailbox is broken and that he is not receiving mail.
5. If no motion has been filed by January 31, 2024, the case shall be dismissed.

SO ORDERED.

DATE: December 29, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum* at 388-389. The standard of reasonableness depends not on what the attorney usually charges but, rather, on what the attorney's services were objectively worth. See *Heller*, 376 Mass. at 629.

Defendants' petition seeks compensation for 20.9 hours of time. Defendants' counsel, David DeBartolo, excluded time entries exclusively related to the two counterclaims withdrawn at the outset of trial, as well as all time entries exclusively related to unsuccessful claims. To account for the fact that Defendants prevailed on some claims and not on others, counsel reduced the total hours billed by 50%. In light of the reductions made by Defendant's counsel, the Court finds that the request for 20.9 hours of time to be reasonable.

With respect to the hourly rate, a judge may discern, from his own experience as a judge and expertise as a lawyer, the rate for which an attorney should be paid. *Heller*, 376 Mass. at 629. Defendants' counsel petitions for an hourly rate of \$250.00 per hour, a rate to which Plaintiff does not object. The Court deems this rate to be reasonable. Accordingly, after consideration of the *Linthicum* factors, the Court finds the petition seeking \$5,225.00 to be reasonable. Defendants also seek an award of costs in the amount of \$60.00 for service of a subpoena. Plaintiff does not object to this request.

In light of the foregoing, final judgment shall enter in favor of Defendants for

damages in the amount of \$5,578.92, plus \$5,285.00 in attorneys' fees and costs.¹

SO ORDERED.

DATE: December 29, 2023

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

cc: Court Reporter

¹ The award of attorneys' fees is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4015

_____)	
LINDA POZO,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER FOR
OLIVIA GILMAN,	)	ENTRY OF JUDGMENT
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court on November 9, 2023 for a bench trial. Both parties appeared without counsel. Plaintiff seeks to recover possession of residential premises located at 89 Monrovia Street, 2d Floor, Springfield, Massachusetts (the “Premises”) from Defendant.¹

Prior to trial, the parties stipulated that Defendant moved into the Premises in February 2021, prior to Plaintiff’s purchase of the Premises. The Premises are part of an owner-occupied duplex. Defendant acknowledges receipt of the notice to quit. Monthly rent is \$1,200.00. The parties agree rent has not been paid for three months, but Defendant made no claim for money in her complaint. Although Defendant did not file an answer, with the assent of Plaintiff, the Court allowed Defendant to assert defenses and counterclaims at trial.

¹ The notice to quit identifies the tenant as Olivia Hillman, but the complaint identifies her as Olivia Gilman. Defendant did not raise this issue at trial.

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

Plaintiff established her prima facie case for possession by stipulation. In October 2022, Defendant sent a text to Plaintiff requesting treatment for cockroaches. Plaintiff agreed to send an exterminator, but failed to do so, claiming that because Defendant was not paying rent, she was unable to pay her mortgage and other bills, and thus could not afford to pay an exterminator. Although Plaintiff cannot use her financial circumstances as an excuse for not treating for pests, Defendant provided insufficient credible evidence for the Court to determine if the presence of roaches constituted an infestation or to assess the effect of the roaches on Defendant's tenancy. Defendant failed to sustain her burden of proving by a preponderance of the evidence that the existence of roaches was a substantial violation of the State Sanitary Code or a significant defect warranting an abatement of rent. Based on the evidence presented, the Court would simply be guessing as to warranty damages.

Likewise, to establish a claim for breach of quiet enjoyment, Defendant has to prove by a preponderance of the evidence that the presence of roaches constituted a serious interference with her tenancy and impaired the character and value of the leasehold. *See Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). She provided insufficient credible evidence for the Court to find that Plaintiff interfered with her quiet enjoyment by not taking action to treat for roaches.²

² Defendant also claims she did not have a carbon monoxide detector, but this violation of the State Sanitary Code, by itself, does not warrant a finding of abatement damages. She also asserts that Plaintiff's husband once yelled at her for allowing her unleashed dog to enter the yard, but she did not

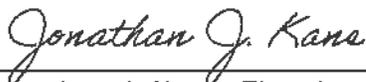
Defendant admits that the reason she stopped paying rent is that she lost her job in August. She has been looking for a place to move, but has had difficulty because of her dog, her poor credit and her lack of available funds. These issues, although clearly an impediment to moving, are not Plaintiff's problem. Plaintiff purchased the property so that her son could live in the Premises. He has been unable to move in due to Defendant's failure to vacate. Plaintiff has suffered significant financial distress due to Defendant's failure to pay rent or use and occupancy for months.

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

1. Plaintiff is entitled to a judgment for possession and court costs.
2. Execution shall issue upon written application ten days after the date the judgment enters on the docket.
3. Defendant is not precluded from filing a motion for a stay pursuant to G.L. c. 239, §§ 9 et seq.

SO ORDERED.

DATE: December 29, 2023



Jonathan J. Kane, First Justice

cc: Court Reporter

establish by a preponderance of the evidence that this conduct was a serious interference with her tenancy.

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:

Despite Defendant's testimony that the Premises have been infested by roaches and mice and that she has had to endure a mold-like substance in the bathroom, she failed to produce any credible evidence to support her claims. She had to replace her phone and thus has no text messages evidencing notice to the landlord, and she offered no witnesses to corroborate her claims. Although she asserted a G.L. c. 93A claim in her answer due to having to replace her refrigerator due to the roach infestation, she admitted that she never informed the landlord. The Court finds that Defendant failed to satisfy her burden of proving any of her claims by a preponderance of the evidence.²

The conditions of disrepair in the Premises are not the reason Defendant stopped paying rent. She has six children (three of whom are over 18) and is pregnant. Due to complications with her pregnancy, she has only had a limited ability to work. She admitted that the reason she had not paid rent for months is that she simply could not afford it.

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

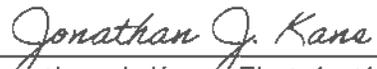
1. Judgment for possession and \$15,159.16, plus court costs, shall enter in favor of Plaintiff.

² To her credit, Defendant admitted that Plaintiff responded and made repairs when asked. Although she testified that she recently contacted the Code Enforcement Department, she did so only the day prior to trial and she had no documentation as to any violations that might have been observed.

2. The execution (eviction order) shall issue by written application pursuant to
Uniform Summary Process Rule 13.

SO ORDERED.

DATE: December 29, 2023


Jonathan J. Kane, First Justice

cc: Court Reporter