Western Division Housing Court
Unofficial Reporter of Decisions

Volume 30

Jan. 23, 2024 — Feb. 20, 2024

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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:

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*
Hon. Robert Fields, Associate Justice, *Western Division Housing Court*
Hon. Benjamin Adeyinka, Associate Justice, *Western Division Housing Court*
Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*
Aaron Dulles, Assistant Attorney General, *Massachusetts Attorney General's Office*
Raquel Manzanares, Esq., *Community Legal Aid*
Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

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

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

EDITORIAL STANDARDS
In General. By default, decisions are *included* unless specific exclusion criteria are met. Exclusion criteria are intentionally limited, and the editors have designed them to minimize any suggestion of bias for or against any particular litigant, type of litigant, attorney, firm, type of case, judge, witness, *etc*. In certain circumstances, redactions may be used in lieu of exclusions.

Exclusion by the Court. The Court intends to provide the editors with all of its decisions except those from impounded cases and those involving highly sensitive issues relating to minors—the latter being a determination made by the Court in its sole discretion. The Court does not provide decisions issued by the Clerk Magistrate or any Assistant Clerk-Magistrate. Additionally, the

Court does not ordinarily provide decisions issued as endorsements onto the face of motion papers. The Court retains inherent authority to withhold other decisions without notice.

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

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

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

PUBLICATION

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

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

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0409

4 PERKINS, LLC, PLAINTIFF v. CITY OF CHICOPEE, ET AL., DEFENDANTS	)	ORDER ON COMPLAINT FOR JUDICIAL REVIEW

Plaintiff filed a complaint for judicial review of the May 9, 2023 decision of the City of Chicopee municipal hearings officer upholding certain citations issued by the City of Chicopee Building Commissioner for violations of the State Building and State Fire Codes. The complaint, which seeks judicial review pursuant to G.L. c. 30A, was filed within 10 days of the decision of the hearing officer.

The Court finds that c. 30A, the Massachusetts Administrative Procedures Act, does not apply to municipalities because they are not "agencies" under the Act. *See* G.L. c. 30A(2) (the term "agency" is defined to include "any department, board, commission, division or authority of the state government or subdivision of any of the foregoing, or official of the state government ..."). Instead, persons aggrieved by a decision of a municipal hearing officer are entitled to a de novo hearing before a clerk magistrate of a court of competent jurisdiction. *See* G.L. c. 40U, § 15.

With respect to local code enforcement matters specifically, Massachusetts law empowers code enforcement officers to issue citations for state code violations. *See* G.L. c. 148A, § 2(a). The alleged violator may either pay the assessment or request a hearing before the municipal hearing officer. *Id. at* § 2(c). A person aggrieved by the hearing officer's decision may appeal to a clerk magistrate of the Housing Court. *Id.* at § 2(d). Accordingly, the Court rules that the appropriate action in this matter is to schedule a de novo hearing before a clerk magistrate.

SO ORDERED.

January 23, 2024

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

cc: Clerk's Office (to schedule hearing)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4012

TIMOTHY COOLEY,

Plaintiff,

v.

KURT JOBST,

Defendant.

ORDER OF DISMISSAL

After hearing on January 19, 2024, on the tenant's motions to vacate the default and to dismiss the case, at which the landlord appeared *pro se* and the tenant appeared with LAR counsel, the following order shall enter:

1. The motion to vacate the default is allowed for the reasons stated on the record which include a credible reason why the tenant missed the first tier event and colorable defenses.
2. The default having been vacated, the motion to dismiss due to an insufficient notice to quit is allowed. The notice is dated July 31, 2023 (and possibly served

on July 30, 2023, terminates the tenancy 30 days later which is not a rental period nor fall on a date that rent is payable.

3. Accordingly, the matter is hereby dismissed. The landlord is instructed to cancel the physical levy now scheduled for February 1, 2024, and to return the execution to the court.

So entered this 23rd day of January, 2024.

Robert Fields, Associate Justice

Cc: Raquel Manzanares, Esq. (Lawyer for the Day Counsel)

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-312

TIFFANY NUGENT,

Plaintiff,

v.

GILBERT BAGUMA,

Defendant.

ORDER

After hearing on January 18, 2024, on the defendant's motion for relief from judgment that entered against him on January 2, 2024, the following order shall enter:

1. **Background:** The defendant, Gilbert Baguma, commenced an eviction matter against the plaintiff, Tiffany Nugent, in January 2023. Because the Nugent, who was a former tenant of the subject premises in the eviction matter had vacated, the parties entered into an a agreement with a Housing Specialist on March 27,

2023 to remove Nugent from the eviction matter and sever her counterclaims to the civil docket.

2. That civil matter (became this instant matter 23-CV-312) on April 19, 2023. The court conducted a Case Management Conference in June 2023, for which Baguma did not appear. A Pre-trial Order issued from the Clerks Office as a result of the Case Management Conference with deadlines for Baguma to file an Answer, for discovery, and for a trial date.
3. Baguma filed an Answer immediately following the Case Management Conference.
4. On the date of trial, the Baguma defaulted and Nugent filed a motion for a damages hearing which was scheduled for December 26, 2023. Baguma did not appear for the hearing on damages and after hearing, an decision was issued by the Court dated January 2, 2024, awarding damages to Nugent on some of her claims.
5. Baguma filed this instant motion two days later, seeking relief from judgment.
6. **Discussion:** Baguma began his argument to the court by stating that he was not an owner of the premises. Later in the hearing, it became evident that he is in fact an owner, though it may be that his sister, Jacqueline Ashton is the primary person in control of the premises. What is also evident is that Baguma and Ashton are engaging with the court in an inappropriate manner by appearing or filing pleadings when they wish and failing to appear when they do not want to. They're presentation to the court was insincere, if not deceitful, when stating different things about who owns the premises. The Court believes that Baguma

and Ashton figured that they do not need to appear at court in the civil matter unless Nugent actually won damages.

7. The Court finds that the behaviors of Baguma (and Ashton) in the manner in which they engaged with the court once the civil matter was commenced were wholly inappropriate and are not a basis upon which the court shall grant relief from its judgment.
8. **Conclusion and Order:** Based on the foregoing, the motion for relief of judgment is denied.

So entered this 24th day of Jan, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0725

CHICOPEE HOUSING AUTHORITY,

PLAINTIFF

v.

KRYSTAL PRIDE,

DEFENDANT

ORDER FOR JUDGMENT

This nonpayment of rent summary process case came before the Court on January 23 2023 on Plaintiff's motion for entry of judgment. Both parties appeared through counsel. Defendant filed a RAFT application yesterday. The Court finds that G.L. c. 239, § 15 is not a defense under these circumstances because Defendant has not established a financial hardship.[1]

Accordingly, after hearing, the following order shall enter:

1. Judgment for possession and $11,080.80 (inclusive of court costs) shall enter nunc pro tunc to September 21, 2022 pursuant to the terms of an agreement of the parties.
2. Issuance of the execution shall be stayed through February 12, 2024 to allow Defendant additional time to submit acceptable financial hardship

[1] Defendant has had multiple previous RAFT applications denied (Plaintiff's counsel cited August 2023, November 2023 and January 2024) for lack of good cause, namely financial hardship.

documents for the pending RAFT application. If Defendant establishes good cause and becomes eligible for a RAFT payment, issuance of the execution shall be further stayed until further order of this Court. If the RAFT application has timed out for lack of hardship documentation, Plaintiff may request issuance of the execution by written application with an affidavit attesting to the status of the RAFT application.

SO ORDERED.

DATE: January 25, 2024

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 23-CV-0840
TIRSA DEJESUS, PLAINTIFF v. 133-135 BEECH STREET ASSOCIATES LLC, ET AL., DEFENDANTS	RULING AND ORDER ON MOTION FOR ATTACHMENT

This case came before the Court on January 23, 2024 for a hearing on a former tenant's motion for a prejudgment real estate attachment in the amount of $100,000.00. All parties appeared through counsel.

This case commenced as a summary process action brought by 133-135 Beech Street Associates LLC against Tirsa DeJesus. When the issue of possession became moot, the court ordered that Ms. DeJesus' claims be transferred to the civil docket. The Court now corrects the caption to list Ms. DeJesus as the plaintiff and she will be referred to herein as "Plaintiff" or "Ms. DeJesus".

Pursuant to Mass. R. Civ. P. 4.1(c), property may only be attached "upon a finding by the court that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance shown by the defendant to be available to satisfy the judgment." The motion for approval of the

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attachment "shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (h) of this rule." Rule 4.1(h) recites that "[a]ffidavits required by this rule shall set forth specific facts sufficient to warrant the required findings and shall be upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that he believes this information to be true."

Here, the only affidavit supporting the motion for approval of the attachment is an affidavit by Plaintiff's counsel. The affidavit recites that "After review of the evidence, I believe the [Ms. DeJesus'] claims to have merit." Ms. DeJesus did not verify her complaint (at the time it was filed, it was her answer) or file an affidavit attesting to the facts underlying her claims.

Mr. Bialis, the manager of 133-135 Beech Street Associates, LLC, submitted an affidavit upon personal knowledge attesting to relevant facts . Based on Mr. Bialis' affidavit, and in the absence of any facts to support Ms. DeJesus' argument that her claims have merit, the Court finds that Ms. DeJesus did not demonstrate a reasonable likelihood of recovering judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment she seeks over and above any liability insurance shown by the defendant to be available to satisfy the judgment.[1]

Accordingly, the request for a real estate attachment is DENIED.

SO ORDERED.
DATE: January 25, 2024

Jonathan J. Kane, First Justice

cc: Court Reporter

[1] Although it is not the basis for denying the motion, the Court notes that insurance counsel appeared for Defendants and argued in opposition to the motion at the hearing, evidencing the possibility of insurance coverage to satisfy any judgment.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2841

EDGEWATER TOWERS, LLC, **Plaintiff,** **v.** **NATASHA YOURNET, et al.,** **Defendants.**	**ORDER**

After hearing on January 18, 2024, on the landlord's motion for issuance of the execution, at which the plaintiff appeared through counsel and the tenant, Natasha Yournet, appeared *pro se*, the following order shall enter:

1. Though the tenants have been making payments to the landlord since their Agreement (Agreement) in August 2023 but not at the rate agreed to. It is noted here that the very first month after the Agreement the rent was increased from $950 to $1,606.

2. The tenants have a RAFT application pending, as confirmed with a representative from Way Finders, Inc. during the hearing, It was also confirmed by Way Finders, Inc. that the tenant has not utilized RAFT in the past twelve months and, therefore, should be eligible for the full $7,000.
3. The tenant shall pay her rent in February 2024 in full and on time.
4. The tenant shall also pay $100 extra each month beginning in March 2024, for any amounts remaining after the RAFT payment is made. This shall represent a "payment plan" for purposes of the RAFT application process.
5. The tenant may wish to work with Springfield Partners for Community Action, Inc. located at 721 State Street in Springfield, MA, for assistance with her RAFT application---particularly for the "hardship documents" requirement. That agency can also be reached at 413-263-6500.
6. This matter shall be scheduled for further hearing on **February 29, 2024, at 9:00 a.m.**

So entered this 25th day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5507

M SQUARED HOLDINGS LLC,

Plaintiff

v.

JON MALONE AND KRYSTINA MALONE,

Defendants

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

This no fault summary process case came before the Court for a bench trial on January 25, 2024. Plaintiff appeared through counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of 1282 South Main Street, Unit 2R, Palmer, Massachusetts (the "Premises") from Defendants.

Defendants stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit which terminated their tenancy as of November 1, 2023. Defendants did not file an answer and assert no defenses. They only seek time to relocate.

Pursuant to G.L. c. 239, §§ 9, et seq., Defendants are be entitled to a stay if they satisfy certain conditions. They have a disabled child, and would be entitled to a maximum stay of twelve months. They seek a stay only until the end of June 2024, however, to allow their child to complete the school year. Defendants owe no rent except for this current month of January, which they have withheld because they have been hoping to be able to vacate by the end of the month, whereupon Plaintiff

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could apply the last month's rent on deposit. Given the foregoing, and in light of the governing law, the following order shall enter:

1. Plaintiff is entitled to a judgment for possession; however, entry of judgment shall be stayed until June 3, 2024. No judgment shall enter if Defendants have vacated the Premises before that date, in which case Plaintiff's counsel shall dismiss the claim for possession without judgment entering.
2. If Defendants are in possession of the Premises as of February 5, 2024, they shall pay $2,900.00 by the end of business on that day, which payment represents use and occupancy (rent) for January 2024 and February 2024.
3. For the remaining duration of the stay, they shall pay $1,450.00 by the 5th of each month except for June 2024, when they shall pay $200.00, which is the difference between the amount they are required to pay for use and occupancy and the amount on deposit for last month's rent.
4. If the judgment enters pursuant to numbered paragraph 1 of this order, execution shall issue ten days thereafter but it shall not be used before June 30, 2024 if Defendants are otherwise in compliance with this order.
5. Plaintiff may file a motion to enter the judgment before June 3, 2024 if Defendants fail to make any required payment.

SO ORDERED.

DATE: January 25, 2024

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. 20-CV-0572

CITY OF SPRINGFIELD, CODE ENFORCEMENT DEPARTMENT,

PLAINTIFF

v.

ORDER ON COMPLAINT FOR CONTEMPT

DASHA MILLER AS TRUSTEE OF THE 197-199 MASSACHUSETTS AVENUE REALTY TRUST,[1]

DEFENDANT

Judgment of contempt entered against the 197-199 Massachusetts Avenue Realty Trust ("Trust") on February 2, 2023. Pursuant to the judgment, daily fines of $50.00 would be assessed beginning on March 1, 2023 and would continue accruing until the building permit had been closed. The final inspection occurred on December 19, 2023.[2] Therefore, for the period of March 1, 2023 through December 19, 2023, a period of 293 days, the Court assesses fines in the amount of $14,650.00.[3]

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

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[1] Dasha Miller is the successor trustee to Lance Chavin. Attorney Chavin is hereby dismissed from this action. The fines that accrued in this action are the responsibility of the trust, and no monetary sanctions will be imposed on Attorney Chavin in his capacity as trustee.

[2] Counsel for Plaintiff said that she would confirm that the building permit was closed as a result of the final inspection, but as of the date of this Order, the Court has no record of such confirmation. Accordingly, based on the information before it, the Court accepts December 19, 2023 as the date of compliance.

[3] As a sanction for the contempt, Plaintiff was invited to submit a petition for attorneys' fees associated with filing the complaint for contempt and attending the contempt hearing. The Court also indicated that it would award reasonable costs for any inspections conducted at the property with respect to roof repairs after June 30, 2022 and any other reasonable costs directly attributable to Defendant's contemptuous conduct. As of the date of this Order, no such petition has been filed.

1. Lance Chavin, as Trustee, shall be dismissed from this action and removed from the caption of the case.
2. The Trust is hereby ordered to make payment of $14,650.00 to the City within sixty (60) days.
3. Pursuant to the Court's November 7, 2023 order, if payment is not made by the date set forth herein, Plaintiff is authorized to place a lien against the property located at 197-199 Massachusetts Avenue, Springfield, Massachusetts, and to record said lien in the Hampden County Registry of Deeds.

SO ORDERED.

DATE: January 29, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0131

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPT,

PLAINTIFF

v.

SPRINGFIELD GARDENS LP, ET AL.,

DEFENDANTS

RULING ON COMPLAINT FOR CONTEMPT

This code enforcement matter came before the Court on January 19, 2024 for a hearing on Plaintiff's complaint for contempt. Plaintiff City of Springfield, Defendant Springfield Gardens, LP ("Springfield Gardens") and Defendant Federal National Mortgage Association appeared through counsel. No other Defendants appeared. The property in question is located at 36 Belmont Avenue, Springfield, Massachusetts (the "Property").

The Property was damaged by fire in February 2023. Pursuant to a court order dated August 30, 2023, Springfield Gardens, LP, was ordered to obtain all required building, electrical, gas and plumbing permits by October 31, 2023 and to complete the rehabilitation of the Property by January 8, 2024. Neither deadline was met. It is undisputed that Plaintiff has demonstrated, by clear and convincing evidence, a clear and undoubted disobedience of a clear and unequivocal command.

Plaintiff seeks both compensatory and coercive orders in this matter. *See Labor Relations Comm. v. Fall River Educators' Assn.*, 382 Mass. 465, 475-476 (1981). For compensatory sanctions, Plaintiff seeks fines for noncompliance with the court order in the amount of $6,000.00, representing fines of $100.00 per day after October 31, 2023.[1] It also seeks attorneys' fees in the amount of $485.00 related to this complaint for contempt as well as inspection fees in the amount of $525.00.[2] Further, the parties have agreed to extend the date for completion of the rehabilitation to April 19, 2024, and in order to coerce Springfield Gardens to comply with this deadline, the City seeks daily fines of $1,000.00 per day after April 20, 2024 until the rehabilitation is complete.

After hearing, the following order shall enter:

1. Judgment for contempt shall enter in favor of Plaintiff against Springfield Gardens.
2. As a compensatory sanction, Springfield Gardens shall be assessed a fine in the amount of $5,000.00, attorneys' fees of $480.00 and costs of $525.00. The attorneys' fees and costs, along with $2,500.00 (half of the amount of the fines) shall be paid to Plaintiff within thirty (30) days of the date this order enters on the docket. The balance of the fines shall be waived if Springfield Gardens completes the rehabilitation of the Property by April 19, 2024.

[1] The August 30 order did not specifically provide for daily fines for noncompliance.

[2] Springfield Gardens does not contest either the amount of attorneys' fees or costs.

3. As a coercive sanction, Springfield Gardens shall be assessed daily fines of $200.00 for each day beyond April 19, 2024 until the rehabilitation of the Property is complete, unless it can demonstrate to the satisfaction of the Court that the delays in completing the rehabilitation were due to circumstances outside of its control.

SO ORDERED.

January 29, 2024

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0145

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPT,

PLAINTIFF

v.

SPRINGFIELD GARDENS LP, ET AL.,

DEFENDANTS

RULING ON COMPLAINT
FOR CONTEMPT

This code enforcement matter came before the Court on January 19, 2024 for a hearing on Plaintiff's complaint for contempt. Plaintiff City of Springfield, Defendant Springfield Gardens, LP ("Springfield Gardens") and Defendant Federal National Mortgage Association appeared through counsel. No other Defendants appeared. The property in question is located at 2477 Main Avenue, Springfield, Massachusetts (the "Property").

The Property was damaged by fire in January 2023. Pursuant to a court order dated September 8, 2023, Springfield Gardens, LP, was ordered to obtain a demolition permit by November 10, 2023 and to complete the demolition by January 12, 2024. Neither deadline was met. It is undisputed that Plaintiff has demonstrated, by clear and convincing evidence, a clear and undoubted disobedience of a clear and unequivocal command.

Plaintiff seeks both compensatory and coercive orders in this matter. *See Labor Relations Comm. v. Fall River Educators' Assn.*, 382 Mass. 465, 475-476 (1981). For compensatory sanctions, Plaintiff seeks fines for noncompliance with the court order in the amount of $6,000.00, representing fines of $100.00 per day after November 10, 2023.[1] It also seeks attorneys' fees in the amount of $780.00 related to this complaint for contempt as well as inspection fees in the amount of $150.00.[2] Further, Plaintiff seeks to impose new deadlines of February 22, 2024 for Springfield Gardens to obtain the demolition permit, with the demolition to be completed by March 13, 2024. Plaintiff further seeks daily fines if the demolition is not completed within the time frames set forth herein. Counsel for Springfield Gardens argues that the lender has not released the funds necessary to complete the demolition and requests a period of six months to complete the work.

After hearing, the following order shall enter:

1. Judgment for contempt shall enter in favor of Plaintiff against Springfield Gardens.
2. As a compensatory sanction, Springfield Gardens shall be assessed fines in the sum of $5,000.00, attorneys' fees of $780.00 and costs of $150.00. The attorneys' fees and costs, along with $2,500.00 (half of the amount of the fines) shall be paid to Plaintiff within thirty (30) days of the date this order enters on the docket. The balance of the fines shall be waived if Springfield Gardens completes the demolition of the Property by March 22, 2024.

[1] The September order did not include an amount of daily fines in the event the deadline was missed.

[2] Springfield Gardens does not contest either the amount of attorneys' fees or costs.

3. The Court reserves a decision on a coercive sanction until the next hearing date. At this time, if Springfield Gardens has not completed the demolition, it shall present evidence as to why it was unable to meet the deadline and the Court will determine the manner in which it will attempt to coerce compliance with the order to demolish the Property by a date certain.
4. The parties shall appear for further hearing on March 25, 2024 at 9:00 a.m.

SO ORDERED.

January 29, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0380

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPARTMENT, HOUSING DIVISION, PLAINTIFF v. SUPERIOR CCM, LLC (owner), OLGA RIOS (tenant), and ANTONIA GARDNER (tenant), DEFENDANTS	ORDER FOR ATTORNEY'S FEES

Following finding of contempt on June 29, 2023 for the failure of Defendant Superior CCM, LLC to comply with two Court orders to provide alternative housing to Defendant Rios, the Court invited Defendant Rios' counsel to submit a petition for an award of reasonable attorney's fees. The petition was filed by Defendant Rios' counsel on December 14, 2023, although the affidavit in support of the petition had been filed on July 6, 2023.

In calculating the amount of an award of attorney's fees, the court uses the "lodestar" method. *See Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). In light of the nature of the case and the issues presented, the time and labor required, 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, *see Linthicum v. Archambault*, 379 Mass. 381, 388-

389 (1979), the Court finds that a reasonable attorney's fee is $1,000.00. The Court considers $200.00 to be a reasonable hourly rate for Attorney Shoenhard in this matter and that it was reasonable for her to spend five hours preparing for and attending the June 26, 2023 and June 28, 2023 hearings.

Accordingly, the Court orders Defendant Superior CCM, LLC to pay Plaintiff $1,000.00 as a reasonable attorney's fee in this matter. Payment shall be made within thirty (30) days of the date this order is entered on the court docket.

SO ORDERED.

January 29, 2024

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

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

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

In this matter seeking judicial review pursuant to G.L. c. 30A, judgment entered for Defendant and Intervenor on November 2, 2023. Plaintiff and Intervenor each filed motions for reconsideration. The standard for addressing a motion for reconsideration is discretionary. "Though there is no duty to reconsider a case, an issue, or a question of fact or law, once decided, the power to do so remains in the court until final judgment . . . ." *King v. The Globe Newspaper Co.*, 400 Mass. 705, 707 (1987), *citing Peterson v. Hopson*, 306 Mass. 597, 601 (1940). A party moving for reconsideration generally must demonstrate "changed circumstances such as (a) newly discovered evidence or information, or (b) a development of relevant law; or (2) a

particular and demonstrable error in the original ruling or decision." *See Audubon Hill S. Condominium Ass'n v. Community Ass'n Underwriters of America, Inc., 82 Mass. App. Ct. 461, 470 (2012)*. The Court addresses each of the parties' respective arguments seriatim.

1. Rental Increase Timeline and Amount. Both Plaintiff and Intervenor agree that the Court's modified rental increase should apply to each of the increases that the City of Chicopee Mobile Home Rent Control Board (the "Board") allowed and the Intervenor implemented. Accordingly, the Court reconsiders its ruling as to the timing of rental increases and orders as follows:

    a. Beginning July 1, 2022: $334.00

    b. Beginning January 1, 2023: $372.00

    c. Beginning July 1, 2023: $410.00

    Future rental increase requests are prohibited until July 1, 2024. The Court declines Intervenor's motion to reconsider its decision to reduce the Board's rental increase amount.

2. Bad Debt Amounts. Intervenor seeks reconsideration of the Court's finding that the line item for $13,000.00 in bad debt expenses was unsupported by substantial evidence. It points to bad debt expense is an accounting deduction based on vacant lots and uncollectable rent. The Court determined that data points included in the record were insufficient to support the amount included in the calculation of reasonable operating

expenses. The Court finds no "particular and demonstrable error" in its original ruling, and declines to reconsider its elimination of the line item for bad debt.

3. Sewer Upgrade Charges. Plaintiff contends that the Court's decision to allow sewer upgrade costs as reasonable operating expenses is a clearly erroneous application of the law. The Court stands by its ruling that the Attorney General's regulations in question do not apply to manufactured housing communities located in municipalities that have adopted rent control laws pursuant to a Special Act of the Legislature and that the "betterment fee" assessed to Bluebird Acres Mobile Home Park is not a capital expense. Accordingly, the Court declines to reconsider this aspect of its ruling.

4. Rule 60(A) motion to correct judgment. Plaintiff contends that judgment should have entered in its favor because the Court made a small adjustment to the rent increase approved by the Board. The Court concluded that judgment would enter for the defendants because it affirmed the decision of the Board subject only to a minor modification to the calculation of reasonable operating expenses. It did not vacate the Board's decision or remand for further findings. Accordingly, the Court declines to reconsider its entry of judgment on the pleadings filed by Defendant and Intervenor.

Accordingly, Intervenor's motion to reconsider the timing of the rent increases is ALLOWED, and in all other respects, both parties' motions for reconsideration are DENIED.

SO ORDERED.
January 29, 2024

Jonathan J. Kane
Hon. 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 FOR AWARD OF ATTORNEYS' FEES

In this matter brought by Plaintiff after his dwelling unit was condemned by the Montague Board of Health on October 19, 2023, the Court ordered Defendants to pay Plaintiff's reasonable attorneys' fees related to the numerous hearings on Plaintiff's motions for repairs and alternative housing. *See* orders dated December 1, 2023 and December 15, 2023. In connection therewith, Plaintiff's counsel, Joel Feldman, submitted a petition for attorneys' fees following the December 1, 2023 court order and a supplemental petition following the December 15, 2023 order.

In calculating the amount of an award of attorneys' fees, the court uses 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). 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).

After considering the factors set forth in *Linthicum,* and calculating a fair market rate for Attorney Feldman's legal services for time reasonably spent preparing for, scheduling and attending hearings to enforce Court orders, the Court finds that a reasonable amount of attorney's fees in this matter is $2,000.00.

Accordingly, Defendants are hereby ordered to pay Plaintiff $2,000.00 within thirty days of the date of this Order.

SO ORDERED.

January 29, 2024

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO: 23H79SP001150

MEREDITH MANAGEMENT CORP.,

Plaintiff

v.

WHITNEY KEATON,

Defendant

Order

The parties appeared before the court on January 29, 2024 on Defendant's motion to remove default and for a stay based on a pending rental assistance application. Plaintiff appeared with counsel. Defendant appeared self-represented. This order addresses only Defendant's request for a stay pending her RAFT application.

Defendant acknowledges that she owed $15,468.00 in rental arrears. She may be entitled to up to $7,000.00 in rental assistance, but the application requires a payment agreement with Plaintiff. The following order shall constitute terms of a repayment plan.

1. To the extent it is not complete, Defendant shall complete her portion of the RAFT application forthwith.
2. If RAFT approves her application and commits to payment of $7,000.00 to Plaintiff, Defendant shall repay the balance as follows:
    a. Defendant shall pay monthly rent in full no later than the 5th of each month beginning in February 2024.

b. Beginning in March 2024, Defendant shall pay $400.00 along with the rent to be applied toward the rental arrears.

c. Defendant shall pay $3,200.00 toward the balance of rental arrears by March 15, 2024.

d. Defendant shall pay the remaining balance of unpaid rent and court costs by April 30, 2024.

3. Use of the execution shall be stayed so long as Defendant is complying with the repayment terms herein. If the execution expires or is nearing expiration while the repayment plan is still in effect, upon return of the original execution, Plaintiff may obtain an alias execution by written application.

4. Upon Defendant reaching a zero balance, Plaintiff shall file a satisfaction of judgment, return the execution and dismiss the case.

SO ORDERED.

January 29, 2024

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0049

ELSIE ROY AND CAROL HAIG, PLAINTIFFS v. MICHAEL OLMSTEAD AND ALICIA LINDGREN, DEFENDANTS	)	ORDER TO SHOW CAUSE

This matter came before the Court on January 29, 2024 on Plaintiff's emergency motion for injunctive relief. Plaintiffs seek an order that Defendants vacate the single family house in which they reside located at 25 Amherst Street, Holyoke, Massachusetts (the "Premises"). Plaintiffs appeared through counsel. Defendants did not appear. Plaintiffs' counsel represented to the Court that notice of this hearing was served by deputy sheriff on January 16, 2024 but he did not have the return of service. Such return must be filed with the Court forthwith.

Based on the facts set forth in the Verified Complaint, the Court finds that Plaintiffs are at risk of irreparable harm if Defendants continue to occupy the Premises without right. Defendants were not present to dispute the allegations in the Verified Complaint or demonstrate that they would suffer irreparable harm if the injunctive relief were granted. In order to ensure Defendants have an opportunity to be heard and show cause why the relief requested should not be granted, the following order shall enter:

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1. Plaintiffs shall have a deputy sheriff serve a copy of this order on Defendants. Plaintiffs shall file the return of service indicating the time and manner of service.
2. Defendants must vacate the Premises within three business days after completion of service unless, within the three business days, they file a motion with the Court opposing Plaintiffs' request for an order that they vacate the Premises.
3. If Defendants fail to file such a motion or vacate the Premises as ordered herein, Plaintiffs may treat them as trespassers and enlist the assistance of law enforcement to enforce the terms of this order.
4. Upon Defendants vacating the Premises, Plaintiffs may change the locks.
5. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.

January 29, 2024

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-1496

SPIRNG MEADOW APARTMENTS,

Plaintiff,

v.

ESTPHANIE DIAZ,

Defendant.

ORDER

After hearing on January 26, 2024, on the tenant's motion to stop a physical eviction scheduled for January 31, 2024, the following order shall enter:

1. During the hearing it was made clear that the execution should not have issued in this matter as the judgment entered on April 5, 2023, and the plaintiff did not request an execution on same until November 22, 2023.
2. G.L. c.235, s.23 does not allow for exectuions to issue after three months after a summary process judgment enters, unless there is a tolling event of some kind. There was no tolling event in this matter.

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3. Accordingly, the plaintiff shall cancel the physical eviction, and return the execution to the court. Additionally, this matter shall be dismissed on February 6, 2024, unless the parties file an Agreement which allows for the case to remain open.

So entered this 29th day of Jan, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5296

BERNARD EWIG III,

Plaintiff

v.

KERI IZQUIERDO-RIVERA,

Defendant

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

This summary process case brought for nonpayment of rent came before the Court for a bench trial on February 1, 2024. Both parties appeared self-represented. Plaintiff is Defendant's father and they reside in separate units in a duplex located at 49-51 George Street, West Springfield, Massachusetts.

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 served and Plaintiff received a notice to quit for nonpayment of rent. The sum of $3,300.00 (the three months of November 2023, December 2023 and January 2024 at $1,100.00 per month) is unpaid through January 2024. Defendant does not currently have a pending application for rental assistance, but appears to be eligible for approximately $3,600.00.

Plaintiff having demonstrated its prima facie case for possession and monetary damages, the Court turns to Defendant's answer in which she asserts a defense and counterclaim for interference with quiet enjoyment based on her allegation that Plaintiff

changed the terms of her tenancy by disconnecting the water to her washing machine. The Court finds that Plaintiff did in fact turn off the water, but only after an overflow that caused water to enter unit below. The Court finds that Plaintiff's actions do not rise to the level of a "serious interference" with his daughter's tenancy, meaning that his acts did not "impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994), particularly because he has offered to move her laundry machines to the basement forthwith where they can be used as before.[1]

Based on the foregoing, and in light of the governing law, the Court enters the following order:

1. Judgment for possession and $3,300.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Defendant shall complete a RAFT application forthwith, and Plaintiff shall complete the landlord portion of the application, including providing a ledger showing the amount of unpaid rent and court costs.
3. Execution may issue upon motion if Defendant fails to complete the application within seven days. If the application is filed, no execution shall issue until the application is closed, denied or approved.
4. Defendant shall pay $1,100.00 for February rent no later than February 5, 2024.
5. The rental application is likely to pay the entirety of the arrears and court costs; however, if not, the parties shall enter into a reasonable repayment agreement for the remainder of the balance.

[1] Although not raised in her answer, Defendant claims that Plaintiff engaged in retaliation. The Court finds no credible support for a finding that Defendant violated G.L. c. 239, § 2A.

6. Plaintiff shall move Defendant's laundry machines to the basement by February 5, 2024, and shall hook the washing machine up to the water supply.

SO ORDERED.

DATE: February 1, 2024

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-5353

FRANCOIS FAULKNER,

Plaintiff

v.

MARIA MARQUEZ,

Defendant

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

This summary process case brought for nonpayment of rent came before the Court for a bench trial on February 1, 2024. Both parties appeared self-represented.

Defendant stipulated to Plaintiff's prima facie case for possession and $10,650.00 in unpaid rent.[1] Defendant did not demonstrate to the satisfaction of the Court a pending rental assistance application, nor did she file an answer or raises defenses at trial.

Accordingly, the following order shall enter:

1. Judgment for possession and $10,650.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Execution may issue upon written application after expiration of the 10-day appeal period.

SO ORDERED.
DATE: February 1, 2024

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

[1] Although the pretrial stipulation indicates that Defendant denies receipt of the notice to quit, he admitted receipt at trial.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1787

HAYASTAN INDUSTRIES,

PLAINTIFF

v.

CHRISTOPHER GUZ AND ANGELA GUZ,

DEFENDANTS

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on Defendants' motion for summary judgment. The arguments asserted by Defendants herein have been asserted previously and addressed previously by this Court in its Rulings on Cross-Motions for Summary Judgment in a case between the same parties, Docket No. 22H79SP000673. Based on the Court's reasoning and ruling in the previous case, Plaintiff is not prohibited from seeking possession on a no fault basis in this case. In summary, the Court finds that the provisions of G.L. c. 140, § 32J (the "Act") apply to tenants renting lots from the operator of a manufactured housing communities, not occupants of a home in the park. Because Defendants do not own a home in the manufactured housing community in question, they do not benefit from the protections of the Act. Accordingly, Defendants' motion for summary judgment is DENIED.

SO ORDERED.
DATE: February 1, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-41

KRYSTAL BRADLEY,

Plaintiff,

v.

ENRIQUE SANTIAGO,

Defendant.

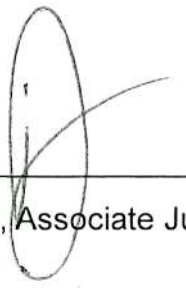
ORDER

After hearing on January 26, 2024, on the tenant's motion for injunctive relief to address the landlord's alleged harassment, at which both parties appeared the following order shall enter:

1. These same parties had an eviction matter (23-SP-3535) in which the tenant prevailed after trial for possession and for money damages.
2. Unfortunately, the court issued an incorrect judgment which mistakenly entered judgment for the landlord for possession. Shortly thereafter, the court issued a corrected judgment.

3. It appears to the court that much of the behavior identified by the tenant as harassment may have been because the landlord erroneously believed he had been awarded possession of the premises. Such behavior included inquiring when the tenant was vacating and sharing information about other housing availabilities. Now that the corrected order has been issued and the judge made it clear at this hearing that the tenant was awarded possession, that behavior should cease.
4. The other behavior complained of, that the landlord spends hours idling in his car at the property and making multiple comments that the rent should be much higher are intimidating and threatening to the tenant and her children and may, in the aggregate, be behavior that could be found to breach the tenant's quiet enjoyment.
5. Based on the foregoing, the landlord shall refrain from behavior that intimidates and/or makes the tenant reasonably fear for her safety or significantly diminish the enjoyment of the premises.

So entered this 2nd day of February, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1570

CITIZENS BANK, NA,

Plaintiff,

v.

JOSEPH BRENTON,

Defendant.

ORDER FOR ENTRY OF JUDGMENT FOR POSSESSION FOR PLAINTIFF and FOR TRANSFER OF DEFENDANT'S COUNTERLCLAIMS TO THE CIVIL DOCKET

After hearing on January 25, 2024, on the plaintiff's motion for Summary Judgment at which the plaintiff appeared through counsel and the defendant appeared *pro se*, the following order shall enter:

1. The plaintiff has established the *prima facie* elements of its claim for possession, having foreclosed on the subject premises and purchased same at the foreclosure auction.
2. The defendant does not challenge the foreclosure but asserts that he is a *bona fide* tenant of the former owner, Ronald Czelusniak. In furtherance of his position, the defendant provided an affidavit and a lease. In accordance with the

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assertions in the affidavit and the credible reporting by the defendant, he took occupancy through a negotiated tenancy with the former owner and mortgagor in December 2018 and took occupancy on January 1, 2019

3. Because the foreclosure took place on February 6, 2018, and the plaintiff recorded its deed on July 5, 2018, the defendant's "tenancy" was entered into after the foreclosure sale to the plaintiff and does not subject the plaintiff to honor the lease.
4. Judgment shall enter for the plaintiff for possession and for no compensatory damages as the plaintiff is not seeking any use and occupancy.
5. The defendant's counterclaims, which include claims against the plaintiff during the plaintiff's ownership (such as for *quantum meruit*), shall be severed and transferred to the civil docket in a new matter captioned *Joseph Brenton v. Citizens Bank, NA*. The Clerk's Office is requested to schedule a Case Management Conference in that newly created civil matter.
6. In this instant summary process matter, judgment shall enter for possession for the plaintiff as noted above and an execution may issue for possession upon the timely filing and service of a Rule 13 Application.

So entered this 2nd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4305

DOMUS INCORPORATED,

Plaintiff,

v.

ANARILEES CRUZ,

Defendant.

ORDER FOR ENTRY OF JUDGMENT

After hearing on January 30, 2024, on the landlord's motion for entry of judgment for which the tenant failed to appear after proper notice, the following order shall enter:

1. The parties entered into an Agreement on November 2, 2023, in which the tenant agreed to pay her rent going forward plus $200 towards the arrearage. The landlord reports that the tenant failed to make any payments in December 2023 and January 2024.

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2. A representative from Way Finders, Inc. joined the hearing and confirmed that the tenant's RAFT application was "timed out" due to her failure to provide hardship documentation and a payment plan.
3. The landlord is seeking a judgment for possession and for outstanding rent (which is granted below) but also indicated on the record their continued interest in working with the tenant should she resume paying her rent and re-apply (successfully) with RAFT.
4. The tenant is urged to work with Springfield Partners for Community Action, located at 721 State Street in Springfield, for help with her RAFT application--- particularly with her hardship documents and negotiating a repayment agreement with the landlord.
5. Based on the foregoing, judgment shall enter for the landlord for possession plus $5,412 in rent arrearage through January 2024 plus court costs. The landlord may have an execution issued upon a timely filing and service of a Rule 13 application. Although the parties are encouraged to work together to avoid eviction there are currently no stay terms on the use of the execution.

So entered this 2nd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5645

PETER A. DUDLEY,

Plaintiff,

v.

ELYSA ROSS,

Defendant.

ORDER OF DISMISSAL

After hearing on January 31, 2024, the following order shall enter:

1. This matter was scheduled for trial. As a preliminary matter, the court also addressed the tenant's application for injunctive relief.
2. **Dismissal of the Landlord's Claim for Possession:** The proceedings focused on the type of eviction case and the parties stipulated to the receipt of the "Eviction Notice" served upon the tenant in August 2023. Said notice was for fault but was served with notice of 14-day termination. The lease terms are silent

as to providing at time shorter than a rental period notice so the landlord was required to provide the tenant with a rental period notice of termination[1].

3. Having failed to provide proper notice of the termination, the landlord's claim for possession is dismissed, without prejudice.
4. The tenant's counterclaims shall be severed and transferred to the Civil Docket in a soon-to-be newly created civil action with a caption of *Elysa Ross v. Peter A. Dudley*[2].
5. The Clerk's Office is requested to schedule that new matter for a Case Management Conference.
6. **Injunctive Relief:** The landlord shall not lock the tenant out of the premises nor allow the tenant to be locked out by anyone else. Additionally, the landlord shall not make any threats to the tenant's safety.

So entered this 2nd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] The landlord made argument that the lease was not in effect at the time of the termination notice due to the tenant terminating the tenancy through a May 2023 email. Even if the lease was not in effect, thus resulting the tenancy to be viewed as a month-to-month tenancy thereafter, the law requires a rental period notice.
[2] The Clerk's Office asked to note that the tenant's attorney, Edmund St. John, III, Esq., shall be the tenant's attorney in the newly generated civil matter.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-741

EBROOK, LP,

Plaintiff,

v.

LAURA WILLOUGHBY,

Defendant.

ORDER FOR ISSUANCE OF A NEW EXECUTION and STAY PROVISIONS THEREON

After hearing on January 29, 2024, on the landlord's motion to renew an execution at which the landlord appeared through counsel and the tenant appeared *pro se* and also at which Alisha White from the Tenancy Program (TPP) joined, the following order shall enter:

1. A new execution shall issue for the landlord for possession plus $13,863.44 plus court costs, but there shall be a stay on its use in accordance with the terms of this Order.
2. The tenant shall work with TPP in securing a Representative Payee.
3. There is currently a RAFT application pending (#00446850).

4. The tenant shall pay her rent by the sixth of each month and an additional $100 towards rental arrearage two weeks later beginning in February 2024. This should be considered as a repayment plan for RAFT program purposes.
5. TPP shall work with the tenant and communicate with Way Finders, Inc. regarding the tenant's Section 8 rental subsidy as there is confusion as to why her rent is set at $1,042 when her income is approximately $1,500. Additionally, TPP shall work with the tenant and her employer to obtain payroll information that may be required to recalculate the tenant's rent.
6. This matter shall be dismissed upon the balance reaching $0.
7. If the landlord alleges a breach of this Order, it may file and serve a motion for lifting the stay on the use of the execution.

So entered this 2nd day of February, 2024.

Robert Fields, Associate Justice

Cc: TPP, Alisha White
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-5573

FREEDOM MORTGAGE CORPORATION, **Plaintiff,** **v.** **KAYLA FORTUNA, JOYCE LACERTE, and ARIA MAYO,** **Defendants.**

ORDER

After hearing on January 30, 2024, at which the plaintiff appeared through counsel and the defendants all appeared *pro se*, the following order shall enter:

1. During the review of the Pretrial Stipulation with the parties on the record, it became clear that the defendants assert that they are the tenants of the former owner of the property, Michael D'Amato, and that the tenancy predates the plaintiff's foreclosure of the premises. As such, G.L. c.186A may apply.
2. Given that no answer was previously filed, and that the tenants are seeking a continuance due to Ms. Lacerte's health, the court shall grant a short

continuance to provide the plaintiff with an opportunity to provide a witness and notices to present evidence of compliance with G.L. c.186A and/or make argument of why that statute does not apply to this case.

3. Given the possible complexity of this post-foreclosure matter, the tenants are urged to seek legal assistance from Community Legal Aid which is located at One Monarch Place on Main Street in Springfield and which can be reached at 413-781-7814.
4. This matter shall be scheduled for further hearing and possible trial on **February 15, 2024, at 9:00 a.m.** Due to Ms. Lacerte's health concerns, the court gives its permission for Ms. Lacerte (and for Ms. Mayo to assist Lacerte) to appear by Zoom at the next hearing. The court's Zoom platform is located at Meeting ID: 161 638 3742 and Password: 1234.

So entered this 2nd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-3242

HOUSING MANAGEMENT RESOURCES, INC.,

Plaintiff,

v.

BETSY MEDINA,

Defendant.

ORDER

After hearing on January 30, 2024, 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. The parties entered into an Agreement on October 26, 2023, in which the tenant was required to pay her rent plus $253 per month but failed to make any payments.

2. The tenant described that she lost her job and was going to begin a new job at the time of the Agreement but that fell through. Thus, she had no income since at least October 2023.
3. Since the Agreement, the tenant's rent was lowered significantly but the tenant claims that she was not aware. It is possible that the rent should be readjusted even further given the tenant's loss of income. Additionally, the tenant stated that she is under the impression that she has lost her rental subsidy because she is "over-housed".
4. It was not possible to ascertain that status of the rent, or if the rent has not been further reduced why, or if the subsidy has been terminated, as the landlord did not have a witness present.
5. A representative from Way Finders, Inc. joined the hearing and confirmed that the tenant is eligible for $2,413 in RAFT funds.
6. The tenant added that she may be receiving tax returns that may be approximately $3,000 (if similar to last year).
7. Given the complexities of the rental situation in this matter, and the tenant's desire to work with an attorney, the tenant is urged to reach out to Community Legal Aid---which is located at One Monarch Place on Main Street in Springfield.
8. Additionally, the tenant is urged to meet with and work with Springfield Partners for Community Action, which is located at 721 State Street in Springfield to assist her with her re-application for RAFT.
9. The tenant shall pay her rent for February 2024 in full and timely.

10. This matter shall be scheduled for review on **February 8, 2024, at 9:00 a.m.** The landlord shall bring a witness who is competent to address the rent issues noted above.

So entered this 2nd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5071

ANDREA MILLER,

Plaintiff,

v.

MIGUEL CARRASQUILLO and MARIA FRIAS,

Defendant.

ORDER

This matter came before the court for trial on January 19, 2024, at which all parties appeared without counsel. After consideration of the evidence introduced at trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Andrea Miller (hereinafter, "landlord") owns a fifteen-unit building at 171 Avenue A in Turners Falls, Massachusetts. The defendants are Miguel Carrasquillo (hereinafter, "tenant") and Maria Frias (hereinafter, "guest"). The tenant has resided in Apartment #25 (hereinafter, "premises") since February 2020. The guest is the tenant's girlfriend and lives in Connecticut

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and frequently visits and stays with the tenant on weekends. The landlord terminated the tenancy with a September 30, 2023, letter asserting that the tenant had violated the lease terms by smoking or allowing smoking in his apartment, allowing Ms. Frias to reside in his apartment without the landlord's permission, and that he stores personal belongings on the porch. Additionally, the landlord alleges that the landlord stores personal items on the porch in violation of the lease.[1] Thereafter, the landlord had the tenant served with a Summons and Complaint and neither defendant filed an Answer but came prepared to defend against the landlord's allegations. The court shall address each alleged lease violation in turn below.

2. **Unauthorized Guest:** Ms. Frias lives in a home she has owned for six years in Connecticut. She freely admitted that she visits and stays with the tenant at the premises most every weekend. The landlord's belief that Ms. Frias is present more often than just weekends appears to be based on the presence of a car registered to her in the parking lot every day. Ms. Frias explained credibly that though the car is indeed registered to her, she has given it to the tenant for his use and that she has owns another car that she uses.
3. The court finds and so rules that Ms. Frias is not living at the premises and is not a tenant. Additionally, as the court finds that she is not a tenant, she is hereby dismissed from this action.
4. **Smoking in the Apartment:** The landlord's husband, Chris Miller, who is involved in property management at the premises, testified credibly that he has

[1] The termination notice also alleged that the tenant falsified information on his rental application but the landlord did not pursue this issue at trial.

had to address complaints from his first-floor commercial tenant, Booska's Flooring, regarding the smell of cigarette smoke entering their unit. Mr. Miller responded to these complaints in late September 2023, by entering the second floor of the building and smelling smoke. When he knocked on the tenant's door, and it was opened by either the tenant or his guest the landlord believed that he could see and smell smoke in the tenant's apartment.

5. Mr. Miller has attempted to mitigate the flow of smoke between the tenant's unit and the commercial spaces downstairs. Even so, the smell of smoke remains unabated. Not only is the smell of smoke still often present in Booska's Flooring but an employee of that company, Leanne Unaitis, credibly testified that she could smell smoke in the bathroom of the dentist next door to Booska's. Ms. Unaitis has no knowledge where the smoke is coming from within the building. Additionally, Booska's often uses a popcorn machine in order to mask the smell of smoke. Additionally, the landlord testified that she has smelled smoke in the hallway near the premises and has also seen pot plants being grown in the tenant's unit. Though the landlord testified that she had emails from the tenant in which he admits smoking occurring in his apartment, the landlord was unable to produce said emails.
6. The Court found that the tenant and his guest were credible and quite candid and reported that Ms. Frias does not smoke at all and that the tenant stopped smoking in September 2023, and that when he was a smoker he always smoked outside including on the porch. The tenant also credibly testified that on at least one occasion when Mr. Miller came by the premises believing that the tenant was

smoking, it was actually smoke from cooking food. On another occasion, on September 28, 2023, the landlord knocked on the tenant's door and when Ms. Frias opened the door, the landlord asked her to open the windows to ventilate the unit because the landlord believed that the unit smelled of smoke. Ms. Frias testified that, on that occasion, the smell in the apartment was from a hair dye she was applying and not from smoke and that she explained this to the landlord at that time. Ms. Frias appeared very credible when she testified that she has never seen the tenant smoke inside the apartment but only outside or in his car and that the tenant stopped smoking completely in September 2023.

7. The landlord admitted that there are tenants in the building, other than Mr. Carrasquillo, who smoke but she is certain that they smoke solely outside and attributes the smell of smoke in the building solely to the tenant's unit. The landlord admitted that Ms. Lisa DePaul (sp?), a second-floor tenant, also smokes and that a portion of her unit is directly above Booska's Flooring commercial unit. It is noteworthy that the landlord was very reluctant to admit that any portion of Ms. DePaul's unit is located directly above Booska's.

8. Though the court appreciates that there is smoking penetrating the downstairs' commercial spaces (Booska's Flooring and a dental office), based on the record before the court, it finds and so rules that the landlord has failed to meet her burden of proof that the tenant is violating the no smoking policy at the premises. The evidence indicates that there are other smokers in the building, that one of the possibly "heaviest" [2] smokers also has a portion of her apartment above

[2] A description by the tenant during his testimony regarding Ms. DePaul.

Booska's, and there was no testimony that the tenant's unit is also above the dentist office. There was also no evidence about how air flows between spaces within this 100-year-old edifice. Finally, the court believes that the tenant has stopped smoking since as late as September 2023 and that Ms. Frias does not smoke, and that there continues to be the smell of smoke being experienced by Ms. Unaitis of Booska's Flooring---suggesting that the smoke is from a person other than the tenant and his guest.

9. **Storage of Personal Items on the Porch:** The court also finds that there is insufficient evidence upon which to find that the tenant has improperly stored personal items on the porch.

10. **Conclusion and Order:** Based on the foregoing, the court finds and so rules that the landlord has not met her burden of proof that the tenant violated his lease and awards possession to the tenant.[3]

So entered this 2nd day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[3] Though the landlord indicated that there may be outstanding rent owed, she did not pursue this issue at trial.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-364

BERKSHIRE HOUSING SERVICES, INC., Plaintiff, v. JOEL STURZ, Defendant.	ORDER

After hearing on January 31, 2024, at which the landlord appeared through counsel and the Guardian Ad Litem Ken Ferris appeared, but for which the tenant was not present as he is still residing in and participating at a rehabilitation facility, the following order shall enter:

1. The landlord's verbal motion for issuance of an execution is denied, without prejudice, for the reasons stated on the record by the judge and mostly arising out to the legal analysis that the tenant is disabled, that there is a colorable nexus between his disability and the bases for this eviction matter, and that the law requires a reasonable accommodation.

2. That accommodation is to continue this matter and afford the Guardian Ad Litem (G.A.L.) to further work with the tenant to ascertain what direction this eviction action is to take.
3. Such work shall include the G.A.L. cooperating with Elder Services and Hillcrest Commons in accomplishing the following as well as any other step the G.A.L. deems appropriate:
    a. meeting with the tenant;
    b. taking the steps necessary to ensure that rent is paid going forward;
    c. taking steps to have a RAFT application processed;
    d. determining if the tenant wishes to and is able to return to the premises and under what circumstances;
    e. taking the steps to have the tenant's unit cleaned;
4. The G.A.L. shall keep landlord's counsel updated on his work.
5. The G.A.L. shall file a report with the court on February 28, 2024.
6. This matter shall be scheduled for further review on March 6, 2024, at 9:00 a.m. at the Pittsfield Session of the court.

So entered this 5th day of February, 2024.

Robert Fields, Associate Justice

Cc: Ken Ferris, Guardian Ad Litem
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3987

LANDWAYS TRANSPORT SERVICES, INC.,

Plaintiff,

v.

CARMEN RODRIGUEZ,

Defendant.

ORDER

After hearing on January 26, 2024, on review of this matter in accordance with the Agreement of the parties filed with the court on November 13, 2024 ("Agreement"), at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se,* and accompanied by Elizabeth Mason of ICP, a part of the Center for Human Development (CHD), the following order shall enter:

1. When the landlord did not receive the tenant's rent for December 2023, it obtained an execution for possession in mid-December 2023 per the terms of the Agreement.

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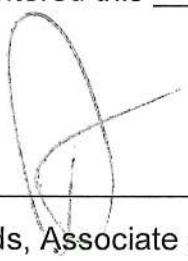
2. There shall be a stay on the use of that execution as the court credits the tenant's testimony that in December 2023 she was hospitalized and made arrangements for her sister to pay the rent. When she was released from the hospital, the tenant followed up and paid her sister back for said rent. By the time of the hearing, the tenant learned that it was her sister's husband that made the payment.
3. Counsel for the landlord reported to the court that the landlord did not receive said funds from anyone (from the tenant, her sister, or her sister's husband) for December 2023 but has received a timely payment of rent ($600) for January 2024.
4. There is no question that failure to make a rent payment pending the tenant's securing alternate housing and vacating the premises is a very important aspect of the agreed upon terms of the Agreement, but given these circumstances during the first month directly following the Agreement, that this is a no-fault eviction and the Agreement contemplates ongoing housing search with the assistance of CHD, the terms of the Agreement shall remain in full force and effect but shall be amended by the terms of this Order (solely to address the December 2023 payment.
5. The tenant, working with Ms. Mason from ICP, shall follow up with her sister and brother-in-law regarding the December 2023 rent payment. If in the end no payment was made for December 2023, the tenant shall owe $600 to the landlord. In that instance, unless it is paid prior to the next hearing scheduled below, a due date for payment shall be discussed at the next hearing.

6. Pursuant to the Agreement, the tenant shall continue to pay her rent ($600) each month. Additionally, the tenant shall continue to work with CHD (and Ms. Mason) on diligently search for alternate housing and keeping the landlord appraised of those efforts. The Agreement also requires the tenant to apply for RAFT upon becoming eligible to do so.
7. This matter shall be scheduled for review on **March 28, 2024, at 9:00 a.m.**

So entered this 5th day of February, 2024.



Robert Fields, Associate Justice

Cc: Elizabeth Mason, ICP, 200 Hillside Circle, Suite 7, West Springfield, MA 01089

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-2663

PHOENIX SOUTH CITY, LLC, **Plaintiff,** **v.** **KATHERINE MORALES,** **Defendant.**	**ORDER**

After hearing on January 29, 2024, on the tenant's motion to stop a physical eviction scheduled for February 1, 2024, the following order shall enter:

1. Ms. Luna, a representative from Way Finders, Inc., joined the hearing and confirmed that the tenant may be eligible for one month of rent plus court costs at the present time. She will then become eligible again on May 1, 2024, for as much as five months' rent.
2. The unit in which the tenant resides has a unit-based subsidy that will be lost to the tenant if she is evicted. Additionally, the tenant was forced to seek assistance from the Juvenile Court to have her two 13-year-old sons placed in Department of Youth Services (DYS) custody and are scheduled to return home soon. Given these extraordinary factors and given the promise of payments

which are designed to pay all outstanding sums to the landlord in a short amount of time, the physical eviction shall be cancelled upon the payment by the tenant of $833 to the landlord by 9:00 a.m. on February 1, 2024.

3. If the landlord does not receive said payment, the physical eviction scheduled for 11:00 that same day is not required to be cancelled.
4. The tenant shall also pay the landlord $833 on February 9, 2024.
5. The tenant shall forthwith apply for RAFT funds and has agreed to pay all of the balance that is not covered by RAFT through her tax returns. This should serve as a repayment plan for RAFT program purposes.
6. Alisha White, from the Tenancy Preservation Program, was present in the courtroom during this hearing and agreed to accept a referral, particularly based on the issues pertaining to the tenant's sons---[redacted]
7. This matter shall be scheduled for review on **February 29, 2024, at 2:00 p.m.**

So entered this 5th day of February, 2024.

Robert Fields, Associate Justice

Cc: Alisha White, Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1542

SUNLIGHT APARTMENTS,

Plaintiff,

v.

NICOLE RODRIGUEZ,

Defendant.

ORDER

After hearing on January 29, 2024, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The tenant is seeking to stop a physical eviction scheduled for January 30, 2024.
2. The landlord asserts that the rental balance through January 2024 is $4023.43 and that there are costs which would include approximately $700 if the physical eviction is cancelled.
3. Given the tenant's assertion that she is a victim of domestic violence and that there may be additional protections under Violence Against Women Act

("VAWA"), and given that there may have been domestic violence ongoing for months during which the non-payment of rent occurred (which may be a basis for "hardship" under the RAFT program), and given a real concern that the Department of Children and Families may remove the tenant's children if she becomes homeless, and also given the tenant's ability to pay $450 today towards the costs of cancelling the physical move-out), the court shall cancel tomorrow's physical eviction.

4. The tenant shall pay the landlord $450 by January 30, 2024, at 10:00 a.m. and then pay her rent going forward by the 16th of the month (based on the notion that the rent is set at $434) and an additional $100 towards the arrearage by the end of each beginning in February 2024. This shall also represent a "payment plan" for any sums not covered by RAFT for purposes of fulfilling that aspect of the RAFT program.
5. The tenant shall forthwith pursue another RAFT application and seek the assistance of Springfield Partners for Community Action located at 721 State Street in Springfield for help with the RAFT application.
6. Because of the VAWA aspect of this matter, the tenant is referred to Community Legal Aid (C.L.A., which has a domestic victim's unit) located at One Monarch Place on Main Street in Springfield and can be reached at 413-781-7814. The tenant should call C.L.A. but the judge is also requesting Chief Housing Specialist Pothier to refer the matter to C.L.A. and provide them with the tenant's address and telephone number: 7 Washington Street , 2L, Ludlow, MA and [redacted].

7. The tenant believes that she will be receiving tax returns of $1,000 and will pay them to the landlord upon her receipt of same.
8. The landlord shall provide an invoice (or invoices) from the sheriff and Goldvine Moving and Storage to the tenant and said sums shall be added to the tenant's debt to the landlord.
9. At the suggestion of Ms. White from the Tenancy Preservation Program (TPP), who was present and listening to the hearing, this matter was referred to TPP for assistance with connecting the tenant with domestic violence resources (including Alianza DV Services of Holyoke mentioned by the tenant).
10. If the tenant fails to make the payment on January 30, 2024, of $450 by 10:00, the landlord is note required to cancel the 2:00 physical eviction.
11. If the tenant fails to make the payments noted above before the next hearing discussed below, the landlord may reschedule a physical eviction without leave of court.
12. This matter shall be scheduled for review on **March 28, 2024, at 9:00 a.m.**

So entered this 5th day of February, 2024.

Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist (for referral to Community Legal Aid)
Tenancy Preservation Program, Alisha White
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 17-CV-0571

CITY OF SPRINGFIELD, CODE ENFORCEMENT DEPARTMENT,

PLAINTIFF

v.

ANN HAUGHTON AND WILMINGTON TRUST, N.A. AS TRUSTEE OF MFRA TRUST 2014-2

DEFENDANTS

ORDER ON MOTION TO APPOINT A RECEIVER

This code enforcement matter came before the Court on February 6, 2024 on Plaintiff's motion to appoint a receiver. Defendant Haughton, the property owner, appeared self-represented. Defendant Wilmington Trust, N.A. as Trustee of MFRA Trust 2014-2 did not appear. The property in question is located at 92 Buckingham Street, Springfield, Massachusetts (the "Property").

As set forth in the affidavit in support of its motion, Plaintiff cited State Code violations in January 2016, which violations have not been corrected. Defendant has been given numerous opportunities over an extended period of time to take the steps necessary to correct the State Code violations. Among other violations at the Property, the means of egress are structurally unsound, the foundation is compromised and the temporary supports in the basement are failing, and the slate roof and siding require repair. Plaintiff believes that Ms. Haughton does not have the financial means to bring the Property up to State Code standards and that her

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proposed rehabilitation plan, even if affordable, is without sufficient details as to the dates the work will be started and completed.

Ms. Haughton claims that she will be able to pay for the repairs, possibly with the assistance of community agencies or city funding sources. She intends to complete the various repairs in sequence rather than all at once, starting with the porches. She entered into a contract with a contractor and claims that she already paid a $6,000.00 deposit, although she did not provide proof of payment. Work on the porches is scheduled to begin on March 18, 2024 and will take a few weeks to complete. She said she would then move on to repair the foundation, roof and other conditions necessary to bring the Property into code compliance.

Given the efforts Ms. Haughton has made in the past year to get approval from the Historical Commission and to find a contractor willing to begin work within a matter of weeks, the Court is unwilling to appoint a receiver at this time. Based on Ms. Haughton's testimony today, the Court is satisfied that she will be able to make adequate progress in correcting the violations within a reasonable time period. The Court reserves the right to appoint a receiver at the next court date if Ms. Haughton does not demonstrate substantial progress toward correcting the violations.

After hearing, the Court enters the following order:

1. The motion to appoint a receiver is denied without prejudice.
2. Ms. Haughton must begin porch repairs by March 18, 2024. Plaintiff may conduct an exterior inspection after April 8, 2024 to determine the status of the repairs.
3. The parties shall return for a status hearing on **April 19, 2024 at 2:00 p.m.** At the status hearing, Ms. Haughton shall have her contractor present and

shall provide the Court and Plaintiff with an updated rehabilitation plan that includes start and anticipated completion dates for the next phases of repairs.

SO ORDERED.

DATE: February 6, 2024

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-0623

WELLS FARGO BANK, N.A., AS TRUSTEE FOR OPTION ONE MORTGAGE, PLAINTIFF v. JACK D. RIVERA, ET AL., DEFENDANTS	FINDINGS OF FACT AND CONCLUSIONS OF LAW

This post-foreclosure summary process case came before the Court on February 6, 2026 for an evidentiary hearing on the question of whether certain individuals identified by Defendants have a bona fide lease or a bona fide tenancy as defined in G.L. c. 186A. [1] The residential property in question is located at 6 Bremen Street, Springfield, Massachusetts (the "Premises"). Defendant Lilia Scher Rivera ("Ms. Rivera") and Plaintiff appeared through counsel. Defendant Jack D. Rivera has deceased. Eric Williams ("Mr. Williams)", who purports to be a tenant at the Premises, also appeared.

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: Ms. Rivera and her deceased husband are the former owners of the Premises. Following a public foreclosure auction, Plaintiff recorded a foreclosure deed and affidavit of sale

[1] Judgment for possession has already entered against Defendants and an execution has issued. Defendants did not appeal and Ms. Rivera does not challenge the validity of the foreclosure.

on September 30, 2022. Ms. Rivera contends that Gary and Cindy Williams, along with their children Eric and Matthew Williams, are tenants at the Premises and were tenants at the time of the foreclosure. The Williamses were not named in the summary process action and they did not receive any notices required by law. Based on representations of counsel, the Court allowed Ms. Rivera's motion for a stay on use of the execution pending a hearing on whether the Williamses have rights under G.L. c. 186A.

In the post-foreclosure context, a lease or tenancy shall not be considered bona fide unless: (1) the mortgagor, or the child, spouse or parent of the mortgagor under the contract, is not the tenant; and (2) the lease or tenancy was the result of an arms-length transaction. *See* G.L. c. 186A, § 1. A foreclosing owner may not evict a bona fide tenant except for just cause. *See* G.L. c. 186A, § 2.

There is no dispute that Plaintiff is the foreclosing owner and has not sought to evict any tenants, only the former owner. There is no evidence that the Williams are related to the former owner or that the tenancy was not the result of an arms-length transaction; thus, the Court finds that the Williamses have a bona fide tenancy and are entitled to the protections set forth in c. 186A, § 2 if they were tenants at the time of the foreclosure.[2]

Based on Ms. Rivera's uncontroverted testimony, the Court finds that Ms. Rivera rents bedrooms in her home to unrelated occupants, including the Williams family. Gary Williams has rented a room since 2015 and the other Williamses moved in

[2] Plaintiff's counsel represented that Plaintiff sent an investigator to the Premises after the foreclosure and that the investigator was unaware of any tenants residing there. However, it appears that the investigator did only an exterior investigation and did not speak to anyone at the Premises.

in 2016. There is no written rental agreement, but the Williamses paid rent, as evidenced by rent receipts, through 2021. The Court was not presented with any rent receipts after 2021. Ms. Rivera testified that, after 2021, she stopped giving rent receipts to the Williamses unless asked to do so.

Despite the lack of evidence of rent payments after 2021, and the lack of documentary proof that the Williamses were living in the Premises as of September 30, 2022, the Court finds Mr. Williams testimony that he and his family have lived in the Premises continuously since moving in and continue to live there today to be credible. The Court finds that the Williamses are bona fide tenants and were tenants at the time of the foreclosure. Therefore, the provisions of G.L. c. 186A, § 2 apply.

Accordingly, based on the foregoing, the Court rules as follows:

1. Plaintiff must comply with the provisions of G.L. c. 186A in order to recover possession of the Premises from all occupants of the Premises.
2. Plaintiff shall return the execution to the Court forthwith. Issuance of a new execution is stayed until a judgment for possession enters against the Williamses.[3]

SO ORDERED.

DATE: February 6, 2024

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

cc: Court Reporter

[3] Ms. Rivera testified that she rented a bedroom to an unrelated individual who recently vacated. Although she said that she intends to find a renter for the room, the Court finds that, other than the Williamses, there are no other tenants residing in the Premises who were tenants at the time of the foreclosure.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
CIVIL ACTION NO. 20-CV-369

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
Plaintiff

v.

NJP ENTERPRISES, LLC (owner),

Defendant

Re: Premises: SS Melville Street, Parcel #47, Springfield, Massachusetts
Hampden County Registry of Deeds Book/Page: #20826/50

ORDER ON PETITION TO ENFORCE THE STATE SANITARY CODE, STATE BUILDING CODE AND ZONING ORDINANCES OF THE CITY OF SPRINGFIELD AND ORDER FOR APPOINTMENT OF A SPECIAL ATTORNEY RECEIVER

Pursuant to the general equity powers of this Court and G.L. Chapter 111, Sections 127F-I, following hearings on February 5, 2024, the Court hereby finds with respect to SS Melville Street, Parcel #47, Springfield, MA ("Property"):

1. **Background:** On September 19, 2019, the Plaintiff observed conditions at the subject property, which are in violation of Article IV of the Zoning Ordinance of the City of Springfield.

   The violations found included but were not limited to a partially demolished blighted property in disrepair with dumping of garage, rubbish and/or other refuse. The conditions described may endanger or materially impair the health or well-being of residents of the area surrounding the subject property.

On September 19, 2019, the Plaintiff served a Notice to the Defendant. This document orders the correction of all zoning ordinance violations, FORTHWITH.

On March 5, 2020 the property was re-inspected and all violations remained.

On March 5, 2020 the Plaintiff observed conditions at the subject property, which are in violation of Massachusetts State Sanitary Code, Chapter II: Minimum Standards of Fitness for Human Habitation, 105 CMR 410.000 and/or 105 CMR 410.831 (D).

The violations included but were not limited to partially a demolished property with foundation exposed and open to arson/vandalism, exposed wires, faulty outlets, cracked/rotted/weak floors and improper receptacles; the property needed to be boarded and secured immediately to avoid arson and/or vandalism and cleaned of all litter, trash, debris, and overgrowth in the yard. The conditions described may endanger or materially impair the health or well-being of residents of the area surrounding the subject property.

On March 5, 2020, the Plaintiff served a Notice to the Defendant. This document orders the restoration and maintenance of the subject property pursuant to the standards required by the State Sanitary Code, FORTHWITH.

On September 8, 2020, the Plaintiff reinspected the property and found that the property was heavily overgrown, dumping and debris on site and the basement was open with a cat seen leaving on inspection.

On June 22, 2022, the Plaintiff reinspected the property and found that the property was with heavy overgrowth, trash and debris present and the foundation on property was unsecured and dangerous.

On January 4, 2024, the Plaintiff reinspected the property and found that the

foundation of the property that was demolished in 2016 was rotting, was in danger of collapsing in, and should be demolished. Further, the foundation was not secure and should be secured forthwith.

On January 4, 2024, the Plaintiff served a Notice to the Defendants. This document consists of a notice of violations and ordered the Defendants to hire a licensed professional to pull permits and correct all State Building Code violations, FORTHWITH.

2. **Description and Conditions of the Premises**. The Property is a vacant lot located in the Liberty Heights neighborhood. It has been neglected by its owner and has long-standing Code violations which pose a serious risk to the health, safety, and well-being of the general public, abutters, emergency personnel, and residents of the community. The Plaintiff performed inspections of the Property on multiple occasions, during which the Plaintiff found the existence of conditions that violate the State Sanitary Code. These include, *inter alia*, a vacant lot with a basement and foundation left after the property was demolished in 2016 leaving numerous State Sanitary Code violation including but not limited to exposed wires, cracked/rotted/weak floor and sub floors, and the foundation being opened to arson and/or vandalism.[1] The owner has been unable or unwilling to complete or comply with repairs necessary to return the Property to Code compliance.
3. **Available remedies**. G.L. c. 111, §127I authorizes appointment of a receiver where violations of the State Sanitary Code will not be promptly remedied unless a receiver is appointed, and where such appointment is in the best interest of future occupants

[1] An exhaustive list of the outstanding violations can be found in the inspection reports attached to the Petitioner's petition and amended petitions, as set out in the attached exhibits.

and of public safety. The Defendant has failed to manage and maintain the Property in compliance with the Code and the violations will not be promptly remedied unless a receiver is appointed. The Defendant's failure to manage and maintain the Property, and failure to promptly bring it into compliance with the Code, endangers or materially impairs the health and safety of the current and/or future occupants of the Property, as well as the surrounding community. Appointment of a Special Attorney Receiver is in the best interest of all current and future occupants of the Property and of public safety.

THEREFORE, following hearing on **February 5, 2024,** at which the Plaintiff was present via counsel, and Defendant **NJP ENTERPRISES, LLC** was not present, the Court hereby **ORDERS** as follows:

4. **Receiver**. **Attorney MIKE WERMAN of 16 South Boulevard, West Springfield MA, 01089** ("Receiver") is hereby appointed Special Attorney Receiver of the Property. At any time, any party to these proceedings or the Housing Specialist Department may request a review or modification of this appointment and the terms thereof, as set forth below. Until the next review date, the Receiver's powers and duties are limited to repairing the fence at the property, posting "No Trespassing" and "Danger" signs at the property, cleaning the Property of all trash, debris, litter, and overgrowth, obtaining an appraisal of the property, posting the property with the Receiver's contact information (as detailed in Exhibit A) as well posting this order, and assessing the property to create a plan for bringing the property into code compliance, for approval by the Court. The Receiver may also address any emergencies, as defined in Paragraph 5(c), that arise at the Property. After the review date, the Receiver's authority and duties shall be as set out in paragraph 5, below.

5. **Authority and Duties of the Receiver**. The authority and duties of the Receiver shall be as follows:

(a) To employ companies, persons or agents to perform duties hereunder.

(b) To deposit all amounts received on account of the Property into a separate account under the control of the Receiver;

(c) To inspect the Property to determine what "Emergency Repairs" are needed to correct violations of the Code and of applicable fire safety, electrical building, and plumbing codes existing at the Property, and to perform or cause to be performed, if necessary such Emergency Repairs.[2] For purposes of this section, "Emergency Repairs" are repairs necessary to eliminate violations which materially endanger or materially impair the health or safety of the occupants of the Property, or which may materially endanger or materially impair the health or safety of the tenants/occupants or public safety in the near future if corrective action is not taken;

(d) To disburse funds received by the Receiver on account of the Property as follows, in the following order of priority:

First- To reimburse the Receiver for actual out-of-pocket expenses incurred in the capacity as Receiver, including without limitation reasonable legal fees, allocable overhead and labor costs, and costs of liability insurance ("Receiver Out-Of-Pocket Expenses");

Second- To secure any vacant units;

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[2] For purposes of this section, "Emergency Repairs" are repairs necessary to eliminate violations which materially alter the health or safety of the occupants of the Property, or which may materially endanger or materially impair the health or safety of the occupants in the near future if corrective action is not taken.

Third- To make Emergency Repairs to occupied and vacant units of the Property.[3]

Fourth- To pay the Receiver for incurred in the capacity of Receiver, as set forth below:

(i). A reasonable management fee consistent with industry standards in the area; and

(ii) A reasonable hourly rate consistent with industry standards for maintenance work performed by the Receiver, or agents thereof, in repairing or maintaining the Property.[4] Rental fees shall be determined by the Chief Housing Specialist, subject to review by the Court upon the request of the Receiver or any party.

Fifth- To make payments, to the extent possible, toward any unpaid taxes, assessments, penalties or interest.

Sixth- To make payments, to the extent possible, due any mortgagee or lienor of record.

(f) The Receiver shall file periodic reports with the Court, setting forth all expenses and disbursements of the Receivership, with attached receipts, and an accounting of all funds received by the Receiver during the period covered by such report, including a list of all tenants/occupants residing at the Property, together with a list of current rental amounts and the status of

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[3] Any dispute regarding the priority of expenditures for Emergency Repairs shall be referred to the Housing Specialist, whose determination shall be binding on the parties unless modified by the Court, upon motion of any affected party;

[4] Any dispute regarding the maintenance and management fees shall be referred to the Housing Specialist, whose determination shall be binding on the parties unless modified by the Court, upon motion of any affected party.

their rent payments to date and funds from other sources. On or before **March 15, 2024,** the Receiver shall file its first report, and shall in that report include a detailed list of what repairs need to be performed, along with a schedule prioritizing the order in which such repairs shall be completed. [5] The Receiver shall also file a motion to approve a rehab plan, if applicable, at that time. The Receiver shall file with the Court and serve upon all parties a copy of this report **no later than March 15, 2024 and every eight (8) weeks thereafter**, unless a different schedule is authorized by the Court. ***The Receiver shall forthwith determine what outstanding Real Estate Taxes are due to the City and shall include that information in its first report. Copies shall also be sent to any mortgagees or lienors as well as all parties to this action each time any report if filed with the court in this matter, and each report will be accompanied by a certificate of service documenting that the reports have been forwarded as called for herein***.

(k) The Receiver shall be an attorney or be represented by an attorney at all future proceedings relative to this receivership.

6. **Bond and Inventory.** The Receiver shall not be required to file a bond, nor shall the Receiver be required to file an inventory, list of encumbrances, list of creditors or any other report required to be filed by Rule 66 of the Massachusetts Rules of Civil Procedure, except as otherwise specifically provided herein.

[5] Although it is the Receiver's duty to prepare the reports and supporting documentation, it is the duty of counsel for the receiver to cause the reports to be filed with the court and sent to all parties and lienholders; a certificate of service confirming service of the report will be timely filed with the court and parties.

7. **Notice of Receivership**. The Receiver shall forthwith complete and post the Notice of Receivership, attached hereto as Exhibit A, in an area visible to the public.

8. **Liability and Agency**

(a) The Receiver shall forthwith acquire general liability insurance in the amount of $1,000,000.00, or such other amount as is consistent with industry standards, and casualty loss insurance and provide proof of coverage to the court no later than **February 20, 2024.** The cost of insurance shall be given first priority under paragraph 5 of this order.

(b) The Receiver shall have no responsibility whatsoever to make any advances on account of the Property, except as approved by the Court.

(c) The Receiver's liability for injuries to persons and property shall be subject to the limitations set forth in G.L. c. 111, section 127I.

9. **Right to Resign**. The Receiver shall have the right to resign at any time by giving seven (7) days prior written notice to the Court and to the parties. The notice of resignation shall include a copy of any rent roll and rental history the Receiver has compiled and an accounting off all funds received and disbursed during its term as Receiver. Such resignation shall be effective on the date specified in such notice, provided, that the Court may require the Receiver to take such actions after the date specified if the Court determines that such actions are required to protect the health or safety of the tenants/occupants and that the Receiver has the capacity to perform such functions consistent with the terms of this Order. Unless otherwise ordered, on the effective date of such resignation, the Receiver shall assign any and all amounts received by it to the Court or to a successor receiver.

10. **Right to Borrow Funds.** Pursuant to the M.G.L. c. 111 § 127I, the Receiver shall have full power to borrow funds and to grant security interests or liens on the affected property,

including from the Attorney General's Office AHIR Loan Fund, with leave of Court upon a motion served upon all interested parties. The Receiver shall also have full power to make such contracts as the Receiver may deem necessary, and, notwithstanding any special or general law to the contrary, shall not be subject to any public bidding law nor considered a state, county or municipal employee for any purpose.

11. **Priority Liens and Mortgages**. The Receiver shall have a priority lien on the Property pursuant to the "super-priority" provision of G.L. c. 111 § 127I, as amended, third paragraph, upon the recording of this Order.

12. **Notice to Creditors**. The Receiver shall cause a title exam to be conducted and shall send a copy of this Order to all mortgagees and lienors of record.

13. **Sale of the Property**. The Property shall not be transferred, foreclosed upon, sold, encumbered or placed under contract for sale without prior leave of the court.

14. **The Defendant(s)**. To the extent not already completed, the Defendant(s) shall: (i) within 48 hours of the signing of this Order, the Defendant(s) shall transfer to the Receiver all keys to apartments and common areas of the premises and their rent roll for all apartments at the Property; (ii) within seven (7) days of the signing of this Order, the Defendant(s) shall provide to the Receiver copies of all documents necessary to manage and maintain the Property and shall provide at least the following information:

(a) Residential Units: the name, address, and telephone number of the owner and contact person for each of the units at the Property; the amount and due date of the rent; and copies of any leases or written tenancy agreements.

(b) Mortgages and Liens: the name and address of all mortgagees and lienors of record; the amount of the lien or mortgage.

(c) Insurance: the name, address, and telephone number of all insurance companies and their agents providing insurance coverage for the Property; the amount and type of coverage; and the amount and due dates of premiums.

(d) Utilities: the amount of the most recent water, sewer, gas, and electric bills; the amount of any outstanding balance; and the date and amount of the last payment.

(e) Real Estate Tax: the amount of the most recent real estate tax bill; the amount of any outstanding balance; and the date and amount of the last payment.

(f) Contracts: copies of all warranties for prior work done, service contracts for ongoing maintenance (e.g. for extermination), and all contracts or bids for repairs.

(g) Other: all information relevant to any outstanding expenses relating to the property.

The Defendant(s) and their agents shall not enter any part of the Property without prior approval of the Receiver, the Court or a Housing Specialist.

The Defendant(s) shall not terminate any insurance coverage to the Property without first seeking leave of this Court.

15. **Motions and Notices**. Any interested party or the Housing Specialist Department shall have the right to request from the Court, by motion and with advance notice, further orders consistent with G.L. c. 111, § 127I, common law, or the terms of this Order. In the event of emergencies, service of motions to parties on this action by facsimile and/or by email transmission shall be acceptable.

16. **Recording**. The Receiver shall forthwith record a copy of this Order at the Registry of Deeds.

17. **Inspection**: The City of Springfield shall conduct an inspection of the property on **February 21, 2024** between 9:00 a.m. and 4:00 p.m. The Receiver shall be at the property at the aforementioned time to allow the City access to the property. The Receiver may be accompanied during this inspection by a representative or representatives of the City of Springfield's Designated Nonprofit Developer for purposes of the City of Homes Pilot.

18. **Review by Court**. The foregoing Order shall remain in effect until the further order of the Court. The Receiver and all other affected parties shall report on the Receiver's progress to the Court on **Friday, March 29, 2024 at 11:00 a.m.**

19. **Effective Date.** This Full Receivership shall take effect on **February 5, 2024** at 5 o'clock p.m.

So entered this 7th day of February, 2024

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2246

EBROOK, LP,

Plaintiff,

v.

LAVAE PATTERSON,

Defendant.

ORDER

After hearing on February 6, 2024, on the defendant tenant's motion to stop a physical eviction currently scheduled for later that day the following order shall enter:

1. The motion is allowed and the physical eviction scheduled for today is cancelled for the reasons on the record and herein.
2. A representative from Way Finders, Inc. joined the hearing and confirmed that there is a pending RAFT application and that tenant is eligible for six months rent plus costs (including sheriffs costs) up to $7,000.

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3. The landlord asserts that the amount of rental arrearage through February 2024 is $11,838.73 plus court costs and sheriff's costs associated with the cancellation of the move out).
4. The parties shall both cooperate with the RAFT application.
5. The tenant shall pay the landlord $1,200 (on-line) and shall pay her rent plus $50 per month beginning in March 2024. The $50 per month should suffice as a repayment plan for RAFT purposes.[1]
6. The tenant shall inform the landlord when she files for her 2023 taxes and shall pay all of her tax returns (as needed) towards the debt owed to the landlord at that time within ten days of receipt of same.
7. The tenant is urged to meet with the Springfield Housing Authority (which administers the tenant's subsidy) to make sure that they have properly calculated her rent.
8. This matter shall be scheduled for review on **March 19, 2024, at 2:00 p.m.**

So entered this 8th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] If RAFT does not pay, the landlord is free to file a motion to increase the repayment plan.

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 February 5, 2024, at which the landlord appeared through counsel and the tenant appeared *pro se* and accompanied by the Community Social Worker from the City of Easthampton (Liz Plouffe), the following order shall enter:

1. A new execution shall issue with a new 90-day period.[1]

[1] A motion for a new execution was previously allowed by the Court but the execution issued had the old (and stale) time period for its use.

2. There shall be a stay on the use of the execution until April 1, 2024, contingent upon the tenant paying January 2024 rent by February 28, 2024. Additionally, the tenant shall pay her February 2024 rent by March 28, 2024.
3. The tenant shall also use her tax returns towards any balance then existing within ten days of her receipt of her tax returns.[2]
4. Given the court's order staying the use of the execution, the landlord's motion for appointment of a special process server is moot as the landlord may now utilize the county sheriffs for the April 1, 2024, date.

So entered this 8th day of February, 2024.

Robert Fields, Associate Justice

Cc: Liz Plouffe, LICWS, Health Dept. for the City of Easthampton
50 Payson Avenue, Easthampton, MA 01027

Court Reporter

[2] If the tenant fails to make any of the payments, the landlord may utilize the execution prior to April 1, 2024, without leave of court.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3923

HIGH RIVER, LLC,

Plaintiff,

v.

KATHERINE D. TAYLOR,

Defendant.

ORDER

After hearing on February 2, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared represented by Lawyer of the Day, the following order shall enter:

1. Though this is a no-fault eviction, the parties entered into an agreement on October 13, 2023 (Agreement), which extended the tenant until September 1, 2024, but with numerous terms.

2. The Amended Motion for Judgment filed by the landlord on January 18, 2024, alleges that the tenant has failed to comply with several of the agreed upon terms from the Agreement.
3. More specifically, the landlord alleges that the tenant has failed to:
    a. Provide evidence of her housing search;
    b. Remove garbage weekly;
    c. Comply with fire and health regulations and requirements; and
    d. Be current on her rent payments;
    e. Work with the Tenancy Preservation Program.
4. The court shall address each of these allegations in turn. As a general comment, however, the court credits the tenant's testimony that her ability to comply with the terms of the Agreement is significantly hampered by her lack of continuance cell phone access (uses a Tracphone which often runs out of minutes) and the lack of usage of a home computer. This impacts, generally, the tenant's ability to stay in touch with TPP, with on-line housing search, and with follow up on her RAFT application.
5. **Rent Payments:** The tenant is required to pay her monthly rent by the 15th of each month. Though the tenant has made some payments since the Agreement, she has failed to 1.5 months since the Agreement. The tenant asserts that she is seeking to use RAFT to pay this outstanding rent. There appears to have been come confusion wherein the tenant believed that she had a timely RAFT application pending only to learn the day of the hearing—working in person with the representative from the Franklin County Regional Housing & Redevelopment

Authority—that her application was not filed until the day of the hearing (February 2, 2024). That said, it is now pending and invokes the protections and protocols of G. L. c.239, s.15.

6. **Removal of Garbage Weekly:** The landlord failed to put forth any evidence that the tenant is failing to comply with this term. The tenant, also, testified that she is giving her friend her garbage each week who discards it elsewhere. Though the Agreement specifies that the tenant discard her garbage in the landlord-provided receptacles, the court does not consider the method of having a friend remove same to her location as a material breach of the Agreement.
7. **Comply with Health and Fire Regulations and Requirements:** The landlord failed to provide any proof that these regulations and requirements are being violated. It is the court's understanding from the hearing that the Health and Fire Departments have been at the premises since the Agreement and have not cited the tenant further.
8. **Housing Search:** The tenant agreed to provide documentation of her housing search one week before the hearing. She failed to do so. That said, she testified credibly about her housing search. With a September 1, 2024, move out date anticipated by the parties, the court is satisfied that the presentation by the tenant of her housing search sufficiently satisfy the requirements of the Agreement. Though the terms of the Agreement do not require further updating the landlord of her housing search, it continues to require the tenant to "make good faith efforts to search for alternate housing during the term of this agreement."

9. **TPP:** The parties agreed that the tenant would "participate with TPP program and comply with requirements of said program". TPP's Nori Anet informed the court at the onset of the hearing that they were able to meet with the tenant in her unit but otherwise have been unable to reach the tenant by phone. The tenant credibly testified about problems with retrieving messages from her Tracphone. That said, the tenant must do more to stay in contact with TPP and fulfill the requirements from the Agreement.
10. TPP is asked to attempt to continue to work with the tenant and if the tenant fails to respond to a phone message (text or voicemail), it is requested to write to the tenant through the postal mail. the tenant is required to respond to TPP and participate with TPP and follow its recommendations.
11. **Conclusion and Order:** Based on the foregoing, the court finds and so rules that the breaches of the Agreement are not substantial enough to be the basis for allowing the landlord's motion for entry of judgment at this time. Accordingly, the motion is denied, without prejudice.

So entered this 8th day of February, 2024.

Robert Fields, Associate Justice

Cc: Raquel Manzanares, Esq., Lawyer for the Day (Community Legal Aid)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3666

HIGH STREET COMMONS,

Plaintiff,

v.

JENNIFER MITCHELL, et al.,

Defendants.

ORDER

After hearing on February 6, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant, Jennifer Mitchell, appeared *pro se,* the following order shall enter:

1. The parties entered into an Agreement at the Tier 1 event on September 26, 2023. The landlord has met its burden of proof that the tenant failed to comply o the terms therein.

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2. More specifically, though the tenant made some payments she failed to make all the payments. She also failed to provide sufficient documentation for her child's emotional support animal.
3. There are, however, mitigating circumstances ....
4. Additionally, there is an application pending with RAFT and the hearing was joined by a representative from Way Finders, Inc. who confirmed that there is a pending application and that the tenant may be eligible for six months of rent and for other costs up to $7,000 (application #[redacted]).
5. The tenant shared with the court that she suffers from [redacted] various other mental health issues.
6. Based on these disabilities, the matter was referred to the Tenancy Preservation Program (TPP, for whom there was a representative at the hearing).
7. This matter is not a non-payment of rent matter but one for cause, alleging repeated and chronic non-payment and for having a dog without permission.
8. TPP shall determine if it can open the case and if it can, will assist the tenant with her RAFT application---especially the hardship documentation---with the reasonable accommodations request regrading her son's emotional support animal, and assisting in setting up a money management arrangement to avoid missed rent payments going forward.
9. The landlord asserts that the tenant's rent balance through February 2024 totals $7,895 plus court costs.
10. The tenant shall pay the landlord $1,008 by February 7, 2024, and shall follow up with her RAFT application. If TPP cannot assist the tenant, the tenant is directed

to immediately go to Springfield Partners for Community Action located at 721 State Street in Springfield (and which can be reached by phone at 413-263-6500).

11. The tenant shall pay her monthly rent going forward, beginning in March 2024, plus $50 per month towards the arrearage and costs.
12. The landlord shall cooperate with the RAFT application process. To assist that process, the court shall establish a repayment plan for any funds not covered by RAFT of $50 per month.
13. The landlord shall also make arrangements to inspect the premises and make all required repairs.
14. Based on the foregoing, and based on a colorable claim for reasonable accommodations, the landlord's motion is denied without prejudice.

So entered this 9th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1005

PYNCHON TOWNHOUSES, LLC,

Plaintiff,

v.

DENISE HERNANDEZ,

Defendant.

ORDER

After hearing on February 6, 2024, 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. The landlord's motion alleges that the tenant has failed to comply with the Court's November 17, 2023, Order.
2. The evidence at the hearing, though, does not support a finding that the tenant has done so as she has applied for RAFT and has paid $253 in November 2023

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and $254 in December 2023---amounts that are specifically ordered by the judge in that Court Order.

3. A representative from Way Finders, Inc. joined the hearing and confirmed that the tenant has a pending application and that she has repeatedly applied to RAFT and each application gets "timed out" due to the landlord's failure to engage in the application process. The RAFT representative also confirmed that the tenant is eligible for six months plus other costs owing up to $7,000.
4. A correct email address was shared with the Way Finders, Inc. representative. The landlord shall comply with the RAFT requirements.
5. If there are funds still outstanding after a RAFT payment, the parties shall come before the court to determine a repayment plan. This term is included to comply with the RAFT application process with the "repayment plan" requirement.
6. Based on the foregoing, the motion is denied without prejudice.

So entered this 8th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4212

ANA BERNARDO,

Plaintiff,

v.

NILKA RODRIGUEZ,

Defendant.

ORDER

This matter came before the court for trial on January 10 and 12, 2024, at which both parties appeared through counsel.[1] After consideration of the evidence admitted at trial, the court shall issue the following findings of fact, conclusions of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Ana Bernardo (hereinafter, "landlord") owns a 3-family dwelling located at 28 Massasoit Place in Springfield, Massachusetts.

[1] Chad Haywood has never been an occupant of the premises. He is often at the premises as he is the father of the tenant's 17-year-old son (also named Chad Haywood) and the landlord named the father even though he does not live at the premises. Accordingly, Mr. Haywood will be dismissed from this matter, without prejudice.

Lady Bernardo, the landlord's daughter, is the person mostly involved in the management of this property on behalf of the landlord. Both Ana and Lady Bernardo shall hereafter be described as "landlord". The defendant, Nilka Rodriguez (hereinafter, "tenant"), has resided in the first-floor unit (hereinafter, "premises") since prior to the landlord's purchase of the property on July 6, 2021[2]. On or about September 1, 2023, the landlord had the tenant served with a 14-day Notice to Quit for Non-Payment of Rent and thereafter commenced this instant eviction action. The tenant filed an Answer with Counterclaim and Defenses which include Retaliation, Violation of Last Month's Rent Laws, Interference with the Covenant of Quite Enjoyment, Breach of the Warranty of Habitability, Violations of the Consumer Protection Laws, and Discrimination. The Court shall address these claims below.

2. **Landlord's Claim for Rent and for Possession:** The parties entered into a Pretrial Stipulation in which they stipulated to the landlord's *prima facie* case for possession and for outstanding rent ($1,100 per month) for a total of **$7,700** through January 2024. What remains for adjudication by the Court are the tenant's claims and as much as they form the bases for a defense to possession.
3. **The Tenant's Breach of Warranty of Habitability and Quiet Enjoyment Claims:** There is no question that conditions of disrepair at the premises occurred at various times during this tenancy. There were problems with the floors, windows, walls, and doors throughout the premises that were documented by the city's inspectors, described in detail by the witnesses, and displayed in

[2] The tenant first took occupancy of the premises no November 1, 2018.

photographs. There is also no question that the landlord addressed these conditions after each citation and that the city's Code Enforcement Housing Division both cited and then found that the items were repaired (both in March 2023 and November 2023).

4. What is unclear, even after hours of testimony and admissions of documents, is the timeframe during which any condition of disrepair existed. As a general matter, in addition to city inspection reports---which include the inspection date and the date of a reinspection when conditions are repaired---the Court will often rely on credible testimony of first-hand witnesses to establish a timeline for each condition of disrepair. In this matter, however, the tenant and her daughter were unable to provide a clear record to make such determinations and the court must rely solely on the dates between the city's citation of an item of disrepair and the city's reinspection when it found the item repaired.
5. There were two periods of time when the city received complaints from the tenant and then inspected, cited, and dismissed their cases; from January 23, 2023, through March 3, 2023, and then from September 21, 2023, through November 20, 2023.[3]
6. The conditions listed in each of those Notices of Violations all violate the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the

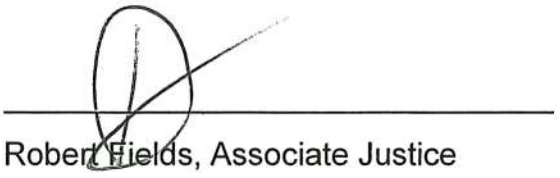
[3] The court can appreciate that the city Code Enforcement Department's paperwork reflects several rescheduled dates as well as lack of access dates. There was not, however, sufficient evidence upon which the Court could determine if any such events were the tenant's fault and/or whether (or when) repairs were completed prior to the date on which the matter was considered closed by the city.

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. Previous 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). The Court finds that the average rent abatement of 20% fairly and adequately compensates the tenant for the diminished rental value of the premises resulting from these conditions for the two time periods listed in the city's Code Enforcement Department's paperwork totaling 13 weeks. As such, the damages shall be for 13 weeks of 20% abatement, totaling **$711**.

7. **The Tenant's Other Claims:** The tenant either did not pursue or failed to meet her burden of persuasion on any of her other claims listed in her Answer.
8. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A, the tenant shall have ten days after the date of this order noted below to deposit with the court $ 7,542.29. This represents the award of damages to the landlord in unpaid rent totaling $7,700 MINUS $711 awarded to the tenant on her warranty of habitability claim equaling $6,989 plus court costs of $ 215.28 plus interest in the amount of $ 338.01. If the tenant makes this deposit in full and timely, judgment shall enter for the tenant for possession and the Clerk's Office will disburse said funds to the landlord's counsel. If the tenant does not make this deposit with the

court, judgment shall enter for the landlord for possession and for $6,989 plus costs and interest.

So entered this 12th day of February, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0076

FEDERAL MANAGEMENT CO., INC., ET AL.,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER FOR INJUNCTIVE RELIEF
	)	
MARK ALEXANDER AND EMMANUEL CRUZ,	)	
	)	
DEFENDANTS	)	

This matter came before the Court on February 12, 2024 on Plaintiff's motion for preliminary injunction. Plaintiff appeared through counsel. Defendants did not appear. Plaintiff seeks to enjoin Defendants from entering the housing complex known as Hampton Court located at 2 Hampton Avenue, Northampton, Massachusetts (the "Property").

Based on the facts set forth in the Verified Complaint, the Court finds that Plaintiff is likely to succeed on the merits of its claim that Defendants, who are neither tenants nor authorized occupants of the Property interfered with the quiet enjoyment of residents of the Property by engaging in illegal activity in Apartment 203. The risk of irreparable harm to Defendants if they are enjoined from entering the Property is small given that they do not have a legal right to be present there. The balance between the risk of irreparable harm to Defendants in light of Plaintiff's chance of success on the merits cuts in favor of Plaintiff. *See Packaging Industries*

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Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980). Accordingly, the following order shall enter as a preliminary and a permanent injunction:

Defendants are enjoined from entering onto and being physically present at the property known as Hampton Court in Northampton, Massachusetts.

SO ORDERED.

February 12, 2024

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2763

ANTHONY SCHEIP,

Plaintiff,

v.

OMAR WILLS,

Defendant.

ORDER

After hearing on February 7, 2024, on the tenant's motion to stop the physical eviction scheduled for the same day, the following order shall enter:

1. The tenant asserted that he cannot remove his belongings from the shed because the roof has collapsed making it unsafe to retrieve his items.
2. At the request of the judge, the matter was recessed to allow landlord's counsel to touch base with the sheriff and the moving company.

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3. The landlord's counsel confirmed that the move-out would be cancelled and not rescheduled until the shed is made sufficiently safe for retrieval of the tenant's belongings.
4. Said rescheduling shall be by new notice in compliance with G.L. c.239.
5. Because the execution may expire prior to the shed issues being remedied, the landlord may return the execution and request a new one (with a copy of the cover letter also sent to the tenant) without leave of court.

So entered this 12th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5540

SOUTH MIDDLESEX NON PROFIT HOUSING CORP.,

PLAINTIFF

v.

PATRICIA WILLIAMS,

DEFENDANT

ORDER ON MOTION TO DISMISS

After hearing Defendant's motion to dismiss is denied. The Court finds that the summons and complaint based on no cause is consistent with the notice to quit. The notice to quit shall be considered a no fault notice and the references to lease provisions shall have no effect. Plaintiff is prohibited from raising any lease violations as part of its case in chief, and Defendant shall be allowed all rights afforded tenants being evicted for no fault (e.g. G.L. c. 239, § 9, et seq.).

Defendant shall be permitted to file an amended answer and propound additional discovery. The Clerk's Office shall send a scheduling order that includes a trial date.

SO ORDERED.

DATE: February 12, 2024

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

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COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

WESTERN DIVISION HOUSING COURT
Civil Action. No. 23 CV 94

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

v.

JAMES C. PHILLIPS and TAUNI L. PHILLIPS, as owners of the property located at located at 42 Cleveland Street, Greenfield, Massachusetts, UNITED STATES DEPARTMENT OF AGRICULTURE RURAL HOUSING SERVICE, as mortgagee and a party with an interest in the property; and THE UNITED STATES OF AMERICA, as a party with an interest in the property,

Respondents.

Re: Premises: 42 Cleveland Street, Greenfield

ORDER TO APPROVE SALE AND DISSOLVE THE RECEIVERSHIP OF 42 CLEVELAND ST GREENFIELD, MA

This matter came before the Court on February 9, 2023 on the Receiver's Motion to Sell and Dissolve the Receivership. After hearing, based on the entire record of these proceedings and the Court being sufficiently advised and after due deliberation thereon,

IT is hereby ordered, adjudged and decreed that:

1) The Special Attorney Receiver's Motion to Approve Sale and Dissolve the Receivership is ALLOWED.

2) Rural Development, Inc. is hereby approved as the buyer of the property located at 42 Cleveland Street, Greenfield, Massachusetts.

3) The court finds that all lien holders and interested parties were given sufficient notice of the Special Attorney Receiver's motion.

4) TM Properties Inc. may proceed accordingly with recording documents evidencing the ownership transfer of 42 Cleveland Street, Greenfield, MA.

5) At closing, all municipal liens and fees will be paid from the closing proceeds.

6) The receiver's lien shall be paid in full from the proceeds of the sale of the property. The receiver's lien as of February 9, 2024, is $8,035.33 and the final amount of the lien at closing is expected to include additional attorneys' fees and the costs to clean out the property as required by the purchase and sale agreement between the Special Attorney Receiver and Rural Development, Inc.

7) At closing, the closing attorney representing Rural Development, Inc. shall place the net proceeds in escrow in her IOLTA account. The net proceeds shall thereafter be disbursed as follows:

   a. First, to the payment of the cost of abating asbestos at the property; and

   b. Second, to the rehabilitation expenses incurred to bring the property into compliance with the State Sanitary Code, the State Building Code, and such other state codes and regulations applicable to the property.

8) The transfer of the property to Rural Development, Inc. shall be free and clear of all subordinate liens and mortgages, including:

   a. A Mortgage by James C. Phillips and Tauni L. Phillips to the United States of American acting through the Farmers Home Administration, United States Department of Agriculture and recorded in the Franklin County Registry of Deeds, Book 2418, Page 100 on February 27, 1990, as affected by a Scrivener's Affidavit

recorded at the Franklin County Registry of Deeds, Book 2420, Page 181.

9) The receivership as to 42 Cleveland Street, Greenfield, Massachusetts shall be dissolved and the Special Attorney Receiver is discharged upon the transfer of ownership of the property by TM Properties Inc. to Rural Development, Inc.

10) The Order on Petition to Enforce the State Sanitary Code and for Appointment of a Receiver at 42 Cleveland Street, Greenfield, Massachusetts which is recorded at the Franklin County Registry of Deeds at Book 8412, Page 167 shall be dissolved and released upon the recording of the deed.

11) The Special Attorney Receiver shall file a final accounting with the court after the transfer of the property.

So entered this 14th day of February, 2024.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-3790

NIXON AUGUSTIN,

PLAINTIFF

v.

ANNA LUZ ROSARIO,

DEFENDANT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This non-payment summary process case came before the Court on February 7, 2024 for a bench trial.[1] Both parties appeared self-represented.[2] The subject apartment is located at 16 Richelieu Street, Apt, B, Springfield, Massachusetts (the "Premises").

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

Defendant did not pay her portion of the rent ($251.00) for the months of June to November 2023 in the aggregate amount $1,506.00. Due to the condition of the Premises, Section 8 did not pay Plaintiff, and he therefore claims he is entitled to the full contract rent of $900.00 for the months of December 2023, January 2024 and February 2024. The Court finds the total amount of Plaintiff's claim for damages is

[1] The trial began on January 4, 2024 and continued on January 24, 2024. The Court stayed the conclusion of the trial until the repairs had been made and inspected by the Section 8 administrator.
[2] Defendant appeared over Zoom from a recovery facility. Her sister, who cares for her, appeared in person in the courtroom.

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$4,206.00. Plaintiff served Defendant with a 14-day notice to quit on August 2, 2023. Defendant does not contest service or receipt. Defendant has not relinquished possession.

Although Defendant did not file an answer, she raised defenses to possession based on the conditions of disrepair in the Premises. The Court finds that Defendant had notice of defective conditions as of August 14, 2023 when the Premises failed a Section 8 inspection. The issues cited included a defective refrigerator, dripping faucets, foundation defects and floor tiles that needed replacement. None of the issues had been repaired at the time of the October 27, 2023 reinspection. On November 18, 2023, the city of Springfield's code enforcement department inspected and found a nonworking smoke detector, no power to the stove and a missing doorknob. Upon reinspection on January 11, 2024, the issues cited on November 18, 2023 had been corrected. On January 30, 2024, the Section 8 administrator notified the parties that the Premises passed inspection.

The Court finds that the conditions in the unit did not constitute a serious interference with Defendant's tenancy, particularly because for much if not all of the time in question Defendant was residing in a recovery facility. The conditions of disrepair do, however, reduce the rental value of the Premises. The Court finds that Defendant proved by a preponderance of the evidence that Plaintiff breached the implied warranty of habitability. Damages for breach of the implied warranty of habitability are measured by 'the difference between the value of the premises as warranted and the value of the premises as it exists in its defective condition.'" *Id.*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994). The Court finds that

Defendant is entitled to a rent abatement of 15% for the period of August 2023 through January 30, 2023, a period of six months. Warranty damages are calculated based on contract rent, here $900.00, so the total amount of damages to which Defendant is entitled is $810.00.

Because this case was commenced for non-payment of rent, Defendant has the opportunity to pay the rental arrears and reinstate her tenancy. She may be eligible for rental assistance through the RAFT program; however, neither party could tell the Court if Defendant's Section 8 subsidy has been reinstated and as of what date. If the voucher is reinstated back to December 2023, Plaintiff will receive some of the back rent from the Section 8 administrator. Until that question is answered, Defendant may not be able to seek rental assistance.

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

1. No later than March 8, 2024, Defendant shall:
    a. provide the Court with written documentation from the Section 8 administrator as to the date Defendant's subsidy has been reinstated;
    b. provide the Court with an application identification number if she has applied to the RAFT program; and
    c. provide the Court with evidence of any payments made to Plaintiff since February 7, 2024.
2. After reviewing the submissions, the Court will enter an order for judgment, offsetting from the balance owed the $810.00 in abatement damages.

3. The Court will schedule further hearing if it cannot determine, based on the submissions, the amount of rent owed after considering the reinstatement of Defendant's voucher and rental assistance available to her.
4. Upon determining the amount owed by Defendant, the Court shall give Defendant ten days to pay the balance owed.

SO ORDERED.

DATE: February 14, 2024

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-4487

BRIDGE ST SHELBURNE REALTY TRUST, PLAINTIFF v. COLLEEN VOUDREN, DEFENDANT	ORDER FOR AMENDED JUDGMENT

This summary process case came before the Court on February 9, 2024 on Plaintiff's motion pursuant to Mass. R. Civ. P. 59(e) to alter and/or amend the judgment. Defendant did not appear or oppose the motion. A Court order pursuant to G.L. c. 239, § 8A entered on January 9, 2024. Plaintiff's motion to amend was filed on January 18, 2024 and is therefore timely. After Plaintiff filed the instant motion, the time period for Defendant to pay the balance due as set forth in the § 8A order expired and final judgment entered in favor of Plaintiff on January 22, 2024.[1]

The basis of Plaintiff's motion to amend the judgment is an alleged error made by the Court in determining the date of the property inspection conducted by the local Board of Health. After trial on December 15, 2023, the Court found that Plaintiff was on notice of the need for repairs in October 2022 after an inspection by the Board

[1]. Defendant's notice of appeal was prematurely filed on January 19, 2024 and thus does not constitute a valid notice of appeal.

of Health. Plaintiff asserts that the inspection was conducted in October 2023.[2] After reviewing the transcript, the Court finds that, although Defendant was vague about the year when she initially testified about the inspection report, she subsequently testified that, as of the trial date, two months had passed since the Board of Health inspected. Defendant's testimony supports Plaintiff's contention that he had notice of the need for repairs from the Board of Health in October 2023, not October 2022.

Accordingly, the Court amends its order and finds that Plaintiff was on notice in October 2023. This amended finding has two consequences. First, G.L. c. 239, § 8A does not apply because it requires that a landlord have notice of defective conditions prior to the tenant being in arrears in rent. Here, Defendant was in arrears prior to October 2023, and thus she cannot use § 8A as a defense to possession.

Second, although Defendant cannot use § 8A as a defense to possession, she remains entitled to damages for breach of warranty for the duration of time that the conditions of disrepair existed. The Court awarded a 10% abatement (on rent of $650.00 per month) on account of the defective conditions, and given that Plaintiff was not on notice until October 2023, the abatement applies for two months (mid-October to mid-December) in the amount of $130.00. This amount shall be offset against the $3,400.00 in unpaid rent that the Court found to be due Plaintiff.

Accordingly, following order shall enter:

1. Plaintiff's motion to amend the judgment is allowed.

[2] The Court did not have the actual inspection report in evidence because Defendant did not offer a certified copy of the report nor a witness to authenticate it, and Plaintiff objected to its admission.

2. Amended final judgment for possession and $3,270.00 in damages, plus court costs, shall enter in favor of Plaintiff.

3. Defendant shall have ten (10) days of the date this amended judgment is entered to file a new notice of appeal.

4. Execution (eviction order) may issue by application after the ten-day appeal period.

SO ORDERED.

DATE: February 14, 2024

_____
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-2077

JEANA MARIE BRODEUR AND ROBERT F. BRODEUR, JR.,

Plaintiffs

v.

CONNIE PALMER,

Defendant

ORDER ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This summary process came before the Court on January 31, 2024 for a case management conference. At the case management conference, it was brought to the Court's attention that Defendant had filed a motion for partial summary judgment on November 20, 2023 and that Plaintiffs had filed their opposition on December 25, 2023 but that the motion had not been scheduled for hearing. Plaintiffs' counsel and Defendant's counsel each assented to the Court deciding the motion on the papers without oral argument. A jury trial is scheduled to commence on March 18, 2024.

Defendant is the mother of Plaintiff Robert Brodeur and mother-in-law of Jeana Marie Brodeur. In June 2008, Plaintiffs purchased a parcel of real estate in Lanesboro, Massachusetts and subsequently constructed two single family homes connected by a shared garage with an address of 40 Potter Mountain Road, Lanesboro, Massachusetts.

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For purposes of this decision, the entire property shall be referred to herein as the "premises," the home where the Plaintiffs reside or resided shall be called the "Brodeur home" and the home where Defendant resides is the "Palmer home."

Title to the premises is in the name of Plaintiffs. Defendant and her late husband contributed money from the sale of their home in May 2008 to assist Plaintiffs in purchasing the premises and constructing the homes. Although not on the deed, Defendant and her late husband Defendant is a co-borrower on the mortgage note. On June 12, 2008, the parties (including Defendant's husband) entered into a written agreement (the "Agreement") containing the following relevant provisions:

> "[Defendant] will have no equity or title interest in the premises but, by this agreement, will have access to and the right to live in the Palmer home as their personal residence for the remainder of their individual natural lives with no obligation to pay rent to the Brodeurs nor make any payments on any note or real estate mortgage on the premises." Agreement, ¶ 2.
>
> "Palmers and Brodeurs will share by private agreement expenses of ownership and use of the homes including, without limitation, homeowners' insurance premiums, real estate taxes, ordinary home maintenance on the homes and utility charges." Agreement, ¶ 4.
>
> "This agreement will not be interpreted to create any form of life estate in the premises or the Palmer home in Palmers or either of them but shall be construed and interpreted simply as their personal contractual right to occupy the Palmer home as their personal residence." Agreement, ¶ 5.

By letter dated February 13, 2023, Jeana Brodeur purported to terminate Defendant's right of occupancy of the Palmer home with a thirty day notice to quit, asserting that Defendant was a tenant at will and that Plaintiffs were non-renewing her tenancy. The notice required Defendant to vacate by March 13, 2023. Defendant contends that the notice to quit is defective and, therefore, that Plaintiffs are unable

to establish their prima facie case for possession. *See Cambridge Street Realty LLC v. Stewart*, 481 Mass. 121, 129-130 (2018) (defective notice to quit represents a failure of a condition precedent to suit).

Pursuant to G.L. c. 186, § 12, "Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and, if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer." Here, the parties did not agree upon periodic rental payments. There was no meeting of the minds that Defendant would occupy the Palmer home on a month-to-month basis; in fact, the parties explicitly agreed that Defendant could reside there for the rest of her life with no obligation to pay rent nor make any payments on any note or real estate mortgage. *See* Agreement, ¶ 2.

Although periodic payments in lieu of rent can constitute consideration necessary to form a tenancy at will, in this case Defendant's agreement to share in the costs of "homeowners' insurance premiums, real estate taxes, ordinary home maintenance on the homes and utility charges" does not create a month-to-month tenancy that could be terminated at the end of a rental period. The parties contemplated that Defendant would make these payments in consideration of a lifetime right of occupancy, which is inconsistent with the notion that Defendant was required to make regular payments as a tenant at will. Therefore, the parties' agreement to share certain expenses does not create a tenancy at will in this case.

Accordingly, because there was no rent or other consideration in lieu of rent to be paid in regular monthly installments, the thirty day notice is ineffective to terminate the tenancy and a notice giving three months' notice was required. Because the notice to quit is defective, Plaintiff cannot establish its prima facie case for possession. Plaintiff's motion for partial summary judgment is ALLOWED, and Plaintiffs' claim for possession is DISMISSED. This case shall be converted to the civil docket with Ms. Palmer as the plaintiff and the Brodeurs as the defendants, and the trial shall proceed on Defendants' counterclaims.

SO ORDERED.

DATE: February 14, 2024

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-3444

JONATHAN COUPER, et al.,

Plaintiffs,

v.

KARL RAIMER, et al.,

Defendants.

ORDER

After hearing on January 31, 2024, the following order shall enter:

1. The tenants filed an emergency motion for alternate housing, alleging the landlord was not making repairs.
2. The landlord's position is that the tenant is not allowing the work to get done.
3. Upon consideration of both parties' testimony, the order shall be that the landlord's plumber (Bill Jones) make the plumbing repairs. The plumber shall be present for the work and not dispatch his employee, Mr. Kisselbrook, to do the work without Jones present.

4. The landlord explained that there is a need for multiple workers to be present at the premises to remove the cast iron bathtub. The landlord's brother, Nick, will not be present at the premises to remove the tub.
5. The landlord shall remove the old tub and make the plumbing repairs upon 48 hours' advance written notice of same to the tenants (this may include texts).
6. The tenants must respond immediately to the landlord's request for access and If the date and time is not agreeable with the tenants, they must respond immediately with alternative times for said repairs.

So entered this 14th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.		HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-0272
YOLANDA PEREZ, PLAINTIFF	)	
v.	)	RULING AND ORDER ON PLAINTIFF'S MOTION FOR ATTACHMENT
POSIADLOSC, LLC, ET AL., DEFENDANTS	)	

This case came before the Court on February 8, 2024 for a hearing on Plaintiff's motion for approval of a prejudgment real estate attachment in the amount of $500,000.00. All parties appeared through counsel.

Pursuant to Mass. R. Civ. P. 4.1(c), property may only be attached "upon a finding by the court that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance shown by the defendant to be available to satisfy the judgment." Here, Defendants[1] have insurance coverage for negligence claims but the insurers have reserved their rights to disclaim coverage for claims based on code violations.

If Plaintiff can establish a breach of the implied warranty of habitability, the strict liability standard would be applicable only to claims for rent abatement, not for claims of personal injury, for which landlord liability is subject to a negligence

[1] As used herein, the term "Defendants" does not include the insurance company defendants.

standard. The claims in this case for rent abatement appear to be de minimis and do not warrant prejudgment security in the form of a real estate attachment.

Given that Plaintiff must establish negligence to recover damages for personal injury, the Court is satisfied that there is a reasonable likelihood that Defendants have sufficient liability insurance to satisfy a judgment. Moreover, given that trial is scheduled to commence in less than a month, the Court finds an insufficient basis to order a prejudgment real estate attachment in this matter. Accordingly, Plaintiff's motion for a real estate attachment is DENIED.

SO ORDERED.

DATE: February 14, 2024

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5452

DONNA PHANEUF AND SCOTT PHANEUF,

PLAINTIFF

v.

CHARLES ACKEIFI N/K/A KWESI ENOS-HOPE,

DEFENDANT

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

This non-payment summary process case came before the Court for a bench trial on February 12, 2024. Both Plaintiffs and Defendant appeared self-represented. The subject apartment is located at 19 Maple Street, Easthampton, Massachusetts (the "Premises").

The parties stipulated to Plaintiffs' prima facie case for possession and unpaid rent. Defendant acknowledged receipt of the notice to quit and unpaid rent of $9,000.00 based on rent of $1,000.00 per month. Defendant did not file an answer; however, without objection by Plaintiffs, the Court accepted Defendant's oral motion to assert claims and defenses related to conditions of disrepair and interference with quiet enjoyment.[1] Based on all the credible testimony, the other evidence presented

[1] Defendant considers himself disabled. [redacted]. Given Defendant's mental health challenges, the Court did not require him to file a written answer to be filed prior to trial.

at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Defendant has paid no rent since June 2023. He had informed Plaintiffs in April 2023 that he intended to vacate on June 1, 2023. Plaintiffs signed a lease for a new tenant to occupy the Premises as of June 1, 2023, but Defendant did not vacate. The relationship soured around this time, causing Defendant to stop paying and leading to other conflicts. Defendant operates a taxi service and claims that his vehicles were vandalized due to Plaintiffs' failure to properly light the parking area at the Premises. Plaintiffs provided evidence that the parking area was lit with motion and photocell lighting. The Court finds no merit to Defendant's assertion that Plaintiffs failed to provide adequate exterior lighting.

Moreover, Defendant contends that Plaintiffs installed surveillance cameras at the Premises, including inside his apartment. The Court finds no evidence that Plaintiffs installed any cameras in the Premises and accepts Plaintiffs' credible testimony that the only exterior camera belongs to a tenant and that it only captures exterior common areas. The Court thus finds insufficient evidence that Plaintiffs substantially interfered with Defendant's quiet enjoyment of his tenancy.[2]

Regarding conditions of disrepair, Defendant contends that he had to paint over smoke-stained walls when he took possession in 2020.[3] He also claims that he told Plaintiffs about leaking faucets and a cracked window and that Plaintiffs

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[2] The Court's findings are limited to landlord-tenant matters. The Court took no evidence and makes no findings about any conduct that may have led to criminal charges being filed against any of the parties or their family members.

[3] Defendant testified that he is not "asking for anything" relating to the painting he did, but stated that he raised the issue to point out that Plaintiffs "never kept their promises."

promised to make repairs but never did. Defendant provided no evidence to support his claim that he notified Plaintiffs about the need for repairs prior to contacting the Easthampton Board of Health on January 11, 2024. The resulting housing inspection report dated January 25, 2024 cites a crack window pane, two dripping sink faucets and missing floor tiles. Plaintiffs testified that Defendant has failed to allow them to enter to make repairs.

The Court finds that the conditions of disrepair do not constitute breach of the implied warranty of habitability as they do not rise to the level of "substantial" violations of the State Sanitary Code or "significant" defects in the dwelling unit. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim). Although Defendant claims he had notified Plaintiffs of these problems over a long period of time, the only evidence of notice came in January 2024, eight months after Defendant stopped paying rent and one month prior to trial.

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

1. Judgment for possession and $9,000.00 shall enter in favor of Plaintiffs.
2. As an accommodation relating to Defendant's mental health issues, execution (eviction order) shall not issue until March 1, 2024 to give Defendant the opportunity to pay the judgment balance of $9,000.00 plus court costs, either with his own funds or with rental assistance through the

RAFT program.[4] The Court asked Defendant to meet with Ms. Amet from the Tenancy Preservation Program for a possible intake after the trial was completed.

3. If Defendant has paid the judgment balance by March 1, 2024, Plaintiffs shall notify the Court and file a dismissal of this case.
4. If, as of March 1, 2024, Defendant has a pending application for rental application, Plaintiffs may not request issuance of the execution until that rental application has been approved or denied.
5. Either of the parties may request a hearing if the party requires further guidance regarding the issuance of the execution.

SO ORDERED.

DATE: February 14, 2024

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Tenancy Preservation Program of Pioneer Valley
Court Reporter

[4] Defendant met briefly with Ms. Amet from the Tenancy Preservation Program ("TPP") after the trial concluded, and the Court will give TPP time to determine if they are able to assist Defendant in filing a RAFT application or provide other supports for this tenancy.

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 PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This post-foreclosure summary process case came before the Court on January 29, 2024 for a hearing on Plaintiff's motion for summary judgment. 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").

To prevail on its motion for summary judgment, Plaintiff must demonstrate with admissible documents that there are no genuine issues as to any material facts regarding its legal title to the Property. *See Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). In a summary process action for possession after foreclosure by sale, Plaintiff must make a prima facie showing that it obtained a deed to the Property and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded. *See Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). In this case, Plaintiff submitted certified copies of the foreclosure

deed and affidavit of sale showing compliance with statutory foreclosure requirements recorded in the Hampden County Registry of Deeds. The Court finds that the pleadings and affidavits submitted by Plaintiff demonstrate that the mortgagee strictly complied with the statutory power of sale and is entitled to a judgment of possession.

Defendant does not oppose Plaintiff's motion and failed to submit admissible evidence showing a genuine, triable issue as to Plaintiff's superior right to possession of the Property. Accordingly, Plaintiff's motion for summary judgment on its claim for possession is ALLOWED. The following order shall enter:

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

2. Execution for possession shall issue upon written application ten (10) days from the date on which judgment enters.

3. Use of the execution shall be stayed through February 29, 2024.

SO ORDERED.

February 14, 2024

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. 19-CV-372

ESTATE OF ABDIKADIR ADEN, et al.,

Plaintiffs,

v.

LRS REALTY, LLC, et al.,

Defendants.

ORDER

This matter came before the court on January 24, 2024, for a Pretrial Conference, at which all parties appeared through counsel. After said conference, the following order shall enter:

Motions *in limine*:

1. **Motion *in limine* to Exclude Settlement Discussions:** Assented to by the parties.
2. **Motion *in limine* to Exclude Evidence of Medical Treatment for Which no Medical Records were Disclosed:** Allowed by assent of the parties.
3. **Motions *in limine* to Exclude Evidence of Plaintiffs' Claims for Lost Wages:** Denied, without prejudice, and the deadline for depositions of any

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and all wage-earning plaintiffs shall be reopened for depositions regarding claims for lost wages.

4. **Motion *in limine* to Exclude Evidence of Latent Defect Due to Lack of Notice to Landlord:** Denied.
5. **Motion *in limine* Excluding Testimony by Occupants of Other Rental Units at the Premises:** Denied. The Court is open, however, to requests by the parties for a proposed jury instruction that jurors not be influenced by sympathy for the witness(es).
6. **Motion *in limine* Requesting Opportunity to Suggest Specific Monetary Amount of Damages to the Jury:** This motion was allowed by assent of the parties. What remained was whether the plaintiff can seek a range of damages as opposed to a set amount. Plaintiff counsel had two weeks to brief this issue and defendants two weeks to do brief thereafter. The court is not in receipt of any briefs on this issue. If the parties still wish to brief the issue, they must file same by no later than February 21, 2024, and it will be addressed at the next pretrial conference noted below.

Attorney *Voir Dire*:

7. The motion for attorney conducted *voir dire* was previously allowed. The issue of whether it would by panel or individual remained for the court to decide. **The attorney *voir dire* shall be individual—at side bar---and not by panel**. Given that the nature and style of the questions submitted by plaintiffs are for panel *voir dire*, the plaintiff shall re-formulate juror questions for individual *voir dire*, and file and serve by February 21, 2024. The other

parties may choose to reformulate and re-submit, serve, and file by that same date.

Jury Demand:

8. Two of the parties indicated an openness to proceeding jury-waived. The parties shall confer and report to the court at the next pretrial conference noted below whether they will proceed jury-waived. In order for this matter to proceed jury-waived, all parties shall need to waive their right to a jury.

Somali Interpreter:

9. The parties are asked to review the need for a Somali interpreter, specifically sharing with the court how many days of the trial such interpreter services are needed.

Next Hearing:

10. This matter shall be scheduled for a next pretrial conference for **February 23, 2024, at 2:00 p.m. by Zoom**. A separate notice of hearing has issued from the Clerks' Office with Zoom contact information.

So entered this 15th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-90

YVONNE HART,

Plaintiff,

v.

RAMONA ETTER,

Defendant.

ORDER

After hearing on February 9, 2024, at which each party appeared without counsel, the following order shall enter:

1. The parties worked with Housing Specialist Jake Hogue and also recessed the hearing and the defendant tenant went down to VOC in Holyoke regarding her Fuel Assistance application.
2. VOC has committed to putting oil in the tank tomorrow (February 10, 2024). Until then, the tenant may only safely use her space heaters in a manner for which they are designed.

3. If the tenant is unable to have oil placed in her tank, the landlord may bring this matter before the court on an emergency motion.

So entered this 16th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3911

ELIZABETH ROCCAMO,

Plaintiff,

v.

UNIQUE CAMPBELL,

Defendant.

ORDER

After hearing on February 12, 2024, on the defendant tenant's motion to stop a physical eviction at which both parties appeared without counsel, the following order shall enter:

1. For the reasons stated on the record including the tenant being able to pay the landlord $700 prior to the eviction currently scheduled for February 13, 2024, the fact that the tenant is asserting that the non-payment of rent is due to Way Finders, Inc.'s failure to properly recalculate her portion of the Section 8 rent

when she lost her employment, and the pending RAFT application that potentially will pay all outstanding rent, the physical eviction shall be cancelled.

2. More specifically, if the tenant pays the landlord $700 by noon on February 13, 2024, the landlord shall cancel the physical eviction. If the tenant fails to make said payment, the landlord does not have to cancel the eviction[1].
3. If the eviction is cancelled, the parties must cooperate with and diligently follow up with the RAFT application.
4. The tenant shall also meet with Way Finders, Inc. regarding her Section 8 rental subsidy and investigate and pursue her claim that her portion of the rent was miscalculated.
5. This matter shall be scheduled for further hearing on **February 22, 2024, at 9:00 a.m.**

So entered this 16th day of February, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] There is a severe snowstorm in the weather forecast for February 13, 2024. The landlord agrees that she is responsible for snow removal from the tenant's driveway. If at noon the driveway is cleared, the tenant shall bring the $700 to the landlord at the landlord's home. If the tenant's car is "snowed in" the tenant shall take a photograph of the car and send it to the landlord. If the landlord receives the monies or a text showing the car unable to be driven from the driveway due to snow accumulation, the landlord must cancel the physical eviction.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4456

29 SPRING STREET, LLC,

Plaintiff

v.

MARIA HERNANDEZ,

Defendant

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

This summary process case brought for nonpayment of rent came before the Court for a bench trial on February 8, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential premises in question is located at 29 Spring Street, Apt. 4L, Springfield, Massachusetts (the "Premises"). Defendant is not eligible for rental assistance until March 2024, and therefore G.L. c. 239, § 15 is not applicable.

Defendant stipulated to Plaintiff's prima facie case for possession and $15,500.00 in unpaid rent at a rate of $1,550.00 per month. Defendant filed a late answer on the date of trial with the assent of Plaintiff. 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 testified that she is missing a radiator in the kitchen, has a roach and mouse infestation, the ceiling leaks water, the toilet clogs and overflows, and a window in the back room is broken. She claims that she notified Plaintiff via text in November or December of 2023, but provided no evidence of such notice. Defendant called the

Springfield Code Enforcement Department ("CE"), who issued a notice of violations on February 3, 2024. Defendant offered no photographs or witnesses regarding the conditions of disrepair.

After RAFT paid $7,750.00 in March 2023, Defendant reached a zero balance. She failed to pay rent in April 2023 and, but for one payment of $1,550.00 in May 2023, has made no other rent payments. Because Defendant was in arrears in rent prior to giving notice to Plaintiff of the need for repairs (based on her testimony that she sent text messages to Plaintiff in November or December 2023), G.L. c. 239, § 8A does not apply. Nonetheless, the Court finds that she is entitled to a rent abatement for breach of the warranty of habitability. Although Defendant did not have proof that she gave notice to Plaintiff in November or December 2023, the Court credits her testimony.[1] The Court concludes that monthly rent should be abated by 10% for the months of November 2023 through February 2024 for a total of $620.00.

Accordingly, in light of the governing law, the following order shall enter:

1. Judgment for possession and $14,880.00 in damages, plus court costs, shall enter in favor of Plaintiff.
2. Execution may issue upon written application after expiration of the 10-day appeal period.

SO ORDERED.
DATE: February 20, 2024

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

[1] Plaintiff's counsel acknowledges that Defendant did have the text messages when the parties were in court previously, presumably on November 9, 2023 at the First-Tier Court Event.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5046

BRIDGET BELISLE,

Plaintiff

v.

BONNIE AROOTH, ET AL.,

Defendants

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

This no fault summary process case came before the Court for a bench trial on January 11, 2024. Plaintiff and Defendants Bonnie Arooth and Francisco Flores ("Defendants")[1] appeared self-represented. Defendants reside at 1044 Thorndike Street, Palmer, Massachusetts (the "Premises").

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. Although the case was brought for no cause, Plaintiff claims $5,000.00 in unpaid rent through the month of trial (rent is $1,000.00 per month). Defendant Arooth filed an answer asserting bad living conditions.

At trial, the Court learned that, on August 10, 2023, Defendant Arooth filed a small claims case seeking damages against Plaintiff (Docket No. 23H79SC00097) alleging numerous conditions of disrepair in the Premises, including a leaking furnace, water leakage and damage, harassment, overflowing dumpsters, dog urine odors, a broken step and electrical

[1] Default entered against Defendants Carolina Hattler and Jessica Carpenter for failure to appear.

issues. Trial in the small claims case took place on November 29, 2023. Defendants failed to demonstrate by a preponderance of the evidence any conditions of disrepair separate from those brought in the small claims case or which continued after the date of the small claims trial. Accordingly, the Court rules that Defendants' claims and defenses have already been judged on the merits and may not be relitigated in this case pursuant to the doctrine of res judicata. Defendants are not permitted to have multiple opportunities to recover damages for the same claims.[2]

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

1. Judgment for possession and court costs shall enter for Plaintiff.
2. Defendant may apply for the execution (eviction order) in writing ten days after the date that judgment enters.

SO ORDERED.

DATE: February 20, 2024

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

cc: Court Reporter

[2] Defendants do claim that Plaintiff violated the security deposit law, but they had no evidence and did not prove such a violation by a preponderance of the evidence.

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-94

STEVEN BREDA and ANNE MARTIN,

Plaintiffs,

v.

LENNY BOUDREAU and PAUL ANDRZEJEWSKI,

Defendant.

ORDER

After hearing on February 14, 2024, on the plaintiff landlords' request for injunctive relief at which the landlords and the tenant defendant, Lenny Boudreau, appeared without counsel but for which co-defendant Paul Andrzejewski did not appear, the following order shall enter:

1. The landlords assert that Mr. Andrzejewski is occupying the subject premises along with the tenant, Lenny Boudreau, but not as their tenant and they are seeking an order for his immediate removal.

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2. Mr. Boudreau did not dispute that Mr. Andrzejewski is occupying as his guest and testified that his guest is staying with him because he (Boudreau) does not otherwise feel safe due to alleged events between the Boudreau and landlord Breda.
3. Breda and Boudreau have an upcoming eviction matter in the Housing Court, 24-SP-364, and is scheduled for a First-Tier event on **February 28, 2024, at 9:00 a.m.** The tenant, Boudreau, says that he is looking to move out as soon as he can secure alternate housing.
4. No emergency order shall issue at this time and this matter shall be consolidated for hearing with *Breda v. Boudreau,* 24-SP-364. Hopefully, all issues between the parties shall be resolved at the First-Tier event. If not, and the Summary Process matter is scheduled for trial, the Clerk's Office is asked to schedule this Civil Action to be scheduled for the same time for further hearing.

So entered this 20th day of February, 2024.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Court Reporter

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0114

BRANDI GAMBLE,)
)
PLAINTIFF)
)
v.) ORDER TO APPEAR
)
KYONDA EATON,)
)
DEFENDANT)

This matter came before the Court on February 20, 2024 for hearing on Plaintiff's emergency motion. Defendant did not appear despite being served by a constable on February 17, 2024. Plaintiff expressed grave concern that Defendant is going to allow the pipes to freeze by not using the heat. In light of the foregoing, the following order shall enter:

1. Defendant Eaton shall set the heat at no less than 55 degrees at all times.
2. Defendant Eaton shall appear in person in the Springfield session of the Western Housing Court at 37 Elm Street on **February 28, 2024 at 2:00 p.m.**
3. If Defendant Eaton fails to appear at the scheduled hearing, a capias (civil arrest warrant) may issue and/or the Court may allow Plaintiff to lock the thermostat with the heat set at a temperature determined by this Court.
4. The fee for injunctive relief set forth in G.L. c. 262, § 4 shall be waived.

SO ORDERED.

February 20, 2024

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

cc: Court Reporter