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May 23, 2024 — Jun. 17, 2024
(*and certain older decisions*)

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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. 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*

Attorney Dulles serves as Editor-in-Chief, with Attorneys Manzanares and Vickery 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.

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

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

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PUBLICATION

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

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3968

BENSON MS REALTY, LLC,

Plaintiff,

v.

CAROL and JOHN BENSON,

Defendants.

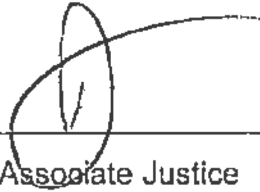
ORDER

After hearing on May 14, 2024, the following order shall enter:

1. Both the plaintiff's motion.for summary judgment and to strike are continued to allow for further discovery.
2. The G.A.L. shall have 30 days from the date of this order noted below to serve discovery on the plaintiff and any non-parties.
3. Responses to said discovery are due 45 days after receipt of same.

4. The G.A.L. report, other than a submission of his time to the Clerks Office, shall be extended and a new due date shall be discussed at the Status Hearing noted below.
5. A Status Hearing shall be scheduled for **August 5, 2024, at 9:00 a.m.** in the Hadley Session. John Benson shall also appear at that hearing, in addition to the other parties.

So entered this 14th day of May, 2024.



Robert Fields, Associate Justice

Cc: Patrick Toney, Esq., G.A.L.
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2778

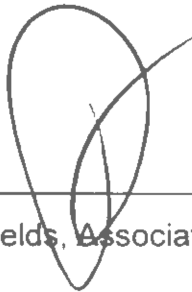
CHRISTOPHER MASON, Plaintiff, v. JOHN HARTLEY and CYNTHIA WATERS, Defendants.	ORDER FOR ENTRY OF JUDGMENT

After hearing on May 17, 2024, at which all parties appeared with counsel, the following order entered on the record and are memorialized herein:

1. The Court conducted an evidentiary hearing on both the landlord's motion to lift the stay on the execution and the tenants' opposition to same as well as on the tenants' oral motion for further stay in accordance with G.L. c.239, ss.9 & 10 and through the court's general equitable powers.
2. For the reasons stated on the record, the Court finds and so rules that the landlord met its burden of proof that the tenants have violated the underlying Agreement dated November 10, 2023, as well as the Court's December 27, 2023, Order.

3. The tenants have been verbally abusive of the landlord and Ms. Roberts who co-resides with the landlord, calling them both profane and inappropriate names. The tenants have also failed to provide housing search logs to the landlord and failed to pay for May 2024 use and occupancy. They have also been careless in their throwing food out their window to feed wildlife and by leaving garbage to accumulate in the foyer and porch for no sufficient reason.
4. Accordingly, judgment for possession only shall enter and an execution may issue upon the timely filing and service of a Rule 13 Application.[1]
5. The tenants' motion for additional time to vacate the premises is also allowed in accordance with G.L. c.239, ss. 9 & 10 and he general equitable powers of the court, and use of the execution shall be stayed until July 1, 2024, contingent upon the tenants paying their use and occupancy for May and June 2024. Also as discussed on the record, the landlord may obtain the execution and have it served by sheriff or authorized constable with a 48-hour notice all before July 1, 2024, but the actual eviction shall not occur until July 1, 2024, or later.

So entered this 21st day of May, 2024.



Robert Fields, Associate Justice

[1] As was discussed on the record, even though the tenants' LAR attorney's appearance was withdrawn at the conclusion of the hearing, landlord's counsel shall send a courtesy copy of the Rule 13 Application to him in addition to service upon the tenants.

Cc: Jeffrey Allan Miller, Esq. (B.B.O.#679690) LAR counsel for the defendants
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-1402

ECP HOLDINGS, LLC,

Plaintiff,

v.

PAUL GRZYBOWKSI,

Defendant.

ORDER OF DISMISSAL

After hearing on May 17, 2024, on the landlord's motion for issuance of the execution, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. **Procedural History:** After trial on the merits on June 21, 2023, the Court issued a decision (Kane, J.) on that same date entering judgment for the plaintiff for $3,600 plus court costs. Execution could issue at the expiration of the appeal period, but its use was stayed through July 31, 2023, to allow for a RAFT application to be processed. An execution for those sums and for possession issued on July 13, 2023, to the landlord. On August 11, 2023, the

Court held a hearing on the tenant's motion to stay execution. The Court issued the following order as a result of that hearing:

> 8/11/23 Motion allowed because of pending RAFT application (00248545). The landlord will complete its portion forthwith. The tenant will pay August rent by 8/31/23 and September by 9/15/23. If the landlord has not received confirmation of approval by RAFT by 9/12/23 it may schedule a motion to lift the stay. The landlord may renew its execution upon request. (Kane, J.)

2. On April 12, 2024, the landlord filed a motion for a new execution and returned the expired execution to the court.

3. **Discussion:** G.L. c.235, s.23 states in its second paragraph:

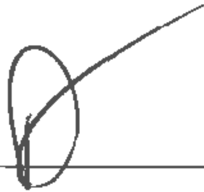
> Executions for possession of premises rented or leased for dwelling purposes obtained in actions pursuant to chapter two hundred and thirty-nine shall not e issued later than three months following the date of judgment, except that any period during which execution was stayed by order of the court or by management of the parties filed with the court hall be excluded from the computation of the period of limitation. Such executions shall be made returnable within three months after the date of issuance and shall state the date of issuance and the return date. No sheriff, constable, officer, or other person shall serve or levy upon any such execution for possession later than three months following the date of the issuance of the execution.

4. In this instant matter, the landlord did not motion the court for a lifting of the stay at any time; not prior to September 12, 2023, nor thereafter. The landlord also did not return the execution nor seek issuance of a new one prior to April 2024, some six months after it expired. Though the landlord may argue that in accordance with the judge's order on August 11, 2023, use of the execution was tolled by court order until the December 19, 2023, payment by RAFT, the request for a new execution (on April 12, 2024) was still beyond

the three months the statute allows for, even from that latest date (December 19, 2023).

5. **Accordingly**, the Court is unable to allow the motion for a new execution for possession. Though the underlying judgment remains valid, the landlord's claim for possession in this action is dismissed. See, *Fort Point Investments, llc, v. Hope Kirunge-Smith*, 103 Mass. App. Ct. 758 (2023).

So entered this 22nd day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
EASTERN DIVISION
DOCKET NO. 24H79SP000800

Carmita Martha Cantos,	)
	)
PLAINTIFF	)
	)
v.	)
	)
Ariana Gonzalez and Devon Lee,	)
	)
DEFENDANTS	)
	)

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This summary process (eviction) matter was before the Court (Adeyinka, J.) for a bench trial on May 21, 2024. The Plaintiff, Carmita Martha Cantos ("Ms. Cantos/Plaintiff") seeks to recover possession of 11 Casmir Street, Unit #1[1], Westfield, MA (the "Premises/Apartment") from Ariana Gonzalez and Devon Lee ("Defendants") based on a claim for non-payment of rent. Both the Plaintiff[2] and Defendants were self-represented at trial.

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

BACKGROUND

The Premises is a two-family home. Ms. Cantos is the owner of the Premises. Both parties agree that the rent is $1,600.00 per month. *See* **Pretrial Stipulation.** On February 2, 2024, the Plaintiff served a notice to quit on the Defendants via Deputy Sheriff Stacey Dufrense. On February 21, 2024, Ms. Cantos filed this summary process eviction with the Court. On April 18, 2024, the parties appeared for a first-tier court event. At the first-tier court event, the Defendants

[1] At trial, the parties both represented that the Defendants live on the first floor. The Clerks Office shall amend the Premises address on the Complaint to read: 11 Casmir Street, Unit #1, Westfield, MA.
[2] The Plaintiff has limited English proficiency and was assisted at trial by the Spanish Interpreter.

filed their Motion to Dismiss Ms. Cantos' claim for possession, which this Court (Adeyinka, J.) denied without prejudice after a hearing. *See* **Docket Entries No. 9 & 10.** However, the Court Ordered the Defendants file and serve an Answer on the Plaintiff before April 30, 2024. *See* **Order dated April 18, 2024.**

On April 19, 2024, the Defendants filed their Answer with the Court. *See* **Docket Entry No. 12.** In the Defendants' Answer, they claimed, among other things, that: 1) the Complaint and Notice to Quit are inconsistent; 2) Ms. Cantos allowed bad conditions to exist within the Premises; 3) Ms. Cantos violated the security deposit law; 4) the Premises had no heat for the "entire winter"; 5) Ms. Cantos violated the Consumer Protection Statute; and 6) the case should be stayed because of rental assistance[3]. The Court scheduled this matter for trial on May 21, 2024.

PLAINTIFF'S CLAIM FOR POSSESSION AND DAMAGES

At the trial Ms. Cantos represented to the Court that she has owned the Premises for "two to three" years. When the Court asked Ms. Cantos to provide proof of ownership, she was unable to produce that information during the trial. However, the Defendants did not dispute renting the premises from Ms. Cantos in February 2023. *See* **Pretrial Stipulation.** On February 16, 2023, the parties entered a one-year lease of the Premises. *See* **Lease at Plaintiff's Exhibit II.** The parties agree that the monthly rent amount is $1,600.00. *See* **Pretrial Stipulation.** On February 2, 2024, Deputy Sheriff Stacey Dufrense on behalf of Ms. Cantos, served a legally sufficient notice to quit on the Defendants, which also provided the required the form pursuant to G.L. c. 186, § 31. *See* **Notice to Quit at Plaintiff's Exhibit I.**

At the trial, the Defendants admitted to receiving the notice to quit. The Defendants also admitted that they last paid rent in October 2023. *See* **Notice to Quit at Plaintiff's Exhibit I.** As a result, the total amount of rent/use and occupancy owed to the Plaintiff is $12,800.00 (8 months X $1,600.00). The Defendants continue to reside at the Premises.

[3] The Defendants admitted that the RAFT assistance was going to be applied towards finding a new apartment and therefore G.L. c. 239 § 15 does not apply in this case.

Accordingly, the Court finds that Plaintiff introduced sufficient evidence to satisfy her prima facie case for possession and damages. However, Ms. Cantos shall submit proof of ownership to the Premises to clerk's office within ten (10) days of this ruling before judgment for possession enters.

DEFENDANTS' DEFENSES AND COUNTERCLAIMS

At the trial, the Defendants testified credibly that they were without heat for four (4) months (November 2023 to February 2024) due to Ms. Cantos converting the Premises heating system from oil to gas. *See* **Defendants Answer.** The Defendants have three (3) children, two (2) of which are diagnosed with autism. As a result of the lack of heat, the Defendants had to purchase space heaters to keep their family warm. Ms. Cantos did not dispute the Defendants; therefore, the Court credits the Defendants claim that Ms. Cantos breached their implied warranty of habitability.

The Defendants also testified that since May 2023 and up to the date of trial, they have had a rodent infestation[4]. *See* **Defendants Answer.** The Defendants did not introduce printed photos, but attempted to show pictures of mice droppings and a mouse that was found in their bathroom shower. Again, Ms. Cantos did not contradict or rebut the Defendants claim that there was a rodent infestation. The Court credits the Defendants testimony, as it relates to the rodent issue.

As a result of Ms. Cantos combined breach of the Defendants' quiet enjoyment, the Court shall deduct $400.00 per month from the contract rent for the four (4) months the Defendants were without heat, which totals a damage award of $1,600.00 (4 months X $400 abatement). The Court shall also deduct $100.00 per month from the contract rent for the twelve (12) months (May 2023 to May 2024) the Defendants dealt with the rodent infestation, which totals $1,200.00 (12 months X $100 abatement).

[4] At the trial, the Court Order Ms. Cantos to inspect and abate the rodent issue on or before May 24, 2024.

Lastly, the Defendants stated that Ms. Cantos violated the Security Deposit Law. Ms. Cantos admitted that she did not provide a receipt for the security deposit. Moreover, Ms. Cantos did not provide the Defendants with the interest accrued on their security deposit. Ms. Cantos admitted that this is her first time, as a landlady, that she had to come into court to navigate the summary process (eviction) rules and procedures. Unfortunately, ignorance of the law is not a defense. Accordingly, and pursuant to G.L. c. 186, § 15B, the Defendants are entitled to damages of $4,800.00, which equals three times the security deposit ($1,600 security deposit X 3).

RULINGS OF LAW

Under the implied warranty of habitability, the landlord assures that the Premises meet the standards of the state Sanitary Code. 105 C.M.R. 410, 780 C.M.R. 1 *et seq*. Ms. Cantos is liable for breaches of the warranties. The Defendants are entitled to damages equivalent to the value of the premises if they were up to Code minus their value in their actual, defective condition. *See* **Haddad v. Gonzalez**, 410 Mass. 855 (1991). It is usually impossible to fix warranty damages with mathematical certainty; the case law permits the courts to use approximate dollar figure so long as those figures are reasonably grounded in the evidence presented at trial. *See* **Young v. Patukonis**, 24 Mass. App. Ct. 907 (1987). In order for such a breach to meet the high standard required for a breach of quiet enjoyment, the Defendants must show that the breach was sufficiently serious and/or prolonged to meet the statutory threshold. *See* **Leardi v. Brown**, 394 Mass. 151 (1985).

As explained above, the Court finds that the lack of heat for four months, coupled with the ongoing rodent infestation are violations of the State Sanitary Code which materially impaired the Defendants' use of the Premises, which the landlord knew about and for which the Defendants were not responsible. As a result, the court awards a total of $2,800.00 on the Defendants' warranty of habitability counterclaim.

SET-OFF

Setting off the $7,600.00 ($1,200 + $1,600 + $4,800) which the Ms. Cantos owes to the Defendants against the $12,800.00 which the Defendants owes to Ms. Cantos, the Court finds that the Defendants owe a balance of $5,200.00.

ORDER FOR ENTRY OF JUDGMENT[5]:

Based upon the foregoing, and considering the governing law, it is ORDERED that:

1. Prior to entry of Judgement, the Plaintiff shall submit proof of ownership to the clerk's office, by deed or affidavit, of the Premises within ten (10) days of this ruling.
2. Upon the requirements of Paragraph No. 1 being satisfied, judgment shall enter for Plaintiff for possession and **$12,800.00** in unpaid rent, plus court costs in the amount of____________ totaling ________________.
3. Judgment shall enter for the Defendants on their counterclaims for breach of the implied warranty of habitability for damages in the amount of **$2,800.00**.
4. Judgment shall enter for the Defendants on their claim of breach of the Security Deposit Law in the amount of **$4,800.00.**
5. The foregoing orders for judgment paragraphs Nos. 2-4 results in a net judgment for the Plaintiff in the amount of **$5,200.00**.
6. Pursuant to G.L. c. 239, §8A, the Defendants shall have ten **(10) days** from the date of this Order to deposit with the Court a bank check or money order made out to the Plaintiff in the amount of **$5,200.00**, plus court cost in the amount of $_________ and interest in the amount of $________for a total of $________.
7. If such payment is made, judgment shall enter for the Defendants for possession. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.

[5] If Ms. Cantos needs assistance with interpreting this decision, the Clerk's office shall provide information to Ms. Cantos regarding language access assistance as it relates to this Order.

8. If the deposit is not received by the Clerk within the ten (10) day period, judgment shall enter for the Plaintiff for possession and damages in the amount of **$5,200.00**, plus court costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

/s/ Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice

May 23rd, 2024

cc: Carmita Cantos
Ariana Gonzalez
Devon Lee

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 21-SP-3358

JEROME MACZKA, Plaintiff, v. BELINDA RODRIGUEZ, et al., Defendants.	ORDER

After hearing on May 20, 2024, on the landlord's motion for entry of judgment and the tenants' motion for additional time to vacate the premises, the following order shall enter:

1. The history of this no-fault matter includes a September 26, 2021, no-fault notice to quit, the filing of this summary process action on December 6, 2021, an Agreement of the Parties dated May 9, 2022, which required a January 1, 2023, move-out, and several post-Agreement extensions agreed to by the parties.

2. The last agreed-upon extension having expired on April 30, 2024, the landlord now seeks entry of judgment so that possession can be returned to the landlord who wishes to occupy the premises himself.
3. The tenant has also filed a motion seeking further time, explaining that she has not been able to secure alternate housing for her and her family.
4. Weighing the equities given the history of this matter as described above, the landlord's motion for entry of judgment *only* (no damages or costs) shall enter. An execution may issue upon the timely **filing and service to the tenant** of a Rule 13 Application.

So entered this 23 day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 22-SP-1891

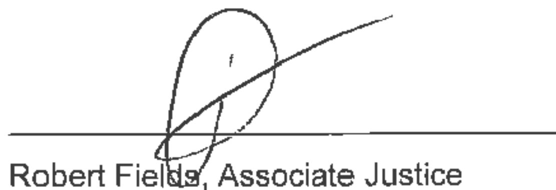
SEARS PROPERTY MANAGEMENT, **Plaintiffs,** **v.** **KRISTINA MARTIN,** **Defendant.**	**ORDER OF DISMISSAL**

This matter came before the court on May 22, 2024, for trial. Both parties and the Guardian Ad Litem were present. After hearing, the following order of dismissal shall enter:

1. As a preliminary matter, the G.A.L. moved the court for dismissal due to the insufficiency of the termination notice underlying this for-cause eviction.
2. The subject premises are subsidized.
3. The Notice to Quit in this matter purports to terminate the tenancy for cause, stating that the bases for the termination are (1) Causing a disturbance, and (2) Harassing Neighbors.

4. Notices to quit in subsidized housing are required to state the reasons for the landlord's action with enough secificity so as to enable the tenant to prepare a defense. The requirement for detail and specificity in the notice to quit is rooted in the protections guaranteed by the Due Process Clause of the U.S. Constitution. The notice in the instant matter fails to provide sufficient details about any of the bases cited and was wholly insufficient to inform the tenant adequately of the allegations against her as required. See *Edgecomb v. Housing Authority of Town of Vernon*, 824 F. Supp. 312, 315 (D. Conn., 1993) and *Plowshares v Smith*, 294 F. Supp. 2d 1067 (N.D. Cal., 2002) (termination notice which alleged violent activity by federally-subsidized tenant was held to be deficient by the court). *Loiacano v. Cooper*, Northeast Housing Court No. 93-SP-287, (Kerman, J., 5/11/93) (court held that the termination notice failed to provide the factual basis for termination of the federally-subsidized tenancy with any meaningful level of specificity).
5. Accordingly, this action is hereby dismissed without prejudice.

So entered this 23ed day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5074

SERGEANT HOUSE, LP, Plaintiff, v. POMPEO BRIGNOLA, Defendant.

ORDER

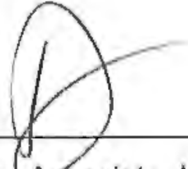
After hearing on May 20, 2024, on the tenant's motion to add the Holyoke Housing Authority as a third-party defendant, the following order shall enter:

1. Counsel for the Holyoke Housing Authority, Priscilla Chesky, appeared and assented to the motion for the Holyoke Housing Authority (H.H.A.) to be added as a third-party defendant. The H.H.A. shall be added as a third-party defendant, represented by Attorney Chesky.
2. Attorney Chesky waived formal service of a summons and complaint, agrees that she is in receipt of the complaint, and has agreed to file an Answer,

Discovery Demand, and formal written response to the tenant's request for a reasonable accommodation by no later than June 14, 2024.

3. All parties shall have until June 14, 2024, to propound discovery.
4. Responses to said discovery are due by July 15, 2024.
5. The tenant's request for leave to conduct depositions is granted.
6. A Status Hearing shall be scheduled for **August 5, 2024, at 9:00 a.m**. at the Hadley Session.
7. At the end of the hearing, the tenant indicated that it had a request for an order for attorneys fees for the filing, preparation, and argument of the motion to add the H.H.A. as a third-party defendant. The tenant argued that the filing was due almost entirely to the lack of response by the H.A.A. to the tenant's request for reasonable accommodations and his many follow-up emails.
8. The Court does not see where the tenant made his request in any pleading and though the Court can glean from the averments in the third-party complaint the copious times the tenant reached out after sending a request for reasonable accommodation without any response from the H.A.A., it does not find that it has a sufficient record upon which to award fees at this juncture. Thus, the request for fees and costs is denied *without prejudice.*
9. As noted above, the H.A.A. now has a date certain by which to respond formally in writing to the tenant's request for reasonable accommodation. The parties are reminded, that before and after any such response is provided by thee H.A.A., they are under a legal obligation to engage in a reasonable accommodation dialogue.

So entered this 23 day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0227

AGAWAM HOUSING AUTHORITY,

Plaintiff

v.

DIANE RAMIREZ AND JOSÉ RAMIREZ,

Defendants

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This summary process action for lease violations came before the Court for a bench trial on March 7, 2024. Plaintiff appeared through counsel. Defendants appeared self-represented.[1] The residential premises in question is located at 1 Danahy School House, 51 Maple Street, Agawam, Massachusetts (the "Premises").

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

Diane Ramirez moved into the Premises in 2007. José Ramirez moved in in 2011. In the past three to four years, José Ramirez's behavior has become volatile and erratic. His behavior typically involves "preaching the word of God" -- for example, speaking or shouting loudly and intensely toward people and demanding that they "repent for their sins." This activity occurs in various locations around

[1] Community Legal Aid declined to represent Ms. Ramirez.

town, but some of the behavior occurs on the Housing Authority property.[2] Records from the Agawam Police Department (introduced through its Keeper of Records) show dozens of police calls about José Ramirez's behavior, approximately fifteen of which appear to have taken place at the Premises. One incident on February 28, 2024 describes José Ramirez confronting a Housing Authority employee accusing her of killing residents with poison.

Two neighbors of the Ramirez's testified about José Ramirez's disruptive behavior. One neighbor testified that José Ramirez called her a "demon" and a "drug dealer" and told her that if she ever knocked on his door, he would use his gun. This tenant is afraid of José Ramirez and testified that he has significantly harmed his peaceful enjoyment of her home. The Housing Authority's Executive Director testified that many of the residents have complained about José Ramirez's behavior.

On May 8, 2023, Defendants and Plaintiff's Executive Director entered into a written out-of-court agreement whereby Defendants agreed that José Ramirez would not harass residents, visitors or staff. For several months, José Ramirez complied with the agreement. In the Fall of 2023, however, the disruptions returned, and Plaintiff served Defendants with a 30-day notice to quit dated November 22, 2023 alleging material lease violations; namely, José Ramirez's failure to live in peaceful manner and his harassment and disturbances of others lawfully on the Housing Authority property.

[2] Some of the complaints about José Ramirez come from members of the public off site, which cannot constitute a lease violation. The Executive Director believes it is her responsibility to prevent such behavior because the Housing Authority has properties throughout town, some in residential neighborhoods. Despite her desire to be a good neighbor, the Court can only enforce the terms of Defendants' lease on Plaintiff's property.

José Ramirez claims that after getting the notice to quit, he decided to move out of the unit. He claims he moved to his sister's house in Hampden, Connecticut on December 21, 2023 (the expiration of the notice period) and has not returned to the Premises. He struggled to recall the address and gave unconvincing testimony about how he gets back and forth to Agawam. He acknowledges his behavior but asserts that his conduct should not cause his wife to be evicted. Diane Ramirez, with whom Plaintiff has no issues, also argues that she should not be evicted for her husband's behavior, particularly now that he no longer lives there. Defendants did not file an answer. José Ramirez He admitted that he would like to move back in again in the future.

The Court finds that Plaintiff proved by a preponderance of the evidence that José Ramirez has engaged in material violations of the lease by harassing other residents and employees of the Housing Authority, and has interfered with other tenants' peaceful enjoyment of the Premises. Given the foregoing, and in light of the governing law, the following order shall enter:

1. In order to preserve Diane Ramirez's tenancy, about which Plaintiff has no issues, judgment will not enter at this time.
2. José Ramirez shall stay away from the Dahany School House at 51 Maple Street in Agawam, Massachusetts.
3. If Plaintiff believes he has violated the stay-away order, it may bring a motion for entry of judgment. The motion shall include the date(s) José Ramirez was at the Premises or on the Dahany School House property and the evidence it intends to present at the hearing.

4. If no motion to enter judgment has been filed by March 1, 2025, this case shall be dismissed.

SO ORDERED.

May 24, 2024

/s/ 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-5619

AMHERST HOUSING AUTHORITY,

Plaintiff

v.

KAREN LINDSEY,

Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This summary process action for lease violations came before the Court for a bench trial on April 22, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented.[1] The residential premises in question is located at 25 Chestnut Street, Amherst, Massachusetts (the "Premises").

Based on the stipulations of the parties, the credible testimony and the other evidence presented at trial, as well as the reasonable inferences drawn therefrom, the court finds as follows:

Ms. Lindsey stipulates to Plaintiff's prima facie case for possession. Her only dispute is with the amount of money Plaintiff claims is owed. Ms. Lindsey acknowledges that she did not pay rent for the months of April, May, June, September, October, November and December 2020; however, Ms. Lindsey contends

[1] Prior to trial, Defendant asked for a continuance in the hopes of returning on a day when a different attorney from the Lawyer for the Day program was present, as the attorney present on this day declined to assist her. There is no right to counsel in a civil case and the Court will not delay the trial simply for Ms. Lindsey to try again with a different volunteer lawyer.

that the unpaid amount was waived because Plaintiff's prior summary process case (21SP1533) was dismissed *with prejudice* without reaching the merits of the case. Plaintiff stipulated to dismissal once it recognized that the notice to quit upon which the case rested might be deemed defective because it alleged both non-payment and for cause reasons in the same notice.

The earlier dismissal with prejudice precludes Plaintiff from seeking possession in that case. The case was not resolved on its merits, and Ms. Lindsey acknowledges that she never made the payments, and therefore the Court rules that Plaintiff has the right to seek the unpaid rent in this case. *Kobrin v. Board of Registration in Med.*, 444 Mass. 837, 843 (2005) (an element of claim preclusion is prior final judgment on the merits).

The other defense raised at trial by Ms. Lindsey is that Plaintiff did not have the authority to increase her rent outside of the annual recertification process each October. In this case, Plaintiff notified Ms. Lindsey that her portion of the monthly rent would increase from $231.00 to $242.00 in approximately August 2020 because it had been accounting only for Ms. Lindsey's Social Security benefits and not the additional small amount of income Ms. Lindsey received from the Commonwealth of Massachusetts. The Court finds that Plaintiff demonstrated by a preponderance of the evidence that it had the right to require an interim recertification to change Ms. Lindsey's share of the monthly rent to reflect her actual total household income.[2]

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

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[2] Ms. Lindsey did not pursue any of her counterclaims, and thus they are dismissed.

1. Judgment shall enter in favor of Plaintiff for possession and damages in the amount of $1,732.86, plus court costs of $265.51.

2. Plaintiff may file a motion for issuance of the execution after a thirty-day period during which Ms. Lindsey shall seek rental assistance to pay the balance owed.

SO ORDERED.

DATE: May 24, 2024

By: /s/ 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. 24-CV-0254

LISSETTE COLON, PLAINTIFF	)	ORDER ON PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF
v.	)	
HOLYOKE HOUSING AUTHORITY, DEFENDANT	)	

Plaintiff filed this action in the nature of certiorari pursuant to G.L. c. 249, § 4 and for injunctive relief and damages pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, requesting reversal of a decision issued by Defendant to terminate Plaintiff's participation in the Section 8 Housing Choice Voucher Program ("Section 8 program"). Defendant Holyoke Housing Authority ("HHA") opposes the motion.

A. Procedural Background

On September 19, 2023, HHA received a letter from Plaintiff's landlord alleging that she had permitted an unauthorized occupant to reside with her since October 2022. On the same date, HHA sent Plaintiff a letter entitled "Proposed Termination of Section 8 Assistance, informing her that HHA was proposing to terminate her assistance for "[f]ailure to obtain HHA approval for unauthorized occupants." The letter notified Plaintiff of her right to request an informal hearing and attached a document called "Informal Hearings for Participants" setting forth the procedures for

such an event." Plaintiff requested an informal hearing.

On October 18, 2023, HHA held an informal hearing. On November 1, 2023, HHA upheld its decision to terminate Plaintiff from the Section 8 program and sent her a Notification of Informal Hearing Decision. She was instructed to "contact her Housing Representative within 10 days to request in writing a formal hearing." The notice informed Plaintiff that she would be terminated from the Section 8 program effective November 30, 2023.

Plaintiff received the notice on November 6, 2023 and filed a written request for hearing on November 14, 2023.[1] The hearing took place on January 30, 2024 in front of a hearing officer (a private attorney who is not an employee of HHA). The hearing officer issued a decision dated February 12, 2024, affirming the prior decision.

B. Discussion

The September 19, 2023 letter notifying Plaintiff that HHA was proposing to terminate her participation in the Section 8 program offered Plaintiff the right to request an informal hearing as required in 24 C.F.R. § 982.555(a)(2). Pursuant to this regulation, "[t]The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision." The Notification of Informal Hearing Decision indicates only that the HHA's intended action is upheld. It does not state any reason for the decision. In conjunction with the September 19, 2023 letter of proposed termination for failure to obtain approval for unauthorized occupants, the Court infers that the person conduction the hearing concluded that Plaintiff did, in

[1] HHA does not challenge the timeliness of this request.

fact, have an unauthorized occupant residing in her unit, but the Notification of Informal Hearing Decision is silent as to the reasons for the decision.

Even though Plaintiff had the benefit of a subsequent formal hearing at which she was able to present evidence, and even though the hearing officer stated his reasoning for upholding the termination after the formal hearing, she was not afforded the process required by Federal regulations with respect to the informal hearing. It would not serve the interests of judgment to permit a housing authority to disregard proper informal hearing procedures by later conducting a formal hearing that affords due process.

Given the failure of HHA to comply with 24 C.F.R. § 982.555(a)(2), Plaintiff has demonstrated a likelihood of success on the merits of her claim. Even if she has not yet been served with a notice to quit from her landlord, termination of participation in the Section 8 program creates a substantial risk of irreparable harm. The risk of irreparable harm to Plaintiff in conjunction with the likelihood of success on the merits warrants the injunctive relief sought. See *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Based on the foregoing, the following order shall enter:

1. Plaintiff's participation in the Section 8 program shall be reinstated retroactively to December 1, 2023.
2. The $90.00 legislative fee for injunctive relief is waived.

SO ORDERED.
DATE: May 24, 2024

Hon. Jonathan Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2309

THE COMMUNITY BUILDERS, INC., Plaintiff, v. EVELYN GORE, Defendant.	ORDER

After hearing on May 20, 2024, on the landlord's motion to advance the case to trial, at which the landlord appeared through counsel, the G.A.L. (Thomas Wilson) appeared, and a representative from the Tenancy Preservation Program (TPP) also appeared, but for which the tenant did not appear, the following order shall enter:

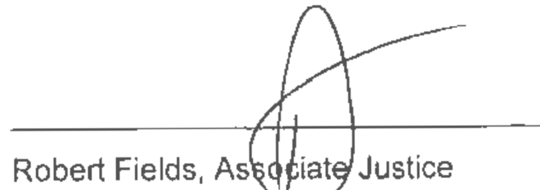
1. Though the G.A.L. has been involved in the case for several months, he has mostly relied on his ward's (the tenant) daughter to have the tenant's home healthcare resources increased so that she may be able to return to the

subject premises. That daughter is also interested in being added to the tenant's lease but has never applied.

2. None of the daughter's efforts appear to have been fruitful.
3. Additionally, the tenant has not recertified and because of that she has lost the rental subsidy for the unit and the rent has been increased to market rent of $921 (instead of her portion that was set at $279).
4. The G.A.L., Thomas Wilson, shall work on seeking completion of a recertification and the restoration of the subsidy. The G.A.L. shall also investigate home healthcare resources and any and all other things that would be needed (including having the tenant's daughter added to the lease) to enable the return of the tenant to her home (as she is currently in a nursing home).
5. TPP reports that it is very unlikely that the tenant will ever be able to return to the reside at the premises.
6. The G.A.L. shall file a report with the court by June 21, 2024, in which he shall report on all his efforts and to provide an assessment of whether the tenant can return to re-occupy the premises or not and, if not, her housing plan.
7. In furtherance of those efforts, the G.A.L shall have authority to speak with and obtain any records from any and all of Evelyn Gore's treating medical professionals (including doctors and other healthcare providers), MassHealth, the Northampton Housing Authority, and HUD.

8. This matter shall be scheduled for further review and possible trial on **June 24, 2024, at 9:00 a.m. in the Hadley Session.**

So entered this 24th day of May, 2024.



Robert Fields, Associate Justice

Cc: Thomas Wilson, G.A.L.
Mike Richtell, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SP-844

THE COMMUNITY BUILDERS, INC., **Plaintiff,** **v.** **KAYLIN LIGON,** **Defendant.**

ORDER OF DISMISSAL

After hearing on May 20, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared with Limited Assistance Representation (LAR) counsel, the following order shall enter:

1. The landlord's counsel proffered at the beginning of the hearing that he had witnesses to speak to noise disturbances, smoking on the premises, and unsanitary conditions.
2. The tenant's counsel made an oral motion to strike any evidence regarding noise complaints as a basis for entry of judgment. For the reasons stated on

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the record, that verbal motion is allowed and the landlord's witness present to testify about noise complaints shall not be permitted to testify. The landlord was required—and failed-- to provide details in its motion regarding the date and times and identify of the witness regarding alleged incidents of non-compliance with the parties' Agreement. Additionally, noise disturbances are not part of this eviction matter.

3. The court then provided the parties an opportunity to consult before moving forward with the motion hearing on the other two grounds of unsanitary conditions and smoking. As the court recessed the hearing for that opportunity to consult, it informed the parities that if the motion was withdrawn, the matter would be dismissed in accordance with the terms of the parties' Agreement.
4. After a recess in the matter, the landlord informed the court that it would withdraw its motion. This matter is now dismissed in accordance with the terms of the parties' Agreement.

So entered this 24th day of May, 2024.

____

Robert Fields, Associate Justice

Cc: Jennifer Dieringer, Esq. (LAR Counse)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0517
AND DOCKET NO. 24-SP-0210
CONSOLIDATED CASES

LAURIEN DEJESUS-CRUZ,

Plaintiff

v.

BASIL HENRY,

Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW AND INTERIM ORDER

These consolidated cases came before the Court for a bench trial on May 8, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential premises in question is located at 297 Dickinson Street, Springfield, Massachusetts (the "Premises").

By way of background, Defendant initially commenced a summary process action case against Plaintiff (Docket No. 23-SP-2067) on May 9, 2023. Plaintiff filed an answer with counterclaims Defendant's claim for possession was dismissed on June 26, 2023 due to a defective notice to quit, and the case was transferred to the civil docket (Docket No. 23-CV-0517, which is subject of the present trial). Defendant subsequently commenced a subsequent summary process case, Docket No. 24-SP-0210, and the two cases were consolidated for trial.

At the outset of trial, Plaintiff moved to dismiss Defendant's claim for possession based on a defective notice to quit. The notice, dated December 7, 2023,

informs Plaintiff that her tenancy will terminate "in fourteen (30) days." Although Defendant asserts that it is just a typographical error, the conflicting dates appear in two different places and the Court finds that it is objectively ambiguous as to the actual date that the tenancy would be terminated, rendering it defective. Accordingly, the Court hereby allows Plaintiff's motion to dismiss Defendant's claim for possession and unpaid rent. The Court turns next to Plaintiff's claims for damages (originally asserted as counterclaims in Docket No. 23-SP-2067).

Based on the stipulations of the parties, the credible testimony and the other evidence presented at trial, as well as the reasonable inferences drawn therefrom, the court finds as follows:

1. Plaintiff lives on the second floor of a three-family house.
2. Defendant, the homeowner, resides on the first floor. Defendant's family members reside on the third floor.
3. Plaintiff moved into the Premises and signed a lease with the previous owner on November 18, 2019 (attached to Exhibit 3, the c. 93A demand letter).
4. Defendant purchased the Premises in April 2020.
5. Defendant did not enter into a new rental agreement with Plaintiff after his purchase of the Premises.
6. Defendant has a rent subsidy in the form of a mobile voucher administered by Way Finders.

7. At all relevant times, contract rent for the Premises has been $1,250.00 per month. Plaintiff's monthly portion of the rent has fluctuated but is currently $258.00.

The Court shall address each of Plaintiff's claims in sequence:[1]

Conditions of Disrepair

Plaintiff testified that the Premises suffered from significant conditions disrepair when Defendant purchased the Premises in April 2020. As part of an exhibit introduced at trial, Plaintiff's lease with the previous owner dated November 18, 2019 was admitted into evidence. The lease included a statement of condition, signed by Plaintiff, indicating that no repairs were needed in the Premises. This evidence contradicts her testimony that the Premises were in a state of disrepair upon Defendant purchasing the property. Plaintiff also testified that she contacted the City of Springfield Code Enforcement Department ("Code Enforcement") in early 2020, which would have been soon after Defendant's purchase. However, Plaintiff submitted hundreds of pages of documents from Code Enforcement which show that her initial complaint was made in August 2021. These are but two examples of the many inconsistencies in Plaintiff's testimony.[2]

After the initial inspection by Code Enforcement, the records show the follow-up inspection was rescheduled 18 times before the next inspection occurred on December 14, 2021. This began a pattern where between most inspections, numerous appointments would be rescheduled, cancelled or access denied. It is not clear which

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[1] Plaintiff withdrew her counterclaims related to lead paint liability.

[2] Plaintiff did herself no favors by constantly interrupting the judge, her counsel and Defendant, and failing to follow repeated instructions not to do so. It made her testimony difficult to follow and understand.

party bears the responsibility for Code Enforcement consistent inability to gain access to the Premises, but at no time did Plaintiff testify that Defendant repeatedly obstructed access by Code Enforcement, and the Court therefore infers that it was Plaintiff who repeatedly postponed inspections, which undermines her argument that she was waiting for Defendant to make necessary repairs.

Despite the problems with Code Enforcement gaining access, the evidence is clear that Defendant failed to complete the repairs in a timely manner. Plaintiff did not offer a letter of compliance or any other evidence that the repairs have been made. The numerous citations by Code Enforcement demonstrate that various conditions of disrepair existed in the Premises and that Defendant was aware of them. Plaintiff has proven by a preponderance of the evidence that the state of the Premises constitute a breach of the covenant of quiet enjoyment, which entitles Plaintiff to damages in the amount of three times the contract rent of $1,250.00, plus reasonable attorneys' fees.

To the extent that Plaintiff seeks a greater award for damages for conditions of disrepair under the theory of breach of the implied warranty of habitability, the Court finds that she did not prove that the warranty damages would exceed the statutory damages based on the same conditions. Although she provided videos of water dripping through a ceiling, her testimony was unclear as to how long that condition existed prior to being repaired. The Court finds that it was only a matter of days before the leaking pipe was fixed, and although the water stains remained on the ceiling for months, the value of the rental premises is not substantially reduced due to water stains. The Court finds that Plaintiff exaggerated greatly throughout her

testimony and that she was not credible regarding many of the issues about which she testified, including the alleged infestation of mice,[3] a broken door mechanism and non-working radiators. The Court finds that statutory damages for breach of quiet enjoyment exceed damages to which she is entitled under breach of warranty.

Breach of the Covenant of Quiet Enjoyment on Grounds Other than Conditions

Plaintiff failed to demonstrate by a preponderance of the evidence that Defendant violated different prongs of G.L. c. 186, § 14, such as failing to furnish utilities or transferring the responsibility for utilities to the tenant without her knowledge or consent. Plaintiff offered no evidence to support her claim that she received six water shut-off notices and she admitted the water was never shut off. She claims Defendant failed to provide heat, but again the Court finds Plaintiff to have exaggerated so regularly in her testimony that her statements regarding the severity of the heating issues lack credibility. To the extent Defendant acknowledged an issue with radiators, he rectified the issue promptly by unclogging the line to Plaintiff's son's room. The Court credits his testimony.

Plaintiff testified at length about Defendant's and his family's use of the front and side porches that she claims were for her exclusive use. She claims that one of the porches is outside of her son's bedroom window and that Defendant's use constituted an invasion of his privacy. She repeatedly stated that the porch was "legally hers" without offering any evidence to support her claims. She took videos of certain conditions, but offered none to support her claim that the porch abutted a

[3] For example, she testified that the mice infestation was so bad that she stores 75% of her belongings in a storage unit. She provided no evidence to support her claim, and the Court finds her statement not to be credible.

window into her unit. Defendant testified credibly and without contradiction that the two porches in question were accessed from common areas, and not from the Premises, and were not part of the second floor rental unit. Plaintiff failed to sustain her burden of proving by a preponderance of the evidence that Defendant interfered with her quiet enjoyment by using the porches.[4]

Security Deposit

Plaintiff contends that she paid a security deposit to the former owner when she moved into the Premises. She provided no evidence of such payment and, in fact, her lease with the former owner has no figure inserted for the amount of the security deposit and last month's rent deposit. Although the evidence shows that Defendant maintains some type of deposit, Plaintiff did not sustain her burden of demonstrating what the deposit was for, how much it was or when it was paid. Given Plaintiff's lack of credibility on so many issues in this case, and in light of the original lease not listing payment of a deposit, the Court does not find her testimony that she paid a security deposit to be believable.

Retaliation

The hundreds of pages of Code Enforcement records offered into evidence by Plaintiff show that she first complained in August 2021. The notice to quit filed in the first summary process case was dated March 27, 2023, well after the six-month period for the presumption of retaliation to arise. To the extent that the retaliatory conduct about which Plaintiff complains is Defendant's behavior in curtailing her access to the

[4] Likewise, the Court finds Plaintiff not to be credible regarding her claims of excessive noise caused by Defendant's family or Defendant's curtailment of her use of the backyard.

yard or informing her that her access to the porches was not exclusive, her testimony lack credibility and specificity. Plaintiff failed to sustain her burden of proof that Defendant's actions, if even accurately reported, were taken in retaliation of her complaints about living conditions.[5]

Violation of G.L. c. 93A

The Court finds that G.L. c. 93A applies to Defendant. When he purchased the Premises, it was a multifamily house that was not his primary residence. After a fire at his home, he moved into the first floor of the property and had his family members move into the third floor. The Attorney General's regulations regarding landlord-tenant matters makes it an unfair or deceptive act or practice for a property owner to fail, within a reasonable time after receipt of notice of the need for repairs, to make such repairs. *See* 940 Code Mass. Regs. 3.17. Here, the number of Code Enforcement inspections without proof of compliance demonstrates by a preponderance of the evidence that Defendant failed to make repairs in a timely manner. Defendant's conduct was willful and knowing (in that he knew the repairs were needed and did not make them), the Court awards damages in the amount of two times the monthly rent, plus reasonable attorneys' fees.[6]

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

1. Defendant's claim for possession and unpaid rent is dismissed.

[5] For example, she testified that Defendant's complaints about her use of the yard began during 2020, well before she complained to Code Enforcement.
[6] Moreover, it is undisputed that Plaintiff sent Defendant a demand letter pursuant to G.L. c. 93A and that Defendant never responded with an offer of settlement.

2. Plaintiff is entitled to damages in the amount of $6,250.00 on account of her counterclaims.

3. No judgment shall enter at this time. Plaintiff shall have fifteen (15) days from the date of this order to file a petition for reasonable attorneys' fees and costs, along with supporting documentation. Defendant shall then have fifteen (15) days from receipt of Plaintiff's petition to file any opposition, after which time the Court will assess attorneys' fees without need for further hearing.

SO ORDERED.
May 27, 2024

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-SP-0166

OMAYRA HEREDIA AND RUTH VALLES,

Plaintiffs

v.

TINISHA SISTRUNK AND ANDRE HARRIS,

Defendants

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

This no fault summary process case came before the Court for a bench trial on May 16, 2024. The parties appeared with counsel.

Defendants (the tenants) reside on the first floor of a two-family house located at 16 Nelson Avenue, Springfield, Massachusetts (the "Premises") owned and occupied by Plaintiffs (the landlords). The parties stipulated to the landlords' prima facie case for possession but do not agree as to the amount of unpaid rent, if any. The landlords did not make a demand rent or use and occupancy in their notice to quit or their complaint and did not file a pretrial motion to amend the complaint to seek monetary damages. The notice to quit purports to terminate the tenancy as of January 1, 2024.

The tenants filed an answer asserted numerous defenses and counterclaims. Based on the evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds as follows:

The landlords purchased the house in July 2023 with the tenants in possession of the Premises. In June 2023, the landlords viewed the house to consider whether to

put a bid in to purchase it. The landlords were allowed to briefly view each room except for one bedroom and bathroom. During that visit, the tenants informed the landlords that the house had roaches. The landlords returned for a second viewing but did not gain access to the Premises.

There is no evidence of a prepurchase inspection by a professional home inspector. There is also no evidence that the tenants informed the plaintiff of problems with living conditions in the unit prior to contacting the City of Springfield Code Enforcement Department ("Code Enforcement"). Code Enforcement inspected on December 29, 2023 and on March 4, 2024.[1] Each time, the Code Enforcement sent a notice of violations. The Court addresses each of the tenants' counterclaims below.

Breach of Quiet Enjoyment as a Result of Bad Living Conditions[2]

Massachusetts law provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ... " G. L. c. 186, § 14. This statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). The statute does not require that the landlord act intentionally to interfere with a tenant's right to quiet enjoyment. *Al-Ziab v. Mourgis*, 424 Mass. 847,

[1] The reports were admitted only for the purpose of demonstrating the date that the landlords were put on notice of the need for repairs. The reports were not certified under the pains and penalties of perjury and no witness was present to offer them into evidence; hence, the contents of the reports are not admissible as prima facie evidence of code violations.
[2] The tenants declined to seek damages based on breach of the warranty of habitability.

850 (1997). In analyzing whether there is a breach of the covenant, the Court examines the landlord's "conduct and not [its] intentions." *Doe*, *supra*, at 285. A tenant must show some negligence by the landlord in order to recover under the statute. *Al-Ziab*, *supra*, at 850.

At trial, Ms. Heredia conceded that the landlords were informed of certain conditions that required addressing, including roaches, a ceiling, kitchen cabinets and mold-like substances on certain surfaces. Ms. Heredia testified that these issues have been resolved, but for the roaches and the kitchen floor. The landlords concede that they need to repair the kitchen floor but want to wait until the unit is vacant to rehabilitate the kitchen. Ms. Sistrunk, Defendants' only witness, did not describe the severity of the problem with the kitchen floor or if it affects the tenants' use of the kitchen, saying only that it is chipped and cracked, which leaves the Court with insufficient evidence to determine how if at the condition of the floor affects their use and enjoyment of the Premises.

Regarding the roaches, Ms. Heredia testified that although the tenants mentioned there were roaches at the first viewing, she was not the owner yet, and after she moved in, she saw no evidence of roaches in her unit. When notified about the need for exterminations after the January Code Enforcement inspection, she promptly hired an exterminator, who began monthly treatments. The Code Enforcement reports were not authenticated and did not come into evidence, and the substance of Ms. Sistrunk's testimony did not convince the Court that the landlords acted negligently in addressing their concerns about living conditions. According, the Court finds that the tenants did not satisfy their burden of proving, by a

preponderance of the evidence, that the conditions in the Premises constitute a violation of the covenant of quiet enjoyment.

Breach of Quiet Enjoyment by Transferring Responsibility for Utilities

The tenants argue that the landlords are liable for a violation of G.L. c. 186, § 14 by failing to separately meter electricity. The tenants allege that the basement electricity is tied to the Premises, and therefore they have been paying for the electricity for areas over which they did not have exclusive control. The tenants offered no evidence to support their claim of cross metering, but rely solely on Ms. Heredia's testimony that she hired an electrician to make repairs. The evidence does not support a finding that the electrician, who was not a witness, discovered cross metering, and, therefore, the Court finds that the tenants failed to prove by a preponderance of the evidence that the landlords violated G.L. c. 186, § 14 based on electrical metering.

Breach of Quiet Enjoyment for Eliminating Access to the Basement

Ms. Sistrunk testified that Defendants had access to the basement under the previous owner, and that the new landlords locked the basement and denied them continuing access. Ms. Sistrunk did not, however, testify that they had the right to use the basement under any rental agreement, or that the previous owner did, in fact, approve of her use of the basement; to the contrary, the tenants introduced their lease with the former owner which explicitly recites "basement can not be use for tenants safety, otherwise have to authorize from landlord." [sic] To the extent that the basement was unlocked previously, allowing them access to the panel to reset a tripped circuit breaker, Ms. Sistrunk only mentioned in passing that she had to call the

new landlord if there was a need to turn a breaker back on, and she did not testify credibly that the loss of access to the panel caused her family to be without electricity for more than a brief period of time as a result. Therefore, the Court finds that tenants did not prove by a preponderance of the evidence a violation of the covenant of quiet enjoyment based on eliminating basement access.

Retaliation

The notice to quit in this case was dated November 2, 2023. The first inspection by Code Enforcement for which evidence was presented at trial was December 29, 2023. The Court infers that the tenants made a complaint to Code Enforcement shortly before that date but after November 2, 2023. To the extent that the tenants allege retaliation based on a purported earlier complaint to Code Enforcement, they failed to establish that such a complaint was made. Given that they had Code Enforcement reports from December 2023, they would have been able to obtain notices of violation prior to service of the notice to quit if any existed. The absence of such a notice in the months prior to service of the notice to quit causes the Court to infer that such complaints were not made.

Violation of G.L. c. 186, § 15B (Security Deposit Statute)

The evidence the tenants rely upon to establish that they paid a security deposit is a lease with their previous landlord indicating the amount of the security deposit. The rental agreement contains no information about the prior landlord (other than an illegible signature) and the tenants produced no evidence that such a deposit was ever paid, such as a bank statement or a corroborating witness. Ms. Heredia testified credibly that she was told that the prior owner was not holding a security

deposit. The Court finds Ms. Heredia's testimony to be credible, and finds Ms. Sistrunk's testimony not to be credible on this subject. Accordingly, the Court finds that the tenants did not prove a violation of G.L. c. 186, § 15B by a preponderance of the evidence.[3]

Conversion

Pursuant to Massachusetts law, "[o]ne who intentionally or wrongfully exercises acts of ownership, control or dominion over personal property to which he has no right of possession at the time is liable for the tort of conversion." *Abington Nat'l Bank v. Ashwood Homes, Inc.*, 19 Mass. App. Ct. 503, 507 (1985). The tenants assertion that the landlords have stolen their mail is based only on speculation. They have not seen the landlords take their mail, but rely on a purported admission by them that they are entitled to go through their mail because they own the entire house. Of course, the landlords do not have such a right, but there is insufficient evidence to find that the tenants proved by a preponderance of the evidence that the landlords intentionally or wrongfully exercised ownership, control or dominion over their mail.[4]

[3] Likewise, there is insufficient evidence to find that the tenants paid a deposit for last month's rent, and the rental agreement makes no reference to such a deposit.
[4] The tenants withdrew their claim for intentional infliction of emotional distress.

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

1. Judgment for possession shall enter for Plaintiffs.
2. Judgment shall enter for Plaintiffs on Defendants' counterclaims.
3. Execution may issue in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: May 27, 2024

By: /s/ 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. 20-CV-620

CITY OF SPRINGFIELD, CODE ENFORCEMENT DEPARTMENT,

Plaintiffs,

v.

LEE BROWN,

Defendant.

ORDER

After hearing on May 23, 2024, at which the defendant failed to appear, the following order shall enter:

1. In accordance with the terms of an agreed-upon order of the court dated April 1, 2024, the defendant property owner (Mr. Lee) was required to "clear the subject property of all trash, litter, debris, overgrowth, tarps, furniture and piles of wood no later than May 10, 2024, at 9:00 a.m..."
2. The parties further agreed to an inspection by the plaintiff (City) on May 10, 2024, and a return court hearing on May 17, 2024.

3. At the May 17, 2024, hearing, Lee argued that he has complied and that the parties differ on their definition of what is or is not "trash, litter, debris". The parties and the court continued the matter to May 23, 2024, for an evidentiary hearing.
4. On May 23, 2024, only the City appeared with its Code Inspector, Michael Jones. Lee did not appear.
5. **Discussion:** After hearing the testimony of Inspector Jones and review of the photographs he took at the May 10, 2024, inspection of the City at the premises, the court finds that Brown has failed to remedy the conditions on his yard.
6. More specifically,
    a. he has created a tarped structure on one side of his home without a permit;
    b. he is storing wooden fencing materials and tubs in a manner that violates the State Sanitary Code and one that creates places for harborage of rodents and standing water;
    c. he has created a stack/pile of debris and tools (rakes, shovels) in a manner that violates the State Sanitary Code and one that creates places for harborage of rodents;
    d. he is keeping an open trash barrel with debris in a manner that violates the State Sanitary Code and one that creates potential harborage for rodents;

e. he stores junk, gas tanks, fencing materials, pallets, barrels, and tires, that block egress, are dangerous, or are stored in a manner that creates potential harborage for rodents and standing water;

f. he uses tarps to cover items in a manner that violates the State Sanitary Code and creates areas for harborage of rodents.

7. The court finds that Lee has created somewhat of a "junkyard" on his property.

8. Though there are some items that are "trash, litter, and debris", the court can appreciate why Lee believes that most of the items cited do not fall into those categories and in some instances it may be the manner in which the istems are stored that is violative of the law and not necessarily the items themselves. The court does not have any information regarding what structures might be able to be built---with property permitting---that could properly store some of the cited materials but perhaps this is the direction that Lee must go in to avoid the removal of these items from his yard.

9. As the City put on the record at the both the May 17 and 23, 2024, hearings, it does not possess many alternatives in such a matter as this and either will seek the appointment of a receiver or bring a contempt complaint and seek coercive remedies.

10. **Conclusion and Order:** Based on the foregoing, Lee shall have until June 30, 2024, to remove all of the items cited above and that are contained in the photographs put into evidence at the May 23, 2024, hearing (and available in the court file if Lee does not have them) or have structures installed that meet

with the City's approval for proper storage of same. (This includes deconstruction of the structure assembled on one side of the house, removal of **all** tarps from the yard, and removal of all the items listed above from the yard.)

11. The City shall reinspect with proper notice after June 30, 2024.

So entered this 28th day of May, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1963

JESSICA GREEN,
Plaintiff,
v.
KENNETH LAGIMONIER, III, et al.
Defendants.

ORDER

After hearing on May 28, 2024, on the plaintiff's motion for a appointment of a special process server to levy on the eviction execution at which only the moving party appeared, the following order shall enter:

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

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

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

good repute and character and qualified to hold said office." Id. After a thorough investigation aided by public officers, constables are granted licenses and can be elected by the "selectmen in any town may from time to time appoint, for terms not exceeding three years" G.L. ch.41 §91A.

5. The final step in becoming a constable is to become bonded. Constables are able to serve or execute civil process if they are bonded in the city or town in which the processes are to be served. (Emphasis added) G.L. c.41 §92, which relates to service of civil process, states:

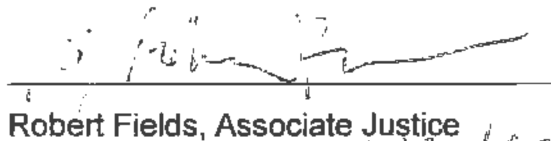
6. A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen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

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

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

8. **Conclusion and Order:** Based on the foregoing and given that the plaintiff is seeking the court to use its discretion under 4C to appoint a special process server who is not appointed by the Town of Ware (where the subject premises are located) and proffers no information regarding the lack of town appointed constables or that there are inordinate delays by using the local constables or sheriffs, the court does not perceive a compelling purpose to make such an appointment----especially when there may be constables that are appointed by the Town of Ware and the Hampshire County sheriffs. Accordingly, the motion is denied without prejudice.

So entered this 29th day of May, 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-4141

BASIL ISRAEL,

Plaintiff

v.

ALICIA JENKINS, WILLIAM JENKINS AND DEVON BANTON,

Defendants

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This summary process case came before the court for a bench trial on March 5, 2024. Plaintiff appeared self-represented. Defendant Alicia Jenkins ("Ms. Jenkins") appeared with counsel.[1] The case was brought for no fault.

Ms. Jenkins resides in a two-family house located at 15 Massachusetts Avenue, Springfield, Massachusetts (the "Property"). The parties stipulated that Ms. Jenkins occupies the second-floor unit (the "Premises") through a Section 8 Housing Choice Voucher Program lease. Contract rent is $1,761.00 per month, and Ms. Jenkins' share is $479.00 per month. Ms. Jenkins stipulates to receipt of notice to quit which terminated the tenancy at the end of August 2023. Plaintiff did not seek unpaid rent or use and occupancy; however, the Court allowed an oral motion to amend the

[1] Co-Defendant Devon Banton did not appear. He is the adult son of Defendant Alicia Jenkins. Co-Defendant Williams Jenkins is actually William Glenn, Defendant Jenkins' father. He moved to the third floor when Ms. Jenkins moved to the second floor. It appears that the units are connected. The third floor does not have a kitchen. Ms. Jenkins testified that he has permission to enter her unit to access the third floor and that she sometimes feeds him. Accordingly, the Court accepts for purposes of this case that Mr. Glenn and Mr. Banton should be considered occupants of Ms. Jenkins' unit.

complaint to add a claim for $858.00 in unpaid use and occupancy for January and February 2024. See *Davis v. Comerford* 483 Mass. 164, 171 (2019) (citations omitted) ("court should include all rent that has become due up to the time of the hearing if the tenant is still in possession"). The Court finds that Plaintiff has established his prima facie case for possession and $858.00 in unpaid use and occupancy through February 2024.

The Court next addresses Ms. Jenkins' defenses and counterclaims. Ms. Jenkins alleges breach of the covenant of quiet enjoyment by interfering with utilities (lack of sufficient heat and hot water and failure of Plaintiff to pay for utilities), breach of the covenant of quiet enjoyment by renting a room in Ms. Jenkins' unit without notice, breach of warranty for conditions of disrepair, violation of G.L. c. 93A, retaliation, violation of the security deposit statute, and violation of the water use statute. Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

Plaintiff purchased the Property in or about July 2019 from Ms. Jenkins' parents, Elizabeth Glenn and William Glenn. Plaintiff testified that he was in an intimate relationship with Ms. Jenkins at the time and that he was interested in learning the business of purchasing and renting residential real estate from her parents, who are experienced in the field. At the time of the purchase, Plaintiff rented the second floor unit to Ms. Jenkins. Ms. Jenkins' brother Todd subsequently moved into the first floor unit.

The Court next turns its attention to Ms. Jenkins' counterclaims which are addressed sequentially.

A. Breach of Quiet Enjoyment

Massachusetts law provides that "[a]ny lessor or landlord of any building or part thereof occupied for dwelling purposes ... who transfers the responsibility for payment for any utility services to the occupant without his knowledge or consent, or any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee ...." G. L. c. 186, § 14. The covenant protects a tenant from "serious interference with his tenancy — acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). Ms. Jenkins claimed that her quiet enjoyment was violated in several different ways.

1. Transfer of Responsibility for Utilities

It is undisputed that the Section 8 lease between the parties places the burden for payment of all utilities (except air conditioning) on Plaintiff.[2] Plaintiff testified credibly that, by mutual agreement, and in light of their ongoing personal relationship, Ms. Jenkins agreed to pay for utilities in lieu of paying rent.[3] There is no evidence that utilities were not furnished to Ms. Jenkins or that she was unaware that Plaintiff had transferred responsibility for payment to her. Although Ms. Jenkins

[2] Plaintiff claimed he did not review the Section 8 lease before signing it because Ms. Glenn instructed him to accept the rental subsidy and he was trying to ingratiate himself with her. Although failure to review the lease is not an excuse for not complying with its terms, Plaintiff's larger point about the unusually close relationship between Plaintiff and the Glenns is demonstrated by Ms. Glenn's efforts -- evidenced by a proposed but unsigned agreement -- to have Plaintiff give Ms. Jenkins an ownership interest in the Property if Plaintiff died.

[3] Because it was not presented to the Court in this case, the Court will not address the question of whether Plaintiff and Ms. Jenkins agreed that she would not pay rent in order for Plaintiff to receive money from the RAFT program.

claimed that she had to pay for utilities for areas not under her exclusive control (such as common areas or areas of the Property where her family members lived), the evidence is unclear. Ms. Jenkins did not offer testimony of an electrician or other professional and did not provide billing records to show which accounts she was paying. Without more, the Court cannot conclude that Ms. Jenkins was paying for utilities not exclusively serving the Premises.

As for the amounts she paid for utilities, Ms. Jenkins made numerous payments directly to the Springfield Water and Sewer Commission beginning on July 5, 2019 and ending on March 7, 2022 in the total amount of $2,164.15. She paid Columbia Gas the sum of $2,818.25 from March 13, 2020 through March 4, 2022, and she paid Eversource $7,677.51 from March 13, 2022 through March 18, 2022. The total amount Ms. Jenkins paid for utilities was $12,659.91. The cumulative amount of rent she would have paid from July 2019 through March 2022 (33 months) based on a rate of $429.00 per month is $15,807.00. during this same period of time. Thus, the sum she paid for utilities was less than the amount of rent she would have paid during the same period.[4]

There is no evidence that Ms. Jenkins objected to the arrangement to pay for utilities before March 2022, when she stopped paying the invoices. There is insufficient credible evidence that her utilities were interrupted due to Plaintiff's failure to pay. Further, there is no credible evidence that the arrangement had a negative impact on Ms. Jenkins' use and enjoyment of the Premises. *See Poncz v.*

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[4] The Court draws the inference that Ms. Jenkins' current share of rent, $479.00, is representative of her rent share during the relevant time period.

Loftin, 34 Mass. App. Ct. 909, 911 (1993). Accordingly, the Court finds that Ms. Jenkins' payment of utilities in lieu of rent did not interfere with Ms. Jenkins' quiet enjoyment. *See Youghal, LLC v. Entwistle*, 484 Mass. 1019, 1023 (2020) (no error in trial court judge's conclusion that there had been no breach of the covenant of quiet enjoyment despite the tenants paying for utilities without a written agreement to do so).

Notwithstanding the foregoing, the transfer of responsibility to pay for electricity and gas to a tenant without a written agreement is a violation of the State Sanitary Code, *see* 105 Code Mass. Regs. § 310.200 (2023), as is charging a tenant for water (unless the landlord is in compliance with G.L. c. 186, § 22). *Id.* at § 410.130. It is also deemed by the Attorney General to be an unfair practice, *see* 940 Code Mass. Regs. § 3.17(6)(g), and therefore a violation of G.L. c. 93A. As a consequence of Plaintiff's violation of G.L. c. 93A, because Ms. Jenkins suffered little or no economic harm, the Court awards Ms. Jenkins nominal damages in the amount of $25.00 plus a reasonable attorney's fee.

2. Failure to Furnish Heat and Hot Water

The Court finds Ms. Jenkins' testimony regarding the heat and hot water issue not credible. Her testimony was inconsistent about when the heat was on and when it was off. She testified at times that the heat was on year-round and at times that it was off every day. She claimed that Plaintiff had to come to the house every day to turn the heat back on, that he came to the house a couple of times per week to turn the heat on and that he came whenever he felt like it. The Court does not credit her testimony regarding the need or frequency of restarting the heating system.

Moreover, despite claiming that the issue had existed since she moved in, she testified that the first time she reported the problem was in 2021, after her relationship with Plaintiff had ended. The first report from the City of Springfield Code Enforcement Department ("Code Enforcement") admitted into evidence is from November 8, 2022.[5] In that report, the inspector found the unit to be at 58.1 degrees. The inspector did not cite Plaintiff for having a defective heating system, however, so it is unclear whether the heating system was defective or whether the low temperature was due to the tenant's use of the thermostat or heating system. The heating system was not cited for violations after the reinspection of the Premises a month later.

In the May 2023 Code Enforcement report, the housing inspector made no mention of issues with the heat or hot water. The report includes photographs of the shower water temperature reading at 120 degrees (the allowable range for shower water temperature per the State Sanitary Code is 110 to 120 degrees) and the kitchen sink reading at 121.1 degrees (the permissible range is 110 to 130 degrees). In July 2023, the Section 8 housing quality inspection report cited no problems with heat or hot water. Given this evidence, the Court finds that Ms. Jenkins failed to sustain her burden of proof that Plaintiff interfered with her quiet enjoyment by failing to furnish heat or hot water.

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[5] Ms. Jenkins offered several Code Enforcement reports into evidence. Plaintiff did not object and the Court finds the reports to be reliable. Moreover, both parties rely on the reports to support their claims.

3. Renting a Room Without Notice

The Court finds Ms. Jenkins' claim that Plaintiff rented a room on the third floor of the Property first to her father and then to someone else without her knowledge to lack credibility. The third floor has a bathroom but no kitchen, and is directly connected to the second floor while also having egress from the outside. Ms. Jenkins offered no evidence to support her assertion that Plaintiff rented (or accepted rent for) the third floor. In fact, Ms. Jenkins conceded that her father did not pay Plaintiff directly, but instead paid rent to her to pay Plaintiff. The Court draws the inference that it was Ms. Jenkins who allowed her father to reside in a room on the third floor and it was her father who allowed another person to reside there. The Court therefore finds no merit to the claim that Plaintiff interfered with Ms. Jenkins' quiet enjoyment by renting rooms on the third floor of the Property.

B. Breach of Warranty for Conditions of Disrepair

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); *see Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State Sanitary Code. *See Davis v. Comerford*, 483 Mass. 164, 173 (2019), *citing Hemingway*, 363 Mass. at 200-201 & n.16. The warranty of habitability applies only to "substantial" violations or "significant" defects. *See McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State Sanitary Code supports a warranty of habitability claim).

One of Ms. Jenkins' primary complaints involved a non-working oven. Plaintiff testified that Ms. Jenkins picked out a double oven when she moved in, which was during the time they were in an intimate relationship.[6] Ms. Jenkins testified that it failed in 2021 and that Plaintiff was slow to replace it. She claimed to have text messages regarding the issue with the oven, but did not produce them. In a related case (22H79CV000732), of which the Court takes judicial notice, Ms. Jenkins filed an affidavit attesting that the oven failed in April 2022, a year after she testified it stopped working.[7] Plaintiff was ordered to provide a stove (in her complaint, Ms. Jenkins asked for a "decent" stove in working condition, not a replacement of the double oven). Plaintiff still had not replaced the oven as of October 24, 2022, when the Court ordered him to do so immediately. There is no evidence suggesting that he did not comply with this order.

It is not clear how long Ms. Jenkins was without a working stove or oven, nor did she testify credibly about what was wrong with it. The December 8, 2022 Code Enforcement report recites only that the "stove oven not working properly." The Code Enforcement reports dated May 23, 2023 and July 11, 2023 contain the same language regarding the stove/oven. Despite references in the Code Enforcement report that that there was something wrong with the stove/oven, the only evidence regarding the specific problem with the stove can be found in the Section 8 housing quality inspection report from July 2023, which noted that the left rear burner

[6] In addition to the double oven, Plaintiff purchased much of the furniture for the Property.
[7] Throughout the trial, Ms. Jenkins repeatedly provided inconsistent or confusing testimony regarding dates.

needed repair. Such a condition does not rise to the level of a substantial violation of the sanitary code or a significant defect, and does not constitute breach of warranty.[8]

Ms. Jenkins testified about other conditions of disrepair, including an infestation of mice, a flickering lights, water intrusion due to a roof leak, and doors that did not property lock. The best evidence of the condition of the unit are the various inspection reports offered at trial. The earliest report is from October of 2022, but it relates to a building code inspection and did not address any conditions of disrepair in Ms. Jenkins' unit. The next report, from November 8, 2022, references the previously addressed issues with heat and the stove/oven.[9] The reinspection report dated December 8, 2022 references only the stove/oven problem and issues in the basement.

It was not until the May 2023 inspection report that Code Enforcement included citations regarding other conditions of disrepair. The May 2023 report recited "mice noted at the time of inspection" and listed various lighting issues that had to be addressed in the Premises.[10] The Section 8 housing quality inspection performed on July 24, 2023 lists a number of issues, none of which are particularly significant. Notably, the Section 8 inspection report makes no mention of mice, despite Ms. Jenkins' testimony that the mouse problem began in 2020 and was ongoing. Given the

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[8] Ms. Jenkins testified she was angry initially because Plaintiff replaced the double oven with a used stand-alone oven that did not match the décor of the kitchen. She also testified that Defendant did not adequately repaint the wall where the double ovens had been. The Court does not find the aesthetics of the wall to be a serious defect.
[9] Much of the report addresses issues in the basement, but there was no testimony that Ms. Jenkins had access to the basement or what, if any, impact the condition of the basement had on the rental value of the Property.
[10] A Code Enforcement report dated July 11, 2023 was also entered into evidence, but it references a May 2023 inspection and is almost identical to the May 2023 report, so it is not clear if the report references the same or a different inspection.

fact that the Court found much of Ms. Jenkins' testimony to lack credibility, and in light of the minimal evidence that the mice and lighting issues were substantial defects in the Premises, the Court finds that Ms. Jenkins did not prove by a preponderance of the evidence that Plaintiff violated the implied warranty of habitability.

C. Retaliation

Ms. Jenkins asserted that Plaintiff served the notice to quit dated July 11, 2023, which is within six months of her complaints to Code Enforcement in May 2023. The timing of the notice to quit, approximately two months after Ms. Jenkins' complaint to Code Enforcement, creates a presumption of retaliation. *See* G.L. c. 186, § 18 ("The receipt of notice of termination of tenancy, except for nonpayment of rent ... within six months after the tenant has ... made such report or complaint ... shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant for engaging in such activities."). Plaintiff did not prove by clear and convincing evidence that his action was not a reprisal against Ms. Jenkins and that he had sufficient independent justification for terminating the tenancy, and that he would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of whether Ms. Jenkins had complained to Code Enforcement. The Court therefore finds that Ms. Jenkins proved her retaliation (reprisal) counterclaim by a preponderance of the evidence. As damages therefor, the Court awards damages in the amount of one months' rent.

D. Violation of G.L. c. 186, § 15B (security deposit law)

The Section 8 contract indicates that Ms. Jenkins was required to pay a security deposit in the amount of $1,273.00, which she claimed she did over three payments. She claimed that Plaintiff violated the security deposit law because he did not provide a receipt for her payment and because he paid no interest on the deposit. Plaintiff denies receiving a security deposit. As evidence of her payment, Ms. Jenkins relied on certain Venmo transfers to Plaintiff. A review of her bank records indicates that she made two Venmo payments to Plaintiff before entering into the lease on July 1, 2029; one, for $1,000.00, was made in April, 2019, and one, for $150.00, was made in May 2019. The only other payment around the move-in date was a payment of $80.00 on October 4, 2019. Given that Plaintiff and Ms. Jenkins were in a relationship in 2019, and given that they sometimes traveled together, there are other reasons why she may have been sending Plaintiff payments by Venmo. The Court therefore finds that Ms. Jenkins did not sustain her burden of proving a security deposit violation by a preponderance of the evidence.[11]

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

1. Plaintiff is entitled to damages in the amount of $858.00 for unpaid use and occupancy through the date of trial.
2. Defendant Alicia Jenkins is entitled to damages in the amount of $1,786.00 on her claim of retaliation and for Plaintiff's violation of G.L. c. 93A.

[11] The claim for violation of the water use statute is dismissed as it was not raised at trial.

3. After setting off the damages to which Plaintiff is entitled, Defendant Alicia Jenkins is entitled to a judgment for damages in the amount of $928.00. No judgment shall enter, however, until the Court awards reasonable attorney's fees.
4. Defendant Alicia Jenkins shall have fifteen (15) days from the date of this order to file a petition for reasonable attorney's fees and costs, along with supporting documentation. Plaintiff shall then have fifteen (15) days from receipt of the petition to file any opposition, after which time the Court will enter final judgment.

SO ORDERED.
May 29, 2024

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-399

DARRELL BALDWIN, Plaintiff, v. LAKSHMI BHULA, INC. and THE WEST SPRINGFIELD HEALTH DEPARTMENT, Defendants.	ORDER

After hearing on May 24, 2024, on the plaintiff tenant's complaint and request for injunctive relief, at which the plaintiff appeared self-represented and the defendants each appeared through counsel, the following order shall enter:

1. The defendant property owner, Lakshmi Bhula, Inc[1]. shall provide alternate living accommodations until the defendant Town of West Springfield informs it in writing that tenants may reoccupy the premises[2].
2. Said accommodations were reported by the parties and met with their approval to be located at Residence Inn at 64 Border Way in West Springfield.
3. Said accommodations shall continue to be provided by the defendant property owner (hereinafter, "Lakshmi") until the defendant Town of West Springfield (hereinafter, "Town") allows re-occupancy of the premises or until further order of the court.
4. The plaintiff tenant (hereinafter "tenant") shall have access to the subject premises during daylight hours check in on and access his belongs during daylight hours unless said access is reduced by the defendant Town in writing.
5. Lakshmi shall take all steps necessary to ensure that the tenant's unit is secured and that his belongings are not damages including, among other things, not covered in construction dust.
6. Lakshmi shall immediately make all best efforts to notify all tenants who were residing at the premises at the time that the Town required everyone to

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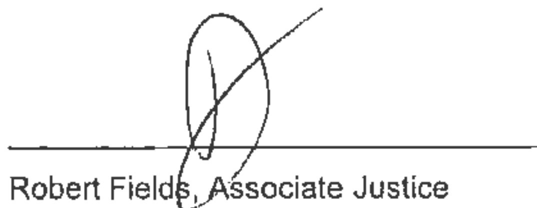
[1] The complaint named the defendant The Bell Air Inn but counsel for the property owner notified the court that the actual name of the owner of the defendant hotel is Lakshmi Bhula, Inc. Accordingly, same shall be substituted as the defendant with a mailing address c/o counsel, Michael S. Wrona.
[2] According to a written submission (and testimony) by Jay Steup, Town of West Springfield Building Commissioner: On May 23, 2024, the building department for the Town of West Springfield "deemed the structure unsafe to occupancy because of the extent of the demolition work in multiple areas of the structure, specifically, the removal of ire separation walls, exposed electrical wiring, the covering of smoke and heat detectors, and concealing work without the required inspections. All work is unpermitted and completed by unlicensed workers. The Certificate of Occupancy was revoked.

vacate the premises of this court action and the obligation of Lakshmi to provide hotel accommodations for any such resident who has established a tenancy-at-will in accordance with Massachusetts law.

7. Laskshmi shall post a copy of this order upon their receipt of same on the doors of each unit that was occupied (for any length of time) at the time the residents were required to vacate.

8. **TO ANY AND ALL WHO WERE OCCUPYING THE BELL AIR MOTEL ON MAY 23, 2024 AND WERE REQUIRED TO VACATE: IF YOU BELIEVE YOU HAVE POSSESSORY RIGHTS AS A TENANT UNDER MASSACHUSETTS LAW TO YOUR UNIT AT THE BELL AIR MOTEL AND ARE SEEKING TO BE HEARD AT THE HOUSING COURT FOR AN ORDER FOR ALTERNATE ACCOMMODATIONS, YOU MAY FILE AN ACTION AT THE WESTERN DIVISION HOSUING COURT, 37 ELM STREET IN SPRINGFIELD, AND BE HEARD.**

So entered this 30th day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 24H79SP000800

Carmita Martha Cantos,	)
	)
PLAINTIFF	)
	)
v.	)
	)
Ariana Gonzalez and Devon Lee,	)
	)
DEFENDANTS	)
	)

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This summary process (eviction) matter was before the Court (Adeyinka, J.) for a bench trial on May 21, 2024. The Plaintiff, Carmita Martha Cantos ("Ms. Cantos/Plaintiff") seeks to recover possession of 11 Casmir Street, Unit #1[1]. Westfield, MA (the "Premises/Apartment") from Ariana Gonzalez and Devon Lee ("Defendants") based on a claim for non-payment of rent. Both the Plaintiff[2] and Defendants were self-represented at trial.

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

BACKGROUND

The Premises is a two-family home. Ms. Cantos is the owner of the Premises. Both parties agree that the rent is $1,600.00 per month. *See* **Pretrial Stipulation.** On February 2, 2024, the Plaintiff served a notice to quit on the Defendants via Deputy Sheriff Stacey Dufrense. On February 21, 2024, Ms. Cantos filed this summary process eviction with the Court. On April 18, 2024, the parties appeared for a first-tier court event. At the first-tier court event, the Defendants

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[1] At trial, the parties both represented that the Defendants live on the first floor. The Clerks Office shall amend the Premises address on the Complaint to read: 11 Casmir Street, Unit #1, Westfield, MA.
[2] The Plaintiff has limited English proficiency and was assisted at trial by the Spanish Interpreter.

filed their Motion to Dismiss Ms. Cantos' claim for possession, which this Court (Adeyinka, J.) denied without prejudice after a hearing. *See* **Docket Entries No. 9 & 10.** However, the Court Ordered the Defendants file and serve an Answer on the Plaintiff before April 30, 2024. *See* **Order dated April 18, 2024.**

On April 19, 2024, the Defendants filed their Answer with the Court. *See* **Docket Entry No. 12.** In the Defendants' Answer, they claimed, among other things, that: 1) the Complaint and Notice to Quit are inconsistent; 2) Ms. Cantos allowed bad conditions to exist within the Premises; 3) Ms. Cantos violated the security deposit law; 4) the Premises had no heat for the "entire winter"; 5) Ms. Cantos violated the Consumer Protection Statute; and 6) the case should be stayed because of rental assistance[3]. The Court scheduled this matter for trial on May 21, 2024.

PLAINTIFF'S CLAIM FOR POSSESSION AND DAMAGES

At the trial Ms. Cantos represented to the Court that she has owned the Premises for "two to three" years. When the Court asked Ms. Cantos to provide proof of ownership, she was unable to produce that information during the trial. However, the Defendants did not dispute renting the premises from Ms. Cantos in February 2023. *See* **Pretrial Stipulation.** On February 16, 2023, the parties entered a one-year lease of the Premises. *See* **Lease at Plaintiff's Exhibit II.** The parties agree that the monthly rent amount is $1,600.00. *See* **Pretrial Stipulation.** On February 2, 2024, Deputy Sheriff Stacey Dufrense on behalf of Ms. Cantos, served a legally sufficient notice to quit on the Defendants, which also provided the required the form pursuant to G.L. c. 186, § 31. *See* **Notice to Quit at Plaintiff's Exhibit I.**

At the trial, the Defendants admitted to receiving the notice to quit. The Defendants also admitted that they last paid rent in October 2023. *See* **Notice to Quit at Plaintiff's Exhibit I.** As a result, the total amount of rent/use and occupancy owed to the Plaintiff is $12,800.00 (8 months X $1,600.00). The Defendants continue to reside at the Premises.

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[3] The Defendants admitted that the RAFT assistance was going to be applied towards finding a new apartment and therefore G.L. c. 239 § 15 does not apply in this case.

Accordingly, the Court finds that Plaintiff introduced sufficient evidence to satisfy her prima facie case for possession and damages. However, Ms. Cantos shall submit proof of ownership to the Premises to clerk's office within ten (10) days of this ruling before judgment for possession enters.

DEFENDANTS' DEFENSES AND COUNTERCLAIMS

At the trial, the Defendants testified credibly that they were without heat for four (4) months (November 2023 to February 2024) due to Ms. Cantos converting the Premises heating system from oil to gas. *See* **Defendants Answer.** The Defendants have three (3) children, two (2) of which are diagnosed with ███. As a result of the lack of heat, the Defendants had to purchase space heaters to keep their family warm. Ms. Cantos did not dispute the Defendants; therefore, the Court credits the Defendants claim that Ms. Cantos breached their implied warranty of habitability.

The Defendants also testified that since May 2023 and up to the date of trial, they have had a rodent infestation[4]. *See* **Defendants Answer.** The Defendants did not introduce printed photos, but attempted to show pictures of mice droppings and a mouse that was found in their bathroom shower. Again, Ms. Cantos did not contradict or rebut the Defendants claim that there was a rodent infestation. The Court credits the Defendants testimony, as it relates to the rodent issue.

As a result of Ms. Cantos combined breach of the Defendants' quiet enjoyment, the Court shall deduct $400.00 per month from the contract rent for the four (4) months the Defendants were without heat, which totals a damage award of $1,600.00 (4 months X $400 abatement). The Court shall also deduct $100.00 per month from the contract rent for the twelve (12) months (May 2023 to May 2024) the Defendants dealt with the rodent infestation, which totals $1,200.00 (12 months X $100 abatement).

[4] At the trial, the Court Order Ms. Cantos to inspect and abate the rodent issue on or before May 24, 2024.

Lastly, the Defendants stated that Ms. Cantos violated the Security Deposit Law. Ms. Cantos admitted that she did not provide a receipt for the security deposit. Moreover, Ms. Cantos did not provide the Defendants with the interest accrued on their security deposit. Ms. Cantos admitted that this is her first time, as a landlady, that she had to come into court to navigate the summary process (eviction) rules and procedures. Unfortunately, ignorance of the law is not a defense. Accordingly, and pursuant to G.L. c. 186, § 15B, the Defendants are entitled to damages of $4,800.00, which equals three times the security deposit ($1,600 security deposit X 3).

RULINGS OF LAW

Under the implied warranty of habitability, the landlord assures that the Premises meet the standards of the state Sanitary Code. 105 C.M.R. 410, 780 C.M.R. 1 *et seq.* Ms. Cantos is liable for breaches of the warranties. The Defendants are entitled to damages equivalent to the value of the premises if they were up to Code minus their value in their actual, defective condition. *See* **Haddad v. Gonzalez**, 410 Mass. 855 (1991). It is usually impossible to fix warranty damages with mathematical certainty; the case law permits the courts to use approximate dollar figure so long as those figures are reasonably grounded in the evidence presented at trial. *See* **Young v. Patukonis**, 24 Mass. App. Ct. 907 (1987). In order for such a breach to meet the high standard required for a breach of quiet enjoyment, the Defendants must show that the breach was sufficiently serious and/or prolonged to meet the statutory threshold. *See* **Leardi v. Brown**, 394 Mass. 151 (1985).

As explained above, the Court finds that the lack of heat for four months, coupled with the ongoing rodent infestation are violations of the State Sanitary Code which materially impaired the Defendants' use of the Premises, which the landlord knew about and for which the Defendants were not responsible. As a result, the court awards a total of $2,800.00 on the Defendants' warranty of habitability counterclaim.

SET-OFF

Setting off the $7,600.00 ($1,200 + $1,600 + $4,800) which the Ms. Cantos owes to the Defendants against the $12,800.00 which the Defendants owes to Ms. Cantos, the Court finds that the Defendants owe a balance of $5,200.00.

ORDER FOR ENTRY OF JUDGMENT[5]:

Based upon the foregoing, and considering the governing law, it is ORDERED that:

1. Prior to entry of Judgement, the Plaintiff shall submit proof of ownership to the clerk's office, by deed or affidavit, of the Premises within ten (10) days of this ruling.
2. Upon the requirements of Paragraph No. 1 being satisfied, judgment shall enter for Plaintiff for possession in the amount of **$12,800.00** in unpaid rent.
3. Judgment shall enter for the Defendants on their counterclaims for breach of the implied warranty of habitability for damages in the amount of **$2,800.00**.
4. Judgment shall enter for the Defendants on their claim of breach of the Security Deposit Law in the amount of **$4,800.00**.
5. The foregoing orders for judgment paragraphs Nos. 2-4 results in a net judgment for the Plaintiff in the amount of **$5,200.00**.
6. Pursuant to G.L. c. 239, §8A, the Defendants shall have ten **(10) days** from the date of this Order to deposit with the Court a bank check or money order made out to the Plaintiff in the amount of **$5,200.00**, plus court cost in the amount of $ 313.92 and interest in the amount of $ 169.37 for a total of $ 5,683.29
7. If such payment is made, judgment shall enter for the Defendants for possession. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.

[5] If Ms. Cantos needs assistance with interpreting this decision, the Clerk's office shall provide information to Ms. Cantos regarding language access assistance as it relates to this Order.

8. If the deposit is not received by the Clerk within the ten (10) day period, judgment shall enter for the Plaintiff for possession and damages in the amount of **$5,200.00**, plus court costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

/s/ Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice

May 30th, 2024

cc: Carmita Cantos
Ariana Gonzalez
Devon Lee

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5337

DANOMA DG, LLC,

Plaintiff,

v.

THOMAS BROWN,

Defendant.

ORDER

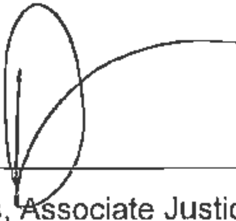
After hearing on May 24, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The landlord alleges that the tenant has failed to comply with the terms of the February 20, 2024, Agreement of the Parties.
2. Specifically, the tenant paid his rent late in March, April, and May 2024, by paying it each month after the 5th of the month.
3. Additionally, the RAFT application pending at the time of the Agreement has lapsed without being processed by Way Finders, Inc.

4. The tenant asserts that the RAFT application "timed out" because the landlord would not provide him (or RAFT) a new lease or verification that he is a tenant pursuant to a month-to-month tenancy.
5. The tenant explained that his income is solely a monthly disability check that arrives the third week of each month and he will not be able to pay the rent until the third week of each month.
6. Given the above, and that the tenant paid his rent each month since the Agreement (albeit after the date agreed to in the Agreement) and given that there appears to be confusion about what documentation is required from the landlord for a RAFT application, the motion for entry of judgment is denied without prejudice.
7. Until further order of the court (or the case is dismissed), the tenant shall pay his rent by the third week of each month as an accommodation to his disability (for which he receives the disability check).
8. Additionally, the tenant shall forthwith reapply for RAFT. He is urged to seek assistance with that application through Springfield Partners for Community Action located at 721 State Street in Springfield and whose phone number is 413-263-6500.
9. The landlord shall provide to Way Finders, Inc. whatever documentation is required by that agency including verification that the tenant is a tenant-at-will at the subject premises.
10. If RAFT either does not pay any amount or pays an amount to the landlord that is less than the outstanding debt, the tenant shall pay $25 extra each

month towards the remaining debt. This amount should be viewed by Way Finders, Inc. as a "repayment plan" for RAFT purposes. The parties may be heard upon proper motion if either seeks an adjustment to this repayment plan.

So entered this 30th day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-674

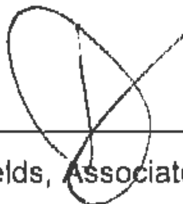
ENOCH JENSEN, Plaintiff, v. ISAAC KELLY, Defendant.	**ORDER of DISMISSAL AND TRANSFER OF COUNTERCLAIMS TO THE CIVIL DOCKET**

After hearing on May 28, 2024, on the tenant's motion to dismiss the following order shall enter:

1. The tenant, Isaac Kelly (hereinafter, "Kelly") makes two distinct arguments for dismissal, both relating to the Notice to Quit. First, it fails to either end on a rent day or fails to be specific enough. The court disagrees and finds the Notice to Quit dated October 11, 2023, is sufficient to terminate the tenancy as of December 1, 2023.
2. The second basis is that Kelly never received the Notice to Quit. Given that the landlord's mother, Gale Whitbeck, purportedly was the person who served the Notice to Quit, the landlord requested and was granted a recess in the matter to allow for Ms. Whitbeck to appear in court.
3. Upon Ms. Whitbeck appearing, the court conducted an evidentiary hearing.

4. After conducting said hearing, at which both parties as well as Jillian Lively (who is married to the named tenant and co-resides at the premises) and Ms. Whitbeck (landlord's mother) testified, the court finds and so rules that the landlord did not meet his burden of proof that the tenant received the Notice to Quit.
5. The Court finds Kelly and Ms. Lively credible in their testimony that that never received the Notice to Quit. Additionally, Ms. Whitbeck testified that she placed the Notice to Quit "in the crack" of the screen door at the front of the house. Based on the credible testimony of Kelly and Lively, the front door of the premises does not have---and never had—a screen door.
6. Because the landlord has not met his burden of proof that the tenant received the Notice to Quit, his claim for possession is dismissed, without prejudice.
7. The tenant's counterclaims shall be transferred to the Civil Docket in a new action entitled *Isaac Kelly v. Enoch Jensen*. The Clerk's Office is requested to schedule a clerk's Case Management Conference in that new civil matter to schedule all pretrial matters.
8. **NOTE:** The July 23, 2024, trial shall be taken off the list for that date as this Summary Process action is dismissed.

So entered this 31st day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4620

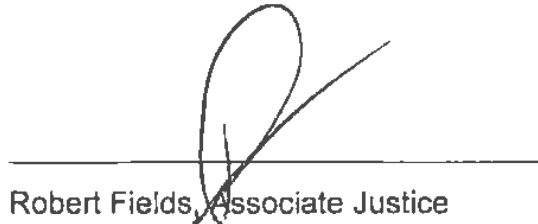
BLANCA LOJAS, Plaintiff, v. SHAKYRA GAUTIER, Defendant.	ORDER

After hearing on May 23, 2024, on the tenant's motion for additional time before she has to vacate the premises, the following order shall enter:

1. The tenant informed the court that she obtained a Section 8 rental voucher as of May 23, 2024, and now has 120 to relocate by the administering agency for the voucher.
2. The landlord is not willing to agree to the entire 120-day period but is willing to grant an additional month.

3. Given the history of this case, the landlord's position is reasonable, and the tenant shall be granted until July 1, 2024, to vacate the premises, contingent upon her paying her use and occupancy for June 2024 in a timely manner.

So entered this 30th day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-4867

MASS WESTFIELD, L.P.,

Plaintiffs,

v.

TRACY ALBANO,

Defendant.

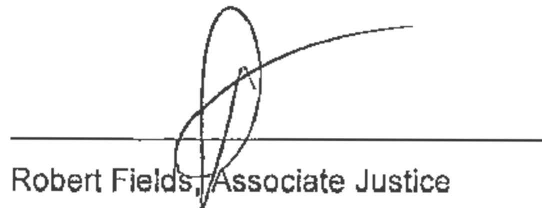
AMENDED ORDER

After hearing on May 16, 2024, on the landlord's motion to amend the court's April 4, 2024, Order at which only the moving party appeared, the following Amended Order shall enter:

1. It was made sufficiently clear at the March 29, 2024, hearing that Shannon Callahan may be occupying the subject unit and that he is a guest/invitee of the tenant, Tracy Albano.
2. Mr. Callahan does not have any rights to possess and/or occupy the premises beyond being Ms. Albano's guest and that when the landlord levies on the execution in this matter, such rights are totally extinguished.

3. As such, the sheriff or constable levying on the execution for possession is authorized to remove Mr. Callahan should he be present at the premises at the time of the levy.
4. Additionally, upon the return of the original execution by the landlord, a new execution (based on the earlier judgment) shall issue.

So entered this 30th day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-475

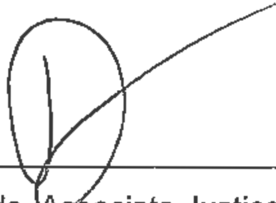
JOSE and LINA MONJE, Plaintiffs, v. MARIANGELICA MUENLE (OCHOA), Defendant.	ORDER

This matter came before the court for trial on May 9, 2024, and the tenant asserted that she never received the Notice to Quit and after hearing on that date, the court dismissed the case due to the landlords' failure to meet their burden of proof that the tenant received the Notice to Quit. The landlords filed a motion to reconsider that ruling and after hearing the following order shall enter:

1. The Notice to Quit was served by Sheriff Mario Cardinale and even though the tenant had asserted in her Answer filed one month prior to the May 9, 2024, hearing, the landlords failed to have the sheriff testify.

2. At the hearing on the motion for reconsideration, the landlords credibly stated for the first time that they never received the Answer, and thus did not have any notice in advance of the trial that the tenant was claiming lack or receipt of the Notice to Quit.
3. Additionally, Sheriff Mario Cardinale's testimony at the hearing on the motion for reconsideration satisfied the court that the landlords have met their burden of proof that the tenant received the Notice to Quit.
4. Accordingly, the motion is allowed, and this matter shall be restored to the list for trial.
5. Said trial shall be scheduled for **June 13, 2024, at 9:00 a.m.**

So entered this 30th day of May, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-312

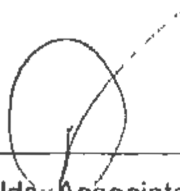
TIFFANY NUGENT, Plaintiff, v. GILBERT BAGUMA, Defendant.	ORDER

After hearing on May 23, 2024, on the plaintiff's motion seeking payment of the judgment in this matter, at which both parties appeared, the following order shall enter:

1. The defendant has filed a timely appeal in this matter and reported at this hearing that said appeal is still pending. The record appears to support that the appeal is pending.
2. As such, the plaintiff's motion is denied without prejudice.
3. The parties are reminded that as Appellant and Appellee, they each have responsibilities and deadlines regarding the appeal process and that there are resources (while they continue to pursue this matter self-represented) to

assist them including on-line resources by the Trial Court and the Trial Court libraries.

So entered this ___20th___ day of ___May___, 2024.



Robert Fields, Associate Justice

Cc: Michael Roche, Assistant Clerk Magistrate (This court's point person re: Appeals)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2345

SPRINGFIELD HOUSING AUTHORITY, Plaintiff, v. IGNACIO COLON SANTIAGO, Defendant.	ORDER

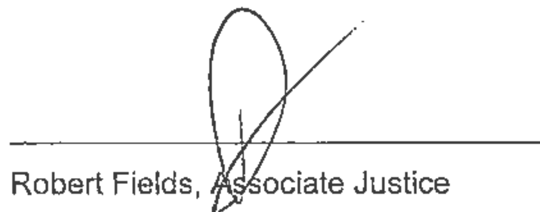
After a review hearing on May 24, 2024, at which the landlord appeared through counsel, the tenant appeared self-represented, and Michel Richtell from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. Pursuant to an order of the court dated April 23, 2024 (Kane, J.) the court was to consider a final one-month extension for the tenant to vacate the premises.
2. The landlord reported to the court that the tenant made his use and occupancy payment for May 2024 (required by the court's order).
3. Mr. Richtell was not able to report any information about TPP's involvement in the case other than to report that the TPP person who was assigned to this

matter was out on maternity leave. Mr. Richtell took the tenant's cell phone number and agreed to see what TPP might be able to assist within in this matter.

4. The landlord returned the execution during the hearing and a new execution based on the underlying judgment shall issue.
5. There shall be a stay on the use of the execution until July 1, 2024.
6. The tenant shall pay his June 2024 use and occupancy (rent) timely and in full by June 7, 2024.
7. This matter shall be scheduled for review on **June 28, 2024, at 2:00 p.m.**

So entered this 30th day of May, 2024.



Robert Fields, Associate Justice

Cc: Michael Richtell, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1422

PETRU BALAN,

Plaintiff

v.

DANIEL WILLIAM GIRARD, SR.,

Defendant

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

This summary process case brought for non-payment of rent came before the Court for a bench trial on May 31, 2024. Plaintiff appeared through counsel and Defendant appeared self-represented. Plaintiff is a tenant residing at 62 Freeman Drive, #3, Greenfield, Massachusetts (the "Premises").

Defendant stipulated to Plaintiff's prima facie case for possession and$11,180.00 in rent arrears. He did not file an answer and is not eligible for rental assistance until July 2024. He is waiting to receive disability benefits concedes that, even with such benefits, he can no longer afford the Premises. He is trying to relocate but has not yet found replacement housing.

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

1. Judgment for Plaintiff shall enter for possession and $11,180.00 in damages, plus court costs.
2. Plaintiff may request issuance of the execution (eviction order) at the next

hearing date of June 28, 2024 at 9:00 a.m. without further notice or pleading.[1]

SO ORDERED.

DATE: May 31, 2024

Jonathan J. Kane, First Justice

[1] Although Defendant is not eligible for a statutory stay because this case was brought for non-payment of rent, he Court is requiring execution to issue by motion in order to allow Defendant the opportunity to offer a viable exit strategy after consulting with Tenancy Preservation Program.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1009

IVAN GONZALEZ,

Plaintiff

v.

JORGE BELTRAN AND MYLEISHA VIERA,

Defendants

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the court for a bench trial on May 23, 2024. All parties appeared self-represented. The rental unit in question is located at 42 Carver Street, Springfield, Massachusetts (the "Premises").

The parties stipulated to the following facts: The Premises consist of a two-family owner-occupied house. The tenancy began on April 1, 2020. Defendants received the notice to quit dated January 12, 2024.[1] They parties agree that monthly rent is $1,250.00 per month and that $7,500.00 of rental arrears are owed. The Court finds that Plaintiff has established his prima facie case for possession and damages of $7,500.00.

Defendants did not file an answer. At trial, they simply asked for additional time to vacate. Because the Court deems this to be a no fault eviction case,

[1] The notice to quit does not state a cause for eviction and the Court finds it to be a no fault notice. The complaint states that Plaintiff is evicting Defendants for nonpayment of rent. Because the notice to quit was for no cause, the Court strikes the non-payment language from the complaint.

Defendants may be entitled to a stay pursuant to G.L. c. 239, § 9. However, Defendants testified that they cannot pay the rent is owed, which is prerequisite for the statutory stay. *See* G.L. c. 239, § 11. Defendants acknowledged that they have no defenses to payment and understand that an execution (eviction order) will issue in due course.

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

1. Judgment shall enter for Plaintiff for possession and $7,500.00 in damages, plus court costs.
2. Execution (eviction order) will issue by application after expiration of the 10-day appeal period.

SO ORDERED.
May 31, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 23-SU-2

BLANCA MATEO, **Plaintiff,** **v.** **DOMINIQUE WISE,** **Defendant.**	**ORDER**

After a Review Hearing on May 23, 2024, at which only the plaintiff appeared, the following order shall enter:

1. Based on the recommendation of the Court Clinic after its May 9, 2024, forensic evaluation the defendant Dominique Wise, the Court shall appoint a Guardian Ad Litem for Ms. Ward in these proceedings.
2. The Clerk's Office is requested to identify a Guardian Ad Litem (G.A.L.) from the Court's G.A.L. list and issue an order of appointment.
3. Upon such issuance, the Clerk's Office is requested to schedule this matter for further review.

4. This is a Supplementary Process matter in which the plaintiff is seeking payment of the judgment entered in the underlying Small Claims action, 21SC80.
5. The G.A.L. shall among things review the file, speak with the parties, and investigate the wherewithal of Ms. Wise to pay the debt.
6. The parties and the G.A.L. shall appear at the next review date to be scheduled by the Clerk's Office under a separate order.

So entered this 31ST day of MAY, 2024.

____
Robert Fields, Associate Justice

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1198

PAUL ROUD,

Plaintiff

v.

MALCOLM CLARK,

Defendant

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

This no cause summary process case came before the Court for a bench trial on May 31, 2024. Plaintiff appeared through counsel and Defendant appeared self-represented. Plaintiff is a tenant residing at 6 Whitney Way (Top Floor), Montague, Massachusetts (the "Premises").

Defendant stipulated to Plaintiff's prima facie case for possession. He did not stipulate to unpaid rent and use and occupancy of $7,000.00, claiming he had made a payment that was not credited to his account. However, at trial, he did not produce any evidence of the payment and agreed to pay the $7,000.00 in order to be entitled to a statutory stay.

The Court has discretion in a no fault eviction case to grant a stay on judgment and execution. *See* G.L. c. 239, §§ 9 - 11. The Court finds sufficient facts to warrant a stay, conditioned upon Defendant paying Plaintiff the $7,000.00 owed and so long as he pays for his use and occupation for the duration of the stay. *See* G.L. c. 239, § 11.

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

1. Judgment for possession only, plus court costs, shall enter in favor of Plaintiff.[1]
2. Defendant will pay $7,000.00 by June 3, 2024, which will reduce the unpaid rent and use and occupancy balance to zero.
3. Defendant shall pay $1,400.00 per month for use and occupancy for the duration of the stay. Payments are due by the 10th of each month beginning in June 2024.
4. Defendant shall make diligent efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which he has applied or made inquiry, including the address, date and time of contact, method of contact, name of contact person and result of contact. He shall bring a copy of the log to the next court date, and shall provide a copy to Plaintiff's counsel the day prior to the hearing.
5. The parties shall appear for a review of Defendant's housing search on July 26, 2024 at 9:00 a.m. in the Greenfield session.

SO ORDERED.

DATE: May 31, 2024

Jonathan J. Kane, First Justice

[1] If Defendant fails to make the $7,000.00 payment, Plaintiff may move to amend the judgment.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1325

DAVIAU & ROBERT PROPERTIES, LLC,

Plaintiff

v.

JOHN CIMINI,[1]

Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This no cause summary process case came before the Court for a bench trial on June 3, 2024. Plaintiff appeared through counsel and Defendant appeared self-represented. Plaintiff is a tenant residing at 37 Haig Ave., 1st Floor, South Hadley, Massachusetts (the "Premises").

Defendant stipulated to Plaintiff's prima facie case for possession and unpaid rent in the amount of $7,800.00. The parties further agree that Defendant has been approved for rental assistance in the amount of $6,500.00, although Plaintiff has not yet received funds. Defendant asserts that he recently made an on-line payment of $1,300.00 for June use and occupancy. Defendant did not file an answer and only seeks time to move.

The Court has discretion in a no fault eviction case to grant a stay on judgment and execution. *See* G.L. c. 239, §§ 9 – 11. The Court finds sufficient facts to warrant a stay of judgment given that he has a zero rent balance,[2] provided that he pays for his use and

[1] The court record should be amended to reflect the correct spelling of Defendant's name, as reflected in the caption.
[2] If one of the listed payments is not received by Plaintiff, it may file a motion for entry of judgment.

occupation for the duration of the stay and continues a diligent housing search. *See* G.L. c. 239, § 11.

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

1. Plaintiff is entitled to a judgment for possession, but said judgment will be stayed pursuant to the terms of this order.
2. Defendant shall pay $1,300.00 per month for use and occupancy for the duration of the stay. Payments are due by the 5th of each month beginning in July 2024.
3. Defendant shall make diligent efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which he has applied or made inquiry, including the address, date and time of contact, method of contact, name of contact person and result of contact. He shall bring a copy of the log to the next court date, and shall provide a copy to Plaintiff's counsel the day prior to the hearing.
4. The parties shall appear for a review of Defendant's housing search on **August 5, 2024 at 9:00 a.m.**

SO ORDERED.

DATE: June 3, 2024

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

WESTERN, ss

HOUSING COURT DEPARTMENT
EASTERN DIVISION
DOCKET NO. 24H79SP000592

Alrick Gardner,
PLAINTIFF

v.

Ashlane Dawkins,
DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

On May 22, 2024, this summary process action was before the Court (Adeyinka, J.) for trial. The Plaintiff, Alrick Gardner ("Plaintiff/Gardner") seeks to recover possession of 241 Tyler Street, Springfield, MA (the "Premises") from Ashlane Dawkins[1] ("Defendant/Dawkins") based on a no-fault eviction. At the trial, the Gardner was represented by counsel. Dawkins was self-represented at trial.

PROCEDURAL BACKGROUND

The Premises is a single-family home. *See* **Pretrial Stipulation.** Dawkins is the sole occupant at the Premises. The parties agree that Dawkins lived at the Premises with her former husband, Patrick Gardner, Sr[2]., since April 2023. *See* **Pretrial Stipulation.** Both parties agree that the Dawkins never leased or rented the Premises, and no rent is owed. *See* **Pretrial Stipulation.** On September 18, 2023, Gardner served a no-fault notice to quit on Dawkins. *See* **Notice to Quit, at Plaintiff's Exhibit I.** On February 9, 2024, Gardner filed this summary process eviction with this Court. *See* **Docket Entry No. 1.** The Court scheduled a first-tier court event for April 1, 2024.

[1] At the trial, the parties represented that Dawkins is married to Gardner's biological father. A petition for Divorce was filed in Hampden Probate and Family Court and that matter is currently pending disposition. Plaintiff's Counsel represented that the Premises is not in dispute, as it relates to the Divorce Petition.

[2] During the trial, Dawkins produced an Abuse Prevention Order ("209A"), issued from the Springfield District Court, against Patrick Gardner Sr. which enjoins him from coming to the martial home or near Dawkins. *See* **209A Order, at Defendant's Exhibit I.**

On March 22, 2024, Gardner filed a Motion for Access to make repairs and determine if the Premises was "abandon[e]d or if there [was] waste on the property." *See* **Plaintiff's Motion for Access, at Docket Entry No. 5.** Gardner's Motion for Access was allowed by this Court (Kane, F.J.) on April 1, 2024, subject to this Court's prior Order[3]. *See* **Order, at Docket Entry No. 11.** On March 25, 2024, Dawkins filed a Motion to Continue the April 1, 2024 first-tier court event, which was DENIED by this Court (Kane, F.J.). *See* **Defendant's Motion to Continue and Order, at Docket Entries Nos. 6 & 10.** On March 27, 2024, Dawkins filed her Answer and Discovery Request. *See* **Defendant's Answer and Discovery Request, at Docket Entries Nos. 8 & 9.** At the April 1, 2024 hearing, the court scheduled this matter for trial on April 16, 2024. *See* **Notice of Next Court Event, at Docket Entry No. 12.**

On April 16, 2024, Gardner appeared with counsel for trial, but Dawkins failed to appear. As a result, Gardner filed for default judgment pursuant to Rule 10 of the Uniform Summary Process Rules. *See* **Military Affidavit, at Docket Entry No. 17.** On April 17, 2024, Dawkins filed a Motion to Remove the Default Judgment, which this Court (Adeyinka, J.). *See* **Order Vacating Default, at Docket Entry No. 19.** A trial was scheduled for May 22, 2024. Prior to commencing the trial both parties agreed that Discovery was complete.

In the Dawkins' Answer, she generally alleged that: 1) Gardner retaliated against her by filing this eviction; 2) she is a domestic violence survivor; 3) Gardner allowed bad conditions to exist at the Premises (i.e. sewage in the basement) and; 4) Gardner caused her to be billed for heat, hot water, electricity, and gas. *See* **Defendant's Answer.**

At trial Dawkins conceded to Gardner's claim for possession and she did not present any credible evidence to support her counter claims or defenses. However, the Dawkins asked the Court to provide her with time to vacate the unit. The Court will liberally construe her request for more time under G.L. c. 239, § 9-13.

[3] On December 29, 2023, this Court (Fields, J.) Ordered Mr. Gardner to put the electricity for the Premises in his name and allowed Mr. Gardner to access the property to inspect the Premises and make any necessary repairs. *See* **Order for Access, at Defendant's Exhibit H.**

FINDINGS OF FACT AND RULINGS OF LAW

On September 18, 2023, Gardner served a legally sufficient notice to quit on Dawkins, terminating her use and occupancy of the Premises. Dawkins acknowledged receipt of the notice to quit. Gardner, through counsel, provided proof of ownership of the Premises, which predates the Divorce Petition filed by Patrick Gardner, Sr. *See* **Deed, at Plaintiff's Exhibit II.** Accordingly, the Court finds that Gardner introduced sufficient evidence to satisfy his prima facie case for possession.

With respect to Dawkins' claims that Gardner breached the covenant of quiet enjoyment because she was billed for heat, hot water, electricity and/or gas, that claim fails as a matter of law. *See* **Deutsche Bank NA v. Gabriel**, 81 Mass.App.Ct. 564 (2012). Moreover, "[t]he covenant of quiet enjoyment applies to interference with a *tenancy and is not applicable here"*. *See* **Enfield v. Rockland Trust Co.**, 87 Mass.App.Ct.1103 (2015) (emphasis added); also *see* generally **Blackett v. Olanoff,** 371 Mass. 714 (1977). Even if the court would find that the covenant of quiet enjoyment applies to this case, on March 27, 2024 when Dawkins filed her Answer, Gardner addressed the alleged issues with the sewage in a reasonable time frame (April 13, 2024). *See* **Repair Receipt at, Plaintiff's Exhibit III.** Because Dawkins failed to present any legally cognizable defenses, Gardner must prevail on its case to recover possession.

With respect to Dawkins' oral request for a stay pursuant to G.L. c. 239, §§9-13, the Court finds that Dawkins is a domestic violence survivor, who is currently going through divorce proceedings. The Court is sympathetic to Dawkins' request for more time given the trauma and abuse that she alleged suffered at the hands of Patrick Gardner, Sr. As a result, the Court will exercise its equitable authority to stay the issuance of the Execution through August 1, 2024.

Based upon the credible testimony and evidence presented, the Court finds that: (i) Gardner terminated Dawkins' use and occupancy of the Premises pursuant to the relevant laws and statute, as referenced above; (ii) Dawkins' condition-based claims fail as a matter of law; (iii) Dawkins

will use due and reasonable effort to secure other housing, and (iv) Dawkins' application for stay is made in good faith and she will comply with such terms and provisions as the Court.

ORDER FOR ENTRY OF JUDGMENT

Based upon foregoing, and considering the governing law, it is **ORDERED** that:

1. Judgment shall enter for Plaintiff for possession and unpaid rent in the amount of $0.00 plus court costs in the amount of $0.00.
2. Issuance of the execution shall be stayed until August 1, 2024, on the conditions that:
   a) The Defendant shall continue to make reasonable efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which they have visited or made inquiry, including the address of the unit, date and time of contact, method of contact, name of contact person and result of contact.
3. If Defendant has not vacated voluntarily as of August 1, 2024, Plaintiff may apply in writing for issuance of the execution.
4. Plaintiff counsel shall immediately inform this Court, by letter or affidavit, if the Hampden County Probate and Family Court takes jurisdiction of the subject Premises.
5. Nothing in this Court's Order shall interfere with any rulings or orders from the Hampden County Probate and Family Court.

SO ORDERED.

/s/ Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice

~~May~~ June 3, 2024

cc: Patrick Nicoletti, Esq.
Alrick Gardner
Ashlane Dawkins

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.

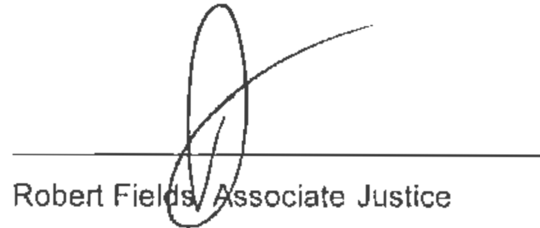
ORDER

After hearing on May 30, 2204, on the defendant's motion for a stay on the use of the execution for possession, the following order shall enter:

1. A new execution for possession shall issue as the original expired during the stay period ordered by the court.
2. Though the court can appreciate Mr. Brenton's circumstances of an accumulation of personal item at the premises, no place to go, and health concerns, given the history of this post-foreclosure matter including a March 4, 2024, order that "no further stays of execution shall be allowed or granted"

the defendant's motion for a further stay on the use of the execution is denied.

So entered this ___4th___ day of ___June___, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-394

CITY VIEW COMMONS II,

Plaintiff,

v.

TANIA CONCEPCION-GARCIA,

Defendant.

ORDER

After hearing on May 31, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The landlord's counsel (without a witness) reported to the court that the landlord had not received any payments from the tenant since the Agreement was filed on March 7, 2024.
2. The tenant testified that she made payment for the past two months (paid at the end of May 2024 for March and April 2024).
3. Without a witness present for the landlord, the motion is denied *without prejudice*.

4. Additionally, landlord's counsel reported that it is her client's understanding that the tenant's RAFT application was denied due to lack of "hardship" documentation.
5. The tenant testified that it was denied due to the underlying debt not being hers but of her niece in whose name the apartment use to be before the tenant became head-of-household.
6. Unfortunately, a representative from Way Finders, Inc. was not available on Zoom to join the hearing and possibly clarify the situation.
7. There appears to be great confusion over this issue for the tenant. She believes that much of her payments since she became head-of-household were towards her niece's debt.
8. The parties are urged to meet and review the ledger and work together on the RAFT application immediately (prior to the next hearing).
9. The tenant shall make a rent payment plus $50 on June 11, 2024.
10. This matter shall be scheduled for REVIEW on **June 27, 2024, at 9:00 a.m.** The landlord shall bring as a witness someone whose responsibilities include the tenant's rental ledger so that she can explain it in detail. The tenant shall bring her receipts and a letter she says she received from RAFT regarding her application.

So entered this 4th day of June, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP001144

ALAN O'BRIEN,

Plaintiff

VS.

DELMAR LaGRANT,

Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER OF JUDGMENT

This is a summary process action in which plaintiff Alan O'Brien is seeking recover possession of a residential dwelling from defendant Delmar LaGrant upon the termination of a tenancy at will. The complaint does not allege cause as grounds for termination of the tenancy. The defendant did not file a written answer; but he requested a stay of levy.

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

The plaintiff owns the two-family townhouse dwelling at 1420 Pleasant Street, South Lee, Massachusetts (the "premises"). The defendant has occupied the premises since 2018. He initially occupied the premises subject to a written lease (with an option to purchase). The lease ended (and the option expired) at the end of the first year. Thereafter, the defendant has occupied the premises as a tenant at will. He lives with his girlfriend and her two children. The agreed monthly rent has been $2,000.00 (from April to October) and $1,500.00 (from November to March). Rent is due by the first day of each month.

On October 27, 2023 the plaintiff served the defendant with a notice to quit terminating the tenancy effective December 1, 2023. The defendant was current with his rent as of the date on which he received the termination notice. However, he has not paid any rent since then.

Nonetheless, the plaintiff did not seek to amend his complaint at trial to include a claim for unpaid rent.

The defendant remains in possession of the premises. He testified that he needs a year to find a new place to live.

The plaintiff has established his case to recover possession of the premises upon termination of the tenancy at will.

This case came before the court for trial approximately 7 months after the plaintiff served the defendant with the notice to quit. After considering the testimony of the plaintiff and tenant, and in the exercise of my discretion under G.L. c. 239, §§ 9 and 10, I shall stay issuance of execution until September 1, 2024. As a condition for granting this stay the defendant must pay the plaintiff $2,000.00 by the 10th day of each month commencing in June 2024 for his continued use and occupancy of the premises.

ORDER FOR JUDGMENT

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

1. Judgment enters for the plaintiff on the claim for possession.
2. Issuance of Execution is stayed until September 1, 2024 provided the defendant pays the plaintiff $2,000.00 by the 10th day of each month commencing in June 2024 for his continued use and occupancy of the premises.

SO ORDERED this 4th Day of June, 2023

Jeffrey M. Winik
Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1663

YELLOWBRICK MANAGEMENT, INC.,

Plaintiff,

v.

AMY KADDARAS and SCOTT AYOTTE,

Defendants.

ORDER

After hearing on May 31, 2024, on the landlord's motion for entry of judgment, at which the landlord appeared through counsel and the tenants appeared through LAR counsel, the following order shall enter:

1. Though the tenants have failed to pay their rent over the past several months despite an Agreement to do so, the motion is continued to the next hearing scheduled below.
2. This continuance is due to several recent events that make it more promising that the tenants will be able to make this a sustainable tenancy.

 (other side)

3. More specifically, one of the tenants (Scott Ayotte) has been approved for SSI and is expecting not only $900 per month from those benefits but also a "lump sum" that may be expedited due to the existence of this eviction action.
4. Also, Community Legal Aid (CLA), agreed to extend its LAR appearance (or perhaps enter a full appearance) and have its agency work with the tenants on their RAFT application and the tenant's Social Security benefits.
5. The tenants shall pay their rent plus $100 per month until the debt is paid. This should be considered a "payment plan" for RAFT purposes.
6. The tenant will work with CLA on both RAFT and the Social Security Administration.
7. This matter shall be continued to **June 27, 2024, at 9:00 a.m.** for further hearing on the landlord's motion and for review. The parties are to prepare an update regarding SSI and RAFT benefits for this next hearing, with copies of relevant documents (RAFT, SSI, etc.)

So entered this 4th day of June, 2024.

Robert Fields, Associate Justice

Cc: Bex Bernocco, Esq. (Community Legal Aid)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4993

26 FEDERAL BSD, LLC, Plaintiff, v. MARIA LUNA, Defendant.

ORDER

After hearing on June 5, 2024, on the tenant's motion to stop a physical eviction, the following order shall enter:

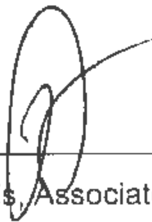
1. For the reasons stated on the record, the motion is denied.
2. The landlord's attorney reported to the court that the tenant will be served in the near future with a 48-hour notice of a newly scheduled physical eviction.
3. The court is extremely concerned with a document entitled **Commonwealth of Massachusetts No Trespass Notice** that was served by the

Commonwealth Constables[1] upon the tenant accompanying the 48-hour notice for an earlier physical eviction (that was cancelled)[2].

4. Said notice is improper. It asserts incorrect law when it labels the tenant has a "trespasser" if she is present at the premises at the time of the scheduled eviction. It also suggests that legal matters such as whether or not she would be a trespasser if present at the time of the eviction have been settled by the court in her eviction matter. It has not. It is also entitled "Commonwealth of Massachusetts No Trespass Notice" though it is not issued by the Commonwealth.

5. The plaintiff landlord shall take all necessary steps to ensure that such a notice does not accompany the new 48-hour notice anticipated to be served on the tenant and that the tenant is not otherwise served such a notice at any time in this matter without leave of court.

So entered this 6 day of June, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

[1] Commonwealth Constables, Mark T. Leary, Constable, P.O. Box 2431, Westfield, MA 01086, are the constables hired by the plaintiff landlord to levy on the execution for possession in this matter. Robert Del Pozzo, Constable, signed the 48-hour notice in question as "on behalf of" Commonwealth Constables.

[2] Attached to this order as "Attachment A".

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-60

CITY OF WESTFIELD, Plaintiff, v. ALYCAR INVESTMENTS, et al., Defendants.	ORDER

After a hearing on May 31, 2024, at which were present Erik Valdes, attorney for the Plaintiff, Narcisso Perez, tenant, and Daniel Carthon, registered agent for Alycar Investments, the Court issues the following order:

1) Defendant Alycar Investments, LLC, (hereinafter, "Alycar") shall appear by counsel forthwith in this matter.
2) Alycar shall correct all the violations listed in Plaintiff's "2nd and Final Notice" dated November 27, 2023, within 30 days of the issuance of this order, except the violation of 105 CMR 410.235(c) which shall be

completed in 14 days from the issuance of this order. All work shall be completed by licensed contractors.

3) Alycar shall inform the City of Westfield upon completion or substantial completion of all correction work in order to allow the City of Westfield's inspection officials to access the property at 32 Margerie St., Westfield, MA to determine compliance.

4) Plaintiff's Motion for Default Judgment is granted, but the entry of default is suspended under the following condition: Alycar hires an attorney who enters an appearance and submits an Answer to Plaintiff's petition by close of business June 17, 2024.)

5) If Alycar is not represented by an attorney and/or fails to submit a proper Answer by the 17th of June 2024, the granting of Plaintiff's Motion for Default shall become final and effective immediately.

6) This matter shall be scheduled for further review on June 24, 2024, at 2:00 p.m. If Alycar submits an Answer contesting Plaintiff's petition, that hearing may be evidentiary in nature.

So entered this 6th day of June, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-280

KENDRA D. EDWARD, Plaintiff, v. MCR PROPERTY MANAGEMENT, Defendant.

ORDER

After hearing on May 30, 2024, on the defendant's motion to enforce the court's earlier order, the following order shall enter:

1. The plaintiff tenant filed this matter seeking injunctive relief against her landlord regarding the securing of a basement door and an order requiring advance notice prior to entering her unit.
2. After hearing on April 30, 2024, the court issued order that required the inspection and any needed repair to the door in question and that the landlord provided 48 hours advance written notice for access going forward.

3. The order also anticipated that the parties would be meet to discuss the placement of cameras by the tenant on the outside of her unit to see if the parties could work out an arrangement for same.
4. The landlord filed this instant motion alleging that the tenant failed to meet with the landlord to discuss the cameras.
5. The court is not going to order anything further at this time regarding the placement of cameras on the outside of the dwelling. The landlord has asserted that such placement is in violation of the lease and the landlord has remedy at law to address their concerns about the cameras.
6. Accordingly, the terms of the April 30, 2024, order regarding advance notice for access and the securing the of the basement door shall become aspects of the parties' and this matter shall be dismissed.

So entered this 6th day of June, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-CV-395

JOHN J. FERRITER, **Plaintiff,** **v.** **DONALD BROOKS,** **Defendant.**

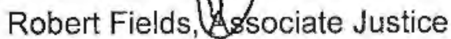
ORDER

After hearing on May 31, 2024, at which only the plaintiff appeared, the following order shall enter:

1. It is unclear from the verified complaint the extent to which the plaintiff was aware that the defendant has been occupying the subject premises and for how long.
2. This matter shall be scheduled for hearing on the date and time below to afford the parties an opportunity to be heard in this matter.

3. The plaintiff shall have a copy of this Order served upon the defendant by sheriff or constable and also post copies of this Order on all doors at the subject property.
4. Anyone residing in the premises including Mr. Brooks who wishes to be heard by the court as to being able to continue to reside at the premises shall appear at the date and time below.
5. This matter shall be scheduled for **June 26, 2024, at 9:00 a.m.**

So entered this 6 day of June, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23H79CV000695

Antonia Gardner)
Plaintiff)
)
v.)
)
Superior CCM, LLC)
Defendant.)

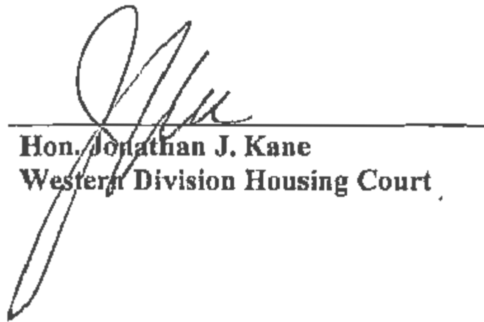
ORDER DISSOLVING WRITS OF ATTACHMENT

After hearing on June 6, 2024, at which both parties appeared through counsel, the following Order is to enter:

1. All Writs of Attachment issued by this Court in this proceeding concerning the Defendant's real estate are hereby rescinded and dissolved.

2. The Defendant, through its counsel, is ordered to escrow $35,000.00 in defense counsel's IOLTA account. These monies shall be held in trust and not disbursed until (a) further Order of the Court, (b) further agreement of the parties, or (c) this matter is dismissed.

So entered on this June 6, 2024:



Hon. Jonathan J. Kane
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-SP-73

M. TRAN PROPERTIES, LLC, Plaintiff, v. ELESIA EDMONDS, Defendant.	ORDER

After hearing on June 5, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. A representative from Way Finders, Inc. joined the hearing and confirmed that the tenant may be eligible for up to $4,750 in RAFT funds.
2. The landlord agreed on the record that it would accept RAFT funds.
3. Accordingly, the motion is denied *without* prejudice and the tenant shall forthwith apply for RAFT funds and the parties shall cooperate with the requirements of the RAFT program.

4. Though it is anticipated that RAFT will pay for all back rent and any other eligible costs, if there are any remaining monies owed the landlord after the RAFT process, same shall be paid at a monthly rate of $100 on top of mon
5. This should be considered by Way Finders, Inc. as a "repayment plan" for RAFT program purposes and can be revisited by the parties at a later time in these proceedings, if needed.
6. The tenant is also asserting that the landlord has failed to properly address conditions of disrepair at the premises and is seeking further order of the court regarding same. Accordingly, there shall be an evidentiary hearing on those assertions and the landlord's defenses on the date and time scheduled below. The parties shall bring photographs and code enforcement reports as well as any relevant additionally documents and witnesses to said hearing.
7. This matter shall be scheduled for a hearing regarding conditions of disrepair on **July 2, 2024, at 9:00 a.m.**

So entered this 6th day of June, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2747

YUK CHANG, Plaintiff, v. DENISSE ROSA, et al., Defendants.

ORDER

After hearing on June 6, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. The parties entered into an Agreement of the Parties (Agreement) in this non-payment of rent matter on September 12, 2023. Per the Agreement, the tenant was to make payments of $200 by the tenth and $190 by the 25 of each month (in addition to rent) towards the arrearage.
2. The landlord reports that the tenant was compliant with these payment terms in October, November, December, January, and February (2024) but then failed to comply in March, April and May 2024.

3. The tenant explained that she was a victim of domestic violence and that her ex-partner stole her money.
4. Given the possible applicability of VAWA[1] and given the tenant's ability to resume her rent and arrearage payments forthwith, the landlord's motion is denied without prejudice.
5. The tenant shall pay her rent and arrearage payments for June 2024 by paying $272 by June 10th and then $262 by June 25, 2024.
6. Thereafter and each month the tenant will pay her rent in full and on time and then make arrearage payments of $200 by the 10th and $190 by the 25th of each month beginning in July 2024.
7. Upon a $0 balance, this matter shall be dismissed.

So entered this 7th day of June, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] Violence Against Women Act, 42 U.S.C. Subchapter III, s.13925.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

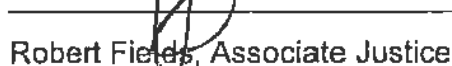
Case No. 20-CV-669

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPARTMENT, Plaintiff, v. JASON PAGAN, Defendant.	ORDER

After hearing on June 7, 2024, the following order shall enter:

1. The defendant property owner's oral motion for leave to serve subpoenas to witnesses for a Session at which the Housing Specialist Department shall be present at the subject property on June 24, 2024, at 2:00 p.m. is allowed.

So entered this 7th day of June, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1566

DOUGLAS DICHARD, Plaintiff, v. RANDY TIMMONS and THOMAS TIMMONS, Defendants.	ORDER

After hearing on June 6, 2024, the following order shall enter:

1. This matter was before the court for a Tier 1 event at which the plaintiff landlord and the defendant tenants Randy and Thomas Timmons appeared. The Housing Specialist (Elizabeth Cruz) had a serious question about the competency of the tenants and had the matter brought before the judge for an order that the tenants both be evaluated by the Court Clinic. All parties present agreed with this order.
2. In order to determine if Randy and/or Thomas Timmons are "incapacitated persons" as that term is defined in G.L. c.c. 190B, ss.510 (9), the court hereby

orders that they each undergo a forensic psychological evaluation with the Court Clinic. The court requests that the clinician evaluate Randy and Thomas Timmons with respect to their decision-making capacity, their ability to comply with court orders regarding their housing, and their ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a *guardian ad litem* for either or both of the tenants.

3. Assistant Clerk Magistrate Cunha shall help coordinate the scheduling of the Court Clinic evaluations.
4. Another named defendant tenant, Elaine King, was the mother of Randy and Thomas Timmons and was reportedly their Representative Payee and passed away on February 28, 2024, and is hereby dismissed from this case.
5. This matter shall be scheduled for review on **July 11, 2024, at 9:00 a.m.**

So entered this 7th day of June, 2024.

Robert Fields, Associate Justice

Cc: Kara Cunha, Esq, Assistant Clerk Magistrate
Court Clinic
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-929

KIM FINLEA, Plaintiff, v. CHARLES ELLIOT, Defendant.	ORDER

After hearing on June 5, 2024, on the plaintiff landlord's request for substitution of costs, the following order shall enter:

1. **Procedural Background:** The landlord commenced this Summary Process action on March 8, 2024, against a tenant to whom she rented a room in her home. The tenant defaulted and the landlord obtained an execution for possession on May 24, 2024. The landlord is now before the court seeking substitution of costs for a sheriff or constable to serve a 48-hour notice and levy on the execution and for the warehouse to move and store the tenant's belongings---all required by statute. See, G.L. c.239, ss. 3 & 4.

2. **Discussion:** The landlord filed an affidavit of indigency which on its face appears to satisfy the law as to her indigency. See, G.L. c.261, s.27A-G.
3. The question before the court is whether the costs the landlord seeks to have substituted by the Commonwealth are ones that are contemplated by the statute and whether they should be reasonably waived.
4. Given that the requested costs to be substituted are not "normal fees and costs" as provided in the statute, the Clerk Magistrate requested that the undersigned judge review the landlord's request as "extra fees and costs".
5. "Extra fees and costs" are defined in Section 27a and states:

> the fees and costs, in addition to those a party is normally required to pay in order to prosecute or defend his case, which result when a party employs or responds to a procedure not necessarily required in the particular type of proceeding in which he is involved. They shall include, but not necessarily be limited to, the cost of transcribing a deposition, expert assistance and appeal bonds and appeal bond premiums.

6. *Adjartey* sets the tone for waiving extra costs in the Housing Court.

> The test is whether the item is reasonably necessary to prevent the party from being subjected to a disadvantage in **preparing or presenting his case adequately**, in comparison with one who could afford to pay for the preparation which the case reasonably requires. *Adjartey v. Cent. Div. of Hous. Ct. Dep't.*, 481 Mass. 830, 845-46 (2019).

7. The *Lockley* Court elaborated,

> In making this determination under the statute, the judge may look at such factors as the cost of the item requested, **the uses to which it may be put at trial, and the potential value of the item to the litigant**. *Com. v. Lockley*, 381 Mass. 156, 161 (1980).

8. The costs being sought in this instant matter by the landlord are not costs associated with prosecuting or defending her Summary Process action. In fact, that action has already reached its conclusion and resulted in entry of

judgment and issuance of an execution. The costs are post-adjudication of the court action and do not appear to be contemplated by the statute.

9. **Conclusion and Order:** Based on the foregoing, the request for substitution of costs for the sheriff or constable to serve the tenant with a 48-hour notice and levy on the execution for possession and the costs of the hiring of a warehouser to move and store the tenant's belongings is denied.

10. The landlord may wish to move this court for a stay on the use of the execution so that it does not expire before she can use it. This suggestion should in no way portend the outcome of such a motion by the court. See, G.L. c.235, s.23.

So entered this 7th day of June, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4241

OUTING PARK APARTMENTS I,

Plaintiff,

v.

ALEXANDRA VIERA,

Defendant.

ORDER

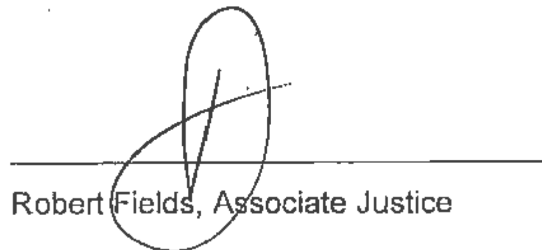
After hearing on June 6, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. The landlord reports that the only documentation that remains outstanding in the tenant's request for a reasonable accommodation to allow her to keep her companion animal is proof of the dog's rabies vaccination.
2. By agreement of the parties, the landlord's motion for entry of judgment is continued to the date below to provide the tenant additional time to submit that documentation.

 (other side)

3. Additionally, this matter was referred to the Tenancy Preservation Program (TPP) whose representative, Donna Bryant, was present in the courtroom and was to meet with the parties directly after the hearing.
4. TPP has agreed to assist the tenant with her reasonable accommodations request for her companion animal and also with her recertification.
5. This matter shall be scheduled for further hearing on **July 2, 2024, at 9:00 a.m.**

So entered this 7th day of June, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4111

HADLEY HOUSING AUTHORITY,

PLAINTIFF

v.

MARIA RODRIGUEZ-HERNANDEZ

DEFENDANT

ORDER FOR REISSUANCE OF EXECUTION AND STAY

This matter came before the Court on June 10, 2024 for review. Plaintiff appeared through counsel and Defendant appeared with Attorney Bryant, her guardian ad litem ("GAL"). Mr. Richtell from the Tenancy Preservation Program (TPP) and Ms. Parent from Highland Valley Elder Services (HVES) also participated.

Plaintiff reports that Defendant completed her recertification and has paid her rent for May and June 2024. There remains a balance due for use and occupancy of $5,119.00, plus court costs of $256.83 and nonrefundable fees of $389.04 related to cancelling an eviction. Defendant claims she does not owe any money, although she cannot articulate a reason why she makes the claim. All participants in the hearing except for Defendant agree that she would benefit from a representative payee to ensure that her rent is paid every month, along with a toward the arrears and costs. Defendant refuses to cooperate with a representative payee and asserts that she will pay no more than the rental amount each month.

The GAL asked to be able to substitute his judgment for that of Defendant so that he can make arrangements for a representative payee and to complete an application for emergency rental assistance in order to preserve her tenancy. This Court does not have the authority to allow a GAL substituted judgment, however, and suggests that the GAL make arrangements with HVES (or another agency) to file a petition in Probate and Family Court for the appointment of a temporary guardian or conservator who can take the necessary steps to ensure that the necessary payments are made.

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

1. Defendant shall pay her share of the monthly rent (currently $274.00 but increasing to $286.00) by the 5th of each month beginning in July 2024.
2. Defendant shall pay $50.00 per month toward the arrears, court costs and cancellation fees by the 5th of each month beginning in July 2024.
3. A new execution shall issue forthwith[1] in the amount of $5,119.00 in damages and $645.87 in court costs and cancellation fees.
4. Use of the execution shall be stayed for 45 days from the date of issuance in order to allow a period of time for the GAL and HVES to try to obtain an order from Probate and Family Court. The time period set forth in G.L. c. 235, § 23 shall be tolled for the 45-day period.
5. The GAL is authorized to share the forensic evaluation report with HVES in order for HVES to seek further order from Probate and Family Court.

[1] The Court stayed use of the previous execution to allow for the forensic evaluation and GAL appointment. The previous execution has already been returned to the Court.

SO ORDERED.
June 10, 2024

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

mP

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-143

CHASSITY MATOS, **Plaintiff,** **v.** **TASHA MARSH,** **Defendant.**	**ORDER**

After hearing on May 30, 2024, on the tenant's motion to amend the parties' agreement to extend her move-out date, the following order shall enter:

1. The parties entered into an Agreement of the Parties (Agreement) on March 5, 2024, in which, among other things, the tenant agreed to vacate the premises by May 31, 2024.
2. Prior to the vacate date, the tenant filed a motion to amend that portion of the Agreement and extend the date by which she must vacate to the end of September 2024.

3. The tenant explained that she is working with Way Finders, Inc. to locate alternate housing but has been so far unsuccessful. She is seeking an extension through September 30, 2024, to relocate.
4. The tenant's motion is also to allow her to pay her May and June 2024 rent by the end of June 2024.
5. The landlord opposed the extension but did not assert any reasons or how she would be prejudiced by a delay other than wishing to have the original terms adhered and that the tenant failed to pay May 2024 rent.

6 Given the tenant being unable to relocate by the previously agreed upon date of May 31, 2024, her not having been able to secure alternate housing, and otherwise based on the record before the court, the date by which she must vacate is hereby extended to September 30, 2024, contingent upon her paying May and June 2024 rent by June 30, 2024, and thereafter paying her rent for July, August, and September 2024, in full and on time.

So entered this 10th day of June, 2024.

____
Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79CV000669

BRANDON NAVOM,
Plaintiff

v.

SAVANNAH RICHARDSON,
Defendant

ORDER FOR ASSESSMENT OF DAMAGES AND FOR ENTRY OF JUDGMENT

This matter came before the Court on June 5, 2024 for hearing to assess damages against the defendant. The defendant did not appear or otherwise present any evidence pertaining to damages.

Procedural History. In 2022 Plaintiff Brandon Navom commenced a summary process action against Defendant Savannah Richardson (22H79SP004934).[1] The complaint alleged nonpayment of rent. Richardson filed an answer that included counterclaims alleging damages from defective conditions at the apartment she occupied as a tenant at 126 East Quincy Street, North Adams, Massachusetts (the "property"). On April 12, 2023 the 126 East Quincy Street property was placed in receivership (22H79CVCV000844) after Navom failed to correct numerous serious defective conditions in compliance with repeated sanitary code abatement orders and court orders (including rodent infestation, defector kitchen floors and cabinets, defective windows, improperly secured front door, defective stairs, non-code compliant plumbing, and additional defective conditions identified by receiver). The receiver, acting within scope of his receivership authority, dismissed the summary process possession claim against Richardson after she informed

[1] The case was commenced in the District Court and transferred to the Housing Court.

him that she did not intend to return to the apartment. Navom's claim for rent of Richardson's counterclaims were transferred to the civil docket (23H89CV000669).

The bench trial on Navom's rent claim and Richardson's counterclaims commenced on March 20, 2024. The trial was adjourned until May 1, 2024. All parties received notice of the continued trial date. Navom, without providing notice or filing a motion, failed to appear in court for the second day of trial on May 1, 2024. As a result, the court dismissed Navom's claim for rent with prejudice and defaulted Navom on Richardson's counterclaims. The court scheduled a hearing for June 5, 2024 to assess damages on Richardson's counterclaims. The clerk sent written notice of the assessment of damages hearing to all parties.

Navom did not appear in court for the assessment of damages hearing on June 5, 2024. Richardson appeared at the hearing and filed an affidavit pertaining to her counterclaim damages. Attorney Pagnotta filed an affidavit in support of his client's request for an award of statutory attorney's fees. At no time between May 1 and June 5, 2024 did Navom file a motion to vacate the default or otherwise explain his failure to appear for the second day of trial. Navom has never filed a motion or otherwise explain his failure to appear for the assessment of damages hearing.

Based upon Navom's default, liability was established with respect to Richardson's counterclaims for breach of the implied warranty of habitability, violation of G.L. c. 186, § 14 and G.L. c. 93A.

Richardson was withholding her rent and is not seeking diminished rental value damages.[2] Richardson is seeking an assessment for actual and consequential damages pursuant to G.L. c. 186, § 14 and G.L. c. 93A.

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[2] There exists with respect to every residential tenancy an implied warranty of habitability that the premises are fit for human habitation. A landlord is in breach of this warranty where there exist defects that may materially affect the health or safety of occupants. *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 199 (1973). A tenant is not entitled to receive damages for minor defects. Not every defect gives rise to a diminution in rental value. Isolated violations do not necessarily constitute a breach of the warranty. *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977). A breach of the implied warranty of habitability occurs from the point in time when a landlord had notice or should have known of a substantial defect or substantial Sanitary Code violation in the apartment. The breach continues until the defect or violation is remedied. *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979) [*landlord in breach of warranty from first notice of substantial Sanitary Code violations that recurred over a period of time despite the landlord's efforts to repair*]. The measure of damages for breach of the implied warranty of habitability is the difference between the fair rental value of the premises free of defects and the fair rental value of the premises during the period that the defective conditions existed. *Boston Housing Authority v. Hemingway*, supra; *Haddad v Gonzalez*, 410 Mass. 855, 872 (1991).

Statutory Claims. The quiet enjoyment statute, G.L. c. 186, §14, provides that any landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises" shall be liable for "actual or consequential damages or three month's rent, whichever is greater . . ." While the statute does not require that the landlord's conduct be intentional, *Simon v. Solomon*, 385 Mass. 91 (1982), it does require proof that the landlord's conduct caused a serious interference with the tenant's quiet enjoyment of the premises. A serious interference is an act or omission that impairs the character and value of the leased premises. *Doe v. New Bedford Housing Authority*, 417 Mass. 273, 284-285 (1994); *Lowery v. Robinson*, 13 Mass. App. Ct. 982 (1982). A landlord violates G.L. c. 186, §14 where he had notice, or reason to know of a serious condition adversely affecting the tenant's use of the apartment and failed to take appropriate corrective measures. *Al Ziab v. Mourgis*, 424 Mass. 847, 850-851 (1997); *Cruz Management Co., Inc. v. Thomas*, 417 Mass. 782 (1994).

G.L. c 93A makes it unlawful to engage in an unfair act or practice in the course of trade or commerce. "The existence of unfair acts and practices must be determined from the circumstances of each case." *Commonwealth v. DeCotis*, 366 Mass. 234, 242 (1974).

Chapter 93A, § 9 (3) provides that damages " . . . shall be awarded in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the Court finds that use or employment of the act or practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated section 2." The prevailing party is entitled to reasonable attorney's fees and costs.

Assessment of Damages. I have taken judicial notice of the docket entries in the summary process, receivership and civil actions.

Based upon the uncontested evidence presented at the June 5, 2024 hearing (including the facts set forth in the Richardson's affidavit and the judicial findings that formed the basis of the receivership order) I make the following findings and assessment of damages.

Richardson resided as a tenant (with her three children) in an apartment at the property from 2020 until November 2022 (when the property was condemned by the City of North Adams Health Department). Richardson and her children went to live with her father. The property was placed in receivership in April 2023 after the court found that there existed at the property conditions that were in violation of the standards of fitness for human habitation established under

the State Sanitary and/or Building Code(s). These violations were cited specifically in the Town of North Adams Inspection Reports and orders dated August 25, 2022, November 18, 2022 and February 21, 2023 (collectively "the violations"). These violations were serious and endangered or materially impair the health or well-being of the occupants of the property and the public.

Navom never repaired the serious defective conditions that remained at the property. Richardson did not return to live at the property because Navom never made any reasonable efforts to correct the serious sanitary code violations that Richardson believed would continue to endanger her family's health and safety.

I conclude that Richardson's fear for the health and safety of her family was justified and that she suffered emotional distress in the amount of **$5,000.00** as a result of Navom's failure to take any reasonable or effective action to correct the serious sanitary code violations that existed in her apartment. Further, I credit the facts set forth in Richardson's affidavit and find that she suffered loss of property resulting from Navom's failure to take any reasonable or effective action to correct the serious sanitary code violations that existed in her apartment. I assess the property damage as follows: children's clothing - **$750.00**; damaged couch - **$400.00**; damaged baby monitor - **$105.00**; two damaged chairs - **$80.00**; damaged vacuum cleaner - **$100.00**; damaged changing table - **$80.00**. The amount for property damage totals **$1,230.00**.

Richardson is not entitled to recover cumulative damages arising from the same facts under every theory of recovery, but he is entitled to recover damages under the theory that results in the largest award of damages. *Wolfberg v. Hunter*, 385 Mass. 390 (1982).

Richardson's claims for violation of G.L. c. 186, § 14 and violation of G.L. c. 93A arise from the same operative facts. Accordingly, I shall award damages under Chapter 93A since that count provides Richardson with the largest monetary recovery.

The amount of actual and consequential damages arising from Navom's failure to maintain the premises in good repair totals **$6,230.00**. I find that Navom's failure to correct the serious sanitary code conditions that existed in Richardson's apartment constituted a willful or knowing violation of G.L. c. 93A. Accordingly, I shall treble the damages to **$18,690.00**.

<u>Statutory Attorney Fees</u>. As the prevailing party on her G.L. c, 186, § 14 and c. 93A claims Richardson is entitled to recover reasonable attorney's fee and costs.

The court should normally use the "lodestar" method to calculate the amount of a statutory award of attorney's fees. Under the "lodestar" method, "[a] fair market rate for time reasonably

spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorney's fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. at 388. An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978). In determining an award of attorney's fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. *Linthicum v. Archambault*, supra. at 381. 388-9. See Heller *v. Silverbranch Const. Corp.*, supra. at 629 ("the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth . . . Absent specific direction from the Legislature, the crucial factors in making such a determination are: (1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney"). The prevailing party is entitled to recover fees and costs for the statutory claims on which he was successful.

I have reviewed the June 5, 2024 affidavit submitted by Richardson's attorney, Stephen N. Pagnotta, Esq., in which he presents sufficient facts to support his representation that he spent 26.10 hours for work he performed on Richardson's G.L. c. 186, § 14 and c. 93A counterclaims. I find that this time was reasonable and reasonably related to the preparation and presentation of Richardson's statutory counterclaims. Based upon the relatively uncomplicated statutory claims at issue I find that Attorney Pagnotta is entitled to be compensated based upon a reasonable hourly rate of **$300.00**.

Accordingly, after considering the factors set forth above, I award Richardson a reasonable statutory attorney's fee in the amount of **$9,526.10**. Attorney Pagnotta did not submit a request for costs and expenses.

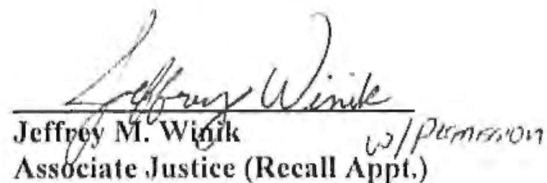
The award of attorney's fees is without interest. See, *Patry v. Liberty Mobilehome Sales, Inc.*, 394 Mass. 270. 272 (1985).

ORDER FOR JUDGMENT

Based upon the entry of default and the credible and evidence presented at the assessment of damages hearing, in light of the governing law, it is **ORDERED** that:

1. Judgment shall enter for defendant/plaintiff-in-counterclaim Savannah Richardson on her counterclaims for breach of implied warranty of habitability, violation of G.L c. 186, § 14 and violation of G.L. c. 93A against plaintiff/defendant-in-counterclaim Brandon Navom, with actual damages of **$6,230.00**, trebled to **$18,690.00**, awarded pursuant to G.L. c. 93A, plus reasonable attorney's fees and statutory interest and costs; and
2. The defendant/plaintiff-in-counterclaim Savannah Richardson shall be awarded a reasonable statutory attorney's fee payable to Stephen Pagnotta, Esq. in the amount of **$9,526.10** pursuant to G.L. c. 186, § 14 and c. 93A.

SO ORDERED this 10th day of June 2024.



Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2826

KRISTINA ROSA, Plaintiff, v. KRISTINA GUIMOND, Defendant.	ORDER

After hearing on June 7, 2024, on the plaintiffs Motion to Appoint a Special Process Server Under Rule 4C. the following order shall enter:

1. The court makes a case-by-case determination of whether there are compelling reasons set forth by the plaintiff to not use constables or sheriffs who are approved to levy on executions in any particular town or county. After hearing, the plaintiff's Motion to Appoint a Special Process Server is denied, for the reasons stated below, without prejudice.

2. **Discussion**: The steps of becoming a constable include completing a training, filling out an application, passing an investigation into your character a moral refute,

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

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

4. Following an application, appointing authority then investigates further into the "reputation and character" of the applicant to make sure they are a "person of good repute and character and qualified to hold said office." Id. After a thorough investigation aided by public officers, constables are granted licenses and can be elected by the "selectmen in any town may from time to time appoint, for terms not exceeding three years" G.L. ch.41 §91A.

5. The final step in becoming a constable is to become bonded. Constables are able to serve or execute civil process if they are bonded in the city or town in which the processes are to be served. G.L. c.41 §92, which relates to service of civil process, states:

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

6. Constables are also required to "periodically pay the city or town in which the constable is appointed or elected 25 per cent of all fees the constable collects for the service of civil process under the fee structure established in section 8 of chapter 262." G.L. ch.41 §95A. Additionally, after appointment a constable must "perform the duties of the office as prescribed by law." 80 C.J.S. Sheriffs and Constables §19. These duties

include, but are not limited to, reporting their income to the town annual. A constable "shall annually on or before April 15 file with the city or town treasurer an account signed under the penalties of perjury of all fees and money received by him under section 8 of chapter 262 for the service of civil process," G.L. ch.41 §95B. Such account must include "an itemization of all civil process fees charged by the constable's civil process office, all revenue received from said fees and all amounts paid by the constable to any city or town treasurer on account of such civil process fees." Id.

7. **Conclusion and Order:** Based on the foregoing, and given that the plaintiff is seeking the court to use its discretion under 4C to appoint a special process server, the court does not perceive a compelling purpose to make such an appointment. Accordingly, the motion is denied *without prejudice*.

So entered this 10th day of June, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4089

ANTHONY and MAGALI TRABAL,

Plaintiff,

v.

CHANEL WILLIAIMS MARBRY,

Defendant.

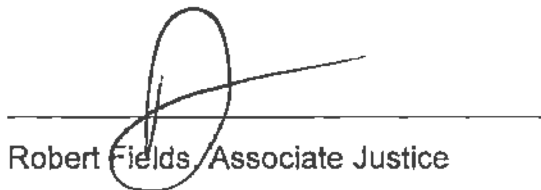
ORDER for ENTRY OF JUDGMNET FOR POSSESSION

After hearing on June 6, 2024, on the landlords' motion to enforce the Agreement of the parties at which all parties appeared without counsel, the following order shall enter:

1. The motion was treated as one for entry of judgment. The parties entered into an Agreement of the Parties (Agreement) on October 5, 2023, in which the tenant agreed to vacate the premises by June 1, 2024.
2. The tenant has been searching for housing but has not been able to secure same and continues to reside at the premises.

3. The tenant reported that though she is on several waiting lists for alternate housing, she has no prospects on the horizon, and those waiting lists are extremely long.
4. Given the extended time negotiated in the Agreement to relocate and given the record currently before the court, the motion is allowed.
5. Judgment shall enter for the landlords for possession. An execution may issue upon the timely filing and service to the tenant of a Rule 13 application.

So entered this 10th day of June, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0226

NORTHAMPTON HOUSING AUTHORITY,

PLAINTIFF

v.

LINDA KIELSON,

DEFENDANT

ORDER TO VACATE DEFAULT JUDGMENT

This matter came before the Court on June 10, 2024 on motions filed by Defendant. She appeared self-represented, although Attorney Edward Bryant, the guardian ad litem ("GAL") appointed *in Linda Kielson v Northampton Housing Authority*, Docket No. 18CV0328 (the "civil case"), appeared.[1] Plaintiff appeared through counsel.

This summary process case was filed on January 18, 2024. A First-Tier Court Event (FTCE) was scheduled for February 26, 2024. On February 22, 2024, Defendant filed a motion for reasonable accommodation to appear by Zoom and asked to reschedule the FTCE to February 28, 2024. She also filed a motion to incorporate the pleadings from the civil case into this summary process matter. When the case did not resolve at the FTCE, the Court scheduled Defendant's motion to incorporate pleadings

[1] A GAL has not been requested nor has a GAL been appointed for Defendant in this matter.

from the civil case into this summary process matter for a Zoom hearing on March 25, 2024. Defendant failed to appear and the motion was denied. The Court scheduled trial on April 22, 2024. Defendant failed to appear for trial and was defaulted. A default judgment entered on April 23, 2024, and execution issued on May 16, 2024. A levy on the execution is scheduled for July 9, 2024 at 9:00 a.m.

Defendant filed (and refiled on multiple occasions) a motion to reconsider the denial of her motion to incorporate pleadings from the civil case into this case. She asserts that she was unaware of the date of the hearing, even though it appears to have been scheduled during the FTCE, for which she did appear. Regardless of whether Defendant had notice of the hearing date, there is no legal basis to reconsider denial of the motion. It appears to the Court that Defendant is seeking to consolidate the two cases, and consolidation is unwarranted. The civil case is a case filed by Defendant for monetary damages; this eviction case was brought by Plaintiff to recover possession of the apartment. The matters seek distinct remedies and the Court finds no reason to consolidate them.[2] Therefore, her motion to reconsider is denied.

Although Defendant did not label her motion as one seeking to vacate the default judgment, the Court looks to the motion's substance, not solely to its label. *Fort Point Investments, LLC v. Kirunge-Smith*, 103 Mass. App. Ct. 758, 768, n.16 (2024). The Court is persuaded that notice of the trial date, sent by U.S. mail by the Court itself, was not received by Defendant because she has been residing in a skilled

[2] The Court will take judicial notice of the civil case, however.

nursing facility for some time.[3] Principles of due process compel the Court to vacate the default judgment and recall the execution. The Court shall send notice of a new trial date, for which Defendant may appear by Zoom.[4]

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

1. Judgment shall be vacated and the execution recalled.
2. Defendant's motion to reconsider is denied.
3. Defendant's motion for reasonable accommodation is allowed.
4. The Court shall send notice for the date and time of a bench trial to Defendant at both the address of the subject premises and the skilled nursing facility (see footnote 3). The trial shall be scheduled by Zoom for 12:00 p.m. or later.

SO ORDERED.

June 11, 2024

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

[3] Although Defendant claims she informed the Court of the mailing address at the skilled nursing facility where she was residing, the Court records show no such address change. Nonetheless, in addition to sending notice to the address on record, the Court shall also send future notices to Defendant at [redacted].

[4] Defendant repeatedly files motions for a reasonable accommodation to appear by Zoom. The request to appear by Zoom is allowed for all future hearings, and Defendant does not need to continue to file such motions.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. **24H79SP001292**

GFC Real Estate	)
	)
PLAINTIFF	)
	)
v.	)
	)
Stephanie Marshall, et al.	)
	)
DEFENDANTS	)
	)

FINDINGS OF FACT, RULINGS AND ORDER FOR JUDGMENT

This summary process (eviction) matter was before the Court (Adeyinka, J.) for a bench trial on June 11, 2024. The Plaintiff, GFC Real Estate, ("GFC/Plaintiff") seeks to recover possession of 108 Wollaston Street, Springfield, MA (the "Premises") from Stephanie Marshall and Tykie Greene, Jr[1]. ("Defendants/Tenants") based on a claim for non-payment of rent. At trial GFC was represented by counsel and the Tenants were self-represented.

BACKGROUND

The Premises is a single-family home, and the Tenants and their family occupy the entire Premises, which has four-bedrooms. GFC owns the Premises. Both parties agree that the rent is $2,500.00 per month and Tenants are tenants at will. *See* **Pretrial Stipulations.** On February 15, 2024, GFC served a fourteen (14) day Notice to Quit on the Tenants via Deputy Sheriff Michael Powers. *See* **Notice to Quit at Plaintiff's Exhibit I.** The Notice to Quit was served with the Form to Accompany Residential Notice to Quit. *See* **Notice to Quit at Plaintiff's Exhibit I.**

[1] The parties agree that there are additional occupants who reside at the Premises. However, the additional occupants are minors and shall not be named in this action. *See* **Housing Court Interim Standing Order 1-23;** *see* also St. 2020, c. 358.

On March 25, 2024, GFC filed this summary process eviction with the Court. *See* **Summons and Complaint at Plaintiff's Exhibit II.** On May 3, 2024, the parties appeared for a first-tier court event in this court. Unfortunately, the parties were unable to resolve their dispute at the first-tier court event, so a trial was scheduled for June 11, 2024. *See* **Docket Entry No. 7.** The Tenants did not file an Answer prior to the commencement of trial.

At trial the Tenants conceded to GFC's non-payment of rent claim and admitted they owe $2,500.00 in rent/use and occupancy. However, the Tenants represented at trial that they are working with various agencies to cure the arrears and they asked the Court to provide them with time to cure the balance and remain at the Premises.

FINDINGS OF FACT AND RULING

The Tenants have resided at the Premises since January 2020, and they are currently tenants at will with no written lease. *See* **Pretrial Stipulations.** The parties agree that the monthly rent amount is $2,500.00. *See* **Pretrial Stipulations.** On February 15, 2024, GFC served a, served a legally sufficient fourteen (14) day Notice to Quit on the Tenants via Deputy Sheriff Michael Powers, which also provided the required form pursuant to G.L. c. 186, § 31. *See* **Notice to Quit at Plaintiff's Exhibit I**. At the trial, the Tenants admitted to receiving the notice to quit. *See* **Notice to Quit at Plaintiff's Exhibit I**. As a result, the total amount of rent/use and occupancy owed to GFC is $2,500.00. The tenants continue to reside at the Premises.

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

It is undisputed that GFC owns the Premises. It is also undisputed that the GFC caused a legally sufficient Notice to Quit to be served on the Tenants terminating their tenancy. *See* **Notice to Quit, at Plaintiff's Exhibit I.** The Tenants acknowledged receipt of the notice to quit, and they admit they owe $2,500.00 to GFC. Accordingly, the Court finds that GFC introduced sufficient evidence to satisfy their prima facie case for possession.

As stated above, the Tenants did not file an Answer that asserted any defenses or counterclaims to the GFC's claim for possession. Because the Tenants failed to present any legally cognizable defenses, GFC must prevail on their case to recover possession.

ORDER FOR ENTRY OF JUDGMENT

Based upon the foregoing, and considering the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession and **$2,500.00** in unpaid rent, plus court costs.
2. Issuance of the execution shall be stayed until August 1, 2024, on the conditions that:
   a. The Defendant pays use and occupancy in the amount of $2,500.00; per month before the fifteenth of each month for June and July 2024;
   b. The Defendants shall continue to make reasonable efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which she has visited or made inquiry, including the address of the unit, date and time of contact, method of contact, name of contact person and result of contact.
3. If the Defendants fail to make the required payments or comply with terms of this Order, Plaintiff may file a motion to issue the execution. If the Defendants make the required payments, they shall vacate the Premises on or before July 31, 2024, leaving the Premises in broom clean condition and returning all keys. If the Defendants have not vacated voluntarily as of August 1, 2024, the Plaintiff may apply in writing for issuance of the execution.
4. If Defendants seeks a further stay of issuance of the execution, their motion must include the information required in section 2(b) herein.

SO ORDERED.

/s/ Benjamin O. Adeyinka
Benjamin O. Adeyinka
Associate Justice

June 12, 2024

cc: Mickey E. Harris, Esq.
Stephanie Marshall
Tykie Green, Jr.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0475

JOSE MONJE AND LINA MONJE,

Plaintiffs

v.

MARIANGELICA VIRGINIA OCHOA MUENLE,

Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW AND c. 239, § 8A ORDER

This summary process case came before the Court on June 13, 2024 for a bench trial. The parties appeared self-represented. Plaintiffs seek to recover possession of residential premises located at 216 White Street, 1st Floor, Springfield, Massachusetts (the "Premises") from Defendant based on nonpayment of rent.

At the outset of trial, the parties stipulated that Defendant received the notice to quit[1] and that rent is $2,000.00 per month. The parties further agreed that $14,000.00 is unpaid. Defendant filed an answer asserting defenses and counterclaims. Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:

Plaintiff Jose Monje ("Mr. Monje") testified that the Premises had no defects at

[1] At an earlier hearing, the Court ruled that Plaintiffs met their burden of proof that Defendant received the notice to quit.

the time Defendant moved in, and Defendant admitted she never reported conditions of disrepair until the first court date. Defendant was unable to present evidence to support her claims of conditions of disrepair. Likewise, the Court heard conflicting testimony on Defendant's claims of discrimination and interference with quiet enjoyment and finds that Defendant failed to sustain her burden of proof by a preponderance of the evidence.

Regarding Defendant's claim for violation of G.L. c. 186, § 15B, the security deposit statute, Mr. Monje admitted that he never provided Defendant with a receipt for the deposit as required by law. He asserted that he should not have to because Defendant stopped paying rent. His misunderstanding of the law does not excuse compliance, however. The Court finds that Defendant established a violation of the statute and that she is entitled to damages in the amount of three times the monthly rent, or $6,000.00.

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

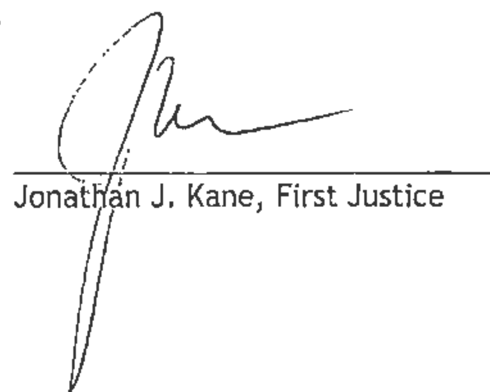
1. Plaintiffs' claim for unpaid rent in the amount of $14,400.00 is reduced by $6,000.00 on account of Defendant's claim for violation of the security deposit statute.

2. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of $8,000.00, plus court costs of $ 223.52 and interest in the amount of $ 342.16, for a total of $ 8,565.68. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

3. If Defendant makes this deposit, judgment for possession shall enter for Defendant. Upon written request by Plaintiffs, the Clerk shall release the funds on deposit to Plaintiffs.

4. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiffs for possession and damages in the amount of $8,000.00, plus costs and interest, and execution shall issue by written application after expiration of the ten-day appeal period.

SO ORDERED.



DATE: June 13, 2024

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1684

PARODY BUILDERS LLC,

Plaintiff

v.

SARA C. FISHBURN,

Defendants

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court for a bench trial on June 9, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential property at issue in this case is located at 108 James Street, Greenfield, Massachusetts (the "Property"). Prior to the commencement of trial, the Court allowed Defendant's motion to file a late answer.[1]

Based on the evidence and testimony presented at trial, the Court finds as follows: Defendant was the prior owner of the Property. The mortgage holder, Greenfield Savings Bank, assigned its bid to Plaintiff for $125,000.00 and Plaintiff recorded a foreclosure deed on January 12, 2024. Accordingly, the Court finds that Plaintiff is the current owner of the Property, a fact that Defendant does not dispute.

[1] The Court allowed the answer on the condition that the trial proceed as a bench trial. Although Defendant asked for a jury in her answer, such a demand must be timely made, and the answer was due on May 21, 2024, three days prior to the First Tier Court Event. Moreover, Defendant raised no factual defenses or counterclaims that would be tried to a jury.

Defendant does not contest Plaintiff's claim to possession, but asserts that she wishes to purchase the Property at a reasonable price. The Court has no authority to order Plaintiff to sell the Property; however, the Court shall permit a short time period for the parties to negotiate. In light of the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. The execution (eviction order) shall issue upon written application after the 10-day appeal period per Uniform Summary Process Rule 13.
3. Use of the execution shall be stayed through July 8, 2024 on the condition that Defendant pay $1,100.00 by June 11, 2024 for her use and occupancy of the Property.[2] The payment shall be in the form of a money order.
4. The time period in G.L. c. 235, § 23 shall be tolled for 30 (thirty) days.

SO ORDERED.

June 14, 2024

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

[2] The Court selected this figure based on Defendant's testimony that her mortgage payment had been approximately $1,100.00 per month.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION
NO. 24 H79CV000405

MICHAEL STEWART,

Plaintiff

VS.

MALAYSHIA BUNN, CANDICE RIVERA, NADIA HAMLETTE, JANE DOE,

Defendants

ORDER

This matter came before the court on June 13, 2024 for further hearing on the plaintiff's application for an injunction pertaining to the presence of dogs on the premises at 92 Beaumont Street, Springfield, Massachusetts. The plaintiff appeared at the hearing; the defendants did not appear.

Based upon the testimony and evidence presented at the hearing, and the reasonable inferences drawn, it is likely that the plaintiff will be able to establish the following:

Plaintiff Michael Steward owns the residential property at 92 Beaumont Street, Springfield, Massachusetts (the "premises"). Defendants Malayshia Bunn, Candice Rivera, Nadia Hamlette and Jane Doe occupy the premises as tenants subject to a written lease. The lease does not allow the defendants to keep pets at the premises without the plaintiff's written permission. The plaintiff has never given the defendants written or oral permission to keep pets (including dogs) at the premises. Nonetheless, the defendants have at least two dogs living with them at the premises.

In response to the plaintiff's complaint regarding the dogs, the court scheduled a hearing that was conducted on June 7, 2024. The plaintiff appeared at the hearing; the defendants did not. After conducting a hearing, the court, Field's J., issued an injunction that, with respect to the animals, ordered the defendants to supervise their dogs, keep the dogs leased when in the common areas, and to clean up after their animals in the common areas.

The defendants have not complied with the court order pertaining to their care of the animals. The dogs continue to be unleashed when in the common area, continue to defecate in the common area, and the defendants do not remove the dog feces in the common area.

I find and rule that the plaintiff is likely to prevail on his claim that the presence of the dogs at the premises is causing damage to the building and poses a serious danger to the health and safety of those who enter the common areas of the premises.

The plaintiff is at risk of suffering irreparable harm if further injunctive relieve is not granted pertaining to the dogs. There is no adequate remedy at law given that the defendants have ignored the June 7, 2024 order and the prosecution of a summary process action for breach of the lease is likely to take a number of months. The defendants will not suffer irreparable harm if they are required to remove their dogs from the premises given that the presence of dogs at the premises constitutes a material breach of their lease.

Accordingly, the court shall grant the plaintiff's request for further injunctive relief in the form of a preliminary injunction entered against the defendants. It is **ORDERED** that:

1. Defendants Malayshia Bunn, Candice Rivera, Nadia Hamlette and Jane Doe are ordered to remove all dogs from the premises at 92 Beaumont Street, Springfield, Massachusetts by July 1, 2024.
2. While the dogs remain at the premises the defendants must comply with all provisions of the June 7, 2024 order.
3. The City of Springfield animal control officer is authorized to remove any dogs remaining at the premises on or after July 2, 2024.

SO ORDERED this 14th Day of June, 2024.

Signed Judge Jeffrey M. Winik (BV)
Jeffrey M. Winik
Associate Justice (Recall Appt)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0277

PATRIOT PROPERTY MANAGEMENT GROUP, INC.,)
Plaintiff,)
v.)
)
KARL VINCENT,)
Defendant,)

ORDER FOR PERMANENT INJUNCTIVE RELIEF

This matter came before the Court on June 6, 2024 on Plaintiff's motion for a permanent injunction for possession. Plaintiff appeared though counsel. Defendant did not appear. By order dated April 26, 2024, the Court ordered Defendant and any other occupants to cease residing in the commercial space located at 143 Main St, Unit 312 Springfield, Massachusetts (the "premises").

The Court finds that Plaintiff has established by a preponderance of the evidence that the premises is being used as a residence. Failing to permanently enjoin Defendant from residing in the premises would subject Plaintiff to a substantial risk of irreparable harm. Accordingly, the following order shall enter:

1. Defendant and all other occupants are permanently enjoined from residing in the premises.
2. Judgment for possession shall enter in favor of Plaintiff and an execution for possession shall issue ten days after judgment enters. Plaintiff may use the execution to recover possession in accordance with G.L. c. 239, §§ 3-4.

3. The statutory fee for injunctions is hereby waived.

SO ORDERED.

DATE: June 16, 2024

By: /s/ 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. 24-CV-0371

S AND G REALTY, LLC, Plaintiff, v. JULIA AIKEN, Defendant,	))))))	ORDER FOR INJUNCTIVE RELIEF

This matter came before the Court on June 6, 2024 on Plaintiff's motion for injunctive relief. Plaintiff appeared though counsel. Defendant did not appear after notice. Defendant resides at 49 Belmont Ave. Apt. 4R, Springfield, Massachusetts (the "Premises").

Based on the facts set forth in the Verified Complaint and testimony of the property manager, the Court finds that Plaintiff has a high likelihood of success on the merits that surpasses any risk of irreparable harm to Defendant, and that failure to issue the injunction would subject Plaintiff to a substantial risk of irreparable harm. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). Accordingly, in light of the foregoing, the following order shall enter:

1. Defendant shall appear to show cause why possession of the Premises shall not immediately revert to Plaintiff due to the allegations of violence and drug use at the Premises.
2. No person other than Defendant may occupy the Premises.

3. The Clerk's Office shall select a date for further hearing approximately 7 days from the date of this order. Plaintiff shall have this order served on Defendant. If she fails to appear at the next hearing, the Court shall consider issuance of an execution for Plaintiff to recover possession.
4. The statutory fee for injunctions is hereby waived.

SO ORDERED.

DATE: June 17, 2024

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

cc: Court Reporter