

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 34

Jun. 20, 2024 — Jul. 12, 2024

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*

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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.

EDITORIAL STANDARDS

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

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

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

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

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

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

PUBLICATION

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

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

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CONTACT US

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

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⁸ Month shown in decision confirmed as erroneous.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-1915

NORTHERN HEIGHTS, LP,

Plaintiff,

v.

LAVERNE CRUMP,

Defendant.

ORDER

After hearing on May 30, 2024, the following order shall enter:

1. The tenant shall work with Springfield Partners at 721 State Street (tel: 413-263-6500) on reapplying to RAFT and to help determine if the fact that the tenant is "overhoused" using a 1-bedroom voucher in a 2-bedroom unit. Additionally, the tenant should inquire with Springfield Partners to assist her with locating a 1-bedroom unit.
2. The tenant shall pay her rent for June and July 2024, plus \$81 additional each month. This should be considered by Way Finders, Inc. as a "repayment plan" when considering the tenant's application for RAFT.

3. This matter shall be scheduled for further hearing on **July 25, 2024, at 9:00 a.m.**¹

So entered this 20th day of June, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

¹ TPP appeared at the hearing and reported that it closed the case after the tenant was denied RAFT as what remained was housing search and TPP does not provide housing search.

tenants at will). *See Pretrial Stipulations.* Both Parties agree that the Tenants have resided at the premises since June 2016. *See Pretrial Stipulation.*

LANDLORD'S CLAIM FOR POSSESSION AND DAMAGES

On February 22, 2024, the Landlord served a fourteen (14) day Notice to Quit on the Tenants via Deputy Sheriff Anthony Gibbs. *See Notice to Quit, at Plaintiff's Exhibit III.* The Notice to Quit was silent as to any proposed rental increase. On March 27, 2024, the Landlord filed this summary process eviction with the Court. On May 2, 2024, the Tenants filed their Answer and Counterclaims. *See Docket Entry No. 6.* In the Tenants' Answer, they allege, among other things, that the Landlord: 1) incorrectly calculated the amount of rent owed at the time the case was filed; 2) Landlord failed to make repairs and as a result, they were withholding rent; 3) increased the rent without signing a lease; and 4) violated the Security Deposit law. *See Tenants' Answer.* As a result of the alleged issues within the Premises, the Tenants are counterclaiming for \$4,350.00. *See Tenants' Answer.* The Court will liberally construe the Tenants defenses and counterclaims under G.L. c. 239, § 8A, since they alleged that they withheld rent, based on conditions that existed within the Premises.

On May 8, 2024, the Parties appeared in Court for a first-tier hearing. At that time, the Parties entered an "Interim Agreement," in which the Landlord agreed to schedule an inspection of the Tenants unit within 7 days to address the: 1) first floor main space floors; 2) back door lock; and 3) light fixtures in the bathroom and upstairs hallway. *See Par. 2 of Agreement, at Docket Entry No. 7.* The Parties also agreed that this matter would be scheduled for trial on May 22, 2024. *See Par. 4 of Agreement, at Docket Entry No. 7.* On May 21, 2024, the Landlord filed an assented to Motion to Continue the trial to June 12, 2024, which was allowed. *See Motion to Continue, at Docket Entry No. 9.*

FINDINGS OF FACT AND RULINGS OF LAW

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:

On February 22, 2024, Landlord served a legally sufficient fourteen (14) day Notice to Quit on the Tenants via Deputy Sheriff Anthony Gibbs, which also provided the required form pursuant to G.L. c. 186, § 31. *See Notice to Quit, at Plaintiff's Exhibit III.*

The Notice to Quit alleged that the Tenants monthly rental amount is \$1,680.00 and the Tenants did not pay any rent since September 2023. *See Notice to Quit, at Plaintiff's Exhibit III.* At the trial, the Tenants admitted to receiving the Notice to Quit, but disagreed with the monthly rental amount of \$1,680.00. The Landlord did not prove by clear and convincing evidence that the rental amount established is \$1,680.00. However, the Landlord introduced a rental ledger into evidence, which is kept in the ordinary course of the Landlord's business. *See Rental Ledger, at Plaintiff's Exhibit I.* The rent ledger showed the Tenants paid the Landlord rent on September 20, 2023 (\$1,680.00) and October 1, 2023 (\$1,000.00). *See Rental Ledger, at Plaintiff's Exhibit I.* The court may draw an inference that at some point in the tenancy, the Tenants agreed to pay the rent amount of \$1,680.00, as evidenced by their payment made on September 20, 2023. Despite any inferences that could be drawn from the rental ledger, the parties filed a Pretrial Stipulation reflecting the agreed upon rent of \$1,550.00. *See Pretrial Stipulation, at Par. 6a.* The Court finds the monthly rent/use and occupancy amount is \$1,550.00.

As a result, the Court finds that the total amount of rent/use and occupancy owed to Landlord is \$12,820.00 ((10 months (September 2023 to June 2024) X \$1,550.00 monthly rent - \$2,680.00 paid by the Tenants)). The Tenants continue to reside at the Premises.

TENANTS DEFENSES AND COUNTERCLAIMS

Breach of the Warranty of Habitability. The Tenants through their Answer raised claims of disrepair within the Premises. *See Tenants' Answer.* In other words, they are claiming a breach of the implied warranty of habitability. 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.* The Landlord is liable for code violations and breach of warranties. A Tenant is 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).

At the trial, the Tenants introduced copies of text messages from February 2023, in which they complained about the issues regarding the floor to their Landlord. See **Text Messages**, at **Defendant's Exhibit II**. The Tenants further testified credibly and introduced photographs to support their claim that Landlord failed to make repairs to the floors, despite the Interim Agreement and the complaints from the Tenants. See **Photos**, at **Defendant's Exhibit I**; see also **Interim Agreement**. As a result of the issues of disrepair with the floors, the Court shall deduct \$1,600 (a rental abatement of \$100.00 per month for the sixteen (16) months that the violations existed) as an offset to the Plaintiff's claim for money damages.

As to the remainder of the Tenants condition-based defenses and counterclaims, the Tenants admitted at trial that the issues with the back door lock and the issues with the lightening have been corrected upon the Landlord receiving notice of those issues, via the Tenants Answer. As a result, the court finds that the Tenants did not prove those alleged conditions of disrepair and how it impacted the implied warranty of habitability.

Security Deposit Statute Claim. The security deposit statute, G.L. c. 186, §15B, imposes strict requirements that must be followed by every landlord who accepts a security deposit from a residential tenant. The landlord forfeits his right to retain a security deposit for any reason where he has failed to comply with the statute, and upon demand, must promptly return the deposit to the tenant. See, Castenholz v. Caira, 21 Mass.App.Ct. 758 (1986). Section 3(a) requires that a landlord hold a residential tenants' security deposit "in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors of the lessor . . ." Section 4 requires that a landlord who has held the deposit in

accordance with the provisions of the statute must "return to the tenant the security deposit or any balance thereof" within thirty days after the termination of occupancy. Section 4 further provides that the landlord is permitted to deduct from the security deposit only (i) unpaid rent which the tenant has not validly withheld or deducted, (ii) unpaid increases in real estate taxes which the tenant is obligated to pay and (iii) a reasonable amount necessary to pay for the repair of damage to the premises caused by the tenant, provided the landlord gives the tenant within the same thirty day period "*an itemized list of damages, sworn to by the lessor or his agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct the damage, and written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof*" (emphasis added). Section 6 provides in relevant part that a landlord,

shall forfeit his right to retain any portion of the security deposit for any reason . . . if he (a) fails to deposit such funds in an account as required by subsection 3 . . . (b) fails to furnish to the tenant within thirty days after the termination of the occupancy the itemized list of damages, if any, in compliance with the provisions of this section . . . or (e) fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance with the provisions of this section, within thirty days after termination of the tenancy.

Finally, Section 7 provides that if the landlord fails to comply with Section 6 (a) or (e), the tenant "shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof . . . plus interest at the rate of five percent from the date when such payment became due, together with court costs and reasonable attorney's fees."

The Tenants allege their Landlord violated the Security Deposit law. However, at trial the Landlord provided proof that they have complied with G.L. c. 186, §15B. *See Landlord's Exhibit*

I. For the reasons stated above, the Tenants claim that the Landlord violated the Security Deposit law was unsubstantiated at trial and therefore fails as a matter of law.

SET-OFF

Setting off the \$1,600.00, which the Landlord owes to the Tenants, against the \$12,820.00, which the Tenants owe to their Landlord, the Court finds that the Tenants owe their Landlord \$11,200.00, plus court costs.

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Landlord terminated the Tenants tenancy pursuant to the relevant laws and statute; (ii) the monthly rent/use and occupancy is \$1,550.00; (iii) the Tenants owe their Landlord \$12,820.00 in use and occupancy/rent; (iv) the Landlord failed to remediate the issues involving the floor and as a result, the Tenants are entitled to an offset of \$1,600.00 to the Landlord's claim for rent/use and occupancy; and (iv) the Landlord has complied with the Security Deposit law.

ORDER FOR JUDGMENT

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

1. Judgment shall enter for Plaintiff for unpaid rent in the amount of **\$12,820.00**, plus court costs.
2. Judgment shall enter for the Defendants on their counterclaim for breach of the implied warranty of habitability for damages in the amount of **\$1,600.00**.
3. The foregoing orders for judgment paragraphs 1-2 results in a net judgment for the Plaintiff in the amount of **\$11,200.00**, plus court costs and interest.
4. 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 **\$11,200.00**, plus court costs.
5. 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.
6. 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 **\$11,200.00**, plus court costs and

interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

7. The Plaintiff shall remedy the issue relating to floor within the Defendants unit.

SO ORDERED.

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

June ____, 2024

cc: Rachel Woods, Esq.
Richard Baker
Charity Vera
Mark Byrd

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5598

CHARLES BURGESS, JR.,

Plaintiff

v.

ABBIE TAYLOR AND KEISHLA SANTIAGO,

Defendants

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND INTERIM ORDER

This no cause summary process case came before the court for a bench trial on March 13, 2024 and March 21, 2024. Plaintiff appeared self-represented. Defendants appeared with counsel. Defendants reside at 255 Mill Street, Apt. A, Springfield, Massachusetts (the "Premises").

The parties stipulated that the Premises are part of a three-family home, that Defendants took occupancy in January 2021, and that they received the notice to quit.¹ At trial, the Court permitted Plaintiff to amend the amount owed in rent from the \$4,500.00 sought in the complaint to \$6,900.00, the amount due at the time of trial. *See Davis v. Comerford*, 483 Mass. 164, 171 (2019) ("court should include all

¹ Although the notice does not set forth a basis for the eviction, the summons and complaint cites "just cause" as the reason for eviction. The Court considers this to be a no cause eviction and rules that the words "just cause" in the summons and complaint do not transform it to a different type of eviction case.

rent that has become due up to the time of the hearing if the tenant is still in possession”).

Defendants filed an answer asserting defenses and counterclaims. They allege breach of the covenant of quiet enjoyment based on conditions of disrepair, breach of the implied warranty of habitability, violation of G.L. c. 93A and retaliation. Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

Plaintiff introduced himself to Defendants as the new property owner in late January 2021, shortly after Defendants had moved in under the previous owner. As Defendant Taylor testified, the unit was in good condition when Plaintiff purchased the property, but for a couple of minor issues. The first time Defendants notified Plaintiff of a problematic living condition was in April 2021, when Defendants asked for pest extermination. Plaintiff indicated that he would scheduling an extermination. Defendants also referenced an issue with their refrigerator. In August 2021, Defendants informed Plaintiff of a crack in the ceiling and in October 2021, of a common hallway light bulb that needed replacement.²

In June 2022, Defendants contacted Springfield’s Housing Code Enforcement Department (“Code Enforcement”). Code Enforcement issued a notice of violations dated June 9, 2022, citing only a few issues, namely peeling paint from water damage

² The Court was presented with a large volume of texts between the parties. Some of the texts do not indicate the year of the message, only the day and month, and they do not appear to be in strict chronological order. Accordingly, the Court draws certain inferences about the timing of complaints based on the totality of the evidence (including dates of notification to Plaintiff’s home warranty company) and, further, the Court discounts undated texts where there is insufficient evidence to infer the year.

in the bathroom ceiling and kitchen walls and a squirrel infestation.³ Plaintiff claims he was never provided actual notice of the violations as he was not living at the address where the notice was sent.

Defendants continued to notify Plaintiff of issues that arose in the Premises by text message, and Plaintiff generally responded with expressions of a commitment to make the necessary repairs. Plaintiff was issued another notice of violations by Code Enforcement by letter dated May 17, 2023. Violations included a defective kitchen cabinet and drawer, missing outlet covers and an inoperable stove burner. The last notice of notice of violations offered into evidence is dated September 8, 2023, in which Code Enforcement cites a crack in a bedroom storm window, the need for repairs to certain window screens, lifting hallway floor tiles and a “mold-like substance” in the bathroom.⁴

The communications between the parties also shows that, despite the concerns raised by Defendants about certain conditions in the Premises, they never informed Plaintiff that they were withholding rent in order to coerce him to make repairs. In fact, on several occasions including as recently as November 2023 (after receipt of the notice to quit), they told Plaintiff that they were struggling to have enough money to pay the rent and that, because he was making repairs, they were doing their best to hold up their end of the bargain by paying rent in full.

³ Plaintiff was also cited for issues with the yard fence and failing to properly post the landlord's name and emergency contact information which do not constitute bad living conditions in the Premises.

⁴ Although Defendants did not present any additional code violation notices, they did offer records indicating that Code Enforcement reinspected on or about December 18, 2023 and January 31, 2024 and found that some violations had been repaired and new, unspecified violations were found.

Defendants received rental assistance funds that paid the rent arrears through September 2023. They have made no payments since that date, leaving rent unpaid from October 2023 through March 2024, the month of trial. The last agreed-upon rental amount is \$1,050.00 per month. Plaintiff sent a notice of a rent increase purporting to increase the rent as of September 1, 2023, but there is no evidence that Defendants actually agreed to pay the increased amount nor is there evidence that they ever paid the increase. Therefore, the Court finds that the amount unpaid is \$6,300.00 through trial based on a monthly rent of \$1,050.00.⁵

The Court next analyzes each of Defendants' counterclaims.

A. Breach of Quiet Enjoyment

Massachusetts law provides, in relevant part, that “[a]ny lessor or landlord of any building or part thereof occupied for dwelling purposes ... who willfully or intentionally fails to furnish such water, hot water, heat, light, power ... or refrigeration service at any time when the same is necessary to the proper or customary use of such building or part thereof ... or 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

⁵ In the rent increase notice, Plaintiff also notified Defendants that he would charge an extra \$100.00 per month for additional occupants not on the lease and \$50.00 per month for using a washing machine. Plaintiff may not unilaterally impose new charges in this manner, and therefore the Court finds these increases to be unlawful. There is no evidence, however, of actual damages as Defendants never made any of these payments.

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).

Here, Defendants assert violations of this statute under two separate prongs: the failure to furnish heat and interference with quiet enjoyment. The Court finds that Defendants did not prove by a preponderance of the evidence that Plaintiff failed to furnish heat, despite claiming that heat was defective for months at a time. Given the volume of text messages regarding the need for repairs and the multiple inspections by Code Enforcement, the absence of significant communications about heating problems leads to the inference that heat was not a substantial problem. The Court finds Defendants’ testimony that heat was out for months at a time during heating season not to be credible under the circumstances.

The Court does find, however, that Defendants have shown that the prevalence of mostly minor problems and the more extensive issue of pest infestations warrants a finding that the conditions in the Premises between the Spring of 2021 and the date of trial interfered with their quiet enjoyment of the Premises. The conditions of disrepair impaired the character and value of the tenancy and entitle Defendants to consequential damages, or three month’s rent, whichever is greater, plus a reasonable attorney’s fee ad costs. Because Defendants did not present evidence as to consequential damages, the Court finds Plaintiff liable for damages in the amount of three months’ rent at the rate of \$1,050.00 for a total of \$3,150.00.

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). A landlord is strictly liable for breach of warranty of habitability claims, meaning that its good faith efforts to make repairs are not considered in calculating damages.

Defendants testified to a number of issues that they claim constitute reach of the warranty of habitability. The Court finds most not to rise to the level of substantial violations of the State Sanitary Code or significant defects in living conditions.⁶ However, the infestation of rodents, in particular, is a substantial violation. Although the Court credits Defendants' testimony that they had squirrels and mice in the Premises, the Court does not find by preponderance of the evidence that the infestation was serious and consistent from April 2021, when an extermination was first requested, through the March 2023 trial date. Because of the lack of specificity as to the actual time periods during which the tenants suffered from an infestation, the Court would be guessing as to how often the tenants were affected by pests in the Premises and how severe the infestation was at any given time. Given Defendants lack of credibility in testifying about heating problems, the

⁶ For example, a non-working stove burner, small cracks in ceilings and walls, window screens in need of repair, missing outlet covers and a missing cabinet door do not necessarily constitute significant defects in isolation.

Court does not credit their testimony that the infestation was severe every month over a two year period. Given that the tenants cannot recover for both breach of warranty and interference with quiet enjoyment based on the same conditions of disrepair, and in light of the lack of evidence about how long many of these conditions existed, the Court rules that Defendants are entitled to recover statutory damages pursuant to G.L. c. 186, § 14 but not damages for breach of warranty.

C. Retaliation

Defendants assert that because Plaintiff's notice to quit for no cause, dated October 23, 2023, came within six months of their complaint to Code Enforcement in May 2023, they are entitled to 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.").

The Court find that Plaintiff proved by clear and convincing evidence that his action was not a reprisal against Defendants and that he had sufficient independent justification for terminating their 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 they had complained to Code Enforcement. Defendants had been struggling to pay rent (and in fact had not paid rent) for months prior to October 2023. After the RAFT program paid Plaintiff in September 2023, Defendants did not pay rent for October 2023, leading Plaintiff to serve the notice to quit. Plaintiff testified credibly, and the text messages support, that he was not upset about Defendants' requests for

maintenance because he had a home warranty contract that covered the repairs. Moreover, Defendants' own texts show that they acknowledged Plaintiff's responsiveness and as recently as November 2023 were endeavoring to pay the rent in full. Accordingly, the Court finds in favor of Plaintiff on the retaliation claim.

D. Violation of G.L. c. 93A

The Court finds that Plaintiff did not commit an unfair or deceptive practice (as defined by the Attorney General's regulations on landlord-tenant relationships found at 940 Code Mass. Regs. § 3.17) by failing to remedy conditions of disrepair in a timely manner. His letter of a rent increase did try to unilaterally impose new conditions on the tenancy which, if there had been a written rental agreement, may have constituted an unfair and deceptive practice. However, in a month to month tenancy, Plaintiff was proposing new terms for continuing the tenancy which Defendants did not have to accept (and, in fact, did not accept). Accordingly, the Court finds no Chapter 93A violation.

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 \$6,300.00 for unpaid use and occupancy through the date of trial.
2. Defendants are entitled to damages in the amount of \$3,150.00 on their counterclaims, plus a reasonable attorney's fee and costs.
3. Pursuant to G.L. c. 239, § 8A, Defendants shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$3,150.00. plus court costs of \$ 221.70 and interest in the amount of

\$ 200.02, for a total of \$ 3571.78. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

4. If such deposit is made, judgment for possession shall enter for Defendants. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
5. If the deposit is not received by the Clerk within the ten day period, Plaintiff shall be entitled to judgment for possession and damages in the amount of \$3,150.00, plus costs and interest, but final judgment shall not enter until reasonable attorney's fees and costs have been awarded.
6. Defendants shall have fifteen (15) days from the date of this order to file a petition, along with supporting documentation, for attorney's fees and costs. 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.
June 21, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-1728

SPRINGFIELD CV1, LLC,

PLAINTIFF

v.

SHAWNA PEEBLES,

DEFENDANT

RULING ON MOTION TO
CORRECT JUDGMENT

This matter comes before the Court on Defendant's motion to correct the judgment. On January 26, 2024, the Court entered an order under G.L. c. 239, § 8A, finding that Plaintiff was entitled to unpaid rent in the amount of \$10,819.00 and that Defendant was entitled to \$2,175.00 on account of her security deposit claim. On March 29, 2024, the Court awarded Defendant attorney's fees in the amount of \$2,475.00.

Judgment was entered erroneously on February 8, 2024 as the Court's order indicated that final judgment would only enter after the attorney's fee petition had been considered. Therefore, the judgment dated February 8, 2024 should be vacated. The judgment entered on April 1, 2024 was also incorrect. At that time, judgment should have entered for Plaintiff in the amount of \$9,739.20 without additional costs

awarded. A separate judgment should have entered in favor of Defendant in the amount of \$2,475.00 without interest for the attorney's fees.

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

1. The judgment for Plaintiff that entered on April 1, 2024 shall be correct to reflect a monetary amount of \$9,739.20 without additional costs.
2. A separate judgment for Defendant shall enter in the amount of \$2,475.00 without court costs or interest.
3. Execution for possession and damages in the amount of \$9,739.20 shall issue for Plaintiff.
4. Execution for monetary damages in the amount of \$2,475.00 shall issue for Defendant.

SO ORDERED.

DATE: June 21, 2024

1st Jonathan J. Kane
Jonathan Kane, First Justice

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SP-4606**

BEACON RESIDENTIAL MANAGEMENT, L.P.,

Plaintiff,

v.

JANET GONZALEZ-ORTIZ,

Defendant.

ORDER

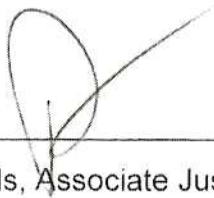
After hearing on May 30, 2024, at which both parties and the Tenancy Preservation Program appeared, the following order shall enter:

1. The tenant has agreed to allow Money Management to be her representative payee and also to participate in a Court Clinic evaluation.
2. The Tenancy Preservation Program (TPP) is requested to work with Assistant Clerk Magistrate Kunha to have the tenant evaluated by the Court Clinic. In order to determine if Ms. Gonzalez-Ortiz is an "incapacitated person" as that term is defined in G.L. c.c. 190B, ss.510 (9), the court hereby orders that she undergo a forensic psychological evaluation with the Court Clinic. The court

requests that the clinician evaluate Ms. Gonzalez-Ortiz with respect to her decision-making capacity, her ability to comply with court orders regarding her housing, and her ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a *guardian ad litem* for Ms. Gonzalez-Ortiz.

3. TPP is requested to conduct their follow-up meetings with the tenant in person, preferably at her home as she has physical challenges and to set up a meeting with the tenant and the landlord to go over her rent ledger, as the tenant appears very confused about what monies she may owe the landlord.
4. The tenant shall per her rent plus \$100 beginning in June 2024 and each month thereafter until this matter is heard again by the court.
5. Assistant Clerk Magistrate Kara Cunha is requested to identify and appoint a *guardian ad litem* for the tenant and then schedule this matter for a Status Hearing.

So entered this 24 day of June, 2024.



Robert Fields, Associate Justice

Cc: Kara Cunha, Esq., Assistant Clerk Magistrate
Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

JOEY CURRAN,

Plaintiff,

-v.-

DOCKET NO. 24SP00773

ROXENIA SILVA,

Defendant.

ORDER

This matter came before the court on June 21, 2024 for a hearing on the defendant-tenant's motion to stop the scheduled move out. The plaintiff-landlord appeared and was self-represented. The defendant appeared with her Lawyer for the Day Program (LDP) attorney.

The landlord brought this eviction case based on non-payment of rent. A default Judgment entered for the landlord in May 2024 for possession and unpaid rent/use and occupancy of \$2,925.41 (including costs).¹ June use and occupancy also remained unpaid as of the date of the hearing. The plaintiff's deputy sheriff served a 48-hour notice to the tenant notifying her that he would use the execution to move her out of the premises on June 27, 2024 at 10:00 a.m. The defendant filed this motion to stop the move out.

The defendant's attorney reported that Ms. Silva is eligible for RAFT financial assistance which could pay the entire arrearage. The landlord has declined RAFT in the past. The defendant agreed to apply for RAFT after the hearing.

The case was referred to the Housing Specialist Department.

¹ The defendant explained that she did not come to court because she thought she had an agreement with the landlord regarding payment.

Orders

As stated on the record at the hearing, the following orders will enter:

1. The move out scheduled for June 27, 2024 is **STOPPED**. The landlord will notify the deputy sheriff of this order.
2. The defendant is responsible to pay the cancellation fee to the plaintiff upon receipt of an invoice from the deputy sheriff.
3. The defendant will apply for RAFT financial assistance on June 21, 2024. Both parties will cooperate with the application process.
4. The defendant's LFD attorney is asked to continue to assist the defendant with her application for RAFT financial assistance, the default judgment and a possible resolution of the case, including the amount of the current rent/use and occupancy.
5. The court's stay of the execution is ordered within the meaning of G.L. c. 235 §23.

June 24, 2024

Fairlie A. Dalton (Rec.)

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-937**

<p>LUGIN ENTERPRISES, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>KATIE MAXFIELD,</p> <p style="text-align: center;">Defendant.</p>	
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ORDER


After hearing on May 31, 2024, on the tenant's motion to stop a physical eviction currently scheduled for June 5, 2024, the following order shall enter:

1. The tenant provided evidence in the form of an email from the Executive Office of Housing & Livable Communities that her RAFT application has been approved for \$6,467.65 which will bring her balance through May 2024 to \$0.
2. Because the landlord was aware that there there was a RAFT application pending, no indication that it was "timed out" or denied, and no effort of the landlord to inquire about the status of the RAFT application at the time the landlord scheduled its move-out---and given that the RAFT funds will pay for

all outstanding monies through May 2024—the physical eviction shall be cancelled and the costs of said scheduling and cancellation shall not be passed on to the tenant.

3. This matter is hereby dismissed.

So entered this 24 day of June, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

KEVIN M. SEARS,

Plaintiff,

-v.-

DOCKET NO. 23SP04899

ANDREW MARTIN,

Defendant.

ORDER

This matter came before the court on June 21, 2024 for an emergency hearing on the defendant-tenant's motion to delay the scheduled move out. The plaintiff-landlord appeared through his attorney. The defendant appeared and was self-represented.

The landlord brought this eviction case based on non-payment of rent. The monthly rent is \$825. Judgment entered for the landlord on or about May 14, 2024 for possession and unpaid rent/use and occupancy of \$5,349. As of the date of the hearing, the arrearage is \$6,174 through June 2024. The plaintiff's constable served a 48-hour notice to the tenant notifying him that he would use the execution to move him out of the premises on June 21, 2024 at 10:00 a.m. The defendant filed this motion to stop the move out.

The defendant used RAFT financial assistance during the past year, but it did not reduce the arrearage to zero. He is not eligible for further financial assistance from RAFT at this time, although his motion states that he has a pending RAFT application. He expects to be eligible for RAFT again in August. Instead, the defendant offered to pay some money to postpone the move out with the assistance of his girlfriend, who was present with him in court, and his mother. The hearing was recessed for the parties to meet with a housing specialist of this court to solidify a proposal for such payment. The parties were not able to reach an agreement.

Orders

As stated on the record when the hearing resumed, the following orders will enter:

1. The move out scheduled for June 21, 2024 is **STOPPED** on condition that the defendant pay \$1,515 to the landlord's attorney by 5:00 p.m. on June 21, as he agreed to do. This represents:
 - a. Cancellation fee of \$690, and
 - b. June's use and occupancy of \$825.
2. If the defendant does not pay \$1,515 as ordered above, the plaintiff may have the constable serve a new 48-hour notice and then use the execution to move the defendant out of the premises.
3. The defendant's motion is continued to July 2, 2024 at 9:00 a.m. At that hearing, the defendant will report on the status of any pending RAFT application, the exact date on which he will be eligible next for RAFT,¹ the amount of such eligible funds, and his plan to pay the use and occupancy in the meantime.
4. The court's stay of the execution is ordered pursuant to G.L. c. 239 §15 and G.L. c. 235 §23.

June 24, 2024

Fairlie A Dalton (pd)
Fairlie A. Dalton, J. (Rec.)

¹ The defendant should speak with Wayfinders to determine this information before the next hearing date.

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

GWEN MILLER WARD,

Plaintiff,

v.

DOCKET NO. 24CV00458

LORI A. PICARD,

Defendant.

ORDER

This matter came before the court on June 21, 2024 for a hearing on the plaintiff's request for an emergency order. The plaintiff appeared and was self-represented. The defendant appeared with her attorney. Both parties as well as the plaintiff's daughter, Nina Miller, testified at the hearing.

Lori A. Picard is the owner of a single family home located at 267 Dwight Road in Springfield, Massachusetts. On or about April 1, 2024, she invited her co-worker Nina Miller, together with her mother, Gwen Miller Ward, and a pet, to stay at the house temporarily. They occupy the attic area which has a half-bath. Ms. Picard offered to let them use the kitchen and other areas of the house, but they have not done so. Ms. Miller moved to Massachusetts with her mother on a contract with a school in Springfield, but they were not able to locate housing in the area. When Ms. Picard learned of their plight and realized that she worked with Ms. Miller at the school, she extended an invitation to stay with her until the end of the school year (on or about June 17).

The time since has not been without incident. Ms. Picard complained that her electric bill had increased significantly. Ms. Miller gave her \$200 toward the electric bill on or about May 13. On or about June 5 there was a disagreement about whether the sliding door should be left open. Ms. Ward accuses Ms. Picard and her worker of using offensive language. Ms. Miller

called the City of Springfield Code Enforcement Housing Division. By order dated June 12, 2024, an inspector condemned the attic space where the plaintiff and her daughter are staying and ordered Ms. Picard to have that space vacated. They continue to reside there.

The plaintiff filed this request for injunctive relief and asks that the defendant be ordered to pay for alternative housing for herself, her daughter and her pet until mid-August when they plan to leave the area when Ms. Miller's contract with the school expires.

The defendant argues that she should not be ordered to provide alternative housing in this situation because no tenancy was ever established between the parties. The court agrees. The defendant did not charge, and neither the plaintiff nor her daughter ever paid, rent for the space they occupied. The payment of \$200 toward the electric bill in response to the defendant's complaint was not consideration that established a tenancy. The plaintiff and her daughter were mere guests of the defendant, with no tenancy rights.¹

The defendant reported that she is not aware of any action taken by the City to enforce its June 12, 2024 order to date. Although her original invitation extended only to June 17, 2024, she reported at the hearing that she is willing to let the plaintiff and her daughter stay in the house, still as her guests, until mid-August when they plan to leave the area. While the court cannot and does not order this, the parties are free to make such arrangements as they wish, as long as the City is satisfied. The court urges the parties to be respectful of each other during any such continued occupancy.

Order

After hearing, the court finds that the plaintiff has not shown a likelihood of success on the merits. Therefore, the plaintiff's request for injunctive relief is **DENIED**.

June 24, 2024

Fairlie A Dalton^(B)
Fairlie A. Dalton, J. (Rec.)

¹The plaintiff submitted an email from Ms. Miller which confirms that this was the arrangement between her and Ms. Picard.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5822

BEACON RESIDENTIAL,
Plaintiff,
v.
TIMOTHY SCOTT, et al.,
Defendants.

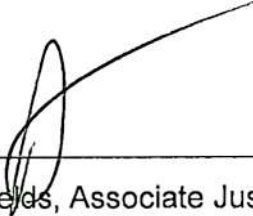
ORDER

After hearing on June 24, 2024, the following order shall enter:

1. The tenant Timothy Scott's motion to compel shall be refiled in the format required by the Court. Such format includes restating the interrogatory/request for admission, restating the response, and state argument as to how that response is deficient.
2. Said re-formatted motion shall be filed by July 8, 2024.
3. The plaintiff shall have until July 19, 2024, to respond to same.
4. The July 9, 2024, hearing date on the tenant's motion for summary judgment shall be rescheduled to the date noted below.

5. Both the motion to compel and the motion for summary judgment shall be scheduled for hearing on **July 31, 2024, at 2:00 p.m.**

So entered this 26 day of June, 2024.



Robert Fields, Associate Justice

Cc: GAL: Patrick Toney, Esq.
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1207

CIG4, LLC,

Plaintiff,

v.

YUNNIOR DIAZ VAZQUEZ,

Defendant.

ORDER

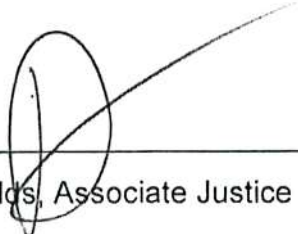
After hearing on June 25, 2024, on the tenant's motion to stop a physical eviction scheduled for this date, the following order shall enter:

1. The tenant handed landlord's counsel \$2,500 in money orders.
2. Based on this payment, the physical eviction is cancelled.
3. The tenant also stated on the record that he never received any documentation regarding his eviction until the magistrate served its recent 48-hour notice.
4. This matter shall be scheduled for review on **June 27, 2024, at 9:00 a.m.**

This time was picked so that the tenant could and would meet with

Community Legal Aid in the Court's Resource Room prior to any mediation or hearing on that date.

So entered this 26th day of June, 2024.



Robert Fields, Associate Justice

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

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-461

RUBEN PALACIA,

Plaintiff,

v.

ERNEST HARRIS and LUIS DELGADO,

Defendants.


ORDER

After hearing on June 24, 2024, on the plaintiff tenant's motion for injunctive relief, at which the tenant was represented by Lawyer for Day Counsel Manzanares and the defendant landlords were self-represented, the following order shall enter:

1. For the reasons stated on the record by the judge, essentially that the defendant landlords purchased a rental property in which the plaintiff tenant resided (and continues to reside) and which tenancy included the use of the basement and shed as well as a laundry hook-up and a parking space on the driveway---an no new lease terms amended same---the defendants shall immediately restore the tenant's use of those areas and parking.

2. The tenant's motion that the landlord remove the camera in the basement is denied as the record reflects his agreement to allow the installation of said camera.

So entered this 26th 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. 19-SP-190

BANK OF NEW YORK MELLON,

Plaintiff,

v.

**ALTON KING, DAVID WHITE, and RACE
STREET PROPERTIES, LLC,**

Defendants.

ORDER

After hearing June 25, 2024, the following order shall enter:

- 1. Relevant Background:** The defendants Race Street Properties, LLC (hereinafter, "Race Street") and David White (hereinafter, "White") performed a physical eviction of the defendant Alton King's belongings (hereinafter, "King") from his former home located at 49 Memery Lane in Longmeadow, Massachusetts. Race and White stored King's belongings at their warehouse purporting to do so pursuant to G.L. c.239, s.4. On August 7, 2023, the Court issued an Order enjoining Race and White from selling or otherwise removing King's belongings from their warehouse

without leave of court. This injunctive order stemmed from the Court's very serious concerns regarding the irregularities and non-compliance with the laws pertaining to storage of and ultimate sale of Mr. King's property. Examples of such malfeasance included but were not limited to the failure to send Mr. King 'monthly statements' regarding costs accruing by the warehouseman upon which a claim can be made upon Mr. King as required by G.L. c.239, s.4(b)(8) and announcing a sale of Mr. King's belongings in violation of the requirement to advertise the sale of stored goods in a 'newspaper of general circulation'.

2. Thereafter, on March 20 and April 26, 2024, the Court issued Orders requiring Race Street and White to provide evidence that Race Street was a licensed moving company regulated by the Commonwealth's Department of Public Utilities (DPU) at the time of the removal of King's belongings from his former residence to date.
3. Race Street and White report that Race Street does is not a licensed moving company and was not a so licensed at the times that they removed King's belongings from his former residence and argue that they need not be due to their being a public warehouse licensed by the Office of Public Safety and Inspections.
4. **Race Street's Motion for Permission to Sell Possessions of Alton King:** Presently before the court is Race Street's motion for injunctive relief, to be given permission to sell King's belongings. For the reasons stated herein, that motion is denied *without prejudice*.

5. **Standard for an Injunction:** The well-established standard for issuance of an injunction requires that the moving party show a likelihood of success on the merits, and a substantial risk of irreparable harm in the absence of injunctive relief. The court must then balance the risk of harm to the moving party against any similar risk of harm to the opposing party associated with granting the injunction. "Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." *Packaging Industries Group, Inc. V. Cheney*, 380 Mass. 609, 617 (1980).
6. **Discussion:** The moving party, Race Street, has not asserted either through testimony or affidavit what harm it faces by storing King's belongings. Its counsel, however, has asserted in his arguments that Race Street leases the building in which King's belongings are stored, that the lease is not being renewed, that Race Street has cleared out all other belongings other than that of King, and that it is paying \$4000 per month to the owner of the building.
7. Even assuming that there was an affidavit or testimony with underlying documentation of those non-testimonial assertions, Race Street has several buildings in which it stores tenants' belongings from many evictions. There is no record before the court establishing why it cannot move King's belongings to one of those facilities. The court takes judicial notice that Race Street is a very busy eviction warehouse. Being one of only two such warehouses in the four counties of western Massachusetts,

this court sees cases each week where Race Street is listed as the storage facility in evictions, and thus seems to have somewhat endless room for new evictees but not for King¹.

8. On the other side of the equation, King repeatedly asserts in pleading--- including in a “verified opposition”---and at hearings, that he has no place to put his belongings and has no funds to pay for their retrieval or storage elsewhere ².
9. Additionally, Race Street failed to provide King with “monthly statements” regarding costs accruing by his belongings being stored at Race Street, as required by G.L. c.239, s.4(b)(8), and failed to comply with the applicable requirements before attempting to sell the belongings in July 2023. More specifically, it was required to adequately advertise the sale of King’s belongings in compliance with G.L. c.106 s.7-210(b)(5) which requires---

¹ Should Race Street choose to move King’s belongings to another facility, it may only do so in compliance with applicable law and by leave of court. Additionally, if the new locale requires the use of moving trucks, it will not be allowed to do so with its own trucks unless it becomes a licensed moving company in accordance with DPU requirements.

See G.L. c.159B, s.3: “No person shall engage in the business of a common carrier by motor vehicle upon any way unless there is in effect with respect to such carrier a certificate issued by the department authorizing the operations to be performed by such person.”

A common carrier by motor vehicle is defined in s.2 (definitions), which states:

Common carrier by motor vehicle, any person who directly, or by his agent or under a lease or any other arrangement, or by arrangement with any other common carrier or with any contract carrier, transports property, or any class or classes of property, for the general public by motor vehicle, for compensation, upon ways, over regular or irregular routes, including carriers by rail or water and express or forwarding companies, when engaged in such motor vehicle operation, except to the extent that such operations by the are subject to chapter one hundred and fifty-nine.

Additionally, the statute and accompanying DPU regulations at 220 CMR 260.00 identify “general public” expansively with few exemptions that include vehicles carrying agricultural and mail (for example) but no exception noted for vehicles carrying items for public warehouses.

² The court notes here that by court order dated August 7, 2023, the parties were given a window to propound discovery, but the record indicates that none of the parties have done so.

among other things---that the sale be advertised in a “newspaper of general circulation where the sale is to be held” which was not done.

10. As a result of these failures, Race Street forfeited its lien against King’s property and as result do not have a right to sell King’s property and there does not appear anything in the court record to move the court to reinstate Race Street’s right to sell King’s belongings at this juncture of this litigation. See, G.L. c.239, s.4(e).

11. **Public Policy:** The “public policy” prong of the standard for issuing an injunctive order is often not highlighted in many court decisions. Here, however, it seems very compelling. As noted above, Race Street is one of only two eviction warehouses that serve the court’s entire jurisdiction. To authorize it to auction off King’s belongings after moving such belongings without a mover’s license ³, and after failures to comply with the statutory language requiring bills and notifications, and then to attempt to auction of these belongings in a manner contrary to the law prior to a full adjudication of the merits of King’s claims represents important public policy concerns⁴.

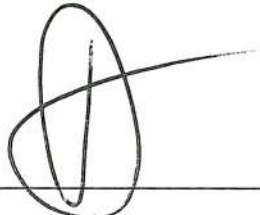
12. **Order on Race Street’s Motion for Permission to Sell Possessions of Alton King:** Based on the foregoing, Race Street’s motion is denied *without prejudice*.

³ See FN #2.

⁴ The record is admittedly unclear as to what claims the parties have against one another due to the unique procedural history of this case. It is currently a post-eviction Summary Process matter, that is active due to the injunctive matters discussed herein. With this order (see below) the Summary Process action shall cease and be transferred to the Civil Docket and then case managed.

13. **Scheduling Order:** This Summary Process action shall be transferred to the Civil Docket. The new case shall be entitled *Alton King v. Race Street Properties, LLC, David White, and Bank of New York Mellon*. King shall have thirty (30) days from the date of this order to file a Complaint, asserting all of his claims against the other parties. Race Street, White, and Bank of New York Mellon shall have thirty (30) days after receipt of the Complaint to file their Answers to said complaint. This matter shall be scheduled for a Judicial Case Management Conference for **September 26, 2024, at 2:00 p.m.** to schedule discovery timelines, pretrial deadlines (including the marking of dispositive motions), and for trial.

So entered this 27th 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-3968

BENSON'S REALTY, LLC,

Plaintiff,

v.

CAROL BENSON and JOHN BENSON,

Defendants.

ORDER

After hearing on June 24, 2024, on a motion to extend deadlines for discovery, at which the plaintiff counsel and the G.A.L. for Carol Benson appeared, the following order shall enter:

1. The motion was assented to by the parties present.
2. The G.A.L. has already propounded discovery upon the plaintiff and the plaintiff shall now have thirty (30) days from the date of this order to respond.
3. The plaintiff shall propound discovery also within thirty (30) days.
4. The defendants shall respond to the plaintiff's discovery within thirty (30) of receipt of said discovery.

5. A Status Hearing is 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 and the G.A.L.

So entered this 27 day of June, 2024.



Robert Fields, Associate Justice

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

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP001721

CAVALIER SOUTHEAST LLC,

Plaintiff

VS.

ANDREW HOWE,

Defendants

**FINDINGS OF FACT, RULINGS OF LAW AND
ORDER OF JUDGMENT**

This is a summary process action in which plaintiff Cavalier Southeast LLC is seeking to recover possession of a residential dwelling from defendant Andrew Howe based upon nonpayment of rent. The defendant did not file a written answer to the complaint.

There is no pending RAFT application. See G.L. c. 239, § 15.

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 six-unit residential building at 165 Elizabeth Street, Pittsfield, Massachusetts. The defendant first occupied the one-bedroom apartment in 2021 subject to the terms of a written lease. The lease expired and thereafter the defendant has occupied the apartment as a tenant at will. The last agreed upon monthly rent was \$950.00 due by the first day of each month.

The defendant has experienced financial difficulties related to his unemployment. He received RAFT assistance in September 2023 and January 2024. After the January 2024 RAFT payment, the defendant owed a rent balance of \$1,227.40. The defendant has not made any rent payments from February to June 2024. The defendant's rent arrearage increased to \$5,977.40 as of the trial date.

On March 20, 2024 the plaintiff had served upon the defendant a legally sufficient 14 Day Notice to Quit.

The court recognizes that the defendant has experienced serious financial difficulties over the past year and that he has made efforts, so far unsuccessful, to secure a new job. However, his financial difficulties does not constitute a defense to the plaintiff's claim for possession and rent.

The plaintiff has established its claim to recover possession of the premises for nonpayment of rent and damages in the amount of \$5,977.40 plus costs and statutory interest.

With the plaintiff's consent, execution shall not issue until July 31, 2024.

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 enter for the plaintiff for possession of the premises at 165 Elizabeth Street, Pittsfield, Massachusetts, and unpaid rent damages in the amount of \$5,977.40 plus costs and statutory interest.
2. Execution shall issue on July 31, 2024.

SO ORDERED this 27th Day of June 2024.

Jeffrey M. Winik

Jeffrey M. Winik

Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1318

SMS REAL ESTATE INVESTMENTS, LLC,

Plaintiff,

v.

**KARA LEBLANC and FRANCISCO
GONZALEZ,**

Defendants.

ORDER

After hearing on June 27, 2024, on the tenants' motion to stop a physical eviction, the following order shall enter:

1. The physical eviction scheduled for July 2, 2024, is hereby cancelled. The basis for this cancelation is that the warehouse listed in the sheriff's 48-hour notice, Race Street Properties of Holyoke, Massachusetts (Race Street), and the Court has been made aware in a separate court case (Case No. 19-SP-190) that Race Street is not a licensed moving company---which it is required to be under G.L. c.159B, s.3 and the Department of Public Utilities (DPU) regulations.
2. See G.L. c.159B, s.3: "No person shall engage in the business of a common carrier by motor vehicle upon any way unless there is in effect with respect to

such carrier a certificate issued by the department authorizing the operations to be performed by such person.”

3. A common carrier by motor vehicle is defined in s.2 (definitions), which states:

Common carrier by motor vehicle, any person who directly, or by his agent or under a lease or any other arrangement, or by arrangement with any other common carrier or with any contract carrier, transports property, or any class or classes of property, for the general public by motor vehicle, for compensation, upon ways, over regular or irregular routes, including carriers by rail or water and express or forwarding companies, when engaged in such motor vehicle operation, except to the extent that such operations by the are subject to chapter one hundred and fifty-nine.

4. Additionally, the statute and accompanying DPU regulations at 220 CMR 260.00 identify “general public” expansively with few exemptions that include vehicles carrying agricultural and mail (for example) but no exception noted for vehicles carrying items for public warehouses.
5. The parties agreed that the tenants shall pay the landlord \$700 on June 28, 2024, by 4:00 p.m. and shall apply to RAFT immediately. The parties also agreed that the tenants shall make some payment in July 2024 toward use and occupancy.
6. This matter shall be scheduled for a review hearing on **July 25, 2024, at 9:00 a.m.**

So entered this _____ day of _____, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-2009

MILL HOUSE, LP,

Plaintiff,

v.

PETER DAVIS,

Defendant.

ORDER

This matter was scheduled for a First-Tier Event on June 28, 2024, at which the landlord appeared through counsel and the tenant appeared self-represented accompanied by his ServiceNet caseworker. The matter was brought before the Court due to the concern of the landlord and of TPP that the tenant may not be sufficiently competent to navigate these proceedings without the appointment of a Guardian Ad Litem. After hearing, the following order shall enter:

1. It became evident to the court that the tenant should be forensically evaluated to determine if a Guardian Ad Litem is necessary in this matter due to lack of competency.

2. It also became evident during the hearing that the tenant will not willingly participate in such an evaluation.
3. As an alternative to a referral to the Court Clinic, the case worker from ServiceNet indicated that if requested by the court her agency might be able to provide documentation that supports the need for a Guardian Ad Litem in these proceedings.
4. As such, ServiceNet is asked to provide to the court documents it possesses that would support the need for a Guardian Ad Litem due to Mr. Davi's lack of capacity to navigate these proceedings. Said documents would be brought to the judge's attention *in camera* and not for view by the landlord or the public and will remain under seal in the court file.
5. Timelines and due dates in this matter shall be suspended to allow for this documentation to be received and considered by the court.

So entered this 25th day of JUNE, 2024.



Robert Fields, Associate Justice

Cc: Kendra Smith, ACCS ServiceNet, 13 Prospect Street, Greenfield, MA 01301

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-671

ROGER REWEL,

Plaintiff,

v.

ABIMAD and KIARA COLON,

Defendants.

ORDER

After hearing on June 26, 2024, at which the plaintiff and his property manager (Nery Bernal) appeared self-represented and the defendants appeared through L.A.R. counsel, the following order shall enter:

1. **Background:** The Court finds the following facts. The tenants appeared at the court for the First-Tier event on April 11, 2024, though likely after the call of the list and were defaulted. They came upon the landlord and his property manager in the court lobby on the first floor of the courthouse and instead of the parties reporting to the Court that the default should not be entered or have a hearing on

having it vacated, the tenants misunderstood what they were told by the landlord and his property manager and believed the matter was dismissed.

2. The parties then reached agreeable terms while in the courthouse and entered into a written agreement two weeks later *outside of court* (but on a court form) at the end of April 2024, which was never filed with the court¹.
3. The tenant with L.A.R. counsel filed a motion for late Answer and Discovery and a motion to dismiss.
4. **Discussion:** For the reasons stated on the record, which highlighted, the circumstances under which the default entered and the agreement was reached by the parties, the default judgment shall be vacated and the Summary Process Agreement for Judgment dated April 31, 2024 (sic) shall be voided.
5. The tenants' motion for late Answer and Discovery is allowed and both are considered filed and served.
6. The landlord shall have until July 12, 2024, to respond to said discovery.
7. The landlord shall have until July 12, 2024, to propound discovery upon the tenants.
8. The tenant shall have until July 24, 2024, to respond to the landlord discovery demand.
9. **The Tenants' Motion to Dismiss:** The tenants assert that they cured the outstanding rent by paying all outstanding rent in April 2024, and bringing the ledger to a \$0 balance. They assert that RAFT paid \$1,400 and the tenants paid

¹ Additionally, the tenant present at the hearing, Kiara Colon, averred that she does not read English (she used the court's interpreter during this hearing) and that she did not understand the terms of the agreement.

\$1,000 in April 2024. The landlord disputes both payments, stating that he did not receive any such funds—either from RAFT or from the tenants.

10. Based on the record before the court, the motion to dismiss is denied *without prejudice*.

11. **Case Management:** This matter has been scheduled for a Case Management Conference with the Clerk's Office on **August 7, 2024, at 11:30 a.m. on Zoom.**

So entered this 1st day of July, 2024.



Robert Fields, Associate Justice

Cc: Susan Grossberg, Esq., L.A.R. Counsel
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SARGENT WEST II APARTMENTS,

Plaintiff,

-v.-

DOCKET NO. 24SP00523

TANISHA LITTLES,

Defendant.

ORDER

This matter came before the court on July 1, 2024 for an emergency hearing on the defendant's motion to stop the move-out scheduled for tomorrow July 2 at 9:00 a.m. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

A default judgment entered in this cause eviction case on March 19, 2024 for possession and unpaid rent/use and occupancy of \$7,472.05 and costs and interest.¹ Execution issued on April 9, 2024. The plaintiff served a forty-eight hour notice that the execution would be used to move the defendant out of the apartment on May 6, 2024. The defendant filed a motion to stop the move-out on the grounds that she had a new apartment as of June 1, 2024. The parties filed an Agreement cancelling the move-out and staying the execution until June 1, 2024.² It allowed the plaintiff to use the execution after June 1, 2024 if the defendant did not move as she agreed.

The parties were before the court again on June 6, 2024 on the defendant's motion to stay the execution further. After hearing a judge of this court denied the motion, ruling that the plaintiff could proceed with a move-out, but that the defendant could file another motion to stay

¹ The plaintiff reported that no rent/use and occupancy has been paid since the judgment entered and that an additional \$4,484 has become due since then.

² This agreed upon stay filed with the court satisfies G.L. c. 235 §23.

the execution if she could prove that the reason she could not move was because of some failure of the landlord.

The plaintiff served a new forty-eight hour notice for a move-out on July 2, 2024 at 9:00 a.m. The defendant filed the instant motion. She testified that the reason that she could not move was because she did not get the apartment because the landlord did not send the “certification letter”. She could not explain what the “certification letter” was. The court finds that the defendant did not prove that it was the landlord’s failure to act which caused her not to be accepted for a new apartment.

Order

After hearing, the defendant’s motion to stop the move-out is **DENIED**. The plaintiff may proceed with the move-out as scheduled. Because this eviction case is based on cause, and because there also is a significant arrearage,³ the defendant is not eligible for a stay pursuant to G.L. c. 239 §9. The defendant did not present any equitable grounds to justify a stay pursuant to G.L. c. 239 §10.

July 1, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

³ The plaintiff reported that the defendant failed to recertify for the subsidy program and that her rent went to market rate.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4310

CORNERSTONE CORPORATION,

Plaintiff,

v.

MARISOL LEON,

Defendant.

ORDER

After hearing on June 27, 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. Given that the tenant made payments towards use and occupancy and appears eligible for RAFT, the motion is denied, *without prejudice*.
2. The tenant shall pay \$805 to the landlord on July 1, 2024. This represents her use and occupancy for July 2024 plus \$170 to catch up on her payments in accordance with the Agreement of the Parties dated April 9, 2024.

3. The tenant shall re-apply for RAFT funds and the landlord shall cooperate with same.
4. The tenant explained that she plans on working with Community Legal Aid (CLA) on her re-application to RAFT.
5. The tenant shall pay her rent in full and on time in August 2024, and thereafter.
6. If RAFT is denied or does not cover the entirety of the arrearage and costs, the tenants shall pay an additional \$50 per month in addition to her rent. This represents a "repayment agreement" for RAFT purposes. This monthly repayment amount may be re-addressed by the court upon a party's marking up a motion for same.

So entered this 2 day of July, 2024.



Robert Fields, Associate Justice

Cc: Gordon Shaw, Esq. (CLA)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3562

MARK GOLDMAN,
Plaintiff,
v.
OVADNEY THORINGTON, et al.,
Defendants.

ORDER

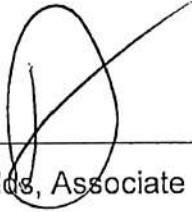
After hearing on May 23, 2024, on the landlord's motion for lifting the stay on the use of the execution, the following order shall enter:

1. It has become evident to the court that the stay on the landlord's use of the execution as become unreasonable and the motion is allowed.
2. More specifically, the plan worked out by the Tenancy Preservation Program and the tenant to relocate the tenant to alternative housing has been dealt a fatal blow with the denial of housing by the new prospective landlord.
3. The stay on the execution was put in place to allow for this relocation. Additionally, the tasks necessary to assist the tenant in relocating, which

included eradication of cockroaches, removal of clutter, improved sanitation of the apartment, and removal of pets have not progressed sufficiently due in significant part to the failures of the tenants.

4. As such, the landlord is free to levy on his execution. Given that this order is being issued after the expiration of the execution, the clerk's office is requested to issue a new execution upon the return by the landlord of the expired execution.

So entered this 2nd day of July, 2024.



Robert Fields, Associate Justice

Cc: **Kara Cunha, Esq., Assistant Clerk Magistrate**
Donna Bryant, Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-482

DESTINY VELEZ,

Plaintiff,

v.

CARMEN ROSA,

Defendant.

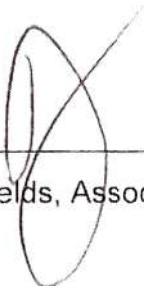
ORDER

After hearing on July 2, 2024, on the plaintiff's motion for injunctive relief at which both parties appeared self-represented, the following order shall enter:

1. The plaintiff shall move all of her belongings from the subject premises located at 41 Grover Street in Springfield, Massachusetts, on July 12, 2024, from 10:00 a.m. to 4:00 p.m.
2. The plaintiff may also remove her items from the basement at that location. If there is a dispute between the parties as to the ownership of any item, each person shall take a photograph of same and leave it at the premises and may bring a motion within this case to resolve the dispute of ownership.

3. The plaintiff may be accompanied to the move-out by folks to assist her but she may not allow Fernando Rosa, Eddie Long, or Carmelita Rodriguez to join her at the premises.
4. The defendant shall not allow Edwardo Alvarez to be present at the premises during the move-out.

So entered this 2 day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5551

6 GRAPE STREET, LLC,

Plaintiff,

v.

NICOLE GRENIER,

Defendant.

ORDER

After hearing on June 27, 2024, on the tenant's motion to stay the issuance of the execution at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The tenant argued that the landlord waived this summary process action for possession by entering into a "new" lease and presented the lease.
2. The landlord explained that the "new" lease is a month-to-month agreement which has terms of commencing on May 1, 2023, and that it was generated solely for RAFT application purposes.

3. I find that there was no agreement between the parties that the "new" lease was being signed for purposes of reinstating the tenancy.
4. That said, the tenant's request that she remain at the premises through September 2024 is allowed contingent upon compliance with the terms of this Order.
5. The tenant shall pay July 2024 use and occupancy within 48 hours of receipt of a payment for back pay due her from STAVROS; and then August and September 2024 use and occupancy by the 7th of each of those months.
6. The tenant shall FORTHWITH re-apply to RAFT for back rent and the landlord shall cooperate with said application.
7. An execution for shall issue based on the underlying judgment (though the landlord states that the outstanding balance has been reduced to \$8,600) but its use shall be stayed in accordance with the terms of this Order.

So entered this 3rd day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

B.G. MASSACHUSETTS I, LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP01065

YESENIA FALU-REYES,

Defendant.

ORDER

This matter came before the court on July 2, 2024 for a hearing on the defendant's second motion to stop the move-out scheduled for July 8, 2024 at noon. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders also appeared at the hearing.

After trial on May 16, 2024, a judge of this court ordered that judgment would enter for the landlord for possession and \$11,934.67 in unpaid rent/use and occupancy through May 2024 and that execution would issue pursuant to statute. However, the use of the execution was stayed on condition that the defendant pay the May use and occupancy immediately, pay the use and occupancy on time each month starting in June as well as \$300 toward the arrearage two weeks later, apply for RAFT financial assistance immediately, and pay any tax refund she received toward the arrearage within five days of receipt.

Both parties agree that the defendant made the May payment on time and that she made the two June payments, but they were late.¹ The rental arrearage is now \$10,548.67 through June. The defendant did not apply for RAFT financial assistance until June 27, 2024. Ms. Luna confirmed that the defendant's application is pending at Wayfinders and that she is eligible for \$7,000 in RAFT rental assistance at this time. (She last received RAFT in June 2023.)

¹ The use and occupancy payment for July is due on July 5.

The plaintiff argued that the execution should not be stayed because the tenancy is not sustainable, based on the late June payments. However, the defendant testified that she has started a new job recently. Further, the judge's order after trial ordered that the \$300 per month payment toward the arrearage would act as a repayment plan for RAFT purposes to pay the balance beyond what RAFT could pay.²

Orders

After hearing, the following orders will enter:

1. The defendant's motion is **ALLOWED**.
2. Because there is a RAFT application now pending, the court stops the move-out scheduled for July 8, 2024, pursuant to G.L. c. 239 §15.³ The court acknowledges that the defendant did not file her application in a timely manner pursuant to the judge's order after trial, but finds that the application is pending at this time.
3. The plaintiff's attorney will notify the constable of this order immediately.
4. Both parties will complete the RAFT application process in a timely manner and in good faith.
5. The defendant will pay the July use and occupancy and the \$300 toward the arrearage on time.
6. All other terms of the judge's May 17, 2024 order remain in full force and effect.
7. The defendant is responsible to pay the \$950 cancellation fee for the July cancelled move. The amount will be added to the arrearage.
8. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.

July 3, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

² The defendant reported that she still has not received a tax refund because of an identity theft issue concerning her son.

³ The defendant had filed an earlier motion to stop the same move-out. After hearing on June 27, 2024, another judge of this court denied the motion. It was only after that hearing that the defendant applied for RAFT.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1850

BAYVIEW APARTMENTS, LLC,

Plaintiff,

v.

MIA THOMPSON,

Defendant.

ORDER

This matter came before the court for trial on July 2, 2024. After hearing on the parties' two motions the following order shall enter:

1. The landlord's motion to add Kimberly James as a necessary party is denied, *without prejudice*. The name tenant, Mia Thompson, explained that Ms. James is merely a guest and both she and James stated on the record during the hearing that James does not seek any possessory rights independent of the tenant, Thompson.
2. The tenant's motion to continue the trial to allow her to seek counsel and to organize her evidence is allowed.

3. The trial in this matter shall be continued to July 22, 2024 at 9:00 a.m. The tenant shall provide copies of all photographs and documents she plans to introduce at trial by July 15, 2024.

So entered this 3 day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-841

DANA CARPENTER,

Plaintiff,

v.

JULISA MALDONADO,

Defendant.

ORDER


After conducting a pretrial conference on June 28, 2024, with the landlord represented by counsel and the tenant appearing self-represented, the following order shall enter:

1. The landlord shall respond to the tenant's discovery demand by no later than July 12, 2024. The landlord shall also provide copies of any and all photographs he plans to use at trial to the tenant with his discovery responses.
2. The tenant has ten (10) days thereafter to file a motion to compel, if needed. Said motion, if filed, shall for each interrogatory or request for document which

she wishes to compel further response restated the request, restate the response, and make written argument as to why further response is required.

3. A final pretrial conference shall be scheduled for September 24, 2024, at 9:00 a.m. At the time of this conference, the tenant shall provide a pretrial memorandum¹ and additional *voir dire* questions for the jury *venire* and both parties shall provide proposed jury instructions and proposed verdict forms.
4. A Jury Trial shall be scheduled for **September 30, October 1 & 2, 2024, each day beginning at 9:00 a.m.**

So entered this 3rd day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

¹ The pretrial memorandum shall include: (A) A short statement summarizing the parties claims and defenses; (B) agreed-upon issues of fact; (c) contested issues of fact and the position of the parties on those issues; (D) contested issues of law, including evidentiary, and the position of the parties on those issues; (E) the name of each party's witnesses and a summary of his/her expected testimony; (F) a list of exhibits that the party intends to introduce.

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 June 26, 2024, at which only the plaintiff appeared after service of the notice for hearing was served upon the premises by sheriff and the doors at the premises were also posted, the following order shall enter:

1. The court heard from the plaintiff's witness, John Brunelle, who is the real estate agent hired by the Personal Representative for the Estate that owns the premises.
2. Mr. Brunelle believes that no one is currently living at the premise but there is some traffic of people entering and leaving the premises with personal belongings.

3. The plaintiff's request to be able to secure the premises with new locks is allowed.
4. Any and all occupants have until July 7, 2024, to vacate the premises or to communicate with plaintiff's counsel, Attorney Wilson at 533-6800, to notify him that they are occupying the premises or need access. Any such person may also file a motion in this court action.
5. After July 7, 2024, the plaintiff may secure the premises and change the locks and, if occupied, have the sheriffs remove the occupants. If this occurs, the occupants may come to court and file an appropriate motion if they believe they have possessory rights to the premises.

So entered this 3rd day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1173

HOUSING MANAGEMENT RESOURCES, INC.,

Plaintiff,

v.

ELVILISS VARGAS,

Defendant.

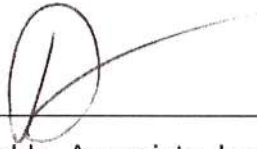
ORDER

After hearing on July 2, 2024, the following order shall enter:

1. The landlord's motion for entry of judgment is denied, *without prejudice*.
2. Instead, the following payment plan shall be instituted.
3. The landlord reports that the outstanding rental balance is \$9,948.25 in addition to outstanding court costs.
4. The tenant shall pay \$1,500 on July 12, 2024, and then \$1,500 each month by no later than the 5th of each month beginning in August 2024. This amount represents monthly rent of \$1,058 plus \$442 towards the rental arrearage and court costs.

5. A representative from Way Finders, Inc. joined the hearing and reported that the tenant will be eligible to apply for RAFT funds for \$7,000 as of August 4, 2024. The tenant shall apply for RAFT at that time and the landlord shall cooperate with same.
6. This matter shall be dismissed upon a \$0 balance.

So entered this 3 day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4140

BASIL ISRAEL,

Plaintiff,

v.

TODD JENKINS,

Defendant.

ORDER

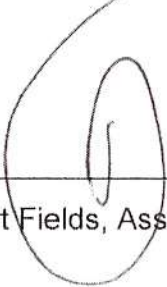
After hearing on July 2, 2024, on cross motions by the parties, the following order shall enter:

1. The landlord's motion for an order for payment of unpaid rent, use, and occupancy, is made moot by the ruling below on the tenant's motion for a stay on the issuance of the execution.
2. The tenant is seeking time to relocate after the court entered judgment on behalf of the landlord after trial on his eviction case based on no-fault.
3. In accordance with G.L. c.239, ss.9 & 10, the tenant's motion is allowed. He is a disabled person who requires additional time to relocate, and his request

for six months is granted, so long as he pays the landlord forthwith for June and July 2024 and thereafter pays use and occupancy in the amount of \$800 per month starting in August 2024.

4. There shall be a stay on the issuance of the execution until January 1, 2025, unless ordered otherwise by the court. This stay shall toll the time contemplated by G.L. c.235, s.23.

So entered this 3 day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

LANDLORD'S CLAIM FOR POSSESSION AND DAMAGES

On December 12, 2023, the Landlady's counsel caused a "30 Day Notice to Quit" to be served on the Tenants, informing them that their tenancy would be terminated February 1, 2024. *See Notice to Quit, at Plaintiff's Exhibit II.* On February 13, 2024, the Landlady's counsel filed this summary process eviction with this Court and a first-tier court event was scheduled for April 11, 2024, but was continued several times by the Parties. *See Docket at Entries Nos. 7-16.*

On May 22, 2024, a first-tier court event was held 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 5, 2024. *See Docket at Entry No. 16.* On June 5, 2024, the Parties appeared in court for trial. At the date of trial, the Tenants made an oral Motion to file a Late Answer, which the Court (Fields, J.) Allowed, and the trial was rescheduled for June 27, 2024. *See Order at Docket Entry No. 19.*

On June 6, 2024, the Tenants filed their Answer and Counterclaims. *See Answer at Docket Entry No. 21.* In the Tenants' Answer, they alleged generally that: 1) they stopped paying rent because of issues of disrepair at the Premises; 2) the Landlady is "neglecting her responsibility and there are drug dealers in the building;" 3) the Landlady is allowing other residents to harass the Tenants; and 4) the Landlady did not supply heat all winter. *See Answer at Docket Entry No. 21.* As a result of the Tenants assert a counterclaim in the amount of \$1,500.00. *See Answer at Docket Entry No. 21.* The Court will liberally construe the Tenants defenses and counterclaims under G.L. c. 239, § 8A, since they alleged that they withheld rent, based on conditions that existed within the Premises.

FINDINGS OF FACT AND RULINGS OF LAW

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 the Landlady owns the Premises. It is also on December 12, 2023, the Landlady's counsel caused a legally sufficient Notice to Quit to be served on the Tenants, terminating their tenancy at will. *See Notice to Quit, at Plaintiff's Exhibit II.* The Tenants acknowledged receipt of the Notice to Quit. During the trial, the Landlady also produced a rental

ledger, which is kept in the ordinary course of the Landlady's rental business, that showed the Tenants have a current unpaid balance of rent/use and occupancy in the amount of \$6,787.00. *See Rental Ledger at Plaintiff's Exhibit III.* The Landlady's Summons and Complaint included an account annex which preserved her claim for rent/use and occupancy. *See Summons and Complaint.* Accordingly, the Court finds that the Landlady introduced sufficient evidence to satisfy her prima facie case for possession and unpaid rent/use and occupancy in the amount of \$6,787.00.

TENANTS DEFENSES AND COUNTERCLAIMS

Breach of the Warranty of Habitability. The Tenants through their Answer raised claims of disrepair within the Premises. *See Tenants' Answer.* In other words, they are claiming a breach of the implied warranty of habitability. 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.* The Landlord is liable for code violations and breach of warranties. Tenants 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).

At the trial, the Tenants represented that they were without heat during the 2023's winter season. *See Tenants' Answer.* However, at trial the Landlady introduced a text message exchange dated December 20, 2023 with the Tenants, in which the Tenants indicated that their apartment was "so hot" and they were "literally sweating in their house." *See Text Message at Plaintiff's Exhibit V.* The Court finds that Tenants claim that they were without heat is untrue. The Tenants further testified and introduced photographs to support their claim that Landlord failed to make repairs to exterior of the Apartment. *See Photos, at Defendant's Exhibit I.* After eliciting testimony on the issue of disrepair, the Landlady testified credibly that she believes a car struck

the exterior wall of the building and she is having that issue repaired. The Tenants failed to prove how the issue with the exterior wall of the building's lower level impacted their tenancy or breached the warranty of habitability. As a result, the Tenants claim that their Landlady breached the warranty fails as a matter of law. However, the Court shall grant a stay of execution pursuant to provisions prescribed in G.L. c. 239, § 10.

Based upon the credible testimony and evidence presented, the Court finds that: (i) the Landlady terminated the Tenants' tenancy pursuant to the relevant laws and statute, as referenced above; (ii) the Landlady is entitled to damages in the amount of \$6,787.00 in rent/use and occupancy; (iii) the Tenants failed to prove their G.L. c. 239, § 8A defenses and counterclaims of the breach of the warranty of habitability and; (iv) the Court shall stay the use of the execution pursuant to G.L. c. 239, §10.

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 **\$6,787.00** plus court costs.
2. Issuance of the execution shall be stayed until August 1, 2024, on the conditions that:
 - a) The Defendants pay use and occupancy in the amount of \$925.00 on or before the tenth (10th) of July 2024.
 - b) The Defendants shall continue to make reasonable efforts to relocate 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 the Defendants fail to make the required payment or comply with terms of this Order, Plaintiff may file a motion to issue the execution. If the Defendants make the required payment, they shall vacate the Premises on or before August 1, 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 seek 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

July 3rd, 2024

cc: Thomas J. Scannell, Esq.
Heather Taylor
Angel Luis Baez, Jr.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4899**

<p>KEVIN M. SEARS,</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">v.</p> <p>ANDREW J. MARTIN,</p> <p style="text-align:right">Defendant.</p>	
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ORDER

After hearing on July 2, 2024, on the tenant's motion to stay use of the execution, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The tenant's motion is allowed and the use of the execution shall be stayed contingent upon compliance with this Order. This stay shall also act as a tolling of the use of the execution in accordance with G.L. c.235, s.23.
2. The tenant shall pay use and occupancy for July by July 12, 2024.
3. Beginning in August 2024, the tenant shall pay for use and occupancy plus \$200 timely and in full each month.

4. The tenant shall apply for RAFT as soon as he is eligible to do so. The landlord shall cooperate with said application.
5. The parties report that their understanding from Way Finders, Inc. is that the tenant will be eligible for \$5,150.
6. The \$200 extra each month should be treated by Way Finders, Inc. to be a payment plan towards any funds not paid by RAFT.
7. This matter shall be dismissed upon a \$0 balance.

So entered this 3rd day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1318**

SMS REAL ESTATE INVESTMENTS, LLC,

Plaintiff,

v.

**KARA LEBLANC and FRANCISCO
GONZALEZ,**

Defendants.

ORDER

After hearing on June 27, 2024, on the tenants' motion to stop a physical eviction, the following order shall enter:

1. The physical eviction scheduled for July 2, 2024, is hereby cancelled. The basis for this cancelation is that the warehouse listed in the sheriff's 48-hour notice, Race Street Properties of Holyoke, Massachusetts (Race Street), and the Court has been made aware in a separate court case (Case No. 19-SP-190) that Race Street is not a licensed moving company---which it is required to be under G.L. c.159B, s.3 and the Department of Public Utilities (DPU) regulations.
2. See G.L. c.159B, s.3: "No person shall engage in the business of a common carrier by motor vehicle upon any way unless there is in effect with respect to

such carrier a certificate issued by the department authorizing the operations to be performed by such person.”

3. A common carrier by motor vehicle is defined in s.2 (definitions), which states:


Common carrier by motor vehicle, any person who directly, or by his agent or under a lease or any other arrangement, or by arrangement with any other common carrier or with any contract carrier, transports property, or any class or classes of property, for the general public by motor vehicle, for compensation, upon ways, over regular or irregular routes, including carriers by rail or water and express or forwarding companies, when engaged in such motor vehicle operation, except to the extent that such operations by the are subject to chapter one hundred and fifty-nine.

4. Additionally, the statute and accompanying DPU regulations at 220 CMR 260.00 identify “general public” expansively with few exemptions that include vehicles carrying agricultural and mail (for example) but no exception noted for vehicles carrying items for public warehouses.

5. The parties agreed that the tenants shall pay the landlord \$700 on June 28, 2024, by 4:00 p.m. and shall apply to RAFT immediately. The parties also agreed that the tenants shall make some payment in July 2024 toward use and occupancy.

6. This matter shall be scheduled for a review hearing on **July 25, 2024, at 9:00 a.m.**

So entered this 3 day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1002

WINDSOR REALTY, LLC,

Plaintiff,

v.

RAQUEL GARCIA,

Defendant.

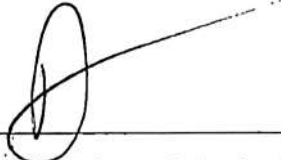
ORDER

After hearing on June 25, 2024, on the landlord's motion for entry of judgment, at which the tenant failed to appear, the following order shall enter:

1. The court shared its concerns about the motion on the record that were two-fold. First, the majority of the outstanding balance of rental arrearage stemmed from premises other than the subject premises. Second, the tenant's portion of the rent has been reduced to \$14 but the arrearage payment required by the April 18, 2024, Agreement is for \$175.

2. Accordingly, even though the tenant failed to appear, this motion hearing is continued to July 25, 2024, at 9:00 a.m. The tenant must appear at that time.

So entered this 3rd day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-497

AMANDA P. BUFFONI,

Plaintiff,

v.

DAVID SMITH II,

Defendant.

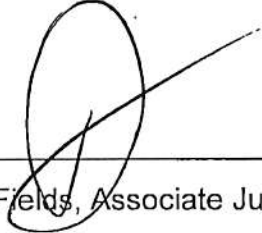
ORDER

After hearing on July 5, 2024, at which only the tenant moving party appeared, the following order shall enter:

1. Based on the testimony of the tenant and the court's view of the tenant's lease---which is still in effect---the defendant landlord shall not enter the tenant's premises located at 100 Brandon Avenue in Springfield, Massachusetts.
2. Additionally, the landlord shall not have direct communication with the tenant other than in writing and shall not touch any of the tenant's belongings.

3. The court shall mail copies of this order to the parties and also to the defendant landlord at 28 High Street, #2 in Bridgewater, Massachusetts.
4. Copies of this order shall be given to the tenant so that she may post them at both the front and back doors at the premises and have an extra copy for the police.
5. This matter shall be scheduled for further hearing on **July 19, 2024, at 9:00 a.m.**

So entered this 5 day of July, 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-1113

LUIS CRUZ,

Plaintiff

v.

ERIC TORRES,

Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND 8A ORDER

This summary process case came before the court for a bench trial on May 23, 2024. Plaintiff appeared self-represented. Defendant appeared with counsel from the Lawyer for the Day Program. The residential property is a two-family owner-occupied house located at 206 Suffolk Street, Holyoke, Massachusetts (the “house”). Plaintiff resides on the second floor and Defendant rents a room on the first floor. The parties stipulated to Plaintiff’s prima facie case for possession. The only issues for trial are the amount of the arrears and the Defendant’s defenses and counterclaims asserted in his answer.¹

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

¹ The Court allowed a late answer to be filed prior to trial. Plaintiff elected to go forward with trial the same day.

Defendant's rent is \$160.00 per week. Plaintiff failed to provide a written ledger (he keeps a list of payments in the "notes" application on his phone) but claims that Defendant has not made a payment since the first week of December 2023. The Court finds that the balance of rent owed through the date of trial is \$3,560.00.²

Defendant rents a room on the first floor of the house (the "rental unit"). Several other bedrooms are rented by Plaintiff to unrelated individuals. The tenants share common areas. At the time of move-in, the rental unit had a number of conditions of disrepair. During the tenancy, which began in 2022, Defendant notified Plaintiff of the need for various repairs. Among other issues, Defendant had to live with a problems in the kitchen (a ceiling leak, a missing cabinet door), a hole in the bathroom wall, broken screens and mice. Plaintiff admits that he was aware of most of the conditions, and testified that he make some of the repairs (such as fixing the leak) but asserts that many of the issues defendant raised were minor, saying "so what" that Defendant had to live with minor conditions of disrepair.

Defendant's testimony regarding the conditions in the rental unit was not particularly specific or itemized, particular as it relates to the alleged rodent infestation, and she offered no corroborating evidence from other residents. She concedes that the infestation was intermittent, and she did not give the Court sufficient evidence to determine the severity or duration of the infestation. The Court finds that a number of the bad conditions in the rental unit do not constitute

² Defendant claims he paid \$340.00 that was not accounted for, but he did not provide any proof of this payment.

"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).

For example, a missing ceiling tile in the kitchen, a light switch without a cover, a ripped screen, evidence of past water damage and a missing toilet lid are not, individually, substantial violations. Defendant's has the right to be free from a "serious interference" with her tenancy, however, and based on the totality of the circumstances, the Court finds that Defendant proved, by a preponderance of the evidence, that the conditions of the rental unit impaired the character and value of the leasehold. Accordingly, the nature of the conditions of the premises violate the covenant of quiet enjoyment.³ As damages for breach of quiet enjoyment, Defendant is entitled to damages in the amount of three months' rent as there is no evidence of actual damages. At \$160.00 per week, monthly rent is \$640.00, resulting in an award of damages in the amount of \$1,920.00.

Defendant alleges a separate basis for her claim of breach of quiet enjoyment; namely, that Plaintiff regularly entered the rental unit's common areas without notice. Plaintiff admits that he entered the common areas, claiming that because he rented bedrooms, he had the right to enter the rental unit whenever he wanted. Plaintiff misunderstands the law. He does not reside on the first floor of his property but instead rents it to tenants, including the exclusive use of the common areas. Therefore, Defendant must give advance notice of no less than 24 hours to the

³ Plaintiff is obligated to make repairs in a rental unit once he becomes aware of them, unless the conditions are caused by the tenant. Here, because the issues were mostly in common areas, the landlord is solely responsible for making repairs.

tenants prior to entering the rental unit. Moreover, Plaintiff required Defendant to leave the front door of the house (the outer door, not the door to the rental unit itself) unlocked and insisted that they use the back door of the house, not the front door.

The Plaintiff's actions related to improper entry and denial of a means of egress interfered with Defendants' quiet enjoyment and constitutes a violation of G.L. c. 186, § 14. Although a tenant may be able to recover separate awards of statutory damages for violations of distinct categories of landlord misconduct described in § 14, both of the violations here violate a single prong (the fourth prong for interference with quiet enjoyment) and therefore Defendant is entitled to only one award of triple rent damages. *See Clark v. Leisure Woods Estates, Inc.*, 89 Mass. Ap. Ct. 87, 93, n.5 (2016).

With respect to allegations that Plaintiff retaliated against Defendant by terminating his tenancy, the notice to quit is dated February 20, 2024. It is uncontested that Defendant was behind in rent at the time the notice to quit was served. Pursuant to G.L. c. 186, § 18, an affirmative claim for retaliation does not apply to cases brought for nonpayment of rent, as is the case here. With respect to the defense of retaliation (G.L. c. 239, § 2A), there is insufficient evidence for the Court to conclude that Defendant contacted any agency governing rental housing, such as the Board of Health or inspectional services. Accordingly, the retaliation counterclaim is dismissed for lack of evidence and the retaliation defense is unsupported by credible evidence.

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 \$3,560.00 for unpaid use and occupancy through the date of trial.
2. Defendant is entitled to damages in the amount of \$1,920.00 on account of her counterclaims.
3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$1,640.00. plus court costs of \$ 187.46 and interest in the amount of \$ 61.51, for a total of \$ 1,888.97. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."
4. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
5. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiff for possession and damages in the amount of \$1,640.00, plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.
6. The Court shall not award attorneys' fees to Defendant's counsel at this time. Under the Lawyer for the Day program, a volunteer lawyer may not recover fees unless he or she files an appearance. The docket in this case does not reflect an appearance by Defendant's counsel. If this is the result of oversight, counsel can move the Court to permit her to file a full appearance and for the Court to reconsider its denial of attorneys' fees.

SO ORDERED.
July 5, 2024

1st 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. 21-SP-3213

ENOCH JENSEN,
Plaintiff,
v.
JOHANNA WHITNEY,
Defendant.

ORDER

After hearing on May 17, 2024, on the landlord's motion to lift the stay on the issuance of the execution for possession, the following order shall enter:

1. **Procedural Background:** The landlord commenced this no-fault eviction in November 2021 to allow him to renovate the subject premises. The parties reached an agreement (Agreement) in January 2022 to allow the tenant until July 1, 2022, to vacate the premises. The Agreement allowed for the tenant to seek leave of court for additional time to relocate.
2. The tenant is a [REDACTED] senior who despite extensive efforts to secure alternate housing was unable to do so by the July 2022 deadline and

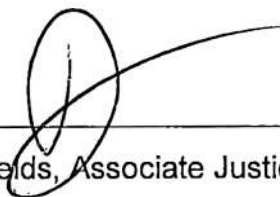
sought additional time from the court. In an order dated November 9, 2022, the court extended the time to relocate and left it to the parties to mark up a motion if one was needed for either another extension or issuance of the execution.

3. In December 2022 the landlord filed a motion for a lifting of the stay of the issuance of the execution. After hearing the court issued a further extension of the tenant's occupancy in a December 30, 2022, Order.
4. At the next hearing in March 2023, the court continued to find that the tenant's housing search was extensive and also found the landlord credible in his testimony that he was looking to use this unit for his own personal use so that he has a place to stay when he and his family come from the west coast to Massachusetts to visit his aging parents.
5. By Order dated March 29, 2023, the court scheduled a follow-up review hearing in May 2023. The court granted further time to secure alternate housing at hearings in May and August 2023 and continued the matter generally.
6. In March 2024 the landlord again filed a motion for judgment and execution to issue and a hearing was conducted on May 17, 2024.
7. **Discussion:** Throughout these proceedings the court has repeatedly been satisfied that the tenant is engaging in a very extensive housing search but has not been able to secure appropriate alternate housing. The court also continues to be satisfied that the landlord's intention is to use the premises, once empty, for his own family use to stay when visiting his aging parents

from out of state. Noteworthy is that the tenant has always paid her rent each month during her occupancy.

8. It has now been two full years since the court has extended the tenant's occupancy after the initial agreed-upon move-out date and it now appears to the court that it has become unreasonable to continue to extend the tenant's occupancy without end in sight.
9. **Order:** Accordingly, judgment shall enter for the landlord for possession *only* (no costs or damages) and execution may issue upon the timely filing of a Rule 13 Application.
10. There shall be a stay on the use of the execution until October 1, 2024. This shall provide a last three-month period for the tenant to relocate. The tenant shall continue to be obligated to pay her rent each month until she vacates.

So entered this 5th day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-CV-438

ARIANNA KETCHAKEU, et al.,

Plaintiffs,

v.

XIAN DOLE, et al.,

Defendants.

ORDER

After hearing on July 1, 2204, on the plaintiffs' motion to sanction the defendants for their failure to produce discovery responses at which the defendants did not appear, the following order shall enter:

1. The motion is allowed. Due to the defendants' failure to provide discovery ordered to be provided by court order dated May 23, 2024, they shall be defaulted. NOTE: 7Q59 Amherst, LLC was already previously defaulted for failure to have an attorney represent it in these proceedings.
2. The plaintiffs are seeking a Hearing on Damages. Because there was a jury demand filed by the defendants and the plaintiffs seek a bench trial, each

party has until July 22, 2024, to file a brief in support of either having the damages hearing heard by a jury or by a judge.

3. This matter shall be scheduled for case management with a judge on **July 29, 2024, at 9:00 a.m.** to determine the scheduling of a damages hearing by judge or jury.

So entered this 5th day of July, 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-1468

MEREDITH MANAGEMENT CORP.,
Plaintiff

v.

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

ELFREDA BARTLEY-HENSON,
Defendant

This summary process case brought for nonpayment of rent 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 170 Riverboat Village, South Hadley, Massachusetts (the “Premises”). Defendant stipulated to Plaintiff’s prima facie case for possession. She disputes the amount of rent and use and occupancy through the date of trial, which Plaintiff claims is \$9,900.00 based on monthly rent of \$999.00. Defendant filed an answer with defenses and counterclaims.

On March 6, 2024, after receiving the notice to quit but before Plaintiff filed this summary process action, Defendant filed a civil action for damages against Plaintiff in Hampshire County Superior Court (Docket No. 24-028). After extensive discussion on the record regarding Defendant’s right to bring her civil claims in this summary process case and to use them as a defense to Plaintiff’s claim for possession pursuant to G.L. c. 239, § 8A, Defendant insisted that she wished to pursue the prior pending action filed in Superior Court

seeking monetary damages against Plaintiff.¹ Accordingly, the Court severs Defendants counterclaims in this action and she may continue to pursue her claim for monetary damages in the Superior Court action. Although Defendant may not bring affirmative claims against Plaintiff in this case, she is entitled to raise defenses to Plaintiff's claim for unpaid rent.

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

1. Defendant last had a zero rent balance in August 2023. She failed to pay rent for September or October 2023.
2. On October 27, 2023, the Town of South Hadley Department of Board of Health condemned the Premises, determining them to be unfit for human habitation and an immediate danger to the life or health of the occupants. Defendant was ordered to vacate the Premises immediately.
3. Pursuant to the condemnation notice, Defendant was notified of her right to request a hearing regarding the condemnation. She did not make such a request.
4. The Premises were condemned following an inspection by the South Hadley Fire Department on the same day. The inspector found that the means of egress were obstructed due to "heavy content" in the unit and that combustibles were in close proximity to the kitchen cooktop. The Fire Department had the power turned off to the Premises but for the refrigerator.
5. Plaintiff was not cited by the Board of Heath or the Fire Department for any

¹ The Court offered Plaintiff the opportunity to speak to an attorney from the Lawyer for the Day Program who was in the courthouse on the day of trial, but she declined. The Court offered her the opportunity to consult with the Tenancy Preservation Program, but she declined.

code violations.

6. The Board of Health reinspected the Premises on January 8, 2024 and found that the violations had been corrected and that the condemnation would be lifted.
7. Defendant has not paid rent since the condemnation was lifted.

Defendant contends that she should be excused from paying rent because Plaintiff illegally removed her from the Premises without notice and because she was unable to reside in the Premises for approximately 11 weeks. The Court finds that the condition of the Premises that led to the condemnation was attributable to Defendant, not to Plaintiff, and thereby her obligation to pay rent did not abate.² Moreover, Defendant's defense related to an illegal eviction is unfounded, as there is no evidence that Plaintiff "evicted" her or otherwise forced her to vacate the Premises. The evidence is clear, and the Court so finds, that it was the South Hadley Board of Health that condemned the Premises and required her to vacate the Premises for her own safety.

In light of the foregoing, the Court finds no merit to Defendant's defenses. Although she has preserved her right to seek damages against Plaintiff in the Superior Court case, she has not entitled to any reduction in the amount of rent that Plaintiff claims in this case.

Accordingly, the following order shall enter:

1. Judgment shall enter for Plaintiff for possession and \$9,990.00 in damages, plus court costs.

² The Court notes that, even if Defendant believed she was relieved from her obligation to pay rent when she could not reside in the Premises, she is not relieved from paying the two months of rent that were unpaid prior to the condemnation or the six months since the condemnation was lifted.

2. Execution (the eviction order) shall issue upon written application following the 10-day appeal period.

SO ORDERED.

DATE: July 5, 2024

1st 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. 24-CV-438**

JOSE SAEZ,	
	Plaintiff,
v.	
THOMAS TROMBLY, THOMAS TROMBLY, SR., SUSAN CAZZIOL, CAROL SEVIGNY, SHARON SKLARSKI, DENISE DINEEN, WILLIAM TROMBLY, and MARY DESTOMP.	
	Defendant.

ORDER

After hearing on July 5, 2024, at which plaintiff Saez and defendant property manager Trombly appeared in the courtroom and Attorney Brown appeared by Zoom for the Town of Palmer, the following order shall enter:

1. Based on the information shared by the Town during the hearing, there are numerous owners of the subject premises located at 207 Brecken ridge Street in Palmer, MA, and the Court hereby finds them indispensable parties for the purposes of this civil action and adds them each as party-defendants.
2. The following shall become defendants in this action:

- a. **Thomas Trombly, Sr.**, [REDACTED]
[REDACTED];
- b. **Susan Cazziol**, [REDACTED];
- c. **Carol Sevigny**, [REDACTED];
- d. **Sharon Sklarski**, [REDACTED];
- e. **Denise Dineen**, [REDACTED];
- f. **William Trombly**, [REDACTED];
- g. **Mary Destromp**, [REDACTED].

- 3. Each defendant, jointly and severally, shall make all repairs at the premises in order to have the condemnation lifted.
- 4. Each defendant, jointly and severally, shall provide a hotel suite accommodation with cooking facilities to the plaintiff tenant, Jose Saez, and his family. Such accommodations shall have two bedrooms and a kitchen. If it does not have a kitchen, the defendants shall provide the tenant with \$75 per day for a food stipend.
- 5. All parties shall appear for a hearing on **July 22, 2024, at 9:00 a.m.** Counsel for the Town of Palmer and any other party may appear by Zoom. The court's Zoom ID is: 161 638 3742 and the Password is: 1234.

So entered this 5th day of July, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

Peter Brown, Esq, Counsel for the Town of Palmer

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4667

JONATHAN WILLIAMS,

Plaintiff,

v.

DESIREE APIONTE, et al.,

Defendants.

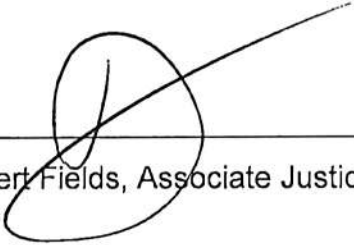
ORDER

After hearing on July 1, 2024, on the tenants' motion for a stay of the use of the execution for possession at which the landlord appeared with counsel and the tenants appeared self-represented, the following order shall enter:

1. The tenants' motion is allowed, consistent with the terms of this Order.
2. The tenants have secured new housing but it is not available until September 1, 2024 (they provided a copy of the new lease during the hearing).
3. The tenants may remain until September 1, 2024, contingent upon their paying use and occupancy in the amount of \$1,550 by July 12, 2024, for July 2024 and \$1,550 by August 20, 2024, for August 2024.

4. The landlord shall use the tenants' Last Month's Rent (which he holds in escrow) for June 2024 use and occupancy.
5. An execution for possession only shall issue forthwith and the landlord shall stay use of it consistent with the terms of this Order but may levy on it if there is a breach of this Order or after September 1, 2024.

So entered this 5th day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5803

YELLOWBRICK MANAGEMENT, INC.,

Plaintiff,

v.

KAYLA SANTOS-BERMUDEZ and GABIMAEEL
BERMUDEZ,

Defendants.

ORDER

After hearing on July 2, 2024, the following order shall enter:

1. This matter was scheduled by the parties in their Agreement filed on February 29, 2024.
2. The terms in that Agreement included a vacate date by the tenants of July 1, 2024.
3. The tenants come before the court today reporting that they have not been able to secure alternate housing and are still in occupancy and are seeking an extension of their vacate date.
4. The landlord opposes any extension and are seeking judgment and execution in accordance with the Agreement.

5. The tenants have a Section 8 Voucher, have been granted an extension by the agency administering the Voucher, and are finding places that will not rent to the due to the presence of lead paint or other Section 8 related reasons. The court informed the tenants that they may wish to bring those cases to the attention of the Attorney General and/or the Fair Housing Center (in Holyoke).
6. The tenant's request for 90 days is allowed. They now have until October 1, 2024, to relocate contingent upon compliance with this Order.
7. The tenants shall pay use and occupancy for July 2024 by July 10, 2024, and thereafter each month they continue to be occupancy by the first week of each month.
8. Additionally, the tenants shall clean up their belongings from the side yard and shall notify the landlord of those items in the yard that are not theirs.
9. Accordingly, judgment shall enter for the landlord for possession only. There shall be a stay on issuance of the execution consistent with this Order. If there is a breach of this Order, including the failure to vacate by October 1, 2024, the landlord may file a motion to issue the execution. The stay on the issuance of the execution shall toll the execution in a manner consistent with G. L. c.235, s.23.

So entered this 5th day of July, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-3546

BALTIMORE CITY PROPERTIES,

Plaintiff,

v.

DONALD MULLER,

Defendant.

ORDER

After hearing on July 5, 2024, the following order shall enter:

1. The tenant may continue to occupy the premises until October 1, 2024. If he requires further time after that, he shall file a motion to that effect.
2. The landlord has continued to neglect the premises and failed to make necessary repairs to the water in the tenant's kitchen as well as a failure to address the rodent infestation. If the landlord continues to fail to address these issues, it may be a basis for further extension of time for the tenant should he bring a motion before the court.

So entered this 8th day of July, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION
NO. 23H79CV000350

MARCUS GARRET,

Plaintiff

VS.

KAREN BAILEY,

Defendant

**FINDINGS OF FACT, RULINGS OF LAW AND
ORDER OF JUDGMENT**

This is a civil action in which plaintiff Marcus Garret (Garret) is seeking to recover monetary damages from defendant Karen Bailey (Bailey) based upon an alleged illegal eviction/lock out involving a residential dwelling. Bailey file a written answer that included a counterclaim seeking monetary damages from Garret for storage expenses.

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

At all times relevant to the claims in this action Bailey has owned the single-family three-bedroom house at 76 Baldwin Avenue, in Pittsfield, Massachusetts.

Garret and Amy Hunt (Hunt) had been involved in a romantic relationship dating back many years prior to 2014. Bailey met Hunt in 2014 and they became friends. They worked for the same company from 2014 until Hunt died on October 11, 2022. They spoke with each other on a regular basis.

In 2016 Bailey rented the 76 Baldwin Avenue house to Hunt and Garret subject to the terms of a written lease. The monthly rent was \$800.00 per month. The utility accounts, including gas, electricity and cable service, where opened in Garret's name and the bills were sent to the 76 Baldwin Avenue address. Garret used the 76 Baldwin Avenue address to receive Social Security correspondence. These bills and correspondence were sent to Garret at the 76 Baldwin Street

address until Hunt's death on October 11, 2022. The 76 Baldwin Avenue address appears on Garret's July 30, 2021 driver's license.¹

Bailey traveled to 76 Baldwin Avenue approximately twice a month to check on the house during the years that Hunt lived there. She would talk with Hunt and the neighbors during her visits.

From 2016 until November 2020 the Hunt and Garret tenancy was uneventful. During that five-year period Garret paid the \$800.00 monthly rent each month to Bailey using checks drawn on his personal checking account. The last rent check from Garret to Bailey is dated November 1, 2020. Garret testified that he paid the December rent to Bailey in cash.

It is undisputed that Garret did not make another rent payment to Bailey by check or in cash in 2021 or 2022.

Sometime prior to December 2020, while he was living with Hunt, Garret started a romantic relationship with Heidi Morehouse (Morehouse). Morehouse lived at 52 Plain Street, in Pittsfield.

In December 2020 Hunt told Bailey that Garret was no longer living with her at 76 Baldwin Avenue. Hunt told Bailey that she had learned that Garret was involved in a romantic relationship with Morehouse and that he went to live at Morehouse's home. Hunt said that Garret had moved out of the 76 Baldwin Avenue house.²

Garret admitted that he was involved in a romantic relationship with Morehouse. He also admitted that in 2020, 2021 and 2022 he spent substantial amounts of time with Morehouse at her house at 52 Plum Street in Pittsfield. I do not find credible Garret testimony in which he denied that he lived with Morehouse at her house in 2021 and 2022 and denied that he had vacated the 76 Baldwin Avenue house in December 2020. I credit Bailey's testimony that between January 2021 and October 2022 she never saw Garret at the house and had no contact with him. It was her understanding that during that period Hunt was the sole tenant residing at the house.

In February 2021, at Hunt's request, Bailey entered into a new oral tenancy at will for the 76 Baldwin Street house with Hunt. The monthly rent set at \$900.00. Thereafter, Hunt paid the monthly rent to Bailey with \$900.00 checks drawn on her personal bank account each month from February 2021 to October 2022.

¹ This is not surprising (nor particularly persuasive with respect to his place of residence in 2021) since Massachusetts licenses are renewed every five years, and he was living at 76 Baldwin Avenue when his 2016 license was issued.

² I consider the statements Hunt made to Bailey, not for the truth of the assertions, but to show Bailey's state of mind with respect to the status of the then existing tenancy and who the remaining occupant/tenant was.

There is ample credible evidence to support the inference that Garret was no longer living at 76 Baldwin Street after December 2020, to wit, that the monthly rent changed to \$900.00 beginning in February 2021, that Hunt paid the \$900.00 rent each month using checks drawn from her personal checking account, that Garret did not make a single monthly rent payment between January 2021 and October 2022, and that Bailey never saw Garret when she went to the property on a regular basis during that twenty-two month period.³

I find that in December 2020 Garret, by his own actions, vacated and surrendered possession of the 76 Baldwin Avenue house leaving Hunt as the sole occupant and tenant. The fact that Garret left some of his personal property at 76 Baldwin Avenue is insufficient to support his claim of continued tenancy at the house he abandoned in December 2020 when he went to live with Morehouse at her 52 Plain Street home.

Garret testified that in September 2022, after an incident that occurred at Morehouse's home, Morehouse obtained a restraining order against Garret barring him from Morehouse's home or coming into contact with Morehouse. On October 7, 2022 Garret was arrested at the 76 Baldwin Avenue house on an assault and battery charge involving Morehouse. Garret was incarcerated until the end of October 2022. Garret testified that he was living as a tenant at 76 Baldwin Avenue at the time he was arrested. I do not credit Garret's testimony. In addition to the credible evidence that leads me to conclude that Garret had abandoned his tenancy in December 2020, there is a text message dated September 23, 2022 that appears to be from Garret to Hunt. In that message Garret states that "I wish you would let me sleep there for a couple of nights so I can try finding somewhere to go . . ." Garret did not challenge the authenticity of the message. I find that Hunt may have allowed Garret to stay at the 76 Baldwin Avenue apartment after he was forced to leave Morehouse's home. However, at best, Garret was staying at 76 Baldwin Avenue as Hunt's temporary guest.

On October 11, 2022, Hunt died at 76 Baldwin Avenue as a result of a drug overdose. Bailey learned of Hunt's death from her neighbors. Bailey went to 76 Baldwin Avenue where she spoke with Hunt's brother and mother. Hunt's relatives told Bailey they would clean up the home and remove everything they wanted.

³ On or about October 20, 2022 Bailey received an e-mail from Morehouse stating that Garret had been living with her since December 6, 2020.

At the end of October 2022 Garret's mother called Bailey and told her that Garret would be returning to live at 76 Baldwin Avenue when he was released from jail. Bailey told Garret's mother that he could not return to 76 Baldwin Avenue because he no longer lived there. Garret did not return to 76 Baldwin Avenue after he was release from jail.

After Hunt's family completed the moveout Bailey returned to the house. She found a number of boxes with Garret's name on them. Bailey placed those boxes in a public storage warehouse at her expense. Between October 2022 and September 2023 Bailey paid \$3,000.00 in storage fees. Because Garret was not Bailey's tenant, Bailey was under no legal obligation as a landlord to place any of the boxes in storage.

Bailey contacted Garret and told him that she had placed his boxes in storage and that he should retrieve them. Garret (in response to a court order) removed his belongings from storage on September 19, 2023.

Garret alleges that certain pieces of furniture and personal possessions were missing when he retrieved his belongings from storage. However, there is no evidence to establish what specific furniture or possession he claims were missing and no evidence sufficient to establish what the value of those items might have been as of the date they were removed from 76 Baldwin Avenue.

Bailey's adult son has occupied 76 Baldwin Avenue since November 2022.

Rulings of Law

Plaintiff's Claims. Garret alleges that Bailey engaged in a "self-help" eviction to lock him out of 76 Baldwin Avenue and disposed of his property in violation of G.L. c. 186, § 14.

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 by the occupant, or who attempts to regain possession of such premises by force without benefit of judicial process . . ." 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); see also *Al-Ziab v. Mourgis*, 424 Mass. 847, 850-851 (1997).⁴

I rule as a matter of law that Garret was not a tenant of the 76 Baldwin Avenue house at any time after December 2020. While he might have been Hunt's temporary guest staying at 76 Baldwin Avenue at the time he was arrested on October 7, 2022, his temporary permissive occupancy came to an end when he was removed from the premises by the police and incarcerated. After Hunt died on October 11, 2022, her tenancy at will ended as a matter of law. Garret could no longer claim a right of continued occupancy as a guest. I rule that Garret was neither a tenant nor an occupant of 76 Baldwin Avenue on or after October 11, 2022. Accordingly, I rule that after October 11, 2022 Bailey did not engage in a "self-help" eviction or engage in conduct to regain possession of 76 Baldwin Avenue in violation of G.L. c 186, § 14 or in violation of any legal rights of Garret.

There is no evidence regarding what if any property belonging to Garret that may have removed or discarded by Hunt's family when they cleared out the 76 Baldwin Avenue house in October 2022. In any event I rule that Bailey owed no duty to Garret with respect to property that Hunt's family may have removed or discarded. I find that the only property that may have belonged to Garret that remained in the house after the Hunt family removed her belongings were the boxes that she placed in storage (and were recovered by Garret in September 2023). There was no furniture remaining at 76 Baldwin Avenue when Bailey first entered the property in October 2022. Accordingly, I rule that Bailey did not engage in any conduct with respect to Garret's property that interfered with any legal rights he may have had under G.L. c. 186, § 14, § 15f or breached any common law duty of care.

Defendant's Counterclaim. With respect to the boxes (with Garret's name affixed) left at 76 Baldwin Avenue by Hunt's family in October 2022, Bailey was under no contractual or other legal obligation to secure those boxes or place them in storage. Garret did not ask Bailey to place those boxes in storage. Bailey's voluntary decision to store those boxes in a public warehouse was considerate of Garret's interests but did not impose of Garret a legal duty or obligation to pay Bailey for the cost of storage. Accordingly, I rule as a matter of law that Garret was not obligated to compensate Bailey for the cost she incurred to pay for storage.

⁴ Section 14 provides in relevant part that "... any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant..." shall be liable to the occupant for actual damages or three months' rent, whichever is greater.

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 Defendant Karen Bailey on Plaintiff Marcus Garret's G.L. c. 186, § 14 claims; and
2. Judgment enters for Plaintiff/Counterclaim Defendant Marcus Garret on Defendant/Counterclaim Plaintiff Karen Bailey's counterclaim.

SO ORDERED this 8th Day of July, 2024.

Jeffrey M. Winik _____

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-2073

PRESTIGIOUS ONE, LLC,

Plaintiff,

v.

TRICIA CREIGHTON and JEFFREY
McCARTHY,

Defendants.

ORDER

After hearing on June 26, 2024, on several motions, the following order shall enter:

1. **The Tenants' Motion to Dismiss:** The tenants make two arguments for dismissal of the landlord's claim for possession.
2. First, is that the landlord is obligated to comply with the term of the Lease Agreement entered into by the tenants with the former owner of the property, entered into on August 1, 2014. That lease term was and continues to be in


effect and is subsidized by the Section 8 Voucher Program which requires, among other things, that the termination notice is given by the landlord to the agency administering the subsidy “at the same time the owner notifies the tenant.”¹

3. The second basis being asserted by the tenants for the dismissal of the landlord’s claim for possession is that the lease is by its clear and unequivocal terms, self-renewing at six-month intervals as of August 1, 2015 (the end of the first 1-year term). As such, the landlord was not permitted to terminate the tenancy for no-fault in the middle of a lease term.
4. **Discussion:** The Court shall dismiss the landlord’s claim for possession for both of these reasons. This summary process action is dismissed *without prejudice* and the tenants’ counterclaims shall be transferred to the Civil Docket in a new civil action entitled *Tricia Creighton and Jeffrey McCarthy v. Prestigious One, LLC*. and is requested to schedule the new matter for a Case Management Conference.
5. **The Tenants’ Motion for Repairs and the Landlord’s Motion for Additional time for Same:** The landlord shall immediately remove the old refrigerator and also shall have a licensed HVAC person investigate and make necessary repairs to the heating unit the tenants’ daughter’s bedroom. Additionally, the landlord shall forthwith repair the kitchen floor and any and

¹ Though there is no record at this stage of the litigation regarding whether the plaintiff landlord has signed any documents with the Section 8 administrating agency (Way Finders, Inc.), it has received monthly rent from that agency in accordance with the Section 8 Voucher Program for several years (month after month and also being subject to yearly inspections). As such, whether or not the landlord has signed any documents with Way Finders, Inc., he is considered by the Court to be subject to the Section 8 Voucher Program. Also noteworthy, is that the landlord may not terminate a tenancy regulated by Section 8 Voucher Program for no-fault.

all remaining items cited by Way Finders, Inc. and read into the record by the tenants' counsel with licensed and permitted professionals as needed and promptly repair.

So entered this 8th day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1282

RENTAL SOLUTIONS, LLC,

Plaintiff,

v.

VALORIE MACY,

Defendant.

ORDER

After hearing on June 24, 2024, on cross-motions by the parties, the following order shall enter:

1. **Tenant's Motion to Amend Answer:** This motion is seeking to add an additional basis for her Retaliation Claim, to wit, the landlord's acts and omissions in regards to an instance (or instances) of alleged violence towards the tenant by the boyfriend of a neighboring tenant.
2. The motion is allowed. That said, it may be subject to a motion for dismissal (partial or otherwise) in the future if the claim should have been asserted in the tenant's Small Claims action (23-SC-90).

3. **Tenant's Motion to Dismiss:** The basis for the motion is that the Notice to Quit failed to provide 30 days prior to termination. Though the tenant is correct, and the landlord's claim for possession would be dismissed, the issue is moot because the tenant has vacated the premises, making the landlord's claim for possession moot.
4. **Tenant's Motion to Compel Discovery:** The tenant propounded discovery and the landlord has not responded to same. But for this matter being transferred to the Civil Docket (as the possession is moot), an order compelling the discovery would be in order. Discovery shall not be compelled at this time, however, as the matter is being transferred to the Civil Docket and the deadlines for discovery shall be extended. Such deadlines shall be established at the Case Management Conference scheduled in the new Civil matter to be scheduled by the Clerk's Office.¹
5. **Landlord's Motion to Strike the Tenant's Counterclaims:** The landlord is seeking dismissal of that portion of the tenant's claims for damages that accrued prior to December 8, 2023; leaving claims for damages for the period after December 8, 2023. The landlord asserts this argument based on the tenant's claims being asserted in a Small Claims action (23-SC-90) which were adjudicated by this court in said Small Claims matter which entered judgment for the landlord on all the tenant's claims.

¹ There was discussion on the record of having the landlord respond to discovery 30 days after the date of this order but the deadline shall be established instead at the Case Management Conference along with the deadline for the tenant's responses.

6. Other than the tenant's claims for discrimination, which were dismissed from the tenant's Small Claims action due to their pendency at the time at the Massachusetts Commission Against Discrimination, the tenant's damages claims for Harassment, Retaliation, Warranty of Habitability and deception/Fraud (which have been pled in this action and will be transferred to the new Civil Action), are limited to after December 8, 2023.²
7. The tenant's discrimination claim is no longer pending at the MCAD and has been pled in this case and shall be one of the tenant's claims in the new Civil Action.
8. Additionally, the tenant has a personal injury claim for an alleged fall at the premises which were not part of either the Small Claims action nor this current Summary Process action. At the time of this hearing, the tenant is seeking to maintain her potential personal injury claim(s) without filing them in this action. Because her alleged injuries have not yet plateaued and her surgeries are on-going, said personal injury claim(s) shall not be included in this new civil action at this time.³
9. **Transfer of this Action to the Civil Docket:** The landlord's claim for possession and the Account Annexed shall be dismissed and the tenant's counterclaims (subject to the limitations noted above) shall be transferred to the Civil Docket in a new case entitled *Malorie Macy v. Rental Solutions, LLC*

² This does not bar the tenant at trial from putting in evidence of events and matters on such claims that may have occurred prior to December 8, 2023, but does limit her capacity to obtain damages for any time prior to that date.

³ The tenant's claim arising out of alleged problems with the stairs (which she alleges she fell down due to their condition) may be part of her Warranty of Habitability claims even though they are directly related to the tenant's personal injury---which are not part of this civil action.

and the Clerks Office is requested to schedule a Case Management Conference.

So entered this ^{KH} 8 day of July, 2024.



Robert Fields, Associate Justice
Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

SC&H PEARL STREET LLC C/O CHASE
PROPERTY SERVICES, INC.

Plaintiff,

-v.-

DOCKET NO. 24CV00430

KAMEL ARNAOUT,

Defendant.

ORDER

This matter came before the court on July 5, 2024 for a hearing on the plaintiff's motion to modify the injunction which issued on June 14, 2024. The plaintiff appeared through its attorney. Sheryl Chase, president of Chase Property Services, Inc. which manages the property, maintenance supervisor Michael Poole, maintenance worker Rick Turcotte, and Nikkia Jackson, the tenant in apartment 2L, testified on behalf of the plaintiff. The defendant did not appear despite being served by deputy sheriff on July 2, 2024. He is self-represented.

After hearing, a judge of this court issued a preliminary injunction on June 14, 2024. The injunction ordered the defendant "not threaten, intimidate or harass any other residents of the property (or their families and guests) or any employees and agents of the Plaintiff." The defendant is the tenant in apartment 1L of the subject rental premises located at 222 Pearl Street in Springfield, Massachusetts. The order further required that the defendant "not deny other residents the right to use common areas, including without limitation the porch". The porch is a common area shared by the twenty-six apartments in the building. Finally, the order provided that if the plaintiff alleged a material violation of the June 14 order, it could "file a motion to modify this injunction to bar the Defendant from the property pending a summary process trial."

The plaintiff filed such a motion alleging serious and repeated violations since the injunction issued on June 14. The plaintiff's witnesses testified to several violations by Mr. Arnaout in the short period since the order issued, including death threats with knives, racially and otherwise offensive language directed at another tenant and her family, preventing a tenant from using the stairs to exit the building, sexually offensive language directed at the property manager, offensive language directed at an employee of the plaintiff and preventing him from making needed repairs, playing loud music and making noise over the music all through the night, yelling and screaming on the common area porch so loudly that the defendant could be heard from inside the building across the street.

The defendant's behaviors have resulted in the tenant in the apartment above his not being able to sleep. His behaviors have interfered with her ability to perform her job. A food delivery person has refused to deliver to her apartment because of the defendant's harassment. The tenant is afraid for her safety. The plaintiff's employees have been unable to perform maintenance requested by the defendant because of his actions. Three of the twelve maintenance employees refuse to do work in the defendant's apartment because of his actions. Certainly other tenants could not use the porch while the defendant was on the porch yelling continuously for three hours.

The defendant was aware of the judge's June 14 order. He told the property manager that he knew what the judge said but he didn't care. The police were called and Mr. Arnaout was arrested during this time period, but he was eventually released and returned to the premises and continued his behaviors.

Based on the testimony of the witnesses and without any opposition from the defendant, the court finds that the defendant materially violated the June 14 order. The court finds that the plaintiff has demonstrated a likelihood of success on the merits.

The plaintiff now asks the court to take the exceptional step of barring the defendant from the premises pending the outcome of a summary process trial. The plaintiff served a rental period notice to quit for cause, but it will not expire until August 1, 2024. It is only after that that the plaintiff can serve a summons and complaint and begin a summary process (eviction) case if the defendant does not vacate the premises voluntarily.¹ The court agrees with the plaintiff that

¹ The plaintiff's attorney reports that the case is not subject to a removal action pursuant to G.L. c. 139 §19, so summary process pursuant to G.L. c. 239 is the only other remedy available.

this leads to an impermissible delay in resolving this matter which involves the safety of residents, employees and vendors from the public.

This order may risk harm to the defendant in that he will be barred from the premises where he has lived, but the court finds that any such harm is substantially outweighed by the irreparable harm to the plaintiff if the court does not allow the modification to the injunction requested by the plaintiff. The defendant was on notice that such exceptional relief could be requested if he did not comply with the order. The demonstrated threats to the safety of others weighs heavily in the court's consideration. Finally, the court finds that it is in the public interest that this modification be allowed to increase the likelihood of safe housing and work for all involved.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion is **ALLOWED**.
2. The defendant is barred from residing in or visiting at the subject rental premises located at 222 Pearl Street, Springfield, Massachusetts, pending the outcome of a summary process case based on the June 18, 2024 notice to quit or further order of the court. This order takes effect once the plaintiff has the order served by the sheriff's department to the defendant.
3. If the defendant does not voluntarily the premises, the plaintiff is authorized to engage the sheriff's department to have the defendant removed from the premises.
 - a. The plaintiff will take all reasonable steps to ensure to the extent possible that such removal is conducted in a peaceful and safe manner.
 - b. This includes, but is not limited to, the presence of the police and a mental health crisis worker with the sheriff at the time the defendant is removed from the premises.
4. The plaintiff is further authorized to change the locks to the defendant's apartment and the building to ensure that the defendant does not return to the premises unless there is a valid court order that he may do so.
5. Except as modified by today's order, all other terms of the June 14, 2024 order remain in full force and effect. This includes but is not limited to the provision that the defendant

shall not threaten, intimidate or harass any other residents of the property (or their families and guests) or any employees and agents of the Plaintiff.

6. The plaintiff will proceed with a summary process action expeditiously pursuant to statute.
7. The defendant may file and serve a motion to further modify this order if he can demonstrate that he can and will comply with the court's June 14, 2024 order, with specific evidence of steps taken to change his behaviors.

July 8, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP01677

ANTHONY SMITH,

Defendant.

ORDER

This matter came before the court on July 8, 2024 for a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney with property manager Celina Correa. The defendant appeared and was self-represented. Leonor Pena of Wayfinders also was present at the hearing to report on RAFT.

The subject rental premises are a public housing unit. The parties entered into their most recent Agreement in this nonpayment of rent eviction case on October 3, 2023. By its terms relevant to this motion, the parties agreed that the defendant's rent/use and occupancy arrearage was \$3,706 through October 2023 and the costs were \$199.25. The defendant agreed to submit an application for RAFT financial assistance to Wayfinders immediately and the plaintiff agreed to cooperate with the application process. Mr. Smith agreed to pay his ongoing use and occupancy of \$342 by the fifth of each month and \$200 toward the arrearage and costs by the fifteenth of each month, both beginning in November 2023. The parties agreed that the case would be dismissed when the defendant achieved a zero balance. If he did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff has now filed such a motion. The defendant made the payments he had agreed to for November, December and January, but he has not paid anything for February

through July. The arrearage is now \$4,471 through July 2024 with \$199.25 in costs. The defendant did not apply for RAFT financial assistance as he agreed to do. He explained that he had applied for assistance from Wayfinders for moving expenses when he first moved into this apartment from the shelter, but he did not receive any funds. However, an application now would be for financial assistance with the arrearage.

Ms. Pena reported to the court that Mr. Smith last filed an application for RAFT in June 2023, but the application timed out. He can apply again, but because the apartment is in public housing where the tenant's share of the rent is set as a percentage of his household income, he will need to document good cause for why he did not pay or get his rent adjusted by the Housing Authority. This will include submitting receipts for things such as car repairs and the loss of his car. He can get assistance with the application and documentation at the Wayfinders office. If he is found eligible for RAFT financial assistance, RAFT can pay a maximum of six months of the tenant's portion of the rent. Mr. Smith will be responsible for the balance. He will need to propose a payment plan for the balance.

The court finds that the defendant is in substantial violation of material terms of the parties' October 3, 2023 Agreement. However, the court does not order that judgment enter at this time to give the defendant another opportunity to apply for RAFT financial assistance and make a realistic payment plan for the balance.

Orders

As stated at the hearing:

- 1. The plaintiff's motion is continued for further hearing on August 5, 2024 at 11:00 a.m.**
2. Before that hearing, the defendant will apply for RAFT financial assistance and submit all required documentation to Wayfinders.
3. The plaintiff will submit all required documentation to Wayfinders promptly.
4. The defendant will pay the use and occupancy for August (\$342) and a payment toward the arrearage (\$200) by August 5, 2024.
5. The defendant will complete his required re-certification at the Housing Authority on or before July 19, 2024.

July 8, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

TINKHAM MANAGEMENT,

Plaintiff,

-v.-

DOCKET NO. 24SP00032

ANGELA SARNELLI,

Defendant.

ORDER

This matter came before the court on July 8, 2024 for a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Leonor Pena of Wayfinders also was present at the hearing to report on RAFT.

The parties entered into a second Agreement in this nonpayment of rent eviction case on April 12, 2024. By its terms relevant to this motion, the parties agreed that the defendant's rent/use and occupancy arrearage was \$4,213.53 including costs. The defendant agreed to pay her April use and occupancy by April 24, 2024 and then her ongoing use and occupancy of \$1,160 by the eighth of each month and \$700 toward the arrearage and costs by the twenty-second of each month, both beginning in May 2024. The parties agreed that if the defendant did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff has now filed such a motion. The parties agree that the defendant paid some, but not all, of the agreed payments. The arrearage through July is \$4,864.53 plus costs. Although the April 12 Agreement provided that if the plaintiff filed a motion for entry of

judgment, the parties would agree to a move-out, the plaintiff reported that it is not seeking such relief at this time.

Ms. Pena reported that the defendant is eligible for the following amounts of RAFT:

\$1,208.46	now
\$4,696.54	on July 11, 2024
\$1,095.00	on August 1, 2024

This would reduce the defendant's arrearage to zero, but she must apply for each amount separately. The plaintiff agreed to accept such payments and to file a dismissal of the case when the defendant reaches a zero balance.

Orders

As stated at the hearing:

1. **The plaintiff's motion is continued for further hearing on August 12, 2024 at 9:00 a.m.**
 - a. If there is a dismissal on file with the court before that date, the parties do not need to appear on August 12 and the Clerk will remove the case from the list.
2. The defendant will complete the **applications** for RAFT financial assistance until her rental arrearage is zero. This includes filing an application today for the amount she is eligible for now.
3. The plaintiff will submit all required documentation to Wayfinders promptly.

July 8, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

462 FRONT STREET, LLC,

Plaintiff,

-v.-

DOCKET NO. 23SP05168

MEGGAN MEREDITH,

Defendant.

ORDER

This matter came before the court on July 9, 2024 for hearing on the plaintiff's motion for access and to schedule the case for summary process (eviction) trial. The plaintiff appeared through its attorney. Defendant Meggan Meredith appeared and was self-represented.

The parties agree that the issue of access has been resolved. Ms. Meredith will allow access to her apartment on July 16, 2024.

With respect to the readiness of the case for trial, plaintiff's attorney reported that he served a second copy of the discovery responses this morning. (The defendant reported that she had not received the earlier set of response which he emailed to her.) The plaintiff reports that discovery is complete with the possible exception of the results of an inspection for mold. If it was not included in the document response, the plaintiff agreed to furnish a copy forthwith.

The case is ready for trial. This is a no-fault eviction case in which the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. The plaintiff anticipates calling one to two witnesses and the defendant anticipates calling one witness at trial.

The Clerk's Office is asked to schedule the case for trial to be held during the week of August 12, 2024 and to send notice.

July 9, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

BC PALMER GREEN LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP00835

PEGGY M. THOMAS,

Defendant.

ORDER

This matter came before the court on July 8, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for July 11, 2024 at 11 a.m. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Alisha White of the Tenancy Preservation Program (TPP) and Leonor Pena of Wayfinders also appeared.

Judgment entered in this nonpayment of rent case on May 16, 2024 for the plaintiff for possession of the subject rental premises and \$1,460.52 in unpaid rent/use and occupancy with costs and interest. The tenancy is subsidized and the tenant's portion at the time was \$195. Ms. Thomas understands that her portion of the rent has increased to \$231 based on a recent recertification. The execution issued on May 30, 2024 on the plaintiff's timely written application. The plaintiff had a deputy sheriff serve the defendant with a forty-eight hour notice that the execution would be used to move her out of the apartment on July 11, 2024 at 11:00 a.m.

The defendant then filed this motion to stop the move out on the grounds that she needed more time to pay the balance and to apply for RAFT. She reported that she had an application for RAFT financial assistance pending. Ms. White reported that Ms. Thomas has been working with the Senior Center in Palmer to apply for RAFT. However, Ms. Pena reported that the Wayfinders records show that Ms. Thomas applied for RAFT in March 2024 but her application

timed out because the plaintiff could not be reached at the email address the defendant provided.¹ No application has been filed since then and there is no RAFT application pending at this time.

The defendant has made one payment of \$231 since judgment entered. This was on July 2. Her arrearage through July 2024 is \$1,619.52.

At the hearing, the court ordered that the July 11, 2024 move-out be stopped, so that Ms. Thomas may complete her application for RAFT financial assistance. She will need assistance to do this. As Ms. Pena explained, because this is a subsidized tenancy she will need to show “good cause” to explain why she did not pay her portion of the subsidized rent. If she meets that requirement, RAFT could pay a maximum of six months of her portion of the rent. This will still leave a balance. Ms. Thomas will need to propose a realistic payment plan for the balance. Ms. White and TPP are asked to assist Ms. Thomas with the entire application process.

The defendant is responsible for the \$300 cancellation fee for the July 11 move.

Orders²

As stated at the hearing, the following orders will enter:

1. The defendant’s motion to stop the July 11, 2024 move-out is **ALLOWED**. Levy on (use of) the execution is stopped.
 - a. The plaintiff’s attorney agreed to notify the deputy sheriff of this order forthwith.
 - b. The defendant is responsible for the \$300 cancellation fee. This will be added to the judgment amount.
2. The execution is stayed pending further order of the court.
3. **The case is continued to August 12, 2024 at 9:00 a.m. in person.**
4. The defendant will file a new application for RAFT immediately and provide all documents required by Wayfinders.
 - a. TPP is asked to assist the defendant in completing this application.
5. The plaintiff will submit all documents required by Wayfinders promptly.
6. The defendant will pay her portion of the rent/use and occupancy (\$231) for August when it becomes due.

¹ The plaintiff’s attorney provided a correct email address for his client during the hearing for the defendant to use in any future RAFT application.

² Today’s order is separate from another eviction case between the parties, based on cause.

7. The defendant, with the help of TPP, will submit a proposed repayment plan to the plaintiff for the balance.
8. The stay of the execution ordered by the court today is within the meaning of G.L. c. 235 §23.

July 9, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

CC: Alisha White, TPP

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

CHARLES BRANTLEY &
WECARE SERVICES, LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP00920

ARTHUR LANIER &
CAROLYN SIGNATARY,

Defendant.

ORDER

This matter came before the court on July 9, 2024 for a hearing on the defendants' attorney's motion to withdraw from the case. The plaintiffs appeared through counsel. The defendants and their attorney appeared.

After hearing, the following orders will enter:

1. The defendants' attorney's motion is **ALLOWED**. The Clerk will remove his name from the docket in this case.
2. The defendants may speak with the Lawyer for the Day program available at the courthouse on Thursdays.
3. If the defendants retain a new attorney, they will have their attorney file and serve a notice of appearance immediately.
4. The exhibit filed by Ms. Signatary at the hearing today will be impounded by the Clerk's Office.
5. **The case is scheduled for a case management conference on July 31, 2024 at 3:00 p.m. to be held on Zoom. The Clerk's Office will send notice.**

6. The defendants' former attorney wishes to return the defendants' file to them. However, there have been problems with the mail in the past.
- a. The defendants agreed to go to the Post Office today and have mail delivery restored.
 - b. Counsel will mail the file to the defendants' address provided at the hearing today no sooner than 72 hours from the date of this order.

July 9, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23SP05819

PAPER CITY PROPERTY
MANAGEMENT,

Plaintiff,

v.

ORDER FOR ENTRY OF JUDGMENT

KENYA V. SIMMONS,

Defendant.

1. This is a summary process (eviction) action in which the Plaintiff seeks to recover possession of the subject rental premises from the Defendant.
2. At a hearing held on July 9, 2024, only the Plaintiff's attorney appeared.
3. The Court finds that the Defendant has substantially violated a material term of the Agreement dated February 1, 2024 because the defendant did not pay the use and occupancy or payments toward the arrearage as agreed.
4. G.L. c. 239, § 15 does not apply because:
 - there is no evidence of a pending application for rental assistance, and
 - the Defendant was not present and thus could not establish a right to a continuance or stay.
5. The Court hereby orders that judgment shall enter for the Plaintiff for possession, damages in the amount of \$4,953.29 and court costs of \$246.71.
6. Execution shall issue upon written application 10 days after the date that judgment enters.

Dated: July 9, 2024

Fairlie A Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1104

LEONARDO PERDOMO,

Plaintiff

v.

MARIELY ADAMS,

Defendant

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

This summary process case came before the court for a bench trial on July 8, 2024. Plaintiff with counsel. Defendant appeared self-represented. The residential property in question is a three-family owner-occupied house located at 254 Orange Street, 3d Floor, Springfield, Massachusetts (the "Premises"). Plaintiff resides on the first floor. The parties stipulated to Plaintiff's prima facie case for possession but did not agree on the amount of unpaid rent. Defendant filed an answer with defenses and counterclaims. The parties were the parties to a previous summary process case (Docket No. 23SP2161) which went to trial in September 2023.

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

Defendant's rent is \$1,200.00 per month. No rent has been paid since October 2023, a period of 9 months. The amount of unpaid rent (use and occupancy) is \$10,800.00.

In her answer, Defendant asserts counterclaims for discrimination and conditions. With respect to discrimination, Defendant failed to articulate any discriminatory behavior by Plaintiff. She did not claim to be part of a protected class but instead argued that Plaintiff is acting improperly by trying to evict her repeatedly, including immediately after the prior court case ended, and by harassing her with threats that she will become homeless. Plaintiff's conduct, if proven, could conceivably form the basis of counterclaims based on retaliation or unfair and deceptive practices, but the behavior cannot support a discrimination claim without some evidence that Plaintiff acted as he did because of her protected status.¹ Accordingly, the discrimination claim is dismissed.

Regarding conditions in the apartment, Defendant asserts that Plaintiff never made the repairs required by the trial judge in the previous case. She did not, however, provide much detail as to the work that was still needed in the Premises, despite being repeatedly invited to testify as to the current state of the unit. She conceded that, after the trial, Plaintiff sent exterminators on two occasions, and she did not prove by a preponderance of the evidence that she is still suffering from an infestation.

Defendant testified about mold in the Premises causing harm to her young son. She failed to offer any scientific evidence that any harmful mold or other dangerous

¹ Defendant alluded to possible discrimination based on receipt of Section 8 benefits, but she did not develop this argument. Moreover, she testified that Plaintiff treats the second floor tenant differently (for example, Defendant testified that the second floor tenant is allowed a parking space and a washer and dryer in the basement), but she did not tie the different treatment to her protected status. She testified that she believes she is not allowed the same benefits because she does not pay her rent.

conditions existed in the Premises or that any ailments suffered by her child were as a result of environmental conditions in the home.

The only evidence offered by Defendant that she reported the need for repairs to Plaintiff after the trial in the 2023 case is a single text about the need for a key to the back door. She did not prove by a preponderance of the evidence that this lack of a key interfered with her quiet enjoyment or prevented her from the full use of the Premises, as she testified that her daughters were always home and would always be able to let her in through the back door as needed. The Court finds in favor of Plaintiff on Defendant's counterclaim based on conditions in the Premises.

Given the absence of any viable defenses or counterclaims, the following order shall enter:

1. Judgment shall enter for Plaintiff for possession and damages in the amount of \$10,800.00 for unpaid use and occupancy through the date of trial.
2. Execution shall issue by written application ten days after the date that judgment enters.

SO ORDERED.
July 9, 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-SP-2323

ROUND TWO, LLC,
Plaintiff,
v.
HELEN BARNETT,
Defendant.

ORDER

After hearing on June 25, 2024, on the tenant's motion for more time to vacate the premises, the following order shall enter:

1. The tenant was accompanied by Ms. Howe, a MassHealth caretaker from CHD, who explained that she is assisting the tenant in securing alternate housing but that it is a very difficult time to locate and secure alternate accommodations---even with the tenant having a Section 8 Voucher.
2. Due to the tenant's age and health, and in view of her working with CHD for housing search and given that this is no-fault eviction in which the plaintiff is

seeking to sell the two-family premises and is likely to have the other unit vacant very soon, the tenant request for additional time is allowed.

3. The tenant may remain at the premises until October 1, 2024 (which is an additional three months) to secure new housing, contingent on her paying her portion of the subsidized rent.
4. This order shall have the effect of tolling the timelines stated in G.L. c.235, s.23.

So entered this 9th day of July, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO.: 24H79CV000171

_____)
TOWN OF SOUTHAMPTON, by and)
through its BOARD OF HEALTH,)
Plaintiff)
v.)
MICHAEL J. WOJTOWICZ,)
Defendant)
_____)

ORDER

In these matters, having come before this Court for a hearing on 7/8/24,
2024, the Court enters the following order:

1. Dukes LLC is hereby appointed as a Receiver (the "Receiver") of the properties at 177 Brickyard Road, Southamptn, Massachusetts and 178 Brickyard Road, Southamptn, Massachusetts (the "Properties"). The purpose of the Receivership is to forthwith bring the Properties into compliance with the State Sanitary Code.
2. Immediately upon acceptance of such appointment, the Receiver shall take possession of the Properties, all its appurtenances, financial and legal records thereof, and all equipment, keys, fixtures and supplies in connection therewith. Defendant Michael J. Wojtowicz (the "Defendant") shall turn over his personal financial records regarding the Properties so as to permit the Receiver to develop a plan to effectuate this Order; and the Defendant shall turn over any documentation as to any liens, mortgages, attachments or other encumbrances as to the Properties to the Receiver.

AUTHORITY AND DUTIES OF THE RECEIVER

3. A. The Receiver shall have the authority to employ, contract or retain whatever professional services are necessary to inspect the Property and, thereafter, to correct all Sanitary Code violations at the Property. The Receiver shall have all authority, not inconsistent with this order, as provided by and set forth in G.L. c. 111, § 127I and G.L. c. 214, § 1.

B. Following such inspection, the Receiver shall prepare and file a report with the Court for the Court's approval setting forth in detail the work and any proposed contract entered into to remove junk and debris from the Properties.

C. After the Receiver's report and proposed contract is approved, the Receiver shall employ, contract or retain whatever professional services are necessary to effectuate the plan.

D. The Receiver shall have the authority to take any and all legal action to seek the removal and eviction of any individuals interfering with work necessary to bringing the Properties into compliance with the State Sanitary Code by requesting removal by the sheriff or other police force.

E. To accomplish the Receiver's duties as set forth herein, the Receiver shall have the authority to receive loans and/or advances from mortgage lenders of the Properties, and to employ persons or agents and to enter contracts to accomplish the Receiver's duties. The Receiver shall be required to deposit all amounts received on account of the receivership of the Properties in a separate account under the control and the name of the Receiver in his official capacity, to keep careful accounts of all income received and funds disbursed with appropriate receipts and records, and to file

with the Court an account under oath every three (3) months until this receivership is terminated. The Receiver shall disburse and expend any funds received by the Receiver, as set forth above, in the following order of priority:

FIRST – To make emergency repairs, if necessary, or to secure the Properties as necessary.

SECOND – To make other repairs and perform such maintenance as he determines in his discretion to be necessary to achieve the goal of decent, safe and sanitary Properties.

THIRD – To reimburse Receiver for his actual out-of-pocket expenses incurred in his capacity as Receiver, including without limitation, any reasonable legal fees incurred by the Receiver, any incurred labor costs, and reasonable fees for the Receiver's services.

LIABILITY OR AGENCY

4. A. The Receiver shall acquire general liability insurance in the amount of one million dollars (\$1,000,000.00). Proof of coverage shall be provided to the Court when obtained and until such time as proof of insurance is provided, the Receiver shall not proceed with any work upon the Properties.

B. The Receiver shall have no duties whatsoever to remedy any Sanitary Code violations, to manage or to make any advances on account of the Properties except from funds received in his capacity as Receiver of the Properties.

C. The cost of insurance shall be reimbursable from the funds obtained by the Receiver by virtue of this order.

RIGHTS OF THE RECEIVER

5. A. The Receiver shall have the right to resign at any time for any reason by giving thirty (30) days prior written notice to the Court and all parties of record.
- B. The notice of resignation shall include an accounting of all funds received and disbursed during his term as Receiver.
- C. Such resignation shall be effective when the Court so orders.
- D. On the effective date of such resignation, Receiver shall assign any and all amounts received by him to the Court or to a successor Receiver, as well as all equipment, keys, fixtures and supplies used and useful in connection therewith.

MISCELLANEOUS PROVISIONS

6. A. The Petitioner shall send a copy of this Order to all mortgagees and the lienors of record.
- B. The Defendant and any mortgage holders shall not interfere with the activities of the Receiver and shall not deny access to the Properties to the Receiver or his employees or agents.
- C. The Receiver shall report to the Court if he learns that a mortgagee has become a mortgagee in possession.
- D. The foregoing order shall remain in effect until further order of the Court. The Receiver shall report his progress to the Court within one (1) month and file accounts with the Court every three (3) months, however the first account shall be due on August 12, 2024.
- E. Except as specified herein, the requirements of Rule 66 of the Mass.R.Civ.P. shall govern.

F. The parties shall appear for review on August 19, 2024 @ 9 AM in The Hadley session.

SO ORDERED:



_____, J.)
Jonathan J Kane
Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP000824

VALLEY OPPORTUNITY COUNCIL,

Plaintiff,

v.

NIVEANETTE DIAZ,

Defendant

Order for Judgment

After conducting a hearing on July 9, 2024 (at which the plaintiff appeared but the defendant did not appear), the plaintiff's *Motion for Entry of Judgment and Issuance of Execution* is **ALLOWED**. I find that the defendant has failed to comply with the payment provisions of the April 9, 2024 Agreement. The defendant has failed to pay any rent or arrearage payments for May or June 2024. As of July 9, 2024 the rent arrearage has increased to \$5,757.94. There is no evidence that the defendant filed a RAFT application that remains pending.

Accordingly, it is **ORDERED** that judgment shall enter for the plaintiff for possession and \$5,757.94 damages and \$234.71 court costs.

So entered this 9th day of July, 2024.

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

LIBRARY COMMONS LIMITED
PARTNERSHIP,

Plaintiff,

-v.-

DOCKET NO. 24SP00209

TYLISHA STARKS,

Defendant.

ORDER

This matter came before the court on July 9, 2024 for a hearing on the plaintiff's motion to issue execution on an amended judgment. The plaintiff appeared through its attorney with property manager Gretchen Calderon. The defendant appeared and was self-represented.

The parties entered into an Agreement for Judgment on February 27, 2024 in this eviction case based on nonpayment of the tenant's share of the subsidized MRVP rent. By its terms relevant to this motion, the parties agreed that the defendant's rent/use and occupancy arrearage was \$3,408 through February 2024 and the costs were \$257.46. Ms. Starks agreed to make a one-time payment of \$1,000 on March 1, 2024 and then to pay her ongoing use and occupancy of \$413 by the fifth of each month as well as \$200 toward the arrearage, both beginning in March 2024. When the defendant reached a zero balance, the case would be dismissed. If the defendant did not comply with the terms of the Agreement for Judgment, the plaintiff could file a motion to issue execution.

The plaintiff has now filed such a motion. The parties agree that the defendant has paid only one \$806.50 payment since the Agreement for Judgment was signed. The arrearage through July 2024 is \$4,666.50 with costs of \$257.46. The court finds that the defendant is in substantial

violation of material terms of the parties' February 27, 2024 Agreement for Judgment and that the plaintiff would be entitled to the issuance of the execution.

However, Ms. Starks explained that she was not able to pay as she agreed because she lost her contract job, but she started a new job on June 15. She applied for RAFT financial assistance three times but was denied because she could not demonstrate a hardship reason for not paying her portion of the subsidized rent. There is no RAFT application pending at this time.

The defendant offered to pay \$500 after the hearing by money order. Because she has returned to work, she thinks that she could pay the balance within thirty to sixty days. The plaintiff agreed to continue this motion for further hearing and review of the defendant's payments on August 13, 2024 at 9:00 a.m.

Orders

As stated at the hearing:

1. **The plaintiff's motion is continued for further hearing on August 13, 2024 at 9:00 a.m.**
2. The defendant will pay \$500 by money order on July 9, 2024 by putting it in the landlord's drop box.
3. The defendant will pay her portion of the use and occupancy (\$413) for August on or before August 5, 2024.
4. At the hearing on August 13, 2024:
 - a. the parties will report on the payments made to date by the defendant, and
 - b. the defendant will present her plan for payment of the remaining balance.

July 10, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP000667

KELLIE HAMLING,

Plaintiff

VS.

KEITH MILLER,

Defendant

**FINDINGS OF FACT, RULINGS OF LAW AND
ORDER OF JUDGMENT**

This is a summary process action in which plaintiff is seeking recover possession of a residential dwelling from defendant Keith Miller 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 single-family dwelling at 67 Bromback Street, Pittsfield, Massachusetts (the “premises”). The defendant has occupied the premises since September 2021. The defendant maintained the property in lieu of rent.

The defendant denies that he received a notice to quit. I do not credit his testimony. I find that on December 29, 2023 a sheriff retained by the plaintiff served the defendant with a notice to quit terminating the tenancy effective February 1, 2024. The defendant remains in possession of the premises. He testified that he needs more time to find a new place to live.

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

This case came before the court for trial approximately 6 months after the plaintiff served the defendant with the notice to quit. After considering the testimony of the plaintiff and tenant,

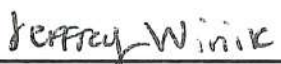
and in the exercise of my discretion under G.L. c. 239, §§ 9 and 10, I shall stay issuance of execution until September 1, 2024. As a condition for granting this stay the defendant must continue to maintain the property as he did before he was served with the notice to quit.

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 continues to maintain the property as he did before he was served with the notice to quit

SO ORDERED this 11th Day of June, 2024.



Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 24SP01017

MYRON COURT, LLC,

Plaintiff,

v.

ORDER FOR JUDGMENT

ERNESTO RODRIGUEZ,

Defendant.

This is a summary process action in which the Plaintiff seeks to recover possession of the subject rental premises from the Defendant based on non-payment of rent. The Plaintiff appeared through its attorney at the hearing held on July 9, 2024. Property manager Evan Powers also appeared. The Defendant appeared and was self-represented.

1. After trial on May 2, 2024 a judge of this court entered an order as agreed by the parties. By its terms, the Plaintiff would accept \$7,000 in RAFT financial assistance toward the arrearage on behalf of the Defendant. The Defendant would pay the remaining balance of \$2,694.50 through May 2024 (including costs) by July 31, 2024 or establish a payment plan at a review scheduled for July 23, 2024. This was conditioned on the Defendant's paying the monthly use and occupancy of \$675 on June 5 and on July 5.
2. The Defendant was approved for \$7,000 in RAFT funding, but the landlord has not received it to date. The parties agree that the Defendant did not pay the June or July use and occupancy.
3. After hearing, the Court finds that the Defendant has substantially violated a material term and condition of the Court's May 2, 2024 order because he did not pay the June or July use and occupancy.
4. G.L. c. 239 §9 does not apply because there is no pending application for short-term emergency rental assistance because the Defendant's application has already been approved.
5. The Court hereby orders that judgment shall enter for the Plaintiff for possession and damages in the amount of \$10,800 in unpaid rent/use and occupancy through July 2024 plus \$244.50 in court costs.
6. If the Plaintiff receives funds from RAFT on behalf of the Defendant, Plaintiff's attorney will file a motion to amend the judgment to deduct \$7,000, or whatever amount is received from

RAFT. As noted in the May 2, 2024 order, the Plaintiff may not pursue the eviction for funds covered by RAFT.

SO ORDERED

DATE: July 11, 2024

By: Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV344

DELFINA PAULO and
JOQUIM PAULO
Plaintiffs

v.

HEATHER BINGLE,
MICHAEL QUEST, and
PAULA QUEST
Defendants

PRELIMINARY INJUNCTION & ORDER

Based on the facts set forth in their Verified Complaint and Application for Preliminary and Permanent Injunction, the Court finds that Plaintiffs possess no adequate remedy at law, and are likely to prevail on the merits. Plaintiffs will suffer immediate and irreparable harm should the Court deny this injunction.

WHEREFORE, it is hereby ORDERED that:

1. Defendants Heather Bingle and Michael Quest are restrained and enjoined from entering onto, returning to, remaining in, trespassing onto, or in any way interfering with the premises located at 53 West Street, Unit 1R, Chicopee, MA 01013 (hereinafter "Premises"), in accordance with this Order.
2. Defendant Paula Quest is hereby restrained and enjoined from allowing any other individuals to occupy the Premises located at 53 West Street, Unit 1R, Chicopee, MA 01013 without Plaintiffs' prior written authorization.

3. Plaintiffs shall serve a copy of this Order to the Defendants at 53 West Street, Unit 1R, Chicopee, MA 01013.
4. On or after the effective date of this Order, Plaintiffs shall give Defendants Heather Bingle and Michael Quest 48-hours' notice (business days only) that Plaintiffs will be changing the locks to the Premises. Said 48-hour notice shall be served upon Defendants at the Premises by Constable or Sheriff.
5. Plaintiffs shall utilize a Constable or Sheriff to remove any and all personal property contained in the Premises, placing such items in storage in the same manner as would be required under M.G.L. c. 239, §§ 3,4.
6. Judgment will enter for Plaintiffs on all counts of the Verified Complaint.
7. The \$90.00 legislative fee for injunctions is waived.
8. This Order shall become effective on July 15, 2024.

SO ORDERED:


Jonathan J. Kane, First Justice

Date: July 11, 2024

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22SP02808

SPRING MEADOW APARTMENTS,

Plaintiff,

v.

ORDER FOR JUDGMENT

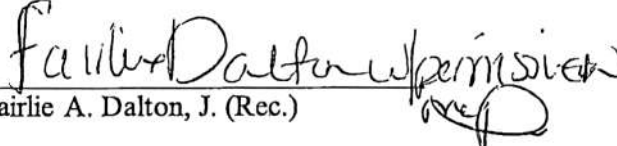
JOMAYRA ROQUE,

Defendant.

1. This is a summary process action in which the Plaintiff seeks to recover possession of the subject rental premises from the Defendant based on non-payment of rent.
2. The Plaintiff appeared through its attorney at the hearing held on July 10, 2024.
3. The Defendant appeared and was not represented by an attorney.
4. Leonor Pena of Wayfinders joined the hearing to report on the status of RAFT.
5. After hearing, the Court finds that the Defendant has substantially violated one or more material terms of the Court agreement dated March 16, 2023 and the court order dated November 30, 2023 because she did not pay her portion of the subsidized rent/use and occupancy nor payments toward the arrearage, as required. The defendant has never reached a zero balance since the case was filed on August 29, 2022.
6. The Defendant's application for RAFT financial assistance was closed on July 8, 2024 because she did not demonstrate a hardship to explain her failure to pay her portion of the subsidized rent (\$913). If she were eligible for RAFT, the maximum payment (6 months X tenant's portion) would not reduce the amount owed to zero.
7. G.L. c. 239 §15 does not apply because there is no pending application for short-term emergency rental assistance.
6. The Court hereby orders that judgment shall enter for the Plaintiff for possession and damages in the amount of \$6,043.53 in unpaid rent/use and occupancy through July 2024 plus court costs of \$201.25.
7. Execution shall issue upon written application ten (10) days after the date that judgment enters.

SO ORDERED

DATE: July 11, 2024

By: 
Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP001922

MICHAEL TONER,

Plaintiff

VS.

ELLA CRAVISH,

Defendant

**FINDINGS OF FACT, RULINGS OF LAW AND
ORDER OF JUDGMENT**

This is a summary process action in which plaintiff Michael Towner is seeking recover possession of a residential dwelling from defendant Ella Cravish upon the termination of a tenancy at will. The complaint cause (breach of tenancy obligations) as grounds for termination of the tenancy. The defendant did not file a written answer.

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 1718-1720 Housatonic Court, Pittsfield, Massachusetts (the "premises"). The defendant has occupied the premises with her daughter since January 2020. The agreed monthly rent has been \$500.00.

The plaintiff alleges that the defendant has engaged conduct that violated the terms of her tenancy. However, the plaintiff has failed to present evidence sufficient to establish that he ever served the defendant with a notice to quit. For this reason, the plaintiff has failed to establish an essential element of his claim for possession and has failed to establish his claim to recover possession 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 defendant on the plaintiff's claim for possession.

SO ORDERED this 11th Day of July, 2024.

Jeffrey M. Winik Date 7/11/2024

Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

U.S. BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS OWNER
TRUSTEE FOR THE REO TRUST 2017-RPL1,

Plaintiff,

-v.-

DOCKET NO. 23SP04793

KEREN BARRY A/K/A KAREN BERRY &
BRIAN BARRY,

Defendant.

ORDER

This matter came before the court on July 9, 2024 for a hearing on the plaintiff's motion to issue execution. The plaintiff appeared through its attorney. Both defendants appeared and were self-represented.

This is a post-foreclosure eviction case in which the plaintiff seeks to recover possession of the subject premises. Ms. Barry is the former owner of the property. Her son, defendant Brian Barry, also lives at the property. After trial, judgment entered for the plaintiff for possession and costs on January 11, 2024. Execution was stayed by order of the trial judge until June 1, 2023¹ on condition that the defendants pay \$200 use and occupancy by the fifth of each month beginning in February. The defendants did not move by June 1 and the plaintiff filed the instant motion to issue the execution.

¹ Since the case was filed with this court on October 23, 2023, the court deems this to be a clerical error that should read June 1, 2024. The parties have acted accordingly.

The defendants paid the use and occupancy for February, March and April. The plaintiff did not receive a payment for May. However Mr. Barry submitted copies of a \$400 money order purchased at the Post Office and sent by certified mail dated May 10, 2024 addressed to the plaintiff's attorney (D Exh). He noted that he had not received the signature card for the mailing from the Post Office. The court notes that the Post Office receipt contains a tracking number for the envelope, which Mr. Barry can trace. Use and occupancy for June and July was not paid although Mr. Barry said they could pay it.

Mr. Barry reported that he is searching for alternative housing for himself and his mother, but they have not found anything to date. He was approved for RAFT financial assistance with moving expenses on June 10, 2024. The defendants requested additional time to relocate. The plaintiff argued that as the former owner and her son, the defendants are not eligible for any further stay of the execution. However, taking into account Ms. Barry's advanced age, the court grants a short additional stay of the execution to allow the defendants time to transition to other housing.

Order

After hearing, and over the opposition of the plaintiff, the following orders will enter:

1. The motion to issue the execution is **DENIED** at this time, without prejudice to renewal on or after September 1, 2024 if the defendants have not moved out of the property by then or if they do not pay the use and occupancy as outlined below.
2. Pursuant to G.L. c. 239 §10 execution is further stayed through August 31, 2024 on equitable grounds on condition that the defendants pay the use and occupancy in the amount ordered by the trial judge in the January 10, 2024 order by the following deadlines:
 - a. June and July use and occupancy on or before July 26, 2024
 - b. August use and occupancy on or before August 9, 2024
3. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.

July 11, 2024

Fairlie A. Dalton
Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 20H79SP000439

WELLS FARGO BANK, N.A.

Plaintiff

VS.

NICHOLAS KALOGERAS and EUGENIA KALOGERAS,

Defendants

Amended Order

This matter came before the court for hearing on July 10, 2024. The plaintiff appeared through counsel and the defendants appeared pro se. This case involves a post-foreclosure claim for possession of a residential dwelling asserted by the plaintiff against the former owners.

On April 15, 2022 judgment entered for the plaintiff on its claim for possession. The defendants filed a timely appeal. In an assented to order entered on May 25, 2022, the appeal bond was waived, and the defendants were required to pay the plaintiff \$1,000.00 per month for their continued use and occupancy of the property during the pendency of the appeal. The plaintiff's attorney agreed to hold the use and occupancy payments in escrow. The defendants complied with their obligations under the payment order.

In an unpublished Rule 23.00 memorandum and order entered on February 8, 2024 the Appeals Court affirmed the April 15, 2022 judgment for possession in favor of the plaintiff (22-P-989). On March 8, 2024 the Appeals Court issued its Rescript, and the matter was remanded to the Housing Court to address the remaining post-appeal issues.

On April 18, 2024 the court allowed the plaintiff's *Motion to Issue Execution for Possession and Authorize Release of Funds Held by Plaintiff's Counsel* and issued a judgment/execution order.

On June 17, 2024 the parties entered into a settlement agreement including a release of claims. The agreement will result in the defendant purchasing the foreclosed property from the plaintiff provided the defendant obtains a mortgage loan. As of July 10, 2024 the plaintiff's attorney is holding **\$25,000.00** in escrow. This amount represented the defendants' use and occupancy payments through June 2024.

To facilitate the sale of the property (or recover possession if the sale is not completed in accordance with the terms of the agreement), the plaintiff filed a motion seeking to amend the Court's April 18, 2024 order. The defendant has assented to the motion.

Accordingly, it is **ORDERED** that the April 18, 2024 order shall be amended with the following superseding provisions:

1. The plaintiff will return to the Court the execution (unsatisfied as of this date) that issued on June 5, 2024. Upon plaintiff's request made after July 30, 2024 (if the closing has not been completed by that date and no written extension of the closing date has been executed), the Court shall issue a new execution for possession to the plaintiff; however, the plaintiff shall not levy on the execution until after August 30, 2024 (in accordance with the terms of the settlement agreement).
2. The plaintiff may use and apply the amount of the defendant's use and occupancy payments held in escrow, currently **\$25,000.00**, towards the defendant's purchase of the property under the terms of the parties' settlement agreement (or to be used at the plaintiff's discretion if the sale is not completed under the terms of the parties' settlement agreement) without further order of the Court. Plaintiff's attorney, **Sean R. Higgins** and **K&L Gates LLP** may disburse said funds from the escrow account to the plaintiff without further order of the Court.

SO ORDERED this 10th day of July 2024.

Jeffrey Winik Date: 7/11/24
JEFFREY M. WINIK
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SC-28

WISE PROPERTIES & CO.,
Plaintiff,
v.
YAHIMA PEREZ,
Defendant.

ORDER

After a status hearing on June 27, 2024, at which counsel for each party appeared, the following order shall enter:

1. A Guardian Ad Litem (G.A.L.) shall be appointed on behalf of Ms. Dominique Wise, owner of the plaintiff company.
2. Assistant Clerk Magistrate Cunha joined the hearing by Zoom and reported that she is presently making attempts to secure a G.A.L. but has not yet identified and appointed a G.A.L. Upon the appointment of a G.A.L., Clerk Cunha shall schedule this matter for further status hearing.

3. The G.A.L. shall consult with both parties and shall begin to assist Ms. Wise on responding to defendant's financial discovery.
4. Attorney Herbert's motion to withdraw shall be continued to the date noted below.

So entered this 11th day of July, 2024.



Robert Fields, Associate Justice

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP005345

BURBANK REALTY NOMINEE TRUST, MARY WELCH TRUSTEE,

Plaintiff,

v.

ARLENE SANTOS,

Defendant

Order for Judgment

After conducting a hearing on July 10, 2024 (at which the plaintiff and defendant appeared), the plaintiff's *Motion to Enter Judgment* is **ALLOWED**. I find that the defendant has failed to comply with the payment provisions of the January 24, 2024. Under the terms of the agreement the defendant acknowledged that she owed \$2,469.30 in unpaid rent. The defendant agreed to pay her share of the subsidized monthly rent (then \$243.00, now \$412.00 by the 5th of each month commencing in February 2024 and an additional \$257.00 by the 20th of each month that would be applied towards the rent arrearage.

The defendant made the required rent and arrearage payments in February and March 2024. However, the defendant has failed to make any payments due for April, May, June or July 2024. As of July 10, 2024 the rent arrearage has increased to \$3,848.30. There is no evidence that the defendant filed a RAFT application that remains pending.

Accordingly, it is **ORDERED** that judgment shall enter for the plaintiff for possession and \$3,848.30 damages and \$262.70 court costs. Execution shall issue in due course.

So entered this 12th day of July, 2024.

Jeffrey M. Winik 7/12/24
Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP001693

FREEDOM MORTGAGE CORPORATION,

Plaintiff

VS.

JAMIE L. JESKE,

Defendant

**FINDINGS OF FACT, RULINGS OF LAW AND
ORDER OF JUDGMENT**

This is a summary process action in which plaintiff Freedom Mortgage Corporation is seeking recover possession of a residential dwelling post-foreclosure from the former owner, defendant Jamie L. Jeske. The complaint does not include an account annexed. The defendant did not file a written answer or otherwise state that she had a defense to the claim for possession.

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

The defendant is the former owner of the single-family dwelling at 3 Burke Avenue, Pittsfield, Massachusetts (the "property"). She occupies the property with her two daughters, ages 10 and 6. The defendant defaulted on her mortgage loan payment obligations, and on January 29, 2024 the plaintiff foreclosed on the defendant's mortgage under the power of sale. The plaintiff was the high bidder at the foreclosure sale and has owned the property since February 16, 2024.

On March 21, 2024 the plaintiff served the defendant with a legally sufficient 72-hour notice to vacate. The defendant remains in possession of the property. I find that the plaintiff's right to possession of the property is superior to any right to possession the defendant might assert.

Accordingly, the plaintiff has established its claim for possession of the property. In the exercise of my discretion after considering the defendant's testimony pertaining to her efforts to

secure alternative housing for her family (and absent substantial opposition from the plaintiff), I shall afford the defendant until October 31, 2024 to vacate the property provided the defendant pays the plaintiff \$750.00 per month by August 5, September 5 and October 5, 2024 for her continued use and occupation of the property.

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 for possession enters for the defendant on the plaintiff's claim for possession.
2. Execution for possession shall issue on September 30, 2024. However, *the plaintiff shall not levy on the execution prior to November 1, 2024* provided the defendant pays the plaintiff \$750.00 by August 5, September 5 and October 5, 2024 for her continued use and occupation of the property. Payment shall be made by personal check, money order or bank check payable to the order of *Freedom Mortgage Company*, and delivered to the plaintiff's attorney, *Sogol I. Plagany, c/o Orleans PC, 204 2nd Avenue, Suite 320, Waltham, Massachusetts 02451*. If the defendant fails to make one or more of the required payments the plaintiff may move for immediate issuance of execution.

SO ORDERED this 12th Day of July, 2024.

Jeffrey M. Winik

Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP001486

JOHN LORD,

Plaintiff

VS.

THOMAS KIE,¹

Defendants

**FINDINGS OF FACT, RULINGS OF LAW AND
ORDER OF JUDGMENT**

This is a summary process action in which plaintiff John Lord (Lord) is seeking to recover possession of a residential dwelling from defendant Thomas Kie (Kie) upon the termination of a tenancy at will. The complaint included an account annexed for unpaid rent. Kie filed a written answer to the complaint that included a conditions-based defense and a counterclaim alleging that the plaintiff failed to pay him for work that he performed at the property.

There is no pending RAFT application. See G.L. c. 239, § 15.

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

Lord has owned the single-family dwelling at 211 Mohegan Street, Pittsfield, Massachusetts for approximately 23 years. The dwelling contains four bedrooms, one bathroom, a kitchen, living room and dining room.

Kie, together with Emily Gennari (Gennari), first occupied the 211 Mohegan Street dwelling in June 2022 subject to the terms of a one-year written lease. The monthly rent was \$900.00 due on the 14th day of each month. The lease expired in June 2023 and thereafter the

¹ With the assent of all parties prior to the commencement of trial on July 10, 2024, Emily Gennaro was dismissed as a defendant in this action. Ms. Gennari represented to the court that she has vacated and surrendered possession of the premises. Thomas Kie remains as the sole defendant.

Gennari and Kie occupied the apartment as tenants at will. The last agreed upon monthly rent was \$900.00 due by the 14th day of each month.² Prior to July 2024 Gennari vacated the premises and surrendered her tenancy rights.

I take judicial notice of the pleadings, docket entries and orders issued in the receivership civil action in the case of *City of Pittsfield Health Department v. John Lord*, 22H79CV000782 (“receivership action”).

In October 2022 the City of Pittsfield Health Department commenced the receivership action seeking an order that Lord repair the premises. On December 27, 2022 the court appointed a receiver (Whitman Properties, Inc.) who was directed to take over management of the premises and make all repairs necessary to bring the premises into compliance with the state sanitary code. The receiver performed the repair work at the property over a period of months. On October 11, 2023, acting upon the joint request of the receiver, the City of Pittsfield Health Department and Lord, the court issued an order terminating the receivership. The receiver and the City of Pittsfield Health Department represented to the court that the premises had been brought into compliance with the state sanitary code.

Based upon the joint representations of the receiver and the City of Pittsfield Health Department, I find that the premises were in substantial compliance with the state sanitary code as of October 11, 2023.

Lord reassumed control of the property on October 11, 2023. Facing financial difficulties and a looming foreclosure, Lord decided to sell the property. It is for that reason that on December 19, 2023 Lord served Kie with a legally sufficient notice to quit that terminated Kie’s tenancy as of February 1, 2024.

In January 2024 Lord signed a purchase and sale agreement to sell the 211 Mohegan Street property to Vivian Gacet. The sale agreement requires that the property be delivered at the closing free of all tenants and occupants.

² Appended to the lease is a letter dated June 2, 2022 signed by Lord and Gennari. The letter states that Gennari is Lord’s niece, and that Lord intends to sell the premises to Gennari (at a price to be determined) after Gennari’s divorce becomes final. Kie signed the letter only as a witness. Lord and Gennari never agreed to a purchase price and never entered into a purchase and sale agreement. Kie holds no enforceable rights under the terms of the appended letter.

Kie has not paid Lord rent for April, May or June 2024. The amount of rent due totals \$2,700.00. I further find that Kie was in arrears with his rent continuously since October 11, 2023.³

Lord has established his prima facie case for possession and unpaid rent subject to the Kie's defenses/counterclaims.

Kie testified that the premises contain defective conditions that remain unrepaired. However, I have determined that the premises were in substantial compliance with the state sanitary code as of October 11, 2023. Even if after October 11, 2023 there came into existence conditions that required repair, there is no evidence that Kie ever notified Lord of these conditions or that Lord knew or should have known of the conditions. Accordingly, Kie has not established a counterclaim for breach of the implied warranty of habitability or a defense to possession pursuant to G.L. c. 239, § 8A (Lord neither knew nor should have known of the existence of defective conditions subsequent to October 11, 2023 and prior to the date of which Kie was in arrears with his rent).

Kie performed repair and/or maintenance work at the property on various occasions during his tenancy. However, whatever payment arrangements may have existed between Kie and Lord with respect to maintenance/repair work were not incorporated into the written lease and were never incorporated as terms of the subsequent oral tenancy. Accordingly, Kie cannot assert a claim seeking damages for such work as a counterclaim in this summary process action. Any claim that Kie might have against Lord for the work he performed must be pursued as a civil action claim for damages based upon an allegation of breach of contract or quantum meruit.

Lord has established his claim to recover possession of the premises and for unpaid rent damages in the amount of \$2,700.00 plus costs and statutory interest.

ORDER FOR JUDGMENT

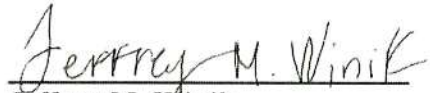
Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that:

1. Judgment enter for Plaintiff John Lord and against Defendant Thomas Kie for possession of the premises at 211 Mohegan Street, Pittsfield, Massachusetts, and unpaid rent damages in the amount of \$2,700.00 plus costs and statutory interest.

³ The plaintiff claims that the defendant has not paid rent for 21 months and that \$19,100.00 remains unpaid. However, the plaintiff is only seeking to recover damages in this action for unpaid rent from April to June 2024.

2. Judgment enters for Plaintiff John Lord on Defendant Thomas Kie's counterclaim for breach of implied warranty of habitability.
3. Defendant Thomas Kie's breach of contract/quantum meruit counterclaim is dismissed without prejudice.
4. Execution shall issue in due course.

SO ORDERED this 12th Day of July 2024.


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