

# **Western Division Housing Court** ***Unofficial Reporter of Decisions***

## **Volume 35**

Jul. 15, 2024 — Aug. 6, 2024  
*(and certain older decisions)*

## ABOUT

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

## WHO WE ARE

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

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

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

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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](http://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](mailto: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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<sup>1</sup> Caption in decision contains typo.

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**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**SARGENT WEST II APARTMENTS,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00523**

**TANISHA LITTLES,**

**Defendant.**

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**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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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,<sup>3</sup> 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.)

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



**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.**

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**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.<sup>1</sup> 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

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<sup>1</sup> The use and occupancy payment for July is due on July 5.

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.)

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.<sup>2</sup>

### 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.<sup>3</sup> 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.)

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

<sup>3</sup> 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  
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**PAPER CITY PROPERTY MANAGEMENT,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01032**

**TANYA SANTIAGO,**

**Defendant.**

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**ORDER**

This matter came before the court on July 2, 2024 for a hearing on the plaintiff's motion to enforce the parties' April 23, 2024 Agreement and to issue execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

The parties entered into an Agreement on April 23, 2024 in this nonpayment of rent case. By its terms relevant to this motion, the parties agreed that the defendant's rent/use and occupancy arrearage was \$6,100 through April 2024 and the costs were \$250.27. The defendant had a pending application for RAFT financial assistance at the time, which would pay \$3,900 toward the arrearage. She agreed to pay her ongoing use and occupancy of \$1,500 by the fifth of each month and \$200 toward the arrearage and costs by the thirtieth of each month, both beginning in May 2024.

The plaintiff reported that since the Agreement was signed, the defendant paid \$1,400 and RAFT paid \$3,900. This exhausted Ms. Santiago's eligibility for RAFT financial assistance because she had received RAFT when she moved into this apartment.<sup>1</sup> Nothing was paid for June or July. The arrearage through July is \$6,600 plus costs.

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<sup>1</sup> The defendant expects to be eligible again for RAFT financial assistance in October 2024.

The defendant offered to pay \$1,500 that day for the June use and occupancy and \$1,500 on July 5 for the July use and occupancy. She reported that two of the disability checks which her household received had stopped and she is working to try to restore them. She began a new job three weeks ago and will receive her first paycheck on July 5. She also reported that there continue to be problems with the conditions in her apartment.

### Orders

As stated at the hearing:

1. **The plaintiff's motion is continued for further hearing on July 9, 2024 at 9:00 a.m.**
2. The defendant will pay the use and occupancy for June (\$1,500) and July (\$1,500) no later than July 5, 2024.
  - a. The parties will report on such payments at the hearing.
3. The defendant will bring a written list of all repairs which are needed in her apartment to the hearing to give to the landlord.
  - a. The plaintiff will report on the repairs and exterminations which have been done at the defendant's apartment since the Agreement was signed.

July 5, 2024

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



THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS

HOUSING COURT DEPARTMENT  
CENTRAL DIVISION  
NO. 22H79SP001616

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff

v.

MARNIQUE T. RIVERA

Defendants

**Order Dismissing Defendant's Appeal**

This matter came before the court on July 3, 2024 for a hearing on the plaintiff's Motion to Dismiss Appeal. The plaintiff's attorney and the defendant (self-represented) appeared at the hearing.

On January 22, 2024 judgment entered in this post-foreclosure eviction action in favor of the plaintiff and against the defendant (former owner) on the plaintiff's claim for possession of a residential dwelling occupied by the defendant. The defendant filed a notice of appeal. She has remained in possession of the dwelling.

On March 28, 2024 the court entered an order pursuant to G.L. c. 239, §§ 5 and 6 that (a) waived the appeal bond based upon the defendant's indigency, and (b) ordered the defendant to make monthly use and occupancy payments to the plaintiff of \$1,000.00 for her continued occupancy of the dwelling commencing on the last day of April 2024 (for the month of April) and on the last day of each month thereafter during the pendency of the appeal.<sup>1</sup> The payment order states that:

"If during the pendency of this appeal [the defendant] fails to make the required monthly payments for her use and occupancy of the property as is

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<sup>1</sup> The court also ruled that the defendant was not entitled to waiver or payment by the Commonwealth of the use and occupancy payments pursuant to G.L. 239, § 5(e) as "*other costs or fees*" as that term is used in G.L. c. 261, § 27C. The Supreme Judicial Court has since adopted with this position. *Frechette v. D'Andrea*, 494 Mass. 167 (2024).

set forth in this order, then upon motion the plaintiff may request that [the defendant's] appeal be dismissed, and that execution for possession issue."

On April 5, 2024 the defendant sought appellate review of the March 28, 2024 order by a single justice of the Appeals Court.

In an order dated April 26, 2024 (No. 2024-J-0209), the single justice affirmed the court's March 28, 2024 use and occupancy order; and citing to *Frechette v. D'Andrea*, 494 Mass. 167 (2024) the single justice ruled that Rivera was not entitled to waiver or payment by the Commonwealth of the use and occupancy payments pursuant to G.L. 239, § 5(e) as "*other costs or fees*" as that term is used in G.L. c. 261, § 27C. The single justice stated:

"The defendant must comply with the requirements of the Housing Court judge's 3/28/24 order within five days of her receipt of notice of this decision or risk the dismissal of her appeal. See G. L. c. 239, s. 5(h)."

As of the date of this order, July 8, 2024, the defendant has not made any of the use and occupancy payments required under the provisions of the March 28, 2024 order (April, May and June 2024 = \$3,000.00 currently due).

I rule the defendant's failure to make the required monthly use and occupancy payments constitutes a violation of a material condition of the March 28, 2024 bond waiver and interim payment order.

I will afford the defendant one opportunity to cure her default. The defendant shall have until **4:00 p.m. on Wednesday, July 17, 2024** to tender payment to the plaintiff in the amount of \$3,000.00 (total amount due for April, May and June 2024 use and occupancy) by **bank check or a money order (not a personal check)** payable to **FEDERAL NATIONAL MORTGAGE ASSOCIATION**. The payment must be delivered to the plaintiff's attorney, **Lucas P. Marchifrazier, Esq.** at his office (**Harmon Law Offices, P.C., 150 California Street, Newton, Massachusetts 02458**).

Attorney Marchifrazier is directed to file an affidavit with the court by July 23, 2024 stating whether or not he received the required \$3,000.00 payment from the defendant by July 17, 2024.

If Attorney Marchifrazier states in his affidavit that he received the payment from the defendant, then the plaintiff's *Motion to Dismiss Appeal* shall be **DENIED** without further hearing.

**However**, if Attorney *Marchifrazier* states in his affidavit that he did not receive the required payment from the defendant, then in accordance with G.L. c. 239, § 5(h), the plaintiff's

*Motion to Dismiss Appeal* shall be **ALLOWED** without further hearing, and the following **ORDER** shall be entered on the docket:

“It is **ORDERED** that the defendant’s appeal from the judgment for possession entered on January 22, 2024 be and hereby is **DISMISSED**, and execution for possession shall issue on August 1, 2024.”

**SO ORDERED** this 8th day of July, 2023.

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

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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HOUSING MANAGEMENT RESOURCES,  
INC., AS LESSOR & HC BROOKINGS, LLC,  
AS OWNER,

Plaintiff,

-v.-

DOCKET NO. 23SP02571

JASMINE ANDREWS,

Defendant.

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ORDER

This matter came before the court on July 1, 2024 for a hearing on the plaintiff's motion to amend the name of the lessor, enter judgment and issue execution.<sup>1</sup> The plaintiff appeared through its attorney with property manager Yesenia Valentin. The defendant appeared and was self-represented. Her mother Tamika Smith appeared with her.

The parties entered into an Agreement on September 22, 2023 in this nonpayment of rent case. By its terms relevant to this motion, the parties agreed that the defendant's rent/use and occupancy arrearage was \$1,538 through September 2023 and the costs were \$212.25. The defendant had a pending application for RAFT financial assistance at the time, which would pay \$780 toward the arrearage. She agreed to pay her ongoing use and occupancy of \$1,058 and \$80 toward the balance in two installments each month beginning in October 2023.

The plaintiff reported that the defendant has not paid the ongoing use and occupancy nor the arrearage payments as she agreed to do. The arrearage through July is \$10,310.25.

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<sup>1</sup> The plaintiff also filed two earlier motions, to amend the name of the lessor (docket #8) and for entry of judgment and issuance of execution (docket #7). The court deems that the substance of both motions is included in the motion now before the court (docket #10).



The court finds that the defendant is in substantial breach of material terms of the September 22, 2023 Agreement of the parties. However, judgment does not enter at this time because the defendant has a pending application for RAFT financial assistance which she filed in June. G.L. c. 239 §15. The plaintiff has submitted its documentation to Wayfinders for the defendant's application. The parties agree that the maximum amount that RAFT could pay at this time is \$2,000. They expect to receive a decision from Wayfinders by the end of July.

Because there will be a balance still owed even if RAFT pays \$2,000 on the defendant's behalf, Ms. Andrews will need to propose a payment plan to pay the balance as well as her ongoing rent/use and occupancy. She reported that she is working with the Tenancy Preservation Program (TPP) to assist her to find additional resources to help her pay the rent. She had applied for subsidized housing when she moved into the property, but she was over-income at the time because of her wages.

#### 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. At the hearing, the defendant will report on:
  - a. The status of the her RAFT application,
  - b. Any payments she makes in July and August,
  - c. Her work with TPP to obtain additional resources to help her pay the rent/use and occupancy, and
  - d. A realistic repayment plan for the balance still owed.
3. The court will address the portion of the plaintiff's motion to amend the name of the lessor at the August 5 hearing.
4. A representative of TPP is asked to be present for the hearing on August 5, 2024.

July 8, 2024

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

CC: Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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JOSE LOPEZ,

Plaintiff,

-v.-

DOCKET NO. 24SP00466

MARITZA MORALES,

Defendant.

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ORDER

This matter came before the court on July 1, 2024 for a hearing on the defendant's motion to stop the move-out which the defendant thought was scheduled for that day. Both parties appeared and were self-represented.

The defendant received a notice from the deputy sheriff dated June 24, 2024. It was *not* a forty-eight hour notice that a move-out had been scheduled, but rather a courtesy notice that the deputy sheriff would serve a forty-eight notice if the tenant did not move by July 1. As such, there is no move-out to stop at this time.

The defendant also filed an earlier motion to remove the default on the grounds that she was denied shelter and to dismiss on the grounds that she needed more time to move (docket #11). A review of the docket shows that there is no default in this case. Both parties were present for trial on April 11, 2024. After trial, the judge ordered judgment to enter in this non-payment of rent case for the plaintiff for possession of the subject rental premises and \$8,695 in unpaid rent/use and occupancy through April 2024 with \$205 in costs, all by agreement of the parties. Execution issued on April 29, 2024 on the plaintiff's written request. The plaintiff is aware that there is a deadline by which he must use the execution to move the defendant out of

the subject rental premises unless it is stayed by order of the court or by written agreement of the parties filed with the court.

The arrearage through July 2024 is \$13,085. The defendant reported that she had applied for RAFT but the landlord did not accept it. The hearing was recessed for the parties to meet with a housing specialist of this court who contacted Wayfinders. When the hearing resumed the housing specialist reported that the defendant is eligible for \$4,200 in RAFT financial assistance at this time. She has a pending RAFT application (# [REDACTED]) for moving expenses, and not for the arrearage at her current apartment. Wayfinders confirmed that an earlier RAFT application was canceled because the landlord did not submit his documentation. The defendant agrees that the maximum that RAFT could pay is much less than what she owes to the landlord. She is looking for a new apartment, but she has not found one to date.

There are no grounds before the court to dismiss the case. The court deems the defendant's motion to be a motion for a stay of the execution. She is not eligible for a stay pursuant to G.L. c. 239 §9 because this is a nonpayment of rent case and there is a significant arrearage. The defendant did not present grounds that would give rise to an equitable stay of the execution pursuant to G.L. c. 239 §10. However, she is entitled to a stay of the execution while her application for RAFT financial assistance to move is pending pursuant to G.L. c. 239 §15. Once that application is approved or denied, the stay of the execution will be lifted and the plaintiff may proceed to serve a forty-eight hour notice to move the defendant out of the apartment if she has not moved voluntarily.

### Orders

After hearing, the following orders will enter:

1. Levy on (use of) the execution is stayed based on the defendant's pending application for RAFT financial assistance for moving expenses pursuant to G.L. c. 239 §15. When Wayfinders makes a decision on the application, the stay will be lifted and the plaintiff may proceed with a levy as he sees fit.
2. This stay is ordered within the meaning of G.L. c. 235 §23.
3. Because the plaintiff has no access to the defendant's application for RAFT for moving expenses, **the court schedules this case for review on July 22, 2024 at 9:00 a.m.**

- a. At the review, the defendant will report on the status of her RAFT application and the court will address the issue of whether the stay should be lifted at that time.

July 8, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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

**Plaintiff,**

**-v.-**

**DOCKET NO. 24CV00430**

**KAMEL ARNAOUT,**

**Defendant.**

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**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.<sup>1</sup> The court agrees with the plaintiff that

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<sup>1</sup> 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 leave 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**

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**37 CLINTON REALTY LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP04665**

**LATASHA HINTON & DAVID COLLINS,**

**Defendant.**

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**ORDER**

This matter came before the court on July 9, 2024 for a hearing on the plaintiff's motion to levy on the execution and for a review of the parties' May 28, 2024 Agreement. The plaintiff appeared through its attorney. Both defendants appeared and were self-represented. Janis Luna of Wayfinders joined the hearing to explain the defendants' eligibility for RAFT at this time.

At the hearing the plaintiff reported that the motion to levy on the execution was moot and the scheduled move-out had been cancelled because the defendants applied for RAFT financial assistance. The case proceeded with the review of the Agreement.<sup>1</sup> In this no-fault eviction case, the plaintiff seeks to recover possession of the subject rental premises and unpaid rent/use and occupancy. The monthly rent is \$950. Judgment entered on May 1, 2024 for possession and \$6,000 in unpaid rent/use and occupancy and \$255.17 in costs. Execution was stayed to May 31, 2024. The parties entered into the May 28, 2024 Agreement giving the tenants another chance to become current in the rent/use and occupancy.

The parties agree that the defendants paid the June use and occupancy. Ms. Hinton reported that they are not able to pay the July use and occupancy when it is due on July 15. Mr.

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<sup>1</sup>This is the third Agreement between the parties in this case. They entered into other substantive Agreements on December 19, 2023 and February 28, 2024 in addition to the one entered into on May 28, 2024.

Collins suffered a stroke in April and is not working at this time, so that the household income has been reduced. However, they promised that they could pay the July use and occupancy in weekly installments.

The defendants applied for RAFT financial assistance. Ms. Luna of Wayfinders explained that the defendants used much of their eligibility to pay a utility arrearage but they remain eligible for \$2,852.77 for their rental arrearage. The plaintiff is willing to accept this money toward the arrearage, but the defendants need to make a payment plan for the remaining balance. They could not agree on a payment plan.

The defendants reported that they could pay \$250 each week through September 3, 2024. This would be applied to the \$950 monthly use and occupancy and \$50 toward the arrearage. Mr. Collins has a doctor's appointment on September 3 when he hopes to be cleared to return to work. He offered to pay the \$950 monthly use and occupancy in weekly installments and \$200 per week toward the arrearage beginning September 11, 2024 and continuing each week until the arrearage is paid in full. In light of all of the circumstances of this case, the court takes the unusual step of ordering this payment plan for ongoing use and occupancy and the arrearage.

### Orders

The following orders will enter:

1. The defendants will comply with the payment plan and the plaintiff will accept the payment plan as outlined above. This will satisfy the requirement of a repayment plan for the balance that will remain after RAFT is paid on behalf of the defendants.
2. All parties will complete the RAFT application process as quickly as possible.
3. **The case is scheduled for further review on September 10, 2024 at 9:00 a.m.**
  - a. The parties will report on the payments made since the July 9, 2024 hearing, the status of the RAFT application, and Mr. Collins' ability to return to work as planned.
4. The execution is stayed pending compliance with this order. This stay 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  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**EDWIN TORRES,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SU00004**

**MARGUERITE SHERMAN,**

**Defendant.**

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**ORDER**

This matter came before the court on July 12, 2024 for a payment hearing in the above-captioned supplementary process case. It is based on the judgment in a summary process (eviction) case in this court between the parties (No. 23SP02054). Both parties appeared and were self-represented. Before the hearing, the defendant submitted a financial statement and medical and employer records documenting why she did not comply with the court's March 4, 2024 payment order in this case.

A default judgment entered on June 21, 2023 in the underlying eviction case granting the plaintiff-landlord possession and \$3,900 in unpaid rent/use and occupancy with \$185.58 costs plus interest.<sup>1</sup> By order dated March 4, 2024 a judge of this court ordered the defendant-tenant to pay \$150 toward the judgment each month beginning in April 2024. The defendant has not paid anything toward the judgment. A capias issued on May 20, 2024.

The defendant testified that she was out of work because of a medical condition. She submitted documentation from her employer and medical providers showing that she was on Family Medical Leave and then unpaid supplemental leave (SEBAC) (D Exh). She was cleared to return to work on July 1, 2024 on a limited basis and then to return to full work on July 6. She

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<sup>1</sup> The defendant reported that she does not wish to take any action to amend the judgment in the eviction case.

reported that she has done so and expects to receive her first paycheck on July 25, 2024. She offered to begin paying the \$150 as ordered by the judge on March 4.

The plaintiff objects to such a payment plan.

Based on a review of the defendant's financial statement and the portion of her wages which is exempt from a payment order pursuant to G.L. c. 224 §16 and c. 235 §34, the court finds that she is financially able to pay the \$150 per month which the judge ordered on March 4, 2024 and which she now agrees to pay.

### **Order**

After hearing, the following orders will enter:

1. Beginning on August 15, 2024 and continuing on the 15<sup>th</sup> of each month until the judgment is paid in full, the defendant will pay the plaintiff \$150 in certified funds.
2. The plaintiff will return the capias which issued on May 20, 2024 to the court immediately.

July 12, 2024

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



CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Franklin, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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TIA L. BELIVEAU & KEVIN C. BELIVEAU,  
Plaintiff,

-v.-

DOCKET NO. 24CV00483

NATE EVENS & TOM SMITH,

Defendant.

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ORDER

This matter came before the court on July 1, 2024 for a hearing on the plaintiff's request for an emergency order. All parties appeared and were self-represented. The record was kept open for Mr. Beliveau and Mr. Evens to submit documentation to support their positions.

Nate Evens is the owner of the subject rental premises, a single family home located at 368 Wilson Hill Road in Colrain, Massachusetts. Kevin C. Beliveau lives there pursuant to an oral tenancy at will agreement with a monthly rent of \$800.<sup>1</sup> However, Mr. Evens and Tom Smith entered into a lease for the house which began on May 14, 2019 (Exh 2). After the first year, the lease renewed automatically on a month-to-month basis. There is no rent amount in the lease. Thomas Smith is listed as the only member of the household in the lease. Section 3 of the lease, Use and Occupancy of Contract Unit provides:

- a. The family must use the contract unit for residence by the family. The unit must be the family's only residence.

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<sup>1</sup> Mr. Beliveau testified that he pays the rent each month to the Town of Colrain for back taxes owed by Mr. Evens. Mr. Evens disputed that there was such a lien on his property. However, after the hearing the plaintiff filed a copy of a September 21, 2022 letter from an attorney representing the Town advising him that the Town was intercepting the rent payments for payment of delinquent property taxes pursuant to G.L. c. 60 §53 and instructing him to pay his rent to the Town beginning in November 2022 (Exh 1). The plaintiff also submitted a print out of the tax account for the property since the taking in 2021. It shows that he has been paying the \$800 rent each month to the Town (with some deductions for repairs) (Exh 1).

- b. The family must not sublease or let the unit.
- c. The family must not assign the lease or transfer the unit.

Despite this language in the lease, Mr. Smith invited Mr. Beliveau to move into the house in 2020, saying, “Why don’t you stay with me?” Mr. Beliveau testified that Mr. Smith told him that he would only be at the house in the summers because he lived in Florida the rest of the year. When he is at the Colrain house, he stays in the basement.

The parties do not agree about how often Mr. Smith has stayed at the house since 2020. He testified that he has been there every summer except 2023. Mr. Beliveau testified that he has not stayed there since 2020 when they lived as “roommates”. What seems to have changed this year is that Mr. Beliveau has moved his daughter and grandchild into the house. Mr. Evens testified that this was without his permission, although the parties have an oral tenancy at will so there is no term of Mr. Beliveau’s tenancy governing who may live at the house.<sup>2</sup>

The defendants have created an untenable problem. Mr. Evens and Mr. Smith have a tenancy, albeit an unusual one. In apparent violation of the terms of his lease, Mr. Smith invited Mr. Beliveau to move in. Mr. Beliveau paid rent to Mr. Evens until he was notified to pay it to the Town of Colrain based on the tax taking of the property. The testimony at the hearing showed that Mr. Beliveau anticipated that he would be sharing the house with Mr. Smith for some months of the year and that in the beginning they lived as “roommates”. Mr. Evens testified that he now wants to “get control” of the house by having Mr. Smith move in.

The relief the plaintiff seeks is twofold, that Mr. Smith be ordered not to occupy the house and that Mr. Evens be ordered not to come to the property unannounced.

The court cannot grant the first request. Based on the lease submitted and the testimony of the parties, Mr. Smith has a tenancy at the subject property. While he may be in breach of his lease, the court cannot order him not to occupy the house under the arrangement that was in place when Mr. Beliveau first occupied the house himself. With respect to this first request the court finds that injunctive relief cannot enter because the plaintiff has not established a substantial likelihood of success on the merits of this part of the claim.

With respect to the second request, Mr. Beliveau is a tenant of Mr. Evens, because he has paid him rent and now pays rent toward the plaintiff’s tax delinquency as ordered by the Town.

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<sup>2</sup> This is unlike Mr. Smith’s lease with Mr. Evens which prohibits Mr. Smith from having anyone other than himself reside at the premises without the owner’s prior written approval.

As the landlord, Mr. Evens cannot interfere with Mr. Beliveau's (or Mr. Smith's) quiet enjoyment of the premises.

The court finds that there is a substantial likelihood of success on the plaintiff's claim based on the covenant of quiet enjoyment in this regard. The burden on Mr. Evens if injunctive relief is granted is small in light of the fact that he has not come to the property in recent years until the incident involving Mr. Smith. There was no testimony about why Mr. Evens would need to come to the property at this time since Mr. Beliveau makes minor repairs, which are deducted from the rent by the Town. The harm to the plaintiff if injunctive relief were not granted is significant because he has the right to be free of interference by the landlord.

### **Order**

After hearing and a review of the submissions of both parties, the following orders will enter:

1. The defendant Nate Evens will not enter onto the subject property located at 368 Wilson Hill Road, Colrain, Massachusetts without giving the plaintiff Kevin C. Beliveau twenty-four hours written notice. Such written notice may be in the form of text, email or notice.
2. The remainder of the plaintiff's request for injunctive relief is DENIED.
3. This order enters as an injunction only. Nothing in this order should be construed to limit the parties' rights to further legal action on the merits.

The court waives the \$90 injunctive relief fee provided by G.L. c. 262 §4 in this case.

July 15, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**HIGH APARTMENTS, LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00857**

**MIA RODRIGUEZ & JOEL SAXON,**

**Defendant.**

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**ORDER**

This matter came before the court on July 9, 2024 for a hearing on the plaintiff's motion to levy (use) the execution. The plaintiff appeared through its attorney. When the case was called for hearing, neither defendant appeared and the motion was allowed without opposition. Later defendant Mia Rodriguez appeared, but not defendant Joel Saxon. Both are self-represented. The plaintiff's attorney was still present and the court re-heard the motion.

In this nonpayment of rent eviction case, the plaintiff-landlord seeks to recover possession of the subject rental premises and unpaid rent/use and occupancy. Judgment entered on April 16, 2024 for the plaintiff for possession and \$1,034 in unpaid rent/use and occupancy through April 2024 with costs and interest. The execution issued on April 30, 2024 on the plaintiff's written request. The plaintiff's constable served the defendants with a forty-eight hour notice that they would be moved out of the apartment on May 23, 2024 at 1:00 p.m. Ms. Rodriguez filed a motion to stop the move-out. A judge of this court issued an order on May 21, 2024 stopping the move-out and staying the execution through August 2024 on condition that the defendant pay the \$840 cancellation fee, pay the monthly use and occupancy of \$945 by the tenth of each month beginning in June 2024, and apply for her remaining RAFT financial



assistance by July 5, 2024 (\$2,390). The arrearage at the time of the order was \$1,979 through May, 2024 with costs.

The defendant paid the cancellation fee, but she paid only \$200 toward the use and occupancy for June and \$200 for July. She did not apply for RAFT. Ms. Rodriguez reported that she thought she was supposed to wait until July 10 to apply for RAFT for some reason. She also reported that she is having a difficult time paying the rent because she works only part-time. She plans to return to work full-time because she has received child-care.

The defendant's arrearage is now \$3,469 through July 2024 plus costs.

### **Findings and Orders**

After hearing, the court finds that the defendants did not comply with the judge's May 21, 2024 order staying the execution through August. The court finds that the defendants are in substantial breach of two material terms of the order, payment of the June and July use and occupancy and applying for RAFT.

1. Therefore, the stay of the execution through August 2024 is lifted.
2. The plaintiff's motion to levy the execution is **ALLOWED**. The plaintiff may proceed with the execution process.
3. If the defendant applies for RAFT and can present a realistic payment plan to pay the balance of the arrearage, she may file a motion to stay the execution pursuant to G.L. c. 239 §15. The statute did not apply at the time of the hearing because there was no RAFT application pending.
4. The court notes that the execution issued on April 30, 2024 and it is valid for ninety days for the plaintiff to use it to move the tenant out of the apartment. The deadline is approaching quickly. However, the stay of the execution ordered by the judge on May 21, 2024, was a court-ordered stay within the meaning of G.L. c. 235 §23. As such, the order tolled the running of the ninety-day period. Now that the stay has been lifted by this order, the ninety-day period begins to run again.
5. If the plaintiff needs to request a new execution, it may do so by written request *before* the current execution expires. The request does not need to be filed by motion in this case.

July 15, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**PAPER CITY PROPERTY MANAGEMENT,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00915**

**HENRY GARCIA,**

**Defendant.**

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**ORDER**

This matter came before the court on July 9, 2024 for a hearing on the plaintiff's motion to enforce the parties' agreement and to enter judgment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. The case was recessed for Leonor Pena of Wayfinders to join the hearing to report on the status of the defendant's RAFT applications.

In this non-payment of rent case, the plaintiff-landlord seeks to recover possession of the subject rental premises and unpaid rent/use and occupancy. The tenancy is subsidized through the Section 8 Housing Choice Voucher Program administered by the Springfield Housing Authority. The parties entered into an Agreement on April 25, 2024. By its terms relevant to the motion now before the court, the parties agreed that the defendant owed \$7,064 through April 2024. The defendant had a pending application for RAFT financial assistance. Both parties agreed to submit their required documents promptly. If RAFT did not cover the entire arrearage, the parties agreed on a payment plan beginning in May 2024. The defendant agreed to pay \$500 on the 10<sup>th</sup> and the 24<sup>th</sup> of each month, to be applied to the tenant's portion of the current month's use and occupancy and the balance to the arrearage. The case would be dismissed when the defendant reached a zero balance. If the defendant did not comply with the terms of the Agreement, the plaintiff could file a motion to enter judgment.

The plaintiff has filed such a motion. The defendant has not made any of the payments beginning in May and there has been no payment from RAFT. The plaintiff reported that the arrearage through July 2024 is \$10,064 (P Exh); the defendant believes it to be \$7,996. The defendant did not comply with paragraph 4 of the parties' Agreement. He explained that he lost his car and he has been unemployed, although he is now receiving income.

Ms. Pena of Wayfinders joined the hearing when it reconvened. She reported that a RAFT application filed on June 12, 2024 timed out on July 4 because the landlord had not submitted its required documents. Mr. Garcia filed a new RAFT application on July 7. It is waiting for assignment to a case worker. Ms. Pena reported that Mr. Garcia could be eligible to receive up to \$7,000.

Despite both parties' agreement on April 25, 2024 to submit all documentation to Wayfinders promptly, the landlord did not do so. As a result the defendant's application for RAFT financial assistance timed out. The parties' Agreement must be enforced against both parties. Recently, the defendant has applied for RAFT financial assistance again and the application is pending. Pursuant to G.L. c. 239 §15 under the circumstances of this case, the court cannot enter judgment at this time.

### Order

After hearing, the following orders will enter:

1. The plaintiff's motion to enter judgment is **DENIED** without prejudice to refile when the plaintiff has complied with its obligations under the April 25, 2024 Agreement if the defendant has not come into compliance by then.
2. Both parties will complete their portion of the RAFT application submitted to Wayfinders on July 7, 2024. This includes, but is not limited to, the submission of all required documents promptly.
3. Because the arrearage through July is more than the maximum amount that RAFT could pay, the defendant will propose a realistic payment plan for the balance that would remain after a RAFT payment. The plaintiff will consider any such proposed payment plan in good faith.

July 15, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**PAPER CITY PROPERTY MANAGEMENT,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01032**

**TANYA SANTIAGO,**

**Defendant.**

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**ORDER**

This matter came before the court on July 16, 2024 for a continued hearing on the plaintiff's motion to enforce the parties' April 23, 2024 Agreement and to issue execution. The plaintiff appeared through its attorney. The defendant did not appear. She is self-represented.

The court outlined the chronology of this case in its July 5, 2024 order. It is incorporated here. The parties were before the court on July 2, 2024 for the first hearing on this motion. As stated at that hearing, the court ordered that the defendant pay the use and occupancy for June (\$1,500) and July (\$1,500) no later than July 5, 2024, as she offered to do, and that the defendant bring a written list of all repairs which are needed in her apartment hearing to give to the landlord at the continued hearing on July 9, 2024. That hearing was continued to today.

The plaintiff now reports that the defendant paid \$1,600 on July 9, 2024 instead of the \$3,000 she offered to pay and was ordered to pay by July 5. After crediting that payment, the arrearage through July is \$5,275 with costs of \$217.25. As discussed at the July 2 hearing, the defendant has exhausted her RAFT financial assistance. She could apply next in October 2024. There is no RAFT application pending.

The defendant did not give management a list of any needed repairs.

### Finding and Order

The court finds that the defendant is in substantial violation of material terms of the April 23, 2024 Agreement and the court's July 5, 2024 order. Therefore, the plaintiff's motion is **ALLOWED**. Judgment will enter for the plaintiff for possession and \$5,275 with costs of \$217.25. Execution will issue on the plaintiff's written application ten days after the date that judgment enters.

While the defendant is not in compliance with the parties' Agreement, she has made some payments during this time. With the help of RAFT she has reduced the arrearage by a small amount. The court urges her to continue her efforts. If she can come into compliance, she may file and serve a motion to stay the execution.

July 16, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**GMC PROPERTY MANAGEMENT LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP05190**

**CARMEN RIVERA,**

**Defendant.**

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**ORDER**

This matter came before the court on July 16, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for July 18, 2024 at 2:30 p.m. The plaintiff appeared through its attorney with the property manager. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT availability.

This is a no fault eviction case in which the plaintiff seeks to recover possession of the subject rental premises and the unpaid tenant's share of the rent/use and occupancy. The tenant has a Section 8 Housing Choice Voucher. Her share of the monthly rent is \$128. The parties entered into an Agreement on December 26, 2023. On April 25, 2024 the plaintiff filed a motion to enforce the Agreement and issue execution on the grounds that the defendant had not complied with the terms as she had agreed. After hearing, a judge of this court issued an order that judgment would enter. Judgment entered on May 21, 2024 for possession and \$846 in unpaid rent/use and occupancy with costs and interest. Execution issued on July 3, 2024. The plaintiff served by constable or deputy sheriff a forty-eight hour notice that the execution would be used to move the tenant out of the premises on July 18, 2024 a 2:30 p.m.

At the time of the hearing, the arrearage is \$1,363.54, including costs.

The defendant reported that her mother lives with her. Her mother is ill [REDACTED]. Ms. Rivera does not have any income because she cares for her mother. However, her mother has income. She has been looking for a new apartment, but she has not found anything to date. She reported that she needs an additional two months to relocate. She could not apply for RAFT financial assistance because she does not have a birth certificate and her ID has expired. Ms. Pena joined the hearing and reported that Ms. Rivera was approved for and received RAFT in September 2022, but there has not been any RAFT application since that time. She discussed alternative forms of identification Ms. Rivera could try to use to support a RAFT application or one filed by her mother. Because the tenancy is subsidized, if she were eligible for RAFT financial assistance, she would need to demonstrate good cause for not paying her portion of the Section 8 rent and then RAFT could pay a maximum of six months of the tenant's share of the rent. This would leave a balance still owed.

The landlord strenuously objects to any further stay of the execution. However, the court grants Ms. Rivera one final opportunity to apply for RAFT and to propose a realistic payment plan for the balance to preserve her Section 8 tenancy. The court stops the move-out scheduled for July 18, 2024 and grants this stay on equitable grounds pursuant to G.L. c. 239 §10 in light of the defendant's mother's disability. The defendant is responsible to pay the cancellation fee of \$750.

### Orders

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

1. The move-out scheduled for July 18, 2024 at 2:30 p.m. is **STOPPED**. The plaintiff's attorney will notify the constable or deputy sheriff of this order forthwith.
2. The execution is further stayed for thirty days from the date of this order to allow the defendant the opportunity to apply for RAFT financial assistance. This will necessitate the defendant's submitting to the plaintiff a realistic payment plan for the balance of the arrearage.
3. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.
4. The defendant will pay her portion of the rent/use and occupancy for August when it becomes due (currently \$128) and the cancellation fee of \$750 by August 15, 2024. If

the defendant truly has no income, she will need to rely on her mother's income to make these payments.

5. If the defendant finds a new apartment within the next thirty days, she will notify the property manager immediately with the date that she plans to move.

July 17, 2024

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

cf

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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MICHELE PROVOST,

Plaintiff,

-v.-

DOCKET NO. 24CV00536

TIMOTHY C. HEALY,

Defendant.

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ORDER

This matter came before the court on July 16, 2024 for a hearing on the plaintiff's request for an emergency order. The plaintiff appeared and was self-represented. The defendant did not appear after service.

The plaintiff testified that she rents a room from the defendant in his home at 550 South Quarter Road in Russell, Massachusetts. The room has its own entrance and she pays \$600 in monthly rent. Since the beginning of the tenancy, the rent includes wifi which the defendant needs for her phone, television and internet. She plans to move out of the property on August 4, 2024.

She asks the court to order the landlord to restore her wifi. She believes that he changed the password so that she cannot access it. She seeks a further order that the air conditioning be restored, that he and his agents not enter her room without permission, and that any belongings which were taken or moved be returned.

A landlord has the responsibility to ensure a tenant's quiet enjoyment of the premises during the tenancy. The court grants the requested relief and finds that the plaintiff has a substantial likelihood of prevailing on her claim for quiet enjoyment of the premises for the short time she intends to remain there. The court further finds that the harm to the plaintiff if injunctive relief were not issued outweighs the potential harm to the defendant if injunctive relief



is granted because what she seeks falls within his existing responsibilities as a landlord of residential property. Finally, the public interest requires the enforcement of the landlord-tenant laws. G.L. c. 186 §14.

Money damages for any violation of the covenant of quiet enjoyment cannot be granted at this stage of the case, which only addresses emergency injunctive relief. The plaintiff may pursue a claim for such damages later in the case as she sees fit.

The Housing Court does not have jurisdiction in domestic violence (G.L. c. 209A) and harassment prevention (G.L. c. 258E) cases. The plaintiff would have to seek such relief in the District Court if she wishes to do so.

### **Order**

After hearing, and without opposition, the following orders will enter:

1. The defendant, Timothy C. Healy, will not interfere with the quiet enjoyment of the plaintiff in the time that she remains a tenant at 550 South Quarter Road, Russell, Massachusetts.
2. The defendant, Timothy C. Healy, will restore the wifi service for the plaintiff to use immediately. If this requires the provision of a new password he will do so immediately. If he changes the password again before August 4, 2024, he will give the new password to the plaintiff immediately.
3. The defendant, Timothy C. Healy, will restore the air conditioning to the plaintiff's room immediately.
4. The defendant, Timothy C. Healy, and his agents will refrain from entering the plaintiff's room without her express permission.
5. The defendant, Timothy C. Healy, will return any of the plaintiff's belongings which he or his agents removed from her room or their usual place of storage, including but not limited to the kitchen, immediately.
6. The defendant, Timothy C. Healy, will not interfere with the plaintiff or her agents as she moves out of the premises on or before August 4, 2024.

The court waives the \$90 statutory fee in this case.

July 17, 2024

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



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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EVELYN TRINADAD,

Plaintiff,

-v.-

DOCKET NO. 24CV00520

KELLY MORALES,

Defendant.

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ORDER

This matter came before the court on July 15 and 16, 2024 for hearing on the plaintiff's request for an emergency order. Both parties appeared and were self-represented.

The plaintiff is a tenant at 448 Newbury Street, 3<sup>rd</sup> floor in Springfield, Massachusetts. The defendant is the owner of the property and lives in the 2<sup>nd</sup> floor apartment there. Ms. Trinidad filed this case seeking to have the landlord repair the electrical service because, for the past month, the circuit breaker is tripped when she plugs in her air conditioner. This leaves one-half of her apartment without electricity. The tenant does not have access to the locked basement to reset the breaker when this happens. She testified that she has had trouble getting in touch with the landlord to have her go into the locked basement to reset the breaker.

Ms. Trinidad had the City of Springfield Code Enforcement inspector do an inspection on July 9, 2024. He referred the matter to the electrical inspector who did an inspection on July 12, 2024. Both inspectors issued reports citing the owner for violations and ordering her to make corrections. The Code Enforcement inspector cited noncompliant outlets throughout the house and work that had been done on the electric panels without a permit (Exh 1). The electrical inspector ordered the owner to change out the breaker that keeps tripping, to make sure that all outlets are compliant, and to address the electric panels that were installed without a permit (Exh

2). Both inspectors gave the owner thirty days to complete the work. He advised the tenant to avoid using a particular outlet.

Ms. Morales denied that she had been unresponsive to the tenant's requests to reset the breaker. She keeps the basement locked because she has her own personal things there and she does not wish to give the tenant a key. This is her choice, but if the tenant does not have access to the basement to reset the breaker herself, Ms. Morales will have to make arrangements to reset it as needed without undue delay. At the time of the hearings, the electricity had remained on. The defendant made arrangements for an electrician to come to the property on July 17, 2024 to address and repair the problem.

### **Order**

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

1. The defendant will arrange for a licensed electrician to come to the property on July 17, 2024 at 8:00 a.m. or shortly thereafter to inspect the electrical problems cited by the City of Springfield and to repair them so that the plaintiff's air conditioner does not trip the circuit breaker when in use.
2. The plaintiff will allow access to the electrician for these purposes.
3. The defendant will have her worker(s) pull all required permits.
4. Pending the completion of the electrical work, the defendant will be available on one hour's notice from the plaintiff that the circuit breaker needs to be reset. Such notice will be provided by text.
5. The defendant will comply in full with all orders of the City of Springfield Code Enforcement and electrical inspectors.

The court waives the \$90 injunctive relief fee in this case.

July 17, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**18 KNOLLWOOD DRIVE LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00740**

**DANA RABECKI,**

**Defendant.**

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**ORDER**

This matter came before the court on July 16, 2024 for a hearing on the plaintiff's motion for authorization to use the execution and to amend the judgment and execution and the defendant's motion to amend the agreement for a further stay of the execution. The plaintiff appeared through its attorney with the manager. The defendant was not present because he is hospitalized. His daughter Danielle Rabecki was present and spoke on behalf of the family.

The parties entered into an agreement on April 30, 2024. By its terms judgment entered and execution issued, but the execution was stayed until July 1, 2024. If the defendant moved by then as he agreed, the plaintiff would waive the rent/use and occupancy arrearage. In late June Mr. Rabecki notified the plaintiff that he would not be able to move as he planned. His daughter reported that she had been staying with her father at times because he was ill, but he is in the hospital and is now unconscious and in critical condition. She would like to move his belongings out of the apartment, but will need thirty days to do so. The landlord agreed to this extension, but asks that the judgment be amended to reflect that the arrearage is not waived. It is now \$10,770 through July 2024. This is the amount that remains after the security deposit and last month rent were credited.

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

1. An amended judgment will enter for possession and \$10,770 in unpaid rent/use and occupancy through July 2024.
2. The plaintiff will return the execution which issued on May 17, 2024 to the Clerk's Office forthwith.
3. A new execution will issue on the amended judgment.
4. Levy on (use of) the execution is stayed until August 16, 2024.
5. The stay of execution is ordered within the meaning of G.L. c. 235 §23.

July 18, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**BRANDON GONZALEZ,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01126**

**MIGUEL ASECIO,**

**Defendant.**

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**ORDER**

This matter came before the court on July 18, 2024 for trial. However, the defendant filed a motion to dismiss or in the alternative to file a late answer and discovery. The plaintiff appeared and was self-represented. The defendant appeared with his attorney. The defendant called Jessica Rivera as a witness at the evidentiary hearing on the motion to dismiss. She is the Section 8 program representative for the defendant and keeper of records at Wayfinders, which is the agency that administers the defendant's voucher.

The defendant argued that there are two grounds on which the eviction case should be dismissed. First, because the tenancy is subsidized through the Section 8 Housing Choice Voucher Program, the landlord is required to furnish a copy of the notice to quit contemporaneously with serving it on the tenant. 24 CFR §982.310(e)(2)(ii). The defendant argues that the plaintiff did not do so here. Ms. Rivera testified that there is no copy of the notice to quit dated January 11, 2024 in the file at Wayfinders, although there is a copy of a 2023 notice to quit. (That notice to quit is not relevant to this case.)

Mr. Gonzalez testified that he left a copy of the notice to quit at the front desk of Wayfinders on January 11, 2024, the day he left it at the property and handed it to the defendant. He argued that there is a lack of communication between the front desk at Wayfinders and the Section 8 staff including Ms. Rivera. However, he also reported that he left a copy of the notice on March 8, 2024 because the Wayfinders office is only a block from the sheriff's office. The



deputy sheriff served the summons and complaint on March 8, 2024. The deputy sheriff did not serve the notice to quit; the plaintiff himself did that. The court notes that there is nothing in the notice to quit or attached to the notice to quit to support the plaintiff's assertion that he gave it contemporaneously to the agency.

### **Order**

After hearing, the defendant's motion to dismiss on the first ground is **ALLOWED**. The case is dismissed pursuant to federal Section 8 regulations. The court does not reach the second ground nor the part of the defendant's motion seeking to file a late answer and discovery. The case is **DISMISSED**. The case will not be scheduled for summary process trial as the issue is now moot in this case.

July 18, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**121131 CLEMENTE HOLYOKE MA LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP04754**

**HECTOR CRUZ,**

**Defendant.**

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**ORDER**

This matter came before the court on July 19, 2024 for an emergency hearing on the defendant's motion to stop the move-out which was scheduled for that day at 9:00 a.m. The plaintiff appeared through its attorney with a manager of the LLC. The defendant appeared and was self-represented. Janis Luna of Wayfinders appeared at the hearing to report on RAFT.

In this non-payment of rent eviction case the plaintiff seeks to recover possession of the subject rental premises and unpaid rent/use and occupancy. A default judgment entered on February 23, 2024 for possession and \$10,925 plus costs and interest. The execution issued on April 30, 2024 on the plaintiff's written application. The plaintiff's constable then served a forty-eight hour notice for a move-out on July 19, 2024 at 9:00 a.m. The defendant filed this motion to stay the execution seeking additional time to remain in the unit, although he reported that he wants to move.

Janis Luna reported that Wayfinders paid \$6,611.87<sup>1</sup> to the plaintiff in RAFT financial assistance on behalf of the defendant on June 12, 2024. The plaintiff submitted a ledger crediting this payment (Exh 1). The arrearage through July is \$9,763.13. Ms. Luna furnished a

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<sup>1</sup> The balance of the RAFT Funds for which the defendant was eligible was paid for a utility arrearage.

copy of a May 2024 repayment agreement e-signed by Harrison Bonner,<sup>2</sup> manager of the LLC, and Mr. Cruz which was uploaded to Wayfinders by the landlord (Exh 2). It provides for an additional \$100 per month payment toward the arrearage. It further notes, "Previous month to month lease \$575 until 4/30/24. *new lease of \$1,050 was signed* and began on 5/1/24. Raft assistance will be accepted and applied to outstanding balance. Tenant will maintain payment plan moving forward and *will remain.*" {emphasis supplied}

Although the June 12, 2024 RAFT payment did not reduce the defendant's arrearage to zero, the court stopped the move-out based on three grounds: There was a significant RAFT payment in June; the parties appear to have entered into a new lease and tenancy at an increased rent of \$1,050 effective May 1, 2024; and the parties entered into a repayment agreement post-judgment which anticipated that the defendant would remain in the premises while he paid the arrearage in installments.

### Order

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

1. The move-out scheduled for July 19, 2024 at 9:00 a.m. is **STOPPED**. The plaintiff's attorney agreed to notify the constable of this order.
2. The defendant is responsible for the cancellation fee of \$650. It will be paid with the arrearage.
3. This stay is ordered within the meaning of G.L. c. 235 §23. The running of the execution is tolled pending further order of the court.
4. **The case is continued to August 9, 2024 at 9:00 a.m. for further hearing on the issues outlined above.**
5. Before August 9, 2024, the defendant will pay at least \$575 toward the August use and occupancy and \$100 toward the arrearage.
6. There is no RAFT application pending. The defendant's RAFT benefits have been exhausted at this time.

July 22, 2024

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

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<sup>2</sup> Mr. Bonner was not available on the day of the hearing.

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**A.P. I LIMITED PARTNERSHIP,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01708**

**NYAJEA VENTURA,**

**Defendant.**

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**ORDER**

This matter came before the court on July 19, 2024 for an evidentiary hearing on the plaintiff's motion to enter judgment and issue execution. The plaintiff appeared through its attorney with the senior property manager. The defendant did not appear and is self-represented.

This eviction case is based on cause, violations of the provisions of the lease concerning noise disturbances and smoking. The parties entered into an Agreement on May 29, 2024. By its terms relevant to today's motion, the defendant agreed that she and her guests would not cause any disturbances at the property. She agreed not to interfere with the quiet enjoyment of the other residents on the property. She also agreed that she was responsible for the behavior of her guests. The parties agreed that the case would remain open until November 29, 2024 to ensure compliance with its provisions. If the defendant did not comply during this period, the plaintiff could file a motion for entry of judgment.

The plaintiff has now filed such a motion. Two nearby neighbors of the defendant, Gladys Medero and Jeannie Fortuna testified that since the Agreement was signed the defendant has continued to cause noise disturbances in the building. The defendant and her guests make excessive noise on the staircase, in the hallways and in her apartment. This includes yelling and screaming and moving furniture. It occurs even in the middle of the night and wakes the other



residents from sleep. Ms. Medero testified that she is unable to sleep because she can hear the noise from Ms. Ventura's apartment even though she wears earbuds.<sup>1</sup> Assistant property managers Glenda Delgado and Angela Steward testified that they continue to receive complaints from other residents since the May 29 Agreement was signed that Ms. Ventura is causing noise disturbances. They have heard her yelling so loudly in her apartment that they themselves could hear her from their office and even from outside the building.

Based on the credible testimony at the hearing, and without any explanation from the defendant, the court finds that the defendant has substantially violated one or more material terms of the parties' May 29, 2024 Agreement. She has continued to interfere with the quiet enjoyment of the other residents on the property. The plaintiff is entitled to judgment for possession pursuant to the terms of the Agreement.

#### **Order**

After hearing, the plaintiff's motion is **ALLOWED**. Judgment will enter for the plaintiff for possession and costs. The plaintiff may apply for the execution ten days after the date that judgment enters.

July 22, 2024

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

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<sup>1</sup> The tenants also testified that the defendant continues to interfere with their use of the property by leaving trash in the hallway, which attracts flies.



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**APPLETON CORPORATION (LESSOR),  
AND/MANAGING AGENT FOR HC  
BROOKINGS, LLC (OWNER) D/B/A ELIAS  
BROOKINGS APARTMENTS,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00178**

**ELIZABTH JOHNSON**

**Defendant.**

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**ORDER**

This matter came before the court on July 16, 2024 for a hearing on the plaintiff's motion to enter judgment and issue execution/amend agreement. The plaintiff appeared through its attorney with property manager Yesenia Valentin. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

The landlord seeks to recover possession and unpaid rent/use and occupancy in this eviction case based on non-payment of rent. The parties entered into an Agreement on February 22, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$6,084 in unpaid rent/use and occupancy and \$276.54 costs. The defendant agreed to pay her monthly use and occupancy (\$1,058) timely and \$783.54 toward the arrearage on the fifteenth, both each month beginning in March 2024. Ms. Johnson had a RAFT application pending. The parties agreed that the case would be dismissed when the arrearage reached zero. If the defendant did not comply with the terms of the Agreement, the plaintiff could file a motion to enter judgment and issue execution.

The plaintiff has filed such a motion. The defendant paid the monthly rent/use and occupancy through May but no payments toward the arrearage. She did not pay anything in June or July. No money was received from RAFT. The arrearage is now \$8,427.92 through July 2024 and \$276.54 costs (Exh).

Ms. Pena reported that Ms. Johnson's most recent application for RAFT financial assistance was closed on May 30, 2024 because it was missing a payment plan. An earlier RAFT application timed out on April 2, 2024 timed out because it was missing the landlord documentation, a new rent ledger. There is no RAFT application pending at this time, although, if one were completed and approved, Ms. Johnson would be eligible for \$7,000.

The defendant reported that she has applied for RAFT four times, but she was never approved for payment. She agreed to apply for RAFT again. She expects that her household income will increase in the near future. She is waiting for SSI benefits, with a retroactive payment, for her daughter as well as FML funds. She did not have any paperwork regarding either of those two sources of income with her at the hearing.

The plaintiff strongly opposes any continuance of the motion at this time or the denial of its motion. The plaintiff is correct that the court cannot order a landlord to accept a specific repayment plan for the balance that would remain after RAFT paid \$7,000. However, here the court is concerned that the March/April RAFT application timed out because the landlord documentation was missing. The parties' February 22, 2024 Agreement acknowledged that there was a RAFT application pending. Both parties should have completed it in good faith. Because Ms. Johnson paid the rent/use and occupancy in March and April, the arrearage and costs at that time would have been less than the amount of RAFT she was eligible to be paid on her behalf. This would have eliminated the need for the additional monthly payments towards the arrears. Unfortunately, because the defendant did not pay the use and occupancy for June and July, the arrearage is now more than the amount of the available RAFT. Ms. Johnson will need to propose a payment plan for the balance. This will include providing documentation to the landlord about her anticipated two increases in household income/assets with reliable indications of when she will receive them.

## Order

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

1. **The plaintiff's motion is continued for further hearing on August 13, 2024 at 9:00 a.m.**
2. The defendant will apply for RAFT financial assistance immediately.
3. Both parties will complete the application, including submitting all required documentation, to Wayfinders immediately.
4. The defendant will propose to the landlord a specific repayment plan for the balance that will remain if RAFT pays \$7,000.
  - a. Such repayment plan will include documentation regarding the amount of SSI benefits for her daughter and FML benefits as well as the dates she expects to receive the moneys.
5. The plaintiff will consider such repayment plan in good faith.
6. At the hearing on August 13, 2024, the parties will report on the status of any RAFT application filed after July 16, 2024 and the actions taken on the proposed repayment plan.
  - a. The defendant will bring her documentation regarding SSI for her daughter and FML to the August 13, 2024 hearing.
7. The defendant will pay the August rent/use and occupancy (\$1,058) when it becomes due.

July 22, 2024

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



2

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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AMANDA P. BUFFONI,

Plaintiff,

-v.-

DOCKET NO. 24CV00497

DAVID J. SMITH, II,

Defendant.

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ORDER

This matter came before the court on July 19, 2024 for further hearing on the plaintiff's request for an emergency order. After a hearing on July 5, 2024, at which only the plaintiff appeared, a judge of this court issued an order. Both parties appeared for further hearing and were self-represented.

The plaintiff is the tenant at the subject rental premises located at 100 Brandon Avenue in Springfield, Massachusetts. The defendant is the owner and landlord of the premises. He maintains an office and storage in the basement. The plaintiff agrees that the defendant has not tried to enter her unit or contact her directly since the July 5 order prohibiting both actions. He emailed her about unpaid rent and contact with her HomeBase caseworker at Wayfinders, but written communication with the tenant was allowed by the July 5 order. He has been at the property, which is a duplex, to see the other tenants.

The plaintiff rented the premises pursuant to a written lease and the HomeBase program, administered by Wayfinders, beginning February 1, 2023. The plaintiff has not signed the most recent proposed rental agreement. Her participation in the HomeBase program has expired. The last full month of payment was May 2024. The defendant served a thirty-day notice to quit on June 30, 2024.



The plaintiff remains a tenant there in the part of the property described in the original rental agreement, at the last agreed upon rent. The defendant agrees that he rented the premises to the plaintiff with his furniture in the unit. That furniture is part of the tenancy and the landlord cannot remove any of that furniture now.

The defendant testified that he has an office and storage in the basement of the property which he used four to five times a week since the outset of the tenancy. The plaintiff agreed that he did so regularly for the first few months of the tenancy. The court finds that it was the understanding of the parties at the outset of the tenancy that the defendant would have the use of the basement for an office and storage, but not to live there. He may continue to use the space as an office and for storage as long as he does not need to access the basement through the tenant's unit. The plaintiff does not have access to this basement space, without the defendant's written express permission.

As explained at the hearing, to the extent that the plaintiff seeks a harassment prevention order pursuant to G.L. c. 258E, the Housing Court does not have jurisdiction under that statute. The plaintiff would have to pursue such an order in the District Court.<sup>1</sup>

### **Orders**

After hearing, the following further orders will enter:

1. The defendant-landlord will not interfere with the quiet enjoyment of the plaintiff-tenant at the subject rental premises located at 100 Brandon Street, Springfield, Massachusetts as those rooms are detailed in the parties' original rental agreement. This means that the defendant shall not:
  - a. enter the tenant's premises, except in the case of a true emergency,
  - b. remove any of the furniture which was in the apartment at the beginning of the tenancy without the plaintiff's written permission,
  - c. touch or remove any of the plaintiff's belongings in the premises.
2. The defendant-landlord shall return any of the tenant's belongings which he removed from the apartment immediately,

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<sup>1</sup> Nor does this court have jurisdiction under the domestic violence statute, G. L. c. 209A. (The plaintiff testified that she and the defendant were in an intimate relationship before and just after the tenancy began.)

3. The defendant-landlord shall return any of the furniture which was in the apartment at the outset of the tenancy and which he removed, unless the tenant gives written permission that she does not want it returned.
4. The plaintiff shall not damage any of the defendant's furniture which is in the premises, reasonable wear and tear excepted.
5. The defendant may access the basement of the property to use as an office and for storage, as long as he may access the area without going through the plaintiff's unit to do so.
6. The parties shall not have any direct communication with each other except in writing. Writing shall include emails, texts, and letters.
7. The Clerk's Office is asked to mail copies of this order to the parties and also to the defendant at 28 High Street #2, Bridgewater, Massachusetts.
8. The Clerk's Office is asked to give copies of this order to the plaintiff. The plaintiff will post a copy at the front door and at the back door of the premises.

The July 5, 2024 order remains in full force and effect, except to the extent that any provision in that order is expressly contradicted by today's order.

The court waives the \$90 statutory fee for injunctive relief in this case.

July 22, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**CHICOPEE HOUSING AUTHORITY,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP04595**

**DIANA DIAZ CENTENO,**

**Defendant.**

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**ORDER**

This matter came before the court on July 19, 2024 for an emergency hearing on the defendant's motion to stop the move-out which was scheduled for that day at noon. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

In this eviction case based on nonpayment of rent, the plaintiff seeks to recover possession of the subject rental premises and unpaid rent/use and occupancy. A default judgment entered on November 22, 2023 and execution issued on December 7, 2023 on the plaintiff's written application. A move-out was scheduled, but the parties entered into an Agreement on February 1, 2024 stopping the move-out because the defendant promised to pay the arrearage and costs (including the cancellation fee for the February 1 move-out) when she received her tax refund. She did not pay the arrearage or the ongoing use and occupancy. After a hearing, a new judgment entered on May 14, 2024 for possession and \$6,078 plus costs and fees. A new execution issued on June 6, 2024. A deputy sheriff served a forty-eight hour notice that the execution would be used to move the defendant out of the public housing unit on July 19, 2024 at noon.



The defendant filed this motion to stop the move-out on the grounds that she has a pending application for RAFT financial assistance, filed on July 17, and that she has had a change in her household income recently. She reported that she did not get the tax refund she expected. Her son was put out of school, which effected the SSI she received for him.

Ms. Luna reported that, because this is a public housing unit, the maximum amount available in RAFT financial assistance for the defendant is six months of the tenant share of the rent/use and occupancy plus costs, including cancellation fees, up to \$7,000 in total. The tenant share is currently \$503. Wayfinders is awaiting the landlord documentation on the current application. An earlier RAFT application from December 2023 timed out because the landlord documentation was missing.

At the hearing, the court stopped the move-out to allow the parties to complete the RAFT application process pursuant to G.L. c. 239 §15 and for the defendant to recertify her income so that her portion of the rent can be adjusted. The arrearage now is \$7,289.35 plus a \$600 cancellation fee from the February 1, 2024 move-out. The cancellation fee for the July 19, 2024 move-out is \$700. The total owed by the defendant through July 2024 is \$8,589.35. This means that even if the defendant is approved for RAFT, a balance will remain. She will need to propose a realistic repayment plan for the arrearage.

### **Orders**

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

1. The move-out scheduled for July 19, 2024 at noon is **STOPPED**. The plaintiff's attorney agreed to notify the deputy sheriff of this order.
2. The defendant is responsible for the \$700 cancellation fee for today's move-out.
3. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.
4. The defendant will recertify her household income to report the loss of her son's SSI to the Housing Authority no later than July 26, 2024. The defendant will submit all required documentation to complete the recertification process.
5. The parties will complete the RAFT application process at Wayfinders in good faith.
  - a. Both parties will submit all required documentation.
  - b. The plaintiff will include the court costs and the cancellation fees for the two cancelled move-outs on the ledger.



- c. The defendant will propose a *realistic* payment plan for the balance that would remain after RAFT paid the amount for which she is eligible.
- d. The plaintiff will consider the proposed payment plan in good faith.
- 6. The defendant will pay the August use and occupancy, as it is then calculated, on time and in full.
- 7. **This matter is continued to August 9, 2024 at 9:00 a.m.** for hearing on compliance by both parties with the above orders.

July 22, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**FRANCES HARDY-GREEN,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24CV00470**

**ROBERT T. BROWN & SUQUIN JOHNSON,**

**Defendant.**

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**ORDER**

This matter came before the court on July 2, 2024 for an evidentiary hearing on the plaintiff's request for an emergency order against the defendants and the defendants' motion for access. All parties appeared and were self-represented. Idella Sanders-Jones testified on behalf of the plaintiff.<sup>1</sup>

The property in dispute is a room at 130 College Street in Springfield, Massachusetts. The property is owned by Aclesia Scotland. The plaintiff manages the property for her (Exh 1).

On May 31, 2024 the plaintiff received a call from a tenant asking if she had a room to rent for her two nephews. The plaintiff met with the defendants. She collected \$100 toward the rent for the room (Exh 2) and told them that she would deduct \$200 from the first month's rent if they cleaned out a downstairs unit, but told them that they could not move into the upstairs room until all monies were paid. The plaintiff submitted a DEPOSIT RECEIPT dated May 31, 2024 (Exh 3). It references the \$100 deposit to "hold" the room for six days. It states, "you are not tenants tell all moneys are paid [sic]" and "Room will not be yours until all money is paid you can not move in till all paid up". The document is signed by both defendants as well as by the

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<sup>1</sup> Ms. Sanders-Jones is a tenant at the property. She testified that originally she was supposed to clean out the downstairs room, but she could not do the work, so the plaintiff asked the defendants to clean out the room. She did not have any independent knowledge of the parties' negotiations about renting the upstairs room.

owner's agent. Mr. Johnson testified that they paid additional monies after the \$100, but they do not total the move-in costs (Exh 8).

Ms. Hardy-Green testified that the defendants began cleaning out the downstairs unit and moved themselves into the upstairs room without completing the payments required to rent the room. On June 11, 2024 she sent them a text inquiring about the remaining balance (Exh 4). That day there was an altercation and the police were called to the building (Exh 5). The plaintiff called the police again on June 19, 2024 after she discovered damage to the property which she believes was caused by the defendants the day before (Exh 6).

After the June 11 incident, Ms. Hardy-Green told the defendants that they would have to remove their belongings and leave. Texts between the parties show that at least Mr. Johnson told her that they had started moving and "every thing will be out by 2" (Exh 7). At some point, Ms. Hardy-Green changed the locks.

Mr. Johnson testified that he did not sign any rental agreement for the room. Mr. Brown offered conflicting testimony on the subject. He testified that the landlord did not know they were tenants. He agreed that they did not sign any rental agreement, but then testified that he signed a month-to-month tenancy, but he never received a copy. This is not credible, in light of the DEPOSIT RECEIPT, signed by all parties, (Exh 3) which clearly stated that there was no tenancy established.

Based on the credible testimony at the hearing, the court finds that the parties never established a tenancy. The monies required before move-in were not paid in full, which was a condition for the tenancy to be established. The defendants occupied the room without the plaintiff giving them a key. They had no right to do so. To the extent they still have belongings in the room, the plaintiff must make arrangements to allow them to retrieve their belongings, but not to occupy the premises.

### **Orders**

After hearing and a review of the exhibits, the following orders will enter:

1. The plaintiff's motion is **ALLOWED**. The defendants must cease any occupancy of the room, common areas, or other areas at 130 College Street, Springfield, Massachusetts because no tenancy was established.
2. The defendants' motion is **DENIED**.

3. If the defendants have possessions at the property, the plaintiff will allow them access one-time to retrieve them.
  - a. To enhance security the plaintiff will arrange for a police officer, constable or sheriff to be present during such access. The plaintiff will be responsible for the cost of such security detail.
  - b. All parties will conduct themselves in a professional and respectful manner during such access.

All parties are urged to consult an attorney if any issues remain beyond these injunctive relief proceedings.

The court waives the statutory \$90 injunctive relief fee in this case.

July 22, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**JOSE LOPEZ,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00466**

**MARITZA MORALES,**

**Defendant.**

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**ORDER**

This matter came before the court on July 22, 2024 for a review of the status of the defendant's application for RAFT financial assistance for moving expenses. The plaintiff appeared, but the defendant did not. Leonor Pena of Wayfinders joined the hearing.

The court reviewed the procedural history of this case in its July 8, 2024 order. It is incorporated here.

The plaintiff reported that the defendant showed him an email from Wayfinders last week that she had been approved for RAFT financial assistance for moving expenses for a new apartment. Ms. Pena confirmed that this is the case, but the money will not be paid until the defendant finds a new apartment, which she has not done to date.

Because there is no RAFT application pending at this time, the court lifts the stay of the execution ordered pursuant to G.L. c. 239 §15. This eviction case is based on nonpayment of rent and the defendant owes a significant arrearage. The plaintiff may proceed with the levy on the execution if the defendant does not move. The plaintiff is concerned that the execution for possession which he received from the court has an expiration date of July 28, 2024.<sup>1</sup> This date

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<sup>1</sup> The execution for possession is valid for 90 days; the execution for money damages is valid for 20 years.

was extended pursuant to G.L c. 235 §23 when the court granted a stay of the execution on July 8, 2024. Because the execution has not expired but was stayed by order the court, the Clerk's Office will issue a new execution for possession and damages with cost and interest upon the plaintiff's return of the April 29, 2024 execution.

**Orders**

After hearing, the following orders will enter:

1. The stay of the levy on (use of) the execution pursuant to G.L c. 239 §15 is lifted. There is no RAFT application pending.
2. The plaintiff may proceed with the use of the execution as he sees fit, pursuant to statute.
3. The plaintiff will return the original execution to the court forthwith.
4. The Clerk's Office will issue a new execution for possession and damages with costs and interest.

July 22, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**MASON SQUARE APARTMENTS I,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP05698**

**NINA MARIE GARCIA,**

**Defendant.**

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**ORDER**

This matter came before the court on July 19, 2024 for a hearing on the plaintiff's motion for entry of judgment and issuance of execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

This eviction case is based on nonpayment of the tenant's portion of the Section 8 rent. The plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. On January 30, 2024 the parties entered into an Agreement. By its terms relevant to this motion, the parties agreed that the defendant owed \$2,221 through January with costs of \$253.06. The defendant agreed to pay her portion of the rent/use and occupancy (\$104) each month by the fifth and \$100 toward the arrearage each month by the eleventh, both beginning in February 2024.

The parties agree that the defendant did not make any payments for February, March and April, although she paid \$200 each month in May, June and July. The arrearage is now \$2,245 with costs of \$253.06.

The defendant applied for RAFT financial assistance on July 18. Ms. Pena reported that she will need to submit documentation to demonstrate that her failure to pay her portion of the

Section 8 rent was due to a hardship in order to be eligible for RAFT financial assistance.<sup>1</sup> Because this is a subsidized tenancy, the maximum that RAFT could pay is six months of the tenant's portion of the rent and costs.

The plaintiff does not object to Ms. Garcia remaining as a tenant as long as she pays the rent and reaches a zero balance on her account. The court does not enter judgment at this time, to allow the defendant to complete the RAFT application process pursuant to G.L. c. 239 §15.

### Orders

After hearing, the following orders will enter:

1. The plaintiff's motion is **DENIED** at this time, without prejudice to the plaintiff's refiling the motion if the defendant does not comply with the terms below.
2. The defendant will complete the RAFT application process, submitting all documentation required by Wayfinders. This includes but is not limited to documentation of the "hardship" criterion.
  - a. The payment plan of \$100 per month to be paid toward the arrearage shall be considered to be the repayment plan for the balance that would remain after RAFT makes a payment. This is the payment plan agreed to by the parties in the January 30, 2024 Agreement and ordered to continue by this order.
3. The plaintiff will complete its portion of the RAFT application, submitting all documentation required by Wayfinders.
  - a. The plaintiff will include the costs of this suit (\$253.06) on the rent ledger.
4. The defendant will pay her portion of the Section 8 rent (currently \$104) each month on time and in full. The tenant portion may change upon recertification if the income of the household changes.
5. The defendant will pay \$100 toward the balance of the arrearage which would remain after RAFT makes a payment by the eleventh of each month. This payment plan will continue until the account reaches a zero balance or there is a further order of the court.

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<sup>1</sup> Ms. Garcia testified that last year there was a mix-up by the West Springfield Housing Authority, which administers her Section 8 voucher. There was an issue with her DTA benefits earlier this year, although the issue has been resolved. She paid \$500 toward an electricity arrearage because she did not know that RAFT could pay utility arrearages as well as rent arrearages.



July 22, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**JJS CAPITAL INVESTMENT, LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00353**

**ANNA RODRIGUEZ,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for an emergency hearing on the defendant's motion to stop the move-out which is scheduled for July 24, 2024 at 10:00 a.m. The plaintiff appeared through its attorney, together with manager attorney Patti Glenn. The defendant appeared and was self-represented.

In this eviction case, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy based on non-payment of the tenant's share of the Section 8 rent (currently \$132). The arrearage through July 2024 is \$4,510 plus costs. Judgment entered on May 24, 2024 and execution issued on June 7, 2024 on the plaintiff's written application. The deputy sheriff served a forty-eight hour notice on June 26, 2024 that the execution would be used to move the defendant out of the apartment on July 24, 2024 at 10:00 a.m.

Ms. Rodriguez testified that she was just released from the hospital today after a two week stay. She does not have any money to offer toward the unpaid rent/use and occupancy at this time.<sup>1</sup> The cancellation fee to stop tomorrow's move is \$750, for which she is responsible.

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<sup>1</sup> The defendant received RAFT financial assistance of \$10,000 in March 2023. The next and last time any money was paid toward the tenant's portion of the rent/use and occupancy was in March 2024.

Based solely on the defendant's reported medical condition and her release from the hospital today<sup>2</sup>, the court stops the move-out scheduled for tomorrow and stays the execution for a short time to allow the defendant and her family to make alternative living arrangements, on condition that she pay the cancellation fee in two installments.

#### Orders

As stated at the hearing, the following orders enter:

1. The move-out scheduled for July 24, 2024 at 10:00 a.m. is **STOPPED** on equitable grounds pursuant to G.L. c. 239 §10. Plaintiff's attorney agreed to notify the deputy sheriff.
2. Execution is stayed through July 31, 2024 on condition that the defendant pay the cancellation fee of \$750 by paying \$500 by July 26, 2024 as she agreed to do and \$250 by July 31, 2024.
3. The plaintiff may serve a new forty-eight hour notice for a move-out on or after August 1, 2024.
4. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.

July 23, 2024

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

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<sup>2</sup> For the purposes of today's hearing, the court accepts the defendant's representations about her medical condition and hospitalization. No medical documentation has been provided.

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-975

NICOLE WINN,

Plaintiff,

v.

SHAUN ROBINSON,

Defendant.

FINDING OF CONTEMPT AND  
FURTHER ORDER

This matter came before the court for a Contempt Trial on June 5, 2024, at which the plaintiff appeared with counsel and the defendant appeared self-represented. After consideration of the evidence, the following order shall enter:

1. **Procedural History:** After hearing on November 27, 2023, on the plaintiff

tenant's motion for injunctive relief regarding repairs, the Court ordered that:

- (1) The defendant landlord shall have a professional locksmith install locks at the premises and provide the tenant with keys by no later than 5:00 p.m. today;
- (2) The landlord shall address all other repairs cited by the Quabbin Health District FORTHWITH;
- (3) The landlord shall provide the tenant with no less than 24 hours written notice for access for repairs. Such notice, which may be by text, shall identify the repair to be made and the window of time needed. Any work which requires a permit or a license shall be effected accordingly.



2. After further hearing on December 18, 2023, the ordered that:

- (1) Mr. Robinson shall have a carpenter repair the door frame and sliding door forthwith and shall have a locksmith install new locks as soon as the carpentry work is completed for the locks to operate properly.
- (2) Mr. Robinson shall have a carpenter address the doors tomorrow between 9:00 a.m. and 5:00 p.m. After these dates Mr. Robinson shall provide 24 hours advance written notice to make repairs.
- (3) Ms. Winn shall not unreasonably deny access.
- (4) Mr. Robinson shall comply with the correction orders set forth in October 31, 2023 Quabbin Health District report forthwith. The QHD is requested to reinspect before 1/5/24 and to appear in court on January 8, 2024, at 9:00 a.m. with the parties for status.

3. After hearing on January 8, 2024, the court made the following order:

- (1) Though there have been some bumps along the road regarding scheduling and completion of repairs since the December 18, 2023, hearing, the parties are still working together to complete the list of repairs.
- (2) The landlord shall provide notice and the tenant shall allow access in accordance with the terms issued by the last court order.
- (3) This matter shall be scheduled for further status on January 29, 2024, at 9:00 a.m. Both parties are urged to have the Health Department inspect in the interim.

4. On May 22, 2024, the plaintiff tenant filed a contempt complaint, asserting that the landlord has failed to comply with the court's orders regarding repairs.

On June 5, 2024, a contempt trial was conducted by the court.

5. **Discussion:** There continues to exist violations of the State Sanitary Code that have been cited by the Quabbin Health District. The landlord's defense to the fact that such conditions have continued to exist is that the tenant has repeatedly denied access unreasonably.

6. In addition to the light in the bathroom not working, lack of screens in the bathroom and two bedrooms, continued rodent activity, and a non-functioning

refrigerator, the landlord has also continued to fail to repair the back sliding door and holes in the bathroom wall and bedroom ceiling and a gap between the wall and the countertop behind the sink---as well as some other items cited by the Quabbin Health District that may be outstanding.

7. After consideration of the testimony of the parties and of the tenant's father, and upon review of the evidence admitted at the contempt trial including texts and Quabbin Health District reports, the Court finds the tenant has not unreasonably denied access for repairs and that the landlord is in contempt of unequivocal orders of the court in the manner in which he has approached having repairs conducted at the premises. Not only by delaying such repairs but also by providing insufficient notice on at least one occasion for repairs and also by using the tenant's occasional reasonable need to have access be reconfigured (and each time immediately providing prompt alternative times for repairs) as an excuse to not having the repairs made altogether.
8. **Order:** Having found the defendant landlord in contempt, the following order shall enter:
  - a. A receiver shall be appointed from the court's receivership list to effectuate the completion of all repairs. This term shall be suspended for the time being to allow one last chance for the landlord to effectuate remaining repairs.
  - b. If the landlord chooses to avoid appointment of a receivership and finally and promptly have the work completed, he shall make

arrangements for licensed professionals to coordinate directly with the tenant (or her counsel) for access for repairs.

- c. If the landlord fails to make such arrangements, the tenant's counsel may move the court for lifting the suspension of the above-noted term and have a receiver appointed (after hearing).
- d. The landlord shall be fined \$50 per day beginning five days after the date of this order noted below until the repairs are completed or until a receiver is appointed.
- e. The tenant's attorney may file and serve a petition for attorney's fees and costs incurred in bringing this contempt action within 20 days of the date of this order. The landlord shall have 20 days after receipt of said petition to file and serve any opposition. The court shall issue an order regarding attorney's fees without further hearing.

So entered this 23<sup>rd</sup> day of July, 2024.

  
Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN SS:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
NO. 24SP1190

DOMENIC BATTISTA D/B/A BATTISTA & SONS PROPERTY MANAGEMENT, LLC  
Plaintiff<sup>1</sup>

VS.

CHERYL ADAMSON  
Defendant<sup>2</sup>

This matter came before the court on July 24, 2024, on Plaintiff's Motion to Bring Case Forward (Paper #12). Plaintiff seeks the Court issue execution for possession. Plaintiff appeared represented by counsel. Defendant appeared self-represented. After hearing, the Court orders as follows:

1. Plaintiff's Motion to Bring Case Forward (Paper #12) is **ALLOWED**. Execution to issue for judgment and possession forthwith.
2. Plaintiff shall not levy on the execution until August 1, 2024.
3. Plaintiff shall return the Defendant's last month rent no later than July 31, 2024, via certified funds.
4. Security deposit current held by Plaintiff shall be handled in accordance with G.L. c. 186 §15B et seq., after the Defendant vacates the premises.

**SO ORDERED**

*Sergio E. Carvajal*  
SERGIO E. CARVAJAL, J.  
HOUSING COURT

**Date: July 24, 2024**

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

<sup>2</sup> As used herein, the term "Defendant" refers to all persons identified as in the caption on the line marked "Defendant."



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**BEACON RESIDENTIAL MANAGEMENT  
LIMITED PARTNERSHIP (LESSOR)  
AND/MANAGING AGENT FOR BC  
COLONIAL ESTATES LLC (OWNER),**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01449**

**AMELIA ADAMS,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the defendant's motion to stop the move-out which was scheduled for August 1, 2024 at 11:00 a.m. Her motion asked the court to remove the default judgment, amend the agreement, continue the case to July 24, 2024 and dismiss the case. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

In this eviction case, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy based on nonpayment of the tenant's share of the rent. The tenancy is subsidized through the project-based Section 8 program. A default judgment entered on June 7, 2024 for possession and \$6,435 in unpaid rent/use and occupancy plus costs. The execution issued on June 21, 2024 on the plaintiff's written application. The deputy sheriff served a forty-eight hour notice that the execution would be used to move the defendant out of the apartment on August 1, 2024 at noon.

The plaintiff reported that the arrearage through July 2024 is \$12,862.76 plus costs. The increase in the arrearage is based on previously unreported tenant income. The tenant's portion of the subsidized rent is \$1,260. The defendant agrees that these amounts are accurate. A previous RAFT application timed out based on missing tenant documentation.

With respect to the specific requests in the tenant's motion, the court denied a continuance until the next day and the hearing proceeded on July 23. There is no Agreement between the parties in the docket to amend.

The motion to remove the default judgment is denied on two grounds. First, Ms. Adams argued that she did not come to court on the day of the First Tier Court Event because she did not get the notice until after the scheduled day. She argued that the deputy sheriff gave the notice to her children (ages 15 and 17) and they did not give it to her on time. The court does not find this argument to be credible. The court notes that the return of service from the deputy sheriff shows that it was left at the property *and* mailed to the defendant directly. Such a return of service is *prima facie* evidence of receipt. The defendant did not overcome the presumption. G.L. c. 41 §94. Second, Ms. Adams' defense to the nonpayment of rent claim was that she was trying to buy a house at the time and she wanted to work out the rental arrearage. She agrees that she had unreported income. The court finds that she did not present a non-frivolous defense to the nonpayment of rent eviction within Massachusetts caselaw and that she did not demonstrate excusable neglect for failing to appear.

The court finds no grounds to dismiss the eviction action.

The defendant asked for the opportunity to pay the arrearage *or* for a two month stay of the execution. She offered to pay \$2,000 toward the arrearage now, but she could not propose a repayment plan for the balance and ongoing use and occupancy.

The court finds no grounds to stop the use of the execution to move the defendant out of the apartment on August 1. Because this case is based on nonpayment of rent and there is a significant arrearage owed, the defendant is not eligible for a stay pursuant to G.L. c. 239 §9. The court does not find any equitable grounds to stay the execution pursuant to G.L. c. 239 §10. G.L. c. 239 §15 does not apply because there is no pending RAFT application.

#### Orders

After hearing, the following orders will enter:

1. The defendant's motion is **DENIED**.
2. The plaintiff may use the execution to move the defendant out of the apartment as planned.

July 24, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**BEACON RESIDENTIAL MANAGEMENT  
LIMITED PARTNERSHIP (LESSOR)  
AND/MANAGING AGENT FOR BC  
COLONIAL ESTATES LLC (OWNER),**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP00849**

**KENYONA B. WILSON &  
SANTEGEA M. MCCALLA,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the defendant's motion to stop the move-out which was scheduled for August 1, 2024 at 11:00 a.m. The plaintiff appeared through its attorney. Defendant Kenyona B. Wilson appeared and was self-represented. She reported that defendant Santegea M. McCalla no longer lives at the premises. Janis Luna of Wayfinders joined the hearing to provide information about RAFT.

In this eviction case, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy based on nonpayment of the tenant's share of the rent. The tenancy is subsidized through the HomeBase program. The parties entered into Agreements since the case was filed on February 17, 2023 to try to resolve the nonpayment of rent issue. However, the plaintiff's motion for entry of judgment was allowed by a judge of this court. Judgment entered on April 12, 2024 for possession and \$10,306.88 in unpaid rent/use and occupancy and \$251.54 in costs. The execution issued on May 8, 2024 on the plaintiff's written application. By orders dated May 28, 2024, a judge of this court denied the defendant's motion to vacate the default, but stayed the execution through June 30, 2024 because the defendant said



that she had an application for RAFT financial assistance pending. No RAFT funds were received on behalf of the defendant. The deputy sheriff served a forty-eight hour notice that the execution would be used to move the defendant out of the apartment on August 1, 2024 at 11:00 a.m.

Ms. Luna reported that the defendant's last application for RAFT financial assistance was closed on April 18, 2024 because of missing landlord documentation. However, she reported that the defendant would not be eligible for RAFT assistance because she already receives HomeBase assistance. There is no RAFT application pending at this time.

The defendant offered to pay only \$100 toward the arrearage at this time. She said that she recently began to work but she has not received her first paycheck yet. She thinks she may be able to obtain some financial assistance from a church.

The court finds no grounds to stop the use of the execution to move the defendant out of the apartment on August 1. Because this case is based on nonpayment of rent and there is a significant arrearage owed, the defendant is not eligible for a stay pursuant to G.L. c. 239 §9. The court notes that this case was filed well over a year ago and the defendant has not made progress on the nonpayment issue. The court does not find grounds to stay the execution pursuant to G.L. c. 239 §10. G.L. c. 239 §15 does not apply because there is no pending RAFT application.

#### **Orders**

After hearing, the following orders will enter:

1. The defendant's motion is **DENIED**.
2. The plaintiff may use the execution to move the defendant out of the apartment as planned.
3. If the defendant can obtain resources to make a significant payment toward the arrearage through third party sources or her work, she may contact the plaintiff to make other arrangements with the landlord.

July 24, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**MARCIA DUCHESNEAN,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24CV00553**

**MICHELLE GIBSON,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the plaintiff's request for an emergency order. Only the plaintiff appeared. She is self-represented. The defendant did not appear. She is self-represented. The defendant filed a motion to continue the case for one week. In light of the emergency nature of the plaintiff's complaint, the court denied the motion for continuance and the hearing proceeded on the day it was scheduled.

The plaintiff has lived at the subject rental premises located at 76 Roosevelt Avenue in Springfield, Massachusetts since May 2023. She moved in with, and later married, the defendant's brother David, but he has passed away. The property is owned by the defendant and a roommate of Ms. Duchesnean. The plaintiff received a notice to quit terminating the tenancy as of August 1, 2024. Her plan at this time is to move out by then, although she does not have alternative housing to date.

The plaintiff testified that since her husband died, the defendant has entered the unit without her permission and removed items that belonged to the plaintiff or to the plaintiff and her deceased husband. She feels that the defendant is harassing her. As explained at the hearing, the Housing Court does not have jurisdiction over harassment prevention cases, pursuant to G.L. c. 258E. To the extent the plaintiff seeks such a restraining order, she must seek relief in the

District Court. However, the Housing Court does have jurisdiction over covenant of quiet enjoyment in residential housing cases pursuant to G.L. c. 186 §14. In every residential tenancy, the landlord must ensure that the tenant can use the premises without interference. The landlord has the obligation to ensure that her agents do not interfere with the tenant's use of the premises.

Ms. Duchesneau reported that there is no case pending in the Probate and Family Court regarding her husband's estate. The parties are urged to consult an attorney about their rights and responsibilities in these matters. The Lawyer for a Day Program is available at the Housing Court on Thursday and Friday to discuss landlord-tenant issues. The parties should call the Clerk's Office to confirm the hours. If the parties wish to mediate a mutually satisfactory resolution of this case, they may call the Clerk's Office to schedule a mediation with a housing specialist of this court.

#### **Order**

After hearing, the following orders will enter:

1. Neither the defendant Michelle Gibson nor any of her agents will interfere with the quiet enjoyment of the premises by the plaintiff for the remainder of the time she lives at the premises.
2. The defendant Michelle Gibson will not enter the plaintiff's unit without the plaintiff's permission, except in the case of a true emergency.
3. The defendant Michelle Gibson will not remove any belongings owned by the plaintiff or her late husband without a valid court order.
  - a. Any such items which were removed by the defendant shall be returned immediately.

The court waives the statutory \$90 injunctive relief fee in this case.

July 24, 2023

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

**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 24-SP-395**

**ROBERT GRAZICK,**

**Plaintiff,**

**v.**

**MOLLY PETERS and MARK WHEELER,**

**Defendants.**

**ORDER**

This matter came before the Court for trial on April 19 and 2024. After consideration of the evidence admitted therein, the following findings of fact and rulings of law shall issue, and the following order of judgment shall enter:

1. **Background:** The plaintiff, Robert Grazick (hereinafter, "landlord") owns a building in downtown Greenfield located on the corner of Main Street and Chapman Street. The first floor houses a restaurant and a bar and the second and third floors contain five apartments. The defendants, Molly Peters and Mark Wheeler (hereinafter, "tenants"), reside as tenants-at-will in Unit #2 therein with an address of 6 Chapman Street, Unit #2, Greenfield,



Massachusetts (hereinafter, "premises" or "property"). The tenancy began in August 2019 at a rent of \$750. On or about December 26, 2023, the landlord served the tenants with a Notice to Quit for non-payment of rent and thereafter filed a Summary Process eviction action. The tenants filed an Answer with Defenses and Counterclaims which included claims for the Breach of the Warranty of Habitability, Breaches of the Covenant of Quiet Enjoyment, Cross-Metering, Retaliation, and Violations of the Consumer Protection Act.

2. **The Landlord's Claim for Possession and Use and Occupancy:** The parties agree that the tenants have not paid the landlord for the past 15 months. Their disagreement is whether the landlord correctly raised the rent from \$750 to \$800 effective January 2023. In December 2022, the landlord provided the tenants with a note with their mail that he was raising the rent from \$750 to \$800 starting in January 2023. The following month, the tenants paid the increased amount of \$800 for rent. Then, beginning in February 2023, after never missing a monthly rental payment throughout the tenancy, the tenants began withholding payment of their rent. The Court finds that the tenants voluntarily accepted the higher rent of \$800 by paying the increased amount in January 2023. Accordingly, the amount of outstanding rent through the month of trial (15 months) totals **\$12,000**.
3. As such, the landlord has met his burden of proof on *prima facie* elements for his claim of possession and for **\$12,000** in use and occupancy.



4. **The Tenants' Claims: Warranty of Habitability:** There have been many conditions of disrepair in the premises *from the inception of the tenancy* <sup>1</sup>. On March 23, 2023, the Greenfield Board of Health cited the following conditions of disrepair:
- a. Burner on stove not working properly;
  - b. No heat in the bathroom;
  - c. Gaps under main door to common hallway;
  - d. Exposed electrical wiring;
  - e. Windows non-functioning;
  - f. Windows non-weathertight;
  - g. Lack of smoke detectors;
  - h. Electrical outlets installed incorrectly;
  - i. Peeling paint;
  - j. Loose plaster;
  - k. Gaps between ceiling and walls;
  - l. Gap behind toilet leading down to bar;
5. These conditions existed since the inception of the tenancy. The problems with the windows were extensive. Some windows did not open properly and some did not close completely and some were unable to stay open on their own. The screens in many of the windows were ripped, allowing wasps to enter in summer and were of concern to the tenants due to being escape hazards for their pets. Some of the loose plaster cited by the town inspectors

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<sup>1</sup> For conditions that existed at the inception of the tenancy, the landlord is imputed with knowledge of their existence.

was extensive and rain soaked from the exterior of the building. Ultimately large portions fell off the wall. The gap in the bathroom cited by City had the effect of diminishing the privacy of the tenants' use of the bathroom as sound traveled between the bathroom and bar downstairs.

6. There were also various conditions of disrepair not listed by the City's inspectors. The leak into the common area hallway was extensive and filled five-gallon buckets placed underneath them by the landlord. The Court credits the tenant's testimony that these buckets would either overflow or spill out onto the carpet and create a dank odor. There were also spots in the ceiling where the gaps were simply filled with bare fiberglass insulation. There were also approximately a dozen dates between December 2023 and March 2024 when the water was shut off for the premises. It was unclear from the trial exactly what caused this problem and whether the landlord was negligent in his addressing same, so it is considered a breach of the warranty of habitability and not a breach of quiet enjoyment (though it significantly impacted the use of the premises).
7. Though the landlord made some repairs after being cited by the town, such work was shoddy at best. Instead of repairing the loose paint and plaster, for example, he merely painted over it. Additionally, the landlord failed to make repairs of all of the items cited by the town inspectors.<sup>2</sup>

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<sup>2</sup> Though the City Health Department inspector generated an undated letter indicating that no further corrections were needed, it was very clear that said letter was not reflective of the conditions still present at the premises whenever written. Additionally, the City inspector believed that the City's policy was not investigate or cite items that were in addition to the initial list of citations. Also, there continued to exist, for items previously cited and additional ones not cited, repairs well after their last time at the premises.

8. These conditions violate the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. Although it is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability irrespective of the landlord's good faith efforts to repair the defective condition [*Berman & Sons, Inc., v Jefferson*, 379 Mass. 196 (1979)], all of these conditions all existed at the commencement of the tenancy and knowledge of them starting is imputed. Additionally, the Court finds the tenant credible when she testified that she personally told the landlord about some of the conditions of disrepair.
9. It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Previous Patukonis*, 24 Mass.App.Ct. 907, (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). The Court finds that the average rent abatement of 30% fairly and adequately compensates the tenants for the diminished rental value of the premises resulting from these conditions from the commencement of the tenancy throughout the tenancy. Thus, there were periods of time when the conditions caused a higher percentage of abatement and time with a lower percentage of abatement. Thirty percent (30%) is an average abatement for the entirety of the tenancy from August 2019 through



the date of trial in May 2024. Accounting for the rent being \$750 until January 2023 and \$800 thereafter, the total damages for the landlord's breach of the warranty of habitability is **\$13,305**.

**10. Breach of the Covenant of Quiet Enjoyment: Lack of Heat, Manner of**

**Garbage Storage, and Shower in the Kitchen:** There was only one heating sources at the premises, in the living room. There were no heating sources in the bedroom or the shower area and until repaired after the City cited it, none in the toilet room. The tenant testified credibly as to the cold temperatures throughout the dwelling during the colder months and that when she complained to the landlord, he suggested that she purchase portable heaters. In addition to insufficient heating, the unit was plagued with drafty windows and drafty walls. Additionally, the common hallway was not heated, and this contributed to the cold temperature in the toilet room, particularly with a gap under the door to that room. During his trial testimony, the landlord appeared confused about what work he did—if any—regarding heating problems. He stated that he had the heating unit replaced in the tenants' unit only to realize on the stand that the unit was not replaced in the tenants' unit but in a neighboring unit.<sup>3</sup>

11. For most of the tenancy, the landlord has kept the garbage receptacles for the tenants of the building inside the building on the second floor (same floor as the subject unit). This caused bad odors and the tenant credibly testified that she was embarrassed by this when she had guests over. Additionally, the

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<sup>3</sup> During his testimony, the landlord also attempted to put into evidence photographs he believed were of the tenants' unit, were in fact of another tenant's unit.



landlord allowed his workers to use these receptacles for their debris and building materials causing blockage to proper egress. It was only for a very short time after being cited by the City that the landlord relocated the trash barrels to outside of the building---but he has since returned them to the second floor hallway.

12. From the commencement of the tenancy in mid-2019 until a wall was installed after the City cited the landlord, the shower for this unit was in the kitchen next to the stove. The tenant provided photographic evidence of the shoddy nature of the shower, with a gap between the shower and the wall with exposed insulation. This horrible condition continued after the installation of the privacy wall in the shower area. Until the landlord constructed a wall, making the shower private from the rest of the apartment, there was no privacy for the person showering as it could be viewed from the living room and kitchen. Additionally, there is no ceiling to the shower and given the drafty window and no heating source, it is very cold when showering. As a response to the tenants' complaint to the landlord about the draftiness of the window and that the gaps were letting wasps in, the landlord had someone use expanding foam and the work is non-workmanlike and hideous. Even after the landlord installed a wall to make the shower private, it was constructed in a manner that does not provide easy access to the shower for the tenant, Ms. Peters. Ms. Peters testified credibly that she has become stuck on one occasion and on several other occasions almost became stuck

between the shower door and the new wall and the door has scraped the tenant's breast and body in order to pass through.

13. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). The Court finds that the landlord's renting out of the premises with insufficient heating sources, a shower in the kitchen, and storage of garbage as described above violated the tenant's covenant of quiet enjoyment and G.L. c. 186, §14 and hereby award the tenant's damages equaling three months' rent for this claim of breach of quiet enjoyment, totaling (\$800 X 3) **\$2,400** and reasonable attorney's fees and costs.

14. **Cross-Metering Electric:** The tenant, Molly Peters, agreed at the commencement of the tenancy to pay for the electric utility in her apartment. The Court finds that the tenant's electric meter, however, included power to the hallway outlet in the common area of the second floor of the building—which powered a light—from the commencement of her tenancy until the landlord corrected this cross-metering in June 2023.

15. The Health Department cited the common area hallway outlet as being part of the tenant's electric meter. Additionally, the tenant credibly testified that when

the electric went off in her apartment, the electric power for the outlet in the common area also went off. Lastly, the landlord admitted to same in his responses to the Request for Admissions in discovery.

16. The damages for said cross-metering are the total amount of the electric bill for the period of cross-metering. *Lavigne v. Dupelle*, Western Div. Hsg. Ct. Case No. 09-SP-370 (Fein, 2010); *Gilmore v Lafreniere*, Western Div. Hsg. Ct. Case No. 88-SP-7406 (Abrashkin, 1988); *Buxo v. Morrissette*, Western Div. Hsg. Ct. Case No. 12-SP-2971 (Fields, 2013); See also, *Lezberg v. Rogers*, 27 Mass.App.Ct. 1158, 1159 (1989). The tenants, therefor, are entitled to damages in the amount of **\$2,189.59<sup>4</sup>** for the landlord's cross-metering of the tenants' electric utility.

17. **Consumer Protection Act Claim, Chapter 93A:** There is no question that the landlord is in trade or commerce for purposes of this statute. He is 30-year owner of a building with five residential apartments. The conditions of disrepair discussed above existed when the tenancy first began which is a violation of 940 CMR 3.17 and also imputes the landlord's knowledge of such conditions. The Court finds these conditions willful and knowing violations of Chapter 93A, mandating the award of multiple damages. See, *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956 (1987).

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<sup>44</sup> The tenants assert a much higher amount (\$5,16.59) and put into evidence the Eversource documents. The judge, however, can not tell from the Eversource materials what the amounts that were charged to for the tenants. Landlord's counsel stipulated, during the trial, to \$2,189.59 being the amount of electric bills paid by the tenants from the commencement of the tenancy through June 8, 2023 when the cross-metering was corrected and the Court shall use this figure.



18. Despite his many years as a landlord of residential property, the landlord appears satisfied to not address repairs other than when the City cited him and, even then, the repairs made were not workmanlike. Moreover, when informed by the tenant that the one source of heating for the entire unit was insufficient, his only response was that the tenant use a space heater. When shown broken and loose plaster on the walls he had his workmen paint over instead of replace the plaster---ultimately resulting in large swaths of plaster falling out.
19. The Court rules that double damages are appropriate on all of the facts and circumstances present in this case. The total damages to which the tenants are entitled are therefore double the warranty of habitability damages:  
 $\$13,305 \times 2 = \$26,610$  plus reasonable attorney's fees and costs.
20. **The Tenant's Other Claims:** The tenants failed to meet their burden of proof on their claims for Retaliation, lack of second means of egress/fire escape, and Cross-Metering of Gas Utility.
21. **Conclusion and Order:** Based on the foregoing, a ruling and award of damages shall enter for the tenant for possession plus **\$13,799.59** and for reasonable attorney's fees and costs. This is not yet a judgment until after the Court rules on the attorney fee petition.
22. **Attorney's Fees:** As a prevailing party in their claims for breach of the covenant of quiet enjoyment (G.L. c.186, s.14) and their consumer protection act claim (G.L. c.93A), tenants' counsel has 20 days from the date of this order noted below to file and serve a petition for reasonable attorney's fees



and costs. The landlord shall have 20 days after receipt of same to file and serve any opposition thereto. The Court shall issue an order of judgment without further hearing which will include a ruling on said fee petition and final judgment on all claims.

**23. Addendum:** The Court wishes to thank both counsel in this matter for their preparedness for what turned into a multi-day trial and, in addition, also specifically for their great effort in submitting proposed findings of fact after the conclusion of the trial. Due to the delay in the Court's issuance of this order, the undersigned judge had to listen to recordings of much of the trial over again and it is clear that counsel---particularly tenants' counsel---engaged in a painstaking effort to submit proposed findings that were very helpful to the judge.

So entered this 24<sup>th</sup> day of July, 2024.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**FRANCES MENDEZ-HERNANDEZ,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24CV00545**

**FELIX CONFESOR & GILBERTO PEREZ,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the plaintiff's request for an emergency order. All parties appeared and were self-represented.

Gilberto Perez has been the owner of the subject rental premises located at 198 Leyfred Terrace, 1<sup>st</sup> floor in Springfield, Massachusetts for a few months. Felix Confesor is the maintenance person for the property. Frances Mendez-Hernandez rented the first floor apartment from Mr. Perez effective April 1, 2024 pursuant to a written month-to-month rental agreement with a monthly rent of \$2,300. She is responsible to pay for the electricity. The property is a two family house, although people also live in the attic. The plaintiff suspects that Mr. Confesor lives in the basement, although he denies that he does.

Since she moved in, her electric bills have been very high. She testified that the first bill she received was for \$600 for two weeks. She suspects that she is paying for the electricity in other units and/or the common areas. In addition, two outlets in her apartment do not work and the lights flicker at times. The landlord has an "internet box" with cameras plugged into her electricity. She talked to the landlord about the problem. He denied there was a problem but also offered to fix it. He did not do so.

Mr. Perez acknowledged that the tenant's electric bills are too high. He gave her \$200 in June and \$300 in July toward the bills. The plaintiff was unable to have an electrician investigate the problem because she does not have access to the basement where the meters are. Mr. Perez acknowledged that there are only two electricity meters in the house although there are at least three units occupied. There is no common area meter.

Ms. Mendez-Hernandez also testified that there was a leak in the bathroom that was not repaired properly. This has led to what she suspects is mold developing in the bathroom.

Any claim by the plaintiff for cross-metering damages, as raised in her complaint, will be addressed at a later stage of the case and not at this injunctive relief stage.

### **Orders**

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

1. The defendant, Gilberto Perez, will have a licensed electrician inspect the property to determine if there is cross-metering, to determine the cause of the flickering lights, and to evaluate if there are other problems with the electricity. "The property" as used in this order includes all occupied units and the common areas at 198 Leyfred Terrace, Springfield, Massachusetts.<sup>1</sup>
2. The defendant, Gilberto Perez, will have a licensed electrician repair any cross-metering so that the property complies with 105 CMR 410.354.
3. The defendant, Gilberto Perez, will have a licensed electrician repair the two outlets and any other defects found in the electrical service at the property.
4. The defendant, Gilberto Perez, will obtain a written report from the licensed electrician outlining the electrician's findings and the work needed to bring the electrical service and equipment into compliance with the state Sanitary Code.
5. The defendant, Gilberto Perez, will repair the leak in the bathroom and remediate any mold or other residue.
6. All work ordered in this order will be done at the landlord's expense.

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<sup>1</sup> The court orders the inspection to be done for the entire building because the second floor tenant filed a case seeking similar relief. *Perez v. Perez et al.*, No. 24CV00546. It was also heard on July 23, 2024 and a comparable order enters in that case today.

7. The plaintiff will allow access to her apartment for the inspection and repair work outlined in this order, on reasonable notice.
8. The matter is scheduled for review of compliance with this order on **July 30, 2024 at 2:00 p.m.** in the Springfield session of this court.
  - a. The defendant will bring a copy of the electrician's report to that hearing.

The court waives the statutory \$90 injunctive relief fee in this case.

July 24, 2024

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



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**SHARLINE PEREZ,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24CV00546**

**GILBERTO PEREZ & FELIX CONFESOR,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the plaintiff's request for an emergency order. All parties appeared and were self-represented.

Gilberto Perez has been the owner of the subject rental premises located at 198 Leyfred Terrace, 2<sup>nd</sup> floor in Springfield, Massachusetts for a few months. Felix Confesor is the maintenance person for the property. Sharline Perez was already a tenant in the second floor apartment there when Mr. Perez bought the property. She rents the apartment pursuant to a Section 8 Housing Choice Voucher Program lease administered by the Springfield Housing Authority. The monthly rent is \$1,800. The tenant is responsible to pay for the electricity. The property is a two family house, although people also live in the attic. The plaintiff suspects that Mr. Confesor lives in the basement, although he denies that he does.

Even before Mr. Perez bought the property, Ms. Perez' electric bills have been very high. She suspects that she is paying for the electricity in the attic and the hallways. On one occasion when her lights went out, the lights in the attic and the hallways also went out. She talked to Mr. Perez about the problem, but he told her to apply for financial assistance from Wayfinders to pay the electric bills. She has used RAFT twice to pay the electric bill. She has scheduled a Section 8 inspector from the Housing Authority to inspect the problem on July 25, 2024.

Mr. Perez acknowledged that the tenant's electric bills are high. The tenants do not have access to the basement where the meters are. Mr. Perez acknowledged that there are only two electricity meters in the house although there are at least three units occupied. There is no common area meter.

In her complaint, Ms. Perez also stated that she and her children are afraid of Mr. Confesor. He scares them when he is in the basement and threatens them on the stairs. She describes his actions as harassment. Mr. Confesor testified that he does not live at the property although he has his equipment in the basement and a garden at the property. He testified that he lives with a friend in Lynn, two and three-quarter hours away. He has been staying in Springfield for a few months, although he did not say where he has been living during that time.

The Housing Court does not have jurisdiction over harassment prevention cases, pursuant to G.L. c. 258E. To the extent the plaintiff seeks such a restraining order, she must seek such relief in the District Court. However, the Housing Court does have jurisdiction over covenant of quiet enjoyment in residential housing cases pursuant to G.L. c. 186 §14. In every residential tenancy, the landlord must ensure that the tenant can use the apartment without interference. This applies to agents of the landlord, such as the landlord's maintenance worker, Mr. Confesor.

### Orders

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

1. The defendant, Gilberto Perez, will have a licensed electrician inspect the property to determine if there is cross-metering and to evaluate if there are other problems with the electricity. "The property" as used in this order includes all occupied units and the common areas at 198 Leyfred Terrace, Springfield, Massachusetts.<sup>1</sup>
2. The defendant, Gilberto Perez, will have a licensed electrician repair any cross-metering so that the property complies with 105 CMR 410.354.
3. The defendant, Gilberto Perez, will have a licensed electrician repair any other defects found in the electrical service at the property.

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<sup>1</sup> The court orders the inspection to be done for the entire building because the first floor tenant filed a case seeking similar relief. *Mendez-Hernandez v Confesor et al.*, No. 24CV00545. It was also heard on July 23, 2024 and a comparable order enters in that case today.

4. The defendant, Gilberto Perez, will obtain a written report from the licensed electrician outlining the electrician's findings and the work needed to bring the electrical service and equipment into compliance with the state Sanitary Code.
5. All work ordered in this order will be done at the landlord's expense.
6. The plaintiff will allow access to her apartment for the inspection and repair work outlined in this order, on reasonable notice.
7. The matter is scheduled for review of compliance with this order on **July 30, 2024 at 2:00 p.m.** in the Springfield session of this court.
  - a. The defendant will bring a copy of the electrician's report to that hearing.
  - b. The plaintiff will bring a copy of the Springfield Housing Authority's Section 8 inspector's report to that hearing.

#### **Further Order**

After hearing, the court further orders:

8. Neither the defendant, Gilberto Perez, nor any of his agents, including but not limited to Felix Confesor, will interfere with the use of the second floor apartment or the common areas by the plaintiff or her family.

The court waives the statutory \$90 injunctive relief fee in this case.

July 24, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**POWDERMILL VILLAGE LLC, AS  
MANAGED BY PEABODY PROPERTIES, INC.,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01817**

**APRIL KAMINSKI**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the defendant's motion to stop the move-out which was scheduled for July 30, 2024 at 1:00 p.m. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to provide information about RAFT.

In this eviction case, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy based on nonpayment of the tenant's share of the Section 8 rent. A default judgment entered on June 11, 2024 for possession and \$963.54 in unpaid rent/use and occupancy and \$259.46 in costs. The execution issued on June 27, 2024 on the plaintiff's written application. The deputy sheriff served a forty-eight hour notice that the execution would be used to move the defendant out of the apartment on July 30, 2024 at 1:00 p.m.

The tenant's portion of the rent has increased from \$203 to \$330. Nothing has been paid since the judgment entered, so the arrearage has increased.

Ms. Luna reported that the defendant's last application for RAFT financial assistance timed out on July 20, 2024 because of missing landlord documentation. The application did not progress to the stage of the defendant's being required to show "hardship" for failing to pay her portion of the subsidized rent. Ms. Kaminski reported that she was in rehab for three months.



Ms. Luna reported that, with the proper documentation, Wayfinders could consider this to be a “hardship” for the purpose of qualifying for RAFT financial assistance for a subsidized tenancy. If the defendant is eligible, RAFT would pay a maximum of six months of the tenant’s portion of the rent and costs up to \$7,000. If this did not reduce the arrearage to zero, the defendant would need to propose a realistic payment plan for the remaining balance.

The court stops the move-out scheduled for July 30, 2024 to give the parties the opportunity to complete the RAFT application process. The defendant is responsible for the cancellation fee when the plaintiff receives an invoice from the sheriff’s office.

### **Orders**

After hearing, the following orders will enter:

1. The defendant’s motion is **ALLOWED**. The move-out scheduled for July 30, 2024 at 1:00 p.m. is **STOPPED**.
  - a. The plaintiff’s attorney will notify the deputy sheriff of this order.
2. The defendant is responsible to pay the cancellation fee when the plaintiff receives the invoice from the constable.
3. The defendant will re-apply for RAFT financial assistance immediately.
  - a. Both parties will submit all required documentation to Wayfinders promptly.
  - b. The plaintiff will include the costs and the cancellation fee on the ledger that is submitted to Wayfinders.
  - c. The defendant will provide documentation of any “hardship” reason why she did not pay her portion of the Section 8 rent, including but not limited to documentation of her time in rehab.
  - d. If the amount that Wayfinders authorizes the defendant to receive does not reduce the arrearage to zero, the defendant will propose a realistic payment plan for any remaining balance.
  - e. The plaintiff will consider such a payment plan in good faith.
4. The defendant will pay her portion of the Section 8 rent for August and all following months when it becomes due.
5. In light of the defendant’s reapplication for RAFT financial assistance ordered herein, the execution is stayed pursuant to G.L. c. 239 §15.

6. If the plaintiff complies with this order, but the defendant does not comply, the plaintiff may file a motion to lift the stay of the execution ordered today.
7. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.

July 24, 2024

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

**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 23-SP-5463**

**US BANK TRUST, N.A.,**

**Plaintiff,**

**v.**

**JOSEPH L. PEREZ-GONZALES,**

**Defendant.**

**ORDER**

After hearing on May 22, 2024, on the plaintiff's motion for summary judgment, at which the plaintiff appeared through counsel and the defendant appeared self-represented, the following order shall enter:

1. The motion is allowed, and the plaintiff shall be awarded possession.
2. This is an *order* and not yet a judgment as there is an outstanding claim for use and occupancy by the plaintiff.
3. A hearing shall be scheduled for **August 13, 2024, at 9:00 a.m.** to determine the amount for use and occupancy. Said hearing shall be evidentiary in nature, with witnesses providing testimony in support of an amount to be

established for use and occupancy. Both parties shall make such witnesses, as well as other evidence, available at such hearing.

4. If the plaintiff wishes to dismiss its claim for use and occupancy, it may file a serve a document to that effect and the court will enter a final judgment awarding possession to the plaintiff. Under those circumstances, the above noted hearing would be cancelled.

So entered this 24<sup>th</sup> day of July, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. **23H79SP003582**

CITIZENS BANK, N.A.,

Plaintiff,

v.

Angel Martinez, et. al.,

Defendants.

**SUMMARY PROCESS APPEAL BOND ORDER**

This matter came before the court for a hearing on July 23, 2024 for: 1) the Plaintiff's ("Citizens/Plaintiff") motion, pursuant to G.L. c. 239, §§ 5 and 6, to set an appeal bond and issue a use and occupancy order pending the Defendant's ("Martinez/Defendant") appeal; 2) the Plaintiff also filed a motion to hold Martinez in Default of Judgment Order<sup>1</sup>; and 3) Martinez's motion, pursuant to G.L. c. 239, §§ 5 and 6, to waive the appeal bond.

This case involves a post-foreclosure summary process eviction in which Citizens sought to recover possession of 83 Ontario Street, Springfield, MA (the "Premises") from Martinez and his family. On May 17, 2024, after a bench trial was held, this Court (Adeyinka, J.), entered judgment in favor of Citizens on their claim for possession of the Premises. On May 24, 2024, Martinez filed a timely appeal from the judgment entered by this Court.

***G.L. c. 239, §§ 5 and 6 Motions***

Since this is a post-foreclosure eviction in which the Citizens has obtained a judgment to recover possession of the foreclosed property, the conditions that attach to the appeal bond are governed by G.L. c. 239, § 5 and G.L. c. 239, § 6. The two sections of the appeal bond statute must be read together. See Bank of New York Mellon v. King, 485 Mass. 37 (2020).

<sup>1</sup> In the Court's May 16, 2024 Order, Martinez was granted a stay of execution through August 1, 2024 contingent on use and occupancy payments in the amount of \$700.00 per month due and payable by the tenth (10<sup>th</sup>) of the month beginning on June 10, 2024. See Order Dated May 16, 2024, at Docket Entries Nos. 20 & 21. Citizens' motion is DENIED, as Martinez has substantially complied with the Court's Order and made the required payments as described *infra*.

With respect to setting an appeal bond, G.L. c. 239, § 6 provides in relevant part that “[i]f the action is for possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff. . . . Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond” (emphasis added). Under the provisions of G.L. c. 239, § 5 the Court shall waive the appeal bond if it is satisfied that Martinez has a defense which is not frivolous and that she is indigent. *See Tamber v. Desrochers*, 45 Mass. App. Ct. 234 (1998).

G.L. c. 239, § 5 (e) provides that “[t]he court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver” (emphasis added). A post-foreclosure former owner/defendant, such as Martinez and his family, who continue in possession of the property as a tenant at sufferance may be ordered to make use and occupancy payments “as rent” as a condition of entering and prosecuting his pending appeal. *See Bank of New York Mellon v. King*, *supra.*, at p. 50. This is true even if the appeal bond is waived based upon indigency. The fact that the Martinez “brought title into question” does not excuse him from compliance with this post-judgment statutory use and occupancy requirement.

Based upon the information set forth in Martinez’s affidavit of indigency I find that he meets the standards of indigency under G.L. c 261, §§ 27A – G. Further, while the court has ruled as a matter of fact and law that the defenses asserted by the Martinez in this summary process action are insufficient to defeat the plaintiffs’ claim for possession, I conclude that the issues Martinez is likely to assert on appeal, specifically the issue involving the “face to face meeting,” barely pass the *Tamber v. Desrochers* threshold and are non-frivolous.

Accordingly, Martinez's Motion to Waive the Appeal Bond is **ALLOWED** in part. Martinez's obligation to post an appeal bond is waived. However, where the obligation to pay an appeal bond has been waived based on indigency, under G.L. c. 239, §§ 5 and 6 Martinez must nonetheless pay Citizens all or a portion of the fair rental value for his continued monthly use and occupancy of the property during the pendency of the appeal. *See Frechette v. Andrea*, 494 Mass. 167 (2024).

Accordingly, with respect to the setting of an amount that Martinez must pay for his continued use and occupancy of the property during the pendency of the appeal Citizens' motion is **ALLOWED**. Pursuant to the Court's May 2024 Order, the parties agree that the monthly use and occupancy amounts shall be \$700.00 per month due and payable on the 10<sup>th</sup> of each month. The parties reported that the Martinez has made those payment, although not timely, pursuant to the court's order. Moreover, Citizens failed to produce any testimony, by document, witnesses, or affidavit at the hearing to refute the use and occupancy amount set by the court of \$700.00. However, the Court takes judicial notice that this is a single-family home and rents are well above the \$700.00 use and occupancy amount set by this Court. As a result, Citizens is free to file a motion to modify the Court's use and occupancy amount.

#### **APPEAL BOUND USE AND OCCUPANCY PAYMENT ORDER**

In accordance with the requirements of G.L. c. 239, §§ 5 and 6, it is **ORDERED** that Martinez, as a condition of entering and maintaining his appeal, shall:

1. Pursuant to the Court's Order dated May 17, 2024, shall continue to pay \$700.00 use and occupancy to Citizens via certified funds due and payable before the 10<sup>th</sup> of the month.
2. If during the pendency of this appeal Martinez fails to make his required monthly use and occupancy payments as set forth in this order, then upon motion Citizens may request that Martinez's appeal be dismissed, and that the execution for possession issue.

***Notice of Appellate Rights***

Martinez has a right of appeal seeking review of this order by a single justice of the Appeals Court as follows:

a. G.L. c. 239, §§ 5 and 6 order: Any party to the action may appeal this part of the order by filing with the clerk of the Housing Court a written notice of appeal seeking review of the order by a single justice of the Appeals Court. Such notice must be filed within the time provided in section 5 for filing a notice of appeal (10 days), or within 6 days after receiving notice of the decision of the court on the motion to waive bond, whichever is the later.

b. G.L. c. 261, §§ 21A – 27G order: Martinez may appeal this part of the order by filing with the clerk of the Housing Court a written notice of appeal seeking review of the order by a single justice of the Appeals Court. Such notice must be filed within 7 days after receiving notice of the decision of the court on the G.L. c. 261, §§ 21A – G motion.

**SO ORDERED:**

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

Dated: July 25, 2024



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**NEW LUDLOW VENTURES LLC, D/B/A  
PARTRIDGE HOLLOW APARTMENTS,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01037**

**LISA FLEMING,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the plaintiff's motion to enter judgment and issue the execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders appeared at the hearing to report on RAFT.

In this eviction case the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy based on nonpayment of rent. The parties entered into an Agreement on April 17, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$6,825 in rent/use and occupancy through April 2024 and \$250.77 in costs. The defendant agreed to pay her use and occupancy (\$1,365) by the tenth of each month beginning in May 2024. She agreed to move out of the premises on or before November 1, 2024. The last month rent would be applied to October 2024 or to the last month the defendant occupied the unit. The plaintiff would handle the security deposit in compliance with G.L. c. 186 §15B. The defendant had a pending RAFT application. If it were denied, the plaintiff agreed to file a motion to bring the case forward so that the parties could mediate new terms.

Ms. Luna of Wayfinders reported that three applications were filed this year for RAFT financial assistance. They timed out because the tenant did not complete the initial filing or one

party or the other did not submit the needed documentation. No RAFT funds were paid this year toward the arrearage on behalf of the defendant. There is no RAFT application pending at this time. The court notes that the maximum amount RAFT could pay is less than the amount the tenant now owes.

The plaintiff reported that the arrearage is now \$9,555 through July 2024 with \$250.77 in costs. The defendant paid her use and occupancy for May, although it was late. She did not pay any use and occupancy for June or July. She reported that she cannot afford the rent going forward. She explained that she was out of work because of medical reasons for fourteen months. She went back to work in March but was on light duty. She has now determined that she cannot perform her job, but she has started a new job. She proposed that she move by September 1, 2024 instead of November 1, 2024 as originally agreed and that the landlord use her last month rent for August 2024 and her security deposit for July 2024. She agreed to pay one month use and occupancy on July 25, 2024 which would be applied to June 2024. She has no means to pay anything toward the arrearage.

The plaintiff agrees to use the defendant's last month rent for August use and occupancy, but opposes the application of the security deposit to unpaid rent before the tenant moves out. The landlord is not required to do so. Pursuant to G.L. c. 186 §15B (4) a landlord may hold a security deposit for damages beyond reasonable wear and tear and then apply the balance to any unpaid rent after the tenant moves out.

The court finds that the defendant is in substantial violation of a material term of the parties' April 17, 2024 Agreement because she did not pay the use and occupancy for June or July. Therefore, the plaintiff is entitled to the entry of judgment. Because the parties' Agreement provided for amended terms if RAFT did not pay the arrearage, the court stays the execution as outlined below.

### **Order**

After hearing, the plaintiff's motion to enter Judgment is **ALLOWED** as follows:

1. Judgment will enter for the plaintiff for possession and \$9,555 in unpaid rent/use and occupancy through July 2024 with costs of \$250.77 and interest.
2. Execution is stayed through August 31, 2024. Plaintiff may apply for the execution in writing after that date.

3. The defendant will pay \$1,365 to the plaintiff to be applied as one month use and occupancy no later than July 31, 2024.
4. The defendant's last month rent will be applied to August 2024 use and occupancy.
5. The defendant will vacate the premises no later than September 1, 2024.
6. The plaintiff will handle the security deposit pursuant to statute. After the defendant moves out of the premises, the plaintiff may apply the security deposit to damages (if any) or to unpaid rent, in the plaintiff's discretion. The plaintiff will notify the defendant of how the security deposit is applied, as required by statute.
7. Either party may file a motion to amend the *amount* of the judgment to reflect payments made after July 23, 2024 and the application of the security deposit to unpaid rent, if done.

July 25, 2024

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



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24CV89  
23SP1570

JOSEPH BRETON  
Plaintiff<sup>1</sup>

vs.

CITIZENS BANK, NA  
Defendant<sup>2</sup>

ORDER

This matter came before the Court on June 24, 2024, on Defendant's Motion to Dismiss Plaintiff's Counterclaim with Prejudice (Paper #28). The Plaintiff did not file a written opposition to Defendant's Motion to Dismiss. Plaintiff appeared represented by counsel. Defendant appeared self-represented. After hearing, review of the record and filings, the Court orders as follows:

This matter commenced on February 6, 2024, as a transfer from the summary process docket. See *Citizens Bank, NA v. Bretton*, Western Housing Court, Docket Number 23H7SP1570. (**Bretton I**). Judgement entered for possession in favor of the Defendant in Bretton I. The Plaintiff's counterclaim in quantum meruit were transferred to the civil docket. (See Paper #16, Bretton I). On May 29, 2024, the Defendant filed its Motion to Dismiss Counterclaims. The Plaintiff is the former tenant of the owner of the property located at 22-24 Brooks Avenue, Chicopee, MA (**Premises**).

Defendant's Motion Dismiss Plaintiff's Counterclaim (Paper #28) is **ALLOWED**. To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege facts that, if true, would "plausibly suggest ... an entitlement to relief." *Lopez v. Commonwealth*, 463 Mass. 696, 701 (2012), quoting *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636, (2008), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

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

<sup>2</sup> As used herein, the term "Defendant" refers to all persons identified as in the caption on the line marked "Defendant."



The Court must assume the allegations in the complaint are true and draw "every reasonable inference in favor of the plaintiff[s]"<sup>3</sup> from those allegations. *Rafferty v. Merck & Co., Inc.*, 479 Mass. 141, 147 (2018). In so doing, however, it must "look beyond the conclusory allegations in the complaint and focus on whether the factual allegations plausibly suggest an entitlement to relief." *Maling v. Finnegan, Henderson, Farabow, Garrett & Dunner, LLP*, 473 Mass. 336, 339 (2015), quoting *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011). In other words, the Court must accept as true only the facts alleged in the complaint, not any "legal conclusions cast in the form of factual allegations." *Sandman v. Quincy Mut. Fire Ins. Co.*, 81 Mass. App. Ct. 188, 189 (2012).

The facts as alleged in the Plaintiff's counterclaim, viewed in light most favorable to Defendant, if true, do not plausibly suggest an entitlement to relief. The Plaintiff's claims regarding improving the premises for the benefit of the bank cannot be sustained factually or legally as to Citizen's Bank. The Plaintiff failed to demonstrate that his improvements conferred a measurable benefit upon the Defendant, that the Plaintiff had reasonable expectation of payment from the Defendant, and that the Defendant accepted the benefit with the knowledge, actual or chargeable of the Plaintiff's expectations. See *Finard & Co. v. Sitt Asset Mgmt.*, 79 Mass. App. Ct. 226, 229 (2011). The Plaintiff's claims may go to the former owner, Ronald Czelusniak, who may have benefited and had knowledge of any "improvements" to the premises. However, such claims cannot be used to recover possession against a foreclosing entity.

Therefore, for the foregoing reasons, the Defendant's Motion to Dismiss (Paper #28) is **ALLOWED**. Plaintiff's counterclaims are dismissed with prejudice as to Citizen's Bank, NA.

**SO ORDERED**

July 26, 2024

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

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<sup>3</sup> In the present case, the Defendant was Plaintiff in the summary process action.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24SP1872

**DEIDRE A. DEPATHY AND DAWN DEPATHY, TRUSTEES OF LINDA E. HERBERT  
IRREVOCABLE TRUST**  
Plaintiffs<sup>1</sup>

vs.

**DAVIS WILLIAM**  
Defendant<sup>2</sup>

**FINDINGS OF FACTS, RULINGS OF LAW AND ORDER**

This matter came before the Court on June 25, 2024, on Defendant's Motion to Dismiss and Sever Counterclaims (Paper #7) and Defendant's Motion for Injunctive Relief (Paper #13). Defendant filed a Motion for Clarification (Paper #24). All parties appeared represented by counsel. After hearing, review of the record and filings, the Court orders as follows.

**FINDINGS OF FACTS**

The Defendant, Davis William (**Mr. Williams**) maintained an off/on romantic relationship with the former owner of the property, Linda E. Herbert (**Ms. Herbert**). The trustees are the daughters (**Depathys**) of Ms. Herbert. Currently, the Depathys also serve administrators/executors of Ms. Herbert's estate. Ms. Herbert owned the property located at 11 Ruth Avenue, Chicopee, MA (**Premises**).

Ms. Herbert passed away in December of 2023. Since Ms. Herbert's passing, there has been a great deal of conflict between the parties. The Depathys have entered the premises without permission, had Mr. William's guests/visitors charged with criminal offenses. The Depathys have also made allegations of domestic violence as to Mr. Williams against Ms. Herbert. Two of Mr. Williams' guests/visitors faced, or currently face, criminal charges arising out of their interaction with the Depathys. There have been multiple requests to have the police

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

<sup>2</sup> As used herein, the term "Defendant" refers to all persons identified as in the caption on the line marked "Defendant."

be present to ensure the peace. Additionally, disputes have arisen between the parties as to the ownership of a great deal of property, including tools.

Mr. Williams resided on the premises consistently for twenty-one years. Mr. Williams did not pay rent in regular intervals to Ms. Herbert but did contribute financially. Mr. Williams receives his mail at the premises and considers it his home. Many of his belongings, including his own tools, are maintained on the premises. On January 17, 2024, the Depathys caused a 90-Day Notice To Quit to be served on Mr. Williams. Mr. Williams continued to occupy the premises after the service of the Notice to Quit.

## **RULINGS OF LAW**

### **I. Status of Defendant**

The Court finds the Defendant is an occupant or tenant based on all the credible evidence. A licensee is a person who has been given permission by the owner to enter and use real estate for a specific purpose without being granted the right to its exclusive control and possession. *Roberts v. Lynn Ice Co.*, 187 Mass. 402, 406-407 (1905). The distinction between a lease and a license is that, “[a] lease of land conveys an interest in land ... and transfers possession ... A license merely executes acts done by one on land in possession of another that without the license would be trespasses, and conveys no interest in land.” *Baseball Publishing Co. v. Bruton*, 302 Mass. 54, 55 (1938).

The determination as to whether an occupant is a tenant or a licensee is a question of law, and in determining whether a license or tenancy was created, the fact finder must look at the parties’ intentions and their objectives as evidenced by the circumstances and by the parties’ conduct. *Willett v. Pilotte*, 329 Mass. 610, 612 (1953); *Gaertner v. Donnelly*, 296 Mass. 260 (1936). Factors relevant to the legal distinction between a guest (licensee) and tenant include: (1) whether consideration – usually the payment of rent – was given for a tenancy;<sup>3</sup> (2) whether the agreement is written or oral;<sup>4</sup> (3) the extent of the parties’ control over the premises;<sup>5</sup> (4) the language, if any, of the agreement;<sup>6</sup> and (5) the intention of the parties.<sup>7</sup> If the defendant is a

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<sup>3</sup> *Siver v. Atlantic Union College*, 338 Mass 212, 216 (1958).

<sup>4</sup> *Id.*

<sup>5</sup> *Assessors of Everett v. Albert N. Parlin House, Inc.*, 331 Mass. 359, 362 (1954).

<sup>6</sup> *Del Bianco v. Boston Edison Co.*, 338 Mass. 657, 659 (1959).

<sup>7</sup> *Commercial Wharf East Condominium Ass’n v. Waterfront Parking Corp.*, 407 Mass. 123, 134 (1990).



licensee, the plaintiff need not follow the requirements of G.L. c. 239 or G.L. c. 186 with respect to summary process and the termination of the tenancy.

In the present case, the Defendant established a tenancy through his continued occupancy of the premises while in a romantic relationship with Ms. Herbert. The Depathys have decided to engage in legal warfare against Mr. Williams, as well as his guests and visitors, based on the Depathys allegations of domestic abuse against their mother. Despite said claim, that does not alter the fact that Mr. Williams was never a licensee or invitee of Ms. Herbert.

## **II. Notice to Quit**

Estates at will may be determined by either party by **three months'** notice in writing for that purpose given to the other party; and, if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer. See. G.L. c. 186 § 12. Whenever a tenancy at will of premises occupied for dwelling purposes, other than a room or rooms in a hotel, is terminated, without fault of the tenant, either by operation of law or by act of the landlord, except as provided in section twelve, no action to recover possession of the premises shall be brought, nor shall the tenant be dispossessed, until after the expiration of a period equal to the interval between the days on which the rent reserved is payable or thirty days, whichever is longer, from the time when the tenant receives notice in writing of such termination. See. G.L. c. 186 §13.

The Notice to Quit in the present matter does not properly terminate the Defendant's tenancy. The Notice to Quit served on the Defendant provides ninety-days, but not full three months as required by G.L. c. 186 §12. Therefore, given the lack of interval rental period, the Plaintiff failed to properly terminate the tenancy.

## **III. Injunctive Relief**

The standard for issuance of a preliminary 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 by the granting of the injunction. See, *Packaging Industrial Group, Inc. v. Cheney*, 380 Mass. 609, 405 N.E.2d 106 (1980). For the reasons stated below, the Court finds that the Defendant demonstrated a likelihood of success on the merits that the Plaintiffs, their agents and others acting on their behalf interfered with his quiet enjoyment



and those of his guests/visitors and others lawfully on the property in violation of G.L. c. 186 §14.

The Court finds that the Plaintiffs interfered with the quiet enjoyment of the Defendant. The record clearly demonstrated that the Depathys have attempted to weaponize their grievances against Mr. Williams by calling the police to interfere with his right to quiet enjoyment. The parties listed a number of pending criminal cases resulting from the Depathys' attempt to recover possession. The quiet enjoyment statute, G.L. c. 186, §14, provides in part that, "Any lessor or landlord of any building or part thereof occupied for dwelling purposes... who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ....or attempts to regain possession of such premises by force without the benefit of judicial process" shall be liable for "actual or consequential damages or three month's rent, whichever is greater .." Rather than seek judicial remedies to address their concerns (Probate Court or Housing Court), the Depathys use the police department to file criminal complaints for perceived grievances.

WHEREFORE, for the foregoing reasons, the Court orders as follows:

#### **ORDER**

1. Defendant's Motion to Dismiss and Sever Counterclaims (Paper #7) is **ALLOWED**. Plaintiff's complaint for possession is dismissed without prejudice. Defendant's counterclaims are transferred to the civil docket.
2. Defendant's Motion for Injunctive Relief (Paper #13) is **ALLOWED**. The orders set forth in paragraphs 4-12, shall remain in effect until such time the Defendant vacates the premises by agreement of the parties or Court order and shall transfer to the civil docket along with Defendant's Counterclaims.
3. Defendant's Motion for Clarification (Paper #24) is **DENIED as MOOT**.
4. All communication between the Plaintiff and the Defendant shall be conducted through counsel of record absent an emergency.
5. Neither party, nor their agents, representatives or others acting on their behalf, shall interfere with the quiet enjoyment of the other parties, each other's guests, visitors or others lawfully of the property located at 11 Ruth Avenue, Chicopee, MA (**Premises**).

6. Plaintiff shall provide the Defendant with forty-eight (48) hours written notice (to counsel) prior to any inspection or repair at the property located at 11 Ruth Avenue, Chicopee, MA (**Premises**).
7. Parties may designate that at neutral third-party or counsel be present at the premises for any inspection, repair, or other lawful purpose.
8. Defendant shall refrain from denying the Plaintiff reasonable access to the Premises for the purposes of inspection(s), repair(s), or to conduct inventory of the estate after receipt of any written notice per this Order.
9. All inspections or repairs shall take place between Monday-Friday, between 8:00 AM and 6:00 PM, and Saturdays, between 10:00 AM and 2:00 PM.
10. All parties reserve the right to seek a modification of this order demonstrating a material change in circumstances. Any party may file a motion at any time prior to final disposition of this matter seeking an evidentiary hearing to demonstrate any such change in circumstances.
11. Nothing contained in this Order shall be viewed as a limitation or restriction on any of the parties' rights and remedies under State and Federal law.
12. This Order places the parties under the restraint of a direct order of the court that they do or refrain from doing the acts stated herein. Any violation of this order can result in further sanctions.

**SO ORDERED**

July 26, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**MAPLE RIDGE APARTMENTS LP,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01819**

**MARIE PEREZ,**

**Defendant.**

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**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the plaintiff's motion to enter judgment and issue the execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

In this nonpayment of rent eviction case the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. The parties entered into an Agreement on June 4, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$3,176.04 in rent/use and occupancy through June 2024 and \$250.01 in costs. The defendant agreed to pay the use and occupancy (\$1,365) for June on June 6, 2024 and beginning in July by the fifth of each month. The defendant also agreed to pay \$700 by the twenty-first of each month beginning in June and continuing until the arrearage is zero.

The parties agree that the defendant now has paid \$2,700 since signing the agreement, although some of the payments were late. The defendant filed an application for RAFT financial assistance, but withdrew it because Wayfinders told her she was over-income.

While the defendant was not in compliance with the Agreement when the plaintiff filed its motion, she had paid a significant amount by the time of the hearing. If she makes the remaining payments as she agreed, the defendant will reach a zero balance in a relatively short

time. Ms. Perez explained that she is in training at a second job, which will pay her on a per diem basis when she completes her training.

The court does not enter judgment at this time. Rather, the plaintiff's motion to enter judgment and issue the execution is continued for review and further hearing on **September 17, 2024 at 9:00 a.m.** This will give the defendant the opportunity to begin receiving income from her second job and make the payments as she agreed to do.

July 26, 2024

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



**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 23-SP-5069**

**CHRISTOPHER WILSON,**

**Plaintiff,**

**v.**

**SHEMAIR BLACK,**

**Defendant.**

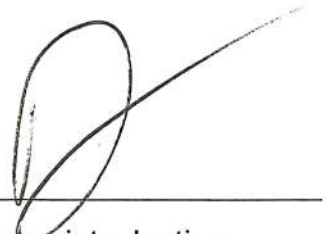
**ORDER**

This matter came before the court for a pretrial conference on July 23, 2024, at which both parties were represented by counsel. After conducting same, the court's order is as follows:

1. The defendant's request for leave to file an Amended Answer with defenses and counterclaims is allowed. The defendant shall have until August 16, 2024, to file and serve same.
2. The parties agree that defendant [REDACTED] (who is the nine year old daughter of the defendant) shall be dismissed from this case.

3. The defendants avers that D. Smith is and was never an occupant of the premises. The defendant shall provide a notarized affidavit from Mr. Smith attesting to that and providing a current address to plaintiff's counsel by August 23, 2024. It is anticipated with said affidavit that Mr. Smith will be dismissed from this summary process matter. That issue will either be resolved by stipulation of the parties or by order of the court upon motion prior to trial.
4. The plaintiff's motion for injunctive relief relative to his allegation of unauthorized occupants and access to the basement shall be heard on **August 13, 2024, at 2:00 p.m.**
5. The parties have until August 30, 2024, to propound further discovery and until September 13, 2024, to serve responses.
6. A trial is scheduled for **September 24 and 25, 2024, beginning each day at 9:00 a.m.**

So entered this 26 <sup>th</sup> day of July, 2024.

  
Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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PATRICK DESRUISSEAUX,

Plaintiff,

-v.-

DOCKET NO. 24CV00487

MARIA ROMAN,

Defendant.

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ORDER

This matter came before the court on July 25, 2024 for a hearing on the plaintiff's request for an emergency order. Both parties appeared and were self-represented.

The defendant is the owner of the subject rental premises, a single-family home located at 13 Furrow Street in Westfield, Massachusetts. The plaintiff has lived there with his family since January 2021. The parties entered into a month-to-month rental agreement dated January 31, 2022 (Exh 5). The City of Westfield Health Department conducted an inspection at the premises and issued a correction order dated October 23, 2023 (Exh 2). The City filed a code enforcement case in this court based on that report on February 6, 2024, *City of Westfield, by and through its Board of Public Health v. Maria Roman, Patrick DesRuisseaux & Amaya Rodriguez*, No. 24CV00083. The City issued a letter of compliance to the landlord dated June 24, 2024 (Exh 1) and then filed a dismissal of the case on June 26, 2024 on the grounds that the repairs had been completed.

The plaintiff testified that some violations of the Sanitary Code remain at the premises - three outlets in the hallway and bathroom do not have covers and have loose wires, after a flood there is no light in the kitchen, there is no light in the dining room which is now used as a bedroom, the windows do not close properly and there are no screens so that insects come into the house, and the family has no access to the back yard because of fallen branches.

The defendant testified that all repairs have been made. She and her contractor asked to see the defective outlets but was told by Amaya Rodriguez that they were all set (Exh 4). Ms.

Roman submitted a letter from the Board of Health inspector dated July 15, 2024 (Exh 3) in which he explains that he considers all violations cited in the original inspection report to be completed, but the report did not cite any issue with the windows at the time. Except for a "larger branch", he considered the back yard to be the responsibility of the tenant based on what the landlord alleges is provided in the rental agreement. He includes a notation from the electrical inspector who recommends that a licensed electrician repair the wiring.

The plaintiff requests that the court order an "independent" inspection of the premises and that the landlord make any additional repairs that are needed.

#### Orders

After hearing, the following orders will enter:

1. The plaintiff may contact the Chief Housing Specialist, Jenni Pothier, to arrange for a housing specialist of this court to conduct a view of the items listed in this report as being defective.
  - a. The housing specialist will conduct any such view in conjunction with the City of Westfield Board of Health.
  - b. Both the plaintiff and defendant will be present during such view.
  - c. The parties, together with the housing specialist, will set a mutually agreeable time for the view to be scheduled.
2. As agreed, the plaintiff will grant access to the defendant's proposed buyer to see the inside and outside of the premises on 72 hours' notice.
  - a. The plaintiff is not required to talk with the proposed buyer.
3. The defendant will make any repairs needed to bring the premises into compliance with the Sanitary Code.
4. Both parties are urged to consult an attorney about their respective rights and responsibilities in this matter.

The court waives the statutory \$90 injunctive relief fee in this case.

July 29, 2024

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



CR

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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JOHN DYBAS,

Plaintiff,

-v.-

DOCKET NO. 24CV00566

CLIFTON JOHNSON,

Defendant.

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ORDER

This matter came before the court on July 25, 2024 for a hearing on the plaintiff-tenant's request for an emergency order. The plaintiff appeared but the defendant-landlord did not appear. Both parties are self-represented.

The plaintiff has been a tenant at will at the subject rental premises, a room located at 15 Blake Hill Street in Springfield, Massachusetts, for seven or eight years. The monthly rent is \$400. He received a thirty-day notice to quit from the landlord which seeks to end the tenancy on July 28, 2024.

Mr. Dybas testified that the defendant has been trying to get him to move earlier by taking his belongings and removing the battery from the key lock so that he would be locked out. However, Mr. Dybas testified that the landlord has stopped such actions since he filed this case.

Order

**The court orders that the defendant Clifton Johnson not interfere with the plaintiff John Dybas' quiet enjoyment of the premises while he remains a tenant there. The defendant will not attempt to regain possession of the premises without a valid court order obtained in a summary process (eviction) case.**

The court waives the \$90 statutory injunction fee in this case.

July 29, 2024

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

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24H79SP00125

ABEL FERNANDES and BRUNO FERNANDES,

Plaintiffs,

v.

RANDI YOUNG, and all other occupants,

Defendant

**Order for Amended Judgment**

After conducting a hearing on July 9, 2024, the plaintiff's *Motion for Amended Judgment* is **ALLOWED**. The parties entered into an agreement on March 21, 2024 which provided that (1) judgment would enter for the plaintiff for possession, (2) the defendant would vacate the premises by June 21, 2024 and (3) if the defendant vacated by June 21, 2024 the plaintiff would waive the rent arrearage (\$18,000.00 as of March 21, 2024).

In material breach of the March 21, 2024 agreement, the defendant failed to vacate the premises by June 21, 2024 and remains in possession. There is no evidence that the defendant filed a RAFT application that remains pending.

Accordingly, upon the filing of an affidavit from the plaintiffs that (1) the defendant remains in possession, and (2) the amount of unpaid rent through July 2024, it is **ORDERED** that the judgment for possession shall be amended to include damages for all unpaid rent that has accrued through July 2024 together with court costs of \$218.52. Execution shall issue in due course.

So entered this 29<sup>th</sup> 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**

---

**MACARTHUR TERRACE LLC C/O DIMEO  
PROPERTIES,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP04530**

**SHIRLEY SPRINKLE,**

**Defendant.**

---

**ORDER**

This matter came before the court on July 23, 2024 for a hearing on the defendant's motion to amend the parties' Agreement and the plaintiff's motion to re-issue the execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Her DCF caseworker Alysha Kane accompanied her. Janis Luna of Wayfinders appeared at the hearing to report on RAFT.

In this eviction case the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy based on nonpayment of the tenant's share of the subsidized rent. The parties entered into an Agreement on November 16, 2023. By its terms, the parties agreed that the defendant owed \$3,859 through November 2023 and \$262.50 in costs. The defendant agreed to pay \$400 every other Friday toward her portion of the use and occupancy (then \$627) and the arrearage and costs beginning in December 2023. The defendant had a pending RAFT application. All parties agreed to submit the required documentation in support of the application.

The plaintiff filed a motion to enter judgment on January 4, 2024 on the grounds that the defendant had not made the payments as she agreed to do. After hearings on January 31 and February 28, 2024, a judge of this court ordered that judgment would enter, but stayed the use of the execution to April 1, 2024 and ordered the defendant to apply for RAFT financial assistance. Judgment entered on February 29, 2024 for \$3,790 with \$262.50 in costs. Execution issued on March 25, 2024.

The defendant applied for RAFT financial assistance but eventually her application was denied because she had insufficient documentation that her failure to pay her portion of the Section 8 rent was due to a hardship. Ms. Luna confirmed this based on the Wayfinders records.



During this time, the defendant's share of the rent was reduced because she reduced her hours at work. She is engaged in a reunification process with her two sons with DCF. In order to be reunited with her older son, she was required to reduce her work hours to be able to spend more time with him. She is now working toward reunification with her younger son with DCF. She will need to reduce her hours further to avoid weekend work and overtime, to be able to spend more time with him. Her DCF caseworker, Alysha Kane, was with her at the hearing and confirmed that she is working with Ms. Sprinkle to resolve the eviction case and the DCF matters.

Ms. Sprinkle's motion asks to amend the amount that she must pay each month in light of her reduced household income. She first needs to recertify her income with the Springfield Housing Authority to know how much her share of the Section 8 rent will be and then she can determine how much she can afford to pay toward the arrearage.

The plaintiff reports that the arrearage through July 2024 is \$4,320 with \$262.50 in costs and asks for a new execution to issue because the original execution expired by its terms. However, the plaintiff argues that the execution was tolled, first by court order on February 28, 2024 and then by the pending RAFT application pursuant to G.L. c. 239 §15, which was ordered to be filed. The court agrees that *Fort Point Investments, LLC v. Kirunge-Smith*, 103 Mass. App. Ct. 758 (2024) does not apply in this case at this time.

The defendant acted correctly to bring a motion to amend the payment plan she had agreed to, based on changed circumstances with her household income. She now needs to take further actions with the Springfield Housing Authority and Wayfinders to be able to determine her new portion of the Section 8 rent/use and occupancy and to propose a new realistic payment plan for the arrearage. Her DCF caseworker confirmed that she will assist her to do this. While she is doing this, she must pay her portion of the rent/use and occupancy. It is important that she not fall further behind on her rental account.

The court does not order that a new execution issue at this time, to give the defendant the opportunity to complete the steps to enter into a new payment plan. The plaintiff's motion is continued for further hearing, as well as the defendant's motion.

### Orders

After hearing, the following orders will enter:

1. Both the defendant's motion to amend the parties' Agreement and the plaintiff's motion to re-issue the execution are continued for further hearing on **August 27, 2024 at 9:00 a.m.**
2. With the assistance of her DCF caseworker, the defendant will
  - a. recertify her income at the Springfield Housing Authority immediately, so that her portion of the Section 8 rent is adjusted to reflect her current household income.



- b. re-apply for RAFT financial assistance at Wayfinders immediately. Because this is a subsidized tenancy, she will need to document why she did not pay her portion of the Section 8 rent. On earlier applications, her documentation was insufficient to prove this, but she will work with Ms. Kane to provide appropriate documentation if possible.
  - c. If she can document such “hardship” with Wayfinders, the maximum amount that RAFT could pay is six months of the tenant’s portion of the rent as well as court costs. This *may* leave a balance still owed, so she will need to propose a realistic payment plan to pay the remaining arrearage.
  - d. If she cannot document such “hardship” with Wayfinders, she will be responsible to propose a realistic payment plan for the entire arrearage and costs.
3. The plaintiff will submit all documentation to Wayfinders, as required, and will include the court costs on the ledger.
4. The defendant will pay her August use and occupancy when it is due at the amount then set by the Housing Authority.
5. Both parties will report on the status of the above items at the August 27, 2024 hearing.
6. The defendant will ask her DCF caseworker to attend the August 27, 2024 hearing with her.
7. The execution is further stayed by this order, within the meaning of G.L. c. 235 §23.

July 29, 2024

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3874

NORTHEAST II APARTMENTS,

Plaintiff,

v.

CARMEN MENENDEZ,

Defendant.

ORDER

After hearing on July 24, 2024, on the tenants' motion to stop a physical eviction, the following order shall enter:

1. The physical eviction scheduled for July 25, 2024, is hereby cancelled. The basis for this cancellation is that the warehouse listed in the sheriff's 48-hour notice, Race Street Properties of Holyoke, Massachusetts (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.

So entered this 29<sup>th</sup> 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-3653**

**EUNICE DRIGO,**

**Plaintiff,**

**v.**

**AUTUMN STEELE,**

**Defendant.**

**APPEAL BOND ORDER**

After hearing on July 24, 2024, on the defendant tenant's motion to waive the appeal bond at which both parties appeared without counsel, the following order shall enter:

1. After the filing of a timely Notice of Appeal, the court must now determine if the appeal bond should be waived by ruling whether the tenant is indigent and whether she has non-frivolous defenses and claims.
2. After review of the tenant's Affidavit of Indigency and Supplement to Affidavit of Indigency, the court finds the defendant indigent within the meaning of G.L.



c.261 and in accordance with G.L. c.239, s.5 finds that she has non-frivolous defenses and claims.

3. More specifically, at the June 26, 2024, hearing on the landlord's motion to enforce the agreement (the decision of the court being appealed) the tenant argued by defense that though she waived her counterclaims in the December 13, 2023, Agreement, conditions of disrepair remained and that they were extensive and that she should be able to withhold her rent. The court disagreed with that argument and though it may be affirmed on appeal, the court finds the tenant's argument non-frivolous.
4. As such, the bond is waived other than the requirement to make monthly payments for use and occupancy going forward pending appeal, as long as the defendant occupies the premises, pursuant to G.L. c.239, s.5.
5. Such payments shall be in the amount of \$1,000 (contract rent) per month beginning in August 2024. Given that the tenant is alleging ongoing conditions of disrepair, she may bring a motion for the amount of such payment to be reduced by the court---but until the court were to order such a reduction, the tenant must pay \$1,000 monthly.

So entered this 30<sup>th</sup> day of July, 2024.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Michael Roche, Assistant Clerk Magistrate  
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-CV-502**

<b>PAULA PELOQUIN,</b>	
	<b>Plaintiff,</b>
<b>v.</b>	
<b>THOMAS KENNEY,</b>	
	<b>Defendant.</b>

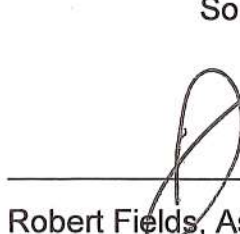
**ORDER**

After hearing on July 29, 2024, at which both parties appeared without counsel and also at which Quabbin Health District Inspector Prenosil joined by Zoom, the following order shall enter:

1. Based on the record before the court, including testimony by Inspector Prenosil, the plaintiff tenant's unit on the second floor of the subject premises is not currently safe for habitation given the extensive rat infestation. The plaintiff and her boyfriend (Timothy Gondola) and children are staying in an emergency shelter. Two other occupants (plaintiff's parents) Patrick and Michelle McDonald continue to occupy the premises.

2. The defendant property owner, Thomas Kenney, shall FORTHWITH address the rat infestation by use of a licensed exterminator and beginning this evening (July 29, 2024) provide alternate housing in a hotel or motel with cooking facilities and do so each evening until the Quabbin Health District deems the premises safe for re-occupancy. If the hotel or motel accommodations do not have cooking facilities, the defendant shall provide them \$100 for daily food stipend for each day in the motel/hotel.
3. The defendant has made arrangements for the Quabbin Health District (and the Town of Ware) to pay for necessary rat extermination and then place a lien on the subject property. They anticipate the extermination to begin by this week's end.
4. This matter shall be heard on **August 5, 2024, at 9:00 a.m.** Inspector Prenosil agreed to appear and update the court and he may appear by Zoom.

So entered this 30<sup>th</sup> day of July, 2024.

  
Robert Fields, Associate Justice

Cc: John Prenosil, Quabbin Health District, Suite D, 126 Main Street, Ware, MA 01082  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2258

THEODORE BURRELL,

Plaintiff

v.

KELLY JACKMAN,

Defendant

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ENTRY OF JUDGMENT

This summary process case brought for nonpayment of rent came before the Court for multi-day bench trial. The final day of trial took place on March 22, 2024.<sup>1</sup> The parties were then given the opportunity to file proposed findings of fact, which were submitted on or about April 15, 2024. At trial, both parties were represented by counsel. The residential dwelling unit that is the subject of this case is located at 82 Deerfield Street, Unit 1, in Greenfield, MA (the “Premises”). Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds, rules and orders as follows:

FINDINGS OF FACT

1. Mr. Burrell owns the Premises. He also owns other rental properties for investment and is in the business of renting residential units.

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<sup>1</sup> The first day of trial was August 18, 2023, and trial continued on November 17, 2023, December 1, 2023, January 26, 2024 and February 27, 2024.



2. Ms. Jackman resides at the Premises with her three children.
3. Ms. Jackman has rented three separate residential units from Mr. Burrell over a span of approximately 10 years.
4. Ms. Jackman has been a tenant at the Premises since approximately June 6, 2020.
5. At the inception of the tenancy, monthly contract rent was \$1,100.00.
6. After expiration of the original one-year lease term on May 31, 2021, Ms. Jackman became and remains a tenant at will.
7. Ms. Jackman has a rental voucher through the Section 8 Housing Choice Voucher Program. The subsidy is administered by the Greenfield Housing Authority ("GHA").
8. Mr. Burrell is knowledgeable about the landlord's obligations when participating in the Section 8 program.
9. The GHA has adjusted Ms. Jackman's portion of rent at different times over the course of her tenancy. At times, Ms. Jackman has had a zero rent share and the entire rent payment was made by GHA.
10. GHA agreed to an increase in the contract rent for the unit from \$1,100.00 to \$1,500.00 per month as of May 2022.<sup>2</sup>

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<sup>2</sup> In February 2022, Mr. Burrell sought an increase in the contract rent from the GHA. The contract rent increase was approved by the GHA as of May 1, 2022. Because GHA sets Ms. Jackman's share of the rent based on her income, not the contract rent (provided it is less than the cap set by the GHA), the Court finds it was unnecessary for Ms. Jackman to consent to the increase in the contract rent rate.

11. Mr. Burrell provided the GHA with a copy of the notice to quit to Ms. Jackman.<sup>3</sup>
12. Mr. Burrell maintains a rent ledger for Ms. Jackman. He created multiple versions of the ledger over time with inconsistent figures.<sup>4</sup> The evidence shows that Mr. Burrell's recordkeeping is deficient and substandard for an experienced professional landlord.<sup>5</sup>
13. Mr. Burrell used the availability of rental assistance funds to increase the amount that he would otherwise have been paid by modifying Ms. Jackman rent ledger.<sup>6</sup>
14. Despite his testimony to the contrary, the Court finds that Mr. Burrell did not always give receipts for payments made by Ms. Jackman.<sup>7</sup>
15. Although not reflected in the rent ledgers, the Court credits Ms. Jackman for the following payments: \$300.00 in October 2021, \$407.00 in January 2022 and \$167.00 in November 2022, December 2022, May 2023 and June 2023. The total amount of payments not reflected in the rent ledger is \$1,375.00.<sup>8</sup>

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<sup>3</sup> This finding is supported by evidence that Mr. Burrell knew of his duty to send a copy of any notices to quit to the GHA and in fact did so in other cases. The absence of a "cc" line on the copy of the notice to quit offered into evidence is not dispositive of the issue of notice.

<sup>4</sup> Mr. Burrell concedes that mistakes were made on the ledger but claims that they were not material or intentional.

<sup>5</sup> Mr. Burrell was in the habit of sending Ms. Jackman a rent ledger and asking her to provide receipts for payments that might not be reflected on it. A professional landlord should have a system that clearly accounts for all payments without the need to ask the tenant if she agrees with it.

<sup>6</sup> Defendant does not seek specific relief as a result of Mr. Burrell's misrepresentation, and the Court takes no position as to whether the amount reported to the rental assistance program constitutes an actionable offense.

<sup>7</sup> For example, when Ms. Jackman asked for a receipt for one \$300.00 payment, he told her to come pick up a receipt for the payment the next day, which apparently did not happen.

<sup>8</sup> The Court finds Mr. Burrell's testimony regarding receipts and recordkeeping to lack credibility. The Court finds Ms. Jackman credible with respect to most of the payments she said she made. The Court does not credit her testimony regarding a \$600.00 payment allegedly made in February 2022.

16. The total balance of rent and use and occupancy outstanding through the last day of trial in April 2024 is \$7,781.00 (\$9,156.00 claimed by Mr. Burrell less payments credited to Ms. Jackman).
17. Ms. Jackman was consistently in arrears in her rent, sometimes by thousands of dollars, over the course of her tenancy. Mr. Burrell did not proceed with eviction proceedings against Ms. Jackman until April 2023.
18. Ms. Jackman did not complete and return the statement of condition of the Premises after she moved into the Premises. When she moved in, she did not complain about the conditions of the unit.
19. In June 2020, as part of a housing quality inspection conducted as part of the Section 8 rental voucher program, the inspector ("Section 8 inspector") indicated a number of minor issues with the Premises, but did not mention evidence of mice.
20. In or around December 2020, Ms. Jackman reported concerns about mice to Mr. Burrell. In response to her complaints, Mr. Burrell visited the Premises, leaving poison in the basement and setting some traps.
21. In June 22, 2021, the Section 8 inspector noted the presence of mice and required Mr. Burrell to provide traps and Ms. Jackman to maintain sanitary conditions so as not to attract mice.
22. In April 2022, Ms. Jackman contacted the Greenfield Board of Health about the mouse infestation and the Board of health issued a correction order. In response, Mr. Burrell brought in Terminex to exterminate.

23. In June and July of 2022, the Section 8 inspector continued to observe evidence of mice and again required the landlord to continue treatments and the tenant to make extra efforts to remove unnecessary items.
24. At an inspection on January 31, 2023, the Section 8 inspector again cited the mice and again asked both parties to take steps to address the problem.
25. On February 2, 2023, Ms. Jackman informed Mr. Burrell that the furnace was leaking.
26. On March 4, 2023 Ms. Jackman complained that the mice were ruining her clothing.
27. In April 2023, Ms. Jackman complained to the Greenfield Health Department (“the Board of Health”) about the infestation of mice. On April 12, 2023, a Health Inspector from the Board of Health inspected the Premises for violations of the State Sanitary Code and issued an Order to Correct to Mr. Burrell.
28. Mr. Burrell subsequently signed a service contract with Terminex and on April 19, 2023, Terminex treated for mice.
29. On or around April 24, 2023, Mr. Burrell served Ms. Jackman with, and Ms. Jackman received, a 14-Day notice to quit for nonpayment of rent alleging that Ms. Jackman’s rent was in arrears in the amount of \$6,512.00. At that time, Ms. Jackman owed less than the amount recited on the notice to quit.



30. Terminex returned monthly for additional treatments. On May 2, 2023, the technician was unable to get access to Ms. Jackman's unit. Treatments were performed in June and July, 2023. On August 3, 2023, Terminex was unable to gain entry into Ms. Jackman's unit.
31. Due to her housekeeping, particularly the keeping of dogs and birds, and due to not being home for exterminations, Ms. Jackman contributed to the persistence of the mice infestation.
32. Despite her testimony that she threw couches, clothes and shoes, a shelving unit, bedroom and baby furniture and bedding, as well as contaminated food, Ms. Jackman provided no credible evidence of actual damages attributable to the mice.
33. Mr. Burrell acted inappropriately and in a sexualized and demeaning manner toward Ms. Jackman. He texted flirtatiously regarding Ms. Jackman's apparent (to him) fondness for him, making her uncomfortable. On February 2, 2022, Mr. Burrell sent Ms. Jackman a series of text messages that said, "Glad to hear you dance, nice ... I like to teach pole and lap dancing ... but I'm closed tonight." Ms. Jackman did not respond to this message. On May 16, 2022, Ms. Jackman sent a text message to Mr. Burrell letting him know she had submitted an application for rental assistance. He responded by writing, "Good girl" and calling her Rose in reference to recently learning that was her middle name.

34. Throughout her tenancy, Mr. Burrell periodically asked Ms. Jackman to come to his home to pay rent. He conspicuously displayed a “stripper pole” in the living room. On one occasion when Ms. Jackman went to Mr. Burrell’s house to pay her rent, he asked that she come into his bedroom upstairs. Although Mr. Burrell testified that he was confined to bed due to a back injury, he nonetheless elected to conduct business with his tenant while lying in bed covered by a sheet.
35. The lease agreement executed on June 6, 2020 contained certain unlawful provisions. Mr. Burrell disclaimed an obligation to repair or replace appliances that he provided at the outset of the tenancy. The lease also provided that the Premises might contain lead paint and that the discovery of lead paint would not constitute a violation of this lease and that Ms. Jackman was accepting the apartment on this basis.

#### CONCLUSIONS OF LAW

##### A. Defenses to Plaintiff’s Claim for Possession

Defendant asserts several defenses that she argues defeat the landlord’s claim for possession. First, she contends that she has paid all of the rent allegedly due, basing the argument on an unlawful rent increase that inflated the amount of the arrears. Without the increase, and accounting for all payments she says she made, plus the RAFT payment, Ms. Jackman contends that she paid more than was owed from the inception of the tenancy through April 2024. In light of the Court’s factual findings, the Court rejects this argument. The Court finds the rent increase to be

lawful, and concludes that Ms. Jackman owes \$7,781.00 in rent arrears through April 2024.

Second, although the amount of rent arrears included in the notice to quit was not accurate, the error is not fatal. There is no evidence that Ms. Jackman attempted to cure or would have done so had the figure been less. Moreover, it is evident that a significant amount was owed, and Mr. Burrell had consistently informed Ms. Jackman of her substantial balance. Even if the math was wrong, the evidence does not support a finding that Mr. Burrell intentionally misrepresented the amount of the rental arrears in order to deter Ms. Jackman from attempting to cure or to make her feel compelled to vacate. The Court finds that inclusion of the incorrect amount of arrears in this case did not meaningfully deny Ms. Jackman the opportunity to exercise her legal rights to challenge the termination of her tenancy.

Third, Ms. Jackman argues that the notice to quit was defective both because Mr. Burrell failed to comply with requirements of Section 8 housing voucher that require landlords to provide a copy of the termination notice to the subsidy administrator at the time the tenant is notified. Plaintiff demonstrated by a preponderance of the evidence that, despite not being able to provide the original (or a copy of the original) notice of termination, Mr. Burrell did notify the Housing Authority of the tenancy termination at the same time he notified Ms. Jackman.

#### B. Retaliation and Reprisal

General Laws c. 239, § 2A establishes an affirmative defense of retaliation in a summary process action. The statute establishes a rebuttable presumption that retaliation has occurred where the summary process action was initiated within six

months of the tenant seeking to enforce federal, state, or local housing standards against the landlord. G.L. c. 239, § 2A. Although this presumption is rebuttable, it "may be rebutted only by clear and convincing evidence . . . that the plaintiff had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not . . . made such report." *Id.* Accordingly, to rebut the presumption in this case, Mr. Burrell must show, by clear and convincing evidence, not only that there was an independent justification to initiate summary process proceedings, but also that he would have initiated proceedings "in the same manner and at the same time" even if Ms. Jackman had not reported the conditions in the apartment. *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 468-469 (2017) (addressing identical language in G. L. c. 186, § 18).

Here, it is indisputable that the presumption applies because Mr. Burrell served a notice to quit within the same month that Ms. Jackman complained to the Board of Health in April 2023. Nonpayment of rent is, of course, an independent justification to pursue summary process, but Mr. Burrell did not testify that he would have initiated proceedings "in the same manner and at the same time" even if Ms. Jackman had not contacted the Board of Health. She had been behind in the rent previously for long stretches of time, and Mr. Burrell had served her with notices to quit in the past but did not file a summary process case. Without a clear explanation of his reasoning for filing this case when he did, Mr. Burrell failed to prove, by clear and convincing evidence, that he would have acted as he did had Ms. Jackman not contacted the Board of Health. Because reprisal for contacting the Board of Health is an affirmative



defense to possession under G.L. c. 239, § 2A, Mr. Burrell is not entitled to a judgment for possession.

In addition her retaliation defense, Ms. Jackman brought a counterclaim for retaliation under G. L. c. 186, § 18. Unlike G. L. c. 239, § 2A, G. L. c. 186, § 18 creates an affirmative right of action for retaliation. The statute uses language nearly identical to G. L. c. 239, § 2A, but with a critical difference — the rebuttable presumption language in G. L. c. 186, § 18 does not apply to eviction proceedings based on the nonpayment of rent. *See Youghal v. Entwistle*, 484 Mass. 1019, 1024 (2020). Given that Ms. Jackman was behind on her rent, Mr. Burrell does not have the burden to provide rebuttal evidence as he did under G. L. c. 239, § 2A, but instead Ms. Jackman has the burden to prove "by a preponderance of credible evidence, that one of Mr. Burrell's principal motives for serving the notice to quit was her complaints about the apartment. *Scofield v. Berman & Sons, Inc.*, 393 Mass. 95, 114-115 (1984).

The Court finds that Ms. Jackman proved by a preponderance of the credible evidence that one of Mr. Burrell's principal motives for evicting her was her complaint about conditions just a couple of weeks prior to service of the notice to quit. Despite similar circumstances in the past when Ms. Jackman was behind in the rent and had complained to Mr. Burrell about mice, once she contacted the Board of Health, which caused Mr. Burrell to have to hire a licensed exterminator, Mr. Burrell apparently had enough. The Court finds it more likely than not that one of Mr. Burrell's principal motives was the steps Ms. Jackman took to involve the Board of Health.

As damages for her affirmative claim for retaliation under § 18, Ms. Jackman is entitled to damages of not less than one month's rent or more than three month's

rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including a reasonable attorney's fee. Based on the totality of circumstances, and given that Ms. Jackman was significantly behind on rent at the time Ms. Jackman contacted the Board of Health, the Court awards damages in the amount of one months' rent (\$1,500.00).

C. 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). A tenant's obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability." *Id.*, citing *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 (1979). 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). Defective conditions caused by the tenant are not considered under the warranty of habitability.

Here, the Court finds the Ms. Jackman endured a significant infestation of mice in the Premises. Mr. Burrell asserts that Ms. Jackman caused the infestation because she left food and other byproducts of her domestic animals on the floor and in the open. The Court finds that Ms. Jackman contributed to the persistence and perhaps to some degree the extent of the infestation, but it was Mr. Burrell who had an obligation to take the necessary steps to prevent mice from entering the Premises in

the first place. His efforts to do so were insufficient until he retained a professional pest control company years after the complaints about mice began.

Ms. Jackman claims that she observed evidence of mice activity as early as December 2020 and Mr. Burrell responded by taking steps to eliminate them himself. After June 2021, when the Section 8 Inspector first noted the presence of mice, Mr. Burrell was aware of the issue and made efforts on his own to try to address the problem. The presence of mice continued, as evidenced by the April 2022 Board of Health order, and Section 8 inspections in June and July 2022 and in January 2023. Mr. Burrell's efforts to blame Ms. Jackman for attracting mice by virtue of keeping domestic animals does not absolve him from his obligation to prevent access of mice into the house. If he believed her housekeeping was the reason the mice could not be eradicated, he could have taken more aggressive steps to require her to change her behaviors.

The fact that the problem improved when Mr. Burrell signed a service contract with Terminex is further evidence that Mr. Burrell's unwillingness to hire licensed professionals to address the problem is the primary reason the infestation continued as long as it did. The credible evidence presented at trial shows that the infestation was not isolated or minor.<sup>9</sup> Mr. Jackman was negligent in not seeking professional extermination services sooner. The Court finds that the infestation of mice existed to various extents from June 2021 to November 2023.

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<sup>9</sup> The Court finds that the inspection reports themselves do not constitute clear evidence of an serious infestation, but the Court finds Ms. Jackman's photographs and credible testimony demonstrate the significance of the infestation.

In determining an appropriate abatement percentage, the Court takes several factors into account in addition to the severity of the problem. Ms. Jackman's sanitation (including the animals) played some role, as noted by the Section 8 inspector. Mice do not enter homes at the same rate all year long, but tend to be present more frequently as the weather becomes cold and are typically less present during warm-weather months. For these reasons, the Court applies a rent abatement of 10% for 30 months. Of the 30 months in question, contract rent was \$1,100.00 for 11 months (June 2021 to April 2022), and for 19 months the contract was \$1,500.00 per month. Accordingly, the rent abatement damages for breach of warranty are \$4,060.00.

As the owner of multiple investment properties, Mr. Burrell is in the business of being a landlord. Pursuant to the Attorney General regulations, 940 Code Mass. Regs. 3.17, his failure to remedy the mice infestation (notwithstanding Ms. Jackman's contribution to the problem) within a reasonable time after receiving notice constitutes an unfair or deceptive act or practice. Mr. Burrell was aware of his duty as a landlord and knowingly allowed the infestation to continue for years. Under G.L. c. 93A, the Court doubles the award of damages to \$8,120.00.

D. Breach of Quiet Enjoyment

As a matter of law, a landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his act causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, § 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a



showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

Mr. Burrell was at least negligent in allowing the mouse infestation to occur, as he received notice from Ms. Jackman when she first noticed the presence of mice and received notice from multiple sources throughout her tenancy that the issue had not been successfully remediated and yet failed to take necessary and appropriate steps to stop the incursion of mice into the Premises. Ultimately, when Mr. Burrell engaged a licensed exterminator, the infestation was brought under control.

As damages, Ms. Jackman is entitled to the greater of statutory damages, which are \$4,500.00 in this case, or actual damages. Here, Ms. Jackman alleges that she suffered actual damages as a result of Mr. Burrell's interference with quiet enjoyment. Ms. Jackman did not demonstrate by a preponderance of the credible evidence that she lost property of value or that she suffered significant emotional distress as a result of the mice, nor did she meet her burden of proof that the infestation caused her to experience anxiety, loss of sleep, depression or extraordinary embarrassment. Because statutory damages for the conditions are less than the damages to which Ms. Jackman is entitled for breach of warranty, she is not entitled to a duplicative award of damages under G.L. c. 186, § 14.

#### E. Violation of G.L. c. 93A - Illegal Lease Provisions

The original lease between Mr. Burrell to Ms. Jackman included unlawful terms, including denying his obligation to repair appliances. See State Sanitary Code, Owner's Installation, Maintenance and Repair Responsibilities, 105 Code Mass. Regs. 410.235. The provision of the lease requiring Ms. Jackman to accept the Premises as is

and disclaiming liability for lead paint violates G.L. c. 186, § 15. Pursuant to 940 Code Mass. Reg. 3.17(3)(a)(1), these provisions constitute an unfair or deceptive act or practice. There is no credible evidence that Ms. Jackman suffered any injury, however, and the Court therefore awards nominal damages of \$25.00 for each technical violation of G.L. c. 93A.

F. Sexual Harassment/Discrimination on the Basis of Sex

Sexual harassment and discrimination on the basis of sex in housing are prohibited under the Fair Housing Act, 42 U.S.C. s. 3601, et seq., and the Massachusetts Anti-Discrimination Act, G.L. c. 151B, s. 4(7)(a) and (b). The elements of a hostile housing environment claim under federal law are as follows: 1) the Plaintiff's conduct was unwelcome; 2) the conduct was based on the Defendant's gender or other protected status; 3) the conduct was sufficiently severe or pervasive so as to alter the Defendant's living conditions; and 4) the Plaintiff "knew or should have known of the harassment, and took no effectual action to correct the situation." *Katz v. Dole*, 709 F.2d 251, 256 (4th Cir. 1983); *see also Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993).

Here, the Court finds that Ms. Jackman established a prima facie case of sexual harassment in violation of state law by a preponderance of the evidence. In particular, the Court finds that inviting Ms. Jackman to his bedroom while he was lying in bed covered by a sheet to be unsolicited harassment of a sexual nature and was of such a nature as to render the tenancy "significantly less desirable" to a reasonable person in Ms. Jackman's position. *Gnerre v. Massachusetts Com'n Against Discrimination*, 402 Mass. 501, 507, (1988) (affirming holding that landlord was liable

for sexual harassment of his tenant). On at least one occasion, Mr. Burrell made an inappropriate and unwelcome sexually charged statement toward Ms. Jackman, making a suggestive reference to exotic dancing. There is no credible evidence that Ms. Jackman participated in these exchanges, and Mr. Burrell knew or should have known that these statements were inappropriate, sexually charged, and unwelcome by Ms. Jackman.<sup>10</sup> Mr. Burrell's conduct in making these statements was based on Ms. Jackman's gender and was sufficiently severe or pervasive so as to alter Ms. Jackman's living conditions.

Ms. Jackman testified credibly that Mr. Burrell's unwelcome conduct left her feeling degraded, powerless, and silenced, which had a negative impact on her mental health, and that she felt compelled to alter the manner in which she dealt with her landlord regarding her housing issues. The Court does not find, however, that Mr. Burrell's conduct was pervasive or extensive, much less especially malicious or done with reckless disregard for Ms. Jackman's protected rights. Accordingly, for this violation of law, the Court awards Ms. Jackman \$2,500.00 in damages.

Based on the Court's factual findings after trial, and in light of the governing law, the following order shall enter:

1. Judgment for possession shall enter for Ms. Jackman based on her affirmative defense under G.L. c. 239, § 2A.<sup>11</sup>

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<sup>10</sup> Ms. Jackman's silence in response Mr. Burrell's actions does not undermine the notion that they were unwelcome. *See, e.g., Commonwealth v. O'Neil*, 67 Mass. App. Ct. 284 (2006) (finding that in the context of seeking a G.L. c. 258E order, that Defendant's conduct in repeatedly sending (unanswered) letters from prison to the victim satisfied the "malice" requirement supporting criminal conviction as any reasonable prudent person would have foreseen that victim would be seriously alarmed by such conduct).

<sup>11</sup> The Court does not need to address any claim to possession under G.L. c. 239, 8A as Ms. Jackman has defeated the claim based on her retaliation affirmative defense.

2. Ms. Jackman is entitled to \$4,389.00 in damages on account of her counterclaims.<sup>12</sup>
3. Defendant shall have twenty-one (21) days from the date of this order to file a petition, along with supporting documentation, for reasonable attorney's fees and costs on those claims for which such fees and costs are available. 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.  
July 31, 2024

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

cc: Court Reporter

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<sup>12</sup> This figure is calculated by setting off the \$7,781.00 in unpaid rent through April 2024 with the damages awarded Ms. Jackman of \$12,170.



**24-SP-4998 COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 24-SP-1998**

**NIKOLAY DIPON,**

**Plaintiff,**

**v.**

**RAUL and JENNIFER COLON,**

**Defendants.**

**ORDER**

This matter came before the court for trial on July 30, 2024. After consideration of the evidence admitted at said trial, the court's finding and rulings were shared by the judge on the record and the following order shall enter:

1. The parties stipulated to the prima facie elements of the landlord's claim for possession, with the tenants stipulating to receipt of a notice to quit for no-fault. The parties further agreed that no monies for use, occupancy, or rent were owing through July 2024.
2. After filing a timely Answer, the tenants were heard on their claims for breach of warranty of habitability and for breach of the covenant of quiet enjoyment.

3. For the reasons stated on the record at the conclusion of the trial, the tenants were successful in their claim for breach of warranty of habitability as the landlord has allowed a patch job on the living room ceiling to remain in place without completion for six months. The court reduced the rent by 10% for six months, totaling \$810.
4. For the reasons stated on the record at the conclusion of the trial, the tenants were also successful in their claim for breach of the covenant of quiet enjoyment stemming from the curtailment of water by the Springfield Water & Sewer Commission due to the landlord's failure to pay the bill. This "shut-off" occurred on March 20, 2024, and the water service was not restored until the end of the next day, March 21, 2024. This failure to furnish water violated the covenant of quiet enjoyment for which the tenants are awarded three months' rent, totaling \$4,050.
5. **Conclusion:** Based on the foregoing and pursuant to G.L c.239, s.8A, judgment shall enter for the tenants for possession and for **\$4,860** in damages.

So entered this 31<sup>st</sup> day of July, 2024.

  
Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**L & M REAL ESTATE LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01040**

**ANGELA STONE,**

**Defendant.**

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**ORDER**

This matter came before the court on July 30, 2024 for a hearing on three motions – the plaintiff’s motion for entry of judgment, the defendant’s motion to enforce the Agreement, and the defendant’s motion to stop harassment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Alysha White of the Tenancy Preservation Program (TPP) also appeared at the hearing.

In this eviction case the plaintiff seeks possession of the subject rental premises based on nonpayment of rent. On May 2, 2024 the parties entered into an Agreement. By its terms relevant to these motions, the parties agreed that the defendant owed \$7,250 in unpaid rent/use and occupancy through May 2024 and costs of \$251.41. The defendant agreed to pay her monthly rent/use and occupancy of \$725 on time each month going forward and to apply for RAFT financial assistance by May 6, 2024. The plaintiff agreed to inspect the premises and make repairs as necessary pursuant to the state Sanitary Code. Ms. Stone was referred to TPP that day. Although it was not grounds for entry of judgment, the defendant also agreed to maintain her apartment in a clean and organized manner. 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 filed such a motion. While the defendant paid her monthly use and occupancy each month since the Agreement was signed, it was received late. The arrearage is now \$6,525 through July with \$251.41 in costs. There is some confusion about whether Ms. Stone completed an application for RAFT, but there is none pending at this time. It turns out that her failure to pay the rent was not based on a hardship within the RAFT definitions, but she was withholding the rent because of repairs she felt were needed in the apartment.

With respect to the defendant's motion to enforce the Agreement, her grounds were that "nothing" was fixed. The Town of Ludlow Health Department inspected the premises and issued a correction order to the plaintiff on October 6, 2023 (Exh). On November 16, 2023 the Health Department issued a letter of compliance that all the cited violations had been repaired. The inspector noted that the plaintiff had agreed to paint the ceilings, but Ms. Stone would have to "provide clear access to the areas" (Exh). Ms. Stone testified that the ceilings have not been painted and there are remaining water stains in the bathroom ceiling. She also testified that the toilet overflows and the linoleum in the bathroom comes up.

Despite the November 16, 2023 letter of compliance from the Health Department, in the parties' May 2, 2024 Agreement the plaintiff agreed to inspect the premises and make repairs as necessary. The plaintiff reported that they reinforced the roof repair earlier this month. They remain ready to paint the ceilings, but the apartment is too cluttered to do so at this time. Ms. Stone acknowledged that the apartment is "a little cluttered" and she would like help with decluttering. TPP is willing to assist her in this process.

There have been issues with communication between the parties. Ms. Stone objects to Sharon Keough contacting her about repairs. Her motion to stop harassment is based on these communications from Ms. Keough.<sup>1</sup> However, as discussed at the hearing, Ms. Keough is the wife of the owner of L & M Real Estate LLC. She and her husband serve as property managers. In that role, it is appropriate for Ms. Keough to communicate with the tenant about repairs and inspections, even though Ms. Stone has communicated with Ms. Keough's husband in the past.

After the hearing the parties met with a housing specialist of this court and a TPP clinician and agreed to a date and time to inspect the apartment for needed repairs.

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<sup>1</sup> As explained at the hearing, the Housing Court does not have jurisdiction over harassment prevention orders pursuant to G.L. c. 258E. However, Ms. Stone's motion here does not appear to lie within that statute.



### Order

After hearing, the following orders will enter:

1. The plaintiff's motion for entry of judgment is **CONTINUED to August 27, 2024 at 9:00 a.m.**
2. The defendant will pay her use and occupancy beginning in August in full and on time.
3. At the August 27, 2024 hearing, the parties will address the payment of the arrearage, if RAFT is not available in this case.
4. The defendant's motion to enforce the Agreement regarding repairs is **ALLOWED** as follows:
  - a. As agreed with the housing specialist after the hearing, the parties will meet at the apartment on August 2, 2024 at 9:30 a.m. to inspect the premises and make a list of all repairs which are needed.
  - b. For any repairs which require that an area be cleared, the parties will make a list of such work which must be done by the defendant before repairs can be begun.
  - c. The defendant will make a plan for such decluttering, with the assistance of TPP and any other resources she wishes to engage.
  - d. The plaintiff will make all needed repairs in the common areas, if any, forthwith.
  - e. The plaintiff will make all needed repairs in the apartment as soon as practicable.
3. TPP is asked to work with the defendant to address the issues of timely payment of the ongoing use and occupancy, the payment of the arrearage, decluttering the apartment, and getting the repairs made.
4. The defendant will cooperate with any recommendations of TPP.
5. The defendant's motion to stop harassment is **DENIED**. There is no restriction on either property manager communicating with the defendant.

July 31, 2024

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

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-SP-5847**

**LEON L. SIRUM & CO., INC.,**

**Plaintiff,**

**v.**

**JOHN DILLON and LOUISE MILOTTE,**

**Defendants.**

**ORDER**

After hearing on July 26, 2024, at which the plaintiff appeared through counsel and the Guardian Ad Litem Patrick Toney appeared, the following order shall enter:

1. The Guardian Ad Litem has leave to file and serve a Discovery Demand upon the plaintiff within 30 days of the date of this Order noted below.
2. The plaintiff shall provide responses to same within 30 days of receipt of the demand.
3. This matter shall be scheduled for a judicial case management on November 1, 2024, at 9:00 a.m.

So entered this 31 day of July, 2024.

\_\_\_\_\_  
Robert Fields, Associate Justice

CR  
**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**FRANCES MENDEZ-HERNANDEZ,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24CV00545**

**FELIX CONFESOR & GILBERTO PEREZ,**

**Defendant.**

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**ORDER**

This matter came before the court on July 30, 2024 for review of compliance with the court's order of July 24, 2024. All parties appeared and were self-represented.

Mr. Perez testified that he spoke with Aaron Cole, the wiring inspector for the City of Springfield, who recommended that he have an electrician do an inspection for cross-metering. This was also ordered by the court after the first hearing in this case. The plaintiff submitted a hand-written statement from Eddie di Vega (Exh). The statement does not say that Mr. di Vega is a licensed electrician nor does it say that he performed an inspection. It states that the reason he was called was to "remove a wire" for the first floor to the second floor and to do something "of electrical panel". It does not mention the occupied attic or the basement, which were of concern regarding cross-metering. The statement does not satisfy the court's order.

Ms. Mendez-Hernandez testified that the electrical repairs in her apartment were not addressed. Her lights still flicker.

**Orders**

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

1. The matter is scheduled for further review of compliance with this order on **August 6, 2024 at 9:00 a.m.** in the Springfield session of this court.
2. The plaintiff will contact the City of Springfield wiring inspector and request an inspection for cross-metering of the electricity and other electrical problems.

3. The defendant, Gilberto Perez, will comply with any citation or order issued by the wiring inspector.
4. The defendant, Gilberto Perez, will obtain a written report from a *licensed electrician* outlining the electrician's findings and the work needed to bring the electrical service and equipment into compliance with the state Sanitary Code.

July 31, 2024

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



Handwritten initials in blue ink.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-CV-454

JARITZA TORRES OQUENDO,  
  
Plaintiff,  
  
v.  
  
SUSAN YE,  
  
Defendant.


ORDER

After hearing on July 23, 2024, on the plaintiff tenant's motion for injunctive relief, at which both parties appeared without counsel, the following order shall enter:

1. The parties agree to enter into an early lease termination agreement to e provided by Way Finders, Inc. that allows the tenant to look for and secure alternate housing---it is anticipated that while she is in occupancy, she and Way Finders, Inc. shall pay the rent.
2. The landlord may not rent the garage, nor authorize someone to use the garage, other than the other tenant at the premises until this tenant vacates.

3. The landlord shall not allow Nicolas Hurling to interact with the tenant other than instances when he is at the premises for maintenance or repairs and only after providing advance notice to the tenant that Mr. Hurling will be at the property for such maintenance or repair.

So entered this 31<sup>st</sup> day of July, 2024.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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SARIMARI ROSARIO,

Plaintiff,

-v.-

DOCKET NO. 24CV00510

ENELIDA REYES, SARA CACERES &  
EDUARDO OTERO,

Defendant.

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ORDER

This matter came before the court on July 12, 2024 for a hearing on the plaintiff's request for an emergency order. All parties appeared and were self-represented. Anna Cruz appeared as a witness for the plaintiff.

The parties and Ms. Cruz are all unit owners at the Clayton Commons Condominium Trust. The defendants are the three members of the Board. Ms. Rosario seeks injunctive relief to order an external audit and to replace Ms. Reyes' as manager with a professional management service, as well as substituting other services she performs with outside services. The external audit request is based on "missing" payments, described as three to five unit owners who did not pay their condo fees and the lack of penalties or late fees. Ms. Reyes testified that the condominium association voted to explore getting a professional management company for the eleven condominiums in the association. This would require an increase in the condo fees. Ms. Cruz supported Ms. Rosario's position and described the condominium meetings as chaotic and the current management as dysfunctional.

After hearing, this court cannot grant the injunctive relief the plaintiff seeks in this case. The dispute between Ms. Rosario and the Board members falls outside of the jurisdiction of the Housing Court pursuant to G.L. c. 185C §3 in that it is in the nature of a strict contract action.

The plaintiff may seek such relief in a court of competent jurisdiction. All parties should consider consulting an attorney to advise them of their respective rights and responsibilities in this matter.

**Order**

The request for an emergency order is **DENIED** and the case is **DISMISSED** with prejudice.

July <sup>31</sup>~~12~~, 2024

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



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT, WESTERN DIVISION  
DOCKET NO.: 24-SP-1198

Paul Roud  
Plaintiff

v.

Malcolm Clark  
Defendant

)  
)  
)  
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)  
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)

ORDER


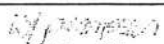
After hearing this 26<sup>th</sup> day of July, 2024, at which both the Plaintiff and his counsel Attorney Lawrence Farber appeared, and the Defendant Malcolm Clark appeared, the court finds the following facts:

1. The Defendant has failed to keep an adequate log of his attempts at finding alternate housing. As required by the Findings of fact, Rulings of Law and Order for Entry of Judgment (hereafter Order) of Judge Kane dated May 31, 2024.
2. The Defendant was, pursuant to the Order of Judge Kane, to pay use and occupancy for the premises in the amount of \$1,400/ month for the months of June and July, 2024.
3. The Defendant failed to make those payments as required.
4. The Defendant did make the \$7,000 payment as was required by that Order.
5. Defendant requested to talk to Plaintiff and his counsel, which this court recessed to allow to happen.
6. Upon resuming the hearing, none of the issues raised by the Defendant were issues

that were part of the previous findings or Order, but concerned items which the Defendant wished compensation from the Plaintiff.

7. Although the Plaintiff's counsel represented that the items were much less than a month's rent, Plaintiff agreed to credit the Defendant for those items through a waiver of one month's rent in exchange for a waiver of all claims by the Defendant. If find that this "Agreement" of the parties is binding on both parties in this case.
8. Due to the Defendant's failure to abide by the requirements of the Order of Judge Kane, I order the following:
  - A. The Defendant , no later than August 10, 2024, must pay the Plaintiff \$2,800, representing the use and occupancy for the months of July and August, 2024.
  - B. The Defendant must vacate the premises no later than August 31, 2024. If the Defendant fails to vacate by that date, the Plaintiff, through an affidavit of the Plaintiff's counsel, may request an execution for possession and any damages based upon Defendant's failure to pay any use and occupancy as ordered herein.
  - C. If the defendant fails to make the payment of \$2,800 as ordered herein, Plaintiff may request an earlier issue of the execution through a motion to this court.
  - D. No further stays shall be granted without valid good cause as determined by this court after a hearing from a request by Defendant.

So Ordered this 31<sup>st</sup> day of July, 2024

  
\_\_\_\_\_  
By   
Robert G. Fields, Justice of the Housing Court

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-CV-469**

**JAMES SUPRENANT,**

**Plaintiff,**

**v.**

**ALICE SUPRENANT,**

**Defendant.**

**ORDER**

After hearing on July 29, 2024, on the plaintiff's motion for access to the subject premises, at which the defendant did not appear, the following order shall enter:

1. The plaintiff has authority to change the locks to the premises and access the basement to make repairs. Simultaneous with changing the locks, the plaintiff shall provide a copy of the key(s) to the defendant.
2. Prior to changing the locks and prior to any instance where access is required for repairs, the plaintiff shall provide at least 48-hours advance written notice of the date and time and a description of the anticipated repairs.



3. If the defendant provides a copy of the key(s) to the current locks, the plaintiff will not need to change the locks.
4. If the defendant wishes to be heard in this matter she may file a motion with the court. She may also request that she appear by Zoom if she is unable to appear in person at the courthouse due to health concerns.
5. The plaintiff shall post a copy of this Order on each door of the subject premises.

So entered this 31<sup>st</sup> day of July, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-1920**

**U.S. BANK, N.A.,**

**Plaintiff,**

**v.**

**HENRYK T. WYSOCKI,**

**Defendant.**

**ORDER**

After hearing on July 24, 2024, on the tenant's motion for the appointment of a Guardian Ad Litem, at which the plaintiff appeared through counsel and the tenant appeared without counsel but accompanied by his Reverend (Daniel Torres) of the Springfield Wesleyan Church, and also at which the Tenancy Preservation Program appeared, the following order shall enter:

1. The court is concerned that the tenant's competency and ability to navigate these proceedings without the appointment of a Guardian Ad Litem may deprive the tenant of necessary due process. As such, the Court requests that the tenant be evaluated by the Court Clinic in order to determine if Mr. Wysocki is an "incapacitated person" as that term is defined in G.L. c.c. 190B, ss.510 (9). The court hereby orders that he undergo a forensic psychological

evaluation with the Court Clinic. The court requests that the clinician evaluate Mr. Wysocki with respect to his decision-making capacity, his ability to comply with court orders regarding his housing, and his ability to understand the legal proceedings and participate meaningful therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the court should appoint a Guardian Ad Litem for Mr. Wysocki.

2. Assistant Clerk Cunha is requested to coordinate between the Court Clinic and Mr. Wysocki---through Rev. Daniel Torres (cell number in file)---for a forensic evaluation.
3. The letter from the tenant's treating physician shall be placed under seal in this matter.
4. Rev. Daniel Torres shall be added as a non-party person to the MassCourts docket so that he may receive (in addition to the parties) all filings and notices.
5. The Clerk's Office is requested to schedule a hearing in a wheelchair accessible courtroom on the tenant's motion to add a necessary party.

So entered this 31<sup>st</sup> day of July, 2024.

\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Kara Cunha, Assistant Clerk Magistrate

Court Clinic

TPP

Rev. Daniel Torres, [REDACTED]

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-CV-975**

**NICOLE WINN,**

**Plaintiff,**

**v.**

**ORDER**

**SHAUN ROBINSON,**

**Defendant.**

After hearing on July 26, 2024, on the plaintiff's motion for injunctive relief to prevent an auction of the subject premises at which the plaintiff and the defendant appeared through counsel and at which Mr. Winder of Winder Realty, LLC joined the hearing, the following agreed upon order shall enter:

1. Winder Realty, LLC, nor anyone else present at the hearing shall not auction, sell, transfer, or further encumber the subject premises until the next hearing noted below.
2. Paragraph 8 d of the court's July 23, 2024 Order is hereby suspended until further order of the court.



3. The parties shall coordinate further repairs at the premises and access shall not be unreasonably denied.
4. This matter shall be continued for further hearing on **August 2, 2024, at 2:00 p.m. at the Springfield Session.** Mr. Linder and Mr. Robinson may appear by Zoom.

So entered this 31<sup>st</sup> 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-1963**

**JESSICA F. KING GREEN,**

**Plaintiff,**

**v.**

**KENNETH LAGIMONIERE, III et al.,**

**Defendants.**

**ORDER**

After hearing on July 29, 2024, on the plaintiff landlord's motion to re-issue an execution and to allow levy by a Lawrence-based constable at which only the landlord appeared, the following order shall enter:

1. The landlord has an execution to evict the named tenants from the subject premises located at 20 Dale Street, Unit 1, Ware, Massachusetts (hereinafter "premises").
2. The landlord explained that the sheriffs effectuated a levy of that execution relative to the two named tenants, Kenneth Lagimoniere, III and Caroline Swiatck but that there remain other occupants and have not been evicted.

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3. If anyone is occupying the premises believes that they have a right to occupy even though there is a valid execution against Lagimoniere and Swiatck, they may be heard by this court at the hearing date noted below.
4. Those occupying the premises who believe they have such a right to do so may be heard on **August 19, 2024, at 9:00 a.m. at the Hadley Session of the Housing Court at 116 Russell Street.**
5. The landlord shall have copies of this order posted on each and every external door at the premises forthwith.

So entered this 1<sup>ST</sup> day of August, 2024.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-2155**

**JUDITH HEMPLING,**

**Plaintiff,**

**v.**

**MAREATHA WALLACE and GENNIFFER  
JACKSON,**

**Defendants.**

**ORDER**

This matter came before the court for trial on July 29, 2024, at which the plaintiff landlord appeared with counsel and the defendant tenants appeared self-represented. After hearing, the following order shall enter:

1. The tenants have secured alternate housing accommodations, have signed a lease for the new accommodations, and they will be vacating these premises and moving by September 1, 2024.
2. The parties stipulated to the landlord's *prima facie* case for possession and for outstanding rent totaling \$10,783 through July 2024.



3. Judgment shall enter for the landlord for possession and for \$10,783 in use and occupancy through July 2024 plus court costs.
4. An execution may issue upon the timely filing and service of a Rule 13 application.

So entered this 1<sup>st</sup> day of August, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 23-SP-4969**

**HOUSIN MANAGEMENT RESOURCES, INC.,**

**Plaintiff,**

**v.**

**MARIO PORTILLO and MARIA BENITEZ,**

**Defendants.**

**ORDER**

After hearing on July 29, 2024, on the landlord's motion for entry of judgment at which both parties (landlord and Mr. Portillo) appeared through counsel, the following order shall enter:<sup>1</sup>

1. The landlord reports that the current rental arrearage balance through July 2024 is \$8,309.05.
2. The tenant, Mr. Portillo, has a pending application for rental assistance with Community Action.

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<sup>1</sup> Attorney Douaihy appeared on Mr. Portillo's behalf as LAR counsel and has agreed to extend her appearance through the next hearing.

3. Mr. Portillo is working with Attorney Reyes from Community Legal Aid on an unemployment insurance claim.
4. Pursuant to G.L c.239, s.15, and based on the record before the court at today's hearing, the landlord's motion shall be continued to the date noted below.
5. The co-tenant, Maria Benitez (Mr. Portillo's mother), may appear at the next hearing by Zoom as she is recuperating from medical issues out of state.
6. The tenants shall pay their rent on time and in full for August 2024.
7. This matter shall be scheduled for further hearing on the landlord's motion on **August 26, 2024, at 9:00 a.m.**

So entered this 1<sup>st</sup> day of August, 2024.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Christa Douaihy, LAR, Community Legal Aid  
Court Reporter

**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hampden, ss:

Western Division  
Housing Court Department  
No. 24H79CV0000405

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**MICHAEL STEWART**

**Plaintiff,**

**v.**

**ORDER**

**MALAYSHIA BUNN,  
CANDICE RIVERA and  
NADIA HAMLETTE**

**Defendants.**

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Hampden, ss:

Western Division  
Housing Court Department  
No. 24H79CV0000455

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**NADIA HAMLETTE**

**Plaintiff,**

**v.**

**ORDER**

**CARLA STEWART and  
MICHAEL STEWART**

**Defendants.**

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At a hearing held before the undersigned on July 31, 2024, Michael Stewart & Carla  
Stewart appeared via counsel and Malayshia Bunn, Candice Rivera and Nadia Hamlette all



appeared self-represented. As a result of the hearing, the following order of the court does hereby issue:

1. The court finds that the defendants Malayshia Bunn, Candice Rivera and Nadia Hamlette are in violation of the June 14, 2024, order of this court, requiring that all dogs be removed from the premises at 92 Beaumont Street, Springfield, MA (hereinafter the “subject premises”) by July 1, 2024, and that the dogs in question still remain at the subject premises.
2. Defendant Malayshia Bunn, Candice Rivera and Nadia Hamlette are thereby ordered to remove all dogs from the premises located at the subject premises on or before Friday, August 2, 2024, at 12:00pm EST.
3. While the dogs remain at the subject premises the defendants must comply with any and all provisions of the June 7, 2024, order including but not limited to, requiring the defendants to leash and supervise any animals at the subject premises while in common areas and to clean up all excrement from any animals immediately in all common areas of the subject premises.
4. If the dogs in question are not removed from the subject premises by August 2, 2024, at 12:00pm EST the plaintiff, Michael Stewart, may engage the services of Springfield Animal Control, who by virtue of this order are authorized to enter the premises located at 92 Beaumont Street, Springfield, MA, with the assistance of municipal police officers to remove any and all dogs at the subject premises.
5. This order further authorizes the issuance of a contempt summons should the plaintiff allege, via sworn affidavit, that the defendant(s) have not complied with

this order.

6. The clerk will schedule a hearing on the tenants' complaint for injunctive relief in 24-cv-455 after the defendant, Nadia Hamlette, removes the dogs located at the subject premises as required by paragraph two (2) of this order and provides the court with a copy of the most recent City of Springfield Code Enforcement Inspection report issued for 92 Beaumont Street, Springfield, MA

**SO ORDERED this 1st day of August 2024.**

*/s/ Jeffrey M. Winik*

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

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-580

DILERBY CRUZ BAUTISTA,

Plaintiff,

v.

CARMEN PEREZ,

Defendant.

ORDER

After hearing on August 1, 2024, on the plaintiff landlord's motion for injunctive relief, the following agreed upon order shall enter:

1. The landlord shall provide at least 48 hours advance written notice which may include text, email, or paper notice posted at the tenant's door, which indicates the date and time of the needed access and also shall include a description of the anticipated repair work.

2. The tenant may not unreasonably deny access for repairs. If that stated time is in conflict with the tenant's schedule, she must immediately notify the landlord in writing of the conflict and offer alternative dates and times.

3. Any such repairs that require to be performed by a licensed person or with a permit obtained from the city, shall be effectuate in that manner.

So entered this 2<sup>nd</sup> day of August, 2024.

A handwritten signature, appearing to be 'R. Fields', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Robert Fields, Associate Justice

Cc: Court Reporter



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**PRIVILNE REAL ESTATE, LLC,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP01365**

**SANDY D. KUDLA & DAN STARZYK,**

**Defendant.**

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**ORDER**

This matter came before the court on August 2, 2024 for a hearing on the defendant's motion for an extension of time to remain at the property. The plaintiff appeared through its attorney with a manager of the LLC. The defendants appeared and were self-represented. Ms. Kudla's father also appeared with them.

This is a post-foreclosure eviction case. The plaintiff is a third party purchaser. The defendants are the former owners of the property. After trial on June 13, 2024, judgment entered for the plaintiff for possession and costs. The judge ordered that use of the execution would be stayed through July 15, 2024, but if the defendants sought a further stay beyond July 15, 2024, "they will be required to pay for their continued use and occupancy at an amount to be determined by the court". The execution issued on July 5, 2024 on the plaintiff's written application. The plaintiff has now had the defendants served with a forty-eight hour notice that the execution will be used to move them out on August 6, 2024 at 10:00 a.m.

In their motion, the defendants seek an additional two months. However, they report that they have no income and they have no ability to pay *any* use and occupancy. If the move were cancelled, the cancellation fee would be \$400. Ms. Kudla said that she might be able to get that

money from her father. He is trying to help them find alternative housing, but they do not have any leads to date.

The property is a four-bedroom, 2-bathroom single family house. The plaintiff argues that the fair market value is \$2,200. The defendants did not suggest a fair market value, but Mr. Starzyk reported that the house needs a lot of work.

The court understands from the defendants' testimony that they are in a difficult situation. Mr. Starzyk had a stroke which left him with disabilities. Ms. Kudla takes care of him. The order of foreclosure notice is from February 2023. They have had no income for quite some time. However, the plaintiff is the lawful owner of the property and has the right to use it as he sees fit and to have the opportunity to make it financially feasible to maintain it. The defendants report that they have no ability to pay use and occupancy, no matter what amount is established. Nevertheless, the court sets a use and occupancy to be paid if the defendants remain living at the property after August 6, 2024. The court sets the use and occupancy at an amount less than what the plaintiff seeks, in light of Mr. Starzyk's argument that much work is needed at the house and the fact that any occupancy by the defendants is going to be of limited duration. The court sets the monthly use and occupancy at \$1,000.

### **Orders**

After hearing, the following orders will enter:

1. The monthly use and occupancy beginning in August 2024 is \$1,000.
2. If the defendants pay the cancellation fee of \$400 and \$1,000 for August use and occupancy no later than 9:00 a.m. on August 6, 2024, the move-out will be stopped and the execution will be stayed through August 31, 2024.
3. If the defendants pay \$1,000 for September use and occupancy on or before September 3, 2024, the execution will be stayed through September 30, 2024.
4. If the defendants do not pay the cancellation fee of \$400 and \$1,000 for August use and occupancy by 9:00 a.m. on August 6, 2024, the plaintiff may proceed with the move-out as scheduled.
5. All payments will be by bank check or money order. The plaintiff is not required to accept personal checks.

August 2, 2024

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

CR

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-CV-63

CITY OF WESTFIELD,

Plaintiff,

v.

DOMINIC SANTANIELLO and LUCUS  
GIUSTO, TRUSTEES of NAPLES HOME  
BUYERS TRUST,

Defendant.

ORDER

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

1. The defendant Elizabeth Zabielski no longer owns the subject premises, having sold it to Dominic Santaniello and Lucus Giusto, Trustees of Naples Home Buyers Trust (hereinafter, "Naples Home Buyers Trust").
2. Accordingly, the plaintiff's request that she be dismissed from the case and substituted with the new owners is allowed.
3. Naples Home Buyers Trust is deemed a necessary party in accordance with Rule 19 as the new and current owners of the subject property with a mailing address of 660 Springfield Street, Agawam, MA 01030.

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4. The plaintiff shall have the new defendant served with the *Amended Petition to Enforce the State Sanitary Code and for Appointment of a Receiver* by sheriff or constable and thereafter file the return of service for same with the court.
5. After service is completed, the plaintiff may mark this matter for hearing with the court.

So entered this 5<sup>th</sup> day of August, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
NO. 23H79SP004717

**DEUTSCHE BANK NATIONAL TRUST COMPANY, as TRUSTEE for the  
REGISTERED HOLDER OF MORGAN STANLEY ABS CAPITAL I INC. TRUST 2007-  
He1 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007 -He1,**

Plaintiff

VS.

**THOMAS P. WELCH, DEBRA FIALKO, KRISTY FIALKO and JARED PRADEL,**  
Defendants

**Order on Cross-Motions for Summary Judgment**

This is a summary process action in which plaintiff Deutsche Bank National Trust Company, as Trustee for the Registered Holder of Morgan Stanley Abs Capital I Inc. Trust 2007-He1 Mortgage Pass-Through Certificates, Series 2007 -He1 ("Deutsche Bank") is seeking recover possession of a residential dwelling located at 26 Grandview Street, Springfield, Massachusetts ("property") from Defendants Thomas P. Welch ("Welch"), Debra Fialko ("Debra"), Kristy Fialko ("Kristy") and Jared Pradel ("Pradel") post-foreclosure.<sup>1</sup> Deutsche Bank contends that the defendants are sufferance occupants and that they failed to vacate the property after receiving a 48-hour notice to vacate.

Pradel filed a written answer.<sup>2</sup> Pradel claims that he is either a bona fide tenant as that term is used in G.L. c. 186A or a tenant at will as that term is used in G.L. c. 186, §13A. Pradel asserts as a defense that Deutsche Bank's effort to terminate his tenancy with a 48-hour notice to vacate was legally insufficient. He claims that Deutsche Bank failed to assert "good cause" to terminate his tenancy under G.L. c. 186A and/or failed to provide him with termination notice that

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<sup>1</sup> It is undisputed that Welch is deceased. Debra represented to the court that she does not occupy the premises and does not claim a possessory interest in the premises. For purposes of ruling on the cross-motions for summary judgment I shall assume without deciding that Debra does not occupy the property.

<sup>2</sup> Neither Kristy nor Debra filed a written answer.

complies with G.L. c. 239, § 13. Further, Pradel's answer asserts tenancy-based affirmative defenses/counterclaims that include a defective conditions-based claim, quiet enjoyment claim, a security deposit claim, a last month rent deposit claim and a derivative unfair trade practice claim.

This matter came before the court on August 1, 2024 for hearing on cross-motions for summary judgment.<sup>3</sup>

Debra and Welch were the former owners/mortgagors of the dwelling. Welch died in 2017. Kristy is Debra's daughter.

Pradel and Kristy have been "friends" since they attended middle school in the mid-1990s.<sup>4</sup> Pradel and Kristy deny that they were ever involved in a romantic relationship. However, in the 2021 obituary for Kristy's grandmother, Pradel is identified as Kristy's fiancé.<sup>5</sup> Pradel (and his minor son) lived at the dwelling with Debra and Kristy during various periods beginning in 2011. Pradel was incarcerated in Pennsylvania from 2014 to 2019. During that period Debra helped to care for Pradel's son at the property. Debra moved to Pennsylvania sometime around 2019.

Upon Pradel's release from prison in 2019 he returned to live at the property with Kristy. According to Pradel's deposition testimony he asked Kristy "... if she thought it would be okay if her mother would mind if I stayed there for a little while until I found a place..." If a factfinder were to find credible the deposition/affidavit testimony of Pradel and Debra the factfinder could conclude that Pradel signed a written lease with Debra in March 2019 to rent the property for

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<sup>3</sup> At the summary judgment hearing Pradel's attorney reluctantly, but wisely, withdrew his premature *Motion for Sanctions for Filing a Frivolous Motion* asserted under Mass.R.Civ.P. 11(a) and G.L. c. 231, § 6F. Ironically, had Pradel chosen to pursue his motion, the timing and substance of his motion itself might have become the subject of a similar motion.

With respect to Pradel's *Motion to Strike* certain statements set forth in the affidavits of Attorney Hale Lake and Jonathan Rankin, the court issues the following rulings:

1. Attorney Lake affidavit: the 2021 obituary notice for Mary Kempo (Exhibit 6) who was Kristy's grandmother shall not be considered for the truth of the assertion as to whether or when Mary Kemp died; but may be considered for purposes of establishing notice of the alleged information and that an obituary was published.
2. Attorney Rankin Affidavit: The report by AAA Constable Services shall not be considered for the truth of the assertions contained in the report. Attorney Rankin's statements pertaining to courtroom representations made by Pradel or his attorney shall not be stricken.

<sup>4</sup> Pradel's interrogatory answers and deposition testimony conflict as to (1) the nature of his "friendship" with Debra and (2) whether Debra cared for Pradel's son.

<sup>5</sup> I am considering the statement in the obituary only to the extent that it constitutes notice of an alleged fact. I am not accepting it for the truth of the assertion. But, notwithstanding the hearsay assertion, it is sufficient to identify a potential disputed issue of material fact.



\$1,300.00 per month effective April 1, 2019. Pradel testified that he found a copy of a lease (a handwritten, partially dated "March 2019", cursory document Pradel and Kristy contend was signed by Debra) after he received Deutsche Bank's 72-hour notice to vacate in 2023. Pradel testified that he earned \$9,000.00 in 2019 and \$16,000.00 in 2023. Nonetheless he testified that he made rent payments.<sup>6</sup> He testified that he did not have written proof of these payments because he said he paid rent in cash. Throughout the period from 2019 to 2023 the utilities for the property were in Debra's name and she paid for the utility services. Debra provided Pradel with financial assistance to pay for his cellphone service.

Deutsche Bank foreclosed on the property on June 28, 2023. It executed a foreclosure deed to itself on July 7, 2023. The defendants do not challenge the validity of the foreclosure sale or that Deutsche Bank holds title to the dwelling. Pradel and Kristy were living at the property at the time of the foreclosure sale and have continued to reside there since.

On September 21, 2023 Deutsche Bank served the defendants with a 72-hour notice to vacate the property.

After reviewing the summary judgment record, I conclude that Deutsche Bank's claim for possession, Pradel's defenses, affirmative defenses and counterclaims (all of which require the court to determine the occupancy status of Pradel and Kristy at time of the foreclosure sale) are not ripe for disposition upon summary judgment. I agree with Pradel that at the summary judgment stage the court cannot make credibility determinations pertaining to the deposition/affidavit testimony of Pradel and Kristy. However, summary judgment is not appropriate where, as is the case here, there is evidence in the summary judgment record sufficient to raise serious questions pertaining to the credibility of Pradel's testimony and Kristy's testimony.<sup>7</sup> I conclude that there exist disputed issues of material fact with respect to the nature of the relationship between Pradel and Kristy (and Pradel's relationship with Debra), the execution of a written lease, and the conditions at the property. These disputed factual issues are critical factors that the factfinder must

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<sup>6</sup> Pradel testified that he would give cash to Kristy, and that Kristy would send it to her mother, Debra.

<sup>7</sup> The summary judgment record does not include an affidavit from Debra averring that in March 2019 she signed a written lease with Pradel. Pradel did not include in the summary process record a handwriting exemplar for Debra. In the court record are foreclosure documents Deutsche Bank filed with the original summary process complaint as part of the entry package. One of the documents is a mortgage signed by Debra and Welch dated August 4, 2006. A comparison of Debra's signature on the 2006 mortgage and the signature (purportedly Debra's signature) on the March 2019 writing Pradel and Kristy testified was a lease signed by Debra in March 2019 is sufficient to raise a material issue of fact with respect to that testimony regarding the authenticity of the Debra's signature.

consider when determining whether at the time Deutsche Bank became the post-foreclosure owner of the premises Pradel and Kristy occupied the property as bona fide tenants, tenants or solely as sufferance occupants. Further, I conclude with respect to Pradel's counterclaims that, even if a factfinder were to conclude that Pradel occupied the property as a tenant, there exist disputed issue of material fact with respect to the factual allegations based substantially upon the testimony of Pradel and Kristy, unsupported by documentation or other evidence pertaining to the breach of implied warranty, interference with quiet enjoyment, consumer protection, security deposit and last month rent deposit counterclaims.<sup>8</sup> How these factual issues are resolved will depend to a large extent on how the court passes on the weight or credibility of the testimony of Pradel and Kristy.

Accordingly, the cross-motions for summary judgment are **DENIED**. The clerk shall schedule this case for a bench trial.

**SO ORDERED this 5<sup>th</sup> Day of August, 2024.**

*Jeffrey M. Winik*

Jeffrey M. Winik

Associate Justice (On Recall)

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<sup>8</sup> Pradel, in his summary judgment motion, asserts for the first time a claim for statutory damages (a fine) under G.L. c. 141, § 35. This claim was never asserted as a counterclaim in Pradel's answer and will not be considered upon summary judgment.



**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 23-SP-4694**

**J & M PROPERTIES, LLC, et al.,**

**Plaintiffs,**

**v.**

**TODD ROLL and NICOLE WITHERELL,**

**Defendants.**

**ORDER**

After hearing on July 31, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. After consultation with a representative from Way Finders, Inc. by Zoom during the hearing, it appears that the tenants are eligible for up to \$7,000 in RAFT funds.
2. The tenants shall immediately re-apply for RAFT. The landlord shall comply with RAFT requirements and provide copies of the ledger and of the summons and complaint and notice to quit to Way Finders, Inc.
3. If RAFT pays \$7,000, that will reduce the arrearage to \$800.

4. The tenant shall pay their rent plus \$200 per month until the balance is \$0.

This should be viewed by Way Finders, Inc. as a repayment plan for RAFT purposes.

5. The tenants shall pay their rent plus \$200 for August 2024 by the last day of August 2024. Thereafter, until the balance is \$0, the tenants shall pay their rent plus \$200 by the last day of each month.

6. The landlord's motion is denied, without prejudice.

So entered this 5<sup>th</sup> day of August, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4390

**RICHARD KOWALSKI, et al.**

**Plaintiffs,**

**v.**

**ORDER**

**NICOLE BUCIER, et al.,**

**Defendants.**

This matter came before the court on May 28, 2024, for trial. After consideration of the evidence admitted therein, the following finding of facts and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiffs, Richard Kowalski and Michelle Lacourse (hereinafter, "landlords") own a 4-unit building located at 119 Main Street in Charlemont, MA. The defendant, Nicole Bucier (hereinafter, "tenant") rents Unit #3 (hereinafter, "premises" or "property") and has resided therein since June 2020, and the parties stipulate that the rent is \$1,250 per month.<sup>1</sup>

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<sup>1</sup> The named co-defendant, Patrick Bucier, is no longer a tenant in this household, having been forced to leave in January 2023 due to domestic violence.. The tenant has a restraining order against Mr. Bucier and she divorced

2. On or about July 28, 2023, the landlords gave the tenant a *for-cause* Notice to Terminate Tenancy (hereinafter, "Notice"). The Notice bases the termination of the tenancy on allegations of cluttering of the porch, making alterations to the property without permission, having pets, and noise disturbances.
3. The tenant filed an Answer with defenses to the landlords' *for-cause* allegations and counterclaims regarding alleged breach of warranty of habitability, retaliation, and emotional distress. By order of the court dated March 12, 2024 (Kane. J), the tenant's counterclaims are permitted in this summary process action (even though it was brought *for-cause*) but that damages for breach of warranty of habitability—if any—are limited to the time since April 1, 2022.<sup>2</sup>
4. **The Landlords' *for-cause* Claims: Cluttering the Porch:** Ms. Tracy Draghi, who lives in Unit #2 directly below the tenant was asked by the landlord to take a photograph of the tenant's porch but could not recall when she took the photograph. Given the testimony of Draghi and the Property Manager, it was likely taken near the time of the Notice. She also took very recent photographs of the porch. The landlords' Property Manager, Jennifer Staples, testified credibly that the porch looked like it did in the early photograph (Exhibit #3) when she issued the Notice to the tenant.

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him and he is not returning to the tenancy. Accordingly, the landlords' motion to default him is denied, without prejudice.

<sup>2</sup> The parties had a previous Summary Process action (21-SP-3509) which included warranty of habitability claims and was tried on April 1, 2022.



5. None of the photographs show much "clutter" and the more recent ones show virtually no clutter.
6. **Waste/Alterations:** The landlords allege that the tenant used the storm windows designated for the premises inappropriately by installing them on the porch to create a closed off shelter portion of the porch and that by doing so the tenant violated the "waste" and/or "no-alterations" terms of the lease. The use of the storm windows to create an enclosure on the porch was effectuated by the tenant's husband---who is no longer a member of the household due to domestic violence.<sup>3</sup>
7. **Railing Damage:** The landlords did not meet their burden of proof that the tenant or anyone in her household or guests caused any damage to the porch railing. The court finds that the damage to the porch railing was caused by a fallen tree.
8. **Pets:** When the tenant first moved in, she was granted permission to keep her service dog. At some point during the tenancy, that dog died.
9. The property manager, Jennifer Staples, testified that she saw photographs on Facebook of the tenant's son with a cat in the tenant's unit self-dated October 2022 and April 22, 2023, and another photograph of a "new" dog in the tenant's unit self-dated March and October 2023.
10. The tenant testified credibly that the second dog was her ex-husband Patrick's idea and that in October 2023 (after Patrick was removed from the

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<sup>3</sup> Going forward, the landlord may require the removal of the storm windows on the porch.

premises) the tenant gave the dog away and it has not returned to the premises.

11. The tenant testified credibly that she has had her two cats since 2021 and believes that she was granted permission from the Ms. Staples (Property Manager) when she got them. She also testified that they are emotional support animals for her and her daughter. Ms. Staples does "not recall" this but she did not say for certain that she did not grant permission. The court finds the tenant credible in her recollection. Additionally, there have been no complaints after three years of having cats of damage or disturbance.
12. **Noise Complaints:** Ms. Tracy Draghi, who resides in Unit #2 which is directly below the tenant, testified that from the beginning of the tenancy through the date that the tenant's husband Patrick Bucier vacated the premises in January 2023, she was subject to hearing fighting between the tenant and her husband. It involved yelling and screaming and banging and Ms. Draghi---who is a former Domestic Violence victim herself---described the fighting as Domestic Violence. In addition to that fighting, the tenant's daughter is very often screaming, perhaps once per week, and that has continued even after Patrick vacated.
13. Anthony Mew, who resides in Unit #1 which is also, like Draghi, located below the tenant's unit, testified that he can hear "stomping around and noise" from upstairs but that it has subsided significantly since Patrick Bucier moved out. Mr. Mew stated that he has not heard any yelling. Mr.

Mew explained that the stomping makes the windows vibrate and believes that it caused his bathroom ceiling tile to fall out.

14. The court finds that much of the noise complaints stemmed from domestic violence caused by Patrick Bucier, who no longer lives at the premises. Mr. Bucier was abusive towards the tenant and created a domestic violence situation which has now, finally, been remedied by the tenant who has an active restraining order against Mr. Bucier (and has divorced him).
15. Though there continues to be some noise disturbances which include stomping and crying by the tenant's young son and screaming by the tenant's teenage daughter, the court is not convinced that such noise is excessive and violative of the lease terms.
16. **Ruling on Cause:** Based on the foregoing, the court finds that the tenant is not in substantial violation of her lease terms and that the worst behaviors of this household all stem from a time when Patrick Bucier was living there and caused domestic violence in the tenant's household. Accordingly, the court finds that the landlord has not met its burden of proof that the tenant should be evicted for breaches of the lease terms.
17. **Account Annexed:** Since May 2022, the tenant paid only one month's rent in November 2022. As such, the outstanding balance of unpaid use and occupancy through the month of trial (May 2024) totals \$30,000.
18. **Tenant's Warranty of Habitability Claims:** There have been conditions of disrepair at the premises for various periods to time since prior to April 1,



2022.<sup>4</sup> The Franklin Regional Council of Governments health inspector and building inspector have inspected and cited the landlord for conditions of disrepair which include a retaining wall in disrepair, and insufficient hand railings, blocked gutters, broken bedroom switch covers, bathroom caulking in disrepair and window unable to open and mold, kitchen sink surfaces peeling and/or uneasy to clean and living room windows not functioning properly.

19. These conditions violate the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. The court is unable to ascertain from the tenant's testimony when these conditions of disrepair began so the court will rely on the dates of the inspection reports which was September 28, 2023, November 21, 2023, and January 2, 2024. It is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability irrespective of the landlord's good faith efforts to repair the defective condition *Berman & Sons, Inc., v Jefferson*, 379 Mass. 196 (1979).
20. It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907, (1987). The measure of damages for breach of the implied Previous warranty of habitability is the

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<sup>4</sup> Whether or not any of these conditions of disrepair existed prior to April 1, 2022, there is a cut off for any money damages as of that date as the parties had a trial stemming from an earlier Summary Process action (21-SP-3509).



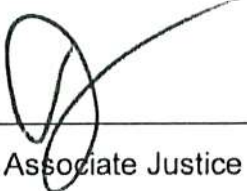
difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass.855 (1991).

21. The court finds that the average rent abatement of 10% fairly and adequately compensates the tenant for the diminished rental value of the premises resulting from these conditions. The tenant's actual damages for the landlord's breach of the warranty of habitability are \$1,000. This represents the contract rent of \$1,250 X 10% (\$125) for 8 months.

22. **Retaliation:** The tenant did not meet her burden of proof on her claim of retaliation.

23. **Conclusion and Order:** Based on the foregoing, the court finds and so rules that the landlords did not meet their burden of proof in their *for-cause* eviction. Accordingly, judgment shall enter for the tenant for possession. Though the landlords did not assert a claim, or move to amend to include a claim, for non-payment of rent in this action they did provide an Account Annexed and proved that \$30,000 was owing at the time of trial. The tenant was awarded \$1,000 on her warranty of habitability claim. Accordingly, a money judgment (not for possession) shall enter for the landlords for \$29,000.

So entered this 5<sup>th</sup> day of August, 2024.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**SPRINGFIELD HOUSING AUTHORITY,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 23SP05007**

**ABIANA REYES,**

**Defendant.**

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**ORDER**

This matter came before the court on August 2, 2024 for a hearing on the plaintiff's second motion for entry of judgment. The plaintiff appeared through its attorney with the property manager. The defendant appeared and was self-represented. The Tenancy Preservation Program (TPP) clinician appeared at the hearing. Janis Luna of Wayfinders also appeared to report on RAFT.

This is a non-payment of rent eviction case in which the plaintiff seeks possession of the subject rental premises and the unpaid tenant's share of the public housing rent/use and occupancy. The parties entered into a first Agreement on December 15, 2023. However, judgment entered on March 26, 2024 after a hearing on the plaintiff's first motion for entry of judgment. The parties entered into a second Agreement on April 12, 2024. By its terms relevant to the present motion, the parties agreed that the defendant owed \$8,103.43 in unpaid rent/use and occupancy and costs of \$236.25. The defendant agreed to pay her share of the monthly rent/use and occupancy (then \$716) by the seventh of each month and \$284 toward the arrears beginning in May. The defendant also agreed to make an additional \$900 payment and to complete her recertification, both by April 19, 2024. Ms. Reyes was referred to TPP for help applying for RAFT financial assistance. The plaintiff agreed to review the inspection report and make all needed repairs within thirty days.

The plaintiff filed this second motion for entry of judgment on the grounds that the defendant has not complied with the terms of the April 12 Agreement. The arrearage is now \$8,115.43 with costs of \$236.25. The recalculation of the tenant's share of the rent was done, but the tenant did not complete it because she did not sign it. The tenant's share of the monthly rent/use and occupancy increased to \$832.

Ms. Luna of Wayfinders reported that there is no record of the defendant filing a RAFT application. Ms. Reyes said that she started the application but thought that she would not be able to document a hardship for failing to pay her rent so she did not submit the application. She acknowledged that she is responsible for the arrearage.<sup>1</sup> Ms. Luna explained that if the tenant could document hardship, RAFT could pay a maximum of six months of her portion of the rent plus costs up to a maximum of \$7,000.

Ms. Reyes reported that she is "not good at managing money" and she has some personal issues. TPP has been working with her to put services in place including a representative payee. TPP agreed to assist her to apply for RAFT and document a hardship reason for not paying her share of the rent/use and occupancy. Ms. Reyes denied access for a housing authority inspection twice, first because she was on vacation and then because she was sick.

Based on the evidence presented by both parties at the hearing, the court finds that the defendant is in substantial violation of material terms of the April 12, 2024 Agreement. However, the court does not order that judgment enter at this time. Instead, the court continues the plaintiff's motion to allow the defendant the opportunity to work with TPP to come into compliance with the Agreement.

### **Orders**

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

1. The defendant will complete her recertification by signing the documentation on August 2, 2024.
2. The defendant will allow access to the plaintiff to inspect the premises on August 5, 2024 at 2:00 p.m.

After hearing the following orders will enter:

3. The plaintiff's motion for entry of judgment is **continued to September 13, 2024 at 9:00 a.m.**

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<sup>1</sup> The arrearage is high for a public housing tenancy, in part because Ms. Reyes had unreported income.

4. Before that continued hearing, the defendant will work with TPP to complete the following tasks:
  - a. Application for a representative payee,
  - b. Application for RAFT financial assistance, including documentation of hardship, as appropriate.
5. The defendant will pay her rent/use and occupancy for August immediately and for September as it becomes due.
6. The defendant will pay \$284 toward the arrearage by August 7, 2024 and \$284 toward the arrearage by September 7, 2024.
7. After August 5, 2024 the defendant will allow access to the plaintiff and its workers to inspect and to make needed repairs on twenty-four hours notice.
8. The plaintiff will submit all required documentation to Wayfinders to support the defendant's application for RAFT financial assistance.
  - a. The plaintiff will include the unpaid costs on the ledger.
9. TPP is asked to continue to work with the defendant to resolve the issues in this case and to be present at the September 13, 2024 hearing.

August 5, 2024

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

CC: Tenancy Preservation Program



**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**BEACON RESIDENTIAL MANAGEMENT  
LIMITED PARTNERSHIP (LESSOR) AND/  
MANAGING AGENT FOR BC COLONIAL  
ESTATES LLC (OWNER),**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24SP00577**

**ELIZABETH MATEO & STEPHANIE M.  
GONZALEZ MATEO,**

**Defendant.**

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**ORDER**

This matter came before the court on August 5, 2024 for a hearing on the defendants' motion to stop the move-out scheduled for August 9, 2024 at noon on the grounds that they have not found a new apartment yet. The plaintiff appeared through its attorney. Both defendants appeared and were self-represented. Leonor Pena of Wayfinders joined the hearing to report on the status of the defendants' RAFT application.

The court outlined the history of this case in its July 8, 2024 order and incorporates it here. The defendants have not paid anything toward the use and occupancy since the last hearing. The plaintiff reports that the arrearage is now \$11,031.64 plus costs. The tenant's share of the subsidized rent is \$484 effective August 1, 2024.<sup>1</sup> Ms. Pena of Wayfinders confirmed that the RAFT application for assistance with the arrearage, which was pending at the time of the last hearing, timed out because the defendants did not demonstrate hardship or good cause for failing to pay their portion of the subsidized rent. The defendants then filed an application for RAFT financial assistance for moving expenses. The hardship requirement is less stringent for this type

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<sup>1</sup> One of the defendants started working, so their portion of the rent increased.

of RAFT application so they may be able to establish their eligibility, but they still needed to complete the application.

Over the opposition of the plaintiff, the court finds that it must stop the move-out scheduled for August 9, 2024 pursuant to G.L. c. 239 §15 because there is a RAFT application pending. The defendants are responsible for the cancellation fee of \$700. They agreed to pay the cancellation fee and their portion of the August use and occupancy (\$484) that day.

### **Order**

As stated at the hearing, the following orders entered:

1. The defendant's motion to stop the move-out scheduled for August 9, 2024 is **ALLOWED.**
  - a. The plaintiff's attorney will notify the deputy sheriff of this order forthwith.
2. As agreed at the hearing, the defendants will pay to the plaintiff \$1,184 on August 5, 2024. This represents use and occupancy for August of \$484 and the cancellation fee for the August 9, 2024 move-out of \$700.
3. The defendants will complete their application for RAFT for moving expenses on August 5, 2024.
4. The execution is stayed pursuant to G.L. c. 239 §15 until there is a decision on the current RAFT application for moving expenses. Once that decision is made, the stay of the execution will be lifted.
5. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.

August 6, 2024

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

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT  
DEPARTMENT OF  
THE TRIAL COURT  
CIVIL ACTION  
No. 24-CV-460

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CITY OF SPRINGFIELD  
CODE ENFORCEMENT DEPARTMENT  
HOUSING DIVISION,

Plaintiff

v.

PATRICIA ANN WARD (owner),

Defendant

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Re: Premises: 325 Main Street, Indian Orchard, Springfield, Massachusetts

ORDER ON PETITION TO ENFORCE THE STATE  
SANITARY CODE AND FOR APPOINTMENT OF A RECEIVER  
AT 325 MAIN STREET, INDIAN ORCHARD, SPRINGFIELD, MASSACHUSETTS

Pursuant to the general equity powers of this Court and G.L. Chapter 111, Sections 127F-I, following a hearing on Monday, July 29, 2024, the Court hereby finds with respect to 325 Main Street, Indian Orchard, Springfield, MA ("Property"):

1. **Background:** On November 30, 2020, the Plaintiff observed conditions at the subject property, which are in violation of Massachusetts State Sanitary Code, Chapter II "Minimum Standards of Fitness for Human Habitation", 105 CMR 410.00 authorized under Chapter 111 Section 127A of the Massachusetts General Laws.

Specifically, Plaintiff found violations including but not necessarily limited to: the abandoned dwelling is not posted with the name of the owner; the front retaining wall is cracked with loose mortar and bricks and must be repaired; the siding has loose and peeling paint and is broken, missing and rotted; and bulk items, paper, plastic and



waste are strewn throughout the yard. The conditions described may endanger or materially impair the health or well-being of residents of the area surrounding the subject property.

On December 1, 2020, the Plaintiff served a Notice to the Defendants. This document ordered the restoration and maintenance of the subject property pursuant to the standards required by the State Sanitary Code, FORTHWITH.

On March 9, 2021, the Plaintiff reinspected the property and the violations remained.

On March 10, 2021, the Plaintiff served a Notice to the Defendant. This document orders the restoration and maintenance of the subject property pursuant to the standards required by the State Sanitary Code, FORTHWITH.

On May 14, 2024, the Plaintiff reinspected the property and the violations remained. Additionally, the Plaintiff found new violations including but not necessarily limited to: an unsecured front-door, broken front-porch windows, loose and peeling paint on the window trim and railing, and heavy overgrowth of bushes, grass, and vines along with the litter, trash, appliances, and waste which were still all present throughout

On May 23, 2024, the Plaintiff reinspected the property and the violations remained. Additionally, the Plaintiff found that the overgrowth around the dwelling was so severe that it was hazardous and preventing full inspection of said dwelling. Furthermore, the property is vacant and all accessible openings must be bordered and secured per U.S. Fire Administration National Arson Prevention Initiative Specifications.

On May 23, 2024, the Plaintiff served a Notice to the Defendant. This document consists of a notice of violations and ordered the Defendant to hire a licensed



professional to pull permits and correct all State Building Code violations,  
FORTHWITH.

On June 18, 2024, the Plaintiff filed a petition with the Western Division Housing Court, Docket No. 24-CV-460.

On June 20, 2024, the Plaintiff served the Petition on the Defendant owner PATRICIA ANN WARD via Hampden County Sherriff at their last and usual address.

After a hearing on July 1, 2024 for which the Plaintiff appeared, and after having been given notice of said hearing a representative of the Defendant PATRICIA ANN WARD did not appear, a Court Order entered on July 2, 2024. Defendant PATRICIA ANN WARD was ordered to secure the subject property in accordance with the U.S. Fire Administration National Arson Prevention Initiative Specifications; to clean the property of all litter, trash, debris, overgrowth, bulk items, paper, plastic, waste and appliances; and to post the subject property with emergency contact information no later than July 8, 2024 at 9:00 a.m.; further to correct all State Sanitary Code violations at the subject property in a workmanlike manner and by licensed professionals with permits pulled as required by law and to correct all State Building Code violations at the subject property, including obtaining and closing all required building permits, in a workmanlike manner and by licensed professionals with permits pulled as required by law no later than July 15, 2024 at 10:30 a.m.; and to provide the Plaintiff with a written plan for rehabilitation or demolition of the above premises on July 29, 2024 at 9:00 a.m.

On July 8, 2024, the Plaintiff reinspected the property and found that the property was not secured per U.S. Fire Administration National Arson Prevention Initiative Specifications; was not clear of litter, trash, debris, and overgrowth; and had no

emergency contact information posted. The property was so completely overgrown that it prevented full access around the dwelling. The Plaintiff also observed signs of forced entry through the front porch and the door into the house along with signs of people staying on the front porch. Neighbors have told the Plaintiff that there are people going in and out of the property frequently.

On July 15, 2024, the Plaintiff reinspected the property and found that the property was not secured per U.S. Fire Administration National Arson Prevention Initiative Specifications; was not clean of litter, debris, and overgrowth; and was not posted with the owner's emergency contact information.

On July 17, 2024, the Plaintiff filed a Motion to Appoint a Receiver. The motion was scheduled to be heard on July 29, 2024.

On July 29, 2024, the Plaintiff appeared and Attorney John Moran<sup>1</sup> appeared for prospective receiver JJJ17 LLC. The Plaintiff's Motion to Appoint a Receiver was allowed. The receiver was ordered to board and secure the subject property and to post the property with emergency contact information by July 31, 2024 at 9:00 a.m.; to clear the exterior of all trash, litter, debris and overgrowth by August 2, 2024 at 9:00 a.m.; to obtain insurance for the property by August 12, 2024; to publish notice of said receivership, including the next hearing date, in *The Republican* newspaper and to post said notice on the property; and to submit a report and rehabilitation plan for the property by September 20, 2024. A review for this matter was scheduled for October 7, 2024 at 9:00 a.m.

**Description and Conditions of the Premises.** The Property is a single-family property in the Indian Orchard neighborhood, which is believed to be vacant. The Petitioner performed inspections of the Property on multiple occasions, during

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<sup>1</sup> Attorney John Moran was covering for Attorney Katharine Higgins-Shea on behalf of JJJ17, LLC.

which the Petitioner found the existence of conditions that violate the State Sanitary Code. These include, *inter alia*, property is not secured; front retaining wall with cracks and loose mortar; trash, litter, debris and overgrowth in the yard; broken siding.<sup>2</sup> The Respondent has been unable or unwilling to complete the necessary Code repairs.

2. **Available remedies.** G.L. c. 111, §127I authorizes appointment of a receiver where violations of the State Sanitary Code will not be promptly remedied unless a receiver is appointed, and where such appointment is in the best interest of future occupants and of public safety. The Respondent has failed to manage and maintain the Property in compliance with the Code and the violations will not be promptly remedied unless a receiver is appointed. The Respondent's failure to manage and maintain the Property, and failure to promptly come into compliance with the Code, endangers or materially impairs the health and safety of the current and/or future occupants of the Property, as well as the surrounding community. Appointment of a Full Receiver is in the best interest of all current and future occupants of the Property and of public safety.

THEREFORE, following hearing on **July 29, 2024** at which the Plaintiff was present via counsel, with notice to all remaining Defendants the Court hereby **ORDERS** as follows:

4. **Receiver.** JJJ17, LLC, 89 FIRGLADE AVENUE, Springfield, MA 01108

("Receiver") is hereby appointed full receiver of the Property. At any time, any party to these proceedings or the Housing Specialist Department may request a review or modification of this appointment and the terms thereof, as set forth below. Upon completion of the necessary repairs, the Receiver shall immediately notify the court. Until the next review date, the Receiver's powers and duties are limited to posting the property with the Receiver's contact information (as detailed

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<sup>2</sup> An exhaustive list of the outstanding violations can be found in the inspection reports attached to the Petitioner's petition, as set out in the attached exhibits.



in Exhibit A) as well posting this order, and assessing the property to create a rehabilitation plan for approval by the Court. After the review date, the Receiver's authority and duties shall be as set out in paragraph 5, below.

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

- (a) To employ companies, persons or agents to perform duties hereunder.
- (b) To receive and collect all rental revenues due from any tenants/occupants of the Property as an agent of the Court for and after the first rental period following the effective date of the Receiver under this paragraph:
  - (i) to account for all receipts according to the standards set forth in subparagraph 5(f) below. The Receiver shall not be authorized to raise rents without further leave of Court.
- (c) To deposit all amounts received on account of the Property into a separate account under the control of the Receiver;
- (d) To inspect the Property to determine what "Emergency Repairs" are needed to correct violations of the Code and of applicable fire safety, electrical building, and plumbing codes existing at the Property, and to perform or cause to be performed, if necessary such Emergency Repairs.<sup>3</sup> For purposes of this section, "Emergency Repairs" are repairs necessary to eliminate violations which materially endanger or materially impair the health or safety of the occupants of the Property, or which may materially endanger or materially impair the health or safety of the tenants/occupants or public safety in the near future if corrective action is not taken;

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<sup>3</sup> For purposes of this section, "Emergency Repairs" are repairs necessary to eliminate violations which materially alter the health or safety of the occupants of the Property, or which may materially endanger or materially impair the health or safety of the occupants in the near future if corrective action is not taken.



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

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

**Second-** To secure any vacant units;

**Third-** To make Emergency Repairs to occupied and vacant units of the Property.<sup>4</sup>

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

- (a). A reasonable management fee consistent with industry standards in the area; and
- (b). A reasonable hourly rate consistent with industry standards for maintenance work performed by the Receiver, or agents thereof, in repairing or maintaining the Property.<sup>5</sup> Rental fees shall be determined by the Chief Housing Specialist, subject to review by the Court upon the request of the Receiver or any party.

**Fifth-** To make repairs, to the extent possible, of conditions that may violate the Code or applicable fire safety, electrical or building codes or ordinances, but which do not rise to the level of “Emergency Repairs” as defined above.

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<sup>4</sup> Any dispute regarding the priority of expenditures for Emergency Repairs shall be referred to the Housing Specialist, whose determination shall be binding on the parties unless modified by the Court, upon motion of any affected party;

<sup>5</sup> Any dispute regarding the maintenance and management fees shall be referred to the Housing Specialist, whose determination shall be binding on the parties unless modified by the Court, upon motion of any affected party.

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

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

- (f) The Receiver shall file periodic reports with the Court, setting forth all expenses and disbursements of the Receivership, with attached receipts, and an accounting of all funds received by the Receiver during the period covered by such report, including a list of all tenants/occupants residing at the Property, together with a list of current rental amounts and the status of their rent payments to date and funds from other sources. On or before **September 20, 2024**, the Receiver shall file its first report, and shall in that report include a detailed list of what repairs need to be performed, along with a schedule prioritizing the order in which such repairs shall be completed.<sup>6</sup> The Receiver shall also file a motion to approve a rehab plan at that time. The Receiver shall file with the Court and serve upon all parties a copy of this report **no later than September 20, 2024, and every eight (8) weeks thereafter**, unless a different schedule is authorized by the Court. *The Receiver shall forthwith determine what outstanding Real Estate Taxes are due to the City and shall include that information in its first report. Copies shall also be sent to any mortgagees or lienors as well as all parties to this action each time any report is filed with the court in this matter, and each report will be accompanied by a certificate of*

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<sup>6</sup> Although it is the Receiver's duty to prepare the reports and supporting documentation, it is the duty of counsel for the receiver to cause the reports to be filed with the court and sent to all parties and lienholders; a certificate of service confirming service of the report will be timely filed with the court and parties.

*service documenting that the reports have been forwarded as called for herein.*

- (g) The Receiver shall complete such documentation and perform such functions as may be necessary in order for tenants to receive public benefits and housing subsidy benefits (such as fuel assistance, food stamps, Section 8, and the MRVP Program), provided that the Receiver's obligations shall not exceed those customarily performed by residential landlords of low/moderate income tenants. The Receiver is hereby authorized to execute any documents necessary to be executed by the tenants' landlord in connection with such benefits programs.
- (h) The Receiver may rent vacant apartments already in compliance with the Code, and may repair vacant units so as to bring them in compliance with the Code.
- (i) **Evictions for Nonpayment of Rent.** Evictions for non-payment of rent shall be governed by the Uniform Summary Process Rules, and G.L. Chapters 186 and 239, and the Receiver shall not collect rent for the period of time prior to his appointment.
- (j) **Evictions for Cause.** The Receiver is granted the right to bring evictions for cause. The Receiver shall not have the right to terminate tenancies at will without cause, or bring summary process actions without cause.
- (k) The Receiver shall be represented by an attorney at future proceedings relative to this receivership. The receiver has identified *Attorney Katharine Higgins-Shea* as their attorney in this matter.

6. **Bond and Inventory.** The Receiver shall not be required to file a bond, nor shall the Receiver be required to file an inventory, list of encumbrances, list of creditors or any other report



required to be filed by Rule 66 of the Massachusetts Rules of Civil Procedure, except as otherwise specifically provided herein.

**7. Rent Payments.**

(a) Once necessary repairs are made and a certificate of occupancy is obtained, the Receiver may begin locating suitable tenants and begin collecting rent at the current fair market rate. Rent payments may be timed so as to coincide with the receipt of public benefits checks.

(b) If, thereafter, any tenant/occupant believes that the amount of rent required to be paid hereunder should be increased or decreased with respect to any unit because of the conditions in or affecting that unit, the tenant/occupant shall make a written request for modification to the Housing Specialist, with copies to all parties. Upon receipt of any such request, the Housing Specialist shall inspect the unit and associated common areas, and shall thereafter provide a recommendation to the Court. Such recommendations shall be based solely upon the condition of the Property. The recommendations of the Housing Specialist shall be binding upon the parties.

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

**9. Liability and Agency**

(a) The Receiver shall forthwith acquire general liability insurance in the amount of \$1,000,000.00, or such other amount as is consistent with industry standards, and casualty loss insurance and provide proof of coverage to the court no later than **August 12, 2024**. The cost of insurance shall be given first priority under paragraph 5 of this order.



- (b) The Receiver shall have no responsibility whatsoever to make any advances on account of the Property, except as approved by the Court.
- (c) The Receiver's liability for injuries to persons and property shall be subject to the limitations set forth in G.L. c. 111, section 127I.

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

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

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

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

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

the Receiver copies of all documents necessary to manage and maintain the Property and shall provide at least the following information:

- (a) Residential Units: the name, address, and telephone number of the owner and contact person for each of the units at the Property; the amount and due date of the rent; and copies of any leases or written tenancy agreements.
- (b) Mortgages and Liens: the name and address of all mortgagees and lienors of record; the amount of the lien or mortgage.
- (c) Insurance: the name, address, and telephone number of all insurance companies and their agents providing insurance coverage for the Property; the amount and type of coverage; and the amount and due dates of premiums.
- (d) Utilities: the amount of the most recent water, sewer, gas, and electric bills; the amount of any outstanding balance; and the date and amount of the last payment.
- (e) Real Estate Tax: the amount of the most recent real estate tax bill; the amount of any outstanding balance; and the date and amount of the last payment.
- (f) Contracts: copies of all warranties for prior work done, service contracts for ongoing maintenance (e.g. for extermination), and all contracts or bids for repairs.
- (g) Other: all information relevant to any outstanding expenses relating to the property.

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

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

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

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

17. **Comprehensive Inspection:** The City of Springfield shall conduct a comprehensive inspection on **August 14, 2024 at 10:30 a.m.** The Receiver shall be at the property at the aforementioned time to allow the City access to the property.

18. **Review by Court.** The foregoing Order shall remain in effect until the further order of the Court. The Receiver and all parties shall appear for a review of this matter on **Monday, October 7, 2024 at 9:00 a.m.**

19. **Effective Date.** This Full Receivership shall take effect on **July 29, 2024** at 5 o'clock p.m.

So entered this 6<sup>th</sup> day of August, 2024

151 Fairlie A. Dalton (B)  
Fairlie Dalton, Associate Justice (Recall)  
Western Division Housing Court