

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

Volume 36

Aug. 7, 2024 — Aug. 29, 2024

ABOUT

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

WHO WE ARE

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

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

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

Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*

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Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

Attorney Dulles serves as Editor-in-Chief, with Attorneys Manzanares and Vickery as co-editors for coordination and execution of this project.

OUR PROCESS

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

EDITORIAL STANDARDS

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

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

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

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

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

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

PUBLICATION

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

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

SECURITY

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1688

BILINGUAL VETERANS OUTREACH CENTERS
OF MASSACHUSETTS, INC.

Plaintiff

v.

PAULO CARVALHO,

Defendant

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

This summary process case came before the Court on May 30, 2024 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 40 Cass Street, #201, Springfield, Massachusetts (the “Premises”) from Defendant based on nonpayment of rent.¹

At the outset of trial, the parties stipulated that Defendant received the notice to quit dated January 19, 2024 and that the tenant’s portion of the monthly rent is \$322.00. The parties disagree as to the amount owed. Defendant filed an answer asserting defenses and counterclaims including bad conditions, retaliation, discrimination and interference with quiet enjoyment. Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn

¹ Defendant asserts that his address does not appear on City records and therefore he has been unable to apply for certain benefits. The issue is not before the Court in this case.

therefrom, the Court finds and rules as follows:

Plaintiff's rent ledger, which the Court accepted into evidence as a business record, shows rental arrears in the amount of \$3,542.00 through the date of trial.² Defendant offered rent receipts for \$422.00 and \$1,000.00, which the Court finds were credited to his account. The Court finds no basis to conclude that the unpaid balance is less than the amount asserted by Plaintiff.

Turning to Defendant's counterclaims, he claims that he has suffered recurring problems with his heat, a non-working electrical outlet and missing towel racks. He admits that he did not make any complaints in writing. The property manager acknowledges that Defendant made certain verbal complaints about heat, broken towel racks and staining on ceilings, and she testified that all necessary repairs were made promptly.

With reference to the heat, the property manager testified credibly that she sent a HVAC technician to the Premises and that no problems were discovered. She personally never witnessed insufficient heat when visiting the Premises. Moreover, although Defendant contacted the City of Springfield Code Enforcement Department ("CED") on more than one occasion, he did not offer any evidence that the CED cited Plaintiff for heating defects. The only citation directed at Plaintiff involved the caulking around the bathtub. Without evidence to support his assertions regarding significant conditions of disrepair,³ the Court finds that Defendant has failed to

² Defendant has filed an application for rental assistance but it appears that his application is incomplete due to missing documentation. If he completes an application, he may be entitled to a stay on issuance of the execution pursuant to G.L. c. 239. § 15.

³ Photographs of pipes and cords plugged into sockets do not constitute credible evidence of inadequate heat or electrical problems.


sustain his burden of proving by a preponderance of the evidence that Plaintiff is liable for damages under the theory of breach of warranty or interference with quiet enjoyment based on poor living conditions.⁴

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

1. Judgment for possession and \$3,542.00, plus court costs, shall enter in favor of Plaintiff.
2. Execution (eviction order) shall issue pursuant to Uniform Summary Process Rule 13 ten days after the date judgment enters.
3. If Defendant completes an application for rental assistance, issuance of the execution shall be stayed until the application is allowed or denied pursuant to G.L. c. 239, § 15.

SO ORDERED.

DATE: August 7, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

⁴ Defendant did not attempt to introduce any evidence as to any other counterclaim, such as retaliation, discrimination and interference with quiet enjoyment. All counterclaims other than those based on conditions of disrepair are dismissed.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

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

LAURIEN DEJESUS-CRUZ,

Plaintiff

v.

BASIL HENRY,

Defendant

RULING ON PETITION FOR
ATTORNEY'S FEES AND
ENTRY OF FINAL JUDGMENT

Plaintiff petitions this Court for an award of reasonable attorney's fees following a bench trial at which the Court found that Plaintiff was entitled to damages in the amount of \$6,250.00 on account of her claims of defective living conditions and violation of G.L. c. 93A. The petition asks for attorneys' fees in the amount of \$10,425.00. Plaintiff did not file an opposition to the petition.

While the amount of a reasonable attorney's fee is largely discretionary, a judge "should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required."

Twin Fires Inv., LLC, supra, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebttec Corp.*, 415 Mass. 309, 324 (1993). The Court is "not required to review and allow or disallow each individual item in the bill, but [may] consider the bill as a whole." *Berman*, 434 Mass. at 303.

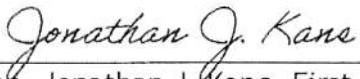
The Court has reviewed the petition and considered the factors set forth in *Twin Fires* and *Linthicum*. The Court notes that Plaintiff did not prevail on all of her claims; she was unsuccessful on her security deposit and retaliation claims. The amount of fees to be awarded should be reduced for time spent on claims that were ultimately unsuccessful and must be viewed in the context of the amount of damages. See *Killeen v. Westban Hotel Venture, LLC*, 69 Mass. App. Ct. 784, 792 (2007) (in determining time reasonably spent on a matter, the Court must be mindful of the results obtained and significance of the interests at stake).

Considering counsel's level of expertise and experience, the difficulty of the case, and the fees customarily charged for similar work, the Court accepts that counsel's requested hourly rate of \$250.00 is reasonable. With respect to the 41.8 hours of time for which fees are sought, the Court notes that the total includes 8.6 hours of driving time and 6.8 hours of waiting time in court. Although the Court is sympathetic to the delays inherent in a busy courthouse, requiring Defendant to pay for 15.4 hours of non-legal time is excessive. The Court shall reduce the non-legal time by 10 hours. Moreover, the Court shall reduce the balance (31.8 hours) by 25% to 23.85 hours to account for unsuccessful claims.

Accordingly, final judgment shall enter in favor of Plaintiff in the amount of \$6,250.00 in damages and attorney's fees in the amount of \$5,962.50.

SO ORDERED.

August 7, 2024


Hoh. Jonathan J. Kane, First Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP003652

EUNICE DRIGO,

Plaintiff,

v.

MARY FURY,

Defendant

Post-Judgment Order Dismissing Defendant's Appeal

After conducting a hearing on August 7, 2024 (at which all parties appeared), the court issues the following orders:

1. Plaintiff's *Motion to Dismiss Appeal* is **ALLOWED**. On June 28, 2024 judgment entered in this summary process action in favor of the plaintiff on her claim for possession and damages in the amount of \$8,274.12. In accordance with G.L. c. 239, § 5 a notice of appeal from a summary process judgment must be filed with the clerk within ten (10) days from the date on which judgment enters. The defendant filed her Notice of Appeal on July 10, 2024. This was twelve (12) days from the date on which judgment entered. The ten-day period for filing a notice of appeal from a judgment is jurisdictional, and a judge has no authority to enlarge the statutory appeal period. *Wells Fargo Bank, Nat'l Ass'n v. Mondy*, 98 Mass. App. Ct. 280, 283 (2020); *U.S. Bank Trust, N.A. v. Johnson*, 96 Mass. App. Ct. 291, 294 (2019).

Accordingly, the defendant's appeal shall be dismissed. Execution shall issue forthwith.

2. Defendant's *Motion for Relief from Judgment* is **DENIED**. The defendant has not presented any reasons sufficient to justify vacating the judgment (that entered after the court determine that the defendant had not complied with an agreement signed, approved and filed with the court on November 1, 2023).

3. Since the defendant's appeal has been dismissed, the court does not need to address the defendant's *Motion to Waive Appeal Bond*.

So entered this 7th day of August, 2024.

Jeffrey M. Winik

Jeffrey M. Winik

Associate Justice (Recall Appt.)

OR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-4141

BASIL ISRAEL,)
)
)
 PLAINTIFF)
)
 v.)
)
 ALICIA JENKINS, ET AL.,)
)
)
 DEFENDANTS)

RULING ON PETITION FOR
ATTORNEYS' FEES AND
ENTRY OF FINAL JUDGMENT

Defendant Alicia Jenkins petitions this Court for an award of reasonable attorney's fees¹ following a bench trial. After trial, the Court found that Ms. Jenkins was entitled to damages in the amount of \$1,786.00 on her claims of retaliation and violation of G.L. c. 93A. The petition asks for attorneys' fees in the amount of \$11,190.00. Plaintiff filed an opposition to the petition.

"While the amount of a reasonable attorney's fee is largely discretionary, a judge 'should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation, and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.'" *Twin*

¹ Ms. Jenkins has not sought an award of costs.

Fires Inv., LLC v. Morgan Stanley Dean Witter & Co., 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC*, supra, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001). The assessment of fees based on the "lodestar" method, which involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," is permissible. See *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993). The Court is "not required to review and allow or disallow each individual item in the bill, but [may] consider the bill as a whole." *Berman*, 434 Mass. at 303.

The Court has reviewed the petition and considered the factors set forth in *Twin Fires* and *Linthicum*. The Court notes that Ms. Jenkins did not prevail on most of her counterclaims; she did not prevail on her claims of breach of warranty or quiet enjoyment, and succeeded only on a claim of retaliation and a technical violation of G.L. c. 93A for which nominal damages were awarded. The amount of fees to be awarded should be reduced for time spent on claims that were ultimately unsuccessful and must be viewed in the context of the amount of damages. See *Killeen v. Westban Hotel Venture, LLC*, 69 Mass. App. Ct. 784, 792 (2007) (in determining time reasonably spent on a matter, the Court must be mindful of the results obtained and significance of the interests at stake).

Considering counsel's level of expertise and experience, the difficulty of the case, and the fees customarily charged for similar work, the Court concludes that a reasonable hourly rate for a matter like this is \$275.00. Further, considering the total

amount of time expended in relation to the claims that were successful at trial, the Court determines that the number of hours must be reduced by 50%, Accordingly, the Court awards Ms. Jenkins attorney's fees of \$5,128.75.

Accordingly, final judgment shall enter in favor of Defendant Alicia Jenkins for possession and \$928.00 in damages, and a separate judgment shall enter for Alicia Jenkins for attorney's fees in the amount of \$5,128.75.²

SO ORDERED.

DATE: August 7, 2024


Jonathan Kane, First Justice

cc: Court Reporter

² The award of attorneys' fees is without interest. *See Patry v. Liberty Mobilehome Sales, Inc.* 394 Mass. 270, 272 (1985).

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2135

GREGORY ANDERSON,

Plaintiff

v.

KIMBERLY VAUGHN,

Defendant

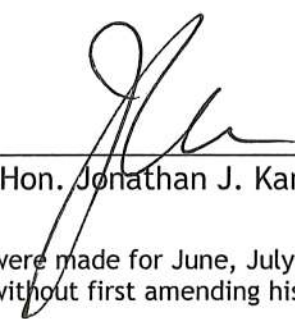
ORDER FOR ENTRY OF JUDGMENT

This no-fault summary process case came before the court for a bench trial on August 8, 2024. Both parties appeared self-represented. Prior to trial, the parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. Defendant did not dispute that she owes the amount of unpaid rent included in Plaintiff's complaint (\$1,125.00).¹ Defendant did not file an answer and she raised no defenses at trial.

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

1. Judgment shall enter for Plaintiff for possession and \$1,125.00 in unpaid rent, plus court costs.
2. Execution (eviction order) will issue by application after expiration of the 10-day appeal period.

SO ORDERED.
August 8, 2024



Hon. Jonathan J. Kane, First Justice

¹ Plaintiff asserts that no use and occupancy payments were made for June, July and August, but he is not entitled to include these amounts in the judgment without first amending his complaint.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2714

DWIGHT ARMS, LLC,
Plaintiff
v.
DONALD DUARTE,
Defendant

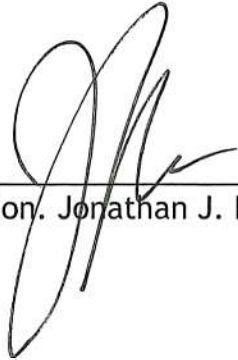
ORDER FOR ENTRY OF JUDGMENT

This no-fault summary process case came before the court for a bench trial on August 8, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. Defendant did not file an answer and raised no defenses at trial.

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

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

SO ORDERED.
August 8, 2024


Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1432

REHAB HOME BUYERS, LLC

Plaintiff

v.

s

ADIS NEGRON AND JACOB ALICEA,

Defendant

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

This no fault summary process case came before the Court for a bench trial over two days, May 23, 2024 and June 6, 2024. Plaintiff appeared through counsel. Defendants appeared self-represented. Ms. Negron is the mother of Mr. Alicea. Plaintiff seeks to recover possession of residential premises located at 28 Calhoun Street, 1st Floor, Springfield, Massachusetts (the “Premises”) from Defendants.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds and rules as follows:¹

Defendant and her family moved into the Premises in 2017. Plaintiff purchased the property in November 2023 without conducting a prepurchase inspection.² At the

¹ At the outset of trial, the parties stipulated that Defendants remain in occupation and that the Premises are part of a two-family home. They did not agree on receipt of the notice to quit nor did they agree upon the amount of monthly rent or any balance due.

² Plaintiff relied on an inaccurate estoppel certificate produced by the seller of the property. Although Mr. Alicea signed the certificate, he was not the proper signatory (his mother, Ms. Negron should have signed it) and he may have done so based on misrepresentations made by an agent of the seller. Although much was made of the estoppel certificate at trial, it does it have any probative value related to the issues in this case.

time of purchase, Ms. Negron lived in the Premises with her six children. The last agreed-upon monthly rent between Ms. Negron and the prior owner was \$900.00. Plaintiff and Defendants never agreed upon a different amount of rent, and no new rental rate was established by the parties' conduct because Defendants have never made any rental payments to Plaintiff.

One of the principals of Plaintiff, Jim Charles, testified that Plaintiff began to rehabilitate the vacant second floor unit soon after purchasing the property. He discovered evidence of a significant leak from the Premises into the basement and offered to place Defendants in a hotel in order to make the necessary repairs. Defendants did stay in a hotel at Plaintiff's expense from January 22, 2024 to February 9, 2024. While Defendants were in the hotel, Plaintiff remodeled the bathroom in the Premises and completed much of the renovations to the second floor unit.

The no-fault notice to quit in the case was served on January 27, 2024 at a time that Defendants were residing in the hotel. The Court finds that the notice was actually received by Ms. Negron based on the credible testimony of Plaintiff's property manager, Toni Brandofino. Ms. Brandofino spoke with Ms. Negron on January 30, 2024, and Ms. Negron admitted that she received the notice to quit and said they would not be able to move by March 1, 2024 and that they would need more time to move.³

Although Defendants did not file a written answer, Plaintiff's counsel assented

³ Ms. Negron testified that, while the family was staying in the hotel, her children were dropped off at the Premises after school and that she went back regularly to care for her dog (until she gave it away). This provides an explanation of how Ms. Negron was able to get the notice to quit despite staying in a hotel at the time it was served.

to Defendants raising defenses and counterclaims at trial. Defendants assert that they suffered from mice and insects, as well as broken bedroom doors and cabinets.

Although Ms. Negron testified that Springfield Code Enforcement Department had been involved under the prior ownership and that she had to use the courts to force the prior owner to make repairs, there is no evidence showing that Code Enforcement inspected after Plaintiff purchased the property. Further, there is no credible evidence that Defendants ever provided written notice to Plaintiff of the need for repairs after Plaintiff purchased the property.⁴ With respect to Ms. Negron's allegation that Plaintiff's agents used her electricity to renovate the second floor unit, Ms. Negron produced no evidence to support this claim.⁵

Defendants raised no other legal defenses. They admit that they have not paid rent to Plaintiff because they have not been able to afford it. Although Plaintiff could seek the unpaid use and occupancy of \$6,300.00 through June (calculated at a rate of \$900.00 per month), it did not include unpaid use and occupancy in the complaint.⁶ Likewise, although Defendants could have sought a stay under G.L. c. 239, §§ 9-11 as part of the trial, they did not do so. Accordingly, the Court resolves only the issue of possession at this time.

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

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

⁴ The bathroom repairs were completed based on Mr. Charles' personal observations of water damage.

⁵ She did testify that someone paid her \$100.00 in acknowledgement that they were using her electricity for the second floor work, but the evidence is insufficient to show the extent of the electricity use or any damage it caused Defendants.

⁶ Plaintiff reserved the right to seek unpaid use and occupancy at trial, but did not make a motion to amend the complaint.

2. Execution (eviction order) shall issue ten days after the date judgment enters pursuant to Uniform Summary Process Rule 13.
3. If Defendants seeks a stay (additional time to move) pursuant to G.L. c. 239, §§ 9-11, they must file and serve a motion.

SO ORDERED.

DATE: August 8, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV000613

The Laguercia Family Limited Partnership)
Plaintiff,)
)
v.)
)
Lynn Gilligan)
Defendant.)

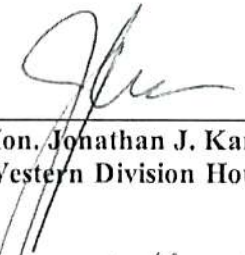
ORDER

After a hearing on August 8, 2024, of which the Plaintiff appeared through counsel, and the Defendant did not appear, based on the allegations set forth in the Plaintiff's Verified Complaint, the following order is to enter: *

1. This matter concerns the premises located at 707 Carew Street, Springfield, MA 01104.
2. The Defendant is ordered to remove all pets from the unit within fourteen (14) days.
3. The Defendant is ordered to remedy all unsanitary and cluttered conditions in the unit within fourteen (14) days.
4. The Defendant is ordered to continue to maintain the unit in a sanitary and uncluttered manner.
5. The Defendant is ordered to refrain from feeding any wild animals or rodents at or near the premises.
6. The Landlord shall be permitted access to inspect the premises and verify compliance with this Order upon 48 hours' written notice to the Defendant.
7. Should the Defendant be aggrieved by this Order, she must file a motion with this Court and appear for hearing before this Court.

8. The legislative fee for instructions is waived.

So entered on this August 8, 2024:



Hon. Jonathan J. Kane
Western Division Housing Court

* The Court is satisfied that Plaintiff has met the standard for injunctive relief set forth in the Lachapin Industries case.

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

**U.S. BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE FOR
LSF10 MASTER PARTICIPATION TRUST,**

Plaintiff,

-v.-

DOCKET NO. 24SP01836

DEVON FLOREK, RYLEY WHITE, ET AL.,

Defendant.

ORDER

This post-foreclosure eviction case came before the court on August 5, 2024 for an agreed upon compliance review of the parties' June 20, 2024 Agreement and defendant Ryley White's motion to amend the Agreement and to enforce the Agreement. The plaintiff appeared through its attorney. Defendant Ryley White appeared and was self-represented. The other defendants did not appear. They are self-represented.

After hearing, the following orders will enter:

1. The parties agree that neither defendant White nor defendant Florek has vacated the premises as agreed pursuant to paragraph 2 of the Agreement.
2. Therefore, pursuant to paragraph 5 of the Agreement, judgment will enter for the plaintiff for possession and costs only.
3. The execution for possession is stayed for thirty days from August 5, 2024 by agreement. After thirty days, the plaintiff may request the execution.
4. The plaintiff is not required to pay any "cash for keys" to Mr. White and/or Mr. Florek pursuant to paragraph 3 of the Agreement because the defendants did not vacate the

premises by August 3, 2024. Mr. White reported that he does not seek any money from the plaintiff at this time.

5. If any defendant seeks a further stay of the execution beyond what is granted in this order, the plaintiff may request use and occupancy for such further time at an amount to be determined at the hearing on the defendant's motion for a further stay.
6. The plaintiff is not required to file a stipulation of dismissal pursuant to paragraph 6 of the Agreement because the defendants did not vacate the premises.

August 8, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

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

Plaintiff,

-v.-

DOCKET NO. 24SP00791

DARAISHA MORALES,

Defendant.

ORDER

This matter came before the court on August 6, 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. Janis Luna of Wayfinders joined the hearing to report on RAFT.

This eviction case is based on nonpayment of the tenant's share of the project-based Section 8 rent. The parties entered into an Agreement on April 4, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$5,880.84 in unpaid rent/use and occupancy and costs of \$246.30. The defendant agreed to make two payments toward the arrearage in April and to submit an application for RAFT financial assistance. She also agreed to pay her portion of the subsidized rent/use and occupancy (then \$755 or any adjusted amount) by the fifth of each month and \$700 toward the arrearage by the twentieth of each month, both beginning in May 2024. When the defendant's account reached a zero balance the case would be dismissed. If the defendant failed to comply with the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff filed such a motion on the grounds that the defendant paid some payments late and failed to make others. The plaintiff reported that the arrearage is \$4,485.84 through August and costs of \$246.30. The tenant's portion of the rent is now \$156. The defendant reported that she made a \$500 payment which was not credited. She furnished a copy of the receipt to the plaintiff's attorney for her client to check. Ms. Morales lost her job shortly after signing the April 4 Agreement. She received Unemployment Compensation benefits and began a new job within the last two months.

Ms. Luna of Wayfinders reported that two RAFT applications timed out – one on May 15, 2024 because of missing landlord documentation and one on June 23, 2024 because of missing hardship documentation from the tenant. Because this is a subsidized tenancy, the defendant must demonstrate to Wayfinders that there was a hardship/good cause for failing to pay her portion of the subsidized rent. If she were eligible for RAFT, Wayfinders could pay six months of the tenant's portion and costs.

Order

After hearing, the following orders will enter:

1. As agreed, the defendant will make the following payments:
 - a. \$356 on August 6, 2024
 - b. \$400 when she gets paid on August 9, 2024
 - c. Both payments will be in the form of money orders.
2. The plaintiff will check on the receipt for \$500 which the defendant supplied to the plaintiff's attorney at the hearing and credit the defendant's account if needed.
3. **The plaintiff's motion is continued to a date in late August. The Clerk's Office is asked to schedule the matter for further hearing and to send notice.** At the hearing the parties will report on the payments above and the defendant will propose a new realistic payment plan in light of her current portion of the rent.
 - a. The defendant will complete all recertifications, if needed, before the hearing.

August 9, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP001689

ANDREW BLEIER and VICTORIA BLEIER,

Plaintiffs,

v.

SHARON DiGENNARO and VINCENT DiGENNARO,

Defendants

Order for Judgment

After conducting a hearing on August 7, 2024 (at which the plaintiff appeared but the defendant did not appear), the plaintiff's *Motion to Issue* is **ALLOWED**.

The parties entered into a written Agreement that was filed with the court on May 22, 2024. Under the terms of the agreement the defendants agreed to vacate the premises by July 31, 2024, and if the defendants vacated by that date the plaintiffs agreed to waive rent for June and July 2024 (\$800.00 x 2). The agreement provided that judgment was to enter on August 1, 2024 for possession and \$4,050.00 plus \$378.64 costs. A review of the docket shows that judgment has not as yet entered pursuant to the agreement. In material breach of the agreement, I find that the defendant has failed to comply with vacate provisions of the May 22, 2024 Agreement. For that reason, the rent due for June and July has not been waived. The defendants have not made any use and occupancy payments for June, July and August 2024. The total amount due for unpaid rent and use and occupancy as of this date totals \$6,450.00. There is no evidence that the defendant filed a RAFT application that remains pending.

Accordingly, it is **ORDERED** that judgment shall enter for the plaintiff for possession, damages totaling **\$6,450.00** and **\$378.64** court costs. Execution shall issue automatically on the

11th day after judgment enters **without further hearing**. The plaintiffs **shall not** be required to file a written motion or request for issuance of execution .

So entered this 9th day of August, 2024.

Jeffrey M. Winik

Jeffrey M. Winik

Associate Justice (Recall Appt.)

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

ANTHONY CHARETTE,

Plaintiff,

-v.-

DOCKET NO. 24CV00584

CHICOPEE HOUSING AUTHORITY,

Defendant.

ORDER

This matter came before the court on August 9, 2024 for a hearing on the plaintiff's motion to extend the time that the defendant must pay for motel accommodations. The plaintiff appeared and was self-represented. The defendant appeared through its attorney.

The defendant agreed to pay for motel accommodations for the plaintiff while repairs were made to the front wall and air conditioner in his apartment. That work was completed on August 8, 2024. The repair company, Cornerstone Building Services, furnished the Housing Authority with a letter outlining the work done to repair the water damage from the air conditioner and concluded that the apartment was safe to return in regard to the repairs the company made (D Exh).

The plaintiff has arranged for a mold inspection to be conducted on August 13, 2024 at his expense. He now asks that the Housing Authority continue to pay for motel accommodations for him until he receives the results of the mold inspection, which he anticipates could be August 21, 2024. He submitted pictures of the damaged air conditioner which has been replaced with a new unit, what he describes as mold, and pictures of what he describes as a rash caused by mold (P Exhs). There is no medical evidence before the court to establish any causation for the rash.

The defendant opposes the motion on the grounds that any dangerous conditions have been corrected and the apartment is now safe for occupancy. There is no evidence before the court that it is not.

Order

Based on the limited record before the court, the plaintiff's motion is **DENIED**. If the plaintiff wishes to remain staying at the motel, he must do so at his expense at this time.

August 9, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

FRANCES MENDEZ-HERNANDEZ,

Plaintiff,

-v.-

DOCKET NO. 24CV00545

FELIX CONFESOR & GILBERTO PEREZ,

Defendant.

ORDER

This matter came before the court on August 6, 2024 for review of compliance with the court's order of July 31, 2024. The plaintiff and defendant Gilberto Perez appeared and were self-represented. Defendant Felix Confesor did not appear. He is self-represented.

The plaintiff reported that she did not receive a call back from Aaron Cole, the wiring inspector for the City of Springfield. The defendant submitted a report from Electrical Experts (D Exh). This is a different electrician than the one he used last month.¹ The report shows the need for further electrical work, although it did not confirm the extent of cross-metering. The defendant testified that Electrical Experts will do the needed work, although he did not know when it would be done.

The plaintiff testified that her electricity will be shut off by Eversource effective August 18, 2024 for nonpayment of the bill. She submitted her most recent bill (P Exh). It did not indicate that the service would be terminated, but that payment is due on August 18. Mr. Perez has given the plaintiff cash toward the electric bills in the past.

¹ The earlier electrician's report was inadequate.

The plaintiff also reported that there was a notice that the water service would be shut off at the property effective August 6, 2024 for nonpayment of the bill. Mr. Perez testified that he has resolved the issue by paying the bill.

The case was referred to the housing specialist immediately after the hearing to:

- Confirm that the water bill was paid and that the water and sewer service will not be terminated effective August 6,
- Call the City wiring inspector to try to arrange an inspection at the premises, and
- Make financial arrangements regarding the bill for the plaintiff's electrical service, to ensure that the service is not terminated for nonpayment.

Orders

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

1. Within one week of the hearing, defendant Gilberto Perez will schedule an electrician from Electrical Experts to do the needed electrical work at the premises and notify the plaintiff of the date and time of the appointment as soon as it is scheduled.
2. The work the electrician will do includes, but is not limited to, an inspection to determine the extent of any cross-metering of the plaintiff's apartment with any other unit or common area in the building.
 - a. The defendant will have the electrician document the extent of any such cross-metering.
 - b. The defendant will have any such cross-metering corrected immediately.
3. The plaintiff will allow access to the electrician when notified of the date and time that the work will be done, which may be after August 10, 2024.
4. Defendant Gilberto Perez will make financial arrangements with the plaintiff to ensure that her electrical service is not terminated for nonpayment of the bill.
 - a. Any money received by the plaintiff from the defendant for this purpose will be paid to Eversource on her account promptly.
5. Defendant Gilberto Perez will ensure that the water service to the premises is not terminated.

6. The defendant will continue to pay the water and sewer bills for the property as they become due.

It is also ordered:

7. The case is scheduled for further review of compliance with this order on **August 27, 2024 at 9:00 a.m.** in the Springfield session of this court. At that hearing:
 - a. The plaintiff will report on her efforts to contact the City wiring inspector and submit any reports from him.
 - b. Defendant Gilberto Perez will report on the electrical work done at the premises to date and submit a detailed invoice from the electrician, including the electrician's findings with respect to cross-metering.

August 9, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP001760

JOHN PACINE,

Plaintiff,

v.

JOSHUA BESSETTE,

Defendants

Order for Judgment

After conducting a hearing on August 7, 2024 (at which the plaintiff appeared but the defendant did not appear), to determine whether the defendant had complied with the vacate provisions of a written Agreement filed with the court on June 26, 2024.

Under the terms of the Agreement, the defendant agreed to vacate the premises by August 6, 2024. The agreement provided that after a hearing scheduled for August 7, 2024 judgment would enter for the plaintiff for possession if the defendant had not vacated the premises.

The plaintiff shall file an affidavit with the court by August 15, 2024 regarding whether or not the defendant has vacated the premises. If the defendant has vacated the premises, then the summary process action shall be dismissed. However, if the defendant has not vacated the premises, then judgment shall enter for the plaintiff for possession and execution shall issue automatically on the 11th day after judgment enters **without further hearing**. The plaintiffs shall not be required to file a written motion or request for issuance of execution.

So entered this 9th day of August, 2024.

Jeffrey M. Winik

Jeffrey M. Winik

Associate Justice (Recall Appt.)

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

YAHAIIRA RIOS,

Plaintiff,

-v.-

DOCKET NO. 24CV00428

AVI GROSS,

Defendant.

ORDER

This matter came before the court on August 6, 2024 for a review of the court's June 20, 2024 order regarding repairs to be made at the premises. The plaintiff appeared and is self-represented. The defendant is self-represented. He did not appear when the case was called, but the housing specialist contacted him and both parties appeared via Zoom at a continued hearing in the afternoon.

The plaintiff-tenant brought this case seeking an emergency order that the defendant-landlord make repairs at the subject rental premises. The City of Springfield Code Enforcement Department issued a report and order to correct on June 6, 2024. The defendant filed a motion to continue the original hearing date which was allowed. However he did not appear on the continued date. A judge of this court issued an order that the repairs be made within thirty days and scheduled the case for review on August 6.¹

The defendant testified that he made some of the repairs, including the smoke detectors, but that the plaintiff denied him access to make the rest of the repairs. He has arranged for the City inspector to be at the premises on August 16, 2024 at 9:00 a.m. to assist him with access to

¹ The defendant testified that he did not receive a copy of the order. The court notes that there is returned mail in the file. At the hearing, the defendant supplied a corrected mailing address to the Clerk and the Clerk resent the June 20 order to him.

the unit. The tenant agreed to allow access at that date and time to the inspector and the landlord and/or his workers. The plaintiff testified that there is still a problem with wires sticking out of the sockets and mice infestation. She suspects there is cross-metering with another unit in the mixed-use commercial and residential property (Exh) because when her electricity went off, her stove and bathroom remained on.

Order

After hearing, the following order will enter:

1. The defendant will make all repairs cited in the June 6, 2024 inspection report on August 16, 2024 beginning at 9:00 a.m.
2. The plaintiff will allow access to her apartment on June 16, 2024 beginning at 9:00 a.m. for the landlord and/or his workers to make all needed repairs and for the City inspector to inspect as needed.
3. The defendant will investigate whether there is cross-metering at the plaintiff's premises. If any cross-metering is found, the defendant will correct it immediately.
4. All work will be done in workmanlike manner. If the inspector requires that any work be done by a licensed professional or any permits be pulled, the defendant will comply with the inspector's instructions.
5. The parties will conduct themselves in a businesslike manner so that the work may be done efficiently and promptly.

August 9, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

AMANDA M. RUIZ,

Plaintiff,

-v.-

DOCKET NO. 24CV00588

STEVE G. AUBE,

Defendant.

ORDER

This matter came before the court on August 6, 2024 for a hearing on the plaintiff's request for an emergency order. Both parties appeared and were self-represented.

The plaintiff-tenant moved into the subject rental premises on April 9, 2024. She testified that on April 23, 2024 the defendant-landlord came to her house unannounced and asked to enter. She asked him to wait ten minutes. When he entered, he walked through the house, looking for evidence of smoking. She denied that she or any member of her household smokes in the premises. The defendant testified that there is a no smoking clause in the parties' rental agreement, but that he received a complaint from the tenant in the other half of the duplex that someone was smoking in the plaintiff's unit. He could smell smoke through the walls and saw a haze. He asked to enter the plaintiff's unit to find the source of the smoking smell. The landlord has filed an eviction case in the District Court based on allegations of smoking in violation of the rental agreement. The matter is scheduled for August 22, 2024.

The plaintiff now asks that the landlord not come to her house unannounced except in an emergency. She testified that the situation is not an emergency at this time and that she does not have a problem allowing access for repairs as needed. The defendant testified that he does not have any reason to go into the premises at this time, unless there is an emergency.

To the extent that the plaintiff seeks a harassment prevention order,¹ the Housing Court does not have jurisdiction pursuant to G.L. c. 258E. Any such relief must be sought in the District Court.

Both parties reported that they have access to counsel if they wish to consult an attorney about their rights and responsibilities in these matters.

Order

After hearing, the following orders will enter:

1. Unless amended in the pending summary process (eviction) case, the parties will communicate with each other in writing only, except in the case of a true emergency.
2. Both parties will conduct their business with each other in a professional manner pending the resolution of the eviction case.

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

August 9, 2024

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

¹ The plaintiff testified that the landlord is harassing her "by text".

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

23 PLACE, LLC,

Plaintiff,

-v.-

DOCKET NO. 23SP05423

MARANGELY RIVERA, ET AL.,

Defendant.

ORDER

This matter came before the court on August 6, 2024 for a continued 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. Janis Luna of Wayfinders also appeared at the hearing to provide an update on the status of the defendant's application for RAFT rental assistance.

The defendant did not pay the \$1,650 use and occupancy for August since the last hearing on July 2, 2024. The arrearage is now \$9,100 through August 2024 with \$320.17 costs. Ms. Luna of Wayfinders reported that the defendant's RAFT application still needs the full lease to be supplied by the landlord and a payment agreement for the balance that would remain even if Wayfinders paid the maximum of \$7,000. Both of these documents must be received by Wayfinders by August 9, 2024 or the current application will time out. The plaintiff agreed to submit the full lease on time.

The plaintiff argued that the court has discretion pursuant to G.L. c. 239 §15 to enter judgment in spite of the pending RAFT application but to stay the issuance of the execution pending a motion to be filed by the landlord. The court disagrees.

Orders

After hearing the following orders will enter:

1. **The plaintiff's motion is continued for further hearing on August 27, 2024 at 9:00 a.m.**
2. The parties will report on the status of the current RAFT application and the defendant's repayment plan for the balance owed if RAFT is received.

August 12, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

DOUGLAS DICHARD,

Plaintiff,

-v.-

DOCKET NO. 24SP01566

RANDY TIMMONS & THOMAS TIMMONS,

Defendant.

ORDER

This matter came before the court on August 6, 2024 for review. All parties appeared and were self-represented. The defendant's sister, Tanisha Onacha, also appeared at the hearing.

This eviction case is based on nonpayment of the monthly rent of \$1,500. The defendants' mother was Randy Timmons' representative payee for his Social Security Disability Insurance (SSDI) and she paid the rent until she passed away in February 2024. The landlord reported that there is \$10,500 in unpaid rent/use and occupancy through August 2024. Mr. Dichard agreed to waive the costs.

All parties would like to maintain the tenancy on condition that the arrearage is paid and ongoing rent can be paid. The defendants' sister reported that she is in the process of being named the new representative payee for Randy Timmons and restoring his SSDI benefits which have been withheld since March 26, 2024. She expected to receive confirmation from Social Security within forty-eight hours. Once the issues with Social Security are resolved, Ms. Onacha is prepared to pay the rent on her brother's behalf. Thomas Timmons reported that he works part time jobs. Ms. Onacha does not have any involvement in his finances.

By earlier order, the court ordered an evaluation to be done for each defendant by the court clinician. Both reports have now been filed with the court. The court referred the case to

the Tenancy Preservation Program (TPP) to consult with the parties to see if there are services which could assist them in getting future rents paid on time and in full.

As stated at the hearing, the case is continued for further review on **September 3, 2024 at 9:00 a.m.** At that hearing, the parties will report on the status of Randy Timmons' representative payee application and the payment of rent/use and occupancy. Also, the court will address the issue of the appointment of guardian(s) at litem (GAL). TPP is asked to be present at the September 3 review.

August 12, 2024

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

CC: TPP

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SPRING MEADOW APARTMENTS,

Plaintiff,

-v.-

DOCKET NO. 23SP03313

NICOLE FERRER & TAVION ROSS,

Defendant.

ORDER

This matter came before the court on August 6, 2024 for a hearing on the plaintiff's motion to lift the stay of execution and the defendant's motion for relief from judgment and more time to try to resolve the matter. The plaintiff appeared through its attorney with property manager Kenny Corea. Defendant Nicole Ferrer appeared and is self-represented. She reported that defendant Tavion Ross does not live at the premises. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

This eviction case is based on nonpayment of the tenant portion of the project-based subsidized rent. Judgment entered for the plaintiff on March 14, 2024 based on a violation by the defendant of the parties' October 3, 2023 Agreement. A judge of this court ordered a stay of the execution on May 3, 2024 because the defendant had a pending application for RAFT financial assistance.

Ms. Pena of Wayfinders reported that that application timed out because the defendant did not provide documentation of hardship/good cause for failing to pay her portion of the subsidized rent. In fact, the defendant reported that she applied for RAFT six times but was never approved. She filed another application, but Ms. Pena reported that it timed out because the landlord did not submit its documentation. Ms. Pena reported that the landlord filed another

application on the day of the hearing and submitted its documentation. The tenant must now submit her documentation and proof of hardship. Ms. Pena explained that under Ms. Ferrer's circumstances she could be found eligible for RAFT. If she were eligible, RAFT could pay only six months of the tenant's portion plus costs up to a maximum of \$7,000.

The plaintiff reported that the defendant owes \$5,962.85 in unpaid rent/use and occupancy through August 2024 with \$341.30 costs. The tenant's portion of the rent has been \$0 since April 2024. The highest that the tenant's portion has been is \$395. Because it is unlikely that RAFT could pay the entire arrearage, there will be a balance still owed even if RAFT is received on this latest application, initiated by the landlord. The plaintiff argued that it is uncomfortable entering into another repayment plan with the defendant based on her past failure to comply with the terms of their Agreement. However, the defendant reports that there has been a change in her circumstances which has the *potential* to provide funds to pay the balance of the arrearage. She is waiting for Unemployment Compensation to resolve an identification verification issue and release funds to her which she expects will be \$3,000 to \$4,000.

At this time, the court does not lift the stay of the execution ordered on May 3, 2024. The court finds no grounds to relieve the defendant from the judgment which entered on March 14, 2024. However, it grants her a short time to finalize a resolution of her Unemployment Compensation issue and to complete the latest RAFT application filed on August 6, 2024.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion to lift the stay of the execution is continued to **September 3, 2024 at 9:00 a.m.** for further hearing.
 - a. At the hearing the parties will report on the status of the RAFT application currently pending.
2. The stay of the execution still in place is ordered within the meaning of G.L. c. 235 §23.
3. The defendant's motion for relief from judgment is **DENIED**.
4. The defendant will submit her documentation, including documentation of subsidy hardship, to Wayfinders immediately.
5. The defendant will propose to the plaintiff a *realistic* payment plan for the balance of the arrearage that would remain if RAFT paid the maximum amount.

- a. The defendant will supply documentation of the sources she will use to make payments under the plan to the plaintiff. This includes, but is not limited to, documentation of monies she receives from Unemployment Compensation.
 - b. The plaintiff will consider the defendant's proposed payment plan in good faith.
6. The defendant will complete the recertification process if there is a change in her household income.

August 12, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

YELLOWBRICK MANAGEMENT, INC.,

Plaintiff,

-v.-

DOCKET NO. 23SP05803

**KAYLA SANTOS-BERMUDEZ &
GABIMAE L BERMUDEZ,**

Defendant.

ORDER

This matter came before the court on August 12, 2024 for a hearing on the defendant's motion to enforce the parties' Agreement and to dismiss the case. The plaintiff appeared through its attorney with the maintenance supervisor. The defendants appeared and were self-represented.

This eviction case is based on nonpayment of the tenant's portion of the Section 8 rent/use and occupancy. The parties entered into an Agreement on February 29, 2024. By its terms, the parties executed a mutual waiver of some claims. In exchange for the parties waiving "any and all claims that could or do exist between the parties from the beginning of time through the date of this agreement" the plaintiff agreed to waive \$10,000 of the \$14,998 in unpaid rent/use and occupancy through March 31, 2024. However, the defendants maintained their personal injury and mold claim. The defendants agreed to move on or before July 1, 2024. If they did so, the plaintiff agreed to waive the remaining \$4,998 in unpaid rent/use and occupancy through March 2024 as well as the use and occupancy for April and May 2024.¹ The parties

¹ The security deposit was applied to the use and occupancy for June 2024 and the parties waived any claims relating to the security deposit. The last month rent would be returned to the defendants at the exchange of keys, if they were in strict compliance with the July 1, 2024 vacate date, and written surrender of possession form.

agreed that there were no emergency repairs that needed to be addressed before the defendants vacated, except that extermination would be ongoing. The plaintiff agreed to give forty-eight hours written notice of exterminations and the defendants agreed not to deny access unreasonably and to “make all efforts to properly prepare for the extermination.” Finally, the plaintiff agreed to provide a neutral reference upon request.

The parties agreed to return to court on July 2, 2024 for a compliance hearing. If the defendants had not vacated, the plaintiff could request that judgment enter and execution issue. A week before the compliance review, the defendants filed a motion for relief from judgment,² to amend the Agreement, and to dismiss.

After the compliance hearing, a judge of this court entered an order granting the defendants’ request for an additional ninety days to remain in the unit, until October 1, 2024, “contingent upon compliance with [the] Order.” The order required the defendants to pay their share of the use and occupancy for July by July 10, 2024 and for August and September by the first week of each month.³ The judge ordered that judgment would enter for the landlord for possession only, but execution would be stayed consistent with the order. If the defendants did not comply with the order, the plaintiff could file a motion to issue the execution. The defendants then filed today’s motion to enforce the Agreement and to dismiss.

The basis of the defendants’ motion is that the landlord failed to make needed repairs at the property. The court notes that the February 29, 2024 Agreement includes a provision, “The parties agree there are no emergency repairs that need to be addressed prior to the Defendants vacating.” However, the defendants have had the premises inspected by the City of Springfield Code Enforcement Department. The inspector has issued reports and orders to the landlord to correct violations. The most recent inspection occurred on or about July 27, 2024.⁴ Ms. Santos-Bermudez reported that the repairs were not completed or not made at all.

The plaintiff reported that it stands ready and willing to make any needed repairs, but that the defendants have denied access to make the repairs on many occasions. The defendants pointed out that a judge of this court entered an order on February 22, 2024 allowing the plaintiff’s motion for access and ordering the defendants to allow access on specific dates and

² No judgment had entered at the time.

³ Additionally, the judge ordered the defendants to clean up their belongings from the side yard and to notify the landlord of those items in the yard that were not theirs.

⁴ Neither party had a copy of the inspection report at the hearing today.

times between February 27 and March 1, 2024. The defendants now report to the court that neither defendant has time to allow access Monday through Friday while they remain living in the premises. They could allow access on Sunday afternoon. The plaintiff objects to having to make repairs on a non-business day. The court agrees with the plaintiff's position on the reasonableness of scheduling non-emergency repairs Mondays through Fridays only.

The plaintiff reported that they have been in contact with the City Code Enforcement Department. They believe that the City will extend the deadline for the repairs to be made until the defendants vacate if that is the wish of the tenants. While Ms. Santos-Bermudez reported that she wants the repairs made, she also reported that she cannot allow access during what the court finds to be reasonable times before they move out. In light of the defendants' stated position, the court leaves it to the plaintiff to make further arrangements with the City Code Enforcement Department on the issue of the deadline to make repairs.

Ms. Santos-Bermudez argued that she is rent withholding. However, the court finds that the defendants do not have any authority or permission to withhold their portion of the rent at this time. As defendants in this eviction case, they are subject to the court's July 5, 2024, order, which explicitly ordered them to pay their portion of the use and occupancy for July, August and September (if they remain in occupancy for each of those months). The July 5, 2024 order of the court remains in full force and effect, including but not limited to, paragraphs 6, 7 and 9.

Ms. Santos-Bermudez reported that she and her family are trying to move, but they have not found alternative housing where they can use their Section 8 voucher to date. She argued that they are hindered in part because the plaintiff is stating falsely that there is a judgment against them and that her husband is named in the judgment.⁵ It is not clear to whom she believes the plaintiff is reporting this, but it is also clear that that information is not false. Ms. Santos-Bermudez believes that judgment should not enter against them if they move by October 1, 2024. However, paragraph 9 of the July 5, 2024 order clearly orders that judgment enters. It is the execution which is stayed until October 1, 2024 on condition that the defendants comply with that order. Mr. Bermudez has been a party to this case since it began. There is no reason that he would not be included in the judgment.

⁵ At the July 2, 2024 compliance hearing, the defendants reported that they were hindered in finding alternative housing because of the presence of lead paint at prospective new apartments or other Section 8 related reasons.

In the parties' February 29, 2024 Agreement the plaintiff agreed to provide a neutral reference "upon request". It is not clear if there have been any requests for a reference from prospective landlords, but the landlord must comply if it receives such a request.

Order

After hearing, the defendants' motion is **DENIED**.

August 12, 2024

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

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV000620


PAPYRUS EQUITIES, LLC)
Plaintiff,)
)
v.)
)
JOHN DOE)
Defendants.)

ORDER

After a hearing on August 13, 2024, of which the Plaintiff appeared through counsel, and the Defendant did not appear, the following order is to enter:

1. This matter concerns the premises located at 112 Spring Street, Unit 2A, Springfield, MA 01105 ("premises").
2. The Court is satisfied that that the Plaintiff has met the standard for injunctive relief as set forth in Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609 (1980).
3. All adult occupants of the property located at 112 Spring Street, Unit 2A, Springfield, MA 01105 shall within seven (7) business days identify themselves to the Landlord or its attorney.
4. A further hearing shall be scheduled for August 29, 2024 at 2:00PM. Any adult occupant of the premises must appear and show cause as to why a Vacate Order should not issue for all occupants of the premises.
5. Any party claiming to be aggrieved by this Order or the Plaintiff's Complaint shall file a motion or position statement with this Court before that date stating their position on the Plaintiff's Complaint.
6. A copy of this Order shall be served by the Plaintiff via constable or sheriff's service forthwith.
7. The legislative fee for injunctions is waived.

So entered on this August 13, 2024:



Hon. Jonathan J. Kane
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1900

MICHAEL POPE,

Plaintiff,

v.

TRACY and ERIC TOWNSEND,

Defendants.

ORDER

After hearing on August 8, 2024, on the landlord's motion for entry of judgment the following order shall enter:

1. **Background:** At the First-Tier event on June 11, 2024, in this non-payment of rent matter, the parties reached an Agreement of the Parties (Agreement).
2. The terms of the Agreement required the tenants to were to pay \$50 per day for each day there continued to occupy the premises after July 5, 2024, and to vacate by no later than August 1, 2024.

3. **Discussion:** The landlord's motion for entry of judgment is based on the fact that the tenants failed to make use and occupancy payments and failed to vacate the premises.
4. The tenants do not dispute these failures but argue that they were due to the landlord's malfeasance and, as such, they should be granted an extended period of time to vacate.
5. More specifically, the electric service in the dwelling is faulty and they routinely lose electricity in half of their apartment. Because the electric is faulty the tenants have been unable to utilize the services of a babysitter for their five-year-old child as the tenants can not entrust the care of their children to a babysitter when the electricity is shut down or faulty and possibly unsafe. Because they could not use a babysitter, they argue, one or the other tenant was required to miss work and stay home with their child and this caused them to not make sufficient wage to effectuate a move-out by August 1, 2024.
6. The landlord admits that the dwelling is part of structure that is over 100 years old and is prepared to upgrade the electrical panel/system for the tenants unit.
7. **Conclusion and Order:** The landlord's motion is denied, without prejudice.
8. The tenants' occupancy may be extended to October 1, 2024, contingent upon their paying \$350 each Sunday to the landlord for use and occupancy until they vacate the premises.

9. The landlord shall have a licensed electrician immediately inspect the premises to ensure the electrical system is functioning properly and safely. The landlord shall also hire the electrician to upgrade the electrical system during the week of August 29, 2024, when the tenants will be away on vacation (or at a different time agreed upon by the parties)
10. The tenants and the owner of the property shall not have any communication with one another whatsoever, other than in a *bona fide* emergency.
11. All communication shall be between the tenants and the property manager Michael Pope and/or his attorney.
12. Mr. Pope shall respond promptly to complaints shared by the tenants regarding the premises.
13. The tenants shall vacate by no later than October 1, 2024.
14. If the tenants fail to make use and occupancy payments as described above, or fail to vacate the premises by October 1, 2024, the landlord may file a motion to enter judgment.
15. The tenants may not withhold or abate the use and occupancy payments required pursuant to this Order without leave of court.

So entered this 13 day of August, 2024.



Robert Fields, Associate Justice
Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

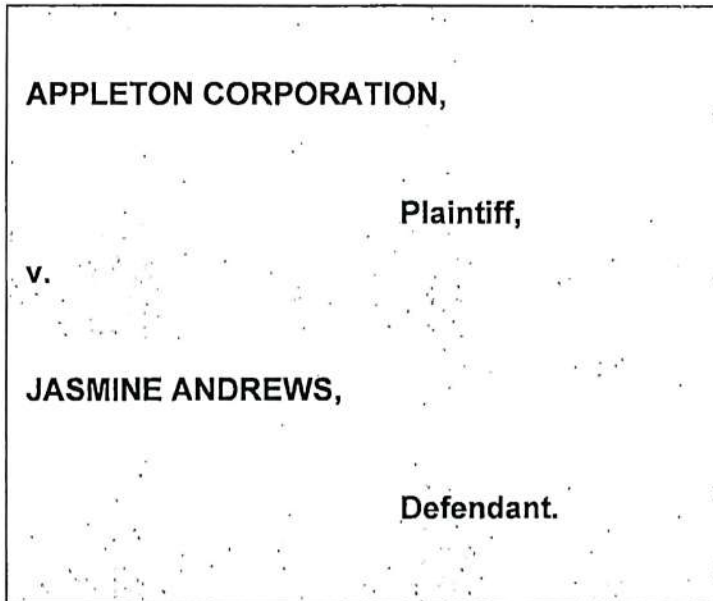
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2571



ORDER

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

1. After consulting with a representative from Way Finders, Inc. by Zoom during the hearing, the tenant shall re-apply to RAFT and both parties shall cooperate with that process. The earlier application was denied due to a failure to include a "repayment agreement". The tenant is eligible for \$6,220 in RAFT funds.
2. A representative from the Tenancy Preservation Program joined the hearing and though it has not yet been able to work with the tenant, they are willing to consult again with her regarding her RAFT application and other resources

that may be available to the tenant. The tenant is currently working with an agency that assist victims of Domestic Violence.

3. Anticipating that RAFT will provide \$6,220, the remaining arrearage through August 2024 will be \$5,148.25.
4. The tenant's mother, who was present at the hearing, has agreed to pay the landlord \$5,148.25 by paying \$2,574.12 by September 9, 2024, and \$2,574.13 by October 17, 2024. This should be considered as a "repayment plan" by Way Finders, Inc. for the RAFT program.
5. The tenant shall pay the landlord \$700 by August 6, 2024, and then pay \$358 remaining for August 2024 by paying \$179 on August 11 and August 26, 2024.
6. In September and October 2024, the tenant shall pay \$700 towards her monthly rent by the first week of the month and then pay \$179 by the 11th of the month and another \$179 by the 26th.
7. The tenant (and TPP, if possible) are urged to consider making a reasonable accommodation request to the landlord to allow the tenant to be able to pay her rent going forward in this or a similar fashion.
8. The landlord shall inform the tenant how to get on to and/or update her place on a waiting list for a 3-bedroom unit and also how to apply for subsidized unit within the complex.
9. The landlord's motion to amend the caption of the case to substitute Appleton Corporation as plaintiff and dismiss Housing Management Resources, Inc. is allowed.

10. If the tenant fails to make the payments described above, the landlord may
file a motion for entry of judgment.

So entered this 14th day of August, 2024.



Robert Fields, Associate Justice

Cc: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3381

THEODORE BURRELL,

Plaintiff,

v.

JOHN TERAULT,

Defendant.

ORDER

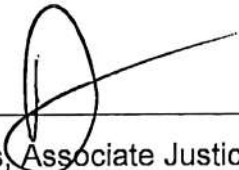
After hearing on May 24, 2024, at which the landlord appeared through counsel and the tenant appeared with L.A.R. counsel, Jennifer Alpert, the following order shall enter:

1. The matter was heard on the landlord's motion for entry of judgment based on allegations that the tenant has failed to comply with earlier agreements and court orders.
2. After conducting an evidentiary hearing at which the landlord testified from first-hand observations and also heard a report from Michael Richtell from the Tenancy Preservation Program (TPP), the court is satisfied that the tenant is not complying with prior agreements and court orders. Specifically, the

requirements that he not have guests in his apartment other than a select identified few listed in court documents.

3. That said, the court is very concerned that the tenant's inability to keep guests from his unit, stems from his disabilities. In accordance with state and federal fair housing laws, the court requests that TPP and Community Legal Aid consider further engagement in this case as described below.
4. The court's attempt to have TPP assess this matter and hopefully help scaffold the tenant for greater compliance was not successful as the tenant was unwilling to work with TPP. The court requests that the tenant and TPP attempt to work together going forward.
5. At this juncture, the court respectfully requests that Community Legal Aid either extend its L.A.R. appearance or enter full representation or refer the matter to its *pro bono* panel for full representation and engage with the landlord (through his attorney) in a reasonable accommodations dialogue.
6. The landlord's motion for entry of judgment shall be continued for further hearing and a review hearing shall be scheduled for **August 30, 2024, at 9:00 a.m.**

So entered this 14th day of August, 2024.



Robert Fields, Associate Justice

Cc: Jennifer Alpert, Esq., Community Legal Aid
Mike Richtell, TPP

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0758

JORGE CAMACHO,

Plaintiff

v.

JALIS SANTOS AND JOSE CRUZ,

Defendants

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

This summary process case came before the Court for a bench trial on June 6, 2024. Plaintiff and Defendant Santos appeared and represented themselves.¹ The residential property is a two-family house located at 15 Moxon Street, Indian Orchard, Massachusetts (the "Premises"). Ms. Santos resides on the second floor.

Prior to trial, the parties stipulated to certain facts; namely, Ms. Santos' receipt of the notice to quit and the amount of monthly rent (\$800.00). Ms. Santos moved into the Premises on January 1, 2022 and continues to reside there. Plaintiff claims that no rent has been paid for 13 months prior to trial (the last payment was made in May 2023) and that \$10,400.00 is owed in rental arrears. Ms. Santos does not claim that she made payments that were not credited, but asserts that she should not have to pay all of the rental arrears based on certain defenses and counterclaims.²

¹ Defendant Cruz did not appear.

² Ms. Santos argued that Plaintiff's father was previously the person with whom she communicated about landlord-tenant issues and that she did not enter into a rental agreement with Plaintiff. This

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

Ms. Santos fell behind in her rent in June 2023. She contacted the City of Springfield Code Enforcement Department ("CED") in July 2023 at a time that she was already behind in rent; therefore she is not entitled to defeat Plaintiff's claim for possession pursuant to G.L. c. 239, § 8A. She is, however, entitled to a reduction in the amount of rent owed as a result of bad conditions in the Premises.

The CED notice of violations dated July 18, 2023 cites a number of code violations, including roaches, broken locks, lack of hot water to the bathroom sink, broken cabinets and faucets and a hole in the kitchen wall. Upon reinspection in January 2024, it appears that some of these items had not been repaired, although neither party brought a witness from the CED to testify, and neither party produced photographs or other documentary proof to show the condition of the Premises at any particular point in time.

In her testimony, Ms. Santos complained primarily about roaches and the absence of heat and hot water. The hot water issue was resolved when water was added to the boiler. Although she testified that she was without heat for two to three months, she offered little evidence to support her testimony. She did not address any of the other conditions cited by the CED in any detail at trial. Given the limited evidence presented at trial, but crediting Plaintiff's testimony about interruptions in her heat and hot water services, the Court finds that Plaintiff violated the warranty of

argument is without merit. She does not dispute that Plaintiff was the owner of the Premises when she moved in and continues to own the Premises as of the date of trial. The Court finds that Mr. Santos has a superior right to possession and is a proper plaintiff under G.L. c. 239.

habitability. Liability under this legal theory is strict; that is, it makes no difference if Defendant made good faith efforts to make repairs. Simply put, Defendant is entitled to a reduction in rent for any period of time she suffered from substandard living conditions. The Court rules that Ms. Santos is entitled to a 20% rent abatement beginning in July 2023 for a total of \$1,760.00.

With the number of problems in the Premises cited by the CED, and the absence of evidence that these conditions were remedied promptly by Defendant, the Court finds that Plaintiff has demonstrated by a preponderance of the evidence that the conditions she lived with seriously affected her tenancy and substantially impaired the property's value. Accordingly, the Court finds that Plaintiff interfered with Ms. Santos' quiet enjoyment. Pursuant to G.L. c. 186, § 14, Ms. Santos is entitled to statutory damages equal to three times the monthly rent, which in this case amounts to \$2,400.00.³

Because the damages to which Ms. Santos is entitled for breach of the warranty of habitability and for breach of the covenant of quiet enjoyment arise from the same conditions of disrepair, Ms. Santos is barred from recovering under both legal theories. She is entitled to recover damages under the legal theory which gives her the greatest amount of damages. Here, the claim that results in the largest award of damages is breach of the covenant of quiet enjoyment, and therefore the maximum award of damages to which Ms. Santos is entitled is \$2,400.00.

³ Ms. Santos presented no evidence of actual damages.

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

1. Judgment for possession and damages in the amount of \$8,000.00, plus court costs, shall enter in favor of Plaintiff.⁴ This figure is the result of setting off the damages to which Ms. Santos is entitled (\$2,400.00) against the rental arrears owed to Plaintiff (\$10,400.00).
2. Execution shall issue upon written application after expiration of ten days following entry of judgment on the docket.

SO ORDERED.
August 14, 2024

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

cc: Court Reporter

⁴ Ms. Santos claims she has a pending RAFT application, but the application is for moving costs, not to pay the arrears. Therefore, G.L. c. 239, § 15 does not apply.

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

**HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 16-CV-029**

CITY OF HOLYOKE,

Plaintiff

v.

**AMANDIO NEVES and
ANTONIETA NEVES**

Defendants

Re: Premises: 21 Morgan Street, Holyoke, Massachusetts

INTERIM ORDER

After hearing on August 9, 2024 on the former Receiver's Motion to Authorize Disbursement of Excess Funds to the Court, the following Interim Order shall issue:

1. Counsel for the Former Receiver shall contact Wayfinders to determine the status of the mortgage to Hampden-Hampshire Housing Partnership from the former owners and advise Wayfinders of the Former Receiver's Motion and next court date;
2. Counsel for the Former Receiver reports there is an Execution recorded by Atlantic Credit & Finance as Assignee in the amount of \$1,628.31 as recorded in the Hampden County Registry of Deeds Book 17598, Page 445 on January 6, 2009, extended on July 28, 2014 in Book 20364, Page 506, and extended again on June 20, 2020 in Book 23253, Page 69. The Former Receiver is authorized to release \$1,628.31 from the surplus funds to Atlantic Credit & Finance Inc. as Assignee.
3. All interested parties shall appear for further hearing on the Former Receiver's Motion on August 26, 2024 at 2pm.

Dated: August 9, 2024



Robert G. Fields

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 19-CV-406

JANE DOE,	
	Plaintiff,
v.	
EXECUTIVE OFFICE OF HOUSING & LIVING COMMUNITIES, et al.,	
	Defendants.

ORDER

After hearing on April 24, 2024, at which the parties were heard on cross-motions for Summary Judgment, the following order shall enter:

1. **Background:** This civil action was commenced as a complaint for judicial review of an administrative agency decision pursuant to G.L. c.30A. The plaintiff, an Emergency Assistance (EA) shelter resident, appealed to the court the decision issued as a result of an October 10, 2018, hearing conducted by Hearing Officer Barbara "Boe" Morgan.
2. The complaint also seeks adjudication on the plaintiff's claims that the defendant violated her rights not only pursuant to G.L. c.30A, but

substantively under 42 U.S.C. s.1983 (Procedural Due Process), the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the Fair Housing Act.

3. Lastly, the complaint seeks injunctive and declaratory relief alleging that the defendant agency has a pattern and practice of denying EA shelter residents their rights under due process, disability, and VAWA laws.
4. **Discussion: G.L. c.30A, s.14(7):** After consideration of the record before the court, which included the audio recording of the October 10, 2018 Administrative Hearing (Administrative Hearing), the court finds and so rules that the plaintiff was prejudiced because the Hearing Officer's decision was "arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law" by failing to give sufficient weight and attention to the plaintiff's disability and victimization by a former domestic partner.
5. The plaintiff stated during the hearing that she suffered from Post Traumatic Stress Disorder (PTSD) and the Hearing Officer failed to inquire into that condition and how it may have affected the plaintiff's ability to either comply with the shelter's requirements or with providing evidence in support of her appeal. Once the plaintiff informed the Hearing Officer of her disability, the Hearing Officer was obligated to consider the plaintiff's PTSD and either engage with the plaintiff during the hearing, after the hearing, and/or address it in her written decision.
6. The Hearing Officer's failings in this regard also violated the plaintiff's rights under the ADA, the Rehabilitation Act of 1973, and the Fair Housing Act.

7. **Due Process:** The record before the court indicates that the plaintiff was unaware of the date and time of the Administrative Hearing until the day of that hearing. This was apparently due to the defendant mailing the notice of said hearing to the plaintiff at her former shelter address in Hyannis and it did not reach her at her then current shelter address in Greenfield. Furthermore, the defendant was aware of the plaintiff's placement in her new shelter unit and should have sent the notice of the hearing to her at that address. Additionally, the Hearing Office engaged in *ex parte* communication with the shelter staff and the agency's attorney during the hearing when the plaintiff was out of the room and such communication was testimony about relevant information and/or prejudicial information.
8. By failing provide the plaintiff with sufficient notice of the haring---and/or failing to address this issue when the plaintiff informed the Hearing Office of her lack of notice--- and by engaging in *ex parte* communication out of earshot of the plaintiff during the hearing, the Hearing Officer deprived the plaintiff of her due process rights.
9. The Hearing Officer's failings in this regard also violated the plaintiff's rights under 42 U.S.C. s.1983.
10. **Remand:** It appears from the record that the plaintiff no longer resides in the Emergency (EA) Shelter system. Even so, there may be occasion in the future that she will seek placement in an emergency shelter, and she has the right to have the underlying violations revisited in her appeal to have them overturned so that she can be in good standing should she reapply for shelter

in the future. Thus, in accordance with G.L. c.30A, s.14(7), the Court shall remand this matter for further proceedings before the agency at which time the agency shall consider both the plaintiff's disability---and engage in a reasonable accommodation dialogue with the plaintiff---and also consider her being a victim of a former domestic partner at the time of her alleged shelter rules violations and at the Administrative Hearing.

11. **Summary Judgment:** The Court finds that the defendant agency violated the plaintiff's rights as described above and enters summary judgment on her claims of 42 U.S.C. s.1983 (Procedural Due Process), the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the Fair Housing Act.

12. **Injunctive and Declaratory Relief:** The plaintiff's complaint also seeks injunctive and declaratory relief, alleging that the Hearing Officer's conduct during the hearing and her decision-making thereafter---which among other things ignored the plaintiff's due process, disability, and VAWA rights---are part of a pattern and practice of that Hearing Officer, of other Hearing Officers, and that is condoned by the defendant agency for all of its Administrative Hearings.

13. The Court finds that there are genuine issues of material fact remaining on the record which require a trial on the merits for the Court to make determinations on the plaintiff's claims for injunctive and declaratory relief.

14. **Conclusion and Order:** Based on the foregoing, the Court remands that portion of this matter to the defendant agency for further proceedings in

accordance with G.L. c.30A, s.14(7). As to that portion of this civil action which seek injunctive and declaratory relief, the Court shall schedule a Status Hearing on **September 6, 2024, at 9:00 a.m.** The parties may appear by Zoom, if they so choose.

So entered this 14th day of August, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1262

LAURA MAE DOUGLAS,

Plaintiff

v.

NINO HERNANDEZ,

Defendant

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

This summary process case came before the Court for a bench trial on June 17, 2024. Both parties appeared and represented themselves. The residential property is a two-family house located at 16 Clifford Street, Apt. 4, Easthampton, Massachusetts (the "Premises").

Prior to trial, the parties stipulated to certain facts; namely, Defendant moved into the Premises in December 2022 and continues to reside in the Premises. They do not agree upon the amount owed. Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

After weighing the credibility of the witnesses, and after reviewing text messages between the parties, the Court finds that Defendant received the notice to quit that forms the basis of this case. The notice to quit is dated February 22, 2024. At the time of the notice, Defendant owed \$1,200.00 for the month of February, the

agreed-upon amount of rent for the Premises.¹ He has not made any payments after receipt of the notice to quit. The total amount of unpaid rent through the date of trial is \$6,000.00.

In his answer, Defendant claims that Plaintiff refused to accept rental assistance which would have allowed him to retain his tenancy. He did not provide any evidence, however, to support his allegation. There is no documentation showing that he applied to the RAFT program or any other rental assistance program, or that Plaintiff was unwilling to accept rental assistance funds. In fact, Plaintiff offered several text messages in which Defendant wrote that he was moving out in February 2024 and again in March 2024. The Court finds that any defense or counterclaim based on Plaintiff's failure to participate in the rental assistance process is without merit.²

Similarly, Defendant failed to prove by a preponderance of the credible evidence his allegations that Plaintiff harassed and intimidated him. Although there was clearly rancor between the parties, it is not clear to the Court that the issues between the parties involved Defendant's housing accommodations. Defendant worked for Plaintiff and her husband, and it is clear that some of the issues between these parties was not directly related to the landlord-tenant relationship. Even if the issues were directly related to housing, the only evidence presented of harassment

¹ Prior to this date, Defendant lived in the Premises rent-free. He had been employed at a restaurant owned by Plaintiff's family and Plaintiff allowed him to reside in the Premises without rent until a complete heating system was installed. The parties agreed that rent in the amount of \$1,200.00 per month would begin in February 2024.

² Defendant's answer also includes assertions that he had to endure bad conditions in the Premises; however, he did not testify about these issues at trial, and therefore the Court dismisses all defenses and counterclaims related to living conditions.

and intimidation is Defendant's testimony, which the Court finds to be exaggerated and not credible.

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

1. Judgment for possession and damages in the amount of \$6,000.00, plus court costs, shall enter in favor of Plaintiff.³
2. Execution shall issue upon written application after expiration of ten days following entry of judgment on the docket.

SO ORDERED.
August 14, 2024

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

cc: Court Reporter

³ G.L. c. 239, § 15 does not apply as there is no pending application for rental assistance.

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

HIGH APARTMENTS, LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP00857

MIA RODRIGUEZ & JOEL SAXON,

Defendant.

ORDER

This matter came before the court on August 13, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for August 15, 2024 at 11:00 a.m. The plaintiff appeared through its attorney. Defendant Mia Rodriguez appeared, but not defendant Joel Saxon. Both are self-represented. Ms. Rodriguez reported that Mr. Saxon no longer lives at the premises.

In its July 15, 2024 order, the court outlined the chronology of this nonpayment of rent eviction case and incorporates it here. In that order, the court allowed the plaintiff's motion to lift the court-ordered stay of the execution through August 2024 and to allow the execution to be used on the grounds that the defendant was in substantial breach of two material terms of the court's May 21, 2024 order staying the execution through August. However, if the defendant applied for RAFT financial assistance and could present a realistic payment plan for the balance of the arrearage, she could file a motion to stay the execution further pursuant to G.L. c. 239 §15.

The defendant did not file such a motion. She has now filed a motion to stop the move-out after receiving the forty-eight hour notice on the grounds that she returned to work full-time on August 5. She reported that she has exhausted all available RAFT financial assistance and she will not be eligible to apply again until November. She offered to pay \$500 toward the arrearage which is now \$4,214 with \$292.95 costs. If the move-out were stopped, the cancellation fee would be \$840. The monthly rent is \$1,050. This means that the defendant is offering less than this month's use and occupancy at this time.

The court finds no grounds to stop the move-out. The defendant is not eligible for a stay pursuant to G.L. c. 239 §9 because this case is based on nonpayment of rent and there is a substantial arrearage. The court finds no 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 RAFT application pending.

Order

After hearing the defendant's motion is **DENIED**. The plaintiff may proceed with the move-out as scheduled.

August 14, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

KENQUAD LIMITED PARTNERSHIP,

Plaintiff,

-v.-

DOCKET NO. 23SP01802

MICHELLE BOWEN,

Defendant.

ORDER

This matter came before the court on August 13, 2024 for a hearing on the plaintiff's motion to issue the execution. The plaintiff appeared through its attorney and property manager Jeremy Hernandez. The defendant appeared and was self-represented.

The plaintiff brought this eviction case based on cause - failure to recertify for the Low Income Tax Credit (LITC) subsidy for the premises and nonpayment/chronic late payment of rent. The defendant also had an MRVP mobile voucher administered by the Springfield Housing Authority. The parties entered into an Agreement on June 13, 2023 and then an Agreement for Judgment on July 25, 2023. By the terms of the Agreement for Judgment relevant to this motion, the parties agreed that judgment would enter for \$6,469 in unpaid rent/use and occupancy through July 2023 and \$256.76 in costs. Execution was stayed because the defendant agreed to pay her portion of the use and occupancy (\$455) by the fifth of each month beginning in August 2023 and \$500 toward the arrearage by the twentieth of each month beginning in September 2023. The defendant also agreed to pay any tax refunds she received in 2024 toward the arrearage and to submit 2022 bank statements to complete her 2022 recertification as required by the LITC subsidy.

The plaintiff reported that the defendant was compliant with the terms of the Agreement for Judgment until her MRVP voucher was terminated effective January 31, 2024 and the rent/use and occupancy increased to \$1,223. The arrearage is now \$14,423 through August 2024 with \$256.76 costs. The defendant completed her 2022 recertification but not her 2023 recertification.

Ms. Bowen reported that she was unaware that her subsidy had been terminated more than six months ago. She agreed to contact the Springfield Housing Authority to investigate what happened. She agreed that, despite her agreement to do so, she did not pay her 2024 tax refund toward the arrearage. Instead she gave it to her mother to help pay for her brother's cremation. She thought that she made some payments which were not credited, but she did not have any receipts for such payments. She described herself as having poor organizational skills and being depressed and anxious. She applied for RAFT twice but was denied because she could not document hardship/good cause for failing to pay her portion of the subsidized rent.

The court finds that the defendant is in substantial violation of material terms of the July 25, 2023 Agreement for Judgment and that the plaintiff is entitled to the execution on an amended judgment. However, the court does order the execution to issue at this time. As explained at the hearing, the case is referred to the Tenancy Preservation Program (TPP) to see if the defendant is eligible to receive services which would help her to come into compliance with the obligations of her tenancy. The court continues the plaintiff's motion for further hearing after the defendant has the opportunity to speak with TPP. Also by then, Ms. Bowen will have returned to work at the Springfield Public Schools as of August 19, 2024.

Order

After hearing the following orders will enter:

1. The plaintiff's motion to issue the execution is continued for thirty days. The Clerk's Office is asked to schedule the case for a further motion hearing and to send notice.
2. The defendant will contact the Springfield Housing Authority and determine the status of her MRVP voucher.
3. The defendant will meet with a clinician of the Tenancy Preservation Program and seek their assistance to:
 - a. Restore her MRVP voucher

- b. Reapply for RAFT financial assistance, including submission of proof of hardship/good cause, if possible
- c. Propose a realistic payment plan for the arrearage.
- 4. The defendant will pay her September use and occupancy when it becomes due.
- 5. The parties will report on the items listed in number 3 above at the continued hearing.
- 6. TPP is asked to be present at the next hearing.

August 14, 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**

**LIBRARY COMMONS LIMITED
PARTNERSHIP,**

Plaintiff,

-v.-

DOCKET NO. 24SP00209

TYLISHA STARKS,

Defendant.

ORDER

This matter came before the court on August 13, 2024 for a continued hearing on the plaintiff's motion to issue execution on an amended judgment. The plaintiff appeared through its attorney with property manager Gretchen Calderon. The defendant appeared and was self-represented.

The court outlined the chronology of this nonpayment of rent case in its July 10, 2024 order and incorporates it here. At the first hearing on the plaintiff's motion, the defendant offered to pay \$500 that day by money order to the plaintiff toward the arrearage. The court ordered her to do so that day and to pay her portion of the August use and occupancy (\$413) by August 5, 2024. The defendant did not make either payment. She reported that her checking account had an overdraft and she did not have the money to make the payments. The arrearage is now \$5,079.50 through August 2024 with \$257.46 in costs. The defendant offered to pay \$213 by money order that day. This represents about half of her use and occupancy for the month, although she offered to make a further payment on August 16.

There is no RAFT application pending at this time, although Ms. Starks said that she is going to apply again. She was denied three times in the past because she could not demonstrate a hardship/good cause for failing to pay her portion of the rent.

Findings and Orders

As the court found after hearing in its July 10, 2024 order, the defendant is in substantial violation of the parties' February 27, 2024 Agreement for Judgment. The court now finds that she is also in substantial violation of the court's July 10, 2024 order. The plaintiff is entitled to the execution on an amended judgment.

After hearing, the plaintiff's motion is **ALLOWED**. An amended judgment will enter for \$5,079.50 in unpaid rent/use and occupancy through August 2024 and \$257.46 in costs.

Execution will issue without further application ten days after the date that judgment enters.

If the defendant is approved for RAFT financial assistance or otherwise is able to pay the arrearage in full, she may contact the plaintiff's attorney.

August 14, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0024

SHINE SERVICES INC.,)	
)	
PLAINTIFF)	
)	
v.)	NOTICE TO PARTIES
)	REGARDING TRANSFER
SPRINGFIELD GARDENS LP, ET AL.)	
)	
DEFENDANTS)	
)	

Pursuant to G.L. c. 185C, § 3, this court has the ability to hear disputes concerned with the health, safety, or welfare of individuals in residential housing. The instant case involves a payment dispute under a contract between business entities for the provision of cleaning services at seventy-seven residential apartment buildings. The complaint does not set forth any facts from which the court can conclude that the dispute involves a problem that affects the health, safety or welfare of occupants of residential housing.¹

The Housing Court is a court of limited jurisdiction, with the central focus being on providing a forum to address landlord-tenant disputes and cases involving minimum housing standards. *See Murphy v. Miller*, 75 Mass. App. Ct. 210, 215 (2009).

¹ The Court notes that the counts of the complaint are for breach of contract, unjust enrichment, quantum meruit, fraud and misrepresentation and violation of c. 93A.

Pursuant to G.L. c. 185C, § 3, this court has the ability to hear disputes concerned with not only the health, safety, or welfare of individuals in residential housing, but also of the use and possession of a residential dwelling and its accommodations. The words "health, safety, or welfare" have been construed narrowly in order to carry out the purpose for which our court was created. *Isakson v. Vincequere*, 33 Mass. App. Ct. 281, 283-84 (1992). In other words, the limited jurisdiction of our court bars not only disputes that would "'dilute [our court's] expertise,'" but also ones "that do not require specialized knowledge and procedures and have only tangential connection with the health and welfare of inhabitants of rental housing." *Com. v. Lappas*, 39 Mass. App. Ct. 285, 286 (1995). See also *Williams v. Attleboro Mut. Fire Ins. Co.*, 31 Mass. App. Ct. 521 (1991) (issues raised are not concerned with housing in its various aspects but, rather, whether the defendant improperly denied liability under a homeowner's insurance policy).

In light of the foregoing, this court concludes that the matter is outside the specialized expertise of the Housing Court and should be referred to the Superior Court. See *Skawski v. Greenfield Investors Prop. Dev. LLC*, 473 Mass. 580, 592 (2016) ("[W]hen a court of limited jurisdiction is confronted with a case over which its jurisdiction is doubtful or lacking, the court should not dismiss the case out of hand; rather, 'the proper procedure is for the judge to ask the Chief Administrative Justice to transfer the case, or the judge, or both, to the appropriate department of the Trial

Court.") (citations omitted).² The parties will be notified of the decision regarding a transfer to Superior Court.³

August 14, 2024

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

cc: Court Reporter

² Dismissal would be particularly unfair here given the existence of a prejudgment real estate attachment granted in January 2024 prior to Defendants challenge to this court's jurisdiction.

³ In light of this order, the court does not address the other motions now pending before it; namely, Defendants' motion to dissolve or reduce real estate attachment and Plaintiff's motion for partial summary judgment.

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

ST. JEROME APARTMENTS, LLC,

Plaintiff,

-v.-

DOCKET NO. 23SP04040

VANESSA COTTO & LUIS COTTO,

Defendant.

ORDER

This matter came before the court on August 13, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for August 15, 2024 at noon. The plaintiff appeared through its attorney with the property manager. Defendant Vanessa Cotto appeared but not her father defendant Luis Cotto. Both defendants are self-represented.

In this eviction case based on nonpayment of rent, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. Since the case was filed on September 11, 2023, the parties have entered into three Agreements with payment plans. Twice the plaintiff filed motions for entry of judgment on the grounds that the defendants had not complied with the payment agreements. The most recent Agreement was an interim Agreement signed on May 21, 2024 in which the parties agreed to further payment terms and to return to court on June 25, 2024 for hearing on the plaintiff's motion for entry of judgment. The defendants did not appear for the hearing. A judge of this court ordered that judgment would enter on grounds of non-compliance by the defendants. Judgment entered on June 26, 2024 for the plaintiff for possession and \$11,511.22 with interest. Ms. Cotto filed a motion to remove the default and for relief from judgment. After hearing on July 18, 2024, the motion was denied. The plaintiff then applied for the execution in writing. Execution issued on July 29, 2024. The plaintiff served a forty-eight hour notice by constable that the execution would be used to move the defendants out of the apartment on August 15, 2024 at noon.

Ms. Cotto filed this motion to stop the move-out on the grounds that she was not given enough time to move on her own. She asked to remain in the apartment at least until August 31, 2024. However, the court notes that this move-out cannot come as a surprise. The case was filed on September 11, 2023. The last time rent/use and occupancy was paid was that month when the landlord received RAFT financial assistance on behalf of Ms. Cotto. It did not reduce the arrearage to zero and the arrearage has grown. It is now \$13,491.42 through August 2024. (The monthly rent is \$990.)

The defendant does not offer any money toward the arrearage or what would be the cancellation fee of \$640 - \$700 if the move-out were stopped. In the May 21, 2024 Agreement Ms. Cotto agreed to pursue her tax returns (i.e. refunds) and to "make a payment of at least \$8,000 once received". She reported at the hearing that she recently received her tax refunds and has the money to pay but does not want to do so.

Also in the May 21, 2024 Agreement, the plaintiff agreed to accept all third party funds and to provide any requested information. No such third party funds have been offered. There is no application for RAFT financial assistance pending at this time.

The court finds no grounds to stop the move-out or to stay the execution.¹ The defendants are not eligible for a stay pursuant to G.L. c. 239 §9 because this case is based on nonpayment of rent and there is a substantial arrearage. While the defendants have at least some money to pay toward the arrearage, they choose not to do so. The court finds no equitable grounds to stay the execution pursuant to G.L. c. 239 §10. The plaintiff has given more than the statutorily-required length of notice for a move-out. G.L. c. 239 §15 does not apply because there is no RAFT application pending.

Order

After hearing the defendant's motion is **DENIED**. The plaintiff may proceed with the move-out as scheduled.

August 14, 2024

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

¹ To the extent that the defendants have claims regarding conditions in the apartment, they may pursue those in a separate civil action.

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

VALLEY OPPORTUNITY COUNCIL,

Plaintiff,

-v.-

DOCKET NO. 24SP01717

YAZMIN ARROYO,

Defendant.

ORDER

This matter came before the court on August 13, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for August 14, 2024 at 9:30 a.m. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Her boyfriend, Ricardo Jesus, also addressed the court. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

In this eviction case based on nonpayment of rent the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. The monthly rent is \$737. Judgment entered by default on June 4, 2024 for the plaintiff for possession and \$732 with \$245.77 in costs. The plaintiff then applied for the execution which issued on June 24, 2024. The plaintiff had the sheriff serve a forty-eight hour notice that the execution would be used to move Ms. Arroyo out of the apartment on August 14, 2024 at 9:30 a.m.

The arrearage is now \$2,943 through August with \$245.77 in costs. In May the landlord received payment of the arrearage through April from a third party although neither the landlord's attorney nor the tenant knew the source of the funds.¹ They thought it was from RAFT, but Ms. Pena could not find any record of a RAFT payment on behalf of the defendant

¹ In any event, the third party payment did not reduce the arrearage to zero because by the time it was received, the defendant owed use and occupancy for May. Nothing has been paid since the third party payment was received.

this year in the Wayfinders records. The last application submitted was in March 2024 and it timed out because the defendant did not finish the application. Based on this, Ms. Pena thought that the defendant would be eligible for RAFT financial assistance at this time if she completed an application now.

Ms. Arroyo's boyfriend, Ricardo Jesus, intervened in the hearing and offered to pay \$1,000 immediately on the defendant's behalf to stop the move-out. He also offered to pay the arrearage within thirty days if Ms. Arroyo does not qualify for RAFT financial assistance.

Order

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

1. The defendant's motion to stop the move-out is **ALLOWED on condition** that the defendant and Mr. Jesus pay \$1,000 to the plaintiff at the plaintiff's office before 9:00 a.m. on August 14, 2024.
 - a. If such payment is not received by then, the plaintiff may proceed with the levy on (use of) the execution as scheduled.
 - b. The plaintiff's attorney will notify the deputy sheriff of this conditional order and whether the move-out is stopped based on the timely payment of \$1,000 as agreed.
2. The defendant will apply for RAFT financial assistance immediately and submit all required documentation to complete the application.
3. The plaintiff will submit all required documentation to Wayfinders to support the defendant's RAFT application.
4. If the defendant's RAFT application is not approved or if RAFT does not cover the entire arrearage (\$2,943 through August 2024), the defendant with the help of Mr. Jesus will pay the balance within thirty days of the August 13, 2024 hearing.
5. The defendant will pay her September use and occupancy (now \$737) on or before September 10, 2024.
6. The case is scheduled for review on **September 17, 2024 at 9:00 a.m.**
 - a. The parties will report on the payments that have been made since the August 13, 2024 hearing and the status of any RAFT application by the defendant.
7. The stay of execution ordered in this case is a stay within the meaning of G.L. c. 235 §23 and tolls the running of the execution.

- a. If the plaintiff needs a new execution, it may request one in writing from the Clerk's Office before the current execution expires without filing a motion.
- b. The court will address the issue of the execution further at the September 17 hearing.

August 14, 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-2993

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

LENEZHE NAYLOR,

Defendant.

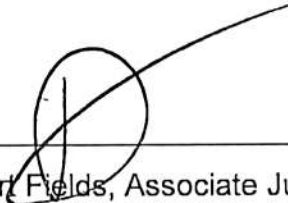
ORDER

After hearing on August 9, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. Though the tenant failed to make certain payment on certain dates as required by the Agreement of the Parties dated April 8, 2024, she has recently made substantial payments totaling \$4,900.
2. The tenant explained that she lost her job and was receiving unemployment compensation and now is about to regain her employment.
3. A representative from Way Finders, Inc. was consulted by Zoom during the hearing and the tenant is eligible for RAFT funds as of November 1, 2024.

4. The landlord's motion is denied, without prejudice, to provide further opportunity consistent with this order, for the tenant to make the landlord whole and not be evicted.
5. More specifically, the tenant shall pay her rent in full and timely by the first week of each month beginning September 2024.
6. The tenant shall also make a \$200 payment to the landlord by the third week of each month beginning in September 2024.
7. The tenant shall apply for RAFT as soon as she is allowed to by RAFT protocols but in no circumstances later than November 10, 2024. Way Finders, Inc. should treat the monthly payment of \$200 towards arrearage as noted above as a "repayment plan" for RAFT purposes.
8. The tenant shall continue to pay her rent plus \$200 per month as described above until the balance is all paid. The landlord asserts that the current arrearage balance through August 2024 is \$7,842.50.
9. This matter shall be dismissed upon a \$0 balance.

So entered this 15th 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-CV-617

BEDFORD, LLC,

Plaintiff,

v.

LINDA BUTLER and SHAWN WALKER,

Defendants.

ORDER

After hearing on August 8, 2024, at which the plaintiff appeared through counsel and the defendants appeared self-represented, the following order shall enter:

1. The plaintiff owns and manages a property located at 50 Lowell Street in West Springfield, Massachusetts. Until she passed away on July 25, 2024, the tenant of Apartment #8 (subject premises) was Shannon Walker.
2. The defendants are the decedent's mother, Linda Butler, and brother, Shawn Walker. Ms. Butler was residing with Shannon Walker for the past year without the knowledge or acquiescence of the plaintiff. Mr. Walker has been staying at the same unit for some time.

3. The defendants are not tenants of the plaintiff and have no possessory rights to the subject premises.
4. They shall have until September 3, 2024, to vacate the premises and take with them those belongings they wish to keep.
5. In the meantime, the plaintiff has agreed to have an additional dumpster provided at the premises for the defendants to remove unwanted items from the unit.
6. If the defendants have not vacated the premises in accordance with this order, the plaintiff may file a motion seeking further relief from the court.

So entered this 15th 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-CV-392

C.S. AMERICAN MANAGEMENT, INC.,

Plaintiff,

v.

ERIKA RAMOS DAVILA, et al.,

Defendant.

**ORDER OF
DISMISSAL**

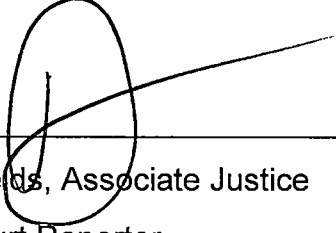
After hearing on June 27, 2024, on the defendants' motion to dismiss and opposition thereto, the following order shall enter:

1. For the reasons clearly and thoroughly argued and briefed by the defendants in their written motion and oral argument, the motion is allowed and this civil action is hereby dismissed.
2. The court agrees with the arguments put forth by the defendants including that because the tenancy is federally subsidized and regulated through the Section 8 program (federal preemption), the landlord must terminate the tenancy in accordance with the requirements of the federal law and the terms

of the lease agreement, even when attempting to seek possession through G.L c.139, s.19. See, *Benchmark Apartment Mgmt. Corp. v. Mercer*, No. 96-CVV-949 (Boston Housing Ct., Jan 3, 1997) (Winik, J.); *Housing Management Resources, Inc. v. Dennard* (Western Division Housing Ct., May 9, 2017) (Fields, J.).

3. The plaintiff here, as highlighted by the defendants, failed to reference actual lease terms that were allegedly violated by the tenant's behavior which is required by the lease agreement, failed to provide the "reasonable accommodation" language required by the lease agreement, and commenced this civil action for possession prior to the termination date afforded in the notice to quit (NTQ terminated the tenancy as of May 31, 2024, but the complaint for possession was filed prior to that date on May 23, 2024).
4. Accordingly, this action is dismissed without prejudice.

So entered this 15th 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. 23-SP-1650

CENTURY PACIFIC HOUSING PARTNERSHIP,

Plaintiff,

v.

ORDER

RAFAEL RIVERA,


Defendant.

After hearing on August 8, 2024, on the landlord's motion for entry of judgment, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The landlord alleges that the tenant failed to comply with the terms of the Agreement of the Parties dated October 20, 2023 ("Agreement").
2. The tenant alleges that at the time of the Agreement he had two jobs; That he lost one job in December 2023 and so informed the landlord of his change in income; That he lost his other job in April 2024 and informed the landlord of his change of income.

3. There was no reduction in the tenant's portion of the rent since the October 2023 Agreement, even though the tenant has had no income since April 2024.
4. There is a pending RAFT application at this time.
5. That said, it is likely that the RAFT application will have to be "closed out" so that the landlord can first determine if there should be (or should have been) a change in the tenant's portion of the rent.
6. The tenant was referred to meet with Community Legal Aid in the Resource Room directly after the hearing.
7. This matter shall be scheduled for further review on **September 12, 2024, at 9:00 a.m.**

So entered this 15th 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-CV-643**

DEBRA L. CHMIELEWSKI-BROWN,

Plaintiff,

v.

DENISE DONNELLY,

Defendant.

ORDER

After hearing on August 15, 2024, on the plaintiff's request for injunctive relief at which both parties appeared self-represented, the following order shall enter:

1. **Background:** The parties are neighbors, with private homes located directly next to one another. The houses are close together. The plaintiff feels that the defendant has surveillance cameras connected to her own home that are focused on the plaintiff's home and that such is a very serious intrusion into the plaintiff's privacy.
2. **Discussion:** The defendant's cameras can be viewed on her cell phone. The Court asked the defendant to display live feeds of the cameras that are focused in the direction of the plaintiff's back and front doors. The defendant

did so and the judge could plainly see that the cameras are very much recording the plaintiff's entryways in a manner that intrudes on her privacy.

3. The Court appreciates the defendant's need and right to have surveillance cameras focused on her own entryways and fences. But the angle of these cameras need to be shifted so that they are focused solely on the defendant's own home (fence and entryway) in a manner that does not intrude on the plaintiff's home and driveway.
4. The Court shared an example of the camera that is fastened on the second floor of the defendant's home and is supposed to focus on her first-floor entryway. Said camera shows much of the plaintiff's driveway in an unnecessarily intrusive manner. That camera should be repositioned so that it only shows the defendant's entryway and property---even if the result is that much of the image is of the defendant's siding along with the first-floor entryway.
5. **Conclusion and Order:** Based on the foregoing, the defendant shall forthwith move, shift, or otherwise re-position her surveillance cameras so that they do not invade the plaintiff's privacy.

So entered this 15th 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-1567

ESTATE of JAMES R. LYNCH,

Plaintiff,

v.

**MARIA DIAZ, HECTOR DIAZ, JOSE DIAZ, and
ANTONIO SANCHEZ,**

Defendants.

ORDER FOR ENTRY

OF JUDGMENT

This matter came before the Court for trial on July 25, 2024, and after consideration of the evidence admitted therein, the following order for judgment shall enter:

1. **Background:** The plaintiff is a Public Administrator and Personal Representative for the Estate of James R. Lynch, having been appointed by the Hampden County Probate and Family Court after Mr. Lynch's death in January 2022 (hereinafter, "Landlord").¹ The defendants, Maria Diaz, Hector Diaz, Jose Diaz, and Antonio Sanchez (hereinafter, "Tenants") have lived at

¹ Based on documents filed in this action, the Court is satisfied that Attorney Hyman Darlling was appointed by the Probate Court and has authority to bring a summary process action pursuant to G.L. c.190B.

20

the premises located at 77 Drexel Street, Springfield, MA, (hereinafter, "Premises") for varying periods of time. Ms. Diaz was in a long-term relationship with the deceased for many years and has resided at the premises since 1997.²

2. The Landlord had the tenants served with a notice to quit dated February 27, 2024, terminating the tenancy (if there ever was one) on April 1, 2024. The tenants are not asserting any counterclaims, but Ms. Diaz asserts that she should be viewed as an equitable owner of the premises having resided there with Mr. Lynch (now deceased) for 25 years.
3. **The Landlord's Claim for Possession:**³ The landlord met its burden of proof on its claim for possession, having proven receipt of the notice to quit.
4. **The Tenants' Defense to Possession:**⁴ The tenants did not meet their burden of proof on any type of equitable or other claim for ownership or possession.
5. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the plaintiff for possession plus court costs.

So entered this 15th day of August, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

² Maria and Hector Diaz were present for the trial.

³ The Landlord waived its claim for use and occupancy.

⁴ The tenant, Maria Diaz, was urged during this and prior hearings to bring her "claim" for ownership in the Probate and Family Court proceedings.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5572

FRONT REALTY, LLC,

PLAINTIFF

v.

JENNIFER REARDON, ET AL.,

DEFENDANT

SUMMARY PROCESS APPEAL
BOND ORDER

This summary process case came before the Court on August 13, 2024 for a hearing to set or waive the appeal bond pursuant to G.L. c. 239, § 5. Plaintiff appeared through counsel. Defendant appeared self-represented. Judgment for possession entered in favor of Plaintiff on July 9, 2024. Defendant filed a timely notice of appeal on July 15, 2024.

To satisfy the conditions for waiver of the appeal bond, a party must demonstrate both indigency, as defined in G. L. c. 261, § 27A, and the existence of a non-frivolous defense. *See* G. L. c. 239, § 5 (e). Based on their sworn financial statements, the Court finds that Defendants meet the statutory standard of indigency.

As to the second prong of the bond waiver statute, the Court rules that Defendants do not have any defense which is non-frivolous. On January 17, 2024,

Defendants entered into an agreement of the parties whereby they agreed to vacate by June 30, 2024. The agreement was approved by the undersigned judge. They did not vacate by this date and for this reason judgment for possession entered on July 8, 2024. Defendants have not articulated a non-frivolous defense to excuse their failure to vacate.¹ See *Adjarkey v. Central Div. of Housing Court*, 481 Mass. 830, 859 (2019) (a “determination that a defense is frivolous requires more than the judge’s conclusion that the defense is not a winner; frivolousness imports futility -- not ‘a prayer of a chance’”). Accordingly, the Court denies Defendants’ motion to waive the appeal bond.

With respect to the amount of the bond, Defendants do not contest that they failed to pay use and occupancy for June, July and August. By agreement, the amount of use and occupancy was set at \$950.00 per month. Therefore, the Court sets the appeal bond at \$ \$2,850.00. As a condition of the bond, Defendants must also pay for their continued use and occupation during the pendency of the appeal. See G.L. c. 239, § 5. The Court sees no reason to change the amount (\$950.00) that the parties agreed upon in January as the appropriate rate for use and occupancy.²

Based on the foregoing, the following order shall enter:

1. Defendants’ motion to waive the appeal bond is denied.

¹ The only explanation they offered for failing to vacate was a bad landlord reference. They submitted the landlord reference in question which notes that Defendants were not current in their rent and paid late. There is no basis to question the accuracy of the reference and Defendants’ inability to find replacement housing is not grounds for appeal of a judgment based on their failure to vacate by an agreed-upon date.

² Based on Defendants’ financial statements, the Court finds that Defendants have the ability to pay this amount each month.

2. Within fifteen days from the date of this order, as a condition for the entry of this action in the Appeals Court, Defendants shall deposit with the Clerk of Housing Court such bond in the amount of \$2,850.00.
3. As a further condition of the bond, beginning on September 1, 2024 and on the first day of each month thereafter during the pendency of the appeal, Defendants shall pay Plaintiff \$950.00 for their continued use and occupation of the Premises. These payments are to be made directly to Plaintiff.
4. Plaintiff may move to dismiss the appeal if Defendants fail to make the required payments. See G.L. c. 239, § 5(h); see also *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 137 n. 19 (2018) (“the statute permits dismissal of an appeal ... when a tenant fails to post the ... use and occupancy payment”).

SO ORDERED.

DATE: August 15, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-304

FRANCINE HACKWORTH,

Plaintiff,

v.

ERIC KEENAN-GRAY,

Defendant.


ORDER

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

1. It appears from the court records that the landlord's motion filed on July 5, 2024, for entry of judgment due to the tenant failing to vacate the premises by July 1, 2024, was never scheduled for hearing but somehow resulted in an Execution issuing for possession and costs—and no judgment ever entering nor hearing scheduled.
2. To the extent that any judgment has entered and to the extent that an Execution has issued, both are hereby vacated, and the landlord shall return the Execution to the court.

3. A hearing shall be scheduled on the landlord's motion for entry of judgment (filed on July 5, 2024) for **August 26, 2024, at 9:00 a.m. in the Hadley Session.**
4. Attorney Manzanares from Community Legal Aid has agreed to extend her LAR appearance to that hearing and a courtesy copy of this order shall be sent to her, in addition to both parties.

So entered this 15th day of August, 2024.



Robert Fields, Associate Justice

Cc: Raquel Manzanares, Esq. (Community Legal Aid), LAR Counsel
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP05120

WILMARYS TORRES,

Defendant.

ORDER

This matter came before the court on August 9, 2024 for a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney with property manager Ivette Otero. The defendant appeared with her attorney. Janis Luna of Wayfinders joined the hearing to report on the defendant's application for RAFT financial assistance.

This eviction case is based on nonpayment of the tenant's public housing rent, which is currently \$99. The parties entered into a third and interim Agreement on June 4, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$8,776.20 in unpaid rent/use and occupancy and \$236.25 in costs.¹ The defendant agreed to make certain payments in June and July for her ongoing use and occupancy and toward the arrearage to accommodate her failure to comply with the payment plan in an earlier Agreement. However, she paid only \$225 during that time. The plaintiff reported that the arrearage was now \$8,524.20 and \$236.25 in costs.

The defendant reported that she lost her income from DTA the same day she signed the interim Agreement and therefore could not make the payment she had agreed to make that day. She began working one or two weeks ago. She offered to pay her monthly use and occupancy

¹ The arrearage was high for a public housing tenancy, in part because the defendant had unreported income.

and \$100 each week toward the arrearage. However, she did not have any money to pay that day, but she said that she would have funds on August 14, 2024.

Ms. Luna confirmed that the defendant filed an application for RAFT financial assistance on July 22, 2024. Wayfinders is waiting for the landlord's documentation and the tenant's hardship documentation to demonstrate good cause for failing to pay her portion of the public housing rent. The application is pending. Pursuant to G.L. c. 239 §15 the court cannot enter judgment at this time because there is a RAFT application pending.

Orders

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.** At that hearing, the parties will report on the status of the defendant's RAFT application and the defendant's proposed payment plan for the balance.
2. The parties will submit all required documentation to Wayfinders to support the defendant's RAFT application. This includes but is not limited to:
 - a. The landlord's documentation
 - b. The tenant's documentation of hardship/good cause for her failure to pay her portion of the public housing rent
 - c. The landlord will include the court costs on the ledger of monies owed.
3. The defendant with the assistance of her Limited Assistance Representation (LAR) attorney will propose to the landlord a realistic payment plan for the balance of monies owed.
4. Before the August 27, 2024 hearing, the defendant will pay her August use and occupancy.
5. Before the August 27, 2024 hearing, the defendant will complete any recertification(s) based on changes in her household income.
6. The defendant's LAR attorney is asked to assist the defendant with her RAFT application to establish hardship/good cause, to complete any recertification(s) at the Springfield Housing Authority, and to develop a realistic payment plan for the arrearage.

August 15, 2024

CC: Defendant LAR attorney

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

VALLEY OPPORTUNITY COUNCIL,

Plaintiff,

-v.-

DOCKET NO. 24SP00824

NIVEANETTE DIAZ,

Defendant.

ORDER

This matter came before the court on August 9, 2024 for a hearing on the defendant's motion to stop the move-out which is scheduled for August 29, 2024 at 10:00 a.m. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on the status of the defendant's RAFT application.

This eviction case is based on nonpayment of the tenant's portion of the subsidized rent (\$434). On July 9, 2024 a judge of this court allowed the plaintiff's motion for entry of judgment on the grounds that the defendant had not complied with her payment obligations in the parties' April 9, 2024 Agreement. Judgment entered on July 10, 2024 for the plaintiff for possession and \$5,757.94 in unpaid rent/use and occupancy and \$234.71 costs. The plaintiff applied for the execution in writing and the execution issued on July 26, 2024. The plaintiff had a deputy sheriff serve a forty-eight hour notice to the defendant that the execution would be used to move her out of the apartment on August 29, 2024 at 10:00 a.m.

The plaintiff reported that the arrearage is now \$5,891.94 and \$234.71 with costs. If the move-out is stopped there will be a cancellation fee of at least \$400.

The defendant reported that she applied for RAFT, although the plaintiff had not been notified of the application. The parties gave a new correct email address for the landlord at the

hearing. Ms. Luna reported that an application was filed on July 23, 2024 and that Wayfinders is waiting for the landlord's documentation and for the tenant's hardship documentation to demonstrate good cause for why she did not pay her portion of the subsidized rent. If Ms. Diaz is eligible, Wayfinders can pay a maximum of six months of her portion of the rent. This will not pay the entire arrearage, so the defendant will need to make a repayment agreement for the balance.

The defendant reported that she applied for Family Medical Leave Act approval which would give her additional income. She has returned to work and is looking for a second job. She agreed to pay her portion of the August use and occupancy (\$434) by August 22, 2024.

Understandably, the plaintiff is skeptical that the defendant will adhere to a new payment plan. She made only one payment since agreeing to an earlier payment plan in the Agreement in April. She reported that she paid her car insurance bill instead of her portion of the rent. The rental arrearage has grown. The court notes that the parties anticipated that the arrearage would not be paid by August because they agreed that Ms. Diaz would apply for RAFT in August when she would become eligible to apply again.

At this time, the plaintiff may not use the execution to move the defendant out of the apartment pursuant to G.L. c. 239 §15 because there is a RAFT application pending. The court continues the defendant's motion to stop the August 29 move-out to give the parties time to complete their documentation for RAFT, for Wayfinders to make a determination on the application, and for the defendant to pay her August use and occupancy as agreed.

Order

After hearing, the following orders will enter:

1. **The defendant's motion to stop the move-out now scheduled for August 29, 2024 is continued to August 27, 2024 at 9:00 a.m.** At that hearing, the parties will report on:
 - a. The status of the defendant's application for RAFT financial assistance,
 - b. The payment of the August use and occupancy (\$434), and
 - c. The defendant's proposed payment plan for the balance of the arrearage if RAFT pays the maximum amount.
2. Both parties will submit their documentation promptly to Wayfinders in support of the defendant's RAFT application. This includes but is not limited to:
 - a. The landlord's documentation

- b. The tenant's documentation of hardship/good cause
 - c. The landlord will include the costs on the ledger of monies owed.
3. After the August 27, 2024 hearing, the court will rule on the defendant's motion. The defendant will be responsible for the cancellation fee.
4. Any stay of the execution arising from this order is within the meaning of G.L. c. 235 §23.

August 15, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

121131 CLEMENTE HOLYOKE MA LLC,

Plaintiff,

-v.-

DOCKET NO. 23SP04754

HECTOR CRUZ,

Defendant.

ORDER

This matter came before the court on August 9, 2024 for a continued hearing after the court stopped the scheduled move-out on July 19, 2024 on an emergency basis. The plaintiff appeared through its attorney with manager Harrison Bonner. The defendant appeared and was self-represented.

The court outlined the chronology of this case in its July 22, 2024 order and incorporates it here. At the last hearing there was a question of whether the parties entered into a new lease and tenancy at an increased rent of \$1,050 effective May 1, 2024 (Exh 1) as well as a repayment agreement post-judgment which anticipated that the defendant would remain in the premises while he paid the arrearage in installments (Exh submitted at last hearing).

Mr. Bonner testified that both documents were e-signed with the defendant's permission. Mr. Cruz denied that he gave permission to e-sign either document. He testified that he told the manager that he receives only \$975 in monthly income so he could not afford the increased rent and would not have agreed to sign the documents. In light of Mr. Cruz' testimony at the hearing, the plaintiff agreed to waive any claim that a new tenancy was established at a higher rent or that the defendant owes the higher rent.

This leaves the agreed upon monthly rent/use and occupancy for the premises at \$575. The arrearage at that rate is \$8,913.13 through August 2024 with costs and a cancellation fee of \$650 (Exh 2).

The court's July 22, 2024 order required the defendant to pay at least the old use and occupancy of \$575 and \$100 toward the arrearage before the August 9 hearing. The defendant did not do so. He said that the landlord did not come to pick it up. He also reported that he has found a roommate with whom he is going to move in September.

Findings and Orders

After hearing, the following orders will enter:

1. The stay of the execution is lifted.
2. During the stay of the execution ordered by the court on July 19, 2024 the execution expired by its terms. However, the court ordered the stay within the meaning of G.L. c. 235 §23 so that the running of the execution was tolled pending further order of the court.
3. The Clerk's Office will issue a new execution to the plaintiff upon return of the original execution.
4. The plaintiff may levy on (use) the new execution upon service of a new forty-eight hour notice.
5. There is no RAFT application pending. The defendant's RAFT benefits have been exhausted.

August 16, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

YEKATERINA ALEKSEYEVA,

Plaintiff,

-v.-

DOCKET NO. 24SP00590

BRIAN GILLESPIE,

Defendant.

ORDER

This matter came before the court on August 15 and 16, 2024 for review pursuant to the parties' July 3, 2024 Agreement. The plaintiff appeared through her attorney. The defendant did not appear on either day. He is self-represented.

In this no-fault eviction case the parties entered into an Agreement with the assistance of the housing specialist on July 3, 2024. By its terms relevant to today's review, the defendant agreed to vacate the subject rental premises by August 15, 2024 and to return the keys without any further extension. In exchange for the defendant agreeing to a vacate date, the plaintiff waived all rent/use and occupancy owed. Pursuant to paragraph 6 of the Agreement, if the defendant moved as he agreed, the plaintiff would dismiss the case. If the defendant did not move as he agreed the plaintiff could file an oral motion to enter judgment at the review.

The plaintiff made such an oral motion at the review on the grounds that the defendant did not vacate the premises as he agreed to do. No keys were returned.

Without opposition, the plaintiff's oral motion is **ALLOWED** pursuant to paragraph 6 of the July 3, 2024 Agreement. The court finds that the defendant is in substantial violation of a material term of the Agreement, i.e. he did not move as he agreed to do in paragraph 2.

Judgment will enter for the plaintiff for possession only.

August 16, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1668

BLUE RIVER PROPERTIES, LLC,

Plaintiff

v.

EFRIN MORALES, MIKE TIMOTH AND
BRENDA MORALES LAVERGNE,¹

Defendants

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

This no fault summary process case came before the court for a bench trial on August 6, 2024. Plaintiff appeared through counsel. Defendants Efrin Morales and Mike Timoth appeared self-represented. Defendant Brenda Morales, who is Efrin Morales' wife, did not appear. The residential property in question is a three-family owner-occupied house located at 7 Charbonneau Terrace, Unit 45, Chicopee, Massachusetts (the "Premises").

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. The parties did not stipulate to the amount of monthly rent or the amount of rental arrears. Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

¹ Efrain Morales informed the Court that his wife goes by the name Brenda Morales Laverigne. The Court will so modify the caption. According to her husband, Ms. Morales did not appear due to physical limitations. The Court will not enter a default judgment against her but she shall be considered part of the household for purposes of the judgment in this case.

The parties agree that rent was initially \$800.00 per month when Defendants took possession in April 2023. Plaintiff asserts that the monthly rent increased the rent to \$1,350.00 in January 2024. The Court finds no evidence of a proper rental increase; that is, no evidence that Plaintiff terminated the tenancy and offered a new tenancy at a higher monthly rate. Moreover, Defendants never paid the increased amount of rent. Therefore, the Court finds rent to be \$800.00 per month for all relevant time periods. The period of nonpayment is 17 months through the date of trial. The balance of rent arrears, therefore, is \$13,600.²

Defendants failed to prove by a preponderance of the evidence any of the legal defenses or counterclaims set forth in their answer. Their only explanation for not paying rent is that Mr. Gupta, Plaintiff's principal, hired them to do odd jobs and did not pay them. The arrangement between the parties regarding the provision of maintenance services is not directly relevant to this case.³ In any event, the Court has no evidence whatsoever regarding the extent of any services performed.⁴

Given the absence of any viable defenses or counterclaims, and based on the factual findings and the applicable law, the following order shall enter:

1. Judgment shall enter for Plaintiff for possession and damages in the amount of \$13,600.00 for unpaid use and occupancy through the date of trial.

² Plaintiff sought to amend the complaint to add physical damages to the Premises. The Court denies this aspect of Plaintiff's motion. In this no-fault summary process case, the Court will limit Plaintiff's evidence to unpaid rent and use and occupancy.

³ If Defendants believe they are owed money for the work they performed, they can bring a separate legal action.

⁴ Likewise, to the extent Mr. Gupta believes Defendants stole materials being stored in the basement, this issue is beyond the scope of this case.

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

SO ORDERED.
August 16, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2150

DAVID CHAMPINEY ET AL.,

Plaintiffs

v.

NOELLA CORNELIUS, ET AL.,

Defendants

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

This no fault summary process case came before the court for a bench trial on August 15, 2024. Plaintiff appeared through counsel. Defendant Noella Cornelius appeared self-represented. Defendant Thomas Cornelius, whom the parties agree no longer occupies the subject premises, did not appear. The address of the subject premises is 130 Valley View Ave., Apt. C, Woronono, Massachusetts (the "Premises").

The parties stipulated to Plaintiffs' prima facie case for possession (including the receipt of the notice to quit) but did not agree on the amount of unpaid rent. Defendant filed an answer with defenses and counterclaims. Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

The rent is \$1,500.00 per month.¹ Defendants last had a zero balance in January 2024. They had a balance of \$50.00 for February 2024, the last month that Thomas Cornelius lived in the Premises. No rent or use and occupancy has been paid since the February payment. The unpaid rent balance is therefore \$8,060.00. Plaintiffs agreed to reduce the balance by \$200.00 to \$7,860.00 as an additional credit toward the cost of replacing a refrigerator.² Plaintiffs are holding \$950.00 as a security deposit and \$950.00 as a last month's rent deposit.

Noella Cornelius' only defense and counterclaim is that a portion of the ceiling in one of the bedrooms fell and has not been repaired.³ Plaintiffs deny that they had any knowledge of this issue until the First Tier Court Event in this matter when Noella Cornelius raised the issue. The Court finds credible Plaintiffs' testimony that they were unaware of the ceiling issue because Noella Cornelius herself acknowledged that her husband, as a maintenance worker for Plaintiffs, would have been the one to repair the ceiling, but that she told him not to make repairs due to her concern about a possible asbestos release. Plaintiffs cannot be held responsible for defects about which they were unaware.

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

1. Judgment shall enter for Plaintiffs for possession and damages in the amount of \$6,910.00. This figure credits Defendants for the last month's rent, which

¹ The parties agree that, while Thomas Cornelius acted in a maintenance capacity, monthly rent was reduced to \$1,150.00, but the arrangement ended prior to March 2024.

² Plaintiffs previously credited \$400.00 for the refrigerator.

³ Her primary concern seems to be about potential asbestos in the ceiling, but she has reserved any personal injury claim for a separate action. Because counterclaims are not compulsory in summary process, the Court agreed that personal injury claims would be excluded from this action.

Plaintiffs may now apply to the balance. The security deposit will be handled in accordance with G.L. c. 186, § 15B.

2. Execution may issue upon written application ten days after the date judgment enters.
3. Because this is a no-fault eviction, if Noella Cornelius believes that she is entitled to additional time to move, she must file a motion with this court and serve it upon Plaintiffs' counsel.

SO ORDERED.

August 16, 2024

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

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

CHICOPEE HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP05361

TIFFANY RIVERA,

Defendant.

ORDER

This matter came before the court on August 9, 2024 for a hearing on the defendant's motion to remove default judgment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

This eviction case is based on nonpayment of the tenant's public housing rent. The parties entered into an Agreement on January 4, 2024 to resolve the case. The plaintiff filed a motion for entry of judgment on the grounds that the defendant had not made all the use and occupancy payments she had agreed to, no RAFT funds were received, and the defendant did not pay the arrears from her tax refunds. A hearing was scheduled for July 11, 2024. Only the plaintiff appeared. A judge of this court allowed the motion. Judgment entered on July 15, 2024.

The court notes that there is no default judgment in this case. Judgment entered after a motion hearing. The defendant testified that she was eight minutes late for the hearing because she was looking for parking. It is not credible that she was in the courtroom at 9:08 and still missed the hearing. Although the defendant filed her motion to remove the default the same day as the hearing, it was after noon when she filed it. In any event, the defendant did not present any evidence at the August 9 hearing that would have required a different outcome. The arrearage is now \$5,085.89 with \$233.25 costs

The defendant's motion to remove the default judgment is **DENIED**. However, the plaintiff reported that the defendant filed another application for RAFT financial assistance on August 8, 2024. Her May application was closed for missing hardship documentation. (Because this is a public housing tenancy, the defendant must show good cause why she failed to pay her portion of the rent/use and occupancy.) Her July application was closed for missing landlord documentation. The email address furnished to Wayfinders was incorrect. The plaintiff filed a written request for the execution, but it may not issue at this time pursuant to G.L. c.239 §15 because there is a pending RAFT application.

Further Orders

After hearing, the following orders will enter:

1. The parties will complete the RAFT application process promptly.
 - a. The defendant will submit all documentation to Wayfinders as required, including but not limited to, her documentation of hardship/good cause.
 - b. The defendant will ensure that she has the correct email address for the landlord and furnish it to Wayfinders.
 - c. The plaintiff will submit all documentation to Wayfinders, as required.
 - d. The plaintiff will include the costs on the ledger submitted.
2. The defendant will pay \$300 to the plaintiff toward the arrearage on or before August 31, 2024.
3. Beginning in September 2024 and continuing each month, the defendant will pay her use and occupancy by the seventh of the month at the amount established by the Housing Authority. It is \$339 as of September 1, 2024, but it may be adjusted based on changes in the household income.
4. The defendant will report fully all household income to the Housing Authority, as required, and will complete all recertifications.
5. The execution is stayed pending further order of the court. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.

August 16, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0944

ANTAVIA GREENE,
Plaintiff

v.

BLUE RIVER PROPERTIES LLC,
Defendant

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ORDER ON ASSESSMENT
OF DAMAGES

This matter came before the Court on July 10, 2024 on a hearing for assessment of damages. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential premises in question is located at 926 Chicopee Street, Unit 23, Chicopee, Massachusetts (the "Premises").

FINDINGS OF FACT

Based on the evidence offered at the evidentiary hearing, the post-trial submissions and the reasonable inferences drawn therefrom, the Court finds the following facts:

1. On February 14, 2023, Defendant Blue River Properties LLC (the "Landlord") filed a summary process eviction case against Plaintiff Antavia Greene (the "Tenant") for nonpayment of rent (Docket Number 23SP0785).
2. On March 2, 2023, the City of Chicopee Health Department ("Health Department") issued a citation to the Landlord for the following issues:
 - a. In the bathroom, stained ceiling tiles showing evidence of a leak, a leaking radiator and a large gap under the door;

- b. In the kitchen, a loose faucet allowing water to leak into the cabinet below;
 - c. In the rear bedroom, a leaking radiator.
- 3. On May 9, 2023, the parties reached an agreement to resolve the summary process case with an application for rental assistance. In the agreement, the Tenant reported a leak in the bathroom ceiling and the two leaking radiators. The Landlord agreed to repair within fourteen days.
- 4. On June 18, 2023, at a hearing on the Tenant's motion to enforce the agreement, the Court found that the Landlord had failed to make the required repairs.
- 5. At a hearing on October 4, 2023, the Tenant claimed repairs had not been made and that she was suffering from a cockroach infestation. The Court relieved her of her obligation to pay rent pending completion of the work and ordered that the Landlord would be subject to daily fines of \$25.00 per day after October 25, 2023 if the exterminations and other repairs remained incomplete. At this time, the Court dismissed the Landlord's case for possession and transferred the case to the civil docket (the instant case).
- 6. On October 20, 2023, the Landlord entered into a service contract with Eliminate Em Pet Control Services, LLC. The company treated the Premises and found no live roaches, although it found a heavy infestation of roaches in a neighboring unit.
- 7. On February 8, 2024, the Tenant filed a motion stating that she was

suffering from a mouse and roach infestation and had no heat or hot water.¹

8. On February 12, 2024, the Health Department conducted another inspection and cited the Landlord for evidence of cockroaches and mice. No other code violations were cited.
9. At a hearing on March 18, 2024, the Court ordered the Landlord to complete all necessary repairs no later than April 15, 2024.
10. On May 20, 2024, the Court ordered that the Landlord address a leak in the ceiling above the bathroom.
11. The Landlord provided evidence that Braman Termite & Pest Elimination completed a treatment on July 16, 2024. The report found one rodent bait box with light activity.
12. The rental arrears are \$1,705.00 through the month of hearing (July 2024).² The months of nonpayment are December 2023 through July 2024.
13. With respect to the start and end date of various conditions of disrepair, the Court finds:
 - a. The violations cited by the Health Department on March 2, 2023 (leaking radiators and faucet and a stained ceiling showing water damage) were corrected by February 12, 2024.³

¹ The heat and hot water issue was not raised by the tenant. The Court infers from the testimony that the issue was resolved promptly.

² At the hearing, the Landlord claimed that \$2,487.00 was owed and that the Tenant's share of rent was \$357.00. The Tenant testified that her rent share was \$224.00 at that time, and was reduced to \$195.00 as of May 2024. Post-trial submissions show that the Tenant was correct. The Landlord acknowledged the new rent amounts in an updated ledger. The fact that the Landlord came to court with an incorrect ledger on the day of the hearing and sought to recover more than it was owed is troubling.

³ The Landlord failed to provide proof that the leaks and ceiling were ever corrected, so the Court is using the Health Department's February 14, 2024 inspection report (which cited only an infestation) as the date by which

- b. The Landlord was aware of a roach infestation by the October 4, 2023 hearing, but not before.⁴ The Tenant acknowledges that the roach infestation was resolved by December 2023.
- c. The rodent infestation of which the Tenant gave notice on February 8, 2024 was substantially resolved by July 16, 2024 when Braman found evidence of only light activity in one of 15 bait boxes.

CONCLUSIONS OF LAW

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); see *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State sanitary code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. 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). Damages for breach of the implied warranty of habitability are measured by 'the difference between the value of the premises as warranted (the rent may be evidence of this value) and the value of the premises as it exists in its defective condition.'" *Id.*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994). The contract rent, not the tenant's subsidized share, establishes the value of the premises for abatement purposes. See

the leaks were repaired. Although the tenant reported another leak in May 2024, she did not demonstrate by a preponderance of the credible evidence that this leak was significant or that repairs were delayed.

⁴ The Tenant was given multiple opportunities to show that she gave notice to the Landlord of the infestation prior to this date, but she failed to do so.

Cruz Management Co. v. Wideman, 417 Mass. 771, 777 (1994) (the full contract rent, not the tenant's portion, is the proper measure of damages).

The Court finds that, from March 2023 through February 2024, the conditions in the Premises reduced the rental value by 15%. Contract rent for the months of December 2023 through April 2024 was \$1,350.00 per month and, as of May 1, 2024, the total rent was \$1,700.00 per month. Therefore, the abatement for the initial Health Department cited violations is \$1,777.50.

The Court finds that rental value of the Premises was diminished by 10% for the roach infestation for the months of October 2023 through December 2023. The amount of the abatement for roaches is therefore \$405.50. With respect to rodents, the Court finds that the continued presence of rodents reduced the value of the Premises by 10% for the months of February 2024 through July 2024. The abatement for the rodents equals \$915.00. In sum, the total rent abatement for the conditions raised in this case is \$3,097.50, which figure shall be offset by the \$1,705.00 that the Tenant owes in rental arrears.

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

1. Judgment for damages in the amount of \$1,392.50 shall enter in favor of Plaintiff.⁵
2. Defendant shall continue quarterly pest control treatments to maintain the Premises free from infestation until the pests have been eliminated.

⁵ The Court declines to add additional fines as the Court was unable to adequately determine when each of the repairs were completed. The damages for breach of warranty shall suffice in compensating the Tenant for the duration of time it took for the Landlord to complete repairs.

SO ORDERED.
August 16, 2024

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

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

ANNA RODRIGO,

Plaintiff,

-v.-

DOCKET NO. 23SP03337

LUISA MARQUEZ,

Defendant.

ORDER

This matter came before the court on August 16, 2024 for a hearing on the defendant's motion to continue the case, which the court deems to be a motion to enforce the parties' Agreement. Both parties appeared and were self-represented.

On October 12, 2023 the parties entered into an Agreement for Judgment with the assistance of a housing specialist of this court. By its terms relevant to today's motion the landlord agreed to make certain repairs within thirty days of signing the Agreement. The tenant agreed to provide access for the repairs on twenty-four hours written notice.

The tenant testified that the repairs were not done, except for the extermination. The landlord testified that she has been unable to get access to make the repairs, although it is not clear if she gave *written* notice. She reported that her handyman, Jack Costa, is on vacation for two weeks, but after that he will be able to make all of the repairs.

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

1. The plaintiff will have her handyman, Jack Costa, enter the defendant's apartment on Saturday, September 7, 2024 between 9:00 and 9:30 a.m. to inspect and repair the conditions listed in the October 12, 2023 Agreement. He will get as much of the work done that day as he can. The parties understand that Mr. Costa may need to

return on another day or days to continue or complete the work. The parties will negotiate any additional day(s) in good faith.

2. The defendant will allow access to her apartment on that day and beginning at that time for inspection and repairs to be made.
3. The plaintiff will continue to have exterminations performed at the premises as needed and the defendant will continue to allow access for such exterminations.

The court referred the case to the housing specialist after the hearing to discuss the payment terms of the October 11, 2023 Agreement. The parties agree that the defendant did not make all of the payments as she agreed and she did not apply for RAFT financial assistance when she became eligible again. However, there is no motion before the court at this time to enforce the payment terms of the Agreement.

August 16, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2437

SCHOOL HOLDINGS LLC,

Plaintiff

v.

RIZA SINANI AND SADETE SINANI,

Defendants

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

This no fault summary process case came before the court for a bench trial on August 15, 2024. Plaintiff appeared through counsel. Defendants appeared self-represented. The address of the subject premises is 1141 Elm St., 1L, West Springfield, Massachusetts (the "Premises").

The parties stipulated to Plaintiff's prima facie case for possession (including the receipt of the notice to quit). They also agreed that no rent has been paid for six months at a rate of \$850.00, for a total rental arrears balance of \$5,100.00. Defendants did not file an answer, but were allowed to assert defenses to payment during the trial. Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

Defendants allege that they have suffered from a significant leak in the bathroom since prior to the change in ownership and management in March 2024. They allege that, when the new management company started, their agents went

door-to-door to inspect for necessary repairs. They offered no evidence of such an inspection or that they notified management or maintenance of the issue. The property manager denies that her company was given any notice of the leak by the tenants, and instead testified that when their subcontractor was replacing toilets throughout the 99-unit property earlier this month, the subcontractor notified management of the leak. The Court finds the property manager's testimony credible regarding the manner in which Plaintiff first received notice. Plaintiff cannot be held responsible for defects about which it was unaware, and therefore the Court rules that Defendants' defense does not warrant an abatement of rent or damages under any other legal theory.

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

1. Judgment shall enter for Plaintiff for possession and damages in the amount of \$5,100.00, plus court costs.
2. Execution may issue upon written application ten days after the date judgment enters.
3. Because this is a no-fault eviction, if Defendants believes that they are entitled to additional time to move, they must file a motion with this court and serve it upon Plaintiff's counsel.

SO ORDERED.

August 16, 2024

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

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP04890

DEON BALLARD & ATOIA BALLARD,

Defendant.

ORDER

This matter came before the court on August 16, 2024 for a hearing on the plaintiff's motion for entry of judgment. The case was also scheduled for a case management conference, but counsel for all parties agreed that it was not needed at this time. All parties appeared through their attorneys.¹ The plaintiff's property manager appeared. Leonor Pena of Wayfinders also appeared at the hearing to report on RAFT.

This is a cause eviction case based on allegations of failure to recertify and chronic late/non-payment of the tenants' public housing rent. The parties entered into an interim Agreement on January 5, 2024. By its terms relevant to today's motion, the defendants agreed to provide documentation to complete their 2023 recertification by a date certain and to pay their February use and occupancy (then \$407) and \$100 toward the arrearage by February 9, 2024. At the time of the Agreement, the plaintiff asserted that the arrearage was \$5,367 through January 2024 and \$310.25 in costs. The parties agreed that an application for RAFT financial assistance had been closed recently because of missing hardship documentation from the defendant and a missing

¹ The defendants' counsel agreed to file a notice of appearance for both defendants immediately after the hearing.

ledger from the plaintiff.² There was no provision in the Agreement for payments beyond February. Since the Agreement was signed, several reviews, mediations, and case management conferences were scheduled. The defendants did not appear for the most recent court events on June 28 and July 19. Although their attorney was present at today's hearing, the defendants were not. Important information could not be ascertained in their absence.

The plaintiff filed a motion for entry of judgment on the grounds that the defendants failed to make the required payments for June, July (and now August) in violation of the Agreement. The plaintiff reports that the arrearage for unpaid rent/use and occupancy is \$7,043 through August 2024 with \$310.25 in costs. The defendants' attorney concedes that they have missed payments. However, there is no such specific requirement in the Agreement.³

The plaintiff reports that the defendants completed their 2023 recertification, but they have not completed their 2024 recertification to date.

Ms. Pena reported that the Wayfinders records show that Deon Ballard made four or five attempts to apply for RAFT financial assistance, but he did not complete any of the applications. Because they have not received any RAFT financial assistance in the past year, if the tenants can demonstrate hardship/good cause for failing to pay their public housing rent/use and occupancy, they would be eligible to receive up to six months of their portion of the rent. The tenant's current portion of the rent is \$433. Even if this payment were received, it would still leave a significant balance owed. Again, the Housing Authority will not be able to provide an accurate updated ledger until the defendants complete their 2024 recertification.

Findings and Order

After hearing, the following findings and orders will enter:

1. The plaintiff's motion for entry of judgment is **DENIED** because the court finds that the plaintiff has not proven that the defendants are in violation of a material term of the interim Agreement.

² The plaintiff explained at today's hearing that they could not submit an accurate updated ledger at the time because the defendants had not completed their 2023 recertification so the Housing Authority could not calculate the rent accurately.

³ Certainly as for all tenants, the defendants have the ongoing obligation to pay their portion of their public housing rent/use and occupancy as it becomes due.

2. If the defendants wish to pursue their argument that the case should be dismissed on procedural grounds, they must file a motion with supporting memorandum. The plaintiff will have the opportunity to file an opposition with supporting memorandum as it sees fit.
3. The defendants' attorney is asked to assist the defendants to complete their 2024 recertification promptly, to assist them to apply for RAFT financial assistance, including documentation of hardship/good cause, to pay their ongoing use and occupancy and to propose a payment plan for the arrearage.
4. If the defendants apply for RAFT financial assistance, the plaintiff will submit all required documentation to Wayfinders, to the extent possible.
5. Either party may file a motion to restore the case to the list if they are not able to resolve the matter through their attorneys. Discovery should be completed before such a motion is filed.

August 16, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP02447

CHRISTINE STONE,

Defendant.

ORDER

This matter came before the court on August 9, 2024 for a hearing on the defendant's motion to remove default and her motion to amend the parties' agreement. The plaintiff appeared through its attorney with the property manager. The defendant appeared and was self-represented. Her substitute care coordinator Tammy Bishop and her daughter Amber Stone appeared with the defendant.

A review of the docket shows that there is no default in this case. After doing two Agreements since the case was filed on June 5, 2023, the parties entered into an Agreement for Judgment on March 1, 2024. The parties agreed that judgment would enter for the plaintiff for possession and \$16,459 in unpaid rent/use and occupancy and costs. Execution did not issue because the parties entered into a payment plan. The plaintiff then filed a motion for entry of judgment, which was really for an amended judgment. After hearing, at which both parties were present, a judge of this court allowed the motion on the grounds that the defendant was not in compliance with the payment plan agreed to on March 1, 2024. An amended judgment entered on June 17, 2024 for possession and \$14,779.25 and costs.

The defendant's portion of the public housing rent/use and occupancy is \$279. She made one payment of two months use and occupancy since the amended judgment entered. The plaintiff reported that the arrearage is now \$15,338 and costs through August 2024. The defendant's application for RAFT financial assistance was denied.

The court finds that there was no default judgment in this case. Therefore, the defendant's **motion to remove the default** is **DENIED**.

Turning to the defendant's motion to amend the payment plan she agreed to, the motion was scheduled to be heard on June 14, 2024 together with the plaintiff's motion. It does not appear from the docket that the motion was ruled on.

The defendant now reports that she could not afford to pay the \$1,000 per month that she agreed to pay. She relied on her daughter Amber Stone to supplement her payments, but her daughter lost her job. She now offers to pay \$700 each month to pay her use and occupancy for the month with the balance going to the arrears, until the balance is zero. It was not clear at the hearing if even this reduced amount is realistic. The defendant's care coordinator was present with her at the hearing, although she explained that she is substituting for Ms. Stone's regular care coordinator. The case had been referred to the Tenancy Preservation Program (TPP). The case would greatly benefit from TPP's assistance.

The defendant submitted money order receipts and copies which she said showed payments to the Housing Authority (Exh). The parties were referred to the housing specialist after the hearing to review the tenant's receipts and ensure that they had been credited to her account.

The court finds that the defendant agreed to an unrealistic payment plan in March because she was relying on a family member to supplement her payments. The arrearage is large for a public housing tenancy¹ so the court understands the intention to reduce it expeditiously. However, under the circumstances of this case, the defendant's **motion to amend the payment plan** is **ALLOWED** as follows:

1. The parties will meet with a housing specialist of this court to mediate a new payment plan for the arrearage.
2. The Clerk's Office is asked to schedule the mediation with the Housing Specialist Department and to send notice.
3. Before the mediation, the defendant will consult with her care coordinator to propose a *realistic* payment plan in light of the financial resources available to her on an ongoing basis.

¹ Much of the arrearage is due to unreported income by the tenant.

4. Pending a revised payment plan, beginning in September 2024, the defendant will pay her monthly use and occupancy no later than the seventh of each month.

The case is referred again to TPP. The Housing Specialist Department is asked to coordinate the referral. TPP is asked to consult with Ms. Stone to determine financial resources, including a representative payee if appropriate, to ensure that the use and occupancy is paid in full and on time.

Finally, the court notes that the plaintiff requested the execution on July 22, 2024. It has not issued to date. Execution is stayed pending the mediation ordered above. This stay is ordered within the meaning of G.L. c. 235 §23.

August 16, 2024

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

CC: Tenancy Preservation Program
CC: Housing Specialist Department

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

VITALITY VILLAGE, LLC,

Plaintiff,

v.

JODY CARTER,

Defendant.

No. 24-SP-1665

VITALITY VILLAGE, LLC,

Plaintiff,

v.

GARY RIVIERE, et al.


Defendants.

No. 24-SP-1666

After hearing on August 5, 2024, on the motion to dismiss filed by the defendants in both matters, the following order shall enter:

1. The motion to dismiss due to the insufficiency of the Notice to Quit is allowed.
The tenants were tenants-at-will with the former owner of the premises and continued that status when the landlord purchased the property after foreclosure.
2. As such, the February 1, 2024, Notice to Quit which terminated the tenancy as of March 30, 2024, was insufficient as it failed to provide a full rental period nor end on a rent day as March has 31 days.
3. The landlord admittedly never inquired with the tenants about their prior tenancy before serving them the Notice to Quit.
4. Accordingly, in both cases the landlord's claim for possession is dismissed and tenants' claims are transferred to the Civil Docket and shall be re-captioned so that the tenants are plaintiffs and the landlord is the defendant.
5. The Clerk's Office is requested to schedule both matters for a Case Management Conference once the Civil Docket cases are opened.

So entered this 16 day of August, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV000581

D&B REAL ESTATE VENTURES,

Plaintiff,

v.

JEREMY S. HAAG and SHANNON I. FINK,

Defendants

Order for Judgment

The plaintiff, D&B Real Estate Ventures, commenced this civil action seeking an injunction to recover possession of a residential apartment from the defendants, Jeremy S. Haag and Shannon I. Fink, after voiding their lease pursuant to G.L. c. 139, § 19. The plaintiff contends that the defendants engaged in drug-related criminal activity at the premises (57-59 Glen Avenue, Unit 3, North Adams, Massachusetts) proscribed by Section 19. The plaintiff filed a motion for a temporary restraining order to bar the defendants from the premises (which the court will consider as a request for a preliminary injunction).

After conducting a motion hearing on August 14, 2024 (at which the plaintiff and defendant Shannon I. Fink appeared, but the defendant Jeremy S. Haag did not appear), the plaintiff's motion is **ALLOWED** in part.

New Bedford Housing Authority v. Olin, 435 Mass. 364 (2001) provides that a claim for possession under Section 19 is similar to a summary process claim for possession, and that a tenant is entitled to a trial on the merits before the tenant is deprived of legal possession of the premises. Section 19 provides the issuance of an injunction as the specific remedy available to the plaintiffs. Pending a trial on the merits of a Section 19 claim a plaintiff may seek a preliminary injunction

against a tenant, but such an injunction should be narrowly tailored to address any immediate danger to health or safety that might exist pending the trial on the merits.

The plaintiff has demonstrated a reasonable likelihood of prevailing on the merits of its claim that the defendants used the premises to engage in drug-related criminal activity.

Accordingly, a preliminary injunction shall enter pursuant to G.L. c. 139, § 19. It is **ORDERED** that the defendants may remain in possession of the premises subject to the following specific requirements:

1. The defendants shall not keep illegal drugs on the premises and shall not engage in any drug-related criminal activity;
2. The defendants shall not keep any firearms on the premises;
3. The defendants shall not cause or threaten to cause physical harm to the other residents or the plaintiff's employees; and
4. The defendants shall not engage in any conduct that threatens the safety of the other residents.

If the defendants fail to comply with this preliminary injunction order the plaintiff may move to modify this order to bar the defendants from residing at or entering upon the premises pending the trial on the merits of the plaintiff's Section 19 claim.

So entered this 19th day of August, 2024.

Jeffrey M. Winik

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0865

JACOB ELWELL AND ASHLEY ELWELL,

Plaintiffs

v.

JAMIE PICARD AND VIRGILIO RIVERA, JR.,

Defendants

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

This no fault summary process action came before the Court for a bench trial on July 24, 2024. Plaintiffs (the landlords) appeared through counsel. Defendants (the tenants) appeared self-represented. The residential rental premises in question is located at 269 Chapman Street, Second Floor, Greenfield, Massachusetts (the “Premises”). Plaintiffs live on the first floor.¹ After trial, but prior to this order, Defendants voluntarily surrendered possession. Accordingly, possession is no longer an issue in this case.

The parties stipulated to Plaintiff’s prima facie case for possession. The parties agreed that rent is \$1,200.00 per month and that Defendants have not paid for the past four months. Defendants filed an answer with defenses and counterclaims relating to conditions of disrepair, breach of quiet enjoyment, retaliation and

¹ The house was owned by Plaintiff Elwell’s father, and Plaintiffs were residing on the first floor when Defendants moved into the second floor unit. Subsequently, the property was transferred to Plaintiffs, who at that point became the landlords.

discrimination.² Based on the credible testimony and the other evidence presented at trial, as well as the reasonable inferences drawn therefrom, the Court finds as follows:

Conditions of Disrepair: Defendants allege significant mold growth in the bathroom and beyond. They produced no admissible scientific evidence of airborne spores that might be harmful to humans.³ They provided no photographic evidence or witnesses to corroborate their claim, and they did not testify with sufficient specificity as to how the presence of the substance affected their daily lives. Accordingly, the Court finds in favor of Plaintiffs as to conditions-based claims related to the presence of a mold-like substance in the Premises.

Retaliation and Reprisal: Defendants assert that Plaintiffs served them with a notice to quit in October 2023 shortly after Ms. Picard reported her concerns about domestic violence occurring between Plaintiffs to Ms. Elwell's sister and her fiancé, Jason Penfield, Jr. As a matter of law, reporting domestic violence to law enforcement can form the basis of defense to retaliation (*see* G.L. c. 239, § 2A). Here, Ms. Picard did not report her suspicions to law enforcement, but instead to a family. Even if the Court found Ms. Picard's report to Ms. Elwell's sister to be the equivalent of a report to law enforcement, G.L. c. 239, § 2A (pursuant to which retaliation can be asserted as an affirmative defense to possession) is now moot because Defendants have surrendered possession. Reporting suspected domestic

² Defendants withdrew their claims for a security deposit violation and failure to pay interest on last months' rent because Plaintiffs returned the security deposit prior to trial and paid three times the interest which had accrued for the last month rent deposit.

³ They conducted self-testing, but the results are inadmissible as there was no evidence presented as to method of sampling, the chain of custody of samples submitted for testing or the reliability of the testing and results.

violence is the not the basis for a reprisal counterclaim under G.L. c. 186, § 18, and therefore the Court declines to award damages for retaliation or reprisal.

Interference with Quiet Enjoyment: A significant amount of testimony at trial involved mutual allegations of interference with quiet enjoyment. Both sides called the police on multiple occasions and both sides testified about behavior-based disturbances caused by the other.⁴ Moreover, it is undisputed that Plaintiffs removed certain of Defendants' personal possessions from the garage without notice. Ms. Picard testified that Plaintiffs also suddenly locked the gate to the backyard, eliminating Defendant's access to let their dogs use the yard in the manner as had been allowed previously.

Based on Ms. Picard's credible testimony, the Court finds that Defendants proved by a preponderance of the evidence that Plaintiffs' conduct caused a serious and direct interference with Defendants' ability to use and enjoy the Premises. See *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994) (the statutory right of quiet enjoyment protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold").⁵ As a result, Plaintiffs are liable for actual and consequential damages or three month's rent, whichever is greater. See G.L. c. 186, § 14. Because Defendants did not provide any credible evidence of actual and consequential damages, the Court awards statutory damages in the amount of \$3,600.00.

⁴ In one case, a police officer testified credibly that a complaint called in Ms. Elwell appeared to be based on false allegations.

⁵ Defendants tried to explain away their behavior by blaming it on factors such as alcohol use and miscarriages, which are not defenses to interference with quiet enjoyment.

Discriminatory Conduct: The Court finds that Defendants proved by a preponderance of the evidence that Ms. Elwell made derogatory and offensive statements under her breath about Mr. Rivera's ethnic origins. A former tenant of Premises testified about similar experiences being the subject of hostile racially insensitive comments. The Court finds that Ms. Elwell's conduct was racially motivated and violates both the federal Fair Housing Act and state antidiscrimination law, G.L. c. 151B. As a result of Ms. Elwell's conduct, the Court finds that Defendants suffered significant distress. The Court further finds that, because of the Elwell family's deep connections in the community, Defendants felt ostracized and humiliated, and no longer welcome in town. As a result of Plaintiffs' conduct, Defendants felt that they needed to move out of Greenfield despite having lived there for decades.⁶ As damages for Ms. Elwell's actions, the Court awards Defendants \$5,000.00.

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

1. Plaintiffs are entitled to \$4,800.00 in unpaid rent.⁷
2. Defendants are entitled to \$3,600.00 on their counterclaim for interference with quiet enjoyment and \$5,000.00 on their counterclaim for discrimination.
3. After setting off the damages to which Defendants are entitled by the unpaid rent, the balance due Defendants is \$3,800.00.

⁶ In fact, shortly after trial, Defendants moved to Virginia.

⁷ Plaintiffs must credit Defendants for the last month's rent deposit, which might reduce the balance of arrears set forth in this order.

4. Final judgment shall enter in favor of Defendants for damages in the amount of \$3,800.00.⁸

SO ORDERED.

DATE: August 19, 2024

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

cc: Court Reporter

⁸ Defendants have not incurred costs and therefore none are added to the judgment amount.



COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0652

INDEPENDENT HOUSING SOLUTIONS)	
INCORPORATED,)	
)	
PLAINTIFF)	
v.)	ORDER
)	
ROBERT SAVARD,)	
)	
DEFENDANT)	

Based on the facts set forth in the Verified Complaint for Injunctive Relief and the evidence presented at an evidentiary hearing on August 19, 2024 at which Defendant appeared self-represented, the Court finds that Plaintiff has a high likelihood of success on the merits and that failure to issue the injunction would subject it to a substantial risk of irreparable harm. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). The risk of irreparable harm to Defendant is minimal.

Accordingly, in light of the foregoing, the following order shall enter as a preliminary injunction:

1. Defendant shall cease and desist causing any property damage in the exterior and interior of the building located at 5 Franklin Street, Northampton, Massachusetts (the "Property").

2. Defendant shall cease and desist from using racial, homophobic, antisemitic and/or ethnic slurs directed at Plaintiff's employees and residents, or any person otherwise lawfully on the Property.
3. Defendants shall cease and desist from disrupting the use and enjoyment of the Property by other residents.
4. Defendant shall cease and desist from substantially violating the material terms of this lease.
5. The \$90.00 statutory fee for injunctions is hereby waived.
6. The parties shall return for review on compliance with this order on September 9, 2024, at 2:00 p.m. All participants may appear by Zoom.

SO ORDERED.

DATE: Augusts 19, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0931

BRAWLING KENOU,

Plaintiff,

v.

LUIS PEREZ AND JANIXA SANTIAGO,

Defendants

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

This no-fault summary process action came before the Court for a bench trial on July 17, 2024. The parties appeared self-represented. The residential rental premises in question is located at 3 Hanover Street, Apt. 2, Westfield, Massachusetts (the "Premises").

The parties stipulated to Plaintiff's prima facie case for possession. The parties agreed that rent is \$1,200.00 per month and that Defendants are current with their rent through the date of trial. They are month-to-month tenants and they acknowledge that they received the notice to quit that terminated their tenancy as of March 1, 2024. Prior to trial, the Court allowed Defendants to file a late answer and counterclaims, and Plaintiff elected to proceed directly to trial. Based on the credible testimony and the other evidence presented at trial, as well as the reasonable inferences drawn therefrom, the Court finds as follows:

Defendants allege that Plaintiff retaliated against them and failed to repair conditions of disrepair.¹ With respect to retaliation, they assert that Plaintiff served them with a notice to quit three days after they informed him that Mr. Perez had fallen on the stairs due to the lack of lighting and the condition of the stairs. Ms. Santiago testified that the fall occurred in November 2022, but at trial she offered a text message dated in February 2023 regarding Mr. Perez's fall. Regardless of whether the fall occurred in 2022 or early 2023, both dates are more than six months prior the notice to quit in this case, which is dated January 1, 2024.²

Without a presumption of retaliation (which occurs if a no-fault notice to quit is served within six months of a complaint about conditions), Plaintiff have the burden of proof by a preponderance of the evidence that the notice to quit that forms the basis for the present eviction case was served upon them in retaliation for reporting bad conditions. They did not meet their burden. They were unable to establish that it was their complaints about Mr. Perez's fall or about bad living conditions that motivated Plaintiff to begin this eviction case. In fact, Plaintiff testified credibly that he began this case for a number of reasons unrelated to Defendants' complaints. For example, he testified about Mr. Perez using the property to conduct a business (auto repair) and running extension cords from the building to the front of the house where he repaired vehicles. He also testified that Mr. Perez smashed in the basement door to retrieve tools that belonged to him. Even if a presumption of retaliation did apply,

¹ They also claim that they paid a significant amount of money (with the assistance of the RAFT program) to keep their apartment and that Plaintiff should not be able to evict them. Massachusetts law protects tenants from being evicted for nonpayment of rent when their rental arrears are paid by a third party such as RAFT, but it does not preclude Plaintiff from bring a no fault eviction case.

² Defendants did not provide the Court with a copy of any other notice to quit that might have been served in retaliation of their report about Mr. Perez's fall.

the Court finds that Plaintiff demonstrated by clear and convincing evidence that he would have served Defendants with the notice to quit in the same manner and at the same time in light of the deterioration of the parties' relationship.

With respect to the living conditions in the Premises, the Court finds that, when Defendants took possession of the Premises, they signed a statement of conditions (on December 31, 2020) indicating that everything in the Premises was in good condition. When issues arose over the course of their tenancy, Defendants testified that Plaintiff made some repairs, but they specifically cite problems with the rear stairs where Mr. Perez fell, flickering electricity, a broken window, cracks in the floors, a broken exterior door and a leak in the bathroom.

Despite this list of problems about which Defendants testified, the evidence shows that in March 2023, when Plaintiff told Defendants that he was trying to schedule a contractor to enter the Premises, Defendants sent a text message asking him what needed repair, writing "... last I knew everything that needed to be fixed was fixed it just need to be painted." Defendants offered little or no credible evidence that they notified Plaintiff of the need for repairs after the text message in March 2023.³

Without proving that they gave notice to Plaintiff of each specific issue after March 2023, Defendants cannot show that they are entitled to monetary damages. For example, regarding the leak in the ceiling, Defendants testified that Plaintiff initially repaired the issue but that it subsequently reoccurred. However, they testified that

³ After the trial concluded, Defendants submitted a correction order from the City of Westfield Health Department dated July 29, 2024 citing a number of code violations. The Court cannot consider this evidence as it did not come in during the trial. To the extent that the Health Department has issued orders for violations to be corrected, Plaintiff must comply with the Health Department's timeframes.

they never told Plaintiff that the leak had returned prior to trial. Therefore, the Court cannot find that Plaintiff was on notice of the need for repair. Defendants likewise offered no written evidence (such as text messages) that they told Plaintiff about the cracks in the floors or the problem with the door not staying closed. As for the electricity flickering, they testified that they told Plaintiff in February 2023 that they would withhold rent until the issue was fixed, yet they produced nothing to show that the issue continued after March 2023 and they continued to pay rent.

With respect to the broken bedroom window, the parties disagreed as to whether the glass was broken from the inside or the outside. There is no dispute that the window was intact at the time Defendants took possession. Without more evidence, the Court is unwilling to conclude that the broken window was due to a natural event (such as a bird strike) as opposed to Defendants' own actions. Moreover, Defendants did not produce a photograph or video of the window, and the Court is unable to determine if the condition is a serious defect that impairs the value of the Premises and one that warrants an abatement of rent.

The final issue is the rear exterior stairs where Mr. Perez apparently fell. Plaintiff testified that he fixed the stairs and Defendants dispute his claim. The photographs of the stairs does not clearly show the extent or nature of the problem. The images show wear and tear on the steps and a few loose and broken pieces of wood that appear to be part of a railing. It is unclear where the broken railing is located or whether it is essential to the safety of the stairs. The evidence is simply

insufficient for the Court to find that the defects in the exterior stairs are significant or that they represent substantial code violations.⁴

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

1. Judgment for possession and court costs shall enter for Plaintiff.
2. Execution shall issue upon written application ten days after the date the judgment enters.
3. If Defendants seek a stay on use of the execution (eviction) pursuant to G.L. c. 239, § 9 -11, they must file and serve a motion.

SO ORDERED.

DATE: August 19, 2024

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

cc: Court Reporter

⁴ In order to use bad conditions as a defense or counterclaim, Defendants have to prove by a preponderance of the evidence that the conditions of which they complain constitute substantial Sanitary Code violations or significant defects in the living conditions. 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).

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO ~~24~~ H89SP001486

JOHN LORD,

Plaintiff

VS.

EMILY GENNARI and THOMAS KIE,

Defendants

Appeal Bond Order

This matter came before the court on August 14, 2024, on defendant Thomas Kie's motion pursuant to G.L. c 239, § 5 to waive his obligation to post an appeal bond and make monthly use and occupancy payments pending his appeal.

After considering the arguments and evidence presented by the parties, defendant Thomas Kie's motion is **DENIED**.

This case involves a residential eviction. On July 16, 2024 judgment entered in favor of the plaintiff on his claim for possession and unpaid rent damages totaling \$3,006.18.¹ Defendant Thomas Kie (Kie) filed a *Notice of Appeal*. On July 17, 2024 Kie filed a motion to set or waive the appeal bond.²

The conditions that attach to the appeal bond are governed by G.L. c. 239, § 5.

Under the provisions of G.L. c. 239, § 5, the defendant is required to give bond in such reasonable amount as the Court orders. The Court shall waive the appeal bond only if it is satisfied that the defendant is indigent and that he has a defense or issue to present on appeal that is not frivolous. See *Tamber v. Desrochers*, 45 Mass. App. Ct. 234 (1998).³

¹ The findings of fact, rulings of law and order granting the plaintiffs' motion for summary judgment, Winik, J., was entered on July 12, 2024.

² Defendant Emily Gennari has vacated the premises and did not file a *Notice of Appeal*.

³ The hurdle that the defendant must clear, as illuminated by the Appeals Court, is not particularly daunting. "Defenses are frivolous if there is no reasonable expectation of proving the defenses alleged [citation omitted]. The idea of frivolousness is something beyond simply lacking merit; it imports futility, not 'a prayer of a chance,' [citation

I am satisfied that Kie meets the standards of indigency; however, he has not identified a defense or issue to present on appeal that is not frivolous.⁴ Accordingly, Kie's obligation to post a bond shall not be waived.

The amount of the appeal bond shall be set at **\$3,966.18** (judgment amount plus July 2024 rent).

Under G.L. c. 239, § 5A the court must establish the fair rental value of the premises, and as a condition of maintaining the appeal the court must require that the defendant pay all intervening rent in an amount set by the court. Kie would be obligated to pay for his ongoing use and occupancy of the premises even if his obligation to post an appeal bond had been waived.

For purposes of setting the use and occupancy amount pursuant to G.L. c. 239, § 5 (and considering that unlike a normal contractual tenancy, judgment for possession has entered against the defendants, and the defendants' continued right to possession is uncertain and is linked to this appeal) I have taken into consideration a number of factors including that (1) Kie has not made any payments to the plaintiff for his continued use and occupancy of the property from April to July 2024, (2) that the property was determined to be in compliance with the state sanitary code as of October 2023 (when the receivership ended), (3) the plaintiff is required to pay real estate taxes, water, sewer assessments and maintenance expenses, (4) Kie is gainfully employed, and (5) the absence of meritorious appellate issues. See generally *Davis v. Comerford*, 483 Mass. 164, 179, 180-182 (2019). After considering these factors, I find that the fair rental value of the property (now and during the pendency of the appeal) shall be set at **\$900.00 per month** (with Kie responsible for utilities, including electricity and oil/gas for heat and hot water). Kie must pay this amount to the plaintiff for his continued use and occupancy of the apartment by August 31, 2024 (for the month of August) and by the last day of each month thereafter during the pendency of the appeal.

Therefore, in accordance with the requirements of G.L. c. 239, § 5, it is **ORDERED** that defendants, as a condition of entering and maintaining their appeal, shall:

1. Post an appeal bond with the Clerk of the Housing Court in the amount of **\$3,966.18**. Defendant Thomas Kie shall post this bond by August 30, 2024 in

omitted], or – as another formulation of the same idea – an egregious lack of merit. [citations omitted].” *Tamber v. Desrochers*, at 237.

⁴ Kie stated as his appellate issues that he needed time to move and that performed work at the premises for which he was not compensated.

the form of a personal check, money order or bank check payable to the **Commonwealth of Massachusetts**.

2. Defendant Thomas Kie must pay **\$900.00** to the plaintiff for his continued use and occupancy of the apartment by August 31, 2024 (for the month of August) and by the last day of each month thereafter during the pendency of the appeal. Defendant Thomas Kie shall continue to be responsible for the payment of his utility bills. Defendant Thomas Kie must make each monthly payment in the form of a personal check, money order or bank check payable to **John Lord**, and delivered vial first class mail to Attorney Peter J. Sturgeon **54 North Street, Suite 301, Pittsfield, MA 01201**. The plaintiff may use the funds to pay for expenses directly related to the property (such as mortgage, real estate taxes, insurance, water and sewer charges and maintenance expenses).
3. If Defendant Thomas Kie fails to post the required bond, or during the pendency of this appeal he fails to make the required monthly payments for his use and occupancy of the unit as is set forth in this order, then upon motion the plaintiff may request that Defendant Thomas Kie's appeal be dismissed, and that execution for possession issue.

SO ORDERED this 19th day of August 2024.

Jeffrey M. Winik

JEFFREY M. WINIK
Associate Justice (Recall Appt.)

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4632**

M & S BLUEBIRD, INC.,

Plaintiff,

v.

CHRISTOPHER PATTEN,

Defendant.

ORDER

After hearing on August 8, 2024, the following order shall enter:

1. The defendant shall sign his responses to discovery under the pains and penalties of perjury.
2. The plaintiff's motion to compel the defendant to better and further respond to the plaintiff's request for production of documents is allowed. The Response: "The information sought is known by the requesting party or is available to both parties equally" is insufficient and the defendant shall re-respond to the request for production of documents.

3. To the extent that the defendant has provided photographs to the plaintiff, he must clarify to for which documentary request each photograph is provided.
4. The defendant shall have thirty days from the date of his order to comply with paragraphs #1, #2, and #3 above.
5. The plaintiff shall have thirty days from the date of this order to respond to the defendant's discovery demand.
6. The plaintiff has already been authorized by the Court at an earlier hearing to add several other defendants who it believes are occupying the premises.
The plaintiff shall have those additional defendants thirty days from the date of this order to have them served by constable or sheriff with a summons and complaint.
7. This matter shall be scheduled for a Case Management Conference on **October 24, 2024, at 2:00 p.m.**

So entered this 19th day of August, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

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

NORTHAMPTON HOUSING AUTHORITY,

Plaintiff

v.

LINDA KIELSON,

Defendant

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

This summary process action brought for material lease violations came before the Court by Zoom for a bench trial on July 23, 2024 and August 6, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented.¹ The residential premises in question is located at 56 Maple Street, #108, Florence, Massachusetts (the "Premises"). At the time of trial, Defendant was residing at a skilled nursing facility (Heritage Hall West in Agawam, Massachusetts).

Plaintiff seeks to evict Ms. Kielson for serious lease violations; namely, her failure to recertify her income on an annual basis as required by her lease, failing to pay for electricity as required by her lease, and failing to physically occupy the

¹ Prior to trial, Ms. Kielson sought the appointment of counsel. The Court cannot appoint counsel in a civil case. She also asked for the appointment of a guardian ad litem, but the Court determined that she is competent and fully understands the legal process and the consequences of eviction. The Court granted numerous accommodations, including limiting trial to one hour per day by Zoom and starting at Noon. At the outset of trial, Ms. Kielson said that Community Legal Aid agreed to represent her, but no appearance was filed and given the number of times this case has come before the Court, including on July 12, 2024 at which time CLA did not appear, the Court declined to further delay trial because it would have been unduly prejudicial to Plaintiff.

Premises as her principal place of residence for nine months in a twelve-month period of time.²

Plaintiff served Ms. Kielson with a 30-day notice to quit dated November 14, 2023.³ This case was filed on January 18, 2024. Default judgment entered on April 23, 2024, and a levy was scheduled for July 9, 2024. On June 11, 2024, the Court recalled the execution and vacated the default judgment after determining that Ms. Kielson did not get proper notice of the trial date. After the first day of trial on July 23, 2024, Ms. Kielson filed a motion to allow late answer, which was denied as untimely. Despite not allowing the formal answer, the Court permitted her to raise discrimination-based defenses at trial.⁴

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

Ms. Kielson moved into a skilled nursing facility in Agawam, Massachusetts on or about January 5, 2022 and has resided there ever since. In October 2021, she notified Plaintiff that she would be leaving for an “extended hospital stay” and that she had no idea how long she would be gone or when she would return. Ms. Kielson contends that she involuntarily left the Premises due to illness, which constitutes a

² Specifically, the lease requires her to “physically occupy the leased premises as [her] principal place of residence for at least nine (9) months during any twelve (12) month period unless good cause is shown for a longer absence such as involuntary absence due to illness....”

³ Ms. Kielson does not contest receipt of the notice to quit.

⁴ On several occasions, Ms. Kielson asked the Court to incorporate her complaint from a different case between the parties (*Kielson v Northampton Housing Authority*, Docket No. 18-CV-0328), as she said it would explain her defenses in this case. One of the claims in the civil case involved conditions of disrepair, which cannot be asserted as defenses to a cause-based eviction case. See G.L. c. 239, § 8A. The Court permitted her to use the discrimination claims asserted in the civil case as defenses in this eviction case.

permissible absence under the lease terms. She also argues that the Premises are unsafe and unhealthy, thereby further justifying her continued absence.⁵

The Court finds that Ms. Kielson has not satisfied the “good cause” standard for her absence from the unit given that she has not lived there since early 2022. Moreover, she testified that she does not wish to return to the Premises and does not intend to do so unless all other options are exhausted. She further testified that she would not be able to reside in the Premises without a significant amount of daily personal care. She is trying to get transferred to a skilled nursing facility in the Eastern part of Massachusetts to be closer to her medical team. In light of the foregoing, the Court finds that Plaintiff has demonstrated by a preponderance of the evidence that Ms. Kielson’s continuing absence from the Premises for over thirty months is a substantial violation of a material provision of her lease.

With respect to Plaintiff’s allegation that Ms. Kielson’s failure to comply with the income recertification requirement in her lease is a separate lease violation, the Court agrees. As a tenant in a public housing project, Ms. Kielson is required to annually recertify her income, assets and expenses for purposes of ensuring her continued eligibility for subsidized housing and to set her rent. The last time she completed an annual recertification was 2017, although she provided paperwork for her 2018 recertification. Despite Ms. Kielson not having completed the recertification paperwork for multiple years, Plaintiff has not increased the rent from the 2017 rate of \$399.00 to market rates. The last time Ms. Kielson had a zero balance as in July

⁵ Based on the allegations in her complaint in the civil case, the Court infers that the bases for her claim that the Premises are unsafe and unhealthy are intermittent interruptions in hot water from 2015 to 2018 and electrical problems in 2017. She did not present evidence of these issues in this case.

2018, and other than one payment of \$200.00 in September 2018, she has not made a payment in approximately five years. The current balance of arrears is \$28,528.00 through July 2024.⁶

Ms. Kielson argues that she should not be held responsible for the failure to recertify. She testified that when she dropped off paperwork in June 2018 she was told that someone would be in contact if they needed anything else from her. Because no one contacted her, she contends that no further recertifications were due until the 2018 process was completed. This argument is disingenuous. Whether or not her 2018 recertification was finalized, Ms. Kielson has made no effort to recertify for over five years and has not responded to notices asking her to do so for at least the past three years. The Court finds her failure to comply with recertification requirements to be a material lease violation.⁷

The third lease violation alleged by Plaintiff involves Ms. Kielson's failure to pay for the electricity service to her apartment, which is her obligation pursuant to the lease. Ms. Kielson admits that she stopped paying for electricity because she was no longer living there. She did not know that the electricity service to the Premises was shut off in or about May 2023 for lack of payment. She claimed that she can cure this violation by paying the balance owed, but as of the date of trial, no such

⁶ In response to Ms. Kielson's complaint in the civil case, Plaintiff filed a counterclaim for unpaid rent. Because the civil case has not been resolved, the Court will not address any claim for unpaid rent in this case and will instead reserve the rent claim to the civil case.

⁷ The Court notes that, despite her failure to recertify, Plaintiff did not raise her rent but instead has kept it at \$399.00, the amount last agreed-upon. In light of this fact, Ms. Kielson has not demonstrated that she has suffered financial consequences for her failure to comply with the recertification requirement.

payment has been made. Accordingly, the Court finds that her failure to maintain electricity at the Premises is a material lease violation.⁸

To the extent Ms. Kielson seeks equitable relief to allow her to preserve her tenancy in case she might need it again in the future, the request is denied. In considering a request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Although Ms. Kielson she might suffer significant harm if she is discharged from her current facility without a plan to move to a different facility, that harm must be viewed in light of the fact that she has not succeeded on the legal merits of her defenses. It must also be weighed against the harm to the public interest by keeping vacant an affordable rental unit that could be used by another individual or family during an extremely tight rental housing market. Given the findings herein, the balancing of the equities favors Plaintiff.

⁸ Even if Ms. Kielson were to restore electricity now, it would not alter the Court's finding that she is in substantial breach of the lease provisions requiring regular occupancy and recertification.

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

1. Judgment shall enter in favor of Plaintiff for possession only, plus court costs.
2. Plaintiff may apply for issuance of the execution ten days after the date that judgment enters.

SO ORDERED.

DATE: August 19, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1652

VICTOR and ANA RAMOS,

Plaintiff,

v.

SHANNON MAYNARD,

Defendant.

ORDER

This matter came before the court for trial on August 14, 2024, at which the plaintiff appeared through counsel and the defendant appeared self-represented. For the reasons stated below, the trial was continued and the following order entered:

1. At the time the Court was reviewing the Pretrial Stipulation, the tenant disputed the first aspect of the stipulation regarding whether it was a single-family house or not. The tenant alleged that there are rooms for rent in the basement but that she is paying for the gas for the hot water and heat for her portion of the house as well as the downstairs tenants.

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2. Though this is a for-fault eviction, one of the landlord's claims is chronic late rent payments. Because the tenant has a colorable claim that her rent may have not been paid timely is related to her allegedly having to pay higher gas bills due to cross-metering, the tenant was given an opportunity to file an Answer.
3. The tenant filed and provided a copy of her Answer to Attorney Wilson and the case has been scheduled for trial on September 4, 2024, at 9:00 a.m.

So entered this 19th day of August, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1850

BAYVIEW APARTMENTS, LLC,

Plaintiff

v.

MIA THOMPSON,

Defendant

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

This summary process case came before the court for a bench trial on July 22, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. The residential property in question is a three-family owner-occupied house located at 24 Dover Street, Apt. 4L, Springfield, Massachusetts (the “Premises”).

The parties stipulated to Plaintiff’s prima facie case for possession. Defendant acknowledges that she received the notice to quit, that monthly rent is \$900.00 and that \$8,100.00 is unpaid as of the date of trial.

Defendant filed an answer asserting that she was withholding rent due to bad living conditions.¹ Trial was originally scheduled for July 2, 2024; on that date, Defendant’s motion to continue was allowed conditioned upon Defendant providing to Plaintiff’s counsel copies of all photographs and documents that she planned to introduce at trial by July 15, 2024. She did not comply with this requirement.

¹ The answer was filed late but Plaintiff did not oppose it being accepted by the Court.

Therefore, the Court disallows any defenses or counterclaims based on the alleged defective conditions.²

In light of the order precluding Defendant from raising conditions-based defenses, Defendant has no legal defenses to Plaintiff's prima facie case for possession and unpaid rent.³ Accordingly, the following order shall enter:

1. Judgment shall enter for Plaintiff for possession and damages in the amount of \$8,100.00, plus court costs.
2. Execution shall issue by written application ten days after the date that judgment enters.

SO ORDERED.
August 20, 2024

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

cc: Court Reporter

² Defendant may bring affirmative claims for damages as a result of the alleged bad conditions in a separate action.

³ Defendant does not have a pending application for rental assistance. Even if she files an application, she has only \$1,650.00 available given previous assistance received in the past 12 months.

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

GMC PROPERTY MANAGEMENT LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP01713

**VINCENT E. GOVINE &
VINCENT J. GOVINE, JR., ET AL.,**

Defendant.

ORDER

This matter came before the court on August 20, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for August 21, 2024 at 9:00 a.m. The plaintiff appeared with the property manager. Defendant Vincent J. Govine, Jr. appeared. His father, defendant Vincent E. Govine, did not appear. Both defendants are self-represented.

This is a no fault eviction case filed on April 13, 2023 in which the plaintiff seeks possession of the subject rental premises. On June 8, 2023 the parties entered into an Agreement whereby the defendants agreed to move by December 31, 2023 and to pay the use and occupancy (\$950) each month until they moved. At the time there was an outstanding arrearage of \$3,325 through June 2023. The defendants did not move as they agreed and the plaintiff filed a motion to enforce the Agreement and enter judgment. A judge of this court allowed the motion on February 28, 2024. Judgment entered for possession and \$2,850 with costs and execution issued. The defendants filed a motion on April 11, 2024 seeking to stop the move-out on the grounds that they did not have any place to go. After hearing on May 9, 2024, the judge issued an order staying the execution through June 30, 2024. The order included the provision that if the defendants sought any further stay, they would have to document their efforts to find alternative housing and that any additional stay was conditioned on payment of the use and occupancy.

Because the original execution would expire by its own terms before the court-ordered stay of the execution expired, the court ordered that the plaintiff could request a new execution after July 1, 2024 if the defendants had not moved by then. When the defendants did not move out by June 30, 2024 the plaintiff requested a new execution which issued on July 3, 2024. The plaintiff then had a constable serve the defendants with a forty-eight hour notice that the execution would be used to move them out on August 21, 2024 at 9:00 a.m.

Vincent J. Govine, Jr. filed a second motion to stop the move-out, again on the grounds that they needed more time to move. He reported that they had obtained a new apartment which would be available next weekend. However, they had not paid first month rent or any deposit for the new apartment nor had they signed any rental agreement for the new apartment. Mr. Govine reported that he had filled out the application for the apartment.

Most importantly, Mr. Govine did not know if his father had paid the rent/use and occupancy as required by the May 9 order if there was to be any additional stay of the execution. The plaintiff reported that only partial payments had been made in May, June and July. Nothing was paid in August. If the move were stopped, the cancellation fee would be \$750. Mr. Govine reported that he did not have any money to pay at this time.

The court finds that the defendants are not in compliance with the court's condition for granting any further stay beyond the fourteen months already granted to the defendants by agreement with the plaintiff or by order of the court. The court finds no grounds to stop the move-out pursuant to either G.L. c. 239 §9 or G.L. c. 239 §10. G.L. c. 239 §15 is not applicable because this eviction is not based on nonpayment of rent and in any event there is no RAFT application pending.

Order

As stated at the hearing, the defendant's motion is **DENIED**. The plaintiff was authorized to proceed with the move-out as scheduled.

August 20, 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-5190

GMC PROPERTY MANAGEMENT, LLC,

Plaintiff,

v.

CARMEN RIVERA,

Defendant.

ORDER

After hearing on August 16, 2024, on the tenant's motion to stop a physical eviction scheduled for August 19, 2024, at which the landlord appeared through counsel on Zoom and the tenant appeared self-represented (and also at which Becki Craig of the Tenancy Preservation Program (TPP) joined), the following order shall enter:

1. After consultation with a representative from Way Finders, Inc. by Zoom regarding RAFT, it appears that if the tenant re-applies to RAFT (with help from TPP as noted below), she may be eligible for six months' rent plus all costs including two cancelled physical evictions.

2. During the hearing, the Court became very concerned that the tenant's disabilities [REDACTED] [REDACTED] have prevented her from successfully navigating her housing situation and RAFT applications.
3. The tenant was referred to TPP during the hearing and she and TPP met briefly, directly after the hearing. The tenant shall cooperate with TPP's efforts to assist with RAFT and obtaining a new State I.D. and with other recommendations.
4. Based on the above, the physical eviction currently scheduled for August 19, 2024, is cancelled.
5. The tenant shall also apply forthwith (with TPP's assistance) for RAFT.
6. The tenant shall pay her rent for August 2024 today at the landlord's office and for September 2024 in a timely fashion.
7. The tenant shall also pay an extra \$10 per month beginning in September 2024. This extra payment should be viewed as a "repayment plan" for RAFT purposes.
8. This matter shall be scheduled for Review on **September 27, 2024, at 2:00 p.m.**

So entered this 20th day of August, 2024.


Robert Fields, Associate Justice

Cc: Becki Craig, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3642

PALPUM RAW, LLC,

Plaintiff,

v.

**GARY YARD, INDIRA YARD, INGLYANA
YARD, INGRIM YARD, and BANK OF NEW
YORK MELLON**

Defendants.

ORDER

After conducting a Case Management Conference on June 27, 2024, at which the plaintiff appeared through counsel, the defendants Indira, Ingyana and Ingrim Yard appeared through counsel, Gary Yard appeared self-represented, and Bank of New York Mellon appeared through counsel, the following order shall enter:

1. The plaintiffs and the defendant occupants of the subject premises shall coordinate an inspection by the West Springfield Fire Department for a smoke

detector certification. A representative from Palpum Raw, LLC, may be present at the time of the fire department inspection.

2. The Bank of New York Mellon ("Bank") shall have until August 30, 2024 (Sixty days from the hearing) to propound discovery.
3. Those parties propounded on by the Bank shall have twenty (20) days from receipt of said discovery demand to respond.
4. Any other party may propound discovery upon the Bank by August 30, 2024 and the Bank shall have twenty (20) days after receipt of a discovery demand to respond.
5. Indira, Inglyana, and Ingram Yard's oral motion to take three depositions of Ms. Jody DeGio-Kamandria (Affiant on the Affidavit of Sale), Bank of New York Mellon in its Trustee capacity pursuant to Rule 30(b)(6), and Palpum Raw, LLC.
6. Said depositions shall be taken within thirty (30) days of the close of written discovery.
7. The parties shall file and serve motions for Summary Judgment by December 6, 2024. Opposition to said motion(s) shall be filed and served by December 20, 2024. A hearing on Summary Judgment shall be scheduled for January 6, 2025, at 2:00 p.m.
8. A Joint Pre-trial Memorandum shall be filed by no later than February 10, 2025, along with any motions *in limine*. The joint pre-trial memorandum shall contain the following information:
9. Agreed upon issues of fact in a form suitable for the record.

18. Any request for the services of an interpreter at trial.
19. As an attachment, for each party represented by counsel, a copy of a completed Uniform Counsel Certification for Civil Cases in compliance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolutions (SJC Rule 1:18).
20. A joint proposed description of the case for the jury venire.
21. Proposed jury instructions.
22. Proposed jury verdict form.
23. PLEASE NOTE: THE PRETRIAL MEMORANDUM IS NOT A SUBSTITUTE FOR OR AN ALTERNATIVE TO DISCOVERY. ALL PARTIES ARE BOUND BY DISCOVERY RULES AND DEADLINES. DEFECTS OR OMISSIONS FROM DISCOVERY MAY NOT BE CURED BY INCLUDING INFORMATION IN THE PRETRIAL MEMORANDUM.
24. If the joint pre-trial memorandum is not filed by the date specified above, the case may be removed from the trial list by either the Clerk-Magistrate of Assistant Clerk-Magistrate. In addition, if any party and/or attorney fails to participate in good faith and in a timely manner in preparing the memorandum, the court may dismiss the action with prejudice, may accept the memorandum from the other party as establishing the facts and/or law of the case, or may impose sanctions upon that party and/or its attorney as provided for failure to obey discovery orders pursuant to Mass. R. Civ. P. 37(b).

10. Contested issues of fact and the positions of the parties on those issues.
11. Agreed upon issues of law.
12. Contested issues of law and the positions of the parties on those issues.
13. Exhibits that the parties have stipulated may be introduced at trial (Those exhibits are to be marked with consecutive numbers).
14. Exhibits upon the admissibility of which the parties cannot agree and the reasons therefore (Those exhibits are to be marked for identification with consecutive letters).
15. The name and address of each witness to be called by each party, a brief statement of the nature and subject matter of his/her testimony, and an estimate of the amount of trial time he/she will consume.
16. The name, address, and qualifications of each expert witness the parties intend to call, together with the subject matter on which the expert is expected to testify, the substance of all facts and opinions to which the expert is expected to testify, a detailed summary of the grounds for each expert's opinion, and an estimate of the amount of trial time he/she will consume.
17. PLEASE NOTE THAT THE ESTIMATES OF TIME REQUIRED FOR EACH WITNESS IS AN IMPORTANT COMPONENT IN THE DETERMINATION OF TRIAL TIME. THIS INFORMATION WILL BE REVIEWED WITH THE TRIAL JUDGE AT THE FINAL PRETRIAL CONFERENCE, AND IF THE TRIAL JUDGE DECIDES THAT THE TIME HAS NOT BEEN ESTIMATED ACCURATELY, THE TRIAL DATE SCHEDULED BELOW MAY BE SUMMARILY CANCELED AND THE TRIAL RESCHEDULED.

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

26. A Final Pre-trial Conference shall be scheduled for February 12, 2025, at 2:00 p.m. live and in-person at the Springfield Session.

27. A five-day jury trial has been scheduled with Judge Robert Fields on April 7 through 11, 2025 beginning at 9:00 a.m. each day.

So entered this 20th 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-980

LINDA and DAVID PARRIS,

Plaintiffs,

v.

GENEVA DIAZ,

Defendant.

ORDER

This matter came before the court on July 25, 2024, for trial, at which the landlords appeared through counsel and the tenant appeared self-represented. After consideration of the evidence admitted therein, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiffs, Linda and David Parris (hereinafter, "Landlords") own a two-family dwelling located at 102 Mooreland Street, Springfield, Massachusetts. The defendant, Geneva Diaz (hereinafter, "Tenant"), has

resided in the second-floor unit (hereinafter, "Premises") since December 2020.

2. On or about January 29, 2023, the landlords had the tenant served with a non-payment of rent termination notice (hereinafter, "NTQ") and thereafter commenced this eviction action. The tenant has filed an Answer with Counterclaims and Defenses which allege claims that the landlords retaliated against her for commencing a case with the court against the landlord, for harassed her, and for failed to remedy conditions of disrepair. Additionally, the matter of *Geneva Diaz v. David Parris*, 24-CV-39 (which is an action commenced by the tenant against the landlord shall hereby be consolidated with this summer process action).
3. **The Landlords' Claim for Use and Occupancy and Possession:** The monthly rent is currently \$1,235 (since December 2023). The landlords met their burden of proof that **\$8,645** is outstanding in use and occupancy through July 2024---the tenant not having made a payment since her last payment in December 2023.
4. **The Tenant's Retaliation Claim:** On or about January 19, 2024, the tenant filed a Civil Action at the Housing Court (24-CV-39). Her complaint alleged landlord harassment including his (David Parris) moving the landlords' Ring doorbell and camera over towards her front door instead of being at the landlords' front door, communicating in an aggressive and/or disrespectful manner (again, David Parris) towards the tenant, her family, and her babysitter, and entering her apartment without her permission.

5. The same day that the tenant commenced her court case, she also contacted the City's Code Enforcement office.
6. After that Civil Action was commenced and directly after the first hearing in that matter on January 25, 2024, the landlord served the tenant with a NTQ for non-payment rent, put a sign on the porch instructing delivery persons to not leave packages for the tenant on the porch but rather on the second floor porch (even though one cannot access the second floor porch without entering the tenant's apartment. The landlords also placed a "For Rent" sign for the tenant's apartment. Lastly, the landlord installed a camera on the porch railing in a fashion that it pointed directly towards the tenant's front door.
7. Reprisal constitutes a defense, G.L. c. 239, s.2A, and counterclaim, G.L. c. 186, s.18, to a landlord's eviction case. The sequence and timing of events which occurred between the parties gives rise to a presumption that the landlords' action was in reprisal against the tenant for their protected activity of commencing a court action as described above, under G.L. c. 239, s.2A, which provides in pertinent part as follows: "The commencement of such [summary process] action against a tenant, or the sending of a notice to quit upon which the summary process action based.. within six months after the tenant has ...exercised such rights.. shall create a rebuttable presumption that such summary process is a reprisal..."
8. The presumption of reprisal may be rebutted only by "clear and convincing" evidence that the landlord 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," G.L. c. 239, s.2A and G.L. c. 186, s.18, irrespective of the tenants' protected activities. The court finds and so rules that the service of the notice to quit stemmed from the tenant's having commenced the court action. The court does not credit the landlord's testimony that he terminated the tenancylate in the month notice

9. The landlords have not rebutted the presumption of reprisal and are liable for between one and three months' rent. The court shall exercise its discretion to award two months and shall award the tenant **\$2,470** (\$1,235 X 2) for a claim of retaliation.

10. The Tenant's Claims for Breach of the Covenant of Quiet Enjoyment:

The kitchen in the window was always nailed shut since the day the tenant moved in. She complained about it but it was not repaired until June 2024, after Code Enforcement cited it. The bathtub was also in disrepair, constantly backing up from the drain, for the past year and the landlord failed to make necessary repairs until after it was cited by Code Enforcement. The bathroom sink was also not functioning properly and would cause the bathroom to fill with water through its drain. The landlord also did not make this repair until March 2024.

11. The worst condition by far is the extensive rodent infestation throughout the premises. The tenant testified credibly that the infestation has been a very serious problem for about one year before the landlord finally hired a licensed exterminator to treat the premises. The tenant put many photographs

showing mouse droppings and eaten food containers into evidence. The tenant complained to the landlords but other than having the tenant's kitchen treated the landlord informed the tenant should purchase mouse traps. Only after Code Enforcement involvement did the landlord begin to have all the rooms treated by a licensed exterminator¹.

12. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of her acts 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). In this instance, the Court finds the landlords' acts and omissions regarding necessary repairs and extermination, as well as their behaviors described in the "Retaliation" section above, were knowing and inappropriate and rule that the landlord breached the tenant's covenant of quiet enjoyment by failing to address the conditions of disrepair discussed above for a protracted period of time, by entering her apartment and taking photographs of her dog's feces², and by acting in the manner described in the "Retaliation" section above.

¹ The Court does not find the landlord, David Parris, credible when he testified that the tenant did not inform him of conditions of disrepair during the tenancy.

² The Court does not find the landlord, David Parris, credible that there was a proper basis for his entering the tenant's unit when he took photographs of dog feces.

13. Having found a breach of the covenant of quiet enjoyment, the Court hereby awards the tenant three months' rent in accordance with G.L. c.186, s.14, totaling **\$3,705**.

14. **Conclusion and Order:** Based on the foregoing and in pursuant to G.L. c.239, s.8A, the tenant has ten (10) days from the date of this Order noted below to deposit \$ 2,834.63 with the Clerk's Office of the Court. This represents the award to the landlords for unpaid rent totaling \$8,645 MINUS the awards to the tenant totaling \$6,175 (\$2,470) plus court costs of \$ 227.30 and interest in the amount of \$ 137.33. If the tenant makes this payment, judgment shall enter for the tenant for possession and the funds deposited with the Court shall be dispersed to the landlords (through their attorney). If the tenant fails to make the payment to the court, judgment shall enter for the landlords for possession plus \$2,470 plus court costs and interest.

So entered this 20th day of August, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

**RELATED MANAGEMENT COMPANY, L.P.,
AS LESSOR, AND CHESTNUT PARK
PRESERVATION L.P., D/B/A SKYVIEW
DOWNTOWN, AS OWNER,**

Plaintiff,

-v.-

DOCKET NO. 22SP04940

TIARA CRUZ,

Defendant.

ORDER

This matter came before the court on August 20, 2024 for a hearing on the plaintiff's motion to issue the execution on an amended judgment. The plaintiff appeared through their attorney. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to discuss RAFT.

This eviction case is based on nonpayment of the tenant's share of the rent. The tenancy is subsidized through the project-based Section 8 program. The tenant's share of the rent has changed several times based on changes in her household income, but since April 2024 it has been \$483.

A default judgment entered on April 3, 2023 for possession and unpaid rent/use and occupancy of \$3,579 with costs. The defendant's motion to vacate the default judgment was denied by a judge of this court after hearing. However, the judge stayed the execution pending assistance from RAFT. By ordered dated June 7, 2023, the judge extended the stay of the execution on condition that the defendant pay \$280 toward the arrearage by the 20th of each month beginning in June 2023 and her monthly use and occupancy by the fifth of each month beginning in July 2023. The defendant was also ordered to sign an interim recertification to determine the correct amount of her share of the rent/use and occupancy.

The plaintiff brought this motion on the grounds that the last payment received from or on behalf of the defendant was on February 29, 2024. The arrearage is now \$3,500 through August 2024 with costs.

Ms. Pena of Wayfinders confirmed that there was no payment of RAFT financial assistance on behalf of the defendant after the June 7, 2023 order. Therefore, if the defendant can demonstrate hardship/good cause for failing to pay her portion of the subsidized rent/use and occupancy she would be eligible for up to six months of her share of the rent plus costs. However, even if RAFT pays the maximum amount, the defendant will still have a balance on the account.

Ms. Cruz reported that she had other expenses, including the transmission on her car, which caused her to not pay the rent/use and occupancy as ordered by the court. She applied for a loan from ESUSU, but was denied. Today, she brought to court a money order for \$1,444 to pay toward the arrearage. The plaintiff's attorney asked her to bring the money order to the management office, which she agreed to do immediately after court. She also agreed to apply for RAFT financial assistance.

As discussed at the hearing, the court does not act on the plaintiff's motion at this time.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion to issue the execution on an amended judgment is continued for further hearing on **September 19, 2024 at 9:00 a.m.**
 - a. Any judge of this court may hear the continued motion.
2. The defendant will pay \$1,444 in a money order to the management office on August 20, 2024 to be credited toward the arrearage.
3. The defendant will apply for RAFT financial assistance immediately.
 - a. Both parties will submit all required documentation to Wayfinders promptly.
 - b. The plaintiff will include the costs on the ledger submitted to Wayfinders.
4. The defendant will pay her September use and occupancy by September 5, 2024.
5. The defendant will report all changes in her household income to the management and complete all interim recertifications as required.

August 20, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

RELATED MANAGEMENT COMPANY, L.P.,
AS LESSOR, AND CHESTNUT PARK
PRESERVATION L.P., D/B/A SKYVIEW
DOWNTOWN, AS OWNER,

Plaintiff,

-v.-

DOCKET NO. 22SP02882

DALERIE FRED-LOPEZ,

Defendant.

ORDER

This matter came before the court on August 20, 2024 for a hearing on the plaintiff's motion to issue the execution on an amended judgment. The plaintiff appeared through their attorney. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to discuss RAFT.

This eviction case is based on nonpayment of the tenant's share of the rent. The tenancy is subsidized through the project-based Section 8 program. Since July 1, the tenant's share of the rent has been \$385.

A default judgment entered on November 4, 2022 for possession and unpaid rent/use and occupancy of \$890 with costs, but the parties entered into an Agreement for Judgment on December 15, 2022. They agreed to remove the default judgment. The parties agreed that judgment would enter for the plaintiff for \$330 in unpaid rent/use and occupancy through December 2022 with costs of \$182.76. The defendant agreed to pay her use and occupancy (then \$220) and \$80 toward the arrearage by the fifth of each month beginning in January 2023. When the defendant reached a zero balance, the case would be dismissed. If the defendant did not comply, the plaintiff could file a motion to issue the execution.

The plaintiff brought this motion on the grounds that the defendant made only partial payments since signing the Agreement for Judgment and that since November 2023 the defendant made only two

payments, each of which was less than the amount she agreed to pay. The arrearage is now \$2,629.42 through August 2024 with \$182.76 costs.

Ms. Pena of Wayfinders confirmed that the defendant's April application for RAFT was denied because the defendant did not demonstrate hardship/good cause for failing to pay her portion of the subsidized rent/use and occupancy. The defendant reapplied on August 13, 2024 and said that she had more documentation to demonstrate a hardship. The landlord also needs to submit its documentation, but Wayfinders did not have an email address for the landlord. One was provided at the hearing. If the defendant is eligible for RAFT, Wayfinders could pay up to six months of her share of the rent plus costs. However, even if RAFT pays the maximum amount, the defendant will still have a balance on the account.

The defendant agreed to go to Wayfinders for help to upload her documents. She reported that she is now working full time and will be able to pay her rent/use and occupancy going forward. She will receive her next paycheck on August 23, 2024.

As discussed at the hearing, the court does not act on the plaintiff's motion at this time.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion to issue the execution on an amended judgment is continued for further hearing on **September 19, 2024 at 9:00 a.m.**
 - a. Any judge of this court may hear the continued motion.
2. The defendant will pay \$265 on or before August 26, 2024. This will complete the August use and occupancy.
3. The defendant will pay the September use and occupancy (now \$385) when she receives her next paycheck after August 23, 2024.
4. The defendant will apply for RAFT financial assistance immediately.
 - a. Both parties will submit all required documentation to Wayfinders promptly.
 - b. The plaintiff will include the costs on the ledger submitted to Wayfinders.
5. The defendant will report all changes in her household income to the management and complete all interim recertifications as required.

August 20, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

MARCO VIEIRA,

Plaintiff,

-v.-

DOCKET NO. 24SP00206

LIS LAVALLEY & MICHAEL MITCHELL,

Defendant.

ORDER

This matter came before the court on August 20, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for August 21, 2024 at 2:00 p.m. The plaintiff appeared through his attorney. Defendant Lis Lavalley appeared and is self-represented. Michael Mitchell did not appear. He is self-represented. Ms. Lavalley reported that he moved out of the apartment last week. Leonor Pena of Wayfinders appeared at the hearing to discuss RAFT.

This eviction case is based on nonpayment of rent. On March 14, 2024 the parties entered into an Agreement for Judgment, which both defendants signed. By its terms, the parties agreed that the defendants owed \$7,400 in unpaid rent/use and occupancy through March 2024 and \$299.52 costs. They further agreed that the defendants did not qualify for RAFT at the time because they had received \$9,300 last year. The defendants agreed to apply for RAFT by June 1 and to pay their rent/use and occupancy (\$1,100) each month in the meantime. They did neither. Ms. Lavalley testified that she forgot to apply for RAFT by June 1 because she has memory issues. There was no explanation for why Mr. Mitchell did not apply. Pursuant to the Agreement for Judgment, the plaintiff could file a motion for execution to issue if the defendants did not comply. The plaintiff filed such a motion. After a hearing on July 25, 2024 at which the defendants did not appear, a judge of this court allowed the motion. Execution issued on July 29,

2024 pursuant to the Agreement for Judgment. The plaintiff had a constable serve the defendants with a forty-eight hour notice that the execution would be used to move them out of the apartment on August 21, 2024 at 2:00 p.m.

Ms. Lavalley filed a motion to stop the move-out. She asks for an additional six, or three, months to remain in the apartment with her elderly mother. She and her mother are disabled. She said that she plans to apply for RAFT which could pay a maximum of \$7,000 toward the arrearage but only if she is able to make a realistic payment plan for the balance that would remain. The plaintiff reported that the defendants now owe \$10,300 through August with costs. If the move-out were stopped, the cancellation fee would be \$910. Ms. Lavalley is on a waiting list for a rental subsidy, but she does not know when she might receive assistance.

Ms. Pena of Wayfinders reported that Ms. Lavalley started an application for RAFT financial assistance today, but it is not pending. The defendant has no money to offer toward a realistic payment plan for the balance that would remain even if RAFT paid \$7,000 toward the arrearage on her behalf. She reported that she cannot afford even the ongoing rent without Mr. Mitchell's living there, although the plaintiff reports, and the record reflects, that the tenants paid very little rent over the last two years even when Mr. Mitchell was living there.

The court finds that there is no RAFT application pending at this time within the meaning of G.L. c. 239 §15. Even if the defendant completed her portion of the RAFT application, there is no realistic hope that it would be approved because the defendant cannot offer a payment plan for the substantial balance that would remain. She also reported that she has no money to offer at this time. The defendant is aware that in the alternative, she could apply for RAFT financial assistance to help her to pay for moving expenses for a new apartment. While the plaintiff is aware of the defendant's difficult circumstances at this time, he relies on the rents from the six-unit building to pay the mortgage.

Based on what the defendant presented in her motion and at the hearing, the court finds no grounds to stop the move-out. Because this case is based on nonpayment of rent and there is a substantial arrearage owed, she is not eligible for a stay pursuant to G.L. c. 239 §9. While the court is sympathetic to the defendant's difficult circumstances, they do not rise to the level of equitable grounds pursuant to G.L. c. 239 §10 in this nonpayment of rent case. G.L. c. 239 §15 does not require a stay because there is no RAFT application pending.

Order

After hearing, the defendant's motion is **DENIED**. The plaintiff may proceed with the move-out as scheduled.

August 20, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

**POAH COMMUNITIES, LLC, AS
LESSOR & EASTGATE PRESERVATION
ASSOCIATES, L.P. AS OWNER,**

Plaintiff,

-v.-

DOCKET NO. 23SP01048

OMAYRA BAEZ DIAZ,

Defendant.

ORDER

This matter came before the court on August 20, 2024 for a hearing on the plaintiff's motion to issue the execution on an amended judgment. The plaintiff appeared through their attorney. The defendant appeared and was self-represented.

This eviction case is based on nonpayment of the tenant's share of the rent. The tenancy is subsidized through the project-based Section 8 program. The tenant's share of the rent has been \$175 since June 1, 2024.

Since this case was filed on March 2, 2023, the parties have entered into a number of agreements. The most recent was an Agreement for Judgment dated February 14, 2024. By its terms relevant to this motion, the parties agreed that judgment would enter for possession and \$1,779.99 unpaid rent/use and occupancy through February 2024 and \$212.25 costs. The defendant agreed to apply for RAFT with the assistance of the Tenancy Preservation Program (TPP) and to pay her share of the use and occupancy by the fifth of each month and \$50 toward the arrearage by the fifteenth of each month, both beginning in March.

The defendant made the agreed-upon payments for March, April and May, although some were late. She did not pay anything in June or July. In August she paid only \$100. The arrearage is now \$2,252.23 through August with \$212.25 costs.

The defendant reported that she did not make the required payments starting in June because she works for the school system and does not receive income during the summer months. In June her adult daughter transferred money out of her account without her permission. However, she returns to work this month and she will receive her next paycheck on September 6.

There is no RAFT application. If the defendant can demonstrate hardship/good cause for failing to pay her portion of the subsidized rent/use and occupancy she would be eligible for up to six months of her share of the rent plus costs.

Orders

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

1. The plaintiff's motion to issue the execution on an amended judgment is continued for further hearing on **August 27, 2024 at 2:00 p.m.**
2. Before the hearing the Tenancy Preservation Program (TPP) is asked to consult with the defendant to help her file an application for RAFT financial assistance, including submission of documentation of hardship/good cause.
 - a. TPP is asked to be present at the August 27 hearing.
3. Both parties will submit all required documentation to Wayfinders promptly.
4. The plaintiff will include the costs on the ledger submitted to Wayfinders.
5. As agreed, the plaintiff will determine if the defendant is eligible for an interim recertification of her share of the rent/use and occupancy for the summer months of 2024.
6. At the August 27 hearing:
 - a. The defendant and TPP will report on the status of the defendant's RAFT application.
 - b. The court will determine the amount the defendant will pay once she receives her September 6 paycheck, which will include at least her September use and occupancy.

August 21, 2024

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

CC: TPP

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

**POAH COMMUNITIES, LLC, AS
LESSOR & EASTGATE PRESERVATION
ASSOCIATES, L.P. AS OWNER,**

Plaintiff,

-v.-

DOCKET NO. 24SP00539

MICHEL MALDONADO SOLIVAN,

Defendant.

ORDER

This matter came before the court on August 20, 2024 for a hearing on the plaintiff's motion for entry of judgment and issuance of the execution. The plaintiff appeared through their 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 share of the rent. The tenancy is subsidized through the project-based Section 8 program. The tenant's share of the rent is \$612.

The parties entered into an Agreement on April 30, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$1,716.74 in unpaid rent/use and occupancy through April 2024 and \$207.25 costs. The defendant agreed to pay her share of the use and occupancy and \$150 toward the arrearage by the fifth of each month beginning in May.

The defendant made the May payments with a small extra amount, but she did not pay anything in June or July. However, in August she paid \$1,924. This did not bring her completely into compliance with the agreed-upon payment plan. The arrearage is now \$1,450.74 through August with \$207.25 costs.

The defendant reported that she did not make the required payments in June and July because her child had an accident and was in rehab as well as because of her own pregnancy complications. She applied for RAFT financial assistance but was denied. Ms. Pena of Wayfinders reported that the last application for RAFT timed out in April because there was no payment plan submitted for the balance that would remain if RAFT were paid. The defendant did demonstrate hardship/good cause for failing to pay her share of the subsidized rent. Because this is a subsidized tenancy, RAFT can pay up to six months of the tenant's share of the rent plus costs. The parties must submit a payment plan for any balance.

The case was referred to the housing specialist after the hearing to negotiate a new payment plan.

Orders

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

1. The plaintiff's motion for entry of judgment and issuance of the execution is continued for further hearing in thirty days. The Clerk's Office is asked to schedule a hearing and send notice.
 - a. Any judge of this court may hear the continued motion hearing.
2. The defendant will reapply for RAFT financial assistance.
 - a. Both parties will submit all required documentation to Wayfinders promptly.
 - b. The plaintiff will include the costs on the ledger submitted to Wayfinders.
3. The parties will agree on a new payment plan for any balance which would still be owed after RAFT payment is received.
4. The defendant will pay the September use and occupancy when it becomes due.

August 21, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

RIVERSIDE PROPERTY MANAGEMENT,

Plaintiff,

-v.-

DOCKET NO. 24SP02015

AUSTIN GINMAN & JEREMY WHEAT,

Defendant.

ORDER

This matter came before the court on August 19, 2024 for a hearing on the plaintiff's motion to enter judgment and issue the execution. The plaintiff appeared through its attorney with manager Janice Labroad. Defendant Jeremy Wheat appeared and was self-represented. Defendant Austin Ginman did not appear and is self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

In this nonpayment of rent eviction case, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. The plaintiff and Mr. Wheat entered into an Agreement on June 17, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$4,850 in rent/use and occupancy through June 2024 and \$314.01 in costs. The defendant agreed to pay \$600 by June 28, 2024 as well as the use and occupancy (\$1,300) each month beginning in July by the fifth of each month. The defendant submitted an application to have a roommate. The landlord later approved the roommate so that he could move in on July 1, 2024, but he has not moved in to date and the plaintiff reported that Mr. Wheat did not sign the lease adding the roommate. In their Agreement, the parties agreed to provide all required documentation for the defendant's then pending application for RAFT financial assistance. When the arrearage reached zero the case would be dismissed. If the defendant did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff filed such a motion. The arrearage is now \$7,450 through August 2024 with \$314.01 costs. The defendant has filed three RAFT applications. At least one timed out because the defendant was missing ID information. Ms. Pena of Wayfinders reported that the most recent application was filed on August 17, 2024 and is awaiting documentation from the landlord. The correct email address for the plaintiff was confirmed on the record. If the application is completed, the defendant would be eligible for \$7,000 in RAFT financial assistance. This would leave a balance of \$450 through August.

Understandably, the landlord is concerned that Mr. Wheat will not be able to make his now-promised payments unless he has a roommate because the arrearage has grown substantially since the parties entered into the June 17 Agreement. The defendant reported that, although an earlier expected job fell through, he has now been hired for two part-time jobs. He anticipates that he will begin receiving paychecks and will be able to pay the \$450 balance, the \$314.01 costs and the \$1,300 September use and occupancy within two weeks. He does not know if his proposed roommate still plans to move into the apartment.

The court does not enter judgment at this time pursuant to G.L. c. 239 §15 because the defendant has a RAFT application pending. There is reason to believe that the result of this application will be different from the earlier ones.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion to enter judgment and issue the execution is continued for further hearing on **September 16, 2024 at 9:00 a.m.** This will give the parties the opportunity to complete the RAFT application process and for the defendant to resume making payments as he agreed.
 - a. Both parties will submit all required documentation to Wayfinders promptly.
2. The defendant will confirm whether his proposed roommate will be moving into the apartment and sharing the rent.
 - a. The defendant will notify the plaintiff's attorney of the status of his proposed roommate no later than September 5, 2024.
 - b. If the proposed roommate is going to move into the apartment, the defendant will execute the needed new lease.
3. Before the September 16, 2024 hearing the defendant will pay as he agreed to do:

- a. \$450 balance that will remain if RAFT pays \$7,000 on the defendant's behalf
- b. \$314.01 costs
- c. \$1,300 September use and occupancy.

August 21, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP01677

ANTHONY SMITH,

Defendant.

ORDER

This matter came before the court on August 26, 2024 for a continued hearing on the plaintiff's motion for entry of judgment and for the defendant's motion to continue. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. The Tenancy Preservation Program (TPP) supervisor joined the hearing.

The court summarized the chronology of this nonpayment of rent case in its July 8, 2024 order and incorporates it here.

At the last hearing in this case on August 5, 2024, the defendant offered to pay \$200 on August 5, 2024, \$142 on August 9, 2024, and \$200 on August 16, 2024. The court included those payments in its August 8 order. The defendant made the first \$200 payment, but failed to make the last two payments. The arrearage is now \$4,613 through August with \$199.25 in costs. The defendant reported that he could pay the \$342¹ on August 30, 2024 because he will receive a check on August 29.

The parties agree that the defendant was approved for \$1,827 in RAFT financial assistance. This leaves a significant balance owed, for which Mr. Smith will be responsible. He needs to propose a payment plan for the balance. The Housing Authority is skeptical that the

¹ \$342 is the defendant's share of the public housing monthly rent/use and occupancy.

defendant will adhere to a payment plan. Since this nonpayment of rent case was filed on April 10, 2023, there have been Agreements and orders with which the defendant has not complied. However, Mr. Smith reports that he has been approved for Unemployment Compensation benefits which may provide lump sum retroactive benefits. Unfortunately, he and the Tenancy Preservation Program clinician have not met, despite Agreements and court orders to do so dating back to June 22, 2023. The defendant was asked to meet with the TPP supervisor immediately after the hearing. If the defendant is found eligible for TPP, the clinician is asked to assist him to:

- Propose a realistic payment plan for the balance that would remain if \$1,827 were paid in RAFT financial assistance and submit it to the Housing Authority's attorney in time for the Housing Authority to review it and, if agreed, for the parties to submit it to Wayfinders by the September 6, 2024 deadline
- Identify and apply for any additional sources of financial assistance
- Develop a method for insuring that the ongoing monthly rent/use and occupancy is paid on time and in full.

The defendant reported that he has been approved for a Section 8 Housing Choice Voucher, although he has not received the voucher to date. He reported that he wants to reach a zero balance in his public housing tenancy.

Orders

After hearing, the following orders will enter:

1. The defendant's motion to continue the hearing was **DENIED**. The hearing proceeded as scheduled today.
2. The defendant will meet with TPP immediately and complete the intake process.
3. If the defendant is found eligible for TPP services, he will meet with a TPP clinician and work with them on the issues outlined above.
4. With or without TPP assistance, the defendant will propose a realistic payment plan to the Housing Authority's attorney for the balance that would remain if RAFT paid \$1,827 toward his arrearage. He will do so in a timely fashion so that the Housing Authority has sufficient time to review the proposed plan before the Wayfinders deadline of September 6, 2024.

5. The Housing Authority will review the payment plan submitted by the defendant in good faith.
6. If the parties agree on a payment plan for the balance, they will submit it to Wayfinders by the September 6, 2024 deadline.
7. The defendant will pay \$342 to the plaintiff on or before August 30, 2024. This represents the two payments he agreed to make and was ordered to make at the August 5 hearing.
8. The defendant will pay his September use and occupancy on or before September 13, 2024.
9. The plaintiff's motion for entry of judgment is **CONTINUED GENERALLY**, to give the parties a final opportunity to resolve the underlying nonpayment of rent issue.
 - a. If the parties enter into a new Agreement to resolve the issue, the plaintiff will file a withdrawal of its motion.
 - b. Otherwise, either party may file a written request with the Clerk's Office to restore the motion to the hearing list.
 - c. If such a written request is filed, the Clerk's Office is asked to schedule hearing on the plaintiff's motion promptly and to send notice.

August 26, 2024

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

CC: Tenancy Preservation Program

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-669

TONYA CANUEL,

Plaintiff,

v.

FELICIANO BONILLA,

Defendant.


ORDER

After hearing on August 26, 2024, on the plaintiff tenant's motion for injunctive relief at which both parties appeared self-represented, the following order shall enter:

1. The tenant's unit located at 15 Wellington Street, third floor, Springfield, Massachusetts has been condemned by the City of Springfield.
2. The defendant landlord shall provide the tenant and her family with alternate accommodations until further order of the court.

3. The alternate accommodations may be a motel or hotel with cooking/kitchen facilities. If such accommodations do not have cooking/kitchen facilities, the landlord shall provide the tenant with a daily food stipend of \$125.
4. The parties shared that the second floor unit is presently vacant. The landlord bought this house with the intention of moving into the second floor unit, but was informed by the court that he may have the tenant occupy that unit for the time-being to comply with this court order.
5. The tenant shall diligently search for permanent housing and keep records of her search. This does not mean that it is already concluded that the tenant will not be able to be restored to the second floor as it may be feasible to make renovations so that the City approves of the unit and could lift the condemnation.
6. This matter shall be scheduled for further hearing on **September 10, 2024, at 9:00 a.m.**
7. At the next hearing, the landlord should come prepared to provide an update to the tenant and the court as to the feasibility of renovating the third floor unit so that the condemnation would be lifted. Additionally, the tenant should be prepared to update the landlord and the court on her search for housing.

So entered this 29th 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-CV-677

TINA IMPIOMBATO,

Plaintiff,

v.

RODNEY and ELMON HOGAN,

Defendants.

ORDER

After hearing on August 26, 2024, on the plaintiff's motion for injunctive relief at which all parties appeared self-represented (without counsel), the following order shall enter:

1. The plaintiff (tenant) met her burden of proof that she is a *bona fide* tenant of the (defendants) at 35 colonial Avenue, 2nd floor, in Springfield, Massachusetts.
2. The landlords must immediately by no later than 5:00 p.m. today (August 26, 2024) install a new air conditioner in the tenant's bedroom, as this is an

essential part of the tenancy and was improperly removed by Ms. Hogan. It is also medically necessary.

3. The landlords must also either hire an electrician to ensure that there is sufficient amperage in the electric service to allow the tenant to use her mini-fridge, air conditioner, and microwave safely or to allow the tenant to move her microwave to the kitchen and grant her access to the kitchen for its use.
4. During the hearing, Ms. Hogan said the locks to the house were changed. Later in the hearing, Mr. Hogan said that they were not yet changed but that he had planned to change them today. The landlords shall not change the locks and if they have already been changed, they must immediately provide the tenant with a new key(s).
5. The tenant was informed that her requests for money damages arising out the landlords' behaviors are not part of this "emergency" case but that she could bring such money claims against her landlords either in small claims or regular civil action in our court (or assert them as counterclaims should the landlords bring an eviction action). She may wish to meet with the Court Service Center located in the Ireland Courthouse regarding such claims.

So entered this 29th day of August, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1275

SUSAN P. OTIS,

Plaintiff,

v.

JOSHUA MORIARTY AND
JENNIFER PLANKEY,

Defendants

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

This summary process action based on nonpayment of rent came before the Court for a bench trial on May 23, 2024. Plaintiff and Defendant Moriarty ("Mr. Moriarty") appeared self-represented.¹ The residential rental premises in question is located at 1047 Pleasant Street, 202, Palmer, Massachusetts (the "Premises"). The Premises are part of a 20-unit property.

The parties stipulated to Plaintiff's prima facie case for possession (including receipt of the notice to quit) and unpaid rent through trial in the amount of \$2,800.00 per month at a rate of \$1,400.00 per month for April 2024 and May 2024. Mr. Moriarty filed an answer asserting conditions of disrepair.² Based on the credible testimony and the other evidence presented at trial, as well as the reasonable inferences drawn therefrom, the Court finds as follows:

¹ Defendant Plankey did not appear for trial. Mr. Moriarty asserts that she vacated several months ago.

² The Court allowed Mr. Moriarty's motion for late answer at the outset of trial and Plaintiff agreed to waive her right to a continuance.

Mr. Moriarty was awarded rental assistance funds through the RAFT program in the amount of \$7,000.00 in or about January 2024. It reduced his rental arrears to \$345.00. Plaintiff agreed to waive this balance provided that Mr. Moriarty resumed making rent payments. Mr. Moriarty agreed to resume paying rent on the condition that Plaintiff complete all repairs in the bathroom. The bathroom repairs were completed in March 2024, at which time Mr. Moriarty paid rent for February and March, bringing his balance to zero. By accepting rental assistance and waiving the remaining balance, Plaintiff permitted Mr. Moriarty to cure the nonpayment default that caused her to terminate his tenancy. Therefore, Plaintiff's claim for possession must be dismissed.³

The dismissal of Plaintiff's claim for possession does not resolve Mr. Moriarty's counterclaims. His counterclaims are based on alleged mold in the bathroom and Plaintiff's failure to repair the bathroom for a period that he calculates as 558 days. The evidence shows that a toilet in an apartment above Mr. Moriarty overflowed into Mr. Moriarty's bathroom on four occasions in 2022. Although Mr. Moriarty claims he gave notice of the leak for the first time on February 17, 2022, the first written notification offered into evidence is on June 29, 2022. He provided evidence of one additional report of a leak on September 1, 2022. The other text messages admitted at trial do not include references to a bathroom leak.

The Court infers from the testimony that the leaks in 2022 caused cosmetic damage in the bathroom and that a mold-like substance then began to grow. It is not

³ Mr. Moriarty's failure to pay rent beginning in April 2024 gives Plaintiff cause to file a new (separate) summary process case if she so elects.

clear from the evidence, however, that Mr. Moriarty asked Plaintiff to address the mold-like substance before early 2024. Given the number of text messages Mr. Moriarty provided to the Court, the Court would have expected to see complaints to Plaintiff after 2022 if he believed the problem to be significant. The Court therefore finds that Mr. Moriarty failed to prove by a preponderance of the evidence that water leaks and resulting mold-like substance existed continuously from 2022 through 2024.

Moreover, Mr. Moriarty did not provide any scientific evidence that the mold-like substance that grew in the bathroom was a type of mold that is harmful to humans or that harmful mold spores existed inside the Premises at a level greater than was present in the ambient atmosphere outside of the Premises. The Court cannot simply take Mr. Moriarty's word that he and his children suffered adverse health conditions due to exposure to mold without actual evidence that the Premises were contaminated with mold or that the air quality inside the Premises actually caused the adverse health conditions at issue.

The evidence shows that Plaintiff began bathroom renovations in February 2024 and completed the repairs in March 2024. The Court finds that the leaks in 2022 and the renovations in 2024 were substantial defects that violated the warranty of habitability.⁴ The warranty of habitability incorporates a strict liability standard; that is, it makes no difference if Plaintiff acted promptly and in good faith to make repairs. Simply put, a tenant's obligation to pay the full rent abates when the landlord has notice of substantial violations of the State Sanitary Code or significant defects in

⁴ Although Mr. Moriarty referenced other conditions of disrepair in his answer, he did not offer sufficient testimony or evidence at trial for the Court to find these were significant defects.

the living conditions of the rental unit. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019). Damages for breach of the warranty of habitability are measured by the difference between the value of the premises as warranted and the value of the Premises as they exist in their defective condition. *Id.*

Based on the credible evidence and the reasonable inferences drawn therefrom, the Court finds that Mr. Moriarty is entitled to a 10% abatement for four months in 2022 and a 25% abatement for the months of February and March 2024. At a monthly rental rate of \$1,400.00, a mathematical calculation results in a total rent abatement figure of \$1,260.00. This rent abatement operates as a set off against the unpaid rent of \$2,800.00 through the date of trial.

Given the foregoing, the following order shall enter:

1. Plaintiff's claim for possession is dismissed.
2. Judgment for monetary damages in the amount of \$1,540.00 shall enter in favor of Defendant Moriarty on his counterclaims.⁵

SO ORDERED.

DATE: August 29, 2024

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

cc: Court Reporter

⁵ Because Mr. Moriarty's conditions-based counterclaims were adjudicated in this trial, if Plaintiff brings a subsequent summary process case, Mr. Moriarty is precluded from raising as a defense or counterclaim any conditions of disrepair through the date of trial.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3931

SILKTREE PROPERTIES, LLC,

Plaintiff,

v.

JOHANNA GARCIA,

Defendant.

ORDER

After hearing on August 26, 2024, on the tenant's motion to stay use of the execution, the following order shall enter:

1. The outstanding rent through August 2024 totals \$9,478
2. After consultation with a representative from Way Finders, Inc., it appears that the tenant may be eligible for as much as \$2,274 currently and then \$4,725 as of November 29, 2024.
3. The tenant's motion is allowed contingent upon compliance with the terms of this order.

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4. The tenant shall pay \$2000 to the landlord by August 27, 2024.
5. The tenant shall also pay \$175 extra per month along with her rent payments beginning in September 2024.
6. If any of these payments are not made, the landlord may use its execution without leave of court.
7. The tenant currently has a RAFT application pending. The parties shall diligently cooperate with that process.
8. The extra payment noted above in paragraph #5 should be viewed by RAFT as a "repayment agreement".
9. The tenant shall reapply for RAFT on or shortly after November 29, 2024 for any remaining outstanding rent owed at that time.

So entered this 29th day of August, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter