

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 37

Aug. 30, 2024 — Oct. 3, 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*

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

OUR PROCESS

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

EDITORIAL STANDARDS

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

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

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

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

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

PUBLICATION

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

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

ROMAN KRISTEV,

Plaintiff,

-v.-

DOCKET NO. 24SP02010

ALEX DIMOGLO & ALLA DIMOGLO,

Defendant.

ORDER

This matter came before the court on August 27, 2024 for review pursuant to a July 11, 2024 order of the court and for hearing on the plaintiff's motion to enter judgment and issue the execution and a motion filed by defendant Alla Dimoglo. The plaintiff appeared with his attorney. One defendant appeared. Both defendants are self-represented.

This is a no fault eviction case in which the plaintiff seeks possession of the subject rental premises. After trial on July 11, 2024, a judge of this court ordered that the plaintiff was entitled to judgment for possession, but stayed the execution through August 31, 2024 on condition that the defendant pay \$900 use and occupancy in both July and August. The judge scheduled the case for review on August 27, 2024 and ordered that the plaintiff could request the execution at that time.

The plaintiff filed his motion on the grounds that the defendant made the two payments late and only in part. The defendant reported that she would pay the \$800 to complete the payments due for July and August on August 29, 2024. As she testified at trial, she understands that she is on the top of the list for subsidized housing, but she does not know how long it will be before an apartment is offered.

Findings and Orders

After hearing, the following orders will enter:

1. Defendant Alla Dimogla's motion in which she checked "Other" and said that she "can't come" because of medical conditions is **DENIED** as she appeared for the hearing.
2. The plaintiff's motion is **ALLOWED**. Judgment enters and the execution issues pursuant to the July 11, 2024 order.
3. Levy on the execution is stayed through September 30, 2024 on condition that the defendant pay:
 - a. \$800 to complete the July and August payments by August 29, 2024, as agreed
 - b. \$900 for September use and occupancy by September 12, 2024.
4. The stay of execution in this order is issued pursuant to G.L. c. 235 §23.
5. G.L. c. 239 §15 is not applicable in this case because it is not brought based on nonpayment of rent and there is no evidence of a pending application for RAFT financial assistance.

August 30, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

MINT WESTERN MA GROUP, LLC,

Plaintiff,

-v.-

DOCKET NO. 23SP05327

DALIANA DEVERS,

Defendant.

ORDER

This matter came before the court on August 27, 2024 for a hearing on the plaintiff's motion for issuance of execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Alysha White of the Tenancy Preservation Program (TPP) also appeared at the hearing.

This eviction case is based on nonpayment of the defendant's share of the subsidized rent. The parties entered into an Agreement for Judgment on June 11, 2024. By its terms relevant to this motion, the parties agreed that judgment would enter on June 12, 2024 for the plaintiff for possession and \$6,394 in unpaid rent/use and occupancy through June 2024 with \$222.25 in costs. The execution was stayed pursuant to G.L. c. 235 §23 on condition that the defendant pay the June use and occupancy in two installments and then \$1,350 by the fifth of each month beginning in July. This would be credited first to the monthly use and occupancy (\$758) and the balance to the arrearage. The defendant agreed to apply for RAFT financial assistance by June 24, 2024. The case was referred to TPP.

The plaintiff filed the motion for issuance of execution on the judgment on the grounds that the defendant did not make any payments in June or July. She paid \$1,700 on August 2. The arrearage now is \$6,210 through August with \$222.25 in costs. The defendant reported that she intends to apply for RAFT. If she can show hardship/good cause for failing to pay her portion of the subsidized rent/use and occupancy, RAFT could pay up to six months of her

portion of the rent. This will leave a balance for which the defendant will have to make a payment plan. She offered to pay \$1,700 on the first of each month beginning in September 2024. This would be credited first to the monthly use and occupancy (still \$758) and the balance to the arrearage. The defendant did not communicate with TPP after the June 11 Agreement for Judgment although she agreed to do so after the August 27 hearing.

The defendant reported that there were spiders and wood bugs in her apartment. The plaintiff agreed to schedule an extermination to determine the type of insects and to exterminate as necessary.

Order

After hearing, the following orders will enter:

1. The plaintiff's motion for issuance of execution is continued for thirty days. The Clerk's Office is asked to schedule the motion for further hearing and to send notice.
2. The execution is stayed pending further order of the court. This stay is ordered within the meaning of G.L. c. 235 §23.
3. The case is referred to the Tenancy Preservation Program (TPP).
4. The defendant will communicate with TPP and will cooperate with TPP's recommendations.
5. The defendant will complete her application for RAFT financial assistance immediately.
 - a. The defendant will submit all required documentation promptly, including documentation of hardship/good cause.
 - b. The plaintiff will submit all required documentation promptly and will include the costs on the ledger submitted.
6. As she agreed, the defendant will pay \$1,700 on the first of each month beginning in September 2024 to the plaintiff. This will be credited first to the monthly use and occupancy (\$758 or any duly adjusted amount) and the balance to the arrearage, until the balance is zero.
7. The plaintiff will schedule inspection(s) and extermination(s) as needed and give at least 24 hours notice to the defendant.
 - a. The defendant will not deny such access unreasonably.
8. TPP is asked to assist the defendant to complete her RAFT application, to cooperate with scheduled inspections and exterminations, and to make payments toward her use and occupancy and the arrearage as she agreed to do.

9. TPP is asked to be present at the continued hearing.

August 30, 2024

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

CC: TPP

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

PAPER CITY PROPERTY MANAGEMENT

Plaintiff,

-v.-

DOCKET NO. 23SP05819

KENYA V. SIMMONS,

Defendant.

ORDER

This matter came before the court on August 27, 2024 for a hearing on the defendant's motion for relief from judgment and to stop a move-out. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

The parties agreed that there is no move-out scheduled in this case and that the defendant was not served with a forty-eight hour notice that the plaintiff would levy on the execution at this time. That portion of the defendant's motion is **MOOT**. The hearing proceeded on the defendant's motion for relief from judgment which entered on July 11, 2024.

On February 1, 2024 the parties entered into an Agreement to resolve the nonpayment of rent case, but the plaintiff later filed a motion for entry of judgment on the grounds that the defendant did not comply with the terms of the Agreement. The defendant did not appear for the hearing on the motion on July 9, 2024. This court issued an order that day allowing the plaintiff's motion. Judgment entered on July 11, 2024 for the plaintiff for possession and \$4,953.29 in unpaid rent/use and occupancy through July 2024 and \$246.71 costs. The execution issued on July 29, 2024 on the plaintiff's written application.

The defendant bases her motion for relief from judgment on the fact that she did not get notice of the July 9 hearing and that she *later* applied for RAFT financial assistance. Recently, she paid \$852 toward the arrearage which is now \$5,528.29 with \$246.71 costs. The monthly

rent is \$1,400. The day after the July 9 hearing and order, the Post Office returned the defendant's notice that had been mailed to her by the Clerk's Office.

The court finds that even if the defendant had been present at the July 9 hearing, the outcome would not have been different. She was not in compliance with the February 1 Agreement and she did not have a RAFT application pending at the time. The part of the motion for relief from judgment is **DENIED**.

However, the defendant *now* has an application pending for RAFT financial assistance. Ms. Luna of Wayfinders confirmed that the application is pending and that the landlord needs to submit all landlord documentation, including the arrearage through August, no later than September 6, 2024.

Further Orders

After hearing, the following further orders will enter:

1. The plaintiff will submit all required documentation to Wayfinders on or before September 6, 2024.
2. The plaintiff will include the costs on the ledger.
3. The defendant will submit all further documentation, if any is required, to Wayfinders to complete the RAFT application on or before September 6, 2024.
4. The execution issued on July 29, 2024 is stayed pending Wayfinders' decision on the defendant's RAFT application pursuant to G.L. c. 239 §15.
5. This stay of the execution is ordered pursuant to G.L. c. 235 §23.

August 30, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 22-SP-4574**

CITYWIDE ASSOCIATES,

Plaintiff,

v.

NICKITA WILSON,

Defendant.

ORDER

After hearing on August 29, 2024, on the landlord's motion for entry of judgment at which the tenant failed to appear, the following order shall enter:

1. Though there was compliance up to a point with the Agreement of the Parties, the tenant has failed to make any payments in June, July, and August 2024.
2. As such, the landlord's motion is allowed and a judgment shall enter for the landlord for possession and for \$3,374 plus court costs, upon the filing of a non-military affidavit.

3. There shall be a stay on the landlord being able to request issuance of an Execution based on this judgment for 30 days.
4. This stay is to provide one more chance for the tenant to avoid being evicted.
5. The tenant shall pay her rent for September 2024 timely and an additional \$50 towards the arrearage prior to the next hearing noted below AND ALSO apply to RAFT for the rental arrearage and court costs.
6. The tenant is urged to seek assistance with her RAFT application from:

Community Legal Aid

One Monarch Place

Springfield, MA

(413) 781-7814

and/or

Springfield Partners for Community Action

721 State Street

Springfield, MA

(413) 263-6500

7. This matter shall be scheduled for further hearing on **September 26, 2024, at 9:00 a.m.**

So entered this 26th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

**ST. JAMES COMMONS APARTMENTS
LIMITED PARTNERSHIP,**

Plaintiff,

-v.-

DOCKET NO. 23SP03229

AISHA SULTAN,

Defendant.

ORDER

This matter came before the court on September 3, 2024 for a hearing on the plaintiff's motion for entry of judgment and issuance of the execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

This eviction case is based on nonpayment of the tenant's portion of the subsidized rent. The defendant rents the apartment through the project-based Section 8 program. The parties entered into a second Agreement in this case on December 21, 2023. By its terms relevant to this motion, the parties agreed that the defendant owed \$6,184 in unpaid rent/use and occupancy through December 2023¹ and \$240.77 costs. The defendant agreed to pay her use and occupancy by the tenth of each month and \$50 toward the arrearage each week, both beginning in January 2024. The defendant agreed to pay the balance of the arrearage when she received her tax refunds. When the defendant's account reached a zero balance, 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 on the grounds that the defendant made no payments or partial payments in June, July and August. The arrearage is now \$6,184 and \$240.77 costs. The

¹ The arrearage is high for a subsidized tenancy, but some of the arrearage is due to unreported or late-reported income.

defendant did not pay the balance with her tax refunds because she spent some of the money on unexpected expenses.

Ms. Sultan reported that she applied for RAFT financial assistance on August 30, 2024. Because the tenancy is subsidized, she will need to demonstrate to Wayfinders that there was a hardship/good cause for failing to pay the subsidized rent. If she is found eligible, Wayfinders could pay up to six months of the tenant's share of the rent and costs. Because there will be a balance remaining even if RAFT pays the maximum amount, Ms. Sultan would need to make a payment plan to pay the balance. She proposed such a plan at the hearing and the plaintiff agreed that it would be satisfactory.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion for entry of judgment is **DENIED** at this time pursuant to G.L. c. 239 §15 because the defendant has a pending RAFT application. The plaintiff may renew its motion if the defendant does not comply with this order or if RAFT is denied.
2. The parties will complete the RAFT application process as promptly as possible.
 - a. The defendant will submit all required documentation, including proof of hardship/good cause, as required by Wayfinders.
 - b. The plaintiff will submit its documentation, as required by Wayfinders.
 - c. The plaintiff will include the costs on the ledger.
3. As she agreed, the defendant will pay September rent/use and occupancy (\$543) as follows:
 - a. \$500 on or before September 13, 2024
 - b. \$43 on or before September 27, 2024
4. Beginning in October 2024, the defendant will pay her use and occupancy on or before the tenth of each month.
5. As she agreed, the defendant will pay \$25 toward the arrearage each Friday beginning on October 4, 2024 until the arrearage is paid in full. This constitutes a payment plan for purposes of the RAFT application process,
6. As she agreed, the defendant will pay any remaining balance within seven days of receiving her tax refunds, which she anticipates receiving in February 2025.

7. The defendant will complete her upcoming recertification promptly and supply all required documentation so that her portion of the rent/use and occupancy can be calculated correctly.

September 3, 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-4693

KING PINE,

Plaintiff,

v.

LISA BARDSLEY and ERNEST NELSON,

Defendants.

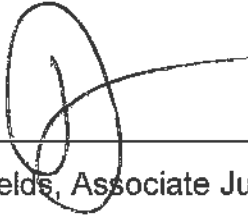
ORDER

After hearing on August 30, 2024, on the tenants' motion to stay the landlord's use of the Execution, the following order shall enter:

1. Since the court's last order of July 11, 2024, the tenants paid the landlord \$2000, bringing the arrearage down to \$1,482.32. August 2024 rent then accrued, bringing the balance back up to \$2,982.32 through August 2024.
2. The tenant reports that she has an application pending with Community Action for rent arrearage funds.

3. Based on the above, the tenants' motion shall be continued to **September 6, 2024, at 9:00 a.m.** for further hearing.
4. The tenant shall pay the landlord \$500 by September 5, 2024, and bring with her proof of the pending Community Action application.

So entered this 4 day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

PIONEER LINDEN LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP2125

**AILEEN T. CRUZ, HECTOR GABRIEL
MARTINEZ & KENNY L. FRANCES,**

Defendant.

ORDER

This matter came before the court on September 3, 2024 for a hearing on the defendant's motion to stay the use of the execution. The plaintiff appeared through its attorney with the manager. Only defendant Hector Gabriel Martinez appeared. The defendants are self-represented. Janis Luna of Wayfinders appeared at the hearing to report on RAFT.

Mr. Martinez reported that his mother, Aileen T. Cruz, passed away. He provided a copy of her death certificate to the plaintiff. Both parties agree that Ms. Cruz will be dismissed as a defendant in this case. Mr. Martinez also reported that Kenny L. Frances moved out of the premises.

This eviction case is based on nonpayment of the tenant's portion of the subsidized rent. Ms. Cruz was the Section 8 voucher holder, but the voucher was transferred to Mr. Martinez as a remaining member of the household after she died. The tenant's portion of the monthly rent/use and occupancy is now \$732. A default judgment entered on July 3, 2024 for the plaintiff for possession and \$6,032 in unpaid rent/use and occupancy and \$362.25 costs. The execution issued on August 6, 2024 on the plaintiff's written request. The defendant filed this motion seeking to stay at the apartment through the winter. The plaintiff has not served a forty-eight hour notice to date.

Originally, Mr. Martinez disputed the amount that he owes, but he acknowledged that he was not aware of what his mother paid or did not pay for the last three months of her life. In any event the arrearage is substantial. The plaintiff reported that it is now \$6,946 through September and \$362.25 costs.

Mr. Martinez reported that he applied for RAFT financial assistance twice, but it was denied because of missing landlord documentation. The plaintiff reported that they had never received any request from Wayfinders for documentation. Ms. Luna of Wayfinders joined the hearing and confirmed that the most recent application timed out on September 1, 2024 because there was no landlord documentation submitted, although the email address on file was correct. Because this is a subsidized tenancy, if the defendant can demonstrate a hardship/good cause for failing to pay the rent, RAFT could pay a maximum of six months of the tenant's portion. This would leave a balance still owing, for which the defendant must propose a payment plan.

Orders

After hearing, the following orders will enter:

1. Defendant Aileen T. Cruz is dismissed from this case.
2. The defendant Hector Gabriel Martinez' motion to stay the use of the execution is **DENIED** at this time.
 - a. There is no pending RAFT application pursuant to G.L. c. 239 §15.
 - b. This case is based on nonpayment of rent and there is a significant arrearage owed, so that the defendant is not eligible for a stay pursuant to G.L. c. 239 §9.
 - c. The defendant did not present facts which would rise to the level of equitable grounds for a stay pursuant to G.L. c. 239 §10.
3. The defendant may reapply for RAFT financial assistance to pay toward the arrearage in this tenancy or for moving expenses, as he sees fit.
 - a. If he applies for RAFT for this tenancy, he must submit his documentation, including documentation of hardship/good cause promptly.
 - b. The plaintiff will file its documentation promptly.
 - c. If the defendant proposes a payment plan for the balance that would remain, the plaintiff will consider it in good faith.

September 4, 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-5251

SOUTH MIDDLESEX NON-PROFIT
HOUSING CORPORATION,

Plaintiff,

v.

YVONNE TOTA,

Defendant.

ORDER

After hearing on August 28, 2024, on review and on the tenant's motion for additional time to vacate the unit, the following order shall enter:

1. This is a *for cause* eviction based on three things: (1) Unsanitary conditions and behavior, (2) unauthorized occupancy by Robert Kioto, and (3) unsafe conditions due to hoarding/cluttering.
2. The landlord agrees that the first two issues have been dealt with successfully and that it is the hoarding/cluttering problems that remain and must be addressed.



3. The landlord also believes that the premises are not appropriate housing for the tenant and continues to seek her vacating as soon as is practicable.
4. The Tenancy Preservation Program (TPP) has been working with the tenant but reports that the tenant has not been willing to cooperate with its efforts to increase personal care attendance and work sufficiently to de-clutter her apartment. The tenant disputes this and TPP and the tenant are asked to discuss this further and, hopefully, work it out so that progress can be achieved.
5. The tenant shall work with TPP to de-clutter the tenant's unit. The tenant shall also work with TPP to participate in assessments to determine which long-term housing is appropriate for the tenant given her disabilities.
6. This matter shall be scheduled for further review on **September 20, 2024, at 9:00 a.m.**

So entered this 4th day of September, 2024.

Robert Fields, Associate Justice

Cc: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

ROBERT ARCOTT,

Plaintiff,

-v.-

DOCKET NO. 24SP00928

JAMES MORIN & TYLER MORIN,

Defendant.

ORDER

This matter came before the court on August 26, 2024 for an evidentiary hearing on the plaintiff's motion to enforce the parties' Agreement. All parties appeared and were self-represented.

This is a no-fault eviction case. The parties entered into an Agreement on May 16, 2024. The plaintiff filed this motion alleging that the defendants violated the Agreement and that judgment should enter for possession of the apartment for the landlord. He testified that the police or fire department has been called to the premises six times since May 16. He submitted a police log showing two such calls (P Exh 1). However, there is no detail nor are there police reports showing what the police found. The plaintiff also submitted a harassment prevention order dated June 20, 2024 from the Chicopee District Court obtained by another tenant against James Morin (P Exh 2). The complaint and affidavit were not submitted, so again there is no detail about the incidents or when they occurred.

James Morin testified that there are no criminal charges pending against him at this time. All the police calls involved his son's girlfriend. He testified that she pulled the fire alarm at the property as a vindictive act against his son. A no trespass order against her was issued by the Chicopee Police Department and she has not been at the property since the incident. He is trying

to find alternative housing where he can use his Section 8 Housing Choice Voucher. He estimates that he would need one month to do so, although this seems optimistic in the current housing market.

The May 16 Agreement provides that Tyler Morin would move out of the premises by August 31, 2024. He testified that he is waiting for a friend's mother to return from the Dominican Republic to see if he can move into their apartment. Whether his friend's mother gives him such permission or not, Tyler Morin is required to move out of the premises no later than August 31, 2024.

After hearing, the court finds that the plaintiff did not establish that the defendants violated the terms of the Agreement with competent, admissible evidence¹ so as to entitle the plaintiff to entry of judgment at this time.

Order

After hearing, the plaintiff's motion is **DENIED**.

September 5, 2024

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

¹ A letter from another tenant who was not in court to testify and be cross-examined was excluded from evidence as hearsay at the hearing.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0166

OMAYRA HEREDIA AND RUTH VALLES,
Plaintiffs

v.

TINISHA SISTRUNK AND ANDRE HARRIS,
Defendants

RULING ON DEFENDANTS'
POST-TRIAL MOTION

Following a bench trial on May 16, 2024, Defendants filed a post-trial motion seeking relief from judgment, a new trial, sanctions and a stay of appeal. After seeking and being granted leave of court for an extension of time to respond, Plaintiffs filed an opposition on July 2, 2024.¹ After careful consideration of the motion and opposition, the Court rules as follows:

Motion to Stay Appeal

Defendants filed their motions for relief from judgment and a new trial approximately four days after trial. Because the motion was filed within ten days of the entry of judgment, the time to take an appeal is automatically tolled by rule and no further court order is necessary. *See M.R.A.P. 4(a)(2)(C).*

Motion for Sanctions

The Court is not persuaded that Defendants are entitled to any further sanctions related to allegations that Plaintiffs failed to adequately respond to

¹ Due to an administrative oversight, the judge was unaware that the motions were ripe for ruling until very recently.

discovery requests. In April 2024, after hearing on Defendants' motion to compel, the Court imposed a monetary sanction on Plaintiffs for their failure to respond to discovery. One week before trial, Defendants filed a 94-page motion for sanctions and summary judgment (inclusive of exhibits) based on their assertion that the discovery responses were incomplete. The motion was not scheduled for hearing prior to trial.

At the outset of trial, the Court heard argument about the discovery dispute. The Court was satisfied that Plaintiffs did not withhold information intentionally or with the purpose of obstructing Defendants' ability to prepare for trial. To ameliorate any potential prejudice, the Court allowed Defendants the opportunity to object to the admission of documentary evidence that was requested but not provided during discovery. The Court concludes that it adequately addressed the discovery issues prior to trial and that no further sanctions are warranted. Therefore, the motion for sanctions is DENIED.

Motion for Relief From Judgment

Rule 60(b) of the Massachusetts Rules of Civil Procedure delineates circumstances when a court may grant relief from judgment. None of the circumstances are present in this case. Plaintiffs' conduct with respect to its production of documents does not rise to the level of a deliberate and calculated plan to use the judicial system in an unconscionable and fraudulent manner.

To the degree that Defendants assert that they were prejudiced by the manner in which Plaintiffs were permitted to present their case, the Court disagrees. It did not give much if any weight to evidence that Plaintiffs claim should have been provided in discovery. It credited the testimony of Ms. Heredia and Defendants had

the opportunity to cross-examine all of Plaintiffs' witnesses.² The only witness called by Defendants, Ms. Sistrunk, was not entirely credible. Defendants were not precluded from calling additional witnesses (such as others with first-hand knowledge of the conditions of the unit, code inspectors or a keeper of the records regarding utility payments) to support their claims. There is simply no basis for the Court to conclude that there was a miscarriage of justice in this case warranting relief from judgment, and thus the motion is DENIED.

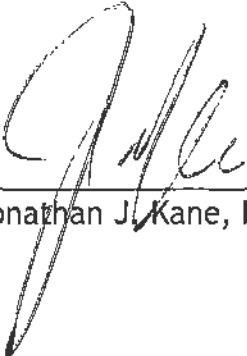
Motion for New Trial

The Court finds no basis for ordering a new trial under Rule 59(a) of the Massachusetts Rules of Civil Procedure. As noted elsewhere in this ruling, there was no miscarriage of justice as a result of the discovery violations alleged by Defendants. At the outset of trial, the Court indicated that it would not rely upon evidence that should have been but was not provided in discovery, and it did not do so. Defendants' appropriate recourse in this matter is to take an appeal. The motion for a new trial is DENIED.

SO ORDERED.

DATE: September 5, 2024

cc: Court Reporter

By: 
Jonathan J. Kane, First Justice

² The fact that Plaintiffs' witnesses testified without substantial supporting documentation goes to the weight of the evidence, not its admissibility.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5367

SPRING MEADOW APARTMENTS,

Plaintiff,

v.

JOELIZ TOLEDO,

Defendant.

ORDER

After hearing on August 28, 2024, on the landlord's motion for entry of judgment at which both parties appeared, the following order shall enter:

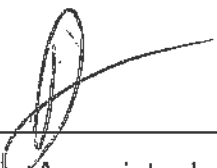
1. The tenant challenges the landlord attorney's accounting of her payments (e.g. she alleges that she paid \$100 in March 2024), and also challenges the landlord's calculation of her portion off the rent¹.

¹ Both that it is set "too high" given her income and that the landlord failed to adjust her household income timely after a household member moved out of the household.



2. Because the landlord did not have a witness present for the hearing, the landlord's motion shall be continued to the hearing date noted below.
3. In the meantime, the tenant was urged to seek assistance with her RAFT application, and it is suggested that she contact Community Legal Aid (One Monarch Place, Springfield, (413) 781-7814 and Springfield Partners (721 State Street, Springfield (413) 263-6500.
4. The tenant shall pay her September 2024 use and occupancy (rent) timely.
5. This matter shall be scheduled for hearing on **September 12, 2024, at 9:00 a.m.** The landlord committed to bringing a recertification specialist from his client's office for said hearing.

So entered this 5th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0712

COLONIAL VILLAGE DEVELOPMENT, LLC,)
Plaintiff)

v.)

PHYLLIS EVANS, ET AL.,)
Defendants)

ORDER FOR PERMANENT
INJUNCTIVE RELIEF

This matter came before the Court on September 6, 2024 on Plaintiffs' complaint and motion for injunctive relief. Plaintiff appeared through counsel. Defendant Phyllis Evans appeared self-represented. Plaintiff seeks an injunction requiring Defendants to vacate the premises located at 162 Southeast Street, Unit B, Amherst, Massachusetts (the "Premises") immediately.

The Court consolidated Plaintiff's request for injunctive relief with a trial on the merits. It took evidence from Ms. Evans, two family members and a representative of Plaintiff. Based on the evidence and the reasonable inferences drawn therefrom, the Court finds that Defendants are subtenants and not tenants of Plaintiff. In the Spring of this year, Phyllis Evans entered into a short-term subletting arrangement with two students who had a lease for the Premises through August 31, 2024. Ms. Evans was aware that the lease ended on August 31, 2024 and that she would have to move. The students surrendered possession of the Premises to Plaintiff.

The Court further finds that Plaintiff did not approve the sublet nor accept any money

from Ms. Evans. Therefore, the Court finds that there was no meeting of the minds that a landlord-tenant relationship would be formed between the parties. Defendants' right to occupy the Premises expired on August 31, 2024 and Plaintiff is entitled to recover possession in this proceeding without the need for summary process.

The Premises are scheduled to be demolished on September 11, 2024 in order for a neighboring building to be lifted and physically moved elsewhere. In order for the building to be moved, various parties (e.g. a building mover, town officials and police, and the utility companies) have coordinated to effectuate the process. Utility lines will be moved, streets will be blocked off and traffic rerouted, and the utilities serving the Premises will be cut off. Any delay in removing Defendants from the Premises will require that all of the coordination necessary to move the building will need to occur again for the rescheduled date.

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. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Here, given the Court's finding that Plaintiff has succeeded on the merits of its claim, the Court cannot compare the hardships to each party equally. Although Ms. Evans will likely suffer significant harm from being removed from the Premises, the Court has to consider that harm in the context of her status as a subtenant. She cannot assert that she has any right to occupy the Premises greater than the rights of the tenants, and the tenants have surrendered possession. Simply put, she has no legal right to occupy the Premises and Plaintiff is thus entitled to the relief it seeks.

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

1. Judgment shall enter in favor of Plaintiff on its complaint.
2. Execution for possession and occupancy shall issue immediately but shall not be used prior to September 9, 2024. If the scheduled demolition of the Premises is delayed beyond the September 11, 2024 date it is planned, then use of the execution to recover possession will be extended to a date that is 72-hours prior to the actual date of demolition.
3. Plaintiff shall comply with the provisions of G.L. c. 239, § 4 with respect to any personal possession remaining in the Premises as of September 9, 2024.
4. The statutory fee for injunctions is hereby waived.

SO ORDERED.

DATE: September 6, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2673

CROCKER CUTLERY LIMITED PARTNERSHIP,

Plaintiff

v.

APRIL JONES, ET AL.,

Defendants

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court for a bench trial on September 6, 2024. Plaintiff appeared through counsel. Defendants appeared self-represented. The residential property at issue in this case is located at 91 Third Street, Unit 2, Turners Falls, Massachusetts.

The parties stipulated to Plaintiff's prima facie case for possession and unpaid rent in the amount of \$14,786.50. Defendants did not file an answer and did not assert any legal defenses at trial. They testified that they might be able to get \$7,000.00 from RAFT and pay the difference in a lump sum. Because Defendants did not demonstrate a pending application for rental assistance, G.L. c. 239, s. 15 does not apply. If an application is filed, however, and Defendants can show that they can pay the remaining balance, they may file a motion to stay the execution.

Based on the foregoing, the following order shall enter:

1. Judgment for possession and damages in the amount of \$14,786.50, plus court costs, shall enter in favor of Plaintiff.

2. Execution (eviction order) may issue upon written application ten days after the date judgment enters.

SO ORDERED.

September 6, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0685

HAYASTAN INDUSTRIES, INC.,
Plaintiff

v.

JOSE SANTIAGO,
Defendant

)
)
)
)
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)

ORDER FOR
INJUNCTIVE RELIEF

This matter came before the Court on September 6, 2024 on Plaintiffs' request for injunctive relief. Plaintiff appeared through counsel. Defendant did not appear. Plaintiff seeks an injunction requiring Defendant to repair and maintain the interior and exterior of his manufactured home at 93 Grochmal Ave., Lot 70, Springfield, Massachusetts (the "Home").

The Court took evidence from Plaintiff's witness regarding the condition of the Home and the lot upon which it sits. The Court finds that serious conditions of disrepair exist inside and outside of the Home. The conditions create a health and safety risk to other residents in the manufactured home community. In light of the foregoing, the following order shall enter:

1. Defendant shall keep the Home free of State Sanitary Code violations and in a clean and sanitary manner to avoid interference with the quiet enjoyment of other members of the manufactured home community.
2. To the extent Plaintiff believes that the condition of the Home, and in particular

the water pooling underneath the Home, poses a risk to the health and safety of other residents, it may seek an inspection by the Springfield Code Enforcement Department.

3. Defendant shall permit Plaintiff's agent to inspect and take photographs of the conditions of Premises in the 48 hours' prior to the next court date. Defendant is encouraged to document all of the efforts he makes to repair and maintain the Home in a safe and sanitary condition.
4. The parties will return for further review on October 8, 2024 at 9:00 a.m. Defendant is hereby ordered to appear at that time.
5. The statutory fee for injunctions is hereby waived.

SO ORDERED.

DATE: September 6, 2024

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

cc: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-698

CASSANDRA KELLY,

Plaintiff,

v.

ERROL and CAROL ESTRIDGE,

Defendants.

ORDER

After hearing on September 6, 2024, on the tenant's motion for injunctive relief for alternate accommodations, the following order shall enter:

1. The parties agreed that the defendants have provided hotel accommodations as ordered by the Court but that there are no accommodations for tonight and September 10, 2024.
2. The defendant shall take all necessary steps to secure hotel accommodations for tonight through the morning of September 11, 2024, at either Homewood Suites or Candlewood Suites or at another hotel agreed upon by the parties.

3. Given the added transportation costs imposed on the tenant during this emergency housing period she requires funds for said transportation. Accordingly, the defendants shall provide \$100 through the tenant's "cash app" immediately.

So entered this 6 day of September, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-575**

CATHERINE "CD" LEFEBVRE,

Plaintiff,

v.

BERNARD HOROWITZ,

Defendant.

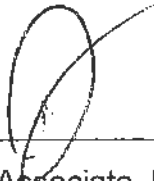
ORDER

After hearing on August 30, 2024, at which both parties appeared, the following order shall enter:

1. The plaintiff tenant's motion alleges that the defendant landlord has violated the Agreement of the Parties dated July 29, 2024 (Agreement), by smoking in the common areas of the premises. The tenant has not witnessed this behavior but asserts that there is cigarette smoke present in the hallways.
2. The landlord denies that he has smoke anywhere in the house other than inside his bedroom.

3. The court does not find that the plaintiff has met her burden of proof that the defendant violated the terms of the Agreement. That said, the plaintiff continues to have issues regarding the travel of smoke into the common hallways, though the defendant believes that only the smell of cigarette smoke is present in the hallway and not smoke.
4. The landlord agrees, however, to install a fan in his bedroom window so that it acts as an "exhaust" fan whenever he smokes in his room.
5. The tenant agrees to not burn sage in the premises.

So entered this 6th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-592**

AMANDA SYLVESTER,

Plaintiff,

v.
SELINA VASQUEZ and FRANCISCO MATIAS,

Defendants.

ORDER

After hearing on September 3, 2024, at which all parties appeared, the following order shall enter:

1. The defendants assented to the plaintiff's motion to reopen and all parties agreed to proceed directly to hearing on the merits.
2. The defendant landlords shall remove the malfunctioning stove from the third-floor premises located at 28 Kendall Street in Springfield, Massachusetts, and have a licensed electrician repair the plaintiff tenant's bathroom light fixture.

3. The parties shall FORTHWITH have City of Springfield Code Enforcement Department inspect the subject premises.
4. Thereafter, the parties shall comply with the City's orders.

So entered this 6th day of September, 2024.



Robert Fields, Associate Justice

Cc: City of Springfield Code Enforcement
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-2288

75 AVON PLACE, LLC,
Plaintiff,
v.
DASHIMA WALTER,
Defendant.

**ORDER for Cancellation of the
Physical Eviction Now
Scheduled for September 10,
2024**

After hearing on September 5 and 6, 2024, on the tenant's motions to stop a physical eviction scheduled for September 10, 2024, at 9:30 a.m., the following order shall enter:

1. It appears from the record that the parties do not dispute that the plaintiff was administratively dissolved by the Massachusetts Secretary of State in December 2023 and was not reinstated by the Secretary of State until the date of the hearing (September 6, 2024).

2. In accordance with Section 14.21 of Chapter 156D of Title XXII of the General Laws, a corporation that has been administratively dissolved “may not carry on any business except that necessary to wind up and liquidate its business and affairs...” Section 14.21(c).
3. “Standing, for jurisdictional purposes, is tested at the time an action commences.” *Alexander Styller v. Zoning Board of Appeals of Lynnfield & another*, 487 Mass. 588 (2021).
4. The record of this matter is that the plaintiff commenced and pursued judgment and execution and the scheduling of a physical eviction all during a time of being administratively dissolved.
5. The tenant filed her motion on September 3, 2024, to stop the physical eviction and the earliest the court could schedule the matter for hearing was September 5, 2024, when the matter was partially heard, and which hearing was extended to September 6, 2024. The court has only one business day to issue a decision prior to the physical eviction scheduled for September 10, 2024. This timeline gives the parties and the Court very little time to process this dismissal claim.
6. The Court finds and so rules that the tenant has met her burden of a likelihood of prevailing on the merits of this claim for dismissal but would prefer to have the benefit of legal briefs from the parties (both represented by counsel) prior to issuing an ultimate decision on the dismissability of the action.

7. The Court is, however, satisfied that this showing for dismissal is sufficient to cancel the physical eviction currently scheduled for September 10, 2024, and the plaintiff is hereby instructed to do so.
8. The parties shall have until September 20, 2024, to file and serve briefs on the issue of dismissal of this action based on the dissolution of the landlord LLC.
9. The court shall thereafter issue further decision and order on this legal issue as well as the other motions now pending with the court without need for further hearing.

So entered this 9 day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1453

ADRR, LLC,
Plaintiff,
v.
FELICIA ORWAT,
Defendant.

ORDER

This matter came before the court for trial on August 7, 2024, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared self-represented. After consideration of the evidence admitted at trial, the following findings of fact, conclusions of law, and order for judgment shall enter:

1. **Background:** The plaintiff, ADRR, LLC (hereinafter, "landlord"), owns a two-family dwelling in Palmer, Massachusetts. The defendant, Felicia Orwat

(hereinafter, "tenant") has resided therein at 4056 High Street (hereinafter, "premises" or "property") since the inception of the tenancy on May 1, 2021.¹

2. On or about November 28, 2023, the landlord sent, and the tenant received, a no-fault termination notice effective January 1, 2024, and thereafter commenced this summary process action. The tenant is asserting claims and defenses arising out of conditions of disrepair at the premises and a security deposit claim.²
3. **The Landlord's Claim for Rent, Use, Occupancy and Possession:** The parties stipulated to the landlord's *prima facie* case for possession (receipt of the "30-Day Notice to Quit") and for rent, use, and occupancy in the amount of \$21,750 through August 2024. What remains to be adjudicated by the Court are the tenant's claims and defenses, damages, and how the landlord's claim for possession is affected by same.
4. **The Tenant's Claim: Breach of the Covenant of Quiet Enjoyment:** The heating system at the premises failed to perform properly during the heating seasons for the first two years of the tenancy (2021/22 and 2022/23). More specifically, the heat either shut off automatically and or failed to provide heat or provided sufficient (if not too much) heat in the upper floor while not

¹ The parties stipulated to this date at the date of the inception of the tenancy although testimony during the trial indicates that perhaps the tenant resided therein prior the landlord purchasing the premises in 2020.

² At the commencement of trial, before taking any evidence, the judge became aware that though the tenant was heard at an initial (beginning of a) trial in District Court in April on her claims and defenses, and then after the matter was transferred to the Housing Court asserted such claims as part of her successful motion to vacate a default judgment, she thereafter never filed or served an Answer. The judge gave the parties two choices before commencing the trial. The first option: To provide the tenant a deadline to file and serve an Answer and perhaps Discovery and reschedule the trial. The second option: To proceed with trial and allow the tenant to assert her counterclaims and as much as those claims effect the landlord's claim for possession. The parties chose the second option and proceeded with trial.

enough on the first floor. The Court found the tenant credible when she described how cold the first floor was during this time period and how she resorted to the use of electric portable heaters and the stove as means of keeping the first floor warm and the resultant increase in her electric bills. This condition was also found and reported in the Town of Palmer Board of Health Correction Order dated July 2023.

5. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his acts or inactions cause 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 Previous at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).
6. The Court finds that the heating system was not fully functioning until the Board of Health found such in September 2023.
7. The Court finds that the landlord's failures as described above resulted in an improperly functioning heating system and violated G.L. c.186, s.14 and shall award the tenant three months' rent totaling **\$4,350**.
8. **Breach of the Warranty of Habitability:** The Palmer Board of Health issued a Correction Order directly following its inspection of June 27, 2023, which cited the following conditions of disrepair:
 - a. Stairs are not properly sealed to prevent moisture and a nail was sticking out of the railing;

- b. No protective baseboards below kitchen cabinets or dishwasher, creating rodent harborage;
 - c. Kitchen floors not smooth and impervious;
 - d. Roof, soffits, and stairs of the second egress in disrepair;
 - e. Holes in living room walls, stop stair transition chipped with nail sticking out, large crack in the stair tread to the 3rd floor, balcony railing on 3rd floor not secure, splintering wood near the hinge in the doorway to bedroom 3, floor transitions throughout the dwelling not smooth or impervious for cleaning and created a tripping hazard, door to the storage area do not properly open or close;
 - f. Baseboard heaters not working properly and concern of temperature controls on the second floor;
 - g. Chronic dampness throughout the basement, mold on walls, large cracks in the foundation;
 - h. Missing window screens throughout dwelling;
 - i. Tub, shower fixture and floor not properly sealed against moisture, bathroom windowsill cracked and chipping, no covers on bathroom vanity lights;
 - j. No lightbulb in the fixture for third floor stairway;
 - k. Rodent feces throughout the kitchen;
9. The tenant credibly testified about many of these conditions and provided photographs in addition to the ones provided by the Board of Health. She described that there were no properly working screens in any of the 18

windows at the premises, though the landlord provided some temporary screens. She also testified about the extensive mold in the basement.

10. These conditions of disrepair existed from the commencement of the tenancy until they were deemed repaired by the Board of Health on September 28, 2023, and violated the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. Although it is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability irrespective of the landlord's good faith efforts to repair the defective condition [*Berman & Sons, Inc., v Jefferson*, 379 Mass. 196 (1979)], all of these conditions all existed at the commencement of the tenancy and knowledge of them starting May 2021 is imputed.
11. It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907, (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). The Court finds that the average rent abatement of 30% fairly and adequately compensates the tenant for the diminished rental value of the premises resulting from these conditions from the commencement of the tenancy through September 28, 2023 (when the

Board of Health found them repaired). As such, the damages shall be for 29 months of 30% abatement, totaling **\$12,615**.

12. **Breach of Security Deposit Laws:** The tenant paid a security deposit at the commencement of her tenancy with the former owners of the premises. That deposit was transferred to the current landlord when he purchased the property. On or about November 2023, the landlord had his attorney send a check to the tenant which purports to equal the security deposit plus 5% interest. That correspondence was sent by certified mail and was returned "unclaimed" to the landlord in December 2023.
13. During the time the landlord retained the deposit, he made improper deductions for house repairs from the security deposit. Additionally, when the security deposit came back to the landlord by mail, unopened, he became aware that the check was not received by the tenant nor transacted upon by the tenant.
14. Having violated the security deposit laws by making improper withdrawals on that account, the landlord forfeited the right to retain the deposit and owes the tenant the deposit plus 5% per annum. Because the tenant never filed an Answer and did not otherwise make a demand for its return in advance of trial, there shall not be any trebling of that deposit. See, *Castenholz v. Caira*, 21 Mass. App. Ct. 758 (1986).
15. Accordingly, the tenant shall be awarded **\$1,569.37** on her security deposit claim (representing the return of the deposit of \$1,350 plus 5% interest since May 2021).

16. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A, the tenant has ten days after the date of this order noted below to deposit with the court \$ 3,634.94 . This represents the amount of damages owed by the tenant after her damage award of \$18,534.37 is deducted from the landlord claim of rent of \$21,750 (\$3,215.63) plus court costs of \$ 251.10 and interest of \$ 168.21 . If the tenant makes this deposit with the court judgment shall enter for the tenant for possession and said funds will be disbursed by the Court to the landlord's attorneys. If the tenant fails to make said deposit, judgment shall enter for possession to the landlord plus damages in the amount of \$3,215.63 plus court costs and interest.

So entered this 9th day of September, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-22

DM PROPERTY, LLC,

Plaintiff,

v.

KIANNA CLAUDIO,

Defendant.

ORDER

After hearing on September 5, 2024, on the landlord's motion for entry of judgment at which the tenant failed to appear, the following order shall enter:

1. The landlord met its burden of proof that the tenant has failed to comply with the terms of the Agreement of the Parties dated February 28, 2024 (Agreement), and the court is poised to enter judgment.
2. That said, because the tenant has made payments along the way since the Agreement, bringing the balance to \$109 in June 2024, the landlord has agreed to not have judgment enter at this time but instead to continue the

hearing on its motion until the date below to provide another opportunity for the tenant to appear at court and possibly negotiate further with the landlord or *at least* be heard by the Court.

3. This matter shall be scheduled for further hearing on the landlord's motion for entry of judgment on **September 19, 2024, at 9:00 a.m.**

So entered this 9th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-204

IVETTE FIGUEROA,

Plaintiff,

v.

DOUBLE K, LLC,

Defendant.


ORDER

After hearing on August 29, 2024, at which both parties appeared, the following order shall enter:

1. Despite the clear order of the court dated June 14, 2024, the defendant landlord did not file a report of the work it purports to have effectuated. Additionally, the landlord did not provide a witness with only its attorney appearing.
2. The plaintiff tenant reports that the landlord made very few repairs and many of them are once again in disrepair.

3. An evidentiary hearing shall be conducted at the date and time noted below to determine what work has been completed and what work, if any, is outstanding.
4. The landlord shall file and serve a report of its completed work by September 3, 2024.
5. Both parties shall communicate with the City of Holyoke code enforcement to have it inspect the premises as soon as is possible so that the parties and the court may benefit of said report at the next hearing.
6. The landlord shall immediately have a licensed exterminator treat the premises for cockroaches, hire a licensed electrician to inspect and make necessary repairs to the bathroom light, and make all repairs, prioritizing repair of the kitchen floor.
7. The landlord shall provide the tenant with no less than 48 hours advance notice in writing for access. Such notices shall provide a time for said repair and a description of the anticipated work.
8. Access may not be unreasonably denied.
9. This matter shall be scheduled for hearing on **October 23, 2024, at 2:00 p.m.**

So entered this 9th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5149**

LITTLE EAGLE, LLC,		
	Plaintiff,	
v.		
ANNE MUSIAK,		
	Defendant.	

ORDER

After hearing on September 5, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. The bargained for date for the tenant to vacate in the Agreement of the Parties dated January 4, 2024, having passed and the arrearage having not been paid, judgment shall enter for the landlord and for \$3,500 in arrearage.
2. The landlord may have an Execution issued based on this judgment upon the filing and service of a Rule 13 Application.

3. There shall be a stay on the use of the Execution until October 1, 2024, as long as the tenant pays the landlord September 2024 rent by September 13, 2024.
4. The landlord shall IMMEDIATELY hire a licensed exterminator to treat the premises for cockroaches. The landlord shall provide at least 48 hours advance notice by text (the tenant's cell number was shared during the hearing) of the exterminator's arrival.

So entered this 9th day of September, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-686

JOSE NIEVES,

Plaintiff,

v.

HORTONO WILSON,

Defendant.

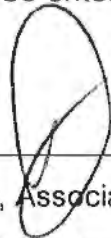
ORDER

After hearing on September 3, 2024, the following order shall enter:

1. Due to the condemnation of the subject premises 48 Eleanor Road in Springfield, Massachusetts, by the City of Springfield Code Enforcement, and the lack of water service to the premises, the defendant landlord shall provide the tenant and his family with alternate housing in a hotel or motel with cooking facilities until the condemnation is lifted or until further order of the court.

2. Such accommodations shall be provided starting this night (September 3, 2024) and shall continue until the condemnation is lifted. If such accommodations do not have kitchen/cooking facilities, the defendant landlord shall provide \$100 for a food stipend to the tenant for each day that he is in such a hotel.
3. This matter shall be scheduled for further hearing on **September 10, 2024, at 9:00 a.m.**

So entered this 9th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

OR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-CV-982

RICARDO RAMOS,

Plaintiff,

v.

BARBARA INGRAM,

Defendant.

ORDER

After hearing on August 29, 2024, at which both parties appeared, the following order shall enter:

1. This matter was formerly a Summary Process action and the tenant relocated. The court then transferred this matter to the Civil Docket to adjudicate the monies owed by the defendant to the plaintiff.
2. The defendant's sole income is Social Security benefits. As such, such funds being exempt from collection, the plaintiff's motion is denied without prejudice, and no payment order shall enter at this time.

3. The defendant is required to notify the plaintiff promptly if her circumstances changes regarding her income. More specifically, should she begin to receive wages from employment or come into funds that are not exempt, she must notify the plaintiff.
4. The parties shall also update the court if their address or telephone number changes.
5. The automatic dismissal date noted in paragraph 5 of the January 26, 2024, Agreement is vacated.

So entered this 9th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-316

VC REAL ESTATE, INC.,

Plaintiff,

v.

JORDAN DUKES,

Defendant.

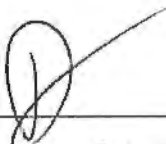
ORDER

After hearing on August 26, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. The basis for the landlord's motion is the tenant's failure to pay \$500 per month for rent since the May 2, 2024, Agreement of the Parties.
2. The tenant is trying to use RAFT to pay the rental arrearage but his applications are being denied and after consultation with Ms. Pena from Way Finders, Inc. it appears that RAFT finds the application "suspicious".

3. It is likely that RAFT is denying the tenant's applications because this matter was brought as a Civil Action and not a Summary Process action. Thus, there is no Notice to Quit and no Summary Process Summons and Complaint.
4. The tenant shall pay \$400 today and an additional \$200 by Friday, September 4, 2024.
5. The tenant shall reapply to RAFT and the landlord shall cooperate with said application and provide the documents that RAFT requires to show proof of the tenancy and the amount outstanding.
6. This matter shall be scheduled for further hearing on the landlord's motion for entry of judgment and further review on **September 19, 2024, at 9:00 a.m.**

So entered this 9th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SU-5

PAUL RUEL,
Plaintiff,
v.
VU H. NGUYEN,
Defendant.

ORDER

After hearing on September 6, 2024, on this Supplementary Process action at which only the plaintiff creditor appeared, the following order shall enter:

1. This matter shall be scheduled for further hearing on **October 1, 2024**, at **9:00 a.m.** for collection proceedings and for any properly marked motions. A *capias* (civil arrest order) may issue for the apprehension of the defendant if he fails to appear at this hearing.

So entered this 10th day of September, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

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 September 10, 2024, at which both parties appeared with counsel, the following order entered on the record and memorialized herein:

1. The parties reported to the court that the defendant landlord has provided the second-floor unit to the subject premises (hereinafter, "Unit") to the plaintiff tenant and her family. This arrangement (as an alternative to providing hotel accommodations) shall remain in place until further order of the court.
2. The landlord reports that the utilities for this Unit appear to be on in the former owner or tenant's name. The landlord shall be responsible to ensure that the

utilities for lights, heat, cooking, water, remain on by putting same into his name.

3. The landlord shall install a locking mechanism to the third-floor unit so that the tenant may lock and secure the third-floor unit and the Unit from entry and provide a key to the tenant FORTHWITH.
4. The landlord may not enter either the Unit or the third-floor unit without the tenant's permission. Access should not be unreasonably denied by the tenant upon a 48-hour advance written notice for repairs.
5. The landlord may not touch or move any of the tenant's personal items located in the third-floor unit.
6. This matter shall be scheduled for further hearing on **September 17, 2024, at 2:00 p.m.** The parties shall have until September 16, 2024, at noon to file and serve legal briefs, as was discussed at the hearing.

So entered this 17th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.
DEPARTMENT

HOUSING COURT

WESTERN DIVISION
DOCKET NO. 231179CV000289

CITY OF HOLYOKE,)
Petitioner)
)
v.)
)
FRANCES L. BLANCHARD-deceased 4/14/18)
NORMAN P. BLANCHARD-deceased 03/12/02)
)
WILLIAM GUY, (Heir))
JEAN COTE, (Heir))
)
U.S. BANK NATIONAL ASSOCIATION, AS)
TRUSTEE FOR RESIDENTIAL ASSET)
SECURITIES CORPORATION, HOME EQUITY)
MORTGAGE ASSET-BACKED PASS-THROUGH)
CERTIFICATES, SERIES 2005-EMXI)
)
MASSACHUSETTS HOUSING FINANCE AGENCY)
PROPERTY ACQUISITION AND DISPOSITION)
CORPORATION)
Respondents)
)


ORDER OF THE COURT

After a hearing on September 6, 2024, at which Petitioner, City of Holyoke, appeared through counsel, Respondent, U.S. Bank National Association, as Trustee for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMXI, appeared through counsel, the Receiver, Alfred Shattleroe, appeared through counsel, and all other Respondents failed to appear, the following is so ORDERED:

1. Receiver, as Ordered, filed a petition for late and limited probate of the Estate of Frances Blanchard (deceased owner of the subject property at 41 Lynwood Avenue, Holyoke, MA) with the Hampden County Probate and Family Court and a Decree was apparently entered.

2. The Decree was not produced, nor was it available online, and the City requested time to review before offering a position on the determination of heirs and the status of the ownership of the subject property.
3. The City also requested that Receiver produce updated proof of adequate insurance coverage along with an amended Rehab Plan with updated dates for completion.
4. Accordingly, the Court orders as follows:
 - a. Receiver shall produce a copy of the Probate Court Decree, along with an updated Rehab Plan with proof of current insurance no later than September 16, 2024.
 - b. The Receiver will then be heard on his Motion for Approval of Plan on September 20, 2024.
 - c. The Receiver shall not commence work on the interior of the building until the pending Motion for Approval of Plan has been decided. The Receiver, however, shall continue to maintain the exterior of the building, including securing the building from potential break-ins and performing all necessary landscaping. The Receiver shall secure the building, including the use of polycarbonate panels in accordance with City Ordinance c. 18-35.
 - d. The undersigned Judge will be sitting in Greenfield at the Franklin County Session of the Western Division Housing Court on September 20, 2024 for the hearing. All parties have the option of appearing live in Greenfield or on Zoom for the hearing on Receiver's motion.

So ordered, this 11th day of September 2024.



CR

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-705**

ANA IRIZARRY,

Plaintiff,

v.

LUIS M. MARTINEZ, et al.,

Defendants.

ORDER

After hearing on September 9, 2024, on the plaintiff's motion for injunctive relief at which the plaintiff and the defendant, Luis Martinez, appeared self-represented, the following order shall enter:

1. The defendant, Luis Martinez, is not a tenant of the premises, though he has been living there openly for more than a year. He was a legal occupant under his former girlfriend Crystal Soler's tenancy. When Ms. Soler vacated the unit this summer, the plaintiff gave the defendant Martinez an opportunity to become a tenant but he never was able to enter into a tenancy.

2. Accordingly, Mr. Martinez has until September 30, 2024, to vacate the premises. If he does not vacate by that date, the plaintiff may bring a motion to seek further court order to have Martinez evicted.

So entered this 17th day of September, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-464

LINDA MERCER,

Plaintiff,

v.

ALICE RODRIGUEZ,

Defendant.

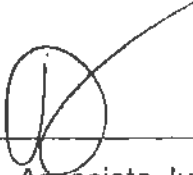
ORDER

After hearing on September 10, 2024, at which the plaintiff tenant appeared self-represented and the landlord appeared with counsel, the following order shall enter:

1. Despite the unequivocal and clear order of the court requiring the landlord to provide hotel accommodations for the tenant until the condemnation is lifted or until further order of the court, the landlord did not do so.
2. The court's August 28, 2024, order shall remain in full force and effect and continued until the next court hearing noted above.

3. More specifically, the landlord shall provide hotel accommodations for the tenant through the night of September 19, 2024, at a hotel that is pet friendly to accommodate the tenant and her dog. If said accommodations shall do not have kitchen facilities, the landlord shall also provide the tenant with a \$75 daily food stipend.
4. The landlord shall not enter the subject premises, which continue to be that of the tenant nor touch her belongings, without express permission from the tenant.
5. Communication between the parties shall be limited to writing, including texts, and shall be only between the named parties and/or counsel.
6. This matter shall be scheduled for further hearing on **September 20, 2024, at 9:00 a.m.** to be consolidated for hearing purposes with *City of Springfield, Code Enforcement v. Ramirez, 24-CV-709*, which is the Code Enforcement action regarding the same premises.

So entered this 17th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-3209

B.G. MASSACHUSETTS I, LLC,

Plaintiff,

v.

KENDRA EDWARDS,

Defendant.

ORDER

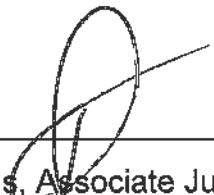
After hearing on September 10, 2024, on the tenant's motion to dismiss and the landlord's motion for access for repairs and for an interim order, the following order shall enter:

1. The owner of the property and the plaintiff are the same entity, B.G. Massachusetts, LLC.
2. B.G. Massachusetts, LLC entered into a lease with the tenant through its agent, MCR Property Management, Inc., the property management company for the subject premises.



3. The tenant's motion to dismiss this action based on *Rental Property Management Services v. Hatcher*, 479 Mass. 542 (2018) is denied as the plaintiff has standing to bring this eviction action.
4. As to the landlord's motion for access to effectuate repairs, the court orders that said access and repairs shall occur from 3:00 p.m. to 4:30 p.m. on September 12, 13, and 14, 2024.
5. As to the landlord's motion for an interim order regarding communication between the tenant and the landlord, the court orders that all non-emergency communication be between the tenant and the landlord's attorney Corey Pontes during regular business hours, via email. Outside of regular business hours, the tenant shall use "after hours" phone number provided by the landlord. In cases of an emergency, the tenant may contact the office directly. This communication protocol does not apply to written communications which can be sent by regular postal service.
6. A First-Tier Court Event---notice for which has already been sent to the parties---is scheduled for October 1, 2024, at 9:00 a.m.

So entered this 12th day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

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

CHARLES BURGESS, JR.,

Plaintiff

v.

ABBIE TAYLOR AND KEISHLA SANTIAGO,

Defendants

RULING ON MOTION FOR
ADDITIONAL DAMAGES

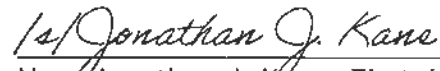
A two-day bench trial in this matter was conducted on March 13, 2024 and March 21, 2024. An order pursuant to G.L. c. 239, § 8A entered on June 24, 2024.

On June 10, 2024, after trial but before a decision had been issued, Defendants filed an emergency order for injunctive relief due to a lack of hot water in the shower. The Court ordered that the hot water in the shower be restored forthwith. Because the Court's trial decision had not yet been made final, the Court agreed to schedule a further hearing for damages.

Upon further reflection, the Court declines to reopen the record from the trial to include post-trial events. The decision of June 24, 2024 stands without modification. Defendants may seek monetary damages from Plaintiff for the absence of hot water to the shower, or any other post-trial event, in a separate proceeding. The testimony and evidence taken by the Court as to the discrete issue regarding hot water in the shower was minimal, and shall be disregarded. Future claims for

damages related to post-trial conditions issues shall not be barred by the doctrine of res judicata as the Court did not decide the claims on their merits.

SO ORDERED.



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-2385

ONKAR PROPERTIES, LLC,
Plaintiff,
v.
MAIA HERNANDEZ,
Defendant.

ORDER

This matter came before the court on September 9, 2024, for trial at which the plaintiff appeared through counsel and the tenant appeared self-represented. After consideration of the evidence admitted therein, the following order shall enter:

1. The parties stipulated to all necessary facts for the landlord's claim for possession and rental arrearage other than the amount of the arrearage.
2. As a preliminary matter, the landlord satisfied the court that it was assigned the rights by the prior property owner to those unpaid funds from prior to its purchase of the premises.

3. More specifically, for those unpaid rent beginning in July 2023.
4. The tenant challenged the amount of outstanding rent arguing that RAFT paid the landlord in a manner that should have reduced the amount outstanding.
5. The facts however show that both RAFT payments were for months not being sought by the landlord. More specifically, the landlord is seeking unpaid rent at a monthly rate of \$1,300 since July 2023, and there is no record of any payment by the tenant or on her behalf since that month.
6. **Conclusion and Order:** Judgment shall enter for the landlord for possession and for \$18,200 in rental arrearage plus court costs. An Execution may issue after the timely filing and service of a Rule 13 application.

So entered this 12th day of September, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

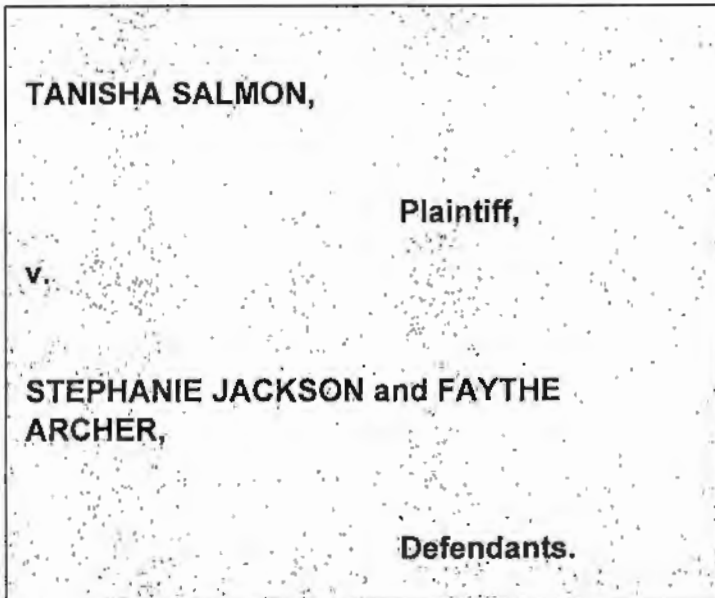
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5135



ORDER

After hearing on September 10, 2024, on the landlord's motion for entry of judgment and on the tenants' motion to enforce a new tenancy arrangement, the following order shall enter:

1. The Court's April 4, 2024, Order extended the tenants' occupancy through July 31, 2024. The tenants not having vacated, the landlord filed her motion for entry of judgment for possession.
2. The tenants oppose entry of judgment arguing with their own motion that the parties have had many communications over the past several months that resulted in a new tenancy and, thus, this summary process action need be dismissed.

3. Both sides submitted copies of text communications between them for the court's consideration.
4. After review of said texts, it appears to the court that the parties negotiated over several weeks with the intention of creating a new (month-to-month) tenancy at a higher rate to begin on August 1, 2024.
5. That new tenancy, however, was contingent upon the tenants paying their rent in full (\$1,900) for August 2024 by August 7, 2024. Without such payment, it was clear that the landlord was not agreeing to enter into a new tenancy. If the tenants were able to make that payment in full and timely, the court would find that the parties had successfully entered into a new tenancy and dismissed this action.
6. The tenants were not, however, able to make that payment. As such, the court finds and so rules that there was no contract for a new tenancy.
7. Having not vacated by July 31, 2024, the landlord's motion is allowed and judgment shall enter for the landlord for possession, *only*. An execution for possession may issue upon the timely filing and service of a Rule 13 application.

So entered this 12th day of September, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4753

WESTOVER MHP, LLC,

Plaintiff,

v.

DANIEL WELCH,

Defendant.

CORRECTED ORDER

After hearing on September 9, 2024, on the landlord's motion to reissue a new Execution for possession (and money damages), at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. After the hearing, the undersigned judge made a margin endorsement on the face of the motion. The endorsement denying the motion referred to G.L. c.239, s.10 in error.

2. The order should have referred to G.L. c.235, s.23, which addresses the shelf-life of an Execution when there is no intervening court event (such as an order or agreement) that tolls the three-month calculation.

3. Landlord's counsel asserts in his motion that he gave the Execution to a sheriff near the end of the three-month period only to have the sheriff point out that the Execution was missing the court's seal and by the time he could have a new generated the Execution expired.

4. It is unfortunate if the court issued an execution without a seal but, as the landlord's attorney pointed out during the hearing, counsel could have noticed this during most of the three months that he held it and sought a seal at that time.

5. Given the clarity of the statute (G.L. c.239, s.23) and the holding in Fort Point Investments, LLC, v. Hope Kimmage-Smith, 103 Mass App. Ct. 758 (2024), the court denies the landlord's motion for a new execution.

So entered this 17 day of September, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0297

DEBORAH BOULANGER,
AMANDA STURTEVANT AND ETHAN FIELD,

Plaintiffs

v.

TOWN OF LUDLOW MOBILE HOME
RENT CONTROL BOARD,

Defendant

WEST STREET VILLAGE, LLC,

Intervenor

ORDER ON PLAINTIFFS'
MOTION TO STRIKE

This matter seeking judicial review pursuant to G.L. c. 30A came before the Court for hearing on September 11, 2024 on Plaintiffs' motion to strike the Record of Proceedings filed by Defendant Town of Ludlow Mobile Home Rent Control Board ("RCB") on August 16, 2024.

The case docket shows that the RCB originally filed the record of the proceedings on July 18, 2024. The RCB's keeper of the records certified that the record was true, accurate and complete. On August 16, 2024, after Plaintiffs' counsel informed the RCB's counsel that the administrative record filed with the Court appeared to be incomplete, the RCB filed a replacement record of proceedings with

numerous additional documents.¹ Plaintiffs argue that the replacement administrative record (and the RCB's motion for judgment) should be stricken as untimely.²

Plaintiffs contend that they suffered prejudice because they filed their motion for judgment based on the original administrative record, not the replacement record. They offer no authority to warrant the imposition of such relief, however, and the Court can alleviate the prejudice to Plaintiffs by allowing them an opportunity to file an amended motion based on the replacement record. Furthermore, the Court will Plaintiffs to conduct discovery in the nature of depositions of the Mullin Rule affiants and of the keeper of the records for the limited purposes of ascertaining what evidence the Mullin Rule affiants reviewed and potential conflicts of interest.

For the foregoing reasons, Plaintiff's motion to strike the RCB's replacement record of proceedings and its motion for judgment on the pleadings is DENIED.

Plaintiffs amended motion shall be filed and served no later than September 30, 2024.

SO ORDERED.
September 13, 2024

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

cc: Court Reporter

¹ Among numerous other documents, the replacement record contained two Mullins Rule affidavits, a disclosure of an appearance of conflict of interest of one board member and a modified transcript of the public hearing listing three board members in attendance (the original minutes listed four members in attendance).

² Plaintiffs contend that the filing of the record of proceedings is the agency's answer (see G.L. c. 30A, § 14(4) ("The agency shall, by way of answer, file in the court the ... record of the proceeding under review.")). Even if the answer was filed late, Plaintiffs had not requested default.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0720

MARIA DEL RIO,)
Plaintiff)
v.) ORDER
)
KORI COOPER ET AL.,)
Defendants)

This case came before the Court for hearing on Plaintiff’s application for injunctive relief on September 13, 2024. Plaintiffs presented evidence that the allegations contained in their Verified Complaint and Motion for Injunctive Relief were true and accurate. Plaintiffs possess no adequate remedy at law and are likely to prevail on the merits. Plaintiffs will suffer immediate and irreparable harm should the Court deny this injunction.

WHEREFORE, it is hereby ORDERED that:

1. A licensed electrician shall make repairs at Defendants’ unit at 8:00 a.m. tomorrow (September 11, 2024). Defendants shall not deny access or interfere with the work. The City’s housing inspector is expected to arrive soon thereafter.
2. Plaintiff shall have no obligation to provide alternative housing in a hotel after tonight.
3. All communications regarding access and repairs shall be between Attorney Herbert on behalf of Plaintiff and Kori Cooper.

4. Paragraph 17 of the Verified Complaint shall be stricken.
5. The legislative fee for the issuance of an injunction is waived.

SO ORDERED.

September 13, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

111-115 BOWERS STREET REALTY TRUST,

Plaintiff,

-v.-

DOCKET NO. 24SP01724

JESSICA COLLAZA,

Defendant.

ORDER

This matter came before the court on September 16, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for September 23, 2024. The plaintiff appeared with property manager Felicia Cortez. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

This eviction case is based on non-payment of rent. A default judgment entered on June 5, 2024 for possession and \$1,675 in unpaid rent/use and occupancy with costs. Execution issued on July 12, 2024 on the plaintiff's written request. The plaintiff's constable/sheriff served a forty-eight hour notice that the execution would be used on September 23, 2024 to move the defendant out of the apartment.

The plaintiff reported that there is now \$3,300 in unpaid rent/use and occupancy due through September with costs. The monthly rent is \$775. The tenancy is not subsidized. If the move were canceled, the cancellation fee would be \$800 to \$900.

The defendant reported that she applied for RAFT financial assistance. Ms. Pena of Wayfinders confirmed that she started an application on September 11, 2024, but she has not completed it. She needs to sign the application and furnish all documentation. Then the landlord would need to submit its documentation. If all documentation is submitted and the defendant is

found eligible, RAFT could pay the arrearage and costs and cancellation fee.¹ Ms. Pena explained that the defendant has twenty-one days to complete her application, but the defendant agreed to do so today.

Because there is a RAFT application pending, the court stops the move out pursuant to G.L. c. 239 §15.

Orders

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

1. The defendant's motion is **ALLOWED** as follows:
 - a. The move-out scheduled for September 23, 2024 is **STOPPED**.
 - b. The plaintiff's attorney will notify the constable/sheriff of this order forthwith.
2. The defendant will complete her application for RAFT financial assistance today and submit all required documentation.
3. The plaintiff will submit all required documentation forthwith when requested.
 - a. The plaintiff will include the court costs and cancellation fee on the ledger submitted to Wayfinders.
 - b. If the plaintiff has not heard from Wayfinders within seven days of this order, the plaintiff will contact Wayfinders to ensure the proper email address is being used.

It is further ordered:

4. The execution is stayed pending further order of the court pursuant to G.L. c. 239 §15.
5. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.
 - a. If the execution expires by its terms and the case is not resolved by payment of the arrearage by RAFT, the plaintiff may file a motion for a new execution to issue.

September 16, 2024

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

¹ Ms. Collaza received RAFT funding in May 2024 for a utility arrearage, but sufficient funds remain to cover the current arrearage in this case.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-0215

FREEDOM MORTGAGE CORPORATION,)	
)	
PLAINTIFF)	
)	
v.)	ORDER ON PLAINTIFF'S MOTION FOR
)	SUMMARY JUDGMENT
VLADIMIR GOROZHANKIN AND)	
TAMARA GOROZHANKINA)	
)	
DEFENDANTS)	

This post-foreclosure summary process case came before the Court on September 10, 2024 on Plaintiff's motion for summary judgment. The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law. *Augat, Inc. v. Liberty Mutual Ins. Co.*, 410 Mass. 117 (1991); Mass. R. Civ. P. 56(c). Unsupported allegations or denials contained in pleadings will not defeat summary judgment. *Cullen Enterprises v. Mass. Property Ins. Underwriting Assoc.*, 399 Mass. 886, 889-899 (1987); Mass. R. Civ. P. 56(e).

After judgment by default entered against Vladimir Gorozhankin on March 14, 2014, this case proceeded against Tamara Gorozhankina alone. By order dated March 22, 2024, this Court allowed Ms. Gorozhankina to file a late answer. On July 29, 2024, Plaintiff filed this motion for summary judgment. Ms. Gorozhankina did not file an opposition.

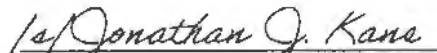
Here, the Court finds that Plaintiff established its prima facie case for possession for the reasons set forth in its memorandum and affidavits attached thereto. Plaintiff has demonstrated that it obtained a deed to the property at issue and that the deed and affidavit of sale showing compliance with statutory foreclosure requirements were recorded. *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). It served Defendants with a legally sufficient notice to quit. Ms. Gorozhnkina does not dispute that she received the notice and failed to vacate after it expired. She remains in possession.

Ms. Gorozhnkina cannot rely upon general denials in her answer once a motion for summary judgment is made and supported by affidavit as is the case here. She has the burden is to set forth specific facts in order to establish a triable issue, which she has not done.¹

Accordingly, the Court hereby ALLOWS Plaintiff's motion for summary judgment. Judgment for possession shall enter in favor of Plaintiff and execution may issue by application in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: September 16, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Moreover, there is undisputed Ms. Gorozhnkina did not sign and is not a party to the mortgage contract and thus lacks standing to assert defenses related to the validity of the foreclosure. .

12

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-682

TANYA HADSELL,

Plaintiff,

v.

ANTOINETTE SANDS,

Defendant.

ORDER

After hearing on September 10, 2024, the following order shall enter:

1. Even though the Court issued an order dated August 28, 2024, requiring the defendant landlord to provide hotel accommodations for the tenants, she has not done so.
2. That court order shall remain in full force and effect and the landlord shall continue to be responsible for providing a hotel for the tenants until the condemnation is lift or until further order of the court.

3. Such accommodations shall have cooking facilities. If it does not have such facilities, the landlord shall also be responsible for providing the tenants with a daily food stipend of \$100.
4. Without opposition, the City's verbal motion to be dismissed from these proceedings is allowed.
5. The parties shall communicate by cell phone, including texts, between the landlord and the tenant (landlord's brother).
6. This matter shall be scheduled for further review on **September 16, 2024, at 2:00 p.m.** to be consolidated for hearing purposes with the city's code enforcement matter, *City of Springfield Code Enforcement v. Antoinette Sands*, 24-CV-708.

So entered this 16th day of September, 2024.



Robert Fields, Associate Justice

Cc: Coreen Goodwin, Esq. (City Law Department)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0053

DANIEL P. KELLY,

PLAINTIFF

v.

WESTWOOD COURT APARTMENTS, LLC,
AND WESTWOOD COURT VENTURES, LLC

DEFENDANTS

RULING ON PLAINTIFF'S
APPLICATION FOR EMERGENCY
INJUNCTIVE RELIEF

This case came before the Court on September 10, 2024 on Plaintiff's application for injunctive relief. Both parties appeared through counsel. The property in question is located at 1583 Riverdale Street, Apartment 12, West Springfield, Massachusetts (the "Premises").

Plaintiff seeks an order that Defendant Westwood Court Ventures, LLC ("WCV") hire a professional mold remediator for the Premises and that WCV provide alternative accommodations in the interim.

By way of background, this case commenced on January 27, 2023 related to water intrusion in Apartment 41, where Plaintiff resided at the time the suit was filed. In May 2023, the Court ordered mold remediation in Apartment 41. Because the source of the water intrusion had not been eliminated, Plaintiff accepted a transfer to the Premises. Prior to moving in, the air quality in the Premises was tested and found to be free of mold. The parties agreed that WCV would wipe down Plaintiff's belongings according to a protocol developed by Walt Baenziger, a building sciences expert, and then have a

professional moving company move the belongings to the Premises. The items were moved to the Premises on March 8, 2024.

After a few months, Plaintiff began having difficulties breathing in his new apartment. Ms. Baenziger performed additional mold testing on July 9, 2024. The laboratory that examined the samples reported "medium" levels of Cladosporium on a storage bin and the filters of the air conditioner and air purifier. It reported "low" levels of Cladosporium on the bed cover. Mr. Baenziger provided an affidavit attesting that only "rare" levels are acceptable per industry standards and that "medium" levels of fungal material on multiple indoor surfaces indicates a need for mold remediation of surfaces.

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. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Here, based on the evidence presented at the hearing on Plaintiff's motion and the reasonable inferences drawn therefrom, the Court finds that Mr. Kelly has a low likelihood of success on the merits of his claim. WCV acted diligently and reasonably in

compliance with the protocol for preparing and moving Plaintiff's belongings.¹ There is no direct evidence that they brought any mold-contaminated items to Apartment 12. Plaintiff surmises that WCV and its agents must have failed to clean all of the mold from his belongings because mold was found in the unit four months later. However, Plaintiff concedes that he moved some boxes into the unit himself before the movers arrived and testified that he cleaned some items himself when he noted some dust on them. There is insufficient evidence for the Court to find that WCV failed to clean the items before they were transferred and that WCV's failure is the cause of the mold in Apartment 12.

Plaintiff's risk of irreparable harm is significant if he continues to have elevated levels of toxic mold in his unit. This risk must be evaluated in light of his likelihood of success on the merits. After balancing these factors, the Court finds that Plaintiff failed to demonstrate he is entitled to injunctive relief in the nature of alternative housing. Given the findings of Mr. Baenziger, however, WCV is responsible for ensuring that Apartment 12 is free of mold.

Accordingly, the following order shall enter:

1. Plaintiff's request for alternative housing is denied.
2. WCV shall take appropriate steps to remove the mold found in Apartment 12.

SO ORDERED.

DATE: September 16, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Three WCV employees spent a full day wiping down surfaces and the moving company brought at least 6 people so that it could transfer the furniture and storage bins immediately after they had been wiped down to avoid recontamination.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2475

DANIELLE MCKAHN AND DENISE MCKAHN,

Plaintiffs

v.

JANE DAPHNE CHICOINE;

Defendant

ORDER ON MOTION TO DISMISS

This summary process case came before the Court on September 16, 2024 on Defendant's motion to dismiss. All parties were represented by counsel. Defendant asserts three bases for seeking dismissal of the complaint. Each will be addressed in sequence:

1. The notice to quit recites that Defendant must "quit and deliver up at the expiration of the month of April (by April 30, 2024)." Despite older case law requiring a notice to vacate to specify termination on a rent day (see *Connors v. Wick*, 317 Mass. 682, 630-31 (1945)), the Court finds that, in this case, termination of a tenancy on the last day of April rather than the first day of May has no meaningful practical effect and therefore does not render the notice defective. See *Cambridge St. Realty, LLC v. Stewart*, 481 Mass 121, 130 (2019).
2. Despite the tenancy having been terminated for no cause, Plaintiffs' counsel included a debt collection notice. Defendant posits that a

statement that Plaintiffs' counsel is acting on behalf of Plaintiffs as a debt collector is inconsistent with a no fault notice to quit and confusing. The Court disagrees. A landlord can seek unpaid rent and use and occupancy in a no fault eviction case, even though it is not the grounds for eviction and does not transform a no fault case into a nonpayment of rent case.

Moreover, the notice counsel attached to the notice to quit as a separate page is a standard form notice included by Plaintiffs' counsel in the event it is considered a debt collector under the Fair Debt Collection Practices Act, and under an objective standard, would not create confusion in the mind of a reasonable tenant facing eviction.

3. In an email on October 29, 2023, one of the plaintiffs wrote in an email to Defendant that her lease would terminate on May 30, 2024. The notice to quit is dated February 7, 2024 and purports to terminate the tenancy a month sooner, at the end of April 2024. There is no basis to find that the email constitutes a bargained-for lease extension.¹ Instead, it was advance notice by Plaintiffs that they were giving Defendant notice that she would need to vacate in the months ahead. In any event, there is no reason for the Court to consider extrinsic evidence because the notice to quit squarely provides a clear and unambiguous termination date.²

¹ In fact, the parties previously agreed in writing that the lease would become month-to-month as of September 1, 2022).

² Even if the Court did consider the email, Defendant should have raised this issue and demonstrated her confusion between February 7, 2024 (the date of the notice to quit) and April 30, 2024 (the date of termination). Had she done so, it may not have rendered the notice defective but it might have been the basis for an equitable stay through May. She has now received the benefit of the extended time (and then some), so any confusion as to whether the tenancy terminated at the end of April or May is moot.

For the foregoing reasons, none of the bases for dismissing the case are meritorious, and therefore the motion to dismiss is DENIED.

SO ORDERED.
September 16, 2024

By: *1st Jonathan J. Kane*
Jonathan J. Kane, First Justice

cc: Court Reporter

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 September 16, 2024 for a continued hearing on the plaintiff's motion to enter judgment and issue the execution. The plaintiff appeared through its attorney. Neither defendant appeared. They are self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

The court reviewed the procedural history of this case in its August 21, 2024 order and incorporates it here. The plaintiff reported that the rent/use and occupancy arrearage is \$9,064.01 through September 2024 including costs. Ms. Pena of Wayfinders confirmed that Mr. Wheat filed an application for RAFT financial assistance on August 12, 2024. The tenant's documentation is complete and Wayfinders is reviewing the landlord's documentation. She expects a decision to be made within two to three weeks. If the defendant is found eligible, he could receive \$7,000 in RAFT financial assistance.

While Mr. Wheat completed his portion of the RAFT application, he did not comply with the other terms of the August 21 order. He did not notify the plaintiff's attorney of the status of his proposed roommate by September 5, 2024 nor did he execute a new lease. He did not pay the \$450 balance that would remain through August if RAFT paid \$7,000 on his behalf, the \$314.01 in costs or the \$1,300 September use and occupancy, although he agreed at the last

hearing to pay all three amounts. The court notes that because Mr. Wheat did not pay the September use and occupancy the balance after RAFT paid \$7,000 would be \$1,750.

Orders

The plaintiff requested that judgment enter. However, the court does not enter judgment at this time pursuant to G.L. c. 239 §15 because the defendant has a RAFT application pending.

The plaintiff's motion is continued to October 7, 2024 at 9:00 a.m.

September 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. 05-CV-000005

TOWN OF LUDLOW,)
)
 PLAINTIFF)
)
v.)
)
PAUL COCCHI,)
)
 DEFENDANT)
_____)

On April 16, 2024, the Court entered an interim order on the Town of Ludlow (TOL)'s complaint for contempt allowing the parties an opportunity to submit post-hearing memoranda. Subsequent motions were filed, and on July 5, 2024, the Court imposed a deadline of August 7, 2024 for Defendant's memorandum and allowed ten days for TOL to file a reply brief.

Upon consideration of the pleadings, and after a careful review of this entire matter, the Court dismisses this case. As reasons for dismissal, the Court notes that the specific order upon which TOL bases its complaint for contempt was issued over 18 years ago (July 31, 2006) by a judge who has been retired since 2008. Although a judge of this court found Defendant in contempt of the 2006 order in March 2018, the parties to that contempt proceeding are not the same parties as are now before the Court.

The original plaintiffs in this case were Town of Ludlow Conservation Commission and Stephen Houle, Building Commissioner for the Town of Ludlow. In

2018, TOL's counsel moved to substitute its then-Building Commissioner, Justin Larivee, for Stephen Houle. The docket does not show that the motion was allowed and Mr. Houle remains one of the named plaintiffs in the court records. Even if Mr. Larivee was allowed to substitute for Mr. Houle, the TOL Conservation Commission remains a plaintiff.

When TOL's counsel withdrew from this case in 2023, current town counsel filed an appearance on behalf of Town of Ludlow Conservation Commission and Jason Larivee, Building Commissioner for the Town of Ludlow. Its first pleading, the Third Verified Complaint for Contempt, counsel indicated in the first paragraph that the complaint was filed by the Town of Ludlow, by and through its Building Commissioner Leslie Ward. It signed the pleading as counsel for Town of Ludlow by and through its (unnamed) Building Commissioner.¹ TOL did not move and the court did not grant permission to change the parties in this action.²

In light of the misnomer of the parties and the fact that the court order the TOL is seeking to enforce is over 18 years old, the Court is unwilling to continue this litigation.³ The Court takes judicial notice of the TOL's bylaws, and notes that many have been amended since this case commenced in 2005.⁴ If it wishes to enforce its bylaws against Defendant, TOL shall begin new enforcement proceedings.

¹ This distinction has significance because the TOL has separate bylaws relating to Conservation and Zoning, respectively.

² The Court acknowledges that Plaintiff could seek leave to substitute parties, but the fact remains that the case began as a complaint by the Conservation Commission and somehow morphed, without leave of court, into a claim brought by the Building Commissioner.

³ If requested, it will take judicial notice of this case in future enforcement litigation.

⁴ For example, the "General Use Regulations" in Chapter V were amended in 2011, 2012, 2020 and 2021.

In light of the foregoing, this case is dismissed without prejudice.

SO ORDERED.
September 16, 2024

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

cc: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-2812

PHILIP and JOYCE MCDONALD,

Plaintiffs,

v.

BRENDAN L. MCDONALD and JENNIFER
HALL,

Defendants.

ORDER

This matter came before the court for a trial, at which the plaintiff appeared with counsel and the defendants appeared self-represented. After hearing, the following order shall enter:

1. The parties stipulated to the landlords' claim for possession and that no rent is required of the tenants—owed or owing until they vacate the premises.
2. The tenants asserted their rights under G.L. c.239, s.9 & 10, seeking six months to allow them to identify, secure, and relocate to alternate accommodations.

3. In accordance with G.L. c.239, s.9 & 10, the tenant shall have until April 1, 2025, to vacate the premises.
4. If the tenants do not vacate by that date, the landlord may bring a motion for entry of judgment.

So entered this 17th day of September, 2024.



Robert Fields, Associate Justice
Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No.24-SP-1967

**SOUTH MIDDLESEX NON-PROFIT HOUSING
CORP.,**

Plaintiff,

v.

JULIE CRICHLOW,

Defendant.

ORDER

After hearing on September 12, 2024, on the tenant's motion for reconsideration, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The tenant comes before the court asking the Court to reconsider its order and decision entering judgment for the landlord based on their no-fault eviction action.

2. The tenant argues that the landlord was not permitted to terminate the tenancy based on no-fault as she alleges that the parties were subjected to a lease that had not expired.
3. The tenant, however, was not able to sustain her burden of proof that there was a lease between the parties. The screen shots she provided the Court do not convince the Court that they represented a binding lease between the parties.
4. There are two pages that show the signature section of a document. One has no signatures but includes handwriting that indicates the tenant will not sign it. The other has only the tenant's signature.
5. Having failed to fulfill her burden that there was a binding lease between the parties at the time of the no-fault termination notice, the motion for reconsideration is denied.

So entered this 17th day of September, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5007

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

ABIANA REYES,

Defendant.

ORDER

After hearing on September 13, 2024, at which the defendant did not appear but or which landlord's counsel and a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. The Court's Oder dated August 5, 2024 (hereinafter, "Order")(Dalton, J.) had the parties returned for this hearing---having continued the landlord's motion for entry of judgment for possession.
2. The landlord reported that the tenant made a payment on August 7, 2024, of \$1,000. This is \$116 less than what was required under the Order (which required rent of \$832 plus \$284 towards arrearage).

3. The representative from TPP, Ms. Battista, reported that she is working closely with the tenant and that there is a RAFT application pending with hardship documentation. She also reported that she spoke with the tenant yesterday who was prepared to pay \$1000 then (or today). She reported also that she heard from the tenant this morning who said she was ill and would not be able to attend the court hearing.
4. Given the payment in August 2024, and the continued work with TPP, the landlord's motion for entry of judgment shall again be continued to the date noted below.
5. In the meantime, the tenant is to cooperate with TPP's efforts to put into place a Representative Payee.
6. The tenant shall pay the rent plus \$284 forthwith.
7. The tenant shall also pay her rent plus \$284 by October 7, 2024.
8. This matter shall be scheduled for further review including an update on the pending RAFT application, and hearing on the landlord's motion for entry of judgment on **October 17, 2024, at 9:00 a.m.**

So entered this 17th day of September, 2024.

Robert Fields, Associate Justice

Cc: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

MASON SQUARE APARTMENTS I, LP.,

Plaintiff,

-v.-

DOCKET NO. 24SP02625

SONIA IVETTE CASTRO-CARRASQUILLO,

Defendant.

ORDER

This matter came before the court on September 17, 2024 for a hearing on the defendant's motion to amend the parties' August 15, 2024 Agreement. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

As discussed at the hearing, there is nothing to amend in the Agreement. The defendant has complied with the terms of the Agreement. She vacated the apartment as agreed. She has an arrearage for unpaid rent/use and occupancy. There is no judgment against her for monetary damages and the plaintiff does not seek a judgment at this time. However, the defendant asked to make a payment plan for the arrearage so that her account is clear. The parties met after the hearing and entered into such a payment plan.

As there is nothing to amend in the Agreement and the parties entered into a payment plan per the defendant's request, the motion is denied as moot.

September 18, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0729

MOLTENBREY APARTMENTS LP,)
Plaintiff)
v.) ORDER FOR TEMPORARY
JASMINE MONTALVO,) RESTRAINING ORDER
Defendant)

This matter came before the Court on September 18, 2024 for a hearing on Plaintiff's emergency motion for injunctive relief. Plaintiff appeared through counsel. Defendant did not appear. Plaintiff's counsel represented that Defendant is in lock-up and was not permitted to appear by Zoom for this hearing.

Based on the facts set forth in the verified complaint and the testimony taken at the hearing, the Court finds that Plaintiff possesses no adequate remedy at law and is likely to prevail on the merits. Further, Plaintiff is likely to suffer immediate and irreparable harm if the injunctive relief is denied.

Accordingly, the following temporary restraining order shall enter:

1. Plaintiff may change the locks to Defendant's unit at 76 Avenue A, #201, Turners Falls, Massachusetts (the "Premises") in order to prevent unauthorized entry while Defendant remains confined in jail or a hospital or other institution.
2. If Defendant is released and seeks to reenter the Premises, Plaintiff shall request an emergency hearing on short notice (the same day if possible)

for Defendant to show cause why she should be permitted to reoccupy the Premises.

3. Until further order of this Court, neither Defendant nor any other person shall be permitted to enter the Premises.
4. An in-person hearing for issuance of a preliminary injunction shall be combined with a trial on the merits on September 27, 2024 at 9:00 a.m. in the Greenfield session of the Western Division Housing Court. If successful on the merits of its claim, or if Defendant fails to appear without good cause shown, Plaintiff may request judgment for possession.
5. Plaintiff shall have this order served upon Defendant within 48 hours by sheriff or constable and shall file the return of service with the Court on or before the date of the next hearing.
6. The legislative fee for injunctive relief is waived.

SO ORDERED.

September 18, 2024



Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0727

PCJM, LLC,)	
Plaintiff)	
v.)	ORDER FOR PRELIMINARY
)	INJUNCTION AND NOTICE
JOSH BORBEAU AND JANE DOE,)	TO APPEAR FOR TRIAL
Defendants)	

This matter came before the Court on September 18, 2024 for a hearing on Plaintiff’s emergency motion for injunctive relief. Plaintiff appeared through counsel. Defendants did not appear. Because Defendants were served with notice to appear at this hearing, the Court treats it as a motion for preliminary injunction.

Based on the facts set forth in the verified complaint, the Court finds that Plaintiff possesses no adequate remedy at law and is likely to prevail on the merits. Further, Plaintiff is likely to suffer immediate and irreparable harm if the injunctive relief is denied.

Accordingly, the following order shall enter:

1. All occupants shall vacate the residential premises located at 244 Walnut Street, Basement, Holyoke, Massachusetts (the “Premises”) no later than September 25, 2024.
2. All persons who have not vacated the Premises by the date above shall appear in person on September 25, 2024 at 9:00 a.m. in the Springfield session of the Western Division Housing Court to show cause why they

should not be required to vacate immediately. The hearing on September 25, 2024 shall be treated as a trial on the merits and judgment for possession may enter at that time.

3. Plaintiff shall have this order served by sheriff or constable no later than September 19, 2024 and shall file the return of service with the Court on or before the date of the next hearing.
4. The legislative fee for injunctive relief is waived.

SO ORDERED.

September 18, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

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 September 17, 2024 for review pursuant to the court's August 14, 2024 order stopping the move-out. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

The court outlined the chronology of this case in its August 14 order and incorporates it here.

The defendant complied with some but not all of the August 14 order. She paid \$1,000 by 9:00 a.m. on August 14 as ordered. She did not pay the September use and occupancy (\$737) by September 10, although she offered to pay it on September 17. Although ordered to file an application for RAFT financial assistance immediately after the August 13 hearing, she did not do so until September 10. The arrearage is now \$2,680 in unpaid rent/use and occupancy and \$1,285.77 in costs and cancellation fees.

Ms. Luna of Wayfinders confirmed that the defendant's RAFT application is awaiting the landlord documentation. The plaintiff reported that they received the request the day before the hearing and are working on the documents to be submitted. If the defendant is found eligible,

she would be eligible for \$4,047 to be paid toward the total arrearage (\$3,965.77).¹ This would reduce the arrearage to zero if it is received in September. If it is not received in September, October will have become due. In any event, upon receipt of payment of RAFT on this application, the defendant will exhaust her RAFT eligibility almost completely.

Order

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

1. The defendant will pay \$737 for the September use and occupancy on September 17, 2024.
2. The plaintiff will complete its documentation for the RAFT application forthwith and will include the costs and cancellation fees on the ledger.
3. The execution is stayed pending further order of the court pursuant to G.L. c. 239 §15 because there is a pending RAFT application.
4. This stay of execution is ordered within the meaning of G.L. c. 235 §23 and tolls the running of the execution.
5. The plaintiff may file a motion to restore the case to the list for further hearing on the issuance of a new execution, if necessary.

September 18, 2024

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

¹ Ms. Luna reported that the remainder of the \$7,000 annual eligibility was paid toward the arrearage in May. The court notes that at the last hearing the parties noted a \$3,000 payment in May but did not know the source.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

VALLEY OPPORTUNITY COUNCIL,

Plaintiff,

-v.-

DOCKET NO. 22SP03816

PIAGET SMITH,

Defendant.

ORDER

This matter came before the court on September 17, 2024 for a hearing on the defendant's motion for relief from judgment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

This eviction case is based on nonpayment of rent. The apartment is in a Low Income Tax Credit property. The monthly rent is \$801. Since the case was filed on October 31, 2022, the parties entered into two Agreements to try to resolve the matter. Judgment entered on August 26, 2024 after a hearing on the plaintiff's third motion for entry of judgment. Judgment entered for the landlord for possession and \$8,063 and \$496.25 in costs.¹

The defendant now asks for relief from that judgment on the grounds that she received a promotion at her job, and she has more money to put toward the rent as of September 1, 2024. She paid \$901 in September to date. This leaves a balance of \$8,459.25 through September in unpaid rent/use and occupancy and costs. Although she has received RAFT in the past, her most recent application was denied in June 2024. She offered to pay \$500 extra each month toward the arrearage.

¹ The costs include a cancellation fee for a move-out which was cancelled in March 2023 based on an earlier default judgment.

The plaintiff opposes the motion on the grounds that the nonpayment of rent case has been ongoing for almost two years without the defendant approaching a zero balance. Despite receiving RAFT financial assistance, she owes almost as much now as she owed when the first judgment entered by default on January 6, 2023. There have been several months since *any* payment was made before September 2024.

After considering both sides' arguments at the hearing, the court finds that the defendant did not present sufficient grounds for relief from the August 26, 2024 judgment. If the defendant can demonstrate a realistic and credible good faith repayment plan, she may negotiate with her landlord, but the court does not find grounds to order such an arrangement.

Order

After hearing, the defendant's motion for relief from judgment is **DENIED**.

September 18, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SC-0116

PAULINE WHILBY,

Plaintiff

v.

SAMANTHA DIAZ,

Defendant

ORDER ON MOTION TO APPOINT
KEEPER AND ATTACH RENTS

This small claims case before the undersigned judge on September 18, 2024 on Plaintiff's motion to appoint a keeper to attach Defendant's rental income to satisfy a default judgment that entered on April 28, 2003. An execution on money judgment in the amount of \$6,640.00 issued on June 21, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented over Zoom.

Defendant asserts that she did not have notice of the small claims trial and was unaware that a judgment had entered against her. Defendant's assertion is supported by returned mail in the Court's file. Defendant recently provided the Court with a new address in Enfield, Connecticut.

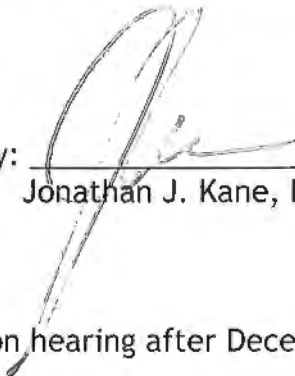
In light of the foregoing, and given Defendant appeared by Zoom rather than in person, the Court shall continue this motion to a later date. In the interim, Defendant may file a motion with respect to her failure to appear for trial, and Defendant may conduct discovery as to Defendant's assets and ability to pay the judgment.

The following order shall enter:

1. Defendant must file and serve any motion for relief within thirty (30) days. Any opposition to Defendant's motion must be filed and served at least 48 hours in advance of the hearing on Defendant's motion.
2. Plaintiff may propound written discovery upon Defendant and may notice depositions no later than October 18, 2024. If Plaintiff propounds written discovery, Defendant shall have forty-five days (45) from receipt to respond.
3. The parties shall appear for an in-person evidentiary hearing on Plaintiff's motion on a date selected by the Clerks' Office after December 1, 2024. Notice of the date will be sent to Plaintiff's counsel and Defendant at the Connecticut address she recently provided to the Court.

SO ORDERED.

September 18, 2024

By: 
Jonathan J. Kane, First Justice

cc: Clerk's Office (to schedule in-person hearing after December 1, 2024)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1846

APPLETON CORPORATION, ET AL.,

Plaintiffs

v.

LESLIE NIEVES,

Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court for a bench trial on September 17, 2024. Plaintiffs (the “landlord”) appeared through counsel. Defendant (the “tenant”) appeared self-represented. The residential property at issue in this case is located at 33 Halsey Street, Springfield, Massachusetts.

The parties stipulated to the landlord’s prima facie case for possession and unpaid rent in the amount of \$16,110.00. The tenant did not file an answer and did not assert any legal defenses at trial. She complained that the landlord did not explain the most recent change in her rent share (in June 2024, when it decreased to \$184.00) but she offered no credible explanation as to how the rent arrears grew to such a large amount. The Court finds that the tenant offered no legal defenses to the landlord’s claim for unpaid rent.¹

¹ The tenant does not have a pending application for rental assistance and therefore G.L. c. 239, § 15 does not apply.

Based on the foregoing, the following order shall enter:

1. Judgment for possession and damages in the amount of \$16,110.00, plus court costs, shall enter in favor of Plaintiff.
2. Execution (eviction order) may issue upon written application ten days after the date judgment enters.

SO ORDERED.

September 19, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

BELLE FRANKLIN LP,

Plaintiff,

-v.-

DOCKET NO. 23SP05217

DESTINY L. JACKSON,

Defendant.

ORDER

This matter came before the court on September 17, 2024 for a hearing on the plaintiff's motion for entry of judgment and issuance of the 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 rent. The apartment is located in a Low Income Tax Credit property. Since this case was filed on November 20, 2023, the parties entered into two Agreements to try to resolve the matter. By the terms of the most recent Agreement (April 23, 2024) relevant to this motion, the parties agreed that the defendant owed \$1,640 in unpaid rent/use and occupancy through April 2024 and \$240.77 costs. The defendant agreed to make a \$700 payment by April 24, 2024 and to pay the monthly use and occupancy (\$950) by the fifth of each month and \$300 toward the arrearage by the twentieth of each month, both beginning in May 2024. The parties acknowledged that the defendant was eligible to apply for RAFT financial assistance. The case would be dismissed when the defendant reached a zero balance. If the defendant did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff filed such a motion on the grounds that the defendant paid only \$700 in August (instead of \$1,250) and nothing in September. The arrearage is now \$2,240 through September with \$240.77 costs.

The defendant testified that she did not make the payments as she agreed because she had been hospitalized and was out of work for some time. She has now returned to work, although she still misses some time from work because of illness. She did not apply for RAFT after entering into the April 23, 2024 Agreement.

Ms. Luna confirmed that a RAFT application was filed two days before the hearing. It appears to have been filed by the landlord, although it was filed by the defendant who apparently clicked the wrong box on the application. If Ms. Jackson completes the application and the landlord submits the required documentation, it appears that she would be eligible to receive the full amount of the arrearage from RAFT.

Order

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

1. The plaintiff's motion for entry of judgment is continued to **October 15, 2024 at 9:00 a.m.**
2. The defendant will complete her RAFT application by the end of this week, and submit all documentation. If she needs help completing the application, she may visit one of the Wayfinders offices for assistance.
3. The plaintiff will submit its documentation to RAFT in a timely fashion and will include the costs on the ledger.
4. The defendant will pay her use and occupancy for October (\$950) no later than October 5, 2024.

September 19, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

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

THEODORE BURRELL,

Plaintiff

v.

KELLY JACKMAN,

Defendant

RULINGS ON CROSS MOTIONS
FOR RECONSIDERATION

This summary process case came before the Court on September 6, 2024 on motions for reconsideration filed by each party. Judgment entered on August 2, 2024 following a multi-day bench trial pursuant to a written decision entered on July 31, 2024. The Court will address each party's motion for reconsideration in seriatim.

Plaintiff's Motion for Reconsideration

Mr. Burrell asks the Court to reconsider its findings related to retaliation, sexual harassment and violation of G.L. c. 93A. With respect to retaliation, the Court did not shift the burden to Mr. Burrell to demonstrate that he did not retaliate by serving Ms. Jackman with a notice to quit on April 24, 2023, approximately twelve days after a visit by the health inspector. It weighed the credibility of the parties in light of the circumstances and concluded that Ms. Jackman established retaliation by a preponderance of the evidence. The decision did not rest on Mr. Burrell's failure to overcome a presumption of retaliation.

Regarding Mr. Burrell's request for reconsideration on the claim of sexual harassment, the Court stands by its ruling. Mr. Burrell essentially contends that his conduct was not actionable because he did not make overt sexual advances or statements, and because Ms. Jackman never told him to stop acting in the manner he did. Particularly in the context of residential housing, the Court's findings set forth in paragraphs numbered 33 and 34 show severe and pervasive harassment. To be sure, the Court can find more severe examples of sexual harassment, but the Court will not reconsider its finding that Mr. Burrell's conduct in this case was objectively severe and pervasive in light of all of the circumstances.¹

Turning the question of damages for c. 93A, in *Hershenow v. Enterprise Rent-A-Car Co. of Boston*, 445 Mass. 790, 800 (2006), the Court re-examined its decision in *Leardi v. Brown*, 394 Mass. 151 (1985), which, like the current case, involved unlawful lease terms in a residential tenancy. The *Hershenow* court wrote that the illegal lease terms in *Leardi* acted as a powerful obstacle to a tenant's exercise of his legal rights and that "the mere existence of statutorily prohibited lease provisions placed all tenants in a worse and untenable position than they would have been had the leases complied with the requirements of Massachusetts law." *Leardi* thus established that unlawful terms in a lease satisfy the required causal connection between the deceptive act and an adverse consequence or loss. Therefore, the Court declines to reconsider its award of nominal damages under G.L. c. 93A.

For the foregoing reasons, Mr. Burrell's motion for reconsideration is DENIED.

¹ Given the Court's reconsideration of its finding as to breach of the covenant of quiet enjoyment, this finding is of less import.

Defendant's Motion for Reconsideration

Ms. Jackman urges the Court to reconsider and/or alter and amend the judgment. She asserts that the Court erred in concluding that Mr. Burrell is entitled to collect unpaid rent in this case because the facts do not support the actual amount of money owed. Although Mr. Burrell's recordkeeping is not a model of consistency or accuracy, the Court does not find his accounting to render the determination of rent arrears impossible. The evidence supports the amount of the contract rent and Ms. Jackman's share from month to month. The Court made findings regarding the discrepancies it found in the ledgers. The Court examined the evidence carefully and does not find a reason to change its findings as to the amount of rent owed to Mr. Burrell.

Regarding the argument that the sexual harassment finding also constitutes a breach of quiet enjoyment, upon reconsideration the Court agrees with Ms. Jackman that its findings regarding Mr. Burrell's conduct support a conclusion that he violated G.L. c. 186, § 14. Pursuant to § 14, a landlord is liable if it "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant." The argument that Mr. Burrell's sexual harassment impaired the character and value of a leasehold has merit, and because the statutory damages under § 14 are greater than \$2,500.00, the Court shall award statutory damages of \$4,500.00.²

The Court does not consider the damages it awarded for sexual harassment to

² The contract rent changed from \$1,100.00 to \$1,500.00 in May 2022. Although some of Mr. Burrell's conduct occurred prior to the rent change, the Court cannot parse each act and assign a particular rental amount. For example, the Court made findings about his conduct in February 2022 (when rent was \$1,100.00) and May 2022 (when it was \$1,500.00). In selecting the higher figure for calculating damages, the Court uses its discretion in not rewarding Mr. Burrell for unlawful conduct that occurred prior to the rent increase that he sought unilaterally from the subsidy administrator.

be punitive damages, and Ms. Jackman is entitled to recover damages under only one legal theory for the identical conduct. She is entitled to damages under the legal the legal theory that results in the greatest award, which in this case is violation of G.L. c. 186, § 14.

Accordingly, Defendant's motion for reconsideration on the issue of damages for breach of quiet enjoyment is ALLOWED. The judgment is therefore amended as follows:

1. Judgment for possession shall enter for Ms. Jackman.
2. Ms. Jackman is entitled to \$6,389.00 in damages on account of her counterclaims.³
3. Defendant shall have twenty-one (21) days from the date of this order to file a petition, along with supporting documentation, for reasonable attorney's fees and costs on those claims for which such fees and costs are available. Plaintiff shall then have fifteen (15) days from receipt of the petition to file any opposition, after which time the Court will enter final judgment.

SO ORDERED,
September 19, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

³ This figure is calculated by setting off the \$7,781.00 in unpaid rent through April 2024 with the damages awarded Ms. Jackman of \$14,170.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

MAZEN AWKAL & HANNA AWKAL,

Plaintiff,

-v.-

DOCKET NO. 24SP02547

PAUL FINK & CONNIE FINK,

Defendant.

ORDER

This matter came before the court on September 17, 2024 for a hearing on the defendant's motions to remove the default and for a stay of the execution. Mazen Awkal appeared with the plaintiffs' attorney. Connie Fink appeared. The defendants are self-represented.

In this eviction case based on nonpayment of rent the plaintiffs seek possession of the subject rental premises and unpaid rent/use and occupancy. The defendants did not appear for the First Tier Court Event on August 13, 2024. A default judgment entered against them on August 15, 2024 for possession and \$9,600 in unpaid rent/use and occupancy with \$316.65 costs. The monthly rent is \$1,600. The arrearage is now \$11,200 through September 2024 with \$316.65 costs. The plaintiff did not request the execution pending the hearing on the defendant's motion to remove the default.

Ms. Fink testified that she and her husband missed the court date because she "had a different date" in her head. She agreed that it was her fault. She explained that they are trying to move because they cannot afford the \$1,600 per month rent.¹ An application for RAFT financial

¹ The rent was \$900 when they moved into this apartment. The original landlord raised the rent twice and then sold the property to this landlord who raised the rent again.

assistance timed out because the landlord did not submit their documentation. However, the court notes that the arrearage was and is substantially more than the maximum RAFT could pay for the year. Ms. Fink acknowledged that they could not offer a payment plan for the balance. Under these circumstances, where the maximum RAFT payment would not reduce the arrearage to zero and there is no repayment plan for the balance, a landlord is not required to accept RAFT.²

The court finds that the defendant did not demonstrate excusable neglect for failing to appear for the court event although Ms. Fink acted promptly to file the motion to remove default. The court further finds that the defendant did not present a viable defense to the nonpayment of rent eviction.

The motion to remove the default is **DENIED**.

Turning to the defendant's motion to stay the execution, the defendant reported that they have been looking for a new apartment since September 2023, but have not found one to date. They are on the state-wide CHAMP waiting list for rental assistance. Ms. Fink does not know how long it will be for them to get to the top of the list, receive a voucher, and find an apartment. She estimates it could be an additional four months. The court notes that the CHAMP waiting list is usually quite lengthy.

The court does not have the authority to grant any further stay of the execution in this case. Because it is based on nonpayment of rent and there is a substantial arrearage, the defendants are not eligible for a stay pursuant to G.L. c. 239 §9. The defendants could not afford to pay the rent/use and occupancy during any such stay. They did not present grounds for an equitable stay pursuant to G.L. c. 239 §10. Because there is no RAFT application pending, they are not entitled to a stay pursuant to G.L. c. 239 §15.

The motion to stay the execution is **DENIED**.

September 20, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

² RAFT also may be used to move to another apartment, separate from this landlord.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-645

TAMPATHA EARLY,

Plaintiff,

v.

KIRK APPIAH and CMSA HOLDINGS, LLC,

Defendants.

ORDER

After hearing on September 13, 2024, at which only the plaintiff appeared, the following order shall enter:

1. The plaintiff was unable to have the defendant, Kirk Appiah, served in-hand the Civil Contempt summons.
2. Accordingly, the matter shall be continued to a new date after service is effective.
3. The Clerk's Office is requested to generate a new Civil Contempt summons for the plaintiff to have Mr. Appiah served in-hand.

4. The plaintiff is reminded that in addition to having Mr. Appiah served the summons in-hand, she must also give notice (not necessary in-hand) to the other defendant CMSA Holdings, LLC of the contempt trial.

So entered this 20th day of September, 2024.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

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

NORTHAMPTON HOUSING AUTHORITY,

Plaintiff

v.

LINDA KIELSON,

Defendant

ORDER ON MOTION TO
WAIVE THE APPEAL BOND

Defendant's motion to waive the appeal bond in this summary process action came before the Court by Zoom on September 20, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. Defendant asked for a continuance because she claims she is meeting with potential appellate counsel next week. She confirmed that counsel is considering representing her with her appeal; the motion before the Court today is a precursor to the appeal process and the Court finds no basis to delay the process. Therefore, the motion to continue the hearing on Defendant's motion to waive the appeal bond is denied.

Judgment entered for Plaintiff on August 21, 2024 following a bench trial. Defendant filed a document entitled "Motion for Emergency Appeal" on August 30, 2024. The Court considers the document to satisfy the requirements of a notice of appeal and considers the appeal timely.¹

¹ Defendant also filed a motion to allow late answer, which the Court denies as untimely.

Where the plaintiff in a summary process prevails at trial and the appealing defendant remains in possession of the property, the appeal is conditioned by statute on the defendant's posting a bond, or making periodic use and occupancy payments pending the resolution of the appeal, or both. See G. L. c. 239, § 5 (c); *Bank of N.Y. Mellon v. King*, 485 Mass. 37, 45-46 (2020). The appellant is entitled to a waiver of the bond where he or she demonstrates both indigency, as defined in G. L. c. 261, § 27A, and the existence of a nonfrivolous defense. See G. L. c. 239, § 5 (e)(7). Even where the bond is waived, the appellant is obligated to pay for use and occupancy in an amount determined by a judge. (“use and occupancy payments required of indigent party may not be waived, substituted or paid by the Commonwealth under the indigency statute). See *Frechette v. D'Andrea*, 494 Mass. 167, 169 (2024).

Defendant is a tenant of public housing and qualifies as indigent under the statute.² The bar for identifying of a nonfrivolous defense is low. See *Adjartey 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’”). Here, although Defendant’s motion papers focus on procedural issues related to the Court’s unwillingness to allow her to obtain the assistance of a lawyer or guardian ad litem, lack of notice and the Court’s failure to allow reasonable accommodations, the substance of this case involves claims that Defendant is in material breach of her lease. At trial, the Court found that she did not satisfy the good cause exception to

² Plaintiff posits that Defendant may have assets, such as a bank account, because she has not paid rent in approximately The statutory definition of indigency does not address assets, only income. See G.L. c. 261, § 27A. In any event, Defendant denies having such assets and Plaintiff has no evidence to the contrary.

the requirement that she reside in her unit for at least 9 months during a 12-month period. Her appeal of this finding -- and other findings regarding her failure to engage in the recertification process -- is not frivolous. Accordingly, the Court waives the requirement that she pay an appeal bond.

As for the payment of use and occupancy going forward, Defendant's share of the monthly rent, which is based on a percentage of her income, has been set at \$399.00 for several years. The Court has no reason to conclude that she should pay any more or less than her share of the rent for the duration of her appeal.

Based on the foregoing, the following order shall enter:

1. Defendant's motion to waive the appeal bond is allowed.
2. Beginning on October 1, 2024 and on the first day of each month thereafter during the pendency of the appeal, Defendant shall pay Plaintiff \$399.00 for use and occupancy.³
3. Plaintiff may move to dismiss the appeal if Defendant fails 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.

September 20, 2024

cc: Court Reporter



Hon. Jonathan J. Kane, First Justice

³ Despite not residing in the unit, she is preventing Plaintiff from renting the unit.

CR

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 19H79SP004544 (Unit 10A)
NO. 19H79SP004537 (Unit 12A)

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE OF AMERIQUEST
MORTGAGE SECURITIES INC., ASSET-BACKED
PASS-THROUGH CERTIFICATES SERIES 2005-RI,

Plaintiff

VS.

THOMAS T. SUCHODOLSKI and BEATA W. SUCHODOLSKI,

Defendants

Order

This case came before the court on September 20, 2024 for a hearing (via Zoom) on the defendants' *Supplemental Motion to Waive, Substitute or Order State Payments of Fees and Costs of "Reasonably Necessary" Trial Tape Recordings Without Hearing*.

The defendants are asking that the court authorize the Commonwealth to pay for the production of audio recordings of 11 hearings that took place between January 2001 and August 9, 2023. They did not specifically request that the court request authorize the Commonwealth to pay for transcripts of the three hearings that addressed Deutsche Bank's summary judgment motion; however, I shall consider the defendants' motion, in the alternative, as a request for state payment of transcripts of hearings pertaining to the summary judgment motion, hearing and judgment.

After considering the arguments presented at the hearing, the defendants' motion for 11 audio tapes is **DENIED**.

However, I shall **ALLOW** the motion and reaffirm a prior order that authorized state payment of 3 transcripts pertaining to the summary judgment motion, hearing and judgment designated by the defendants' counsel pursuant to M.R.A.P. 9 (c) (2) on August 9, 2021.

These two cases involve post-foreclosure evictions. On April 22, 2021 separate judgments for possession and \$20,238.87 damages (for unpaid use and occupancy) plus interest and costs entered for the plaintiff and against the defendants in (1) 19H79SP004544 (10-12 Pleasant Street, Unit 10A, Ware, Massachusetts), and (2) 19H79SP004537(10-12 Pleasant Street, Unit 12A, Ware, Massachusetts). The facts and legal rulings are set forth in the Court's *Memorandum of Decision on the Plaintiff's Motion for Summary Judgment* dated April 20, 2021.

On May 3, 2021 the defendants timely filed in each case a *Motion to Alter or Amend Judgment*; and in an order dated June 24, 2021, the Court denied the defendants' motions. On July 6, 2021 the defendants timely filed a *Notice of Appeal* in each case.

The court determined pursuant to G.L. c. 239, §§ 5 and 6 that the defendants were indigent and waived their obligation to pay an appeal bonds in the two cases. However, as a condition of prosecuting their appeal the court ordered that the defendants' make monthly use and occupancy payments during the pendency of the appeal. In orders dated May 23, 2023 and July 19, 2023 the court's use and occupancy order was affirmed by single justices of the Appeals Court (2023-J-0212).

On August 8, 2021 (Docket. No. 54) the defendants' attorney, acting in compliance with M.R.A.P. 9 (c) (2), filed with the court a written designation identifying the hearing transcripts the defendants' intended to include as part of the appellate record.

While the court had determined that the defendants met the indigency standard it is unclear from the record whether they had requested that the court authorize the commonwealth to pay for the transcripts as "extra fees and costs" and it is unclear if the court approved that request if made.

The defendants did not comply with the court's use and occupancy payment order. In an order entered on August 11, 2023 the court dismissed the defendants' appeals from the judgments entered in each case.

In an order entered on August 15, 2023, a single justice of the Appeals Court (in 23-J-0212) issued the following order staying the use and occupancy order (and effectively staying prosecution of the defendants' appeal):

Upon consideration of the defendants' motion, the plaintiff's opposition, and the orders that have issued in connection with 2023-P-0751, Frechette v. Brown, a case involving similar issues, the motion is allowed only to the extent that the order of the single justice entered on 05/23/2023 which required the defendants to make monthly use and occupancy payments is hereby stayed

pending the outcome of the proceedings in 2023-P-0751, Frechette v. Brown. The defendants shall file a status report on or before 10/13/2023, or within 5 business days of a decision in the Frechette matter, whichever comes first. (Vuono, J.).¹

In an order entered on November 13, 2023 (2023-J-0212), while Frechette was pending before the Supreme Judicial Court, Deutsche Bank sought leave to vacate the use and occupancy payment order (that had been affirmed by a single justice) and vacate the stay on the defendants' appeal. A single justice of the Appeals Court, acting on Deutsche Bank's motion to vacate the stay of the appellate proceedings, issued the following order:

In light of the motions of Deutsche Bank National Trust Company seeking to waive its right to use and occupancy payments pending the defendants' appeals of the judgments that have entered in these cases, the Housing Court judge's order requiring the defendants to pay use and occupancy is vacated. The single justice's 05/23/2023 order affirming the requirement that the defendants pay use and occupancy is vacated. The single justice's 08/15/2023 order that stayed the requirement that the defendants make monthly use and occupancy payments is vacated. The defendants may proceed with their appeals from the judgments. (Vuono, J.).

The parties are now seeking to take the steps necessary to assemble the record to transmit the case to the Appeals Court so that the defendants' appeal (that has been pending for more than three years) can proceed.

G.L. c. 261, § 27C(4) provides “[i]f the court makes a finding of indigency, it shall not deny any request with respect to normal fees and costs, and it shall not deny any request with respect to extra fees and costs if it finds the document, service or object is reasonably necessary to assure the applicant as effective a prosecution, defense or appeal as he would have if he were financially able to pay.”

PRIOR DESIGNATION. The fact that the single justice directed that the parties may proceed with the appeal does not mean that the defendants can seek to assemble the record *de novo*.

On August 8, 2021 (Docket. No. 54) the defendants' attorney (who has since withdrawn his appearance), acting in compliance with M.R.A.P. 9 (c) (2), filed with the court a written

¹ The Supreme Judicial Court took direct appellate review of the Frechette v Brown case. The issue presented was whether an indigent occupant's obligation to pay monthly use and occupancy during the pendency of the appeal pursuant to G.L. c. 239, § 5 is considered to be “extra fees and costs” within the meaning of G.L. c. 261, §§ 27A–27G.

designation identifying the hearing transcripts the defendants' intended to include as part of the appellate record. The defendants designated the following transcripts as part of the appeal record: 01/20/2021 Motion Hearing on Plaintiff's Motion for Summary Judgment; 03/01/2021 Motion Hearing on Plaintiff's Motion to Strike; and 03/31/2021 Motion Hearing on Defendants' Motion for Reconsideration. These hearings all pertained to the summary judgment motion and hearings that resulted in the entry of summary judgment in favor of Deutsche Bank for possession and damages. The defendants' attorney represented that he had ordered the three transcripts on July 19, 2021.

Consistent with the defendants' August 8, 2021 M.R.A.P. 9 (c) (2) designation, I shall authorize state payment of transcripts of hearings pertaining to the summary judgment motion, hearing and judgment; to wit:) 3/01/2021; 03/01/2021; and 03/31/2021. The defendants must request the transcripts online within fourteen (14) days from the date this order is docketed. The request must be made to:²

Office of Transcription Services (OTS)
Massachusetts Trial Court
2 Centre Plaza, Suite 540
Boston MA 02108
OTS@jud.state.ma.us
617-878-0225

The defendants must file an affidavit with the court within seven (7) days from the date they requested the three transcripts from OTS. If they fail to file the affidavit within the designated time the court will assume that they have waived their August 8, 2021 M.R.A.P. 9 (c) (2) designation, and that they "have not ordered and does not intend to order transcripts or any portion thereof" in accordance with M.R.A.P. 9 (d) (2) (C). And the court will then complete assembly of the record for transmission to the Appeals Court.

DEFENDANTS' SUPPLEMENTAL REQUEST.

The appeal to the Appeals Court involves a limited issue, to wit, whether this court's April 22, 2021 summary judgment entry was legally correct. With respect to that appellate issue, the defendants have not presented any reasons or arguments sufficient to show that access to a digitized recordings of post- March 31 2021 hearings would be "reasonably necessary to assure

² This order constitutes court approval of the defendants' updated Affidavits of Indigency (Section 3) dated December 22, 2023 with respect to authorization for state payment of the three designated written transcripts reference above.

the applicant as effective a prosecution, defense or appeal as he would have if he were financially able to pay.”

Accordingly, that part of the defendants’ motion that seeks waiver or payment of “other fees and costs” pertaining to the production of eight audio tapes of eight court hearings subsequent to March 31, 2021 is **DENIED**.

SO ORDERED this 23rd Day of September, 2024.

Jeffrey M. Winik

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP05132

YALIXIA FIGUEROA & JESUS A. GONZALEZ,

Defendant.

ORDER

This matter came before the court on September 23, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for September 24, 2024 at 11:00 a.m. The plaintiff appeared through its attorney with property manager Ivette Otero. Both defendants appeared and were self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

This case is based on nonpayment of the tenant's share of the public housing rent. The tenant's share was \$180 per month, but the defendants failed to recertify their income and the rent increased to \$832 (market rent). The arrearage is now \$3,831.93 through September 2024 with \$310.25 costs. If the move-out were cancelled, the cancellation fees would be \$940.

Since the case was filed on November 13, 2023 the parties entered into two Agreements in this case to try to resolve the underlying problems. The landlord filed a motion for entry of judgment on the grounds that the tenants did not comply with the terms of the last Agreement of February 9, 2024. The defendants did not appear for the hearing on August 9, 2024 and the court entered an order allowing the plaintiff's motion and ordering that judgment would enter. The execution issued on the plaintiff's written application.

Ms. Pena of Wayfinders joined the hearing. She reported that Ms. Figueroa applied for RAFT financial assistance on July 23, 2024, but the application timed out on August 14, 2024 because she did not finish the application. There is no RAFT application pending at this time. If she were to apply again, she would need to document hardship/good cause for failing to pay the tenant portion of the public housing rent. If she were approved, RAFT could pay up to six months of the tenant share of the rent. Any balance would need to be paid with a repayment agreement.

Ms. Figueroa reported that they have been going through financial problems, which could have been resolved at least in part if they had recertified as required and completed the RAFT application. However, she explained that she suffers from [REDACTED] which have prevented her from doing what she needs to do in this matter. Mr. Gonzalez reported that he has tried to find a job for the past three years but has not been able to do so. They have four children living with them in the apartment. They report that they have no place to go if they are evicted from this apartment.

The plaintiff opposes any stay of the execution because the defendants have only \$200 to offer toward the arrearage, costs and cancellation fees, and current use and occupancy at this time. However, the court stops the move-out scheduled for tomorrow to give the defendants a final opportunity to complete a RAFT application and preserve their public housing tenancy if possible. The case is referred to the Tenancy Preservation Program (TPP) based on Ms. Figueroa's representation that she has not been able to comply with the terms of her tenancy because of her disability.

Orders

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

1. The move-out scheduled for September 24, 2024 at 11:00 a.m. is **STOPPED**.
 - a. The plaintiff's attorney will notify the constable/sheriff of this order forthwith.
2. 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.
3. The defendants will pay \$200 to the Springfield Housing Authority no later than September 25, 2024.
4. The defendants will apply for RAFT financial assistance immediately. They may go to any of the Wayfinders offices for help in the application process.

- a. The defendants will complete the application, including submitting all documentation of hardship/good cause.
 - b. The plaintiff will submit its documentation when requested by Wayfinders and will include the costs and cancellation fees on the ledger.
5. The defendants will propose a realistic payment plan for any remaining balance if RAFT is approved.
6. The defendants are responsible for the \$950 cancellation fee for stopping tomorrow's move-out.
7. The defendants will complete their recertification at the Housing Authority immediately.
8. The case is referred to the Tenancy Preservation Program. TPP is asked to evaluate the sustainability of the defendants' tenancy if appropriate services are put in place and to assist the defendants with the following:
 - a. Completing an application for RAFT financial assistance, including submitting their hardship documentation;
 - b. Proposing a realistic payment plan for any remaining balance if RAFT is approved;
 - c. Completing the recertification process at the Springfield Housing Authority;
 - d. Devising a plan to ensure that the tenant's share of the rent is paid on time and in full each month going forward.
9. The case is continued to **October 7, 2024 at 9:00 a.m.** for further hearing on the defendant's motion to stay the execution. The parties will report on the status of the items outlined in this order.
 - a. TPP is asked to be present at the October 7 hearing.

September 23, 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**

OMAR ABEED,

Plaintiff,

-v.-

DOCKET NO. 24SP01437

ERIC ANDERSON & STEPHANIE ANDERSON,

Defendant.

ORDER

This matter came before the court on September 24, 2024 for hearing on the tenant's motion to stop the move-out scheduled for September 25, 2024 at 10:00 a.m. The landlord appeared with his attorney. Both tenants appeared and were self-represented.

After hearing, the motion is denied. The parties entered into an Agreement in this no fault eviction case. By its terms the tenants agreed to move by July 15, 2024 and the landlord agreed to waive unpaid rent/use and occupancy. The amount of the unpaid rent/use and occupancy is now \$25,200 through September 2024. The parties were before the court on August 15, 2024 on the landlord's motion to enter judgment. After hearing a judge of this court allowed the motion and ordered that judgment for possession would enter.

The court finds that the defendant has not demonstrated grounds to stay the execution further pursuant to G.L. c. 239 §9 because although it is a no fault case, there is a substantial amount of unpaid rent/use and occupancy. The court also finds that there are insufficient equitable grounds to support a stay of the execution pursuant to G.L. c. 239 §10. There is no pending RAFT application that would stay the execution pursuant to G.L. c. 239 §15.

Order

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

September 24, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-0617

BEDFORD, LLC,
Plaintiff
v.
LINDA BUTLER AND SHAWN WALKER,
Defendants

ORDER FOR ENTRY OF JUDGMENT
AND ISSUANCE OF EXECUTION

This matter came before the Court on September 24, 2024 for a hearing on Plaintiff's motion for entry of judgment. Defendants did not appear.

After hearing on August 8, 2024, the Court found that Defendants were not lawful tenants and ordered them to vacate by September 3, 2024. Defendants were present and had the opportunity to be heard. Because the Court found them not to be lawful tenants, Plaintiff is not required to proceed with summary process under G.L. c. 239. Defendants had notice of this hearing and could have appeared to offer an alternative to entry of judgment. Having not appeared, Defendants are subject to eviction from the premises.

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

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

2. Plaintiff may apply for issuance of an execution for possession ten days after the date the judgment enters.
3. The legislative fee for injunctive relief is waived.

SO ORDERED.

September 24, 2024

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-2126

SHANNON WALLACE, Personal
Representative of the Estate of Dennis A.
Letendre,

Plaintiff,

v.

RYAN LETENDRE,

Defendant.

ORDER

After hearing on September 12, 2024, the following order shall enter:

1. The motion is allowed due to the defendant's failure to comply with the terms of the August 1, 2024, Agreement.
2. Judgment for possession shall enter for the plaintiff. An Execution may issue upon the timely filing and service of a Rule 13 application.
3. There shall be a stay on the use of the Execution through November 1, 2024, contingent upon the defendant making the following payments:



a. \$300 by September 13, 2024, and \$300 each Friday through October 2024.

So entered this 24th day of September 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

MORRIS JORDAN,

Plaintiff,

-v.-

DOCKET NO. 24SP02379

EVELYN FIGUEROA,

Defendant.

ORDER

This matter came before the court on September 24, 2024 for hearing on the tenant's motions to remove the default judgment and to stop the move-out scheduled for September 30, 2024 at 10:00 a.m. Both the landlord and the tenant appeared and were self-represented. Members of the landlord's family also appeared.

This eviction case is based on nonpayment of the tenant's portion of the Section 8 rent (\$384). The Housing Authority stopped paying its portion of the rent effective January 2024 based on violations of the Sanitary Code at the premises. The landlord does not seek judgment for the Housing Authority portion of the rent in this case. A default judgment entered on August 19, 2024 for possession and \$9,251 with \$223.52 costs because the defendant did not appear for the First Tier Court Event on August 15, 2024. Execution issued on September 5, 2024 on the landlord's written request.

The defendant testified that she did not appear at court on August 15 because she was sick for several days with covid. There is a dispute about when she notified the landlord that she was ill. However, the court finds that her illness was excusable neglect within the meaning of Massachusetts caselaw. Although the defendant did not file an answer, she testified that there were violations of the Sanitary Code in the apartment. She submitted reports from the City of

Springfield Code Enforcement Department dated February 14, 2024 and July 9, 2024 citing violations which needed to be corrected (Exh). The landlord offered conflicting testimony about when the repairs were made, although they agreed that not all were completed and that the Housing Authority stopped paying its portion of the Section 8 rent in January 2024 based on violations cited by the Housing Authority. The court finds that the defendant has a creditable defense to the nonpayment of rent in this case.

The defendant reported that she had not applied for RAFT financial assistance because the landlord would not give her documentation of what is unpaid or it was just received within days of the hearing. However, the judgment is such documentation of the debt, at least as of the date of the default. If the defendant wishes to apply for RAFT, she should do so immediately.

Order

After hearing, the following order will enter:

1. The defendant's motion to remove the default is **ALLOWED**. The August 19, 2024 judgment is vacated and the case is restored to the list for a First Tier Court Event.
2. The Clerk's Office is asked to schedule the case for a First Tier Court Event and to send notice to both parties.
3. The defendant's motion to stop the move-out is **ALLOWED**. The move-out scheduled for September 30, 2024 at 10:00 a.m. is stopped.
 - a. The plaintiff will notify the constable/sheriff of this order immediately.
4. The plaintiff will return the execution to the Clerk's Office immediately.
5. The defendant is responsible for the cancellation fee for the stopped move-out, as she agreed. To date the plaintiff has paid \$700, but she does not know how much is non-refundable. Upon receipt of the constable/sheriff's invoice for the cancellation fee or non-refundable amount, the defendant will pay that amount to the plaintiff within seven days of receipt.
6. If the defendant applies for RAFT, both parties will complete the application process promptly and in good faith, submitting all documentation as required by Wayfinders. Both parties are urged to consult an attorney regarding their rights and responsibilities in this matter.

September 25, 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-2657

ANTOINETTE SANDS,

Plaintiff,

v.

TONIE SANDS, JR. AND TANYA HADSELL,

Defendants

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

This summary process action for nonpayment of rent came before the Court for a bench trial on September 19, 2024. All parties appeared self-represented.¹ The residential rental premises in question is located at 296 Orange Street, Springfield, Massachusetts (the “Premises”). The Premises is a two-family house. Plaintiff resides on the second floor. Defendants reside on the first floor.

By stipulation, the parties agree to the Plaintiff’s prima facie case for possession and \$3,350.00 in unpaid rent through the date of trial. The parties agree that rent is \$900.00 per month. Defendants assert defenses and counterclaims.

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 moved into the Premises in September 2023. They paid monthly rent through May 2024 and made a partial payment in June 2024 of \$250.00. They

¹ Defendant Tonie Sands is Plaintiff’s brother.

assert that they stopped paying rent because Plaintiff had not made repairs since they moved in. The parties understood that the Premises were unfinished when Defendants took possession, and Defendant Sands (Plaintiff's brother) agreed to help his sister (Plaintiff) complete some of the renovations, such as carpentry and painting. He is not a licensed tradesman and never intended to address any plumbing or electrical issues. There is no dispute that the Premises suffered from serious State Sanitary Code violations from the date Defendants moved in. Plaintiff testified that they agreed to a discounted rental rate of \$900.00 per month to account for the condition of the apartment.

Under Massachusetts law, a tenant cannot waive the requirement that a landlord provide a habitable apartment. Even though the parties are related, once Plaintiff created a landlord-tenant relationship, she became obligated to comply with the laws regarding the obligations of a landlord. The fact that the tenants may not be paying rent does not absolve the landlord from providing a habitable apartment.

A tenant is entitled to a rent abatement if the residence has substantial code violations or significant defects. In determining the amount of an abatement, the Court determines an appropriate reduction based on the conditions. Because the bathroom was only partially completed and did not have a working shower/bath, the fair rental value of the apartment plummets; however, in this case, the parties acknowledge and text messages confirm that the tenants were allowed to use Plaintiff's bathroom to shower. In addition to the lack of a complete bathroom, the Premises suffered from unfinished and defective flooring and a broken door. As a result of all of the defects in the unit, the Court concludes that the value of the

apartment was reduced by 70% from move-in (September 2023) until the condemnation (August 28, 2024), a period of twelve months, for a total of \$7,560.00.

Defendants claim that Plaintiff interfered with their quiet enjoyment by shutting off their water and electricity at times, and that Plaintiff used Defendants' electricity because it is connected to the basement. Defendants had no evidence regarding the amount of money they spent on electricity, so the Court has no basis upon which to award them utility costs. The cross-metering of electricity, however, and the repeated shutoffs of electricity and hot water, as well as the intentional destruction of Defendants grill, constitute a substantial interference with the tenancy as the conduct impaired the character and value of the leasehold. Plaintiff's violation of G.L. c. 186, § 14 entitles Defendants to statutory damages equal to three times the monthly rent, or \$2,700.²

On August 28, 2024, the City of Springfield Code Enforcement Department inspected the Premises and issued a condemnation order. Defendants were ordered to vacate. During the period of condemnation, the fair rental value of the Premises is zero, and thus Defendants are not required to pay any rent until the condemnation is lifted.

Based on the findings of the Court, Defendants are entitled to damages through the date of trial in the amount of \$10,260.00. These damages are offset by the unpaid rent through the trial date, which is \$3,350.00. Accordingly, given the foregoing, and in light of the governing law, the following order shall enter:

² Statutory damages are the appropriate measure because Defendants offered no evidence of actual damages.

1. Judgment shall enter for Defendants for possession and \$6,910.00 in damages.
2. Plaintiff must immediately place the electricity serving the Premises in her own name unless there is a separate meter serving only the Premises.

SO ORDERED.

September 25, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

SPRING MEADOW APARTMENTS,

Plaintiff,

-v.-

DOCKET NO. 23SP03313

NICOLE FERRER & TAVION ROSS,

Defendant.

ORDER

This matter came before the court on September 24, 2024 for review pursuant to a court order after a continued hearing on the plaintiff's motion to lift the stay of execution. The plaintiff appeared through its attorney with property manager Kenny Corea. Defendant Nicole Ferrer appeared and is self-represented. Janis Luna 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. Execution issued on July 9, 2024 after review of the status of the RAFT application. After hearing on August 6, the court ordered the defendant to submit her documentation of hardship/good cause for failing to pay her portion of the subsidized rent to Wayfinders to support a new application for RAFT. After a September 3 hearing, the judge again ordered the defendant to complete a RAFT application.

The parties agree that the RAFT application(s) to date were closed because of missing tenant documentation. Ms. Luna of Wayfinders confirmed that there was no evidence of

hardship submitted. She reported that the defendant could submit another application, but Ms. Ferrer reported that there is “nothing else [she] can do” to try to get RAFT financial assistance.¹

The plaintiff reported that the balance remains at \$5,962.85 in unpaid rent/use and occupancy through September 2024 with \$341.30 costs. The tenant’s portion of the rent has been \$0 since March 2024. After the August 6 hearing, the court granted the defendant a short time to finalize a resolution of her Unemployment Compensation issue. However, it has not been resolved to date. She provided documentation from July 2024 that she had appealed the Unemployment Compensation decision to withhold benefits. It shows that if she wins the appeal and the issue were resolved, she would receive a lump sum of \$5,538 plus any additional weeks for which she qualified (Exh). Ms. Ferrer reported that there was no more recent update available. She does not know when the issue will be resolved.

Findings and Order

After hearing, the following finding and orders will enter:

1. Judges of this court have granted stays of the execution because the defendant had pending RAFT applications. However, those applications have all been closed without any payment, based on the defendant’s inability to document hardship/good cause as required for subsidized tenancies.
2. There is no RAFT application currently pending.
3. There is no timeline for resolution of the issue with the defendant’s Unemployment Compensation.
4. The judgment has not been satisfied.
5. The plaintiff’s motion to lift the stay of execution is **ALLOWED**.
6. The stays of the execution ordered by judges of this court were ordered within the meaning of G.L. c. 235 §23. Therefore, the running of the July 9, 2024 execution was tolled although the language of the execution states that it will expire soon.
 - a. If the plaintiff needs a new execution, its attorney may file a written application for a new execution before the current execution expires. Such application does not need to be by motion. The Clerk’s Office will act on the request pursuant to this order.

¹ The defendant reported that she followed the suggestion in the September 3 order and contacted the agencies noted, but she still was denied for RAFT.

7. If the defendant receives a favorable resolution of her Unemployment Compensation appeal, and she has documentation that she will receive a lump sum payment as she anticipates, she may contact the plaintiff's attorney to negotiate a mutually agreeable stay of the use of the execution, or she may file and serve a motion for such a stay with the court.

September 25, 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-2843

YAHAIRA LOPEZ,

Plaintiff

v.

ALISHA FERRERO,

Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court for a bench trial on September 26, 2024. Both Plaintiff (the “landlord”) and Defendant (the “tenant”) appeared self-represented. The residential property at issue in this case is located at 42 Lombard Street, Second Floor, Springfield, Massachusetts.

The parties stipulated to the landlord’s prima facie case for possession. The tenant did not file an answer and did not assert any legal defenses at trial. She testified that she made two \$300.00 cash payments that are not reflected on the landlord’s rent ledger. She provided no evidence to support her testimony, and the landlord denies receipt of the funds. The Court finds that the balance of rent arrears is \$10,750.00.¹

¹ The tenant did not claim to have a pending application for rental assistance and therefore G.L. c. 239, § 15 does not apply.

Based on the foregoing, the following order shall enter:

1. Judgment for possession and damages in the amount of \$10,750.00, plus court costs, shall enter in favor of Plaintiff.
2. Execution (eviction order) may issue upon written application ten days after the date judgment enters.

SO ORDERED.

September 26, 2024


Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2006

THANH NGUYEN,

Plaintiff

v.

BLANCHE MEADOW,

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 September 11, 2024. Plaintiff appeared with counsel. Defendant appeared self-represented. The residential property at issue in this case is located at 1235 Bay Street, Springfield, Massachusetts (the "Property").

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

Defendant's mother, Tomorrow Meadow, is the former owner of the Property. Plaintiff is a third-party purchaser following a foreclosure. He purchased the property in October 2023. He was unaware that Tomorrow Meadow had deceased and had her served with a notice to quit. When he learned that Tomorrow Meadow was no longer alive and that Defendant was occupying the house, Plaintiff served a new notice to quit on Defendant (which she acknowledges receiving) and started the eviction proceedings anew. The notice terminated Defendant's right of occupancy as of May 1,

2024. Defendant has not vacated. She did not file an answer and did not articulate any legal defenses at trial.

Plaintiff also seeks an order that Defendant pay use and occupancy for the duration of her occupancy of the Property. Daniel Rodriguez, an experienced licensed real estate broker and a property manager of approximately 400 rental units in the Springfield area, determined that the fair rental value of the Property is \$1,600.00 to \$1,800.00 per month. In reaching his conclusion, Mr. Rodriguez relied on his experience and comparable properties in close proximity to the Property. He also considered the HUD determination of fair market rental rates in the same zip code as the Property, which is \$1,560.00. Mr. Rodriguez was not able to view the interior of the Property and therefore is uncertain of its condition. The Court finds, based on all of the evidence presented, that the fair rental value of the Property is \$1,600.00 per month.

Because Defendant is merely a tenant at sufferance and has no landlord-tenant relationship with Plaintiff, the statutory stay on execution provided in G.L. c. 239, §§ 9 et seq. is not available to Defendant. Accordingly, as execution will issue shortly, there is no basis for ordering Defendant to make use and occupancy payments at this time.¹

Based on the foregoing, the following order shall enter:

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

¹ If Defendant files a motion for an equitable stay to find replacement housing, Plaintiff may renew its request for use and occupancy payments and may rely on the Court's finding that the fair rental value of the Property is \$1,600.00 per month.

2. Execution shall issue by written application (with a copy of the application sent to Defendant) ten days after the date judgment enters.

SO ORDERED.

September 27, 2024

1st 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-2904

AT HOME PROPERTIES, LLC,

Plaintiff

v.

DAIANA JIMENEZ AND JOSHUA JIMENEZ,

Defendants

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This no fault summary process case came before the Court for a bench trial on October 1, 2024. Plaintiff (the “landlord”) appeared through counsel. Defendants (the “tenants”) appeared self-represented. The residential property at issue in this case is located at 88 Edgewood Avenue, Chicopee, Massachusetts.

The parties stipulated to the landlord’s prima facie case for possession. The tenants did not file an answer and did not assert any legal defenses at trial. Although the parties agree that \$2,850.00 is owed through September 2024, the landlord is willing to forgive the remaining balance and allow the tenants a stay through the month of October 2024 on the following conditions, which are hereby adopted as a court order:

1. Judgment for possession only shall enter in favor of the landlord.
2. Execution (the eviction order) shall issue after the 10-day appeal period by written application.

3. Use of the execution shall be stayed through October 31, 2024 on the condition that the tenants shall pay \$1,500.00 by October 5, 2024.
4. The tenants shall vacate no later than November 1, 2024.
5. If the tenants do not vacate by November 1, 2024, they will not be eligible for a further stay unless they pay the balance owed through September 2024 plus use and occupancy for the duration of the stay.¹

SO ORDERED.

October 1, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Pursuant to G.L. c. 239, § 11, to be eligible for a stay, the tenants must pay all rent unpaid prior to the period of the stay.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

PATRICK DUNKELLY,

Plaintiff,

-v.-

DOCKET NO. 23SP05485

MILTON REID, SHELLY ANN DUNKELLY &
LORNA FISHER,

Defendant.

ORDER

This matter came before the court on September 30, 2024 for a hearing on the plaintiff's motion to enter judgment and issue execution. The plaintiff appeared via Zoom. Defendants Milton Reid and Shelly Ann Dunkelly appeared in person. Defendant Lorna Fisher did not appear.¹ All parties are self-represented. Leonor Pena of Wayfinders joined the hearing to report on the status of Ms. Dunkelly's application for RAFT financial assistance.

The plaintiff-landlord seeks possession of the subject rental premises in this no-fault eviction case. On January 25, 2024, the parties entered into an Agreement to resolve the case. By its terms relevant to this motion, the defendants agreed to move out of the premises by August 31, 2024 and to pay the use and occupancy (\$1,100) each month as it became due. The Agreement provided that there would not be any extensions beyond August 31. If the defendants did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The parties agree that the defendants did not move by August 31 as they agreed. The plaintiff reports that they did not pay the \$1,100 use and occupancy for August or September.

¹ Lorna Fisher is the mother of the other two defendants. There is a dispute about whether she still lives at the premises. Ms. Dunkelly reported that she moved out of state three months ago. Mr. Reid reported that she is only visiting another son, but her belongings are still at the premises.

He explained that he rented the second floor apartment with an attic to his niece, Ms. Dunkelly, only.² He expects to receive the monthly rent/use and occupancy from her. In turn, she allowed her mother Ms. Fisher and her brother Mr. Reid to move in with her five years ago. They have an arrangement whereby Ms. Fisher and Mr. Reid gave money to Ms. Dunkelly and she sent it to her uncle. Ms. Dunkelly reported that she does not talk to her brother nor forward his share of the rent/use and occupancy. He sent the money to her daughter, but Ms. Dunkelly told her to return it to Mr. Reid. She did not send her uncle her own share of the rent/use and occupancy. The result is that there is an arrearage through September 2024 of \$2,200.

Ms. Dunkelly reported that she has been looking for alternative housing, but she has not found any to date.³ She is “on standby” to rent a house once it is purchased. She anticipates that she would need an additional three weeks. Leonor Pena of Wayfinders confirmed that Ms. Dunkelly’s application for RAFT financial assistance for moving expenses, filed on September 27, 2024, is pending.⁴

Mr. Reid reported that he also has been trying to find alternative housing. The only place he has found to date is one which will need three months for the new landlord to fix.

Findings and Order

After hearing, the court finds that the defendants violated material terms of the parties’ January 25, 2024 Agreement and that the plaintiff is entitled to Judgment for possession and \$2,200 through September, 2024. However, Judgment cannot enter at this time pursuant to G.L. c. 239 §15(a) because one of the defendants has a pending RAFT application. Once the RAFT application is no longer pending, Judgment may enter. The plaintiff’s motion is continued for three weeks to determine the outcome of Ms. Dunkelly’s RAFT application for moving expenses. The Clerk’s Office is asked to schedule the case for hearing and send notice.

As ordered by a judge of this court, Mr. Dunkelly may appear at that hearing via Zoom, although he is asked to have his camera functional for the next hearing.

October 1, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

² Mr. Dunkelly reported that he named all three defendants on the summons and complaint in this case because he knew all three of them occupied the unit.

³ Ms. Dunkelly’s earlier motion for an extension of time beyond August 31, 2024 was denied by a judge of this court after hearing.

⁴ Ms. Dunkelly’s earlier RAFT application for moving expenses was approved on May 28, 2024, but the letter of intent expired because she had not found alternative housing to use the funds.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-SP-5260

ANCHORED PROPERTY INVESTMENTS, LLC,)
)
 PLAINTIFF)
)
 v.)
)
 MELISSA VASQUEZ,)
)
 DEFENDANT)

ORDER ON DEFENDANT'S
MOTION TO DISMISS

This summary process matter came before the Court on October 2, 2024 on Defendant's motion to dismiss. Both parties appeared through counsel. After hearing, the motion is denied.

Defendant contends that the notice to quit and the summary process state conflicting reasons for eviction.¹ In assessing the legal sufficiency of a notice to quit, courts have “long distinguished between minor errors of technicality or form and material errors of substance.” *See Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 130 (2018), *quoting Torrey v. Adams*, 254 Mass. 22, 25-26 (1925) (“Technical accuracy in the wording of such a notice is not required, but it must be so certain that it cannot reasonably be misunderstood ...”). “To be defective such that it fails to terminate a lease, a notice to quit must involve a material error or omission, i.e., a defect that has some meaningful practical effect.” *Id.*

¹ At the hearing, Defendant withdrew the claim that Plaintiff failed to notify the Section 8 administrator of the pending eviction.

Here, the notice describes in some detail the reasons for lease termination, including the date of the alleged breach and the reasons. Although it does not explicitly cite the pertinent statute, G.L. c. 139, § 19, it references an “automatic termination of your lease,” a concept only available under that particular statute. The complaint cites the statute specifically, clearly referencing the activity cited in the notice to quit.

The practical effect of the allegedly conflicting language is not evident on the face of the pleadings.² Moreover, the Court is unwilling to dismiss the case for the reasons stated given that trial is scheduled to start in approximately two weeks before trial and the parties have already filed a joint pretrial memorandum. This case was filed on November 20, 2023. Defendant’s counsel filed an appearance on March 28, 2024. The facts underlying the motion were known when the case was first filed, and were known known by counsel after he entered the case at the end of March 2024.³ For all of the foregoing reasons, the motion to dismiss is DENIED.

SO ORDERED.

DATE: October 3, 2024



Hon. Jonathan J. Kane, First Justice

² Defendant is not precluded from developing a factual basis at trial regarding possible confusion regarding the notice or complaint.

³ At the hearing, Defendant’s counsel posited another basis to dismiss the claim; namely, that Plaintiff accepted payment without reservation after the termination of the tenancy. This is not evident from the pleadings, and can be raised at trial once the facts have been established.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2919

MEYER ATTIAS,

Plaintiff

v.

KAYLA BLAND, KAISHA BLAND AND
CINTHIA APONTE,

Defendants

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This no fault summary process case came before the Court for a bench trial on October 2, 2024. Plaintiff (the “landlord”) appeared through counsel. Defendants (the “tenants”) appeared self-represented. The residential property at issue in this case is located at 31 Collins Street, Springfield, Massachusetts.

The parties stipulated to most of the landlord’s prima facie case for possession, including the amount of unpaid rent/use and occupancy of \$13,635.10. The tenants contest receipt of the notice to quit. The Court finds that the return of service by deputy sheriff is prima facie evidence of proper service. Although the tenants testified that they had not seen the document before coming to court for the First Tier Court Event, they explained that other family members were living in the house at the time and it is possible one of them picked up the notice. The notice was also

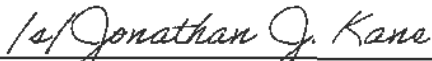
mailed, and there is no returned mail. Moreover, service of the notice of the First Tier Event and the Summons and Complaint were received by the tenants' admission.

The Court finds that Defendants are not entitled to the statutory stay pursuant to G.L. c. 239, §§ 9-11 because they cannot pay "all rent unpaid prior to the period of the stay." See G.L. c. 239, § 11. Accordingly, the following order shall enter:

1. Judgment for possession and unpaid rent in the amount of \$13,635.10 shall enter in favor of Plaintiff.
2. Execution (the eviction order) shall issue by written application after the 10-day appeal period.
3. Use of the execution will be stayed through October 31, 2024.

SO ORDERED.

October 3, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
CENTRAL HOUSING COURT

Michael Pope

Plaintiff

-v.-

No. 24-SP-1900

Tracy Townsend
Eric Townsend

Defendant

ORDER

On October 3, 2024, a hearing occurred on the plaintiff's request for an entry of judgment and the defendants' request to amend the parties' agreement. Both parties were present. Based on the arguments presented, the plaintiff's request is **ALLOWED**, and the defendant's request is **DENIED**, as follows:

The plaintiff brought an eviction to recapture possession of the residential premises, which the defendants occupy, based on alleged non-payment of rent. The parties resolved the matter under an agreement. (Entry 14). Following the plaintiff's first request for an entry of judgment, a justice of this Court denied the request, issued further orders related to use and occupancy, and ordered the defendants to vacate by October 1, 2024, (Entry 20) The defendants do not dispute failing to vacate the premises or to pay use and occupancy. The defendants asked the Court to retroactively permit them to withhold rent and to amend the vacate date based on their claim that the plaintiff violated the warranty of habitability by failing to properly meter the unit permitting cross-metering charges to occur.

The Court denied the defendants' request based on a lack of authority to amend the parties' agreement (*BHA v. Cassio*, 428 Mass. 112 (1998)) and finding that a potential claim of cross-metering does not warranty amending the vacate date where the claim and obligation to relinquish possession are unrelated as the defendants can seek relief for damages under a

separate action.

Finding the defendants did not comply with this Court's order and failed to pay use and occupancy as required the plaintiff's motion is **ALLOWED** and the following shall enter.

1. A judgment for possession and costs of \$176 shall be entered for the plaintiff.
2. A judgment for damages for unpaid rent shall enter for the plaintiff.
3. An execution may issue 10 days following the entry of judgment upon request.

SO ORDERED

/s/ Alex Mitchell-Munevar

Associate Justice

Date: October 3, 2024

COMMONWEALTH OF MASSACHUSETTS
CENTRAL HOUSING COURT

SC Hamilton Apts c/o
Mount Holyoke Mngt LLC

Plaintiff

-v.-

No. 23-SP-4146

Stephany Batista

Defendant

ORDER

On October 3, 2024, a hearing occurred on the defendant's request for relief from a judgment entered against her on September 5, 2024. Both parties appeared. Based on the arguments presented at the hearing the defendant's request is **DENIED** as follows:

The defendant does not contest that she failed to comply with her payment obligations under the parties' agreement. However, the defendant offered to tender at the hearing \$3,000 in certified funds, claims to have a pending rental assistance application to cover the balance, and that her circumstances have changed that would allow her to make ongoing rental/use and occupancy payments. Counsel opposed vacating the judgment but accepted the funds and requested an order to stay the execution's issuance pending the determination of the defendant's rental assistance application.

1. The defendant's motion to vacate the judgment is denied.
2. A stay shall go into effect pending a further hearing on the matter to determine the status of the defendant's rental assistance application.
3. The clerk shall schedule the matter for a status hearing.

SO ORDERED

/s/ Alex Mitchell-Munevar

Associate Justice

Date: October 3, 2024

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

KEVIN M. SEARS,

Plaintiff,

-v.-

DOCKET NO. 23SP04899

ANDREW J. MARTIN,

Defendant.

ORDER

This matter came before the court on September 27, 2024 for a hearing on the plaintiff's motion to renew and enforce execution in this case. The plaintiff-landlord appeared through his attorney. The defendant appeared and was self-represented. His girlfriend, Brittany Condon, appeared with him. Janis Luna of Wayfinders joined the hearing to report on RAFT.

In its June 24, 2024 order the court outlined the chronology of the case and incorporates it here. In that order, the court stopped the levy on (use of) the execution on condition that the defendant pay the cancellation fee and June's use and occupancy of \$825.¹ The defendant's motion was continued to July 2, 2024 for further hearing and a report by the defendant on the status of any pending RAFT application. After the July 2 hearing, a judge of this court issued an order staying the use of the execution on condition that the defendant pay July use and occupancy and, beginning in August 2024 pay the use and occupancy and \$200 toward the arrearage. The judge further ordered the defendant to apply for RAFT financial assistance when he became eligible.

¹ The defendant argued that the rent/use and occupancy should be \$750 as it was in the original lease effective August 1, 2022. However, the plaintiff argued that the rent increased to \$825 by agreement.

The parties agree that the defendant paid the June and July use and occupancy and the cancellation fee for the move-out, but he did not pay anything for August or September. The arrearage is \$6,717 and \$311 costs through September 2024. The plaintiff moves that the stay of the execution be lifted and that a new execution issue on an amended judgment.


Ms. Luna of Wayfinders reported that an earlier RAFT application timed out because no landlord documentation was received. The defendant filed another application which is pending. Both parties have submitted their documentation. What is remaining to be submitted is a payment plan for the balance that would remain if RAFT paid the \$5,900 for which the defendant is eligible at this time.² The case was recessed for the parties to meet with a housing specialist of this court to work out a payment plan for the balance. They were not able to agree on a payment plan for the balance.

Findings and Order

After hearing, the following order will enter:

1. The court finds that the defendant is not in compliance with the July 3 order because he did not pay August or September use and occupancy nor anything toward the arrearage.
2. However, the court cannot lift the stay of the execution at this time because there is a pending RAFT application. G.L. c. 239 §15.
3. The plaintiff's motion is continued until there is a decision on the pending RAFT application from Wayfinders.
 - a. Plaintiff may ask the Clerk's Office in writing, with notice to the defendant, to restore his motion to the list for further hearing when the parties receive a decision on the RAFT application now pending.
 - b. Pending a decision on that motion, the stay of the execution continues pursuant to G.L. c. 235 §23.
4. The parties are urged to continue to negotiate in good faith regarding a payment plan.
 - a. The defendant reported that he is starting a job on September 30, so that his income will increase. If this enables him to offer a more realistic payment plan, he should discuss this with the plaintiff's attorney.

October 3, 2024



Fairlie A. Dalton, J. (Rec.)

² The defendant was not able to comply with the payment plan ordered by the judge in the July 3 order.