

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 38

Oct. 7, 2024 — Nov. 4, 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:

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

A & J REALTY ASSOCIATES, LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP02314

TEENA RODRIGUEZ,¹

Defendant.

ORDER

This matter came before the court on October 4, 2024 for a hearing on the plaintiff's motion to enforce the parties' Agreement and to enter judgment. The plaintiff appeared through its attorney, together with the manager. The defendant did not appear and is self-represented.

In this eviction case based on cause, the plaintiff seeks to recover possession of the subject rental premises and unpaid rent/use and occupancy. The parties entered into an Agreement on August 29, 2024 to resolve the matter. By its terms, Jonathan Velez was dismissed from the case. He had moved out of the premises. He and the landlord waived all claims against each other. Teena Rodriguez would maintain occupancy of the premises. She agreed that \$5,858 was due in unpaid rent/use and occupancy through August 2024, but that it would be paid by HomeBase. She agreed to pay \$1,300 for use and occupancy beginning on September 1, 2024. If she did not comply with the terms of the Agreement, the plaintiff could file a motion for judgment for possession and monies owed.

¹ A second defendant, Jonathan Velez, was dismissed from the case by Agreement of all parties on August 29, 2024.

The plaintiff now filed such a motion, alleging that Ms. Rodriguez did not use HomeBase to pay the arrearage and she did not pay September use and occupancy. The arrearage is \$7,158 through September 2024 with \$221.54 costs.

Ms. Rodriguez moved out of the premises on September 30, 2024. The plaintiff submitted two documents signed by Ms. Rodriguez (Exh). She acknowledged that she was surrendering possession of the apartment effective September 30, 2024 and that she owed \$7,158 in unpaid rent/use and occupancy.

The issue of possession is moot. The plaintiff is entitled to judgment for money damages only, on the grounds that the defendant is in substantial breach of a material term of the parties' August 29, 2024 Agreement.

Order

After hearing, the plaintiff's motion is **ALLOWED**. Judgment will enter for the plaintiff for \$7,158 with \$221.54 costs.

October 7, 2024

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

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Berkshire, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

CAR HAVEN, LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP03084

ERIC GREGORIE,

Defendant.

ORDER

This matter came before the court on October 7, 2024 for an emergency hearing on the defendant's motion to stop the move-out which was scheduled for that day at 10:00 a.m. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

In this eviction case based on nonpayment of rent, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. A default judgment entered on September 12, 2024 for possession and \$5,180 with costs. The execution issued on September 25, 2024. The plaintiff had a deputy sheriff serve a forty-eight hour notice dated October 1, 2024 that the execution would be used to move the defendant out of the apartment on October 7, 2024 at 10:00 a.m. The move-out was put on hold pending the hearing.

The defendant argues that he needs "a couple of days" to move and has no place to go. He has moved most of his belongings out of the apartment already. He denied receiving the notice of his September 11, 2024 court date until it was handed to him two days after his court date. However, the deputy sheriff's return of service states that the notice was left at the premises and mailed to the defendant on August 13, 2024. Such return of service is *prima facie* evidence of receipt pursuant to G.L. c. 41 §94 unless the defendant shows affirmative evidence that he did not receive it. The court finds that he did not demonstrate such credible evidence in

this case. The defendant reported that he does not have any money to offer toward the rent/use and occupancy or the cancellation fee if the move-out were stopped.

The defendant reported that he was denied for RAFT financial assistance to move into this apartment in February 2024, and that there is no RAFT application pending now. G.L. c. 239 §15 is not applicable in this case.

Order

Based on the above, as stated on the record, the court **DENIED** the defendant's motion to stop the move-out. However, the defendant asked and the deputy sheriff agreed that he could have until 3:00 p.m. that day to remove the rest of his belongings on his own. The deputy sheriff appeared via Zoom and confirmed this and that the movers had left the premises.

October 7, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

TANYA HADSELL,

Plaintiff,

-v.-

DOCKET NO. 24CV00682

ANTOINETTE SANDS,

Defendant.

ORDER

This matter came before the court on October 4, 2024 for a hearing on the plaintiff's motion for access. She also filed a complaint for contempt against the defendant for failing to comply with the court's August 28, 2024 order that she provide alternative housing for the plaintiff and her family until the condemnation order was lifted by the City of Springfield Code Enforcement Department.¹ Both parties appeared and were self-represented.

On September 16, 2024, a judge of this court ordered the defendant to replace the locks and provide the plaintiff with a key. Although she and her fiancé each have a key to the plaintiff's apartment, the defendant reported that she has not provided a key to the plaintiff because she has not had time to do so. The court finds that this is not a credible or legitimate reason for failing to obey the September 16 court order.

¹ There is other litigation between the parties. The tenant has a harassment prevention order against the landlord issued by the District Court. The landlord's eviction case against the tenants (24SP02657) went to trial on September 19, 2024. Judgment entered for the tenants for possession and \$6,910 in damages. In the City's code enforcement case (24CV708), a limited receiver was appointed to provide alternative housing to the tenants and to prepare a rehabilitation plan for the property.

Order

As stated at the hearing:

1. The defendant will furnish a key to the plaintiff no later than 9:00 a.m. on Monday, October 7, 2024.
2. This case is continued for further hearing on Tuesday, October 8, 2024 at 2:00 p.m. in this court.
3. If the defendant complies with order no. 1 above, neither party need appear at the October 8 hearing.

October 7, 2024

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

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP002816

AUDREY HERRICK,

Plaintiff

VS.

CATHERINE WOJCIK,

Defendant

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

This is a summary process action in which Plaintiff Audrey Herrick (Herrick) is seeking recover possession of a residential dwelling from Defendant Catherine Wojcik (Wojcik). Wojcik did not file a written answer but claims as a defense that Herrick engaged in acts of harassment directed against her that interfered with her quiet use and enjoyment of the premises. Wojcik also requested a stay of execution.

Based upon all the credible testimony and evidence presented at bench trial conducted on October 2, 2024, and the reasonable inferences drawn therefrom, the Court finds as follows:

Herrick and David Connor (Connor) were co-owners of the two-family duplex dwelling at 181-183 Ashuelot Street, in Dalton, Massachusetts (the “premises”) for 22 years.

Herrick occupies the duplex unit identified as 181 Ashuelot Street. She lives alone. Herrick has a daughter and grandson.

Connor occupied the duplex unit identified as 183 Ashuelot Street. Connor was Herrick’s stepfather. Connor died on March 7, 2024.

Upon Connor’s death Herrick became the sole owner of 181-183 Ashuelot Street.

Wojcik began to live with Connor at 183 Ashuelot Street in 2012. She told him she needed a place to stay for a short period until she found another place to live. Connor said she could stay in a spare bedroom. Wojcik’s short stay continue for 12 years. Wojcik never entered into a tenancy

relationship with Connor or Herrick. Wojcik never paid rent.¹ Wojcik continued to occupy the unit at 183 Ashuelot Street since Connor's death in March 2024.

Herrick is obligated to pay the following monthly expenses related to 181-183 Ashuelot Street: \$1,180.00 for mortgage payments (including real estate tax and insurance escrows); \$153.33 for municipal water and sewer charges; \$126.00 for electricity; and \$172.00 for gas heat (on monthly budget plan). Wojcik has never made payments to Herrick (or Connor) to cover any portion of these expenses.

Herrick wants her daughter and six-year-old grandson to occupy the unit at 183 Ashuelot Street. Herrick looks after her grandson when her daughter is at work, and she picks up her grandson from the elementary school he attends (which is across the street from 181-183 Ashuelot Street). It is for this reason that on April 2, 2024 Herrick served Wojcik with a notice "to terminate your occupancy" and to vacate the unit at 183 Ashuelot Street by July 5, 2024 (more than three months' notice).

Wojcik did not surrender possession of 183 Ashuelot Street by July 5, 2024, and in July 2024 Herrick commenced this summary process action.

I find and rule that Wojcik has occupied the unit at 183 Ashuelot Street as Connor's invited guest who was permitted to reside there as a sufferance occupant. Wojcik never occupied the unit as a tenant and does not have any rights to possession as a tenant. The April 2, 2024 notice to vacate was legally sufficient to terminate whatever rights to possession of 183 Ashuelot Street Wojcik may have had.

Herrick has established her case to recover possession of the unit at 183 Ashuelot Street from Wojcik.

Wojcik testified that Herrick played loud music in her unit that was intended to harass Wojcik and interfere with Wojcik's quiet use and enjoyment of the unit. I do not find Wojcik's testimony to be credible. There is insufficient evidence to support Wojcik's claim that Herrick engaged in any acts of harassment directed against Wojcik or that Herrick interfered with Wojcik's quiet use and enjoyment of the unit.

This case came before the court for trial six months after the plaintiff served the defendant with the notice to vacate. After considering the testimony of Herrick and Wojcik, and in the

¹ Wojcik testified that the only financial contribution she made over the years was to help pay for groceries.

exercise of my discretion under G.L. c. 239, § 9, I shall stay issuance of execution until November 1, 2024.

ORDER FOR JUDGMENT

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

1. Judgment enters for the plaintiff on the claim for possession.
2. Issuance of Execution is stayed until November 1, 2024.

SO ORDERED this 7th Day of October, 2024.

Jeffrey M. Winik

Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP00875

PITTSFIELD HOUSING AUTHORITY

Plaintiff,

v.

STEPHANIE MILLS,

Defendant

Order

This matter came before the court on October 2, 2024 for a hearing on the plaintiff's *Motion for Issuance of Judgment and for Execution for Possession*.

I will afford the defendant one last opportunity to comply with the May 2, 2024 Agreement (which provided that the defendant would pay her monthly rent when due (\$680.00 as of November 1, 2024) and pay an additional \$100.00 monthly that would be applied to her rent arrearage (currently \$7,271.10).

The defendant must pay the plaintiff \$400.00 by October 16, 2024 (arrearage payments owed for July, August, September and October).

If the defendant makes that \$400.00 payment by October 16, 2024, then the plaintiff's *Motion for Issuance of Judgment and for Execution for Possession* will be **DENIED**.

However, if the defendant does not make that \$400.00 payment by October 16, 2024, then upon the filing of an affidavit of noncompliance by the plaintiff's attorney, the plaintiff's *Motion for Issuance of Judgment and for Execution for Possession* will be **ALLOWED**, and judgment for possession and \$6,569.50 damages plus \$239.65 court costs shall enter, with execution to issue in due course.

So entered this 7th day of October, 2024.

Jeffrey M. Winik

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

YAHAIRA RIOS,

Plaintiff,

-v.-

DOCKET NO. 24CV00689

145 MAIN ST PROPERTY LLC &
SPRINGFIELD WATER AND SEWER
COMMISSION,

Defendant.

ORDER

This matter came before the court on October 4, 2024 for a hearing on the plaintiff's request for an emergency order to prevent the water from being turned off at her apartment. The plaintiff appeared and was self-represented. The defendant-landlord 145 Main St Property LLC did not appear despite being served. There is no notice of appearance docketed for the company. The defendant Springfield Water and Sewer Commission appeared through its attorney with a member of the collection department.

The Commission's attorney reported that there is an outstanding balance on the water account for the subject rental premises located at 38-40 Oak Street in Indian Orchard, Massachusetts of \$835. The collections manager for the Commission tried to contact the landlord through an attorney who represents the LLC in cases pending in this court (Exhs 1 & 2), but has not been contacted by the landlord to date. The water was scheduled to be turned off for nonpayment on September 11, 2024, but Ms. Rios filed this case and the Commission did not turn off the water as scheduled. The plaintiff has been withholding her rent because of other conditions at the premises, so she is not in a position to deduct from her rent and make a payment plan with the Commission. The plaintiff received a notice on October 4 that a new management

company is taking over management of the property “effective immediately” (Exh 3). Either party may contact the new management company at the telephone number provided and discuss the nonpayment of the water bill before the next court date in this matter.

The plaintiff filed an earlier case in this court, *Yahaira Rios v. Avi Gross*, 24CV00428 based on a June 6, 2024 report and order to correct issued by the City of Springfield Code Enforcement Department. Despite two court orders that all repairs be made, Ms. Rios reported at the October 4 hearing in this case that there continue to be code violations at the premises. It is her understanding that Avi Gross no longer works for the landlord. The court will schedule 24CV00428 for review together with this case.

Orders

After hearing, the following orders will enter:

1. Defendant 145 Main St Property LLC will pay the outstanding water bill or will enter into a payment plan with the Springfield Water and Sewer Commission for the account for the subject rental premises forthwith, so that the water is not turned off.
2. As agreed at the hearing, the Springfield Water and Sewer Commission will not turn off the water to the subject rental premises pending review and further hearing in this court.
3. The Clerk’s Office is asked to schedule this matter for review and further hearing in two weeks and to send notice.
4. All parties or their attorneys are required to attend this hearing.
5. The Clerk’s Office is asked also to schedule case no. 24CV00428 for review on the same day as this case and to send notice.
6. The plaintiff’s complaint asks for a harassment order and protection from an unnamed individual. The Housing Court does not have jurisdiction in harassment prevention cases pursuant to G.L. c. 258E. Any relief under that statute must be sought in the District Court. If Ms. Rios fears for her safety, she should call the police.

October 7, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-782

NILSA APONTE,

Plaintiff,

v.

KEVIN MERLOS,

Defendant.

ORDER

After hearing on October 8, 2024, on the plaintiff tenant's motion for injunctive relief at which the defendant landlord failed to appear, the following order shall enter:

1. The subject premises continue to be condemned by the City of Springfield Department of Code Enforcement Housing Division.
2. The court made several attempts to reach the landlord by telephone and left several messages and then postponed the hearing for some time to provide for additional time for the landlord to reach the court. He did not.

3. The defendant landlord shall provide hotel accommodations for the tenant and her family forthwith and until further order of the court, as well as with a daily food stipend of \$95.

4. The court's Housing Specialist Department is requested to send a copy of this order to the landlord with a text to his telephone as well as the regular mail to be sent by the clerk's office.

5. **This matter shall be scheduled for further hearing on October 10, 2024, at 9:00 a.m.**

6. The Housing Specialist Department is also requested to reach out to the City law department and ask that they appear at the above-noted hearing with a potential Receiver who may be appointed by the court sua sponte as an emergency appointment to prevent homelessness of the plaintiff and her family.

So entered this 9 day of October, 2024.



Robert Fields, Associate Justice

Cc: Amber Gould, Esq., City of Springfield Law Department
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 October 7, 2024 for a continued hearing on the plaintiff's motion to enter judgment and issue the execution. The plaintiff appeared through its attorney with the property manager. Defendant Jeremy Wheat appeared and is self-represented.

The court reviewed the procedural history of this case in its August 21, 2024 order and incorporates it here. The plaintiff's property manager reported that the defendant's application for RAFT financial assistance was approved for \$7,000 and that she anticipates receiving the funds by the end of the week. The defendant paid \$600 on September 16 and \$500 on October 7. The parties anticipate that another \$200 will be received by the plaintiff on October 8. This leaves a balance of \$2,064.01 through October 2024.

After some delay, the defendant's roommate, Jason Sheehan, moved in last week. This is the person whom the landlord approved earlier to move into the apartment and who signed a lease. Mr. Wheat now needs to sign the lease.

Mr. Wheat offered to pay the remaining balance of \$2,064.01 by October 28, 2024 and to pay the November use and occupancy by November 15, 2024 to reduce his balance to zero. He explained that with his roommate now living with him, the rent will be more affordable.

Order

The plaintiff requested that judgment enter. However, the court does not enter judgment at this time to give the defendant the opportunity to pay the remaining balance and become current on the rent/use and occupancy.

The Clerk's Office is asked to schedule the case for review and further hearing on the plaintiff's motion on a date after November 15, 2024 and to send notice.

Before that hearing, the defendant will pay:

- \$2,064.01 by October 28, 2024
- November use and occupancy in full by November 15, 2024.

October 8, 2024

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP05132

YALIXIA FIGUEROA & JESUS A. GONZALEZ,

Defendant.

ORDER

This matter came before the court on October 7, 2024 for a continued hearing on the defendant's motion to stay the execution further. The plaintiff appeared through its attorney. Both defendants appeared and were self-represented. A representative of the Tenancy Preservation Program (TPP) also appeared.

The court outlined the chronology of this nonpayment of rent eviction case in its September 23, 2024 order stopping the September 24 move-out and incorporates it here.

Since the last hearing, Ms. Figueroa applied for RAFT financial assistance. She still needs to submit her documentation to Wayfinders of hardship/good cause for failing to pay the tenant portion of the public housing rent. If she is 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, which the tenants have not proposed to date because the defendants say that they have no income. Ms. Figueroa is applying for DTA benefits and Unemployment Compensation.

Ms. Figueroa has not completed her recertification because she is waiting for a letter of termination from her former employer.

She paid \$200 toward the arrearage as ordered by the court. The arrearage is now \$4,463.93 through October 2024 with \$310.25 costs and \$940 cancellation fee for the cancelled September 24 move-out.

TPP reported that the housing specialist would complete the referral to TPP that day. TPP is asked to work with the defendants to:

- Complete the RAFT application process, including submission to Wayfinders of the defendant's hardship documentation
- Complete the recertification process with the Housing Authority and any further recertifications as needed if the household income changes
- Complete the applications for DTA benefits and Unemployment Compensation
- When the household has income again, propose a realistic payment plan for the balance that would remain after RAFT is paid
- Determine a method of insuring that ongoing use and occupancy is paid.

The case is continued for three weeks for review and for further hearing on the defendant's motion to stay the execution. The Clerk's Office is asked to schedule the case and to send notice. TPP is asked to be present at the continued hearing.

October 8, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CC: Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 2488 2725
DOCKET NO. 24-CV-0723

_____)	
CHRISTINA DUROSS,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
NOFAR HOFFMAN,	)	AND ORDER FOR JUDGMENT
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court on September 19, 2024 for a bench trial. Both parties appeared self-represented. Plaintiff seeks to recover possession of a room rented to Defendant at the premises located at 20 Lowell Avenue, West Springfield, Massachusetts (the “Premises”) from Defendant. Defendant’s application for an emergency order (Docket No. 24-CV-0723) is hereby consolidated into the summary process case. The Court took evidence as to both matters during the summary process trial.

At the outset of trial, the parties stipulated to Plaintiff’s prima facie case for possession. Defendant acknowledged receipt of the notice to quit terminating her tenancy as of July 1, 2024. Further, the parties agreed that no rent is owed through the date of trial. Defendant did not file an answer and raised no defenses at trial.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue upon written application ten days after the date judgment enters.¹
3. Each party shall respect the right of the other to the peaceful enjoyment of the home.
4. Plaintiff may not change the terms of the tenancy as established by the course of the parties' conduct since Defendant moved into the Premises.

SO ORDERED.

DATE: October 9, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Pursuant to G.L. c. 239, § 9, et seq., Defendant may be entitled to a stay of execution. If she seeks such a stay, she must file a motion with the court.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-778

STEPHANIE JACKSON,

Plaintiff,

v.

TANISHA SALMON,

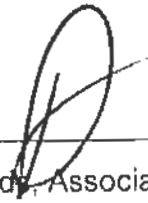
Defendant.

ORDER

After hearing on October 8, 2024, on the plaintiff tenant's motion for injunctive relief at which both parties appeared, the following order shall enter:

1. The defendant landlord shall not text, email, or call the tenant outside of the hours of 9:00 a.m. and 5:00 p.m.
2. The landlord shall not use the tenant's Wi-Fi for the security system at the premises and shall not inquire about the tenant's Wi-Fi password.
3. The landlord shall immediately have the front door of the premises inspected and have necessary repairs effectuated forthwith.

So entered this 9th day of October, 2024.



Robert Field, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

SLF REALTY CORP. C/O STARLIGHT
PROPERTY MANAGEMENT,

Plaintiff,

-v.-

DOCKET NO. 24SP02275

KENNIA LOPEZ,

Defendant.

ORDER

This matter came before the court on October 8, 2024 for a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

In this nonpayment of rent eviction case the plaintiff seeks to recover possession and unpaid rent/use and occupancy of the tenant's share of the subsidized rent. The parties entered into an Agreement on July 25, 2024 to resolve the matter. By its terms relevant to this motion, the parties agreed that the defendant owed \$279 in rent/use and occupancy through July and \$268.45 costs. She agreed to pay the arrearage by August 5, 2024 and the costs by August 20 and to pay the rent/use and occupancy (\$934) by the fifth of each month. When she 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 has now filed such a motion on the grounds that the defendant did not make the payments as agreed, although she paid some money in September. The arrearage through October 2024 has grown to \$1,082 and \$268.45 costs.

The defendant explained that she has not been able to work her usual number of hours because her son was suspended from school. She agrees that she owes the amount reported by the plaintiff. She reported that she filed an application for RAFT financial assistance on October 7, 2024. Ms. Luna of Wayfinders confirmed that the application had been filed. Wayfinders is waiting for the landlord documentation as well as the tenant documentation regarding hardship/good cause.¹

Judgment cannot enter at this time because there is a pending RAFT application.

Order

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

1. The plaintiff's motion for entry of judgment is continued for further hearing on November 12, 2024 at 9:00 a.m.
2. Both parties will complete the RAFT application process promptly.
 - a. The defendant will submit her documentation of hardship/good cause.
 - b. The plaintiff will submit its documentation when requested by Wayfinders² and include the costs on the ledger.
3. The defendant will pay her rent/use and occupancy as it becomes due while her RAFT application is pending.

October 9, 2024

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

¹ Ms. Lopez reported that she understands what she must submit to document a hardship because she has done so in earlier RAFT applications.

² The plaintiff's attorney furnished the correct email address for his client to Wayfinders at the hearing.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2778

SUSAN M. FLORES 2023 TRUST,

Plaintiff

v.

HOLLY PIETRUSZKA,

Defendant

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 September 20, 2024. Plaintiff appeared through counsel. Juano Flores (“Mr. Flores”), one of the beneficiaries of the trust and the property manager, appeared on behalf of Plaintiff. Defendant appeared self-represented. The residential property at issue in this case is located at 202 Main Street, West Unit, Charlemont, Massachusetts (the “Premises”).

The parties stipulated to the landlord’s prima facie case for possession. They further stipulated that monthly rent/use and occupancy is \$1,050.00. Plaintiff contends that five months remain unpaid through September 2024 for a total of \$5,250.00. The tenancy was terminated as of July 1, 2024. Defendant filed an answer and, on the morning of trial, filed an amended answer. Plaintiff assented to the late filing of the amended answer.

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

Defendant testified that in November 2023, she got a dog without first asking permission. She contends that this upset Mr. Flores, even though she had a letter from a health professional indicating that the dog was necessary to ameliorate the symptoms of her mental health disabilities. Because she was in fear of being evicted over the dog, she said that she removed it after a few months.

Mr. Flores denies the claim that Defendant provided a letter indicating that she needed a dog as a reasonable accommodation for her disabilities. He testified credibly that Defendant told him that she was taking care of a friend's dog while the friend was incarcerated. She did not provide the Court with any credible evidence that she made a request for a reasonable accommodation or submitted the letter from her health care provider to Mr. Flores. Therefore, the Court finds that Defendant did not prove discrimination by a preponderance of the evidence. Defendant offered no other defenses or counterclaims at trial, and therefore Plaintiff is entitled to judgment.

With respect to the amount of arrears, Mr. Flores testified that his ledger was created for trial as a summary of what is owed by Defendant. He said that he keeps a contemporaneous spreadsheet of payments made, including the dates of payment, but did not bring it with him to trial. Because the ledger is not admissible as a business record, and because Defendant disputes the balance owed but has no receipt today, the Court will bifurcate the issue of unpaid rent/use and occupancy for resolution at a subsequent evidentiary hearing.

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

1. Judgment for possession only shall enter in favor of Plaintiff.
2. Pursuant to G.L. c. 239, §§ 9 et seq., execution (the eviction order) shall be stayed through the next court date on the condition that Defendant pay \$1,050.00 by September 23, 2024 and \$1,050.00 by the 5th day of each month thereafter for so long as she occupies the Premises.
3. Defendant shall make a diligent search for replacement housing. She shall keep a detailed log of her efforts, including the dates of inquiry or application, the address, and the result of the inquiry or application. At the next court date, Defendant shall present the log to the Court for review if she intends to seek additional time to move.
4. Also at the next hearing, Mr. Flores shall submit the contemporaneous record of all payments (and dates of payments) made by Defendant. Defendant shall bring in any evidence of her payments. The Court will review the evidence and make a finding as to the balance owed.¹
5. The parties shall return for further proceedings consistent with this order on November 8, 2024 at 9:00 a.m.

SO ORDERED.

October 9, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

¹ G.L. c. 239, § 15 does not apply because this case was not brought solely for nonpayment of rent.

establishing its prima facie case as to ownership of the Premises. See *Federal Nat'l Mortgage Ass'n v. Hendricks*, 463 Mass. 635, 642 (2012).¹

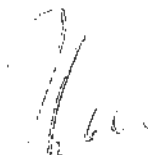
Defendants did not file answers or offer any defenses at trial. They stipulated that they received the notice to quit dated May 23, 2024 and they continue to reside in the Premises. They seek additional time to clean out the Premises and relocate.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Defendants shall diligently search for housing and continue to clean and pack the belongings in the Premises.
3. Issuance of the execution (eviction order) shall be stayed until the next court date, which will be scheduled for **December 11, 2024 at 2:00 p.m.** Execution shall issue at that time; however, Defendants may seek a stay on use of the execution if they are able to pay for their use and occupancy of the Premises.
4. At the next court date, the Court will conduct an evidentiary hearing to set the monthly use and occupancy payment required for a stay on use of the execution.

SO ORDERED.

DATE: October 9, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Plaintiff offered into evidence certified copies of other foreclosure documents as well.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

ENMANUEL VENTURA,

Plaintiff,

-v.-

DOCKET NO. 24SP01287

KYLA JANE BRUNSON,

Defendant.

ORDER

This matter came before the court on October 8, 2024 for a hearing on the defendant's second motion to stop the move-out scheduled for October 9, 2024 at 11:30 a.m. The plaintiff appeared through his attorney. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

After hearing on October 7, 2024 on the defendant's first motion to stop the move-out, the court denied the motion based on the lack of grounds to stay the execution in this case. Since then, the circumstances have changed because Ms. Brunson filed an application for RAFT financial assistance for moving expenses. Ms. Pena of Wayfinders joined the hearing and confirmed that the application, filed on October 7, is waiting to be reviewed and pending.

Orders

As stated on the record at the hearing:

1. The defendant's second motion to stop the October 9, 2024 move-out is **ALLOWED**.
2. The plaintiff's attorney agreed to notify the constable of this order forthwith.
3. The defendant will pay the cancellation fee of \$550 to the plaintiff no later than October 21, 2024.

4. The case is scheduled for review on October 22, 2024 at 9:00 a.m. for the defendant to report on the status of her RAFT application for moving expenses.

- a. The defendant asked if she could stay for an additional month if she paid one month use and occupancy while she looks for another apartment. The court has no authority to grant such an extension, but she may discuss it with the plaintiff at the October 22 review.

October 9, 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-1829

329 BEECH STREET, LLC,)
)
 PLAINTIFF)
)
 v.)
)
 ARON BROGA,)
)
 DEFENDANT)

ORDER FOR
ENTRY OF JUDGMENT

This summary process case came before the Court on October 10, 2024 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 329 Beech Street, 3LR, Holyoke, Massachusetts (the “Premises”) from Defendant.

The parties entered into an agreement on June 4, 2024 wherein Defendant agreed that he owed \$3,305.00 in rent arrears plus court costs. Further, the agreement allowed Plaintiff to schedule a trial if RAFT failed to pay the balance and a repayment agreement could not be reached.

At trial, Defendant stipulated to Plaintiff’s prima facie case for possession and unpaid rent in the amount \$2,385.00. He agreed that rent is \$895.00 per month. He did not file an answer and did not assert any defenses at trial. He requested only that he be able to continue his monthly payments and be given additional time to pay off the balance with his tax refunds from the past two years of tax returns, which he intends to file shortly.

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

1. Judgment for possession and damages in the amount of \$2,385.00, plus court costs, shall enter in favor of Plaintiff.

2. Issuance of the execution shall be stayed and the time period in G.L. c. 235, § 23 tolled on the following terms:

a. Defendant shall pay \$500.00 every two weeks beginning on October 11, 2024.

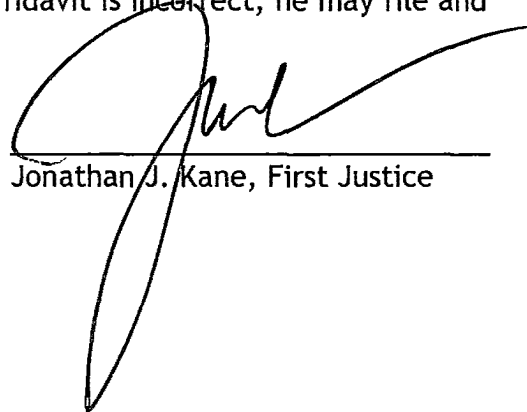
b. Defendant shall pay the remaining balance in full by April 18, 2025.

3. If a payment is missed, Plaintiff's counsel may file an affidavit to that effect and apply for issuance of the execution. The application and affidavit must be sent to Defendant simultaneously.

4. If Defendant believes that the affidavit is incorrect, he may file and serve a motion to stay use of the execution.

DATE: October 10, 2024

cc: Court Reporter



Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2565

_____)	
VLADIMIR GARGUN,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
CHRISTINA GAUDREAUULT AND	)	AND G.L. c. 239, § 8A ORDER
MATTHEW MYERS,)	
)	
DEFENDANTS)	
_____)	

This summary process case came before the Court on October 4, 2024 for a bench trial. Both parties appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 4 K Street, Apt. D, Turners Falls, Massachusetts (the "Premises") from Defendants based on nonpayment of rent.

At the outset of trial, the parties stipulated that Defendant received the notice to quit and that rent is \$1,350.00 per month. The stipulated facts establish Plaintiff's prima facie case for possession. Defendants dispute the amount of money owed.

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

Despite the parties' agreement as to the rental rate of \$1,350.00, the Court finds that the rental increase from \$1,300.00 to \$1,350.00 was ineffective. There is no evidence that Defendants agreed to the increase and they never paid the higher rental rate. Defendants received rental assistance through the RAFT program in

January 2024 and again in March 2024, exhausting their eligibility until January 2025. After the March 2024 rental assistance payment, the balance owed was only \$448.00. Additional rental assistance of \$1,200.00 was paid in April 2024, resulting in a total arrears amount of \$558.00 through April 2024. No payments have been made since, a period five months, leaving a total balance of rent and use and occupancy due of \$7,048.00 through the date of trial.¹

Defendants filed an answer and testified at trial about two potential defenses and/or counterclaims;² namely, bad living conditions in the Premises and violation of the security deposit statute. Regarding conditions of disrepair, although Defendants testified that they should have a smoke detector in the kitchen, that their water smells and that the refrigerator leaks, they offered no credible evidence to support their assertions. Plaintiff testified that he did not place a smoke detector in the kitchen because it is not required by law, and that the refrigerator was brand new when Defendants moved in. Defendants did not prove by a preponderance of the evidence that Plaintiff is liable for any conditions of disrepair in the Premises.

With respect to the security deposit, Plaintiff concedes that he took a security deposit of \$1,200.00 when Defendants moved into the Premises on January 15, 2022 but did not provide them with the receipt required pursuant to G.L. c. 186, § 15B.³ Plaintiff further failed pay annual interest on the deposit. Although Plaintiff testified that he put the security deposit “in an account,” he did not offer any evidence that

¹ Rent is payable on the 15th of the month, so rent for October is not yet due.

² The defenses and counterclaims raised in the answer but not addressed at trial are hereby dismissed.

³ G.L. c. 186, § 15B recites that a “receipt shall be given to the tenant within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit. Failure to comply with this paragraph shall entitle the tenant to immediate return of the security deposit.”

the security deposit was “held in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors.” *See* G.L. c. 186, § 15B(3)(a).

If a landlord fails to hold the security deposit in the required manner, a tenant is entitled to three times the security deposit. *See* G.L. c. 186, § 15B(7). A landlord is also required to “pay interest at the rate of five per cent per year, or other such lesser amount of interest as has been received from the bank where the deposit has been held payable to the tenant at the end of each year of the tenancy.” *See* G.L. c. 186, § 15B(3)(b). Plaintiff provided no evidence as to the actual rate of interest in the account where the security deposit is held, and thus Defendants were entitled to receive interest in the amount of \$60.00 on January 15, 2023 and \$60.00 on January 15, 2024. Pursuant to 940 Code Mass. Regs. 3.17(4)(c), the Attorney General has deemed the failure to pay interest on a security deposit to be an unfair and deceptive practice. Under G.L. c. 93A, the amount of unpaid interest shall be trebled.

In summary, Plaintiff established that \$7,048.00 is due in unpaid rent and use and occupancy through the date of trial. Defendants are entitled to damages in the amount of \$3,960.00 (three times the security deposit plus three times the unpaid interest of \$120.00). The difference between what Plaintiff is owed in rent and the damages to which Defendants are entitled is \$3,088.00. Defendants shall have the opportunity to defeat Plaintiff’s claim for possession and remain as tenants by paying the amount written in numbered paragraph 2 below within one week after having received written notice from the Court of the balance due. *See* G.L. c. 239, § 8A.

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

1. Plaintiff is entitled to damages in the amount of \$7,048.00.⁴

2. Pursuant to G.L. c. 239, § 8A, Defendants shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$3,088.00, plus court costs of \$ ~~254.00~~ and interest in the amount of \$ ~~102.64~~, for a total of \$ 3,444.64. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

4. If such deposit is made, judgment for possession shall enter for Defendants. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.

5. If the deposit is not received by the Clerk within the ten day period, judgment shall enter for Plaintiff for possession and damages in the amount of \$3,088.00, plus the court costs and interest noted in numbered paragraph 2 above, and execution shall issue by written application after the expiration of the 10-day appeal period following the date judgment enters.

SO ORDERED.

DATE: October ~~10~~, 2024

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

cc: Court Reporter

⁴ As written above this figure is the difference between what Defendants owe and what they are entitled to for their counterclaims.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 09-SU-14**

JEFFREY A. NEECE,

Plaintiff,

v.

LEN DAWSON,

Defendant.

ORDER

After hearing on October 8, 2024, on the plaintiff/creditor's motion at which both parties appeared without counsel, the following order shall enter:

1. The motion is allowed and the defendant/debtor shall provide his tax returns (state and federal) for 2021, 2022, and 2023 to the plaintiff/creditor within 30 days.
2. The defendant/debtor's social security number (and that of any dependents or spouse, may be redacted leaving the last four digits on all documents.

3. The plaintiff/creditor shall not share the information contained in the tax returns with anyone (other than counsel should he obtain one) and he may not photocopy or post on the internet any portion thereof.
4. Additionally, the plaintiff/creditor has leave to engage in written discovery regarding the defendant/debtor's financial wherewithal to pay the outstanding judgment.

So entered this 10th day of October, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

HIGH STREET COMMONS,

Plaintiff,

-v.-

DOCKET NO. 23SP03666

**JENNIFER A. MITCHELL & PRENTISS
ANDERSON, JR.,**

Defendant.

ORDER

This matter came before the court on October 11, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for October 16, 2024 at 11:30 a.m. The plaintiff appeared through its attorney. Defendant Jennifer A. Mitchell appeared and was self-represented. Defendant Prentiss Anderson, Jr. did not appear. Janis Luna of Wayfinders joined the hearing to report on RAFT.

This cause eviction case was filed on August 14, 2023 based on chronic late payment of the tenant's portion of the subsidized rent and an unauthorized animal in the unit. There is also a substantial arrearage of the tenant's portion of the subsidized rent. The tenant's portion has been \$259 throughout this case. The arrearage is now \$7,615. Since the case was filed, the plaintiff has been working with Ms. Mitchell to try to resolve the underlying issues. The parties entered into an Agreement on September 26, 2023. By its terms the defendant agreed to pay her rent/use and occupancy each month. She agreed to apply for RAFT financial assistance for the arrearage. After a hearing on the plaintiff's first motion for entry of judgment a judge of this court denied the entry of judgment, but issued an order on February 8, 2024 that the defendant pay her portion of the rent/use and occupancy and \$50 each month and apply for RAFT. After a hearing on the plaintiff's second motion for entry of judgment, another judge of this court issued an order on

July 11, 2024 that found that the defendant was not in compliance and ordered that judgment enter. Judgment entered on July 12, 2024. The execution issued on July 26, 2024 on the plaintiff's written request. The plaintiff had a deputy sheriff serve a forty-eight hour notice that the execution would be used to move the tenants out of the apartment on October 16, 2024 at 11:30 a.m. If the move were stopped, the cancellation fee would be \$750.

Ms. Mitchell filed this motion on the grounds that she does not have anyplace to move if she is evicted. She offered to pay \$740 toward the arrearage now. She has a pending RAFT application. She testified that she had to stop working for medical reasons, but that she is returning to work. She receives SSI for her son.

Janis Luna of Wayfinders reported that the defendant has filed at least three RAFT applications. One timed out because the tenant did not submit documentation of hardship/good cause for failing to pay her portion of the subsidized rent/use and occupancy. The second timed out because the tenant did not submit the hardship documentation nor a payment plan for the balance that would remain even if she were approved for RAFT. Because this is a subsidized tenancy, RAFT can pay a maximum of six months of the tenant's share ($\$259 \times 6 = \$1,554$) and costs. The defendant will need to propose a realistic payment plan for the balance.

Orders

After hearing, the following orders will enter:

1. The defendant's motion to stop the move-out scheduled for October 16, 2024 at 11:30 a.m. is **ALLOWED**. The move-out is **STOPPED**.
 - a. The plaintiff's attorney will notify the deputy sheriff of this order forthwith.
 - b. Although this eviction case is based on cause, the court stops the move-out and stays the execution pending further hearing on equitable grounds.
2. The defendant is responsible to pay the cancellation fee of \$750.
3. As she offered to do, the defendant will pay \$740 to the plaintiff by the close of business on October 15, 2024. This will be applied to the arrearage through October 2024.
4. The parties will complete the RAFT application process promptly.
 - a. The defendant will submit all required documentation, including her hardship documentation, and a payment plan for the balance.
 - b. The plaintiff will submit its required documentation and will include the costs and the cancellation fee on the ledger.

5. The execution is stayed pending further hearing in thirty days. The Clerk's Office is asked to schedule the case and send notice.
 - a. At the hearing, the parties will report on the status of the RAFT application and any payments made by or on behalf of the defendant.
 - b. Beginning in November, the defendant will pay her portion of the rent/use and occupancy as it becomes due.
6. This stay of the execution is ordered within the meaning of G.L. c. 235 §23. This tolls the running of the time provided by statute for the plaintiff to use the execution. The plaintiff may return the July 26, 2024 execution to the court and request a new execution in writing but without filing a motion, if one is needed after the continued hearing.

October 11, 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-SP-2972

<hr/>)
PRB, LLC,)
	PLAINTIFF)
v.)
MARYANN BERTHIAUME,)
	DEFENDANT)
<hr/>)

ORDER FOR APPOINTMENT
OF A GUARDIAN AD LITEM

This matter came before the Court on October 11, 2024 for trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Mr. Richtell from the Tenancy Preservation Program (TPP) was also present.

After review of the forensic psychology evaluation report from the Court Clinic, the Court believes that the appointment of a GAL for Defendant is necessary to secure the full and effective administration of justice. The Court hereby exercises its inherent power to appoint a GAL for Defendant and requests that the Clerk’s office select the next GAL on the list who is willing to accept the appointment.

Accordingly, the following order shall enter:

1. The Court hereby orders the appointment of a GAL for Defendant. The GAL is authorized to do the following:

- Investigate the facts and gather information relevant to the summary process action, including communicating with counsel for Plaintiff and TPP; and
- Make recommendations to the Court for appropriate next steps in the summary process case, including the need for a Rogers order; and
- Coordinate with TPP regarding wrap-around services that are or will be put in place.

2. The parties shall return for further review on November 15, 2024 at 9:00 a.m. in the Greenfield session.

SO ORDERED.
October 11, 2024



Hon. Jonathan J. Kane, First Justice

cc: Assistant Clerk Magistrate Cunha (for GAL appointment)

CR
COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-772

MIRIAM SANABRIA,

Plaintiff,

v.

SANDRA DIAZ,

Defendant.

ORDER

After hearing on October 9, 2024, on the plaintiff tenant's motion for injunctive relief regarding repairs in her home at which both parties appeared without counsel, the following order shall enter:

1. The defendant landlord shall FORTHWITH make all repairs listed by the City's Code Enforcement citation. Such work shall be effectuated where required by a licensed professional and with proper permits.
2. The landlord shall also use a licensed exterminator to treat the rodent infestation FORTHWITH.

3. The landlord shall provide the tenant with no less than 48 hours advance written notice for each time that the landlord requires access for such repairs and extermination. Such writing may be by text.
4. Access for said repairs and exterminations shall not be unreasonably denied by the tenant.

So entered this 11th day of October, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-782**

NILSA APONTE,

Plaintiff,

v.

KEVIN MERLOS,

Defendant.

ORDER

After hearing on October 10, 2024, at which the plaintiff tenant appeared but for which the defendant property owner/landlord failed to appear, the following order shall enter:

1. On or about October 2, 2024, the subject premises was condemned by the City of Springfield.
2. At an October 8, 2024, the matter came before the court on the tenant's complaint and motion to require the landlord to make repairs to have the condemnation lifted and to provide alternate housing accommodations

(hotel/motel) for the tenant and her family. The court attempted to reach the landlord by telephone and left messages on his voicemail.

3. The court became very concerned that the tenant and her family, along with the two other households at the premises would be homeless (24-CV-784 and 24-CV-785), it asked the court's staff to reach out to the city law department to have them appear at the next hearing with a proposed Receiver.
4. Despite the court's efforts to reach the landlord he did not engage at all with the court and at the hearing on October 10, 2024, the court made an emergency appointment of a Receiver, JJS Capital Investment, LLC.
5. Receiver "JJS" shall immediately provide hotel accommodations to the tenant and her family with kitchen facilities until further order of the court or until the condemnation is lifted by the city.
6. JJS shall also inspect the premises and develop a written plan to accomplish the repairs necessary to have the condemnation lifted. The Receiver is also authorized to make up to \$7,000 in repairs in order to have the condemnation lifted.
7. JJS shall also make diligent efforts to contact the landlord and inform him of this order and its appointment as Receiver.
8. The City shall make diligent efforts to reach counsel for MERS (lender) to inform them of this court action and the appointment of an emergency Receiver and of the return date in this matter noted below. MERS has permission from the court to appear at the next hearing by Zoom.

9. After allegations that some work has been effectuated at the premises without proper permitting or licensure, the Receiver is asked to take control of the premises and not allow the landlord to make any repairs.
10. The landlord shall refrain from effectuating any repairs at the premises until further order of the court.
11. The landlord may be heard at the hearing noted below or on short notice prior to that date if he wishes to be heard.
12. The tenant may access the premises during daylight hours to access her belongings.
13. This matter is scheduled for further hearing on **October 16, 2024, at 2:00 p.m.**

So entered this 15 day of October, 2024.

Robert Fields, Associate Justice

Cc: Amber Gould, Esq., City of Springfield Law Department
Attorney Higgins-Shea, Esq., Counsel for the Receiver (JJS Capital)
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-3029**

FLOR BONILLA,

Plaintiff,

v.

ELAINE ROMAN,

Defendant.

ORDER

This matter came before the court for trial on October 10, 2024, at which both parties appeared without counsel, and the following order shall enter:

1. This summary process action is dismissed due to the insufficiency of the termination notice dated April 29, 2024.
2. More specifically, as explained in greater detail on the record, the landlord listed both non-payment of rent and a no-fault basis for the termination. A landlord is not permitted to do so, being required to pick one or the other.

3. In this scenario, the effect of such a notice is to foreclose the tenant's right to cure the non-payment of rent basis by Answer date, because the notice would appear to allow the landlord to pursue the eviction based on "no-fault" anyway.
4. Accordingly, the case is dismissed without prejudice. The landlord was directed to the Resource Room in the courthouse to consult with the landlord lawyer for the day if she wished to further appreciate this dismissal and for advice on how to proceed with a new eviction action.

So entered this 15th day of October, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

MAPLE COMMONS,

Plaintiff,

-v.-

DOCKET NO. 23SP01017

YAIZALIZ PEREIRA BRUNO & JONATHAN
SOLIS PEREIRA,

Defendant.

ORDER

This matter came before the court on October 11, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for October 16, 2024 at 11:00 a.m. The plaintiff appeared through its attorney. Defendant Yaizaliz Pereira Bruno appeared and was self-represented. Her son, Jonathan Solis Pereira, did not appear. Janis Luna of Wayfinders joined the hearing to report on RAFT.

This eviction case is based on nonpayment of rent. It was filed on February 27, 2023. The rent is subsidized through the Low Income Tax Credit program. The tenant's portion of the rent is \$1,094 per month. The arrearage through October 2024 is \$7,617.87 and costs of \$348.

The defendant asks to stop the move-out on the grounds that she does not have any place to go if she is evicted and that she has an application pending for RAFT financial assistance.

There have been three recent RAFT applications. The first, referenced in the parties' August 5, 2024 Agreement, timed out on August 9 because of missing landlord documentation. Janis Luna of Wayfinders confirmed this and reported that a second application timed out on August 20 because the tenant did not successfully complete the fraud documentation requirement. A third application, filed on October 4, 2024, is waiting for the landlord documentation. The tenant will also need to submit her hardship documentation.

There is a question of whether the defendant will be found eligible for RAFT financial assistance because at least some of the arrearage is due to unreported income. However, the court will give the defendant a final opportunity to complete the RAFT application for a determination by Wayfinders on the merits of the application to see if she is eligible for any RAFT assistance. If she is found not eligible for RAFT assistance to pay the arrearage and she does not pay the arrearage through other means, the plaintiff will be entitled to use the execution.

Order

After hearing, the following order will enter:

1. The defendant's motion is **ALLOWED**. The move-out scheduled for October 16, 2024 at 11:00 a.m. is **STOPPED**.
 - a. The plaintiff's attorney will notify the deputy sheriff of this order immediately.
2. The defendant is responsible for the cancellation fee of \$750.
3. As she agreed, the defendant will pay to the plaintiff \$1,176 no later than October 18, 2024. This will be applied first to the October rent/use and occupancy (\$1,094) and the balance to the arrearage.
4. The defendant will pay the monthly use and occupancy (\$1,094) as it becomes due beginning in November 2024.
5. The execution issued on July 19, 2024 but was stayed by the written Agreement of the parties filed with the court on August 5, 2024. This tolled the time period to use the execution pursuant to G.L. c. 235 §23.
6. The execution is stayed pending further order of the court.
7. This stay of the execution is ordered within the meaning of G.L. c. 235 §23. This means that the time period to use the execution is tolled.
8. Either party may restore the case to the list for further hearing, as needed.

October 15, 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-SP-0472

WESLEY BROWN,
PLAINTIFF
v.
JEFFREY CARROLL,
DEFENDANT

ORDER ON DEFENDANT'S MOTION
TO WAIVE APPEAL BOND

This summary process case came before the Court on October 17, 2024, for a hearing on Defendant's motion to waive the appeal bond. Both parties appeared self-represented. Judgment entered against Defendant on September 30, 2024, following a hearing on Plaintiff's motion to enter judgment based on an agreement of the parties dated March 22, 2024 ("Agreement"). Defendant filed a timely notice of appeal on October 3, 2024, and, prior to this hearing, filed an affidavit of indigency.

Pursuant to Massachusetts law, Defendant is entitled to a waiver of the appeal bond where he 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). The Court finds Mr. Lind is indigent based on his receipt of government benefits. Because judgment entered in this case based upon the undersigned judge's interpretation of language in an agreement of the parties, and because the language could be interpreted differently, the Court finds the existence of a nonfrivolous defense. Therefore, the

Court concludes that Defendant has met the legal standard for waiver of the appeal bond.

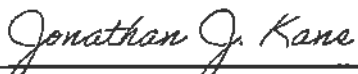
Despite the Court's waiver of the requirement of an appeal bond, the Court shall require Defendant, as a condition for maintaining his appeal, to pay Plaintiff for his ongoing use and occupancy of the premises for the duration of the appeal. Neither party offered any evidence as to the fair rental value of the subject premises. However, as documented in the Agreement, the parties stipulated to monthly rent in the amount of \$800.00 per month. The parties agreed to this figure as the monthly use and occupancy rate for the duration of the appeal.¹

Based on the foregoing, the following order shall enter:

1. Defendant's motion to waive the appeal bond is allowed.
2. Beginning in November 2024 and continuing for the duration of the appeal or until Defendant vacates, whichever occurs first, Defendant shall pay Plaintiff \$800.00 by the 4th of each month.
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.

October 17, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

¹ Defendant agrees to pay use and occupancy for this month by October 18, 2024.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1566**

<p>DOUGLAS DICHARD,</p> <p style="text-align:right">Plaintiff,</p> <p>v.</p> <p>RANDY and THOMAS TIMMONS,</p> <p style="text-align:right">Defendants.</p>	
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ORDER

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

1. James T. Brown, Esq., shall be appointed Guardian Ad Litem (G.A.L). His contact information is as follows:

James T. Brown, Esq., Nicoletti and Brown, LLP, 1350 Main Street, Suite 1507, Springfield, MA 01103 (Tel: 413-342-4845, Email: james@nicolettiandbrown.com .

2. Attorney Brown shall meet with the parties and shall have authority to obtain medical records and records of the Social Security Administration. He shall also have authority to apply and sign documents for resources (i.e., Social

Security Administration, Executive Office of Housing and Livable Communities) for which his wards may be eligible on their behalf.

3. Attorney Brown shall consider whether a Representative Payee can be secured for purposes of receiving funds for either or both wards so that rent and other daily expenses may be met.
4. Any funds obtained by Attorney Brown on his wards' behalf that is sufficient for payment to the landlords for use and occupancy shall be considered a top priority for prompt payment.
5. Attorney Brown shall also investigate whether a guardianship or conservatorship should be sought in the Probate & Family Court and by whom.
6. Any and all timelines under the summary process rules relative to the filing of an Answer, Counterclaims, Request for Jury, and/or a Discovery Demand shall be extended to October 31, 2024.
7. The Tenancy Preservation Program was referred and a representative from that program appeared for the hearing.
8. This matter shall be scheduled for review and an update by the G.A.L. on **October 23, 2024, at 2:00 p.m.**

So entered this 18th day of October, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

ENMANUEL VENTURA,

Plaintiff,

-v.-

DOCKET NO. 24SP01287

KYLA JANE BRUNSON,

Defendant.

ORDER

This matter came before the court on October 15, 2024 for a hearing on the plaintiff's motion to reconsider and amend the court's order stopping the move-out scheduled for October 9, 2024 and staying the execution pending a decision on the defendant's RAFT application. The plaintiff appeared through his attorney. The defendant appeared and was self-represented.

After hearing on October 7, 2024 on the defendant's first motion to stop the move-out, the court denied the motion based on the lack of grounds to stay the execution in this case. Immediately after the hearing, the defendant applied for RAFT financial assistance for moving expenses and filed a second motion to stop the move-out. The court stopped the move-out based on the pending RAFT application after a hearing on October 8, 2024.

The plaintiff now asks the court to reconsider and amend that order in light of the language of G.L. c. 239 §15 which provides:

- (b) In an action for summary process for nonpayment of rent, a court having jurisdiction over said action for summary process shall:
- (i) grant a continuance for a period as the court may deem just and reasonable if, either at the time the answer is timely filed or on the date the trial is scheduled to commence: (1) the tenancy is being terminated *solely for non-payment of rent* for a residential dwelling unit. . . . {emphasis supplied}

- (ii) issue a stay of execution on a judgment for possession if the requirements in clauses (1) to (3), inclusive, of paragraph (i) are met; . . .

The plaintiff argues correctly that in this case the tenancy was not “terminated solely for non-payment of rent”. It is a no cause case based on a thirty day notice to quit. Therefore, the court incorrectly applied the provisions of G.L. c. 239 §15 to this case in its order on the October 8 hearing.

The court notes that the stay of the execution on the grounds of a pending RAFT application for moving expenses would have been brief, until Wayfinders made a decision on the application. Once the RAFT application had been approved or denied, the plaintiff could proceed with the use of the execution. The court scheduled the case for review of the status of the RAFT application on October 22, 2024. Ms. Brunson reported that as of October 11, 2024 her application was on “final review” at Wayfinders.

The other issue to be discussed at the October 22 review was the defendant’s request to stay an additional month after the decision on her RAFT application, if she paid one month use and occupancy, as she proposed at the October 8 hearing. The plaintiff’s attorney reported that his client has rejected that proposal. The court finds no grounds to order such an arrangement.

Order

As stated on the record at the hearing today:

1. The plaintiff’s motion for reconsideration is **ALLOWED**. The court’s order issued on October 9, 2024 is amended as follows:
2. The court cannot vacate the part of the order stopping the October 9, 2024 move-out because that date has passed. The court notes that the plaintiff complied with the emergency order and stopped the move-out.
3. However, the stay of the execution ordered at the October 8, 2024 hearing and included in the October 9, 2024 order is lifted. The plaintiff may use the execution to move the defendant out of the apartment after service of a new forty-eight hour notice.
4. The stay of the execution that was ordered by the court is within the meaning of G.L. c. 235 §23, so that the time period for the plaintiff to use the execution was tolled. That time period begins to run again on the date of this order.

5. The defendant remains responsible to pay the cancellation fee of \$550 to the plaintiff no later than October 21, 2024 since the move-out was cancelled.
6. As the court ruled in its October 7, 2024 order denying the defendant's first motion to stop the move-out, the court finds no grounds to stay the execution pursuant to G.L. c. 239 §9 or §10.
7. The Clerk's Office will remove the case from the list for October 22, 2024 because the two issues which were to be reviewed were addressed at the hearing today. The defendant's RAFT application is not relevant in this no-fault eviction case. The plaintiff and defendant do not agree on a "voluntary" stay of the execution for one month. The court finds no grounds to support an order for such a stay in this case. Neither party needs to appear on October 22.

October 16, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP002762

MAURICE ABISHOUR,

Plaintiff

VS.

JOSHUA A. LUCZYNSKI,

Defendant

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

This is a summary process action in which Plaintiff Maurice Abishour (Abishour) is seeking recover possession of a residential dwelling from Defendant Joshua A. Luczynski (Luczynski). Luczynski did not file a written answer, but at trial he requested a stay of execution.¹

Based upon all the credible testimony and evidence presented at bench trial conducted on September 18, 2024, and the reasonable inferences drawn therefrom, the Court finds as follows:

Luczynski was the former owner of the single-family dwelling at 23 Murray Street, in North Adams, Massachusetts (the "property"). In 2015, to secure a loan, Rebecca L. Luczynski granted a mortgage on the property to Adams Community Bank (the "Bank"). The mortgagor defaulted on her mortgage loan obligations, and on November 9, 2023, the mortgagee, the Bank conducted a foreclosure sale of the property. The Bank was the high bidder with a bid of \$60,000.00 and proceeded to assign the bid to Abishour. On January 23, 2024 the Bank executed and delivered to Abishour a foreclosure deed to the property in exchange for consideration paid of \$60,000.00. On February 14, 2024 the foreclosure deed was recorded at the Berkshire North Registry of Deeds at Book 1848, Page 463.

¹ Luczynski was defaulted and judgment entered on August 15, 2024. The court vacated the default judgment and set the trial for September 18, 2024.

Luczynski has lived at the property for thirteen years prior to the foreclosure sale. Luczynski's girlfriend has resided at the property at with Luczynski's permission. Luczynski continues to live at the property with his girlfriend and her two children. He has never entered into a tenancy with Abishour and has never paid him rent.

On February 27, 2024 Abishour had served upon Luczynski a legally sufficient notice to quit that terminated effective April 1, 2024 whatever occupancy rights Luczynski may have had. I find that post-foreclosure Luczynski was a sufferance occupant.

Luczynski did not surrender possession of the property by April 1, 2024, and in late April 2024 Abishour commenced a summary process action in the Northern Berkshire District Court (No. 2428SU000034). In June 2024 Luczynski transferred the district court summary process action to the Western Division Housing Court.

Abishour has established his case to recover possession of the property from Luczynski (and all other persons occupying the property with his permission).

This case came before the court for trial six months after Abishour served Luczynski with the notice to vacate. After considering the testimony and evidence presented at trial, and in the exercise of my discretion under G.L. c. 239, § 9, I shall stay issuance of execution until December 1, 2024. Abishour may levy on the execution for possession on or after January 6, 2025.

ORDER FOR JUDGMENT

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

1. Judgment enters for the plaintiff on the claim for possession.
2. Issuance of Execution on December 1, 2024. However, the plaintiff shall not levy on the execution until on or after January 6, 2025.

SO ORDERED this 21st Day of October, 2024.

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

COMMONWEALTH OF MASSACHUSETTS

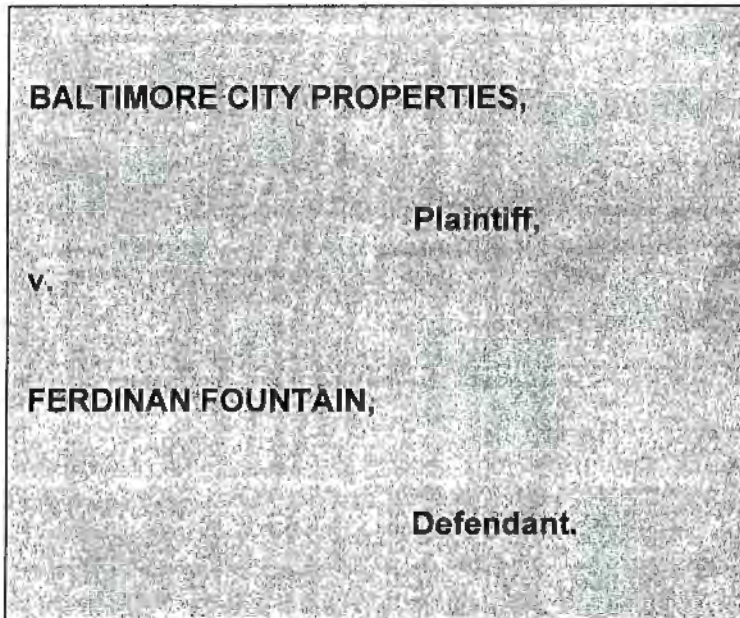
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-1984



DISMISSAL OF APPEAL

After hearing on September 5, 2024, on the defendant (plaintiff-in-counterclaim)'s motion for enforcement of payment of judgment at which on only moving party appeared after proper notice was given to counsel for Baltimore City Properties, the following order shall enter:

1. Upon review of the record in this matter, the appellant Baltimore City Properties has failed to take any steps to perfect its appeal and in accordance with Rule 10(c) of the Massachusetts Rules of Appellate Procedure the appeal is hereby dismissed.

2. With the dismissal of the appeal, Mr. Fountain is free to attempt to collect on the judgment and he may wish to file a Supplementary Process action in the court.

So entered this 21st day of October, 2024.



Robert Fields, Associate Justice

Cc: Michael Roche, Assistant Clerk Magistrate for Appeals ✓

Michael Doherty, Clerk Magistrate

Court Reporter ✓

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
NO. 24SP2354

DARWIN A CASTRO-HERRERA

Plaintiff¹

VS.

APRIL BRAY, ROBERT HERDIA

Defendants²

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

This is a summary process action in which the Plaintiff seeks to recover possession of the premises from the Defendant based on a 30-Day Notice to Quit for No Cause. The parties appeared for trial on October 21, 2024. The Plaintiff appeared represented by counsel. Defendants appeared self-represented. The Defendants filed an Answer and Counterclaim in response to the Plaintiff's claim for possession (Paper #5). Based upon all the stipulations, credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

FINDINGS OF FACT

The Plaintiff seeks to recover possession of the property located at 34 Aspen Street, Apartment 2, Ware, MA (**Premises**). The premises is a two-family residential dwelling. The Plaintiff does not reside at the premises. The monthly rent is \$1,100.00 per month. (**Plaintiff's Exhibit 2**). The Defendant moved into the premises in 2022. (**Plaintiff's Exhibit 2**). The Plaintiff is the owner and lessor of the premises. The Plaintiff caused to be served upon Defendants, a 30-Day Notice to Quit on April 19, 2024. (**Plaintiff's Exhibit 1**). The Defendants does not dispute receipt or the validity of the Notice to Quit. The Plaintiff claimed \$8,800.00 in unpaid rent through October 2024. The Plaintiff established a prima facie case for possession.

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

² As used herein, the term "Defendants" refers to all persons identified as in the caption as "Defendants."

The Defendant moved into the premises in 2022. (**Plaintiff's Exhibit 2**). The Defendants testified that they have lived with substandard conditions for a period of time. However, the Defendants failed to produce any documented proof of any conditions. The tenancy agreement does not list any defects or conditions at the time of execution.

RULINGS OF LAW

G.L. c. 239 §8A provides in part:

Whenever any counterclaim or claim of defense under this section is based on any allegation concerning the condition of the premises or the services or equipment provided therein, the tenant or occupant shall not be entitled to relief under this section unless: (1) the owner or his agents, servants, or employees, or the person to whom the tenant or occupant customarily paid his rent knew of such conditions **before the tenant or occupant was in arrears** in his rent; (2) the plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under his control; except that the defendant shall have the burden of proving that any violation appearing solely within that portion of the premises under his control and not by its nature reasonably attributable to any action or failure to act of the plaintiff was not so caused; (3) the premises are not situated in a hotel or motel, nor in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than three consecutive months; and (4) the plaintiff does not show that the conditions complained of cannot be remedied without the premises being vacated; provided, however, that nothing in this clause shall be construed to deprive the tenant or occupant of relief under this section when the premises are temporarily vacated for purposes of removal or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to section one hundred and ninety-seven of chapter one hundred and eleven.

The Defendants did not produce any credible evidence indicating they informed the Plaintiff of the conditions prior to the service of the Notice to Quit or any proof of the conditions. The Defendants failed to produce letters, e-mails or credible testimony that they notified the Plaintiff of the defects prior to the service of the Notice to Quit of commencement of the present action.

Therefore, judgment shall enter for Plaintiff for possession and damages (unpaid rent) in the amount of \$8,800.00, plus court costs.

ORDER FOR JUDGMENT

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

1. Judgment for possession shall enter for the Plaintiff, damages in the amount of \$8,800.00, plus costs.
2. Execution may issue ten (10) days after the entry of judgment upon written request.

SO ORDERED

Sergio E. Carvajal

SERGIO E. CARVAJAL
FIRST JUSTICE

October 21, 2024

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-5248

GENNARO DIBENEDETTO, TRUSTEE, ET AL.,)

PLAINTIFFS)

v.)

NINA SERRANO, ET AL.,)

DEFENDANTS)

RULING ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Defendants seek summary judgment on their counterclaims under Mass. R. Civ. P. 56(a). Plaintiffs filed a written opposition to the motion. The Court heard argument on September 18, 2024.

The standard for review on summary judgment “is whether, viewing the evidence in the light most favorable to the non-moving 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 Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible evidence, including deposition testimony, answers to interrogatories, admissions, documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). “Any doubts as to the existence of a genuine issue of material fact are to be resolved against the party moving for summary

judgment." *Lev v. Beverly Enters-Mass., Inc.*, 457 Mass. 234, 237 (2010).

After review of the motions, memoranda and affidavits, the Court concludes that there exist genuine issues of material facts in dispute that must be reserved for trial. With respect to the issue of cross-metering, Defendants argue that the State Sanitary Code ("Code") precludes an owner from charging a tenant for electricity without a written rental agreement. *See* 105 CMR 410.200.¹ Although the Code permits charging a tenant in a two- or three-family residence for certain adjacent common area electricity, this also requires a written rental agreement, which appears not to exist in this case. *See* 105 CMR 410.300(F). Such transfer of responsibility for electricity constitutes a breach of the covenant of quiet enjoyment only if it is done without the tenants' knowledge. *See* G.L. c. 186, § 14.

Viewed in the light most favorable to Plaintiffs, there are genuine facts in dispute as to whether Defendants were aware of the transfer of utilities, which precludes summary judgment on the quiet enjoyment count. Although the transfer violates the Code and is therefore an unfair and deceptive act pursuant to the Attorney General's Regulations (provided the violation was not corrected within a reasonable time after notice), *see* 940 CMR 3.17(1)(i), there are genuine facts in dispute as to whether Defendants suffered any actual injury and when Plaintiffs assumed responsibility for electricity. Thus, the Court is unwilling to enter liability regarding Defendants' cross-metering claims prior to trial.

As for Defendants' security deposit violation claim, their argument rests upon Plaintiffs' failure to respond or return the deposit within thirty days of filing the

¹ Defendants cite to the same provision contained in the previous version of the State Sanitary Code.

answer and counterclaim. Defendants' argument rests upon the absence of a satisfactory explanation in Plaintiffs answers to interrogatories as to how they handled the security deposit. Rather than determine liability based on a vague answer to an interrogatory, the Court defers the issue to trial. The elements of proof are few, and the question of whether Plaintiffs complied with G.L. c. 186, § 15B can be the subject of brief and simple inquiry of witnesses.

For the foregoing reasons, Defendants' motion for summary judgment is DENIED.

SO ORDERED.

October 21, 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-SP-3853

ROBERT HAWLEY AND LINDA HAWLEY,)
)
 PLAINTIFFS)
)
 v.)
)
 MICHAEL MAJORS AND HEATHER GALSU,)
)
 DEFENDANTS)

ORDER ON
MOTION TO DISMISS

This summary process matter came before the Court on October 9, 2024, on Defendant Michael Major’s motion to dismiss. Plaintiff appeared with counsel. Mr. Majors appeared through counsel. Defendant Galus, who is self-represented, did not appear. After hearing, the motion is denied.

Mr. Majors contends that the notice to quit is defective for two reasons. First, Plaintiff served him with two notices to quit in quick succession. One, a 14-day notice dated April 14, 2024, is based on nonpayment of rent (“first notice”).¹ The second notice to quit is dated April 30, 2024 (“second notice”) and purports to terminate the tenancy as of May 31, 2024. The second notice “is based on the damages caused by you or another within your household.” The second notice further recites “due to the need for repairs, you are being served this ‘notice to quit’ (vacate the property). In a separate section, Plaintiffs inform Defendants that the notice to quit “does not

¹¹ Mr. Majors claims that, because he resides in a “covered unit” as that term is defined in 15 U.S.C. § 9058, the notice to quit for nonpayment of rent had to provide 30 days’ notice. This issue is not dispositive as the Court finds the non-payment notice to quit is not the operative notice in this case.

resolve [sic] you from any outstanding back rent owed” and details the arrearage. Mr. Majors claims that the second notice is defective because it combines multiple reasons for eviction; namely, both cause-based allegations and non-payment of rent.

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.*

Here, the Court finds that the second notice is the operative notice, as it was served after the first notice and explicitly recites that it is based on damages caused in the unit. Although it also states that Defendants are not relieved of their obligation to pay outstanding rent, failure to pay rent is not the basis for this eviction case. Nonetheless, because a legally sufficient notice to quit is an element of Plaintiffs’ prima facie case for possession, if Mr. Majors establishes at trial that the language contained in the second notice did have some meaningful practical effect, Plaintiffs may not be able to establish their prima facie case for possession. On its face, however, the second notice is not defective.²

For all of the foregoing reasons, the motion to dismiss is DENIED.

² A plaintiff may seek unpaid rent in a for-cause eviction case, but the plaintiff’s claim for possession is based solely upon the cause alleged.

SO ORDERED.

DATE: October 21, 2024

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-SP-2231

_____)	
YEVGENIY KAFANOV, ET AL.,)	
)	
PLAINTIFFS	)	RULING ON DEFENDANTS'
v.	)	MOTION FOR SUMMARY JUDGMENT
)	
VLADIMIR SHARAKIN, ET AL.,)	
)	
DEFENDANTS)	
_____)	

Defendants seek summary judgment on their counterclaims under Mass. R. Civ. P. 56(a). Plaintiffs filed written opposition to the motion. The Court heard argument on the motion on September 26, 2024.

The standard for review on summary judgment “is whether, viewing the evidence in the light most favorable to the non-moving 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 Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible evidence, including deposition testimony, answers to interrogatories, admissions, documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). “Any doubts as to the existence of a genuine issue of material fact are to be resolved against the party moving for summary

judgment.” *Lev v. Beverly Enters-Mass., Inc.*, 457 Mass. 234, 237 (2010).

After review of the motions, memoranda and affidavits, the Court concludes that there exist genuine issues of material facts in dispute that must be reserved for trial. Although Defendants accurately cite the law as to strict liability for breaches of the warranty of habitability, the warranty of habitability applies only to “substantial” violations or “significant” defects. *See McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim). Viewing the evidence in in the light most favorable to Plaintiffs, there is a genuine dispute as to the significance of the defects and their effect on Defendants.

Likewise Defendants’ evidence that Plaintiffs’ acts and omissions impaired the value of the premises and/or interfered with the furnishing of utilities must be viewed in the light most favorable to Plaintiffs. Here, the affidavit in opposition to the motion raises genuine issues of fact as to whether there was a “serious interference” with Defendants’ tenancy and whether Defendants have been reimbursed for all damages related to cross-metering of electricity. The Court finds that a genuine dispute exists as to whether Defendants are entitled to damages for breach of the covenant of quiet enjoyment.

Finally, regarding Defendants’ claim for retaliation, the undisputed facts may entitle Defendants to a presumption of retaliation, as Defendants assert, but the resumption is rebuttable. In his affidavit, Plaintiff Yevgeniy Kafanov asserts an independent basis for termination of the tenancy, which effectively precludes entry of summary judgment.

Therefore, for all the foregoing reasons, Defendants' motion for summary judgment is DENIED.

SO ORDERED.

October 21, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

NILSA APONTE,

Plaintiff,

v.

KEVIN MERLOS,

Defendant.

No. 24-CV-782

EMELY GARCIA,

Plaintiff,

v.

KEVIN MERLOS

Defendant.

No. 24CV 784

SARAH HALL

Plaintiff,

v.

KEVIN MERLOS

Defendant.

No. 24cv785

After hearing on October 16, 2024, at which all parties of the three above-captioned matters appeared in addition to the Receiver and the City of Springfield Law Department, the following order shall enter:

1. **Background:** The three plaintiffs are tenants of the defendant property owner Kevin Merlos (hereinafter, "Merlos" or "landlord") at the premises located at 6-8 Pomona Street in Springfield, Massachusetts. Said premises were condemned by the City of Springfield Code Enforcement Department on or about October 2, 2024. Each of the plaintiffs filed injunctive cases due to the landlord's failure to make the necessary repairs to have the condemnation lifted and for alternate housing until that time.
2. Several hearings were conducted with various orders for Merlos to make repairs and provide alternate housing for the tenants and their young families. Despite the court's efforts to reach Merlos and leaving messages and

scanning court orders attached to text messages, as well as mailing orders to his home, Merlos did not respond or appear at the court hearings.

3. On October 10, 2024, with Merlos failing to comply with the court's earlier order and failing to appear, and with the three plaintiff's young families homeless, the court appointed a temporary emergency Receiver to place the families in hotels and to inspect the premises for repairs necessary to have the condemnation lifted (with authorization to spend up to \$7,000 for said repairs).
4. The court was very cognizant of the property interests of the defendant property owner and the interests and the lack of notice to the mortgagee MERS, but weighing the safety concerns of young children and adults being homeless, it chose to appoint a temporary Receiver and instructed the city's attorney to reach out to MERS and the usual attorneys who represent MERS in our court. The court also instructed the Receiver to reach out to the defendant property owner. Lastly, the court's Housing Specialist Department again reached out to the defendant property owner, texted him a copy of the court's latest order, and stressed the importance of his appearance at the October 16, 2024, hearing.
5. On October 15, 2024, Merlos filed a motion to appear at the next hearing by Zoom which was allowed on the papers.
6. **Discussion:** At the October 16, 2024, hearing the court heard from all the parties as well as the Receiver and the City. Melos' workmen entered the premises illegally, cutting their way through a lock, and entering a tenant's

unit without her permission. They pulled the walls off to expose the plumbing making an extreme mess. It was described by the tenant and the Receiver as having "trashed the place" in a manner that was abusive to the tenant's home and belongings. The police were called and the workmen left.

7. At the hearing, Merlos testified that he did not give these workers permission to enter in the manner that they did which defies credibility. Additionally, he testified that he does not have enough funds to make the remaining repairs and pay for the hotel through the end of the week (October 25, 2024).
8. Upon consideration of the entirety of the record—which included Merlos' own testimony that he would not be able to make sufficient repairs for the condemnation to be lifted while keeping the families in a hotel through the end of the week (October 24, 2024)—the court's weighing of all the equities and capacities of the parties results in an order to have the Receiver complete the necessary repairs to have the condemnation lifted while providing hotel accommodations to the plaintiffs and their families.
9. Despite efforts by the city to reach MERS, no one appeared for MERS. The court, as noted above, appreciates that MERS may be prejudiced by an order that the Receiver continue making repairs that are required to lift the condemnation and keep the families house in hotels until the condemnation is lifted, but the court sees no alternative.
10. **Conclusion and Court Order:** The Receiver shall take full control of the premises and make all repairs necessary to have the condemnation lifted and shall continue to provide hotel accommodations for three tenants and their

families until the condemnation is lifted. Additionally, the City Law Department shall provide the court with a service address for MERS so that it can added to this case and served by the court. Additionally, the city shall also send copies of this order to any attorney who might respond to it as it attempts to identify counsel for MERS.

11. This matter shall be scheduled for **October 24, 2024, at 2:00 p.m.**

So entered this 20nd day of October, 2024.

Robert Fields, Associate Justice

Cc: Amber Gould, Esq. (City of Springfield Law Department)

Katherine Higgins-Shea, Esq. (Receiver Counsel)

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-2755

CV 215 FORT PLEASANT I, LLC,

Plaintiff,

v.

JORGE ARANGO-CAMERO and KASSANDRA
RIVERA,

Defendants.

ORDER

This matter came before the court for trial on October 22, 2024. After consideration of the evidence admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. Background: The plaintiff, CV 215 Fort Pleasant I, LLC (hereinafter, "landlord") owns a 60-unit apartment complex in Springfield, Massachusetts. The defendants, Jorge Arango-Camero and Kassandra Rivera (hereinafter, "tenants") reside in Unit E3 of that complex (hereinafter, "premises") and have been renting the premises since October 1, 2023, at a monthly rate of \$1,120.

2. On or about June 11, 2024, the landlord had the tenants served with a Notice to Quit for non-payment of rent and thereafter filed a timely summons and complaint with this court. The tenant filed a timely Answer, with defenses and counterclaims arising out of alleged claims that the landlord is violating the Federal Reserve Act and the Uniform Commercial Code (UCC).
3. **The Landlord's Claim for Use and Occupancy and Possession:** The parties stipulated to the landlord's prima facie case for possession other than the amount of unpaid use and occupancy. The landlord met its burden of proof on the outstanding use and occupancy through its witness, Property Manager Dave Lengieza. The amount of unpaid rent related to non-payment of the months of May through October 2024 @\$1,120 totaling \$6,720.
4. **The Tenant's Defenses and Counterclaims:** The tenants' argument that the Federal Reserve Act and UCC apply to any aspect of the relationship between the parties is incorrect as a matter of law. The court finds that the tenants failed to meet their burden of proof that any damages are to be awarded them in this matter.
5. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the landlord for possession plus \$6,720 for use and occupancy through October 2024 plus court costs.

So entered this 22 day of October, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-2352

WELLS FARGO, N.A.,

Plaintiff,

v.

GARY, CYNTHIA, and ERIK WILLIAMS,

Defendants.

ORDER

After hearing on October 15, 2024, at which the plaintiff bank appeared through counsel and the defendant tenants appeared self-represented, the following order shall enter¹:

1. The bank foreclosed on the subject premises which were owned by the defendant tenants' former landlord, Mr. Rivera.
2. Judgment shall enter for the plaintiff for possession *only*. Execution shall be stayed to provide additional time for the tenants to relocate.

¹ Defendant Cynthia Williams was unable to appear as she was in the hospital.

3. The tenants shall diligently search for alternate housing and keep records of their search.
4. This matter shall be continued to **December 16, 2024, at 9:00 a.m.** At said hearing, the tenants may seek additional time if needed and should be prepared to show the bank and the court evidence of the diligence of their search. The tenants explained that due to the age and medical concerns of two of the tenants, they have specific needs such as a first-floor apartment or one with an elevator.
5. The bank shall forthwith inspect the premises and make any and all repairs--- with a particular focus on the roof and the hot water tank (tenants assert they are leaking).

So entered this 22nd day of October, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-796

ROBERT E. WILLIAMS,

Plaintiff,

v.

**CARLOS TRICHOCHIE and THE
SPRINGFIELD HOUSING AUTHORITY,**

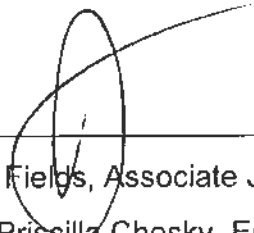
Defendants.

ORDER

After hearing on October 15, 2024, at which the defendant failed to appear, the following order shall enter:

1. The Springfield Housing Authority is an indispensable party to this action and is hereby added as a party defendant.
2. The defendant Carlos Trichochie shall not have any communication with Mr. Williams and may not knock on his door or attempt to speak with him.
3. This matter shall be scheduled for **October 29, 2024, at 9:00 a.m.** for further hearing.

So entered this 22 day of October, 2024.



Robert Fields, Associate Justice

Cc: Priscilla Chesky, Esq., Springfield Housing Authority
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2278

_____)	
JOANNE ABEL,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
DEBORAH GALLAGHER,	)	ORDER FOR ENTRY OF
	)	JUDGMENT
DEFENDANT)	
_____)	

This no-cause summary process case came before the Court for a bench trial on September 19, 2024. Both parties appeared self-represented. The residential property at issue in this case is located at 124 Firglade Avenue, 3rd Floor, Springfield, Massachusetts (Premises).

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

Plaintiff owns a two-family home and resides on the second floor. Defendant rents the third floor. Plaintiff entered into a one-year lease with Defendant commencing on March 7, 2022 which called for a monthly rent of \$500.00 (utilities included) due on the first of each month. The lease was not renewed. Plaintiff initially informed Defendant by letter that her tenancy would terminate as of March 31, 2023. When Defendant did not vacate, Plaintiff commenced a summary process action (23H79SP001786). Judgment for possession entered for Plaintiff on

October 6, 2023, following a bench trial in August. The case was dismissed on April 24, 2024 pursuant to G.L. c. 235, § 23, however, as Plaintiff failed to levy on the execution within three months.

Thereafter, Plaintiff served Defendant with a new no-fault notice to quit, which serves as the foundation of this summary process case.¹ The Court deems the notice to be legally sufficient and finds it was received by Defendant. The notice to quit terminated Defendant's tenancy as of May 31, 2024. Plaintiff claims that Defendant has not paid rent since February 2024 and Defendant contends that, because Plaintiff received a rental assistance payment of \$7,000.00 in March 2024 at a time that she owed significantly less than \$7,000.00, she owes no rent at all and, in fact, Plaintiff owes her money. Neither party presented any evidence whatsoever regarding any monies owed or what time periods were covered by the RAFT funds. Therefore, the Court makes no findings as to any monies owed and reserves the issue to a subsequent hearing if Defendant seeks a stay under G.L. c. 239, § 9.

At trial, Defendant focused only on the question of whether she owes any rent to Plaintiff. She did not raise any legal defenses. Accordingly, in light of the foregoing, the following order shall enter:

1. Judgment for possession and court costs shall enter in favor of Plaintiff.
2. Plaintiff may apply for the execution ten days after judgment enters.

SO ORDERED.

October 23, 2024

cc: Court Reporter


Jonathan J. Kane, First Justice

¹ This case having been brought for no fault, Plaintiff's contention that Defendant houses unauthorized occupants and has engaged in illegal activities are not relevant.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

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

BEACON RESIDENTIAL MANAGEMENT, L.P.,

Plaintiff,

v.

TIMOTHY SCOTT, et al.,

Defendants.

**ORDER AWARDING SUMMARY
JUDGMENT TO THE TENANTS
ON THE LANDLORD'S CLAIM
FOR POSSESSION**

After hearing on September 6, 2024, on the defendant's tenant's motion for summary judgment, the following order shall enter:

1. **Background:** The landlord "served" the October 30, 2023 Notice to Quit for Non-Payment of Rent (hereinafter, "Notice to Quit") by leaving same at the door of the tenants' apartment and by mailing it to the tenants—both on October 30, 2023. The tenants credibly assert that they were not at home until various dates in November 2023, asserting that they did not actually receive the termination notice until November 20, 2023. By their summary judgment motion the tenants argue that as a matter of law, such service was

insufficient to terminate the tenancy on the desired date of December 1, 2023, as it was not received by the tenants until a date in November 2023 and, thus, failed to provide the requisite 30 days' notice.

2. **Standard of Review; Summary Judgment:** Pursuant to Mass. R. Civ. P. 56 (c), summary judgment shall be granted where there are no genuine issues as to any material facts and where the moving party is entitled to judgment as a matter of law. *Cassesso v. Commissioner of Correction*, 390 Mass. 419, 422 (1983); *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976). The moving party bears the burden of affirmatively demonstrating the absence of a trial issue and that the record entitles the moving party to judgment as a matter of law. *Pederson v. Time, Inc.*, 404 Mass. 13, 16-17 (1989). When considering a motion for summary judgment, the ruling judge may rely on facts stated in pleadings, discovery depositions, etc. that are part of the record, as well as verified affidavits. See, *Lindsay v. Romano*, 427 Mass. 771, 773 (1998).
3. **Discussion:** Massachusetts law states that the time period for which a Notice to Quit is set to expire begins on the day the tenant actually receives the notice. *Youghal, LLC v. Entwistle*, 484 Mass. 1019, 1022 (2020); *Ryan v. Sylvester*, 358 Mass. 18 (1970); *Hodgkins v. Price*, 137 Mass. 13, 16 (1883); *May v. Rice*, 108 Mass. 150 (1871).
4. "Once the deadline stated in the notice to quit has passed, the landlord may serve his or her tenant" with a summary process summons and complaint to recover possession of the premises. *Adjarthey v. Central Div. of the Housing*

Court Dep't, 481 Mass. 830 at 852, 860 (2019). See, *Hodgkins v. Price*, 137 Mass. 13, 18 (1884). See also Rule 2(b) of the Uniform Summary Process Rules (1993). It is the landlord's burden to "show that [it] gave a notice which complied with the statute. The statute does not proscribe how notice is to be given." See, *Ryan v. Sylvester*, 358 Mass. 18, 19 (1970).

5. A Notice to Quit served by leaving it at the tenants' door, is not "given to the tenant," until the tenant receives actual or constructive notice of it. Such constructive notice may include handing it to the tenant's wife or with a partner charged with reading the notice, or with one of the tenants, or with the husband of the tenant. (Case cited in *Ryan v Sylvester*, *Id.*)
6. The burden is on the landlord to show that it gave a notice which complied with the statute. *Connors v. Wick*, 317 Mass. 628, 631 (1945).
7. The defendants both assert credibly in their affidavits that they were away from the premises for legitimate reasons (Mr. Scott in Germany and Mrs. Scott in Vermont caring for her elderly mother) when the Notice to Quit was "served" and mailed and that they did not receive the Notice to Quit until they opened their mailbox on November 20, 2023 and there is no suggestion by the plaintiff or any source that this is not accurate and no suggestion that the tenants were acting in bad faith in not seeing the notice until that date in November, 2023.
8. The landlord argues that the "mailbox rule" should apply here as proof of proper service. That rule, that properly addressed and duly mailed first-class letter is presumed received by the person to whom it was addressed, does

not apply in this instance because its mailing was not until October 30, 2023 and it is not feasible that it would have been received by the tenants' mailbox by that day or the next—and thus not timely to be effective for December 1, 2023. Moreover, the general rule in Massachusetts for calculating receipt of such mail is three days after mailing.

9. The landlord argues that the practical implications of a finding and ruling that service was not sufficiently made would mean that tenants could avoid service of termination notices by never opening their mail. Such argument has no place here as there is nothing to suggest that the tenants were not legitimately elsewhere until some time in November 2023, or any allegation that they in fact received the Notice to Quit by October 31, 2023.

10. **Order and Conclusion:** Based on the foregoing, and upon ruling that the Notice to Quit failed to terminate the tenancy by December 1, 2023, summary judgment shall enter for the tenants on the landlord's claim for possession, without prejudice. The Clerk's Office is requested to schedule this matter for a judicial case management conference to determine what remains of this litigation.

So entered this 23rd day of October, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1985

BEZVINER REAL ESTATE, INC.,

Plaintiff

v.

JONATHAN ADORNO,

Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER PURSUANT
TO G.L. c. 239, § 8A

This summary process case brought for nonpayment of rent came before the Court for a bench trial on October 7, 2024. Plaintiff (the “landlord”) appeared with counsel. Defendant (the “tenant”) appeared self-represented. The residential property at issue in this case is located at 23 Dale Street, Ware, Massachusetts (the “Premises”).

By way of pretrial stipulation, the parties agree that the Premises is a two-family home (the tenant lives upstairs) and that he has lived there for approximately three years. Plaintiff purchased the Premises in February 2024 and served a notice to quit dated March 18, 2024. The tenant continues in possession along with his 11-year-old daughter. The parties agree that the monthly rent is \$1,100.00 and that no payment has been made for the four months including the month of trial.

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

The tenant contends that he has suffered from various conditions of disrepair and that the landlord interfered with his quiet enjoyment by entering the Premises without his permission at a time when his daughter was home alone. With respect to conditions, the tenant testified about a leaking bathroom faucet (that was recently repaired), a dripping kitchen faucet and a defective heating system. The Court finds that the dripping faucets do not constitute substantial defects that warrant an abatement of rent.

The heating issue is more significant. The tenant testified that he had no heat from the time the landlord purchased the Premises until recently, when the system was repaired. He claims that after it began working, it stopped working but that he has not notified the landlord of this problem. He testified that he had to use an electric heater for which he pays electricity costs.

The tenant demonstrated by a preponderance of the evidence that he notified the landlord or his agent of his concerns at or around the time the landlord acquired the Premises in February 2024. He did not, however, provide any evidence to support his testimony about the severity of the conditions or how it affected his tenancy. Nonetheless, the Court credits his testimony about the absence of heat and awards a rent abatement of 33% for the months of February and March of 2024, and a rent abatement of 10% for April, May, June, September and October 2024 (prorated to the date of trial). At a monthly rental rate of \$1,100.00, the value of the rent abatement is \$1,190.84.

Regarding the tenant's claim that the landlord's agent entered the Premises without permission, the Court finds insufficient evidence to find that the landlord

violated the covenant of quiet enjoyment. The tenant testified that his apartment door at the top of the stairs leading from the exterior of the house does not have a lock, and therefore, he argues that the stairwell is part of the Premises. He claims he found the landlord's agent cleaning the stairwell without his prior consent and that this conduct constitutes entry into his unit. The Court is not convinced that the stairwell is part of the rental unit, but to address the issue, it will require the landlord to install a lock to the apartment door itself at the top of the stairs.¹

Based on the foregoing, the following order shall enter:


1. Plaintiff shall repair the heat forthwith and shall install a lock on the apartment door at the top of the stairs leading from the exterior. Plaintiff's agent shall give 48 hours' advance written notice of the date of repair, and Defendant shall not unreasonably deny or delay access.
2. Plaintiff is entitled to unpaid rent in the amount of \$4,400.00.
3. Defendant is entitled to damages in the amount of \$1,190.84 on account of his defenses and counterclaims.
4. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$3,209.16, plus court costs of \$ _____ and interest in the amount of \$ _____, for a total of \$ _____. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

¹ To the extent the tenant raised any other counterclaims, he did not sustain his burden of proof.

5. If such deposit is made, judgment for possession shall enter for Defendant.
Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
6. If the deposit is not received by the Clerk within the ten-day period, judgment shall enter for Plaintiff for possession and damages in the amount of \$3,209.16 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

October 23, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1929**

<p>HORALDA CARDONA,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>LEINA LOZADA and KELVIN ANDINO,</p> <p style="text-align:center">Defendants.</p>
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**ORDER of
DISMISSAL**

This matter came before the court for trial on October 17, 2024, at which the plaintiff landlord appeared self-represented and the tenants appeared with Lawyer for the Day Counsel. As a preliminary matter the tenant was heard on her motion to dismiss due to the insufficiency of the Notice to Quit. After hearing on said motion, the following order shall enter:

1. The notice to quit upon which the plaintiff landlord relies is insufficient as a matter of law to terminate a tenancy at will. G.L. c. 186 s 12 provides in pertinent part as follows: "Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and, if

the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer."

2. The landlord asserts that she delivered a copy of the notice to quit dated April 1, 2024, on that date to the tenant's door and also mailed a copy by regular first-class postal mail and the notice purported to terminate the tenant as of May 1, 2024¹. The notice to quit, even if received by the tenant on April 1, 2024², did not provide the tenant with a full 30 days as the 30th day lands on May 1, 2024 (a day when rent is due) and the statute requires that the counting of the 30 days would require an expiration date after the end of May 1, 2024 (thus: May 2, 2204).
3. Accordingly, the landlord's claim for possession is dismissed and the tenants agreed to dismiss their claims without prejudice. Case dismissed.

So entered this 23rd day of October, 2024.

Robert Fields, Associate Justice

Cc: James Mooney, Esq. (Community Legal Aid, LFD)
Court Reporter

¹ The court adds at least three days for notice send by mail.

² The tenant asserted that she did not receive it until April 2, 2024.

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-515

TRICIA CREIGHTON and JEFFREY
MCCARTHY,

Plaintiffs,

v.

PRESTIGIOUS ONE, LLC,

Defendant.

ORDER

After hearing on October 18, 2024, on the plaintiffs' motions at which all parties appeared with counsel, the following order shall enter:

1. **Motion to Enforce the Court Repair Order:** The landlord shall FORTHWITH inspect the premises, particularly the alleged toilet leak and broken basement stair, and make any needed repairs. The landlord shall also FORTHWITH remove any and all of his saturated/formerly saturated items from the basement.

2. If the plaintiffs seek further orders from this court requiring repairs of those items previously ordered repairs, they shall mark up an evidentiary hearing with the Clerk's Office---either as a Contempt trial or otherwise.
3. **Motion for a Real Estate Attachment:** The court is satisfied that the plaintiffs have met their burden in accordance with Rule 4.1 of the Massachusetts Rules of Civil Procedure for an attachment on the subject property in the amount of \$83,558. More specifically, the plaintiffs have asserted various colorable claims that if they prevail may reach or accede the amount of the attachment and the court is concerned with the lack of record that there is insufficient insurance to cover said potential judgment and also that the property will not be transferred or sold prior to adjudication of this matter.

So entered this 23rd day of October, 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-0761

_____)	
LEO FUGLER,)	
)	
PLAINTIFF)	
)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
KELLY F. PYTEL,	)	AND ORDER FOR ENTRY OF
	)	JUDGMENT
DEFENDANT)	
_____)	

This for-cause summary process case came before the Court for a bench trial on October 7, 2024. Plaintiff (landlord) and Defendant (tenant) appeared through counsel. The residential property at issue in this case is located at 113 School Street, Granby, Massachusetts (the “Premises”).

The landlord terminated the tenancy by letter dated December 14, 2023 for alleged lease violations. The two bases given in the notice to quit were (1) “leaving rubbish, appliances, feces surrounding the premises; (2) having pets which is in violation of your lease.” In a for-cause eviction case, a landlord is limited to the reasons for eviction set forth in the complaint, and here the complaint refers by implication to the lease violations cited in the notice. Accordingly, to prevail at trial, the landlord must prove by a preponderance of the evidence that the conduct described in the notice to quit constitutes a substantial violation of a material term of the lease.



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

The Premises is a single-family, three-bedroom house with a two-car garage located on an acre (approximately) of land. Plaintiff owns the Premises. Defendant and her family have lived in the home for nearly ten years, and she was a tenant at a different property owned by Plaintiff before that.

Regarding the first set of allegations in the notice to quit, Plaintiff failed offer any credible evidence that Defendant left rubbish and appliances in the yard, leaving only the issue of feces surrounding the Premises. Plaintiff testified that there was an abundance of animal feces throughout the yard; however, the evidence did not show how the feces got into the yard. There was no direct evidence that Defendant failed to pick up waste left by her pet or pets, and no pictures of the feces.¹ The Court was not provided any testimony or evidence as to whether there was a fence surrounding the property, making it impossible to conclude that Defendant had exclusive use of the yard. If the yard is not fenced in, a reasonable inference can be drawn that some or all of the feces might have been left by neighboring pets or wildlife.

Moreover, Plaintiff offered no credible evidence regarding the adverse impact of the feces in the yard. The yard is large (approximately one acre), and the house is a single-family home. Plaintiff offered no evidence offered to show that anyone other than Defendant and her family used the yard or had to traverse it for any reason.

¹ Prior to trial, the Court allowed Defendant's motion to exclude evidence not produced in discovery. Plaintiff did not object to Defendant's discovery requests and yet failed to produce relevant photographs that should have been produced.

Without more, the evidence was insufficient to support a finding that the presence of animal feces in the yard constitutes a substantial lease violation.²

With respect to the second allegation in the notice to quit, violation of the pet policy, the evidence shows that Defendant's lease prohibits pets without the prior written consent of the landlord. Defendant admits she had a dog at the time the notice to quit was served. She testified that had owned a chihuahua for many years, including when she lived in a different apartment owned by Plaintiff in South Hadley. She said that Plaintiff was aware of the dog in the previous apartment and did not object. More important, she stated that the dog died in April 2024. Given that the dog is no longer in the household, the Court is not willing to find that the presence of a dog that is no longer in the household is sufficiently serious to warrant eviction.


Defendant also admitted to keeping a cat, which she claims she got approximately five years ago to deal with a mouse infestation in the home. Although there was no evidence offered that Plaintiff gave written permission to have a cat, there was likewise no evidence that Plaintiff objected to the cat or that the cat caused any damage to persons or property. The focus of Plaintiff's testimony at trial was that Defendant had two dogs (he offered no evidence to support the allegation of a second dog) and a cat, and the dogs defecated throughout the yard. Plaintiff offered no evidence of why the cat was problematic. Considering the totality of the circumstances, and weighing the respective interests of the parties, the Court finds that Defendant's cat is not a substantial violation of a material provision of the lease.

² Further, Plaintiff did not cite to particular provision of the lease that Defendant violated by failing to pick up the feces.

Based upon the foregoing, the Court concludes that Plaintiff failed to prove his claim to possession by a preponderance of the evidence. Accordingly, the following order shall enter:

1. Judgment for possession shall enter in favor of Defendant.
2. No court costs shall be awarded.

SO ORDERED.
October 23, 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-2808

OLESYA LEBEDINSKAYA,

Plaintiff

v.

ALEX MEDINA,

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 10, 2024. Plaintiff (the “landlord”) appeared through counsel. Defendant (the “tenant”) appeared self-represented. The residential property at issue in this case is located at 59 Pochassic Street, 1st Floor, Westfield, Massachusetts (the “Premises”).¹

The parties stipulated to the landlord’s prima facie case (including receipt of the notice to quit) and the amount of monthly rent (\$1,400.00), but they did not agree as to the amount of the arrears. The landlord contends that \$12,605.00 is owed through the date of trial. Although he did not file an answer, the tenant testified that he should be excused from paying some of the rent due to poor living conditions.²

¹ The street name is misspelled on the Court’s docket and should be corrected.

² The tenant stated that he did not know that he had to file an answer; however, he attended the First-Tier Court Event, at which tenants are informed of their rights and obligations, the availability of assistance with housing costs and other available resources and programs (e.g. g., Lawyer for the Day

The landlord objected to the admission of evidence and testimony regarding living conditions given that it was prepared to move forward with the trial and that she had no advance notice of the tenant's intention to assert defenses and counterclaims.³ The tenant did not request a continuance, nor did he make an oral motion to be allowed to file an answer late. The Court cannot grant relief that is not sought. Therefore, the Court precluded evidence of substandard living conditions at trial.⁴ Given that no other legal defenses were asserted at trial, the Court finds that the landlord established its prima facie case for possession and damages in the amount of \$12,605.00.

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

1. Judgment for possession and damages in the amount of \$12,605.00, plus court costs, shall enter in favor of Plaintiff.
2. Execution (the eviction order) shall issue by written application 10 days after the judgment is entered.

SO ORDERED.

October 23, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

Program, Tenancy Preservation Program, etc.), and are given the opportunity to reach a resolution of the matter through mediation.

³ The Court explained to the tenant that he could speak to a lawyer or visit the Court Service Center for information about filing a motion that might allow the Court to consider his evidence, but no such motion has been filed.

⁴ The tenant was advised that counterclaims are not compulsory in summary process and that he had the right to sue his landlord for any damages he claims to have suffered.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-1306

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff

v.

REBECCA MARTINEZ,

Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER PURSUANT TO
G.L. c. 239, § 8A

This for-cause summary process case came before the Court for a bench trial on September 4, 2024. Plaintiff (landlord) appeared with counsel. Defendant (tenant) appeared self-represented. The residential property at issue in this case is located at 45 Layzon Brothers Road, Springfield, Massachusetts (Premises).

By way of pretrial stipulation, the parties agree that the tenant continues in possession of the Premises after receiving the notice to quit dated January 21, 2024. The tenant moved into the Premises in March 2022,¹ and her share of the rent has varied over time. Most recently, her rent share is \$241.00, effective September 1, 2024. For all time periods relevant to this case, the contract rent for the Premises has been \$609.00 per month.

¹ The tenant transferred to the Premises from another Springfield Housing Authority unit.

The landlord terminated the tenancy because it alleges that the tenant (a) repeatedly failed to pay rent on time in full, and (b) refused access or failed to prepare for numerous exterminations. The tenant filed a late answer with leave of court. The Court construes the tenant's answer, dated May 1, 2024, to be a denial of the landlord's claims. The Court discerns no viable counterclaims in the answer.

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

The Premises are part of a public housing development subsidized through the U.S. Department of Housing and Urban Development. The tenant is required to pay rent on the first of each month, and rent is considered delinquent after the 7th. The evidence shows and the Court finds that the tenant repeatedly failed to pay her share of the monthly rent and, when she did pay rent, she rarely paid the full amount that was owed. The landlord proved by a preponderance of the credible evidence that the tenant owes \$5,140.00 in rent arrears and unpaid use and occupancy dating back to April 2022.²

Although the tenant suggested that she paid "large amounts of money" for the unit she lived in prior to being transferred to the Premises and that such payments should have been credited to the new unit when she moved in March 2022, she offered no credible evidence of any other payments that should have been applied to the balance. The evidence shows that the tenant was in fact given a rent credit when she moved into the Premises. The Court concludes that the landlord's accounting is accurate and that the amount of unpaid rent and use and occupancy is \$5,140.00.

² The rent ledger shows the that balance owed is \$5,335.00, but that figure includes \$195.00 in charges for cancelled exterminations. The Court excludes these charges for purposes of determining the amount of unpaid rent and use and occupancy.

With respect to the issue of pest treatments, the landlord established that it contracts for monthly treatments for cockroaches and rodents. In the tenant's building, the exterminator comes on Tuesdays and the tenants are given a reminder notice no later than the Friday prior. The landlord also schedules interim treatments on demand when it gets notice from a tenant regarding the need for additional exterminations.

The landlord proved by a preponderance of the evidence that, on numerous occasions, the tenant failed to allow access for the scheduled pest treatments for various reasons; for example, she was not home, there was a pet in the unit, or she was unable to vacate the Premises due to bad weather. Most important, the tenant refused continued bait treatments, insisting instead that the exterminator use a chemical spray to eradicate the rodents. Once the exterminator changed to a chemical spray, the tenant was more amenable to allowing access for treatment.³

The Court finds that landlord had knowledge of the tenant's complaints about roaches as of July 29, 2022, when the tenant placed a work order for an extermination. The landlord was also aware that the Springfield Code Enforcement Department found evidence of roaches at its inspection on December 1, 2022.⁴ In its annual inspection of the Premises in August 2024, the landlord observed roaches. It is not disputed that the landlord performed monthly treatments through a third-party pest control company.⁵ The primary issues for the Court, then, are whether the landlord should have done more to eradicate the roach

³ Although the tenant complained about both roaches and rodents, the tenant concedes that the roaches are the primary problem. She testified that, when she has a cat in the unit, she does not see rodents. The Court finds insufficient evidence of a significant rodent infestation.

⁴ The inspection report is admissible pursuant to G.L. c. 185C, § 21.

⁵ There is no credible evidence that the tenant made a request for additional treatments outside the monthly treatment after December 2022.

infestation in the Premises, and whether the tenant's repeated failure to allow access excuses the landlord from successful elimination of the infestation.

The evidence shows that the tenant's conduct in failing to cooperate with the treatments contributed to the extent and duration of the infestation. Nonetheless, the landlord understood the tenant continued to suffer from the presence of roaches in her unit. After balancing the landlord's obligation to rid the Premises of roaches and the tenant's failures to provide access and refusals of treatments, the Court determines that a 10% rent abatement for the period of July 2022 through the date of trial is appropriate.⁶ In subsidized tenancies, the abatement is calculated using the contract rent, which in this case is \$609.00 per month. Therefore, the rent abatement to which the tenant is entitled amounts to \$1,583.40.⁷

In sum, the Court finds that the landlord has established its burden of proving by a preponderance of the evidence that the tenant materially violated the lease by consistently paying rent late or not at all, and that she failed to cooperate with roach treatments. Because the tenant is entitled to a rent abatement on account of her defenses, she will have the opportunity to defeat the landlord's claim to possession pursuant to G.L. c. 239, § 8A.⁸

Based on the foregoing, the following order shall enter:

1. Plaintiff is entitled to unpaid rent in the amount of \$5,140.00.

⁶ Had the landlord presented more direct evidence of the tenant's failure to provide access and, had the Court had more of a basis to find her conduct inexcusable, the tenant may have not been entitled to any rent abatement, but given that the tenant articulated some basis for demanding a different type of treatment, the Court will award a rent abatement.

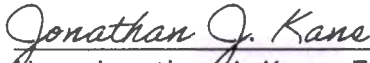
⁷ The tenant did not establish that the landlord was negligent, and therefore there is no basis to award statutory damages under G.L. c. 186, § 14.

⁸ Despite the case being brought for cause, given that the primary issue is money owed, Plaintiff's counsel assented to the application of Section 8A in this case.

2. Defendant is entitled to damages in the amount of \$1,583.40 on account of her claims and defenses.
3. Pursuant to G.L. c. 239, § 8A, Defendant shall have ten (10) days from the date this order is entered on the docket to deposit with the Clerk the sum of \$3,556.60, plus court costs of \$ _____ and interest in the amount of \$ _____, for a total of \$ _____. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."
4. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiff, the Clerk shall release the funds on deposit to Plaintiff.
5. If the deposit is not received by the Clerk within the ten-day period, judgment shall enter for Plaintiff for possession and damages in the amount of \$3,556.60 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

October 23, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP002854

RICHARD ANDERSON,

Plaintiff

VS.

SHAMIA BERKELEY,

Defendant

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

This is a summary process action in which Plaintiff Richard Anderson (“Anderson”) is seeking recover possession of a residential dwelling from Defendant Shamia Berkeley (“Berkeley”) for breach of lease. The complaint includes an account annexed for unpaid rent. Berkeley did not file a written answer.¹

Based upon all the credible testimony and evidence presented at bench trial conducted on October 23, 2024, and the reasonable inferences drawn therefrom, the Court finds as follows:

Anderson owns the two-family dwelling at 246-248 Appleton Street, in Pittsfield, Massachusetts. Anderson occupies the apartment identified as 248 Appleton Street subject to the terms of a written lease. Berkeley occupies the apartment identified as 246 Appleton Street (the “apartment”). The parties executed a rent subsidized Section 8 written lease for a term that commenced on October 1, 2023 and was set to expire on September 30, 2024. The full contract rent was \$1,600.00 due by the first day of each month. Berkeley’s share of the Section 8 rent was \$0.00 (based upon her household income, which included only her limited income and not income from any other person). Under the terms of the lease (1) Berkeley agreed that she would be the

¹ Luczinski was defaulted and judgment entered on August 15, 2024. The court vacated the default judgment and set the trial for September 18, 2024.

only authorized occupant, (2) she could not have any pets without Anderson's written permission, (3) she could not cause damage to the apartment, and (4) she was obligated to maintain her apartment in a clean and sanitary condition.

Notwithstanding the lease provisions, Berkeley kept a cat in her apartment as a pet. Over a period of many months the cat urinated on the carpeting in the apartment causing significant damage. The carpet cannot be cleaned and will have to be replaced. Further, the Berkeley has failed to maintain her apartment in a clean and sanitary condition. As is depicted in the photographs the apartment is filled with trash and debris creating a health and safety hazard. Finally, Berkeley has allowed Lawrence Bolling to live at the unit from the inception of her tenancy as an unauthorized occupant without reporting his occupancy (and his income) to the Pittsfield Housing Authority, the Section 8 program manager.

On May 31, 2024 Anderson served Berkeley with a legally sufficient notice to quit alleging that in breach of the written lease Berkeley kept a cat in her apartment, allowed an unauthorized occupant to live in the apartment, caused damage to the apartment, failure to pay a security deposit and smoking in the apartment.

In June 2024 the Pittsfield Housing Authority terminated Berkeley's Section 8 voucher ending her right to a rent subsidy. Accordingly, commencing in July 2024 Berkeley became obligated to pay the full contract rent set forth in the lease, \$1,600.00 per month. Berkeley has not paid any rent for July, August, September and October 2024. Berkeley owes \$6,400.00 in unpaid rent.

Anderson commenced this summary process action in July 2024 alleging as cause the breaches of the lease set forth in the notice to quit.

I find that Berkeley (1) kept a cat in her apartment without Anderson's permission; (2) allowed the cat to urinate on the carpet rendering the carpet unusable; (3) allowed an unauthorized person to occupy her apartment; and (4) caused damage to the apartment by failing to maintain her apartment in a clean and sanitary condition. Each of these acts constituted a material breach of the written lease.²

² There is no evidence that Berkeley smoked or allowed others to smoke in her apartment, and there is no evidence that Berkeley was obligated to pay a security deposit.

I find that Berkeley failed to pay \$1,600.00 due for July through September 2024. Berkeley paid only \$500.00 towards her rent in October 2024, leaving \$1,100.00 due for that month. The amount of unpaid rent due Anderson totals \$5,900.00.

Anderson has established his case to recover possession of the apartment from Berkeley for material breach of lease.

ORDER FOR JUDGMENT

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

1. Judgment enters for the plaintiff Richard Anderson for possession and unpaid rent damages in the amount of \$5,900.00.
2. Execution for possession shall issue in due course.

SO ORDERED this 24th Day of October, 2024.

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-3293

HURRICANE PROPERTIES, LLC,

Plaintiff,

v.

DHYANI RODRIGUEZ,

Defendant.

ORDER

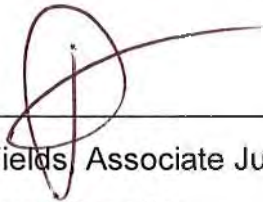
This matter came before the court on October 22, 2024, for trial, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared self-represented. After hearing, the following order shall enter:

1. The parties stipulated to the entirety of the landlord's case in chief: Receipt of the notice to quit and the amount of outstanding rent, and the tenant is not asserting any defenses or counterclaims¹.

¹ The tenant explained that she was unable to pay the rent due to her not having childcare, which in turn caused her not to be able to work. She now has childcare and is looking for employment but has no means to pay the outstanding rent---even if she were to apply for RAFT for back rent.

2. Accordingly, judgment shall enter for the landlord for possession plus \$9,900 plus court costs. An execution may issue upon the timely filing and service of a Rule 13 application.

So entered this 24th day of October 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

YAHAIRA RIOS,

Plaintiff,

v.

145 MAIN STREET PROPERTY, LLC and
SPRINGFIELD WATER AND SEWER
COMMISSION,

Defendants.

No. 24-CV-689

YAHAIRA RIOS

Plaintiff,

v.

145 MAIN STREET PROPERTY, LLC
and AVI GROSS

Defendants

No. 24-CV-428

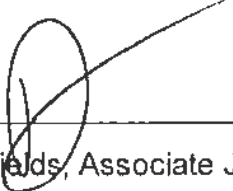
After hearing on October 23, 2024, on the above captioned matters that were consolidated for hearing purposes, at which only the plaintiff appeared until the court

was able to reach the new property manager for defendant 145 Main Street Property, LLC, Solomon Teitz, who joined by Zoom, the following order shall enter:

1. 145 Main Street Property, LLC of 44 School Street, Suite 505, Boston, MA 02108, shall be added as an indispensable party-defendant to Docket No. 24-CV-428 and shall be represented by counsel going forward.
2. When the clerk's office reached out to the Water and Sewer Commission the court was informed that the water bill has been paid and that was why the Commission did not appear. Relying on that representation, Docket No. 24-CV-689 shall be dismissed without prejudice. If the bill was not paid, that matter may be reopened by any party.
3. 145 Main Street Property, LLC (hereinafter, "landlord"), shall inspect and make all necessary related to the subject premises in which the plaintiff, Yahaira Rios, resides with a particular focus on the heating system, infestation, bathroom floor, windows, and doors (weathertightness).
4. The landlord shall come to the premises on October 24, 2024, between 8:00 a.m. and noon to inspect and make any other repairs it can in that window of time. The landlord shall also have access the following day (Friday, October 25, 2024, for further repairs.
5. For repairs thereafter, reasonable access shall be granted upon a 48 hour written notice (texting is okay).
6. All repairs that require being done by a licensed professional and by permit shall be effectuated in that manner.

7. This matter shall be heard further for review and compliance on **October 30, 2024, at 9:00 a.m.** live and in person at the court. Again, the landlord must have an appearance by counsel.

So entered this 24th day of October, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2013

FELICITA SANTANA,

Plaintiff,

v.

DAVID MONROE,

Defendant

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

This no-fault summary process action came before the Court for a bench trial on August 26, 2024. Plaintiff landlord appeared self-represented. Defendant tenant appeared with counsel from the Lawyer for the Day Program. The residential rental premises in question is located at 73 Washburn Street, Springfield, Massachusetts (the "Premises").

The parties stipulated to Plaintiff's prima facie case for possession. The parties agreed that rent is \$1,400.00 per month and that Defendant's share of the rent pursuant to a mobile Section 8 rent voucher is \$360.00.

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:

Defendant resides in the Premises with his two children. Plaintiff contends that one month of the tenant's share (\$360.00) is owed, which Defendant denies. Even if Plaintiff could establish the arrears, she did not make a demand for monetary

damages in the complaint and never filed a motion to amend the complaint.

Therefore, the Court finds that Plaintiff is not entitled to unpaid rent as of trial.

Defendant asserts counterclaims related to (a) conditions of disrepair, (b) retaliation, (c) improper late fee charges, and (d) violation of M.G.L. c. 186, § 15B. Each counterclaim shall be addressed separately.

A. Conditions

The Court finds that Defendant was without heat in early November 2021. He notified Plaintiff immediately. Plaintiff ordered a new sensor, and it took approximately one and one-half weeks to restore the heat. Plaintiff provided the tenant with electric space heaters in the interim.

The Court finds that Defendant was without hot water from December 2, 2022 to December 6, 2022 when Plaintiff replaced the water heater. On May 4, 2023, Defendant reported that one of the two toilets in the Premises was making noises and filling with hot water. It was repaired on or about May 23, 2024, but the hot water remained inoperable until May 25, 2024. In total, Defendant was without hot water for a total of seven days and did not have use of the upstairs toilet for 18 days.

On January 31, 2024, Defendant complained that foul-smelling water was filling his kitchen sink and dishwasher. Plaintiff sent a repair person the same day, but the next day Defendant said the foul-smelling water remained. Defendant replaced the dishwasher on February 5, 2024 and placed on the back porch, where it remained for months before being dumped in the back yard.¹

¹ Defendant also complained about missing window and door screens. He notified Plaintiff of these issues in April 2023. The broken screen door was repaired June 2024.

The Court finds that lack of heat, hot water, use of the toilet and broken dishwasher are each significant defects that violate the implied warranty of habitability. The Court determines that Defendant is entitled to a 50% rent abatement for eleven days due to the heating system problem² and a 50% rent abatement for the seven days without hot water. Using the contract rent of \$1,400.00 per month, the value of this abatement is \$420.00. The broken upstairs toilet warrants a 25% abatement for 18 days in the amount of \$210.00. The other issues complained of by Defendant are less significant but, considered in the aggregate, diminished the fair rental value of the Premises by 10% for a period of 73 days. The resulting abatement is \$341.00. In sum, the total damages for breach of warranty are \$971.00. The Court finds that Plaintiff did not commit an unfair or deceptive act or practice (including any of the acts and practices specified in the Attorney General's landlord-tenant regulations). Accordingly, the Court does not award multiple damages or attorneys' fees for this claim.

In order to conclude that Plaintiff violated the covenant of quiet enjoyment as it relates to conditions of disrepair in the Premises, Defendant must show that Plaintiff was at least negligent. Defendant failed to meet its burden of proving negligence by a preponderance of the evidence. The Court finds that Plaintiff acted reasonably in addressing the various repairs requested by Defendant.³ Therefore, the Court finds in favor of Plaintiff on Defendants' claim for breach of the covenant of quiet enjoyment.

² The Court notes that Defendant was not without heat because Plaintiff provided electric space heaters as an interim solution.

³ Although the toilet repair took some time, the text messages show that Defendant declined to have a repair person come when he was at work and postponed at least one appointment almost a week.

B. Retaliation

The notice to quit that forms the basis of this case was dated March 29, 2024. It was sent within six months of the tenant's complaints about the foul-smelling water and the dishwasher problem, thereby creating a presumption of retaliation. In order to rebut the presumption, Plaintiff must demonstrate by clear and convincing evidence that she had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not engaged in any protected activity.

Here, Plaintiff initially asked Defendant to vacate at the end of June 2023. Plaintiff testified credibly that she initially asked Defendant to vacate because she wanted to move into the unit due to domestic violence issues. Plaintiff agreed to allow Defendant to stay until the end of October 2023, and entered into a written agreement to that effect. When Defendant failed to vacate as agreed, Plaintiff commenced a summary process case (Docket No. 23SP5440). The case was voluntarily dismissed on March 29, 2024 due to procedural defects, and on the same day, Plaintiff sent another notice to quit (the notice that forms the foundation of this case). Therefore, the Court concludes that Plaintiff had sufficient independent justification for sending the instant notice to quit, and would have taken such action in the same manner and at the same time even if the tenant had not engaged in any protected activity.

C. Late Fees

Pursuant to 940 CMR 3.17(6), "it shall be an unfair and deceptive practice for an owner to ... impose any interest or penalty for late payment or rent unless such

payment is 30 days overdue.” Here, the evidence shows that Plaintiff imposed a late fee on Defendant before the rent was 30 days overdue. Because Defendant did not pay the late fee, he suffered no actual damages. Accordingly, the Court awards nominal damages of \$25.00, plus a reasonable attorneys’ fee.

D. Violation of G.L. c. 186, § 15B

Pursuant to Massachusetts’ security deposit law, at or prior to the commencement of any tenancy, a landlord may not require a tenant or prospective tenant to pay any amount in excess of the rent for the first and last full month of occupancy and a security deposit equal to the first month’s rent and the purchase and installation cost for a key and lock. G.L. c. 186, § 15B(1)(b). In this case, Plaintiff demanded Defendant pay an additional deposit of \$1,500.00 to be able to move into the Premises immediately, without waiting for the voucher administrator to send the security deposit. This fee is not one of the deposits authorized by statute. Plaintiff subsequently refunded the \$1,500.00 to Defendant, so Defendant suffered little actual harm. For this violation of law, the Court awards nominal damages of \$25.00, plus a reasonable attorneys’ fee.

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

1. Judgment for possession and damages in the amount of \$1,021.00 shall enter in favor of Defendant.
2. Defendant shall have fifteen (15) days from the entry of judgment to file a petition for reasonable attorneys’ fees and costs, along with supporting documentation. Defendant shall then have fifteen (15) days

from receipt of the petition to file any opposition, after which time the Court will assess attorneys' fees without need for further hearing, unless the Court so requests.

SO ORDERED.

DATE: October 24, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-824

TATIANA THOMAS,

Plaintiff,

v.

YE XIUMEI,

Defendant.

ORDER

This matter came before the court on October 22, 2024, on the plaintiff tenant's complaint and motion for injunctive relief arising out of the condemnation of her apartment. After hearing, at which the tenant and the defendant property owner appeared self-represented, the following order shall enter:

1. Nicholas Hurlin appeared and reported to the court that he is the Property Manager for the subject premises located at 62 Pomona Street, Unit 1, Springfield, MA.

2. The defendant shall make all repairs necessary at the premises as soon as is practicable until the condemnation is lifted. All such work that requires licensure and permits shall be effectuated in that manner.
3. Access for said repairs is to be coordinated through the tenant and the workers may only access her unit upon her express permission and only after at least 24 hours written notice (texting is fine) and access shall not be unreasonably denied by the tenant.
4. Until the condemnation is lifted by the City in writing, the defendant shall provide hotel accommodations plus a daily food stipend of \$125 for the tenant and her family. The parties entered into a mediated order in writing regarding the hotel stay.

So entered this 24 day of October, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-4324

RODERICK BARTON,

Plaintiff,

v.

BREANNA BROWN,

Defendant.

ORDER

After hearing on October 9, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The landlord met its burden of proof that the tenant failed to comply with the terms of the Agreement of the Parties dated October 31, 2024, and asserts that \$4,750 is outstanding in use and occupancy through October 2024.
2. The tenant explained that she had lost her job and car but has now regained employment and believes she can pay \$275 every week with her paycheck.

3. Such amounts would cover her rent (\$900) plus approximately \$282.50 towards arrearage and court costs [\$275 X 4.3 weeks per month].
4. Additionally, the tenant shall pay \$550 by October 11, 2024, and thereafter she shall pay \$275 every Friday until the balance is \$0.
5. The tenant shall also apply for RAFT when she again becomes eligible (it is believed that RAFT will be available in January 2025).
6. No judgment shall enter at this time but if the tenant fails to make the payments described above, the landlord may again move for entry of judgment.

So entered this 25th day of October, 2024.

Robert Fields Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

VICTOR RAMOS & ANA RAMOS,

Plaintiff,

-v.-

DOCKET NO. 24SP01652

SHANNON MAYNARD,

Defendant.

ORDER

This matter came before the court on October 25, 2024 for a hearing on the plaintiff's motion to extend the execution. Only the plaintiff's attorney appeared. He reported that the defendant had been present earlier in the day, and did not oppose the motion.

After hearing and a further review of the docket, the motion is **ALLOWED** as follows only: The execution which issued on July 15, 2024 is void because the judgment on which it is based was vacated. A new judgment entered on September 6, 2024. Pursuant to the court's September 24, 2024 order execution will issue on that judgment after December 31, 2024 on the plaintiff's written application. No further motion is needed because the issuance of the execution was stayed pursuant to G.L. c. 235 §23 by order of the court.

October 25, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-838

KATHLEEN ARCE,
Plaintiff,
v.
BRIAN HALL,
Defendant.

ORDER

After hearing on October 25, 2024, on the plaintiff-occupant's complaint for injunctive relief relative to conditions of disrepair at the subject premises located at 3 Prospect Avenue, Greenfield, the following order shall enter:

1. The defendant property owner shall address all outstanding violations cited by the Greenfield Health Department.
2. Given the circumstances as they appear thus far in this emergency hearing, the defendant property owner shall immediately put the gas service in his name so that heat and hot water will be restored. Though the occupant admits that she was responsible for the gas service for her unit under the

former owner she explained that it came to light that her gas service was heating the common area hallways and when the bank took ownership at foreclosure it put the gas utility in its own name. The court is concerned with the weather turning cold about the safety of the occupant without sufficient heat and with the history recounted by the occupant and no written agreement between the parties which makes the gas utility clearly the responsibility of the occupant, the court orders the defendant property owner to immediately place the utility in his name until further order of the court.

3. The parties should reach out to the Greenfield Health Department to ask it to reinspect prior to the next hearing date scheduled below, with a particular focus if feasible to inspect the allegation of cross-metering of electricity and gas.
4. Though the Greenfield Health Department is not a party to this action, it will be sent a copy of this Order and asked—if possible—to attend the next hearing.
5. This matter shall be scheduled for review on **November 15, 2024, at 9:00 a.m.** at the Greenfield Session of the Court

So entered this 28th day of October, 2024.



Robert Fields, Associate Justice

Cc: Greenfield Health Department (Jake Hogue Housing Specialist shall get a copy of this order to the Health Department)

Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 18-SP-4521**

VITALY GLADYSH,

Plaintiff,

v.

JOSEPHUS GRANT, et al.,

Defendants.

ORDER

After hearing on October 18, 2024, on the plaintiff's motion for dismissal of the appeal and issuance of the execution for possession at which the plaintiff appeared through counsel and the defendant appeared with Lawyer for the Day counsel, the following order shall enter:

1. The Appeals Court having adjudicated the appeal, and having affirmed this court's entry of judgment, there is presently no appeal pending.
2. Accordingly, execution may issue for the plaintiff for possession.
3. The defendant moves the court for a stay on the use of the execution in accordance with G.L. c.239, s.10.

4. The court finds that the defendant has met his burden of proof under that statute for the stay being requested through February 2025. More specifically, the defendant persuaded the court that he is diligently searching for alternate housing, has obtained pre-approval for financing to purchase a new house or manufactured home and will continue to do so during the stay.
5. The defendant has been, and will continue to, pay his use and occupancy of \$900 until he vacates the premises.
6. Additionally, the defendant is a disabled person under the law.
7. The plaintiff is planning to make repairs to the roof and siding of the premises prior to the winter weather prevents him from doing so. The defendant states that he is willing to allow the plaintiff to make such repairs (in a manner that does not prevent him from residing safely therein) immediately. Thus, the prejudice of a stay specifically presented by the plaintiff has been addressed.
8. Based on the record before the court, the defendant's motion to stay use of the execution through February 2025 is allowed contingent upon the defendant paying monthly use and occupancy of \$900. This stay shall toll the clock on the execution in accordance with G.L. c.235, s.23. An execution for possession only for the plaintiff may issue upon the filing and service of a Rule 13 application.

So entered this 28th day of October, 2024.

Robert Fields, Associate Justice

Cc: Christa Douaihy, Lawyer for the Day, Community Legal Aid
Court Reporter

MR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampshire, ss

Housing Department
Western Division
Docket No. 24CV0652

_____)	
Independent Housing Solutions)	
Incorporated)	
Plaintiff)	
v.	)	ORDER
)	
Robert Savard)	
Defendant)	
_____)	

On August 14, 2024, Plaintiff landlord filed a complaint against tenant Robert Savard seeking injunctive relief in the nature of an order barring Mr. Savard from the premises at 5 Franklin Street, Northampton, Massachusetts (the "Property") pending the conclusion of a summary process eviction case. Plaintiff is a non-profit organization offering supportive housing to low-income disabled persons experiencing homelessness. Mr. Savard is physically disabled [REDACTED].

After hearing on August 19, 2024, at which Mr. Savard appeared self-represented, the Court found that Plaintiff satisfied the requirements for obtaining injunctive relief; however, at the suggestion of Plaintiff, rather than an order barring Mr. Savard from the Premises, the Court ordered a less restrictive alternative. Among other conditions, the Court ordered that Mr. Savard cease and desist from using racial, homophobic, antisemitic and/or ethnic slurs toward anyone lawfully on the Property and that he cease and desist from disrupting the quiet enjoyment of other occupants of the Property (the "August 19 order").

Plaintiff subsequently filed a motion to enforce the terms of the August 19 order, claiming that Mr. Savard violated the terms of the August 19 order. After hearing on September 23, 2024, Plaintiff agreed to allow Mr. Savard another opportunity to maintain his tenancy on the conditions that he comply with the terms of the August 19 order and that attend an anti-hate speech training. Ms. Savard acknowledged the terms he needed to follow in order to continue residing at the Property.

On September 20, 2024, Plaintiff, alleging that Mr. Savard did not comply with the terms of the prior order, renewed its motion to bar him from the Property. After a hearing on October 21, 2024, the Court gave Mr. Savard yet another opportunity to remain in the Premises, requiring him to attend the anti-hate speech training he had previously agreed to attend, and to take steps to become alcohol and drug free. Plaintiff's staff made extraordinary efforts to obtain a difficult-to-procure prescription medication for Mr. Savard and ordered other prescription medicine deemed necessary to help Mr. Savard modify his behavior.

Based on the evidence taken at a hearing on October 28, 2024, the Court finds that Mr. Savard did not register for the training, did not take the medication and did not pick up the other prescription medication that Plaintiff ordered. Mr. Savard admitted to consuming considerable alcohol over the past weekend, and Plaintiff showed video of Mr. Savard verbally abusing another resident with abhorrent racial slurs and excessive profanity, and aggressively [REDACTED] at the resident, forcing him out of the hallway where the interaction occurred. Based on the

evidence presented, the Court finds Mr. Savard clearly and unequivocally violated the material terms of the previous court orders.

The Court concludes that there is no less restrictive alternative available than an order that Mr. Savard vacate the Property. Because of the extreme nature of Mr. Savard's behavior and given that the Court has given Mr. Savard three opportunities to modify his conduct, the Court concludes that the only relief that will protect the rights and safety of other people lawfully present on the Property is an order barring Mr. Savard from entering on the Property.

Accordingly, the following order shall enter:

1. Mr. Savard must vacate the Property at or before 3:00 p.m. on October 30, 2024. Prior to vacating, Mr. Savard shall not destroy property or threaten the safety or welfare of any person legally present on the Property. If he does either, Plaintiff may file an emergency motion to accelerate the vacate date and time.
2. Judgment shall enter for possession immediately, and execution may issue by written application ten days after judgment enters so that Plaintiff can have a deputy sheriff remove Mr. Savard if he fails to vacate as ordered.
3. Mr. Savard may not return to the Property without court order. At any time after October 30, 2024 but prior to the summary process trial, Mr. Savard may file a motion to vacate the judgment in this case and be restored to possession pending the conclusion of the summary process case. In order to succeed on his motion, Mr. Savard must be able to demonstrate to the Court

what steps he has taken to be able to comply with the terms of the orders that have entered in this case.

4. Upon the entry of a summary process action against Mr. Savard, the Court shall consolidate this case with the summary process case.

SO ORDERED.

October 28, 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

M TRAN PROPERTIES LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP00073

ELESIA EDMONDS,

Defendant.

ORDER

This matter came before the court on October 25, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for October 30, 2024 at noon. The plaintiff appeared through its attorney with the principal of the LLC. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

The court reviewed the chronology of this case in its October 15, 2024 order and incorporates it here.

The defendant's arrearage is \$7,250 through October 2024 and costs. Ms. Luna confirmed that the defendant received some RAFT financial assistance in April 2024, although it did not reduce the arrearage to zero. It is not clear how much additional RAFT is available for the defendant (considering the maximum eligibility of \$7,000), but in any event the amount she is eligible for is significantly less than the balance she owes. Although she was ordered to pay \$100 each month toward the balance that would remain after RAFT was paid, she has not done so.

Ms. Edmonds testified that she tried to apply for RAFT but kept getting locked out. Ms. Luna explained that if she entered the wrong password multiple times, her password would be reset after thirty minutes and she would need to request a new password which the computer would email her immediately.

As she had at the October 7, 2024 hearing, the defendant again argued that the landlord had not completed the repairs cited by the Board of Health in its January 30, 2024 report and order. For the reasons stated in its October 15, 2024 order following that hearing, the court again finds that the defendant did not present any grounds to amend the judgment or to stay the execution based on this issue.

Finally, the defendant asked that she be granted thirty days to apply for RAFT financial assistance and to pay the balance that would remain. The court does not have the authority to order the landlord to wait or to stop a move-out based on a promise of payment in thirty days. Likewise, the court does not have the authority to order a landlord to accept less than the amount that is owed in order to stop a move-out.

The court finds that the defendant is not entitled to a stay of the execution pursuant to G.L. c. 239 §9 because there is a substantial arrearage owed. The defendant did not demonstrate equitable grounds for a stay pursuant to G.L. c. 239 §10. There is no RAFT application pending. In any event, this case is not covered by G.L. c. 239 §15 because it is not based solely on nonpayment or rent but is a no-fault case with rent owed.

Order

After hearing, the following order will enter:

1. The defendant's motion to stop the move-out scheduled for October 30, 2024 at noon is **DENIED**.
2. The plaintiff may proceed with the move-out as scheduled.

October 28, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-2928

ROBERTS DEVELOPERS, INC.,

Plaintiff,

v.

TAMIKA SMITH,

Defendant.

ORDER

After hearing on October 28, 2024, on the tenant's motion to vacate the default judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The tenant met her burden for purposes of vacating the default in that she had a good reason for missing the hearing (late arrival by bus due to construction traffic) and is asserting defenses and counterclaims.
2. The record reflects that no default entered as a result of the tenant's missing the Tier 1 event.

3. Accordingly, the case shall be scheduled for a Housing Specialist Mediation session on **November 18, 2024 at 9:00 a.m.**
4. The tenant shall have until November 4, 2024, to file and serve an Answer. The tenant was directed to meet with the Lawyer for the Day program at the courthouse directly after this hearing.

So entered this 29th day of October, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

RB

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-827

RUBEN ALBERIO PALICIO ZULETA,

Plaintiff,

v.

EMILIO VELEZ,

Defendant.

ORDER

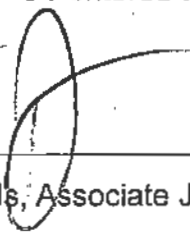
After hearing on October 28, 2024, at which both parties appeared, the following order shall enter:

1. As explained to the parties at the hearing, the defendant landlord (who purchased the property with the tenant already residing therein) may not unilaterally alter the terms of the plaintiff's tenancy that carried over from the month-to-month tenancy the tenant had with the former landlord.
2. Accordingly, the defendant landlord shall restore the tenant's use of the backyard, the laundry room, and the basement. As an alternative to the

landlord's restoration of the tenant's use of the shed, the tenant may safely store those items he had been storing in the shed in the basement.

3. The landlord shall also ensure that any and all cameras he has installed for safety at the premises do not capture those areas that are exclusively used by the tenant to avoid an invasion of the tenant's privacy.
4. The landlord shall communicate with the tenant solely in writing, which may include texts. The landlord may not communicate with the tenant's children.

So entered this 29th day of October, 2024.



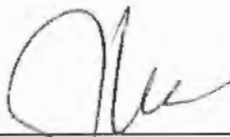
Robert Fields, Associate Justice

Cc: Court Reporter

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

SO ORDERED.

October 30, 2024



Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-3274

QUEEN MANAGEMENT, LLC,
Plaintiff

v.

VALENCIA KEATON,
Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the court for a bench trial on October 30, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of the residential premises located at 272 Centre Street, Apt. 272, Indian Orchard, Massachusetts 01150 from Defendant.


The parties stipulated to most Plaintiff's prima facie case for possession and unpaid rent in the amount of \$5,738.05. Although Defendant did not stipulate to receipt of the notice to quit, the Court finds that the notice was received by Defendant. The deputy sheriff's return is prima facie evidence of service, and Defendant did not offer any credible reason why she would not have received the notice.¹ The Court thus finds that Plaintiff has established its prima facie case. Defendant did not file an answer and raised no defenses at trial.

¹ At trial, in response to an inquiry by the Court, Defendant said she recalls getting a notice to quit for nonpayment of rent but thought it indicated a different amount due.

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

1. Judgment shall enter for Plaintiff for possession and \$5,783.05 in damages, plus court costs.
2. Execution (eviction order) will issue by application after expiration of the 10-day appeal period.

SO ORDERED.
October 30, 2024



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

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

Plaintiff,

-v.-

DOCKET NO. 24SP02600

FRANCISCO VIZCARRONDO,

Defendant.

ORDER

This matter came before the court on October 29, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for November 7, 2024 at 10:00 a.m. The plaintiff appeared through their attorney. The defendant appeared and was self-represented.

The plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy in this eviction case brought based on nonpayment of rent. The apartment is located in a Low Income Tax Credit property and the monthly rent is \$1,588. Judgment entered on August 16, 2024 for possession and \$2,528 with costs. Execution issued on September 17, 2024 on the plaintiff's written request. The plaintiff had a deputy sheriff serve the defendant with a forty-eight hour notice that the execution would be used to move him out of the apartment on November 7, 2024 at 10:00 a.m.

The defendant filed a motion to stop the move-out on the grounds that he needs more time. He reported that he was unable to pay the rent/use and occupancy because he lost his jobs. There is no RAFT application pending. He received RAFT in December 2023. He may be eligible for a small amount of RAFT because he did not use the maximum \$7,000. However,

any remaining RAFT eligibility would be only a fraction of the arrearage at this time, \$5,704 through October 2024. The defendant has applied for a student loan which he believes would be sufficient to pay the arrearage. He does not know when he would receive the funds, but he thinks it may be within the next two to three weeks. However, at this time, he does not have the money to pay the arrearage.

The court finds that the defendant is not eligible for a stay of the execution pursuant to G.L. c. 239 §9 because he owes a substantial amount of rent. The court finds that he does not present grounds that would support an equitable stay pursuant to G.L. c. 239 §10. G.L. c. 239 §15 does not apply because there is no RAFT application pending.

Order

After hearing, the defendant's motion to stop the move out scheduled for November 7, 2024 at 10:00 a.m. is **DENIED**. The plaintiff may proceed with the move-out as planned. If the defendant receives the proceeds of the loan that he expects and he could pay the arrearage, he may consult with the plaintiff's attorney about a stay.

October 30, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

ROYAL VIBE HOMES LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP02976

ANGEL GUZMAN & JESENIA VARGAS,

Defendant.

ORDER

This matter came before the court on October 29, 2024 for a continued hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney with the owner. The defendants appeared and were self-represented.

The plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy in this eviction case brought without cause. The parties entered into an Agreement on September 4, 2024. By its terms relevant to this motion, the defendants agreed to move out of the premises by November 1, 2024 and to pay use and occupancy of \$850 by the fifteenth of the month in September and October. In exchange for the defendants making these two payments and moving by November 1, the plaintiff waived the arrearage (\$1,700 representing July and August). If the defendants did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment for possession and all money owed.

The plaintiff filed such a motion on the grounds that the defendants did not pay as they agreed. The first hearing on the motion held on October 24, 2024 was continued to October 29 to give the defendants the opportunity to pay the \$1,700 they owed because they said that they had not known how to make the payments. They did not pay, explaining that they did not have

the money to pay. They have been approved for RAFT financial assistance to help them to move to another apartment.

The court finds that the defendants are in substantial breach of a material term of the parties' September 4, 2024 Agreement because they did not pay September and October use and occupancy as they agreed. Therefore, the plaintiff's waiver of all unpaid rent/use and occupancy as of the signing of the Agreement is void pursuant to no. 5 of the Agreement. The plaintiff is entitled to judgment for possession and unpaid rent/use and occupancy for four months (July through October).

Order

After hearing, the plaintiff's motion is **ALLOWED**. Judgment will enter for the plaintiff for possession and \$3,400 in unpaid rent/use and occupancy through October 2024. Execution will issue on the plaintiff's written application ten days after the date that judgment enters.

October 30, 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-3228

THE COMMUNITY BUILDERS, INC.,
Plaintiff,
v.
MARK MELLO,
Defendant.

ORDER

After hearing on October 25, 2024, for review and further hearing of the landlord's motion for entry of judgment, the following order shall enter:

1. There is a RAFT application pending.
2. The tenant shall pay his rent for October 2024 by October 25, 2024.
3. The tenant shall pay his rent for November 2024 by November 10, 2024.
4. The tenant shall pay his rent for December 2024 by December 13, 2024.
5. This matter shall be scheduled for **December 13, 2024, at 9:00 a.m.** for further review and continued hearing of the landlord's motion if applicable.

So entered this 30th day of October, 2024.


Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-5463**

<p>U.S. BANK, N.A,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>JOSEPH L. PEREZ-GONZALES,</p> <p style="text-align:center">Defendant.</p>	
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ORDER

After hearing on October 25, 2024, the following order shall enter:

1. This hearing was evidentiary in nature and was to provide a record upon which the court may establish a fair market use and occupancy value for the subject premises for the purpose of entering a final judgment after summary judgment entered for the plaintiff for possession.
2. The plaintiff's witness, Glenn Stevens, is a real estate broker that was hired by the bank to monitor this property after it foreclosed on the mortgage in September 2023. He has been monitoring the premises by driving by it

approximately every two weeks. Mr. Stevens has been a Connecticut-based real estate broker since 2009 who works mostly entirely on sales (more than 90% of his practice is with selling and 10% or less involve rentals) but he has never been involved in any rentals in Massachusetts.

3. Mr. Stevens has never been inside the subject premises.
4. The defendant and his other witness Mr. Woosacki testified about a multitude of conditions of disrepair at the premises.
5. Based on the record before the court, and particularly without insufficient evidence of the poor conditions at the premises, a fair monthly use and occupancy amount cannot be established.
6. The plaintiff shall make arrangements with the defendant to access the premises, inside and out, with two weeks' notice to the defendant. The defendant shall not deny access unreasonably.
7. The inspection may include up to three individuals who may take photographs but shall be careful to not photograph personal items of the defendant.
8. The Clerk's Office is requested to schedule another evidentiary hearing to establish the financial aspect of a final judgment, in a [REDACTED] courtroom for approximately five or six weeks from the date of this order and so notify the parties under a separate notice.

So entered this 30th day of October, 2024.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate (for scheduling the next hearing)
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

KERBY ROBERSON,
 Plaintiff,
 v.
 BOUBACAR KOMOU,
 Defendant.

24-CV-735

Komou,
 Plaintiff,
 v.
 ROBERSON, and the Springfield
 Water & Sewer Commission
 Defendants

24-CV-766

CITY OF SPRINGFIELD
CODE ENFORCEMENT
Plaintiff,
v.
ROBERSON and Komou,
Defendant. S

No. 24-CV-850

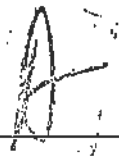
After hearing on October 29, 2024, in the matter of *Roberson v. Komou*, 24-CV-735, the following order shall enter:

1. The defendant, Boubacar Komou, agrees that he has been ordered to not reside at the premises by the City of Springfield due to a condemnation. He agrees that he has complied and will continue to comply with that order.
2. The court makes additional conditions of his accessing the premises until the condemnation is lifted. Specifically, he may only be permitted inside the premises during daylight hours; he may not use candles or fire therein; he may not use space heaters; and he may not use the stove or oven.
3. The agreed-upon order of the court dated September 25, 2024, remains in full force and effect. Thus, the plaintiff Kerby Roberson may have access to the premises for purposes of repairs upon 24 hours written notice and the defendant must immediately respond to any such communication from Mr.

Roberson. Any repair work to be effectuate at the premises that requires licensure and/or permitting shall be done in that manner.

4. All three of the above-captioned matters---which include *Roberson v. Komou 24-CV-735*, *Komou v. Roberson* and *The Springfield Water & Sewer Commission 24-CV-766*, and *City of Springfield Code Enforcement v. Roberson and Komou 24-CV-850*, shall all be scheduled for further hearing on November 15, 2024, at 9:00 a.m.

So entered this 31st day of October, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

STARLIGHT PROPERTY MANAGEMENT,

Plaintiff,

-v.-

DOCKET NO. 24SP02898

LEONAR NIEVES,

Defendant.

ORDER

This matter came before the court on October 21, 2024 for review and a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

In this eviction case based on nonpayment of rent, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. The parties entered into an Agreement on September 18, 2024. By its terms relevant to this motion, the plaintiff alleged that the defendant owed \$3,271 in unpaid rent/use and occupancy and \$266.04 costs. The defendant agreed to pay the rent/use and occupancy (\$1,025) in two installments of \$512.50 each on the tenth and twenty-fifth of each month beginning in October. The defendant agreed to complete an application for RAFT financial assistance by the close of business on September 23, 2024. Both parties agreed to cooperate with the RAFT application process. The defendant alleged that there were repairs needed in the apartment. The plaintiff agreed to inspect within ten days and to make any needed repairs within thirty days or with due diligence.

The plaintiff filed its motion for entry of judgment on the grounds that the defendant did not pay the first installment of the October use and occupancy by October 10, that there is no

notification of the defendant's filing a RAFT application, and that the landlord has been unable to get access to inspect and repair despite four attempts to do so.

The defendant reported that he paid the first installment one day late, on October 11. He did not have the information to submit with the RAFT application. The only day that he can allow access for inspection and repairs is Monday because of his work schedule.

Ms. Luna of Wayfinders joined the hearing and confirmed that there is no RAFT application pending or filed at this time. She explained the documentation which the defendant will need to submit. If the defendant is eligible, RAFT could pay up to \$7,000 in unpaid rent/use and occupancy and costs. This is more than the current arrearage (\$3,783.50) and would reduce the arrearage to zero.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion for entry of judgment is continued to **November 22, 2024 at 9:00 a.m.** for further hearing and for review of the status of the defendant's RAFT application and payments as well as the plaintiff's inspection and repairs.
2. As agreed, the plaintiff's attorney will provide the relevant rental agreement and the plaintiff's contact information for Wayfinders to the defendant immediately.¹
3. The defendant will file and complete a RAFT application immediately, including submission of all required documentation.
4. The plaintiff will submit its documentation for the RAFT application immediately upon request from Wayfinders. The plaintiff will include the costs on the ledger.
5. The defendant will pay the second installment of the October use and occupancy on October 25, 2024 and then the first installment of the November use and occupancy on November 10, 2024. Payment of the use and occupancy will continue to be made in two installments pending further order of the court or agreement of the parties.
6. The parties tentatively agreed that the plaintiff can access the apartment, with the defendant present, to inspect and make repairs pursuant to section 4 of the parties' September 18 Agreement on Monday, October 28, 2024. The plaintiff's attorney agreed to confirm the date and time with his client and the plaintiff will so notify the defendant.

¹ The court notes that the plaintiff's email address "to be used for the RAFT application" was listed in the parties' September 18, 2024 Agreement.

- a. Any further inspections and repairs as listed in the September 18 Agreement will be done on Mondays if possible, at a time to be determined by the plaintiff. Plaintiff will so notify the defendant at least 48 hours in advance.
- b. The defendant will unblock the plaintiff's telephone number so that the plaintiff can reach him to schedule such inspections and repairs.

October ST 31, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

WESTERN HOUSING COURT
Civil Action. No. 24 CV 585

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS,

Petitioner

v.

CAROL JANE SIERAKOSKI, and the ESTATE
OF JOHN W. SIERAKOSKI, his heirs, successors
and assigns, known or unknown as the owners of
the property located at located at 10 Unity Street,
Turners Falls, Massachusetts,

Respondents.

**Re: Premises at 10 Unity Street, Turners Falls, Massachusetts
Franklin County Registry of Deeds Book No. 2578, Page 156**

ORDER

After a hearing held on November 1, 2024, at which the petitioner The Attorney General for the Commonwealth of Massachusetts appeared and the receiver, Rural Development, Inc. appeared but the respondents Carol Jane Sierakoski and the Estate of John W. Sierakoski did not appear, the court enters the following order:

1. The Receiver's First and Second Reports are accepted. Receiver reports expenses in the amount of \$7,825.39, which is the amount of the Receiver's asserted lien to date.
2. Upon the representation of counsel for the receiver that the son of Carol Jane Sierakoski, namely Jason Sierakoski, attended the hearing on September 13, 2024, that Jason Sierakoski represented to the court that Carol Jane Sierakoski would not understand these proceedings and that he was acting on behalf of his mother under a Power of Attorney,

Jason Sierakoski is hereby added as an indispensable party pursuant to Mass. R. Civ. P. 19.

3. The Receiver is ordered to continue to control the Premises, keeping it boarded and secured, while it pursues a strategy of applying for financing in order to redevelop the property as affordable housing for a qualified first-time homebuyer.
4. The parties are to return to court on December 6, 2024, to determine next steps and to ascertain whether a guardian *ad litem* should be appointed for Carol Jane Sierakoski. Jason Sierakoski is encouraged to attend the hearing on December 6, 2024, and Carol Jane Sierakoski is ordered to attend if she is competent to understand the proceedings.



Fields, J.

Dated: November 1, 2024

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1869**

B.G. MASSACHUSETTS I, LLC,

Plaintiff,

v.

CARMEN COTTO and CHARLENE MONTERO,

Defendants.

ORDER

After hearing on October 17, 2024, at which all the parties appeared, the following order shall enter:

1. There is a pending RAFT application and the tenants have submitted an updated letter from a physician in support of the hardship requirement of that program.
2. The tenants have paid their monthly rent since the last hearing and the total arrearage is the same as the last court hearing.

3. Given the pendency of the RAFT application and the continued payments of rent by the tenants, the landlord's motion to lift the court's stay on the execution is denied.
4. An accurate email address for the landlord was provided to the Way Finders, Inc. representative during the hearing and the landlord shall provide to RAFT those documents for which they are responsible promptly.
5. The tenants shall pay their rent going forward plus \$50 per month towards the arrearage. The RAFT program shall consider this arrearage payment as a "repayment plan" for RAFT purposes, though this figure may be reviewed at a later date in these proceedings.
6. This matter shall be scheduled for review on **November 14, 2024, at 9:00 a.m.** Landlord counsel and his property manager may appear at the hearing by Zoom.

So entered this 1st day of November, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

FRANKLIN,SS

WESTERN DIVISION
HOUSING COURT
CIVIL ACTION 24 CV 872

CHAPMAN STREET PROPERTIES,LLC }
Plaintiff }
v. }
FELICIA MIZULA, }
Defendant }

ORDER

After hearing on November 1, 2024 at which the Plaintiff Chapman Street Properties, LLC (Landlord) appeared through counsel, and the Defendant Felicia Mizula (Tenant) did not appear, although served at last and usual, the Court finds the following facts and enters the following order:

1. The Tenant is responsible for electricity under her lease;
2. The Tenant's electricity appears to have been terminated due to non-payment of the Tenant's electric bill for that service;
3. As a consequence of not having electrical service in her unit and the potential hazard that it poses, the Court orders that the Tenant is forbidden from residing in her unit until the electric service is restored by the Tenant;
4. The Tenant may enter the unit during daylight hours, but must leave the unit by 5: p.m. each day until electric service is restored;

5. While at the unit, the Tenant may not use candles or run extension cords to other units or the common area. Violation of these requirements could result in the court revoking the right to visit the unit at all and allow the Landlord to change the locks;
6. The Tenant is encouraged to contact Franklin County Regional Housing and Redevelopment Authority's (FCRHRA) RAFT program to see if they can help with payment of past electric bills so service may be restored
7. The parties are to appear in the Greenfield Courthouse, 43 Hope Street, Greenfield, MA in the Housing Court session on the fourth floor on November 8, 2024 at 9:00 a.m. for a review of this order and update on the electrical service. After review, this court may extend the Order, modify it, or revoke permission to go to the unit if there is found to be a violation of this order.

Signed this day as an Order of this Court.



Date: November 4, 2024

Judge Robert Fields
Dated;

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-1566

DOUGLAS DICHARD,
Plaintiff,
v.
RANDY and THOMAS TIMMONS,
Defendant.

ORDER

After hearing on October 23, 2024, at which the landlords appeared and the tenant Thomas Timmons appeared self-represented and also at which the Guardian Ad Litem James Brown, and a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. **Update:** The Guardian Ad Litem (G.A.L.) reported to the court that he is working with TPP and with Thomas Timmons to obtain benefits from the Social Security Administration and perhaps the Department of Transitional Assistance pending SSA benefits. The G.A.L. shall also assist in efforts to

- obtain SNAP benefits and other government benefits for Thomas including RAFT funds for rental arrearage.
2. The G.A.L. will also seek an "Institutional Representative Payee" for Randy Timmons' SSI benefits now that his mother (former Representative Payee) is deceased. The G.A.L. shall also investigate the existence of a life insurance policy for which the tenants may be beneficiaries.
 3. The G.A.L. has identified that a motion to dismiss was filed on behalf of the tenants back on June 6, 2024, but has not been ruled on.
 4. **Tenants' Motion to Dismiss:** Even though the landlords have been exemplary and extremely generous and patient in their approach to this case, and it is due to their interest in wanting to help the tenants after the loss of their mother and caretaker, that the eviction action has been continued repeatedly while resources (TP and a G.A.L.) have been afforded the tenants, the court must consider the tenant's motion to dismiss and make a ruling on said motion.
 5. The G.A.L. makes a very good point that if the court does not address a pending motion to dismiss in this action it could undo everything that comes next in the parties (and G.A.L.'s and TPP's) efforts to assist the tenants in making the landlords whole and the tenancy sustainable.
 6. The motion to dismiss is based on the deficiency of the Notice to Quit (NTQ), which was delivered to the tenants on March 2, 2024, but purports to terminate the tenancy on April 1, 2024. Given that this is a tenancy-at-will and the NTQ seeks to terminate the tenancy for no-fault, it fails to provide the

statutory "rental period notice" which would require a May 1, 2024, termination date (and not an April 1, 2024, termination date).

7. Accordingly, the landlord's claim for possession and for use and occupancy is dismissed, *without prejudice*.
8. Though the tenants have not yet asserted their own claims against the landlord, this action shall be transferred to the Civil Docket and newly entitled Randy and Thomas Timmons v. Douglas Dichard.
9. The G.A.L. shall file an Answer on behalf of the tenants which at least includes a claim for Reasonable Accommodations by no later than November 30, 2024.
10. As was stated repeatedly during the hearing, the G.A.L. and TPP shall continue their efforts described above to maximize resources for the Timmonses and pay the outstanding rent even though the eviction action has been dismissed.
11. The newly created Civil Docket matter shall be scheduled for further review hearing on **November 8, 2024, at 9:00 a.m.** with Judge Fields.

So entered this 4th day of November, 2024.

Robert Fields, Associate Justice

Cc: James Brown, Guardian Ad Litem
Alicia White, TPP
Court Reporter