

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

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## **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**

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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.

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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.

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<sup>1</sup> Contains a typo as to the month of the date of decision.

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COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-3441

428446 MAPLE HOLYOKE MA, LLC,  
  
Plaintiff,  
  
v.  
  
ASHLEY STACKOW and ARNALDO  
MORALES,  
  
Defendants.

ORDER

After hearing on October 29, 2024, on the defendants' motion for an escrow bond, for which all parties appeared through counsel, the following order shall enter:

1. The motion is denied *without prejudice* as the court records indicates that the plaintiff LLC has no assets.
2. The plaintiff LLC having sold the premises, its claims are dismissed *without prejudice*.

3. The defendants' counterclaims shall be transferred to the Civil Docket in a new captioned matter *Ashley Stackow and Arnaldo Morales v. 428446 Maple Holyoke MA, LLC*.
4. The defendant in the new case, 428446 Maple Holyoke MA, LLC, shall file and serve an Answer to Stackow and Morales' counterclaims within 20 days from the date of this order noted below.
5. The plaintiffs in the new action, Stackow and Morales have leave to include questions about the defendant LLC's finances as part of their discovery demand.
6. The Clerk's Office is requested to schedule and conduct a Case Management Conference so as to schedule pretrial and trial dates.

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



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Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate  
Court Reporter



Defendant did not file an answer and articulated no defenses at trial. He offered a payment in the amount of \$4,300.00 and is looking for additional time to search for housing. Given the foregoing, and considering the statutory stay permitted under G.L. c. 239, §§ 9-11, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of the execution (the eviction order) shall be stayed through

February 4, 2025 on the conditions that:

- a. Defendant pays \$4,300.00 to Plaintiff within three business days of the trial date; and
- b. Defendant pays use and occupancy in the amount of \$1,495.00 for the month of December 2024 by December 5, 2024 and \$1,495.00 for the month of January 2025 by January 5, 2025.

3. If Defendant fails to comply with the conditions in the preceding paragraph, Plaintiff may request issuance of the execution by affidavit attesting to the non-compliance.

4. Defendant will maintain a log of all efforts he makes to obtain replacement housing. He shall provide the log to the Court at the next court date.

5. The parties will appear on **February 4, 2025 at 2:00 p.m.** for review.

SO ORDERED.

November 7, 2024

  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter



**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-SP-5230**

<p><b>STEPHEN RICE,</b></p> <p style="text-align:right"><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>DEIRDRE SLOCUMB,</b></p> <p style="text-align:right"><b>Defendant.</b></p>	
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**ORDER**

This matter came before the Court for trial on August 27, 2024, at which the plaintiff landlord appeared self-represented and the defendant tenant appeared with counsel. After consideration of the evidence admitted therein, the following order findings of fact and conclusions of law and order for judgment shall enter:

1. **Background:** The plaintiff, Stephen Rice (hereinafter, "landlord"), owns a two-family dwelling located at 111 Westford Circle in Springfield, Massachusetts (hereinafter, "premises" or "property"). The defendant, Deirdre Slocumb (hereinafter, "tenant") was residing at the premises at the

- time that the landlord purchased the property in December 2021. On or about September 25, 2023, the landlord gave the tenant a *no-fault* eviction notice and thereafter filed a summary process action with the Court.
2. The tenant filed an Answer with Counterclaims and asserts claims and defenses arising out the insufficiency of the termination notice, conditions of disrepair, retaliation, and breach of the covenant of quiet enjoyment.
  3. **The Landlord's Claim for Possession:** The parties agreed on the record that the day the rent is due each month is the third of the month, not the first. The notice used by the landlord to terminate this tenancy terminated it as of November 1, 2023. G.L. c.186, s.12 states that if the rental period is less than three months (as it is here), notice to terminate a tenancy at will is sufficient "if it is equal to the interval between the days of payment or thirty days, whichever is longer." Additionally, the notice must terminate the tenancy on a day on which the rent becomes payable: "a notice to quit which breaks into the month and expires on an intermediate day is invalid and insufficient." *Sandford v. Harvey*, 65 Mass. (11 Cush.) 93, 95-96 (1853); see also *Connors v. Wick*, 317 Mass. 628 (1945).
  4. The landlord's notice was insufficient to terminate the tenancy because it contains a termination date that is not a day on which the rent becomes due. The landlord's failure to terminate the tenancy properly requires that this Court dismiss the landlord's claim for possession of the premises.
  5. **The Landlord's Claim for Use and Occupancy:** The parties agree that by an earlier order of the Court the landlord was permitted to amend his

- complaint to include an "Account Annexed". The landlord, however, was unable to meet his burden of proof on his claim for unpaid rent, use, and occupancy. He testified that the outstanding balance was for unpaid amounts since March 2023 totaling \$17,100. On cross examination, though, he admitted to receipt of various payments from the tenant since March 2023 and the Court was left with having serious questions about the landlord's accounting and not able to determine the amount of outstanding rent.
6. Nevertheless, counsel for the tenant offered an alternative accounting which is acceptable to the Court. In February 2024, this matter was scheduled for trial and the parties entered into a Pretrial Stipulation in which the landlord asserted \$10,450 was outstanding in rent through February 2024. Counsel for the tenant offered that the court could use this amount plus outstanding rent for the intervening months. As such, the court finds that the amount of outstanding rent (use, occupancy) through August 2024 totals **\$16,150** (representing \$10,450 plus 6 months @\$950).
  7. **The Tenant's Claim: Water Shut-Offs (Breach of the Covenant of Quiet Enjoyment):** On April 10, 2024, the parties entered into a Joint Stipulation in which the parties agreed that the water had been shut-off due to the landlord's non-payment of his water bill (on August 10, 2022, March 23, 2023, and March 19, 2024).
  8. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character

and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997).

9. The Court finds and so rules that the landlord's failures to pay his water bills and/or reach agreeable payments terms to prevent same violated the tenant's covenant of quiet enjoyment and G.L. c.186, §14 and hereby award the tenant damages equaling three months' rent for this claim of breach of quiet enjoyment, totaling (\$950 X 3) **\$2,850** plus reasonable attorney's fees and costs.

**10. Retaliation:** The City of Springfield Department of Code Enforcement inspected the premises and sent correction orders to the landlord beginning in July 2023. Within a couple of months in September 2023, the landlord served the tenant with a no-fault Notice of Termination.

11. Reprisal constitutes a defense, G.L. c. 239, s.2A, and counterclaim, G.L. c. 186, s.18, to a landlord's eviction case. The sequence and timing of events which occurred between the parties gives rise to a presumption that the landlord's action was in reprisal against the tenant for her protected activities of reporting conditions to the City and the City's notice of violations under G.L. c. 239, s. 2A, which provides in pertinent part as follows: "The commencement of such [summary process] action against a tenant, or the sending of a notice to quit upon which the summary process action based..

.within six months after the tenant has ...exercised such rights.. .shall create a rebuttable presumption that such summary process is a reprisal..."

12. The presumption of reprisal may be rebutted only by "clear and convincing" evidence that the landlord had "sufficient independent justification" for taking such action, and "would have in fact taken such action, in the same manner and at the same time," G.L. c. 239, s.2A and G.L. c. 186, s.18, irrespective of the tenants' protected activities.

13. The landlord has not rebutted the presumption of reprisal and is therefore liable for between one and three months' rent. The court finds that this retaliatory act by the landlord, who was fully aware of extensive conditions of disrepair that he was not addressing for the 1.5 years prior to the code enforcement notice, was egregious and the court shall exercise its discretion to award three months' rent.<sup>1</sup> Accordingly, pursuant to G.L. c.239, s.2A, the landlord's claim for possession is dismissed and in accordance with G.L. c.186, s.18, the court shall award damages of **\$2,850** plus reasonable attorney's fees and costs.

**14. Breach of the Warranty of Habitability:** There have been numerous conditions of disrepair at the premises throughout the entirety of this tenancy, all of which have been well documented by the City during their many inspections and inspection reports. Such has included water temperature issues, plumbing issues, toilet issues, problems with the flooring, electrical problems, leaks, exposed wiring, radiator covers missing, and lack of

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<sup>1</sup> See below Warranty of Habitability section which addresses the landlord's knowledge of conditions of disrepair including the extensive rodent infestation and leaks from the inception of the tenancy.

smoke/CO detectors. Aside from the city's inspection reports, the Court finds that the landlord is imputed with the knowledge of the existence of these conditions as they existed at the time of the inception of the tenancy (when the landlord purchased the property in December 2021).

15. These conditions violate the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. It is well settled law that a landlord is strictly liable for breach of the implied warranty of habitability irrespective of the landlord's good faith efforts to repair the defective condition. It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907, (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). The Court finds that the average rent abatement of 25% fairly and adequately compensates the tenant for the diminished rental value of the premises resulting from these conditions. The tenant's actual damages for the landlord's breach of the warranty of habitability are **\$4,987.50**. This represents the contract rent of \$950 X 25% (\$237.50) for 21 months.

16. **Breach of the Covenant of Quiet Enjoyment:** During the period of time between August 2023 and January 2024, conditions of disrepair were

particularly horrific. The hot water ran constantly in the kitchen sink, resulting in a lack of hot water in the entire unit. There was extensive mouse infestation, a lack of smoke and carbon monoxide detectors, and leaks.

17. The Court finds and so rules that during this period of time the conditions described above had such an impact on the tenant's enjoyment of the property that it constituted a violation of the covenant of quiet enjoyment and G.L. c.186, s.14, separate and distinct from the Court's other finding of a violation of G.L. c.186, s.14. See, *Doug Clark & Others v. Leisure Woods Estates, Inc.*, 89 Mass. App. Ct. 87 (2016).
18. The Court became very aware from the landlord's testimony that his outlook as to his responsibilities as a landlord was that he and the tenant were "in this together" and because he felt he lacked the funds to make all the necessary repairs and claims to have appreciated the impact on his tenant, he wanted very much to work things out with the tenant to make it more equitable; meaning: perhaps he and the tenant could agree to reduce the rent due to conditions of disrepair and also have the tenant's PCA's shut the water off at the premises (during a leak) until the landlord could afford a plumber.
19. The landlord displayed a fundamental misconception of his role and responsibilities as the landlord. He believes that the tenant's unwillingness in his view to "do her part in society" is what caused the biggest problems with this tenancy and seemed actually surprised at trial that the tenant did not share his views on how he is to fulfil his responsibilities as the landlord and by her unwillingness to work it out.

20. Though the tenant is [REDACTED], she is able to use a shower and the lack of a functioning shower during this time had a very powerful impact on the tenant's emotional distress as a result of these conditions of disrepair. During this acute time when, among other things, the shower was not functional, the tenant was subjected to being washed by her PCAs which made her feel less independent than she was (when the shower was functioning).
21. The Court finds the tenant credible in her describing how she feared that mice would crawl into her bed [REDACTED]; and fearful that she was going to be poisoned by carbon monoxide due to the landlord's failure to make repairs to the hot water tank vent.
22. With the covenant of quiet enjoyment being breached in this manner, and completely distinct from the court's other findings of breach of the covenant of quiet enjoyment, the court shall award the tenant either three months' rent or actual damages—which may include emotional distress damages. See, *Homesavers Council of Greenfield Gardens, Inc. v. Luz Sanchez*, 70 Mass. App. Ct. 453 (2007).
23. Given her circumstances, the Court finds and so rules that the tenant reasonably suffered emotional distress and hereby awards her **\$10,000** plus reasonable attorney's fees and costs for this breach of the covenant of quiet enjoyment.
24. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A, an order awarding possession to the tenant plus \$4,537 in



damages plus reasonable attorneys fees and costs shall enter. This represents the award of damages to the tenant (\$20,687) minus the award of damages to the landlord for outstanding rent (\$16,150). *This is not yet a judgment* as the court needs to also consider an award for reasonable attorneys fees and costs.

**25. Reasonable Attorneys Fees and Costs:** The tenant shall have 20 days from the date of this order noted below to file and serve a petition for attorneys fees and costs. The landlord shall have 20 days from his receipt of said petition to file and serve an opposition. Thereafter, the court shall issue a ruling on the petition for attorneys fees and costs and enter final judgment at that time.

So entered this 7<sup>th</sup> day of November, 2024.

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

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

WESTERN DIVISION HOUSING COURT  
Civil Action. No. 24 CV 439

ATTORNEY GENERAL for the  
COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

v.

ESTATE OF JOHN W. ROMANOWSKI, his heirs,  
successors and assigns, known or unknown as  
owner of the property located at 91 Stillwater Road,  
South Deerfield, Massachusetts, the ESTATE OF  
STANLEY F. ROMANOWSKI, his heirs,  
successors and assigns, known or unknown,  
CHESTER P. OSTROWSKI, JR., as a potential heir  
and party with an interest in the property,  
MICHAEL MORAWSKI, as a potential heir and  
party with an interest in the property, and PETER  
OSTROWSKI, as a potential heir and party with an  
interest in the property,

Respondents.

INTERIM ORDER

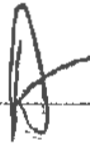
At a hearing on November 1, 2024, the Petitioner and the Receiver, **Roxy Corp Inc.** appeared through counsel. After receiving proper notice, Respondent the **Estate of John W. Romanowski** did not appear, Respondent the **Estate of Stanley F. Romanowski** did not appear, potential heir and a party with an interest in the Property **Chester P. Ostrowski, Jr.** did not appear, potential heir and party with an interest in the Property **Michael Morawski** did not appear; and potential heir and party with an interest in the Property **Peter Ostrowski** did not appear. Accordingly, the following Order is to enter:

1. Appointment: The Receiver, **Roxy Corp Inc.**, was appointed by this Court after a hearing on July 23, 2024.
2. Subject Property: The subject property at **91 Stillwater Road, South Deerfield** is a vacant single-family dwelling.
3. Service: The Respondents the Estate of John W. Romanowski and the Estate of Stanley F. Romanowski were served in accordance with the Court's allowance of Petitioner's Motion for Alternative Service of Process by publication and by posting at the subject property. Respondent

and potential heir Chester P. Ostrowski, Jr. was served via Franklin County Sheriff on or about June 17, 2024 at their last and usual address and was sent a certified mail copy of the Amended Petition to Enforce the State Sanitary Code and for Appointment of a Receiver on July 1, 2024. Respondent and potential heir Michael Morawski was served via Franklin County Sheriff on or about July 5, 2024 at their last and usual address. Respondent and potential heir Peter Ostrowski was served via Hampden County Sheriff on or about July 10, 2024 at their last and usual address. Respondent and potential heir Peter Ostrowski appeared at the previous hearing scheduled for July 19, 2024, that was rescheduled due to a technical issue. Mr. Ostrowski did not appear at the hearing in which the Receiver was appointed.

4. **Insurance:** The Receiver filed proof of insurance with the Court in July 2024.
5. **Rehabilitation Plan:**
  - A. The Receiver has filed a Motion to Approve Rehabilitation Plan. The proposed cost of the rehabilitation, as set out in the rehabilitation plan is estimated to be **\$479,950** not including legal costs, utility costs and overhead which are estimated to be about **\$38,800-\$41,300**.
  - B. The Receiver expects to complete rehabilitation of the Property by **June 2025**.
  - C. Due to the complex nature of the probate matter in this case, the Receiver has initiated the services of an heir location company and will therefore need additional time to report back to the Court.
  - D. Receiver still maintains possession and control of the Property however, review of Receiver's Motion to Approve Rehabilitation Plan is continued.
6. **Receiver's Reports:** The Receiver's most recent report was filed with the court and served upon all parties and lienholders on October 1, 2024. The report covers the time period of July 24, 2024 through September 15, 2024. During this time, the Receiver reports expenses in the amount of **\$45,959.98** which brings the amount of the Receiver's asserted lien to date to **\$45,959.98**. The report and its receipts have been reviewed for accuracy by the Petitioner and found to be acceptable.
7. **Inspection:** The Town has no issues to report at this time.
8. **Next report:** If the Receiver incurs expenses to report to the Court before the next hearing date, the Receiver shall file with the Court and serve upon all parties and lienholders a copy of the receiver's report with a detailed account of funds received and funds expended, one week before the next hearing date. Copies shall also be sent to all parties to this action and shall be accompanied by a certificate of service documenting that the reports have been forwarded as called for in the order appointing the receiver to this property.
9. **Additionally:** \_\_\_\_\_
10. **Review:** A review of the receivership shall be heard on **December 20, 2024 at 9 a.m.** in the Greenfield Session.

So Ordered:

  
\_\_\_\_\_  
Hon. Robert Fields  
Western Division Housing Court

Dated: 11/8/24

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-316**

**BEACON RESIDENTIAL MANAGEMENT, LP,**

**Plaintiff,**

**v.**

**HILDA CIRILO,**

**Defendant.**

**ORDER**

After hearing on October 15, 2024, on the tenant's motion to stay the use of the execution, the following order shall enter:

1. The motion is allowed consistent with compliance with the terms of this order.
2. The tenant shall pay her rent for November 2024 plus \$50 on November 1, 2024. The additional \$50 payment noted above shall be considered a "repayment plan" for RAFT programmatic purposes.
3. There is a RAFT application pending which is awaiting documents from the landlord.

4. There shall be a stay on the use of the execution until further order of the court which shall toll the time of the execution in accordance with G.L. c.235, s23.
5. A referral was made to the Tenancy Preservation Program (TPP) and a representative from TPP agreed to meet with the tenant directly after the hearing.
6. This matter shall be scheduled for review on **November 19, 2024, at 9:00 a.m.**

So entered this 8<sup>th</sup> day of November, 2024.

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Robert Fields, Associate Justice

Cc: TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24CV0783

KORI COOPER

PLAINTIFF(S)

v.  
MARIA DEL RIO

DEFENDANT(S)

ORDER

After hearing at which [] both parties [] plaintiff only [] defendant only appeared, the Court orders the following:

Plaintiff's emergency motion for injunctive relief came before the Court on October 31, 2024. The motion is in the nature of a motion for real estate attachment. The house in question is in the process of being sold, and Plaintiff seeks that a sum of money from the sale be set aside as security for a judgment related to the landlord/tenant relationship.

Although the Court scheduled an in-person evidentiary hearing for today, Plaintiff is ill and appeared by Zoom. The court is unwilling to proceed with an evidentiary hearing under the circumstances.

Based on the allegations in the verified complaint, and in light of the potential of an imminent sale of the property, the Court enters the following order:

1. The evidentiary hearing shall be rescheduled by the Clerk's Office.
2. If Defendant completes a sale of the property prior to the next court date, she shall place \$10,000.00 of the proceeds in her attorney's IOLTA account to be held until further order of this court. This is a temporary hold-back that will be subject to modification at the evidentiary hearing.

SO ORDERED:

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

DATE: 11/11/24

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-0915

PAPER CITY PROPERTY MANAGEMENT, )

Plaintiff )

v. )

HENRY GARCIA, )

Defendant )

ORDER FOR ENTRY OF  
JUDGMENT

This matter came before the Court on October 31, 2024 for a continued motion by Plaintiff for entry of judgment. Defendant claims to have a pending RAFT application but concedes that he has had many applications that have timed out. The prior court order indicates that one reason his last application timed out was his inability to prove that he had suffered a financial hardship.

The current balance owed is \$13,064.00, almost twice as much as the \$7,064.00 Defendant acknowledged that he owed when the parties entered into a repayment agreement dated April 25, 2024. Defendant has not made a single payment since the agreement was made, despite agreeing to pay \$500.00 twice per month.

At this time, the arrearage has ballooned and there is no evidence that RAFT will provide rental assistance. Even if it does, the maximum amount of assistance is \$7,000.00, leaving a balance of \$6,064.00. Plaintiff would not be able to accept the \$7,000.00 unless it agreed to waive the balance or enter into another repayment agreement. Under the circumstances, the Court cannot order Plaintiff to enter into a



repayment agreement considering Defendant's failure to make any of the payments he previously agreed to make.

Accordingly, the following scheduling order shall enter:

1. Judgment for Plaintiff shall enter for possession and \$13,064.00 in damages. Court costs have been paid (as stipulated in the agreement of the parties).
2. Execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: November 11, 2024

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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ONE HOLYOKE CDC,

Plaintiff,

-v.-

DOCKET NO. 24CV00861

CINDY TORRES, CHASSIDY TORRES &  
ANNELISE COLON,

Defendant.

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ORDER

This matter came before the court on November 8, 2024 for a hearing on the plaintiff's amended motion for injunctive relief. The plaintiff appeared through its attorney, together with property manager Aida Cruz. None of the defendants appeared, despite service by the deputy sheriff.

The three defendants are tenants of the plaintiff-landlord at 131 Sargeant Street, Apt. 4R in Holyoke, Massachusetts. In the past several months there have been disturbances on the back porches of 413 Maple Street which are connected to the porches of 131 Sargeant Street. These disturbances were caused by the defendants and included physical altercations, destruction of property, and threats to other tenants and their families. The police have been called to stop the violence. Defendant Cindy Torres was arrested for assault and battery and disorderly conduct (P Exh).

The plaintiff asks the court to enter an order that the defendants cease and desist from further behavior that interferes with the quiet enjoyment of the other tenants in the building.

Without opposition, and based on the plaintiff's presentation at the hearing, the court finds that the plaintiff has demonstrated a likelihood of success on the merits because the defendants' behaviors constitute a serious interference with the quiet enjoyment of the premises

by the other tenants. There would be serious harm to the plaintiff if the court did not order the injunctive relief as requested because the plaintiff could not maintain appropriate living arrangements for all the tenants in the building. Conversely, the court does not find any harm to the defendants if they are ordered to do what is already required of them by the terms of their tenancy. Finally, the public interest is satisfied if the subject property is maintained as a place of peace and quiet enjoyment for all the tenants.

Therefore, the following **order** will enter immediately:

**The defendants are ordered to cease and desist from all behaviors which interfere with the quiet enjoyment of the other tenants in the building at 113 Sargeant Street and 413 Maple Street in Holyoke, Massachusetts.**

The plaintiff will pay the \$90 statutory injunctive relief fee pursuant to G.L. c. 262 §4 to the Clerk's Office forthwith.

November 12, 2024

*Fairlie A. Dalton*

Fairlie A. Dalton, J. (Rec.)

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**Hampden, ss.**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION**

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**CRAIG RIEL,**

**Plaintiff,**

**-v.-**

**DOCKET NO. 24CV00721**

**JENIFFER LEAHY,**

**Defendant.**

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**ORDER**

This matter came before the court on November 8, 2024 for a hearing on the defendant's motion to enforce the parties' September 13, 2024 Agreement regarding the plaintiff's retrieval of the rest of his belongings from the defendant's house. Both parties appeared and were self-represented.

In their September 13 Agreement, the parties agreed that the plaintiff would have until September 27, 2024 to remove his belongings, exclusive of a bed. In her motion, the defendant asked that he remove them by October 31, 2024 or that she be given permission to dispose of them. The plaintiff testified that he tried to remove them but was denied access or given only a short time to do so because the police escort only stayed for fifteen minutes.

As agreed at the hearing:

1. The plaintiff will retrieve all his belongings from the defendant's house and shed, exclusive of the bed, on Thursday, November 14, 2024 from 1:00 p.m. to 3:00 p.m.
2. Any belongings which are to be disposed of will be removed by the plaintiff and disposed of by him.
3. Each party may have another person present in the premises to assist them and to act as a witness.

4. The plaintiff will arrange for a police escort beginning at 1:00 p.m. The parties understand that it has been the practice of the police not to remain for the entire time. If either party wishes a police presence for the entire time but the police do not agree to stay, that person may hire a police detail to be present.

It is further ordered:

5. If the plaintiff is unable to keep the November 14, 2024 appointment to remove his belongings (e.g., if he cannot rent a truck or cannot get a police escort), he will have his mother notify the defendant by text as soon as possible and he will file a motion to set a new date to remove his belongings.
6. The defendant does not have permission to dispose of the plaintiff's belongings at this time.
7. With respect to the bed, the parties agreed that eventually it will be moved to the basement while the plaintiff continues to make payments to the company. Because it is a specialized bed, there is concern that it is not damaged in the move. The defendant will contact the Sleep Number Company to determine if the company can disassemble and move the bed professionally. If the company will do so, she will arrange for the bed to be so moved as soon as possible and will notify the plaintiff through a text to his mother.

Finally, it is ordered:

8. Any restraining order(s) currently in effect between the parties issued by the District Court remain in full force and effect and are not amended in any way by today's order. The parties are responsible to comply with today's order in such a way that complies with any such District Court order(s).

November 12, 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-1939**

<p><b>S &amp; C INVESTORS, LLC,</b></p> <p style="text-align:right"><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>MARIE PATRUNO et al.,</b></p> <p style="text-align:right"><b>Defendants.</b></p>	
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**ORDER**

After hearing on November 6, 2024, on the tenant's motion to cancel a physical eviction the following order shall enter:

1. The court recessed the hearing to afford the tenant to consult with the Tenancy Preservation Project (TPP). After said consultation, Ms. White of TPP reported that her agency will open a case with Ms. Patruno as it shares the court's concern voiced on the record by the judge that there may be a nexus between the tenant's mental health concerns that she stated on the record (severe depression, PTSD, and anxiety).
2. Additionally, the tenant stated that she is a victim of domestic violence perpetrated by a family member against whom she has a 209A restraining order.

3. The tenant also has a \$1,000 money order to give to the tenant at the hearing (which will be witnessed by Court Officer).
4. The referral was made to TPP and the parties shall work cooperatively with TPP.
5. Ms. White of TPP quickly met with Community Legal Aid's Fair Housing Unit who agreed to meet with the tenant.
6. As a reasonable accommodation, the eviction scheduled for November 7, 2024, shall be cancelled by the landlord. The landlord's attorney shall send an invoice for the costs incurred by the landlord in scheduling and cancelling the eviction with copies of the bills from the constable and the moving company and said sums shall be added to the tenant's rental debt.
7. The tenant asserts that she has a pending RAFT application. Also, as a reasonable accommodation, beginning in December 2024 the tenant shall pay her rent plus \$50 extra per month towards arrearage not covered by RAFT until the balance is \$0. The RAFT program should view this extra payment as a "repayment plan" for RAFT purposes.
8. This matter shall be scheduled for review on **November 15, 2024, at 9:00 a.m.**

So entered this 12<sup>th</sup> day of NOVEMBER, 2024.

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Robert Fields, Associate Justice

Cc: Alicia White, TPP

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-1766

**RAVELLO ROSA REALTY INVESTMENTS,  
LLC,**

**Plaintiff,**

**v.**

**BRENDA RENAUD and DAVID PANTOJA,**

**Defendants.**

**ORDER**

After hearing on November 8, 2024, on the landlord's motion to strike or dismiss the tenants' claims and defenses, the following order shall enter:

1. Counsel for the landlord argued that the tenants' responses to discovery were so insufficient that their claims should be dismissed or struck from this action.
2. To make a determination whether or not the tenants' discovery responses were deficient, the court engaged the parties in a hearing in which the demand requests and the tenants' response were reviewed.



3. Even though Attorney Komack's motion was not properly formatted to include (1) the discovery question, (2) the response, and (3) argument as to why the response was deficient, the court proceeded with the motion hearing by reviewing the discovery demand, separately review the tenants' responses, and then review the motion.
4. The court finds that the tenants have attempted to comply with the landlord's discovery demand but that that said responses are in need of supplementation and the motion to strike the tenants' claims and defenses is denied.
5. Instead, the tenants shall be required to supplement their discovery responses within thirty days from the date of this order noted below by providing the following in that time frame.
  - a. Supplement their responses to the interrogatories;
  - b. Respond to the request for documents with a list of each request and whether they are providing documents that relate to said request by number and then provide documents that are labeled with that number;
  - c. Respond to the request for admissions.
6. A trial has been scheduled for **December 20, 2024, at 9:00 a.m.**

So entered this 13<sup>th</sup> day of November, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-3517

SC&H PEARL STREET LLC,  
Plaintiff

v.

SHANNON OSKI AND ARVIND MAHARAJ,  
Defendants

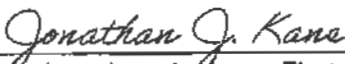
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the court for a bench trial on November 14, 2024. Plaintiff appeared through counsel. Defendant Oski appeared self-represented.<sup>1</sup> Plaintiff seeks to recover possession of the residential premises located at 220 Pearl Street, Unit 3L, Springfield, Massachusetts from Defendant.

The parties stipulated to Plaintiff's prima facie case for possession and unpaid rent in the amount of \$5,398.00. Defendants did not file an answer and Defendant Oski raised no defenses at trial. Accordingly, the following order shall enter:

1. Judgment shall enter for Plaintiff for possession and \$5,398.00 in damages, plus court costs.
2. Execution (eviction order) will issue by application ten days after the date judgment enters.

SO ORDERED.  
November 14, 2024

  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

<sup>1</sup> Defendant Maharaj did not appear. Plaintiff may seek a default judgment against him

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 18-CV-641

CITY OF CHICOPEE, HEALTH DEPARTMENT,

Plaintiff,

v.

GEORGE WHITEHEAD, et al.,

Defendants.

ORDER

After hearing on November 8, 2024, on the Receiver's motion to authorize its sale of the subject property at which no party other than the moving party appeared, the following order shall enter:

1. Receiver's counsel reported to the court that the Probate & Family Court recently issued an order which identifies the heirs of the defendant Georg Whitehead.
2. Those heirs, **James Schoedinger** with an address of [REDACTED] and **Edward J. Whitehead, Jr.** with an

address of [REDACTED] are indispensable parties under Mass. R. Civ. P. 19 and shall be added as party-defendants.

3. The Receiver shall have these new defendants served with the summons and complaint and a copy of its instant motion forthwith.
4. The Receiver shall file a motion to establish its lien and serve all parties by no later than November 29, 2024. Said motion shall refer to earlier (ones that have already been filed in this action) and updated Receiver Reports (to be filed with the motion).
5. The Receiver shall reach out to the plaintiff city's counsel regarding this case, update them, and inform them that the court is expecting them to appear at the next hearing prepared to address all pending motions.
6. This matter shall be scheduled for hearing on properly marked motions and on review of this receivership on **December 13, 2024, at 9:00 a.m.**

So entered this 15 day of November, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23-SP-2309

THE COMMUNITY BUILDERS, INC.,

Plaintiff

v.

EVELYN GORE,

Defendant

ORDER ON DEFENDANT'S MOTION  
TO WAIVE APPEAL BOND

Defendant's motion to waive the appeal bond in this summary process action came before the Court by Zoom on November 13, 2024. Plaintiff appeared through counsel. Defendant did not appear. Defendant's daughter appeared and represented that she was her mother's health care proxy. Defendant's guardian ad litem did not appear.

On August 12, 2024, final judgment entered against Defendant, who currently resides in an extended care facility. Judgment entered after Defendant's guardian ad litem and a service coordinator from the Tenancy Preservation Program both reported that Defendant was not likely to return to her apartment from the long-term care facility. Defendant filed a notice of appeal on August 23, 2024, and subsequently moved to waive the appeal bond and "transcript fee."

Although Defendant does not reside in the premises, Defendant remains in possession of the property; therefore, her appeal is conditioned by statute on the posting a bond and making periodic use and occupancy payments pending the

resolution of the appeal. See G. L. c. 239, § 5 (c); *Bank of N.Y. Mellon v. King*, 485 Mass. 37, 45-46 (2020). She is entitled to a waiver of the bond (but not necessarily use and occupancy payments<sup>1</sup>) where she demonstrates both indigency (as defined in G.L. c. 261, § 27A) and the existence of a nonfrivolous defense. See G. L. c. 239, § 5(e)(7).

The Court finds that Defendant is indigent under the statute. With respect to the second prong, the Court notes that the bar for identifying of a nonfrivolous defense is low. See *Adjartey v. Central Div. of Housing Court*, 481 Mass. 830, 859 (2019) (a “determination that a defense is frivolous requires more than the judge’s conclusion that the defense is not a winner; frivolousness imports futility -- not ‘a prayer of a chance’”). Defendant did not appear and did not submit a written brief with respect to possible defenses.<sup>2</sup> It is not self-evident that Defendant has defenses to what was, in effect, judgment by default.

Accordingly, the Court denies Defendant’s motion to waive the requirement that she pay an appeal bond. The Court finds that the balance of unpaid rent is \$5,780.45 through November 2024. Because Defendant was not present, the Court has no basis to order an amount of use and occupancy that is less than the monthly rent, which is \$1,250.00.

Based on the foregoing, the following order shall enter:

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<sup>1</sup> See *Frechette v. D’Andrea*, 494 Mass. 167, 169 (2024) (“use and occupancy payments required of indigent party may not be waived, substituted or paid by the Commonwealth under the indigency statute”).

<sup>2</sup> Defendant’s daughter cannot represent her mother in this case. She offered no evidence that she has the authority to act on her mother’s behalf (for example, appointment as a legal guardian).

1. Defendant's motion to waive the appeal bond is denied. Defendant shall pay \$5,780.45 to the Court within one week of the date this order enters.

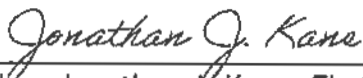
2. Beginning on December 1, 2024 and on the first day of each month thereafter during the pendency of the appeal, Defendant shall pay Plaintiff \$1,250.00 for use and occupancy.<sup>3</sup>

3. Defendant's motion to waive transcription fees for the hearing on August 12, 2024 is allowed. If she requires transcripts of other hearings, she must, within ten (10) days of the date this order enters, identify the hearings she wishes to be transcribed and the Court will consider whether the transcriptions are necessary to pursue the appeal.

4. 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.

November 15, 2024

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>3</sup> Despite not residing in the unit, Defendant is preventing Plaintiff from renting the unit.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

BERKSHIRE, SS  
FRANKLIN, SS  
HAMPDEN, SS  
HAMPSHIRE, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Docket No. 24-SP-03645

\*\*\*\*\*  
Ming Tsang \*  
PLAINTIFF \*  
\*  
v. \*  
\*  
Maribel Gonzalez and Carlos Gonzalez, \*  
Other Occupants<sup>1</sup> \*  
DEFENDANTS \*  
\*\*\*\*\*

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

This is a summary process action in which the plaintiff seeks to recover possession of the premises from the defendants and damages for unpaid rent. The defendants appeared for trial and testified.

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

The defendants, Maribel Gonzalez and Carlos Gonzalez, have resided at 20 Gordon Street, Springfield, MA ("the premises") as tenants under a written lease from September 2023 through August 31, 2024, and as tenants at will thereafter. The plaintiff, Ming Tsang, is the owner of the premises and is the defendants' landlord. The rent for the premises is \$1,520.00 per month and is due on the first day of the month. The defendants have failed to pay the plaintiff

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<sup>1</sup> There was no evidence at trial that any adults other than the named defendants occupy the premises. Accordingly, the remainder of this decision is limited to the named defendants only.





unpaid rent.

The Court finds that, on July 29, 2024, the plaintiff served the defendants with a legally sufficient Notice (30) Day Notice To Quit.

The Court finds that the plaintiff has established her case for possession of the premises and damages for unpaid rent in the amount of **\$1,520.00**, plus costs.

The defendant Carlos Gonzalez testified that the defendants need an additional year in which to find alternative housing.

The defendant Maribel Gonzalez testified that the defendants have been trying to find alternative housing, but it is difficult to do so.

The plaintiff testified that she would agree to give the defendants until the end of September 2025 to find alternative housing.

The Court credits the parties' testimony on these issues.

G.L. c. 239, §9 provides, in pertinent part: "In an action of summary process to recover possession of premises occupied for dwelling purposes, ...where a tenancy has been terminated without fault of the tenant, either by operation of law or by act of the landlord, except by a notice to quit for non-payment of rent as provided in section twelve of chapter one hundred and eighty-six, a stay or stays of judgment and execution may be granted, as hereinafter provided, for a period not exceeding six months or for periods not exceeding six months in the aggregate, or, for a period not exceeding twelve months, or for periods not exceeding twelve months in the aggregate in the case of premises occupied by a handicapped person or an individual sixty years of age or older, as the court may deem just and reasonable, upon application of the tenant..."

G.L. c. 239, §10 provides, in pertinent part: "Upon application for such a stay of proceedings, the court shall hear the parties, and if upon the hearing it appears that the premises of which possession is sought to be recovered are used for dwelling purposes; that the applicant

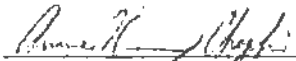
cannot secure suitable premises for himself and his family elsewhere within the city or town in a neighborhood similar to that in which the premises occupied by him are situated; that he has used due and reasonable effort to secure such other premises; that his application is made in good faith and that he will abide by and comply with such terms and provisions as the court may prescribe; or that by reason of other facts such action will be warranted, the court may grant a stay as provided in the preceding section, on condition that the terms upon which such stay is granted be complied with..."

The Court finds that, in all of the circumstances of this action, a stay in the issuance of the execution is warranted, pursuant to G.L. c. 239, §§9 and 10.

**ORDER FOR JUDGMENT**

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

1. Judgment enter for the plaintiff for possession of the premises and damages for unpaid rent in the amount of **\$1,520.00**, plus costs.
2. Execution issue on October 1, 2025, upon written request of the plaintiff.

  
**ANNE KENNEY CHAPLIN**  
**ASSOCIATE JUSTICE**

**Date:** November 17, 2024

**cc:** Ming Tsang  
Maribel Gonzalez  
Carlos Gonzalez

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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HIGH STREET COMMONS,

Plaintiff,

-v.-

DOCKET NO. 23SP03666

JENNIFER A. MITCHELL & PRENTISS  
ANDERSON, JR.,

Defendant.

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ORDER

This matter came before the court on November 15, 2024 for further hearing. After a hearing on October 11, 2024 on the defendant's motion to stop the move-out scheduled for October 16, 2024, the court ordered the move-out stopped and stayed the execution pursuant to G.L. c. 235 §23 pending further hearing. 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.

The court outlined the chronology of this cause eviction case in its October 11, 2024 order and incorporates it here. The order also required the parties to take certain actions regarding RAFT and payments toward the arrearage.

The plaintiff reports that the defendant's arrearage is \$8,819 in the unpaid tenant share of the subsidized rent through November 2024 and \$195.01 in costs. The cancellation fee (\$750) for the October 16 stopped move-out was not paid. For the past year, the tenant's share of the monthly rent/use and occupancy has been \$259.

Despite the defendant's offer and the court's order that she pay \$740 toward the arrearage by the close of business on October 15, 2024, she did not do so. Nor did she pay the November use and occupancy (\$259) as ordered. However, she brought a \$900 money order to court. She

had not completed her application for RAFT financial assistance. Janis Luna of Wayfinders reported that the defendant filed another RAFT application.<sup>1</sup> Wayfinders has requested further documentation of the defendant's hardship/good cause for failing to pay her portion of the subsidized rent/use and occupancy. Because this is a subsidized tenancy, RAFT could pay a maximum of six months of the tenant's share (\$259) for the months for which she can demonstrate a hardship/good cause and costs. She reports that the hardship was that she paid \$500 to retrieve her car. As the plaintiff points out, this could explain two months of non-payment of rent/use and occupancy. The court notes that the defendant reported that she paid \$518 toward her electric bill. It is not clear why she did not apply for RAFT financial assistance for the utility arrearage which Wayfinders could have paid in addition to the rental arrears (up to a total of \$7,000). Ms. Mitchell has until Monday, November 18, 2024 to submit the hardship documentation or her application will timeout again. Even if she is approved for RAFT, she will have a substantial balance, so that she will need to propose a realistic payment plan for the balance.

The court stopped the October 16 move-out and stayed the execution based on equitable grounds described by the defendant at the October 11 hearing. Over the objection of the plaintiff, who reports that the defendant's continued failure to pay her portion of the rent/use and occupancy is causing a financial burden, the court stays the execution further to give the defendant a final opportunity to complete the RAFT application, if possible, to make payments toward the arrearage, and to propose a payment plan for the balance.

#### **Orders**

After hearing, the following orders will enter:

1. The case is continued for further hearing on **December 6, 2024 at 9:00 a.m.** The Clerk's Office is asked to send notice with this order.
2. The defendant will make the following payments to the landlord:
  - a. \$900 to be paid immediately and applied to the arrearage through November, and
  - b. \$259 for December use and occupancy no later than December 5, 2024.
3. The parties will complete the RAFT application process:

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<sup>1</sup> Ms. Mitchell had filed at least three RAFT applications before the October 11, 2024 hearing. They timed out because the defendant did not provide the required hardship documentation.

- 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.
4. The execution is stayed pending the hearing on December 6, 2024. 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.
5. This stay of the execution is ordered within the meaning of G.L. c. 235 §23. This further 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 December 6 hearing.

November 18, 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-2549

KENNETH KAUFFMAN and BENJAMIN  
KAUFFMAN,

Plaintiffs,

v.

KYLE SHERMAN and SHERI HARRIS,

Defendants.

ORDER

This matter came before the court for trial on November 13, 2024. The landlords appeared through counsel and the tenants appeared self-represented. After consideration of the evidence admitted at trial, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The landlords, Kenneth and Benjamin Kauffman (hereinafter, "landlords") own a two-family dwelling at 24 Hathaway Street in North Adams, Massachusetts. Kyle Sherman and Sheri Harris (hereinafter, "tenants") rent Unit

- B, the upstairs unit at that location (hereinafter, "premises") for \$1,200 per month rent.
2. On or about June 5, 2024, the landlords served the tenants with a 14-day notice to quit for non-payment of rent. Thereafter, the landlords filed and served a summary process action seeking non-payment of rent. The tenants filed an Answer with defenses and counterclaims regarding conditions of disrepair, cross-metering, and harassment.
  3. **The Landlords' Claim for Use and Occupancy and Possession:** The parties stipulated to the landlords' *prima facie* case for use and occupancy and possession with the tenants agreeing to timely service of the notice to quit and to the amount of outstanding use and occupancy through November 2024 totaling **\$9,600**. What remains for the court's adjudication are the tenants' defenses and counterclaims.
  4. **Cross-Metering; Breach of the Covenant Quiet Enjoyment:** The laundry room at the premises is used by both apartments located at 24 Hathaway Street in North Adams. The electricity and the gas used for that space and appliances is solely on the tenants' utility meters. The fact that there are only two utilities meters for the dwellings and the landlord's text in Exhibit 6 admits the cross-metering when offering to pay for utilities used by the "lower unit" and the facts support an inescapable conclusion that the tenants are paying for the utilities in the common area laundry room
  5. This "transfer" of the responsibility for such utility service is a violation of G.L. c. 186, s.14 and the damages to be awarded the tenants is either the entire gas

and electric utility bills or three months' rent, whichever is greater. Having not provided the court with their bills, the tenants shall be awarded three months' rent totaling \$3,600.

6. Additionally, the landlords shall immediately put the utilities for the common area laundry room in their names to prevent future cross-metering.
7. **The Tenants' Other Defenses and Counterclaims:** The tenants failed to meet their burden on their remaining claims of harassment and breach of the warranty of habitability.
8. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c. 239, s.8A, the tenants have ten (10) days from the date of this order noted below to deposit with the Court's Clerk's Office \$ 4104.24. This amount represents the award of damages awarded to the landlord of \$9,600 in unpaid use and occupancy MINUS the damages awarded the tenants of \$3,600 (\$6,000) plus court costs of \$ 338.42 and interest of \$ 165.82.
9. If the tenants make this deposit in full and timely, judgment shall enter for them for possession and the deposited funds shall be disbursed to the landlords' counsel. If the tenants do not make this deposit, a judgment for possession and for \$6000 plus court costs and interest shall enter for the landlords.

So entered this 18 day of November, 2024.

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

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-SP-380

LUDLOW HOUSING AUTHORITY,  
  
Plaintiff,  
  
v.  
  
JAZLYN HERNANDEZ,  
  
Defendant.

ORDER

After hearing on October 23, 2024, on the landlord's motion for entry of judgment at which the tenant failed to appear, the following order shall enter:

1. The motion is allowed, and judgment shall enter for the landlord for possession and for \$833 in outstanding use and occupancy.
2. Ms. Battista from the Tenancy Preservation Program (TPP) joined the hearing and informed the court that the tenant informed her that automatic bills were paid from her account before she could withdraw the funds to pay the landlord

and that the tenant can pay \$600 today and the remaining \$233 by October 25, 2024.

3. If those sums are paid in full and by those deadlines, the landlord shall return the judgment to the court satisfied and the case dismissed.

So entered this 14 day of November, 2024.

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Robert Fields, Associate Justice

Cc: TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2972

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PRB, LLC,  
Plaintiff

v.

ORDER

MARYANN BERTHIAUME,  
Defendant

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This matter came before the Court on November 15, 2024, for review. Plaintiff appeared through counsel. Defendant appeared self-represented. Also present were Roger Reid, Esq., Defendant's guardian ad litem ("GAL"), and Michael Richtell from the Tenancy Preservation Program ("TPP"). Based on reporting by the GAL and TPP, the following order shall enter:

1. Defendant shall continue to take the medication prescribed by her health providers, which seem to have ameliorated the conduct that caused this case to be filed.
2. Defendant shall continue to cooperate with her GAL and TPP, as well as her other providers, and follow their recommendations.
3. Defendant shall have no written or verbal contact with management or other residents, except in the case of emergency. She shall communicate through her GAL or TPP until further court order.

4. If Plaintiff receives complaints about Defendant or its employees or agents witness behavior consistent with that described in the notice to quit, it shall notify TPP prior to filing a motion with this Court.

5. Unless either party (or someone acting on behalf of Defendant) files a motion or otherwise brings this case forward by February 28, ~~2025~~, this GAL shall be discharged and the case will be dismissed automatically.

SO ORDERED.

November 18, 2024

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

cc: Court Clinic

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

ORDER

This summary process case came before the Court on November 15, 2024, on Defendant's motion for a continuance. Plaintiff appeared through counsel. Defendant appeared with counsel from the Lawyer for the Day Program.

After a bench trial, the Court entered judgment for possession in favor of Plaintiff on October 9, 2024. The Court bifurcated the issue of monetary damages because, at trial, Plaintiff did not bring an admissible business record and because Defendant, who contested the amount claimed by Plaintiff, did not have evidence of the payments she claims to have made. Defendant now seeks additional time to prepare for the evidentiary hearing. The following order shall enter:

1. Defendant shall be referred to the Tenancy Preservation Program.
2. Defendant shall pay \$1,050.00 by the 5<sup>th</sup> day of each month beginning in December and continuing 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. The parties shall appear on December 20, 2024 at 9:00 a.m. for an evidentiary hearing as to the rental arrears owed.

SO ORDERED.

November 18, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT  
DEPARTMENT OF  
THE TRIAL COURT  
CIVIL ACTION  
No. 24H79CV000743

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TOWN OF MONTAGUE BY AND THROUGH  
ITS DIRECTOR OF PUBLIC HEALTH,  
Plaintiff

v.

ALYCAR INVESTMENTS, LLC  
Defendants

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Re: Premises: 106-108 3<sup>RD</sup> Street, Turner's Falls, MA

ORDER

After a status conference on Friday, November 1, 2024 the following order is to enter:

1. On September 17, 2024, the Town of Montague filed this complaint with the Western Housing Court alleging various sanitary code violations at the Defendant's property, located at 108 Third Street, Turners Falls, MA (the "Property"), dating back to notices which began being sent by Plaintiff in June, 2024.
2. Pursuant to the terms of the Order endorsed by this Court on October 4, 2024 (the "October 4 Order"), in relevant part, the Defendant agreed to remedy all existing code violations and pay in full all previous inspection fees associated with the Property.
3. On Wednesday, October 30, 2024, Counsel for the Plaintiff confirmed that the Property had been sold in a foreclosure auction, and the Defendant was no longer the Property's owner, as verified by the foreclosure deed recorded with the Franklin County Registry of Deeds on October 30, 2024. A true and accurate copy of said deed is attached hereto as Exhibit A.
4. However, pursuant to the terms of the October 4 Order, the Defendant "shall pay in full all previous inspection fees, associated with the Property, currently in the amount of \$6,000.00, no later than February 3, 2025."
5. Such fees remain outstanding in the amount of \$2,700.00.

6. Given the outstanding fees owed to the Plaintiffs under the terms of the October 4 Order, the Parties agreed after a colloquy with the Judge to continue the matter to February 7, 2025
7. The parties shall return for a status hearing on Friday, February 7, 2025 Either party may file any motions to be heard on that day including any motions for contempt or motions to appoint a limited receiver.

So entered this 18 day of November, 2024.

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



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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ADRIANYS ULLOA,

Plaintiff,

-v.-

DOCKET NO. 24CV00774

469 STATE ST LLC,

Defendant.

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ORDER

This matter came before the court on November 15, 2024 for a hearing on the plaintiff's motion to enforce a court order. The plaintiff appeared and was self-represented. The defendant appeared through its attorney.

After hearing, the motion is continued to **November 22, 2024 at 9:00 a.m.**

The plaintiff will bring copies of *all* reports and orders of the City of Springfield Inspectional Services Department and a *written* list of the repairs which are needed at her apartment at this time. (She may print out the list which she says is in a text.)

The defendant's property manager Solomon Teets will be present at the hearing. He will be prepared to testify about all repairs made or attempted to be made at the plaintiff's apartment.

November 18, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Franklin, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24CV0880

KEVIN BURNS

PLAINTIFF(S)

v.  
THUY BICH REED

DEFENDANT(S)

ORDER

After hearing at which  both parties  plaintiff only  defendant only appeared, the Court orders the following:

After hearing on November 15, 2024 on Plaintiff's two emergency motions to restore services, the motions are DENIED and the Court's November 4, 2024 order is terminated.

The subject premises is a camper situated at the White Birch Campground in Whately, Massachusetts. Burns had a license to use the campground in common with others until October 31, 2024. The campground's permit to operate expired on October 31, 2024 as evidenced by the letter from the Foothills Health District. Plaintiff's request would essentially require the campground to reopen and restart operations.

After evaluating in combination the respective parties' risk of irreparable harm and chance of success on the merits (see *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980)), the balance favors Defendant.

Therefore, Plaintiff has failed to demonstrate he is entitled to injunctive relief. His motion is DENIED.

SO ORDERED: Jonathan J. Kane DATE: 11/19/24  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NOS. 23-SP-4085  
AND 23-SP-4086

ISANTHES, LLC,  
Plaintiff

ORDER

v.

RODNEY E. GOULD AND JONATHAN BROWN,  
Defendants

These post-foreclosure summary process cases came before the Court for a virtual hearing on November 19, 2024. Plaintiff appeared through counsel. Jonathan Brown appeared; Rodney Gould did not appear. A levy is scheduled for November 21, 2024. Defendants jointly filed motions to stop the eviction in each case. The Court shall treat them together.

By way of procedural history, Rodney E. Gould is the prior owner of 29-31 Rush Street, Springfield, Massachusetts. The property was the subject of a foreclosure sale on September 30, 2022. The property has three separate rental units. Docket Number 23-SP-4085 relates to possession of the first floor; Docket Number 23-SP-4086 relates to possession of the third-floor unit. Plaintiff has already recovered possession of the second-floor unit. Notices to quit for both the first and third floor units were served in August 2023.

Judgment for possession entered in favor of Plaintiff in 23-SP-4086 (3<sup>rd</sup> floor) on October 31, 2023, and in 23-SP-4085 (1<sup>st</sup> floor) on March 4, 2024. No appeal was taken in either case. Execution issued on May 24, 2024, in 23-SP-4086 and on June 26, 2024,

in 23-SP-4085. When the officer levying on the executions arrived at the property, an individual not named in the case (Eugene Brown) claimed to have rights to possession to one or both units. After hearing on July 22, 2024, the Court determined that no person other than the named defendants had a possessory right in the property.

To give the deputy sheriff authority to proceed with the levy, the Court ordered the issuance of a new execution in both cases naming Jonathan Brown, Rodney E. Gould “and all other occupants.” A written order entered July 23, 2024. On the same date, Defendants filed a notice of appeal, a motion to waive the appeal bond and a motion to stay all court orders.

On August 27, 2024, the Court heard argument on the various motions. Although a written order appears not to have been docketed, the Court denied all motions. The motion to waive the appeal bond was moot because Defendants were not appealing a final judgment. See G.L. c. 239, § 5 (“If either party appeals from a judgment of ... a housing court ...”) (emphasis added).<sup>1</sup> The motion to stay all proceedings was predicated on an argument that they have been deprived of their right to cross-examine witnesses because they were not given a trial. However, there was no trial because Plaintiff prevailed on its motion for summary judgment, and

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<sup>1</sup> Even if the provision of the statute applied, to be successful on their motion to waive the appeal bond, Defendants need to show both that they are indigent and that they have a nonfrivolous defense on appeal. See G. L. c. 239, § 5; *Adjartey v. Central Div. of the Housing Ct. Dept.*, 481 Mass. 830, 859 (2019). Here, they do not satisfy the second requirement. Judgment for possession entered against both Defendants months ago and was not appealed. The only reason a new execution was necessary is that Jonathan Brown’s brother, Eugene Brown, claimed that he had been residing at the property. He has not filed a pleading to be added to the case or an application for injunctive relief. He did not appear at the hearing to present evidence as to his right to possession. A bare assertion of possessory rights by a third party does not create an appellate issue for Defendants. Accordingly, even if the appeal bond provisions applied, the Court finds the appeal to be frivolous.

Defendants did not take an appeal. Defendants made no other credible argument to support their motion to stay all proceedings.

Now, Defendants seek to stop the eviction and, once again, they rest on legal arguments, namely that the Court does not have subject matter jurisdiction. The Housing Court does have jurisdiction over post-foreclosure summary process cases, however. *See, e.g., Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011). Once again, Defendants fail to make a compelling argument for equitable relief.

Based on all the circumstances, the Court denies Defendants' motion to stop the levy scheduled for November 21, 2024.

SO ORDERED.

November 19, 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  
DOCKET NO. 24-CV-0937

WARE HOUSING AUTHORITY,  
Plaintiff

v.

BEATRIZ ROMAN,  
Defendant

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ORDER

This matter came before the Court on November 19, 2024 on Plaintiff's emergency motion for injunctive relief. Plaintiff appeared through counsel. Defendant appeared self-represented.

After hearing, the Court finds that Plaintiff is entitled to injunctive relief in the nature of a preliminary injunction as follows:

1. Defendant shall cease and desist from behaviors that interfere with the peaceful enjoyment of other tenants.
2. Defendant shall comply with the terms of the Harassment Prevention Order requiring her to maintain 10-yard distance from the Executive Director, Linda Hanssen, and prohibiting further forms of harassment toward Ms. Hanssen.
3. Until further Court order, Defendant shall not communicate with the Executive Director, orally or in writing, except in the case of a bona fide emergency.

4. Defendant shall not enter the management office and shall only enter and exit the common room through the laundry area and shall do so solely for the purpose of doing laundry.
5. A referral shall be made to Tenancy Preservation Program (Michael Richtell was present by Zoom and agreed to meet with her) based on Defendant's statements and conduct in courtroom.
6. An evidentiary hearing for entry of a permanent injunction, including Plaintiff's request that Defendant vacate the premises, shall be held on December 12, 2024 at 2:00 p.m. TPP may appear by Zoom.
7. The \$90.00 legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: November 19, 2024

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH

Hampden, ss.

Housing Court Department  
Western Division  
Civil Action No. 24-SP-2361

FOREST PARK CONDOMINIUMS LP  
Plaintiff

v.

TIFFANY DINOIA  
Defendant

**ORDER**

After hearing on November 20, 2024, at which the Plaintiff appeared with counsel, the Defendant appeared, and the Defendant's GAL (James Taylor Brown, Esq.) appeared, the Court orders the following which is adopted from the requests of counsel of the Plaintiff and the GAL for the Defendant:

1. The parties reported that there are three documents missing from February 1, 2024 annual tax credit recertification. The items are verification from Citizens Bank that the Defendant's account has been closed and verifying the date the account was closed, verification of the Defendant's child support as of 2/1/24 and verification of TAFDC benefits as of 2/1/24.
2. The GAL is authorized to subpoena the documents necessary to complete the 2024 recertification process, including but not limited to, records regarding TAFDC benefits, records regarding child support payments, and bank statements. Additionally, the GAL is authorized to sign the 2024 and 2025 annual recertifications on behalf of the Defendant as is necessary to prevent further frustration of the recertification process.
3. Upon submission of the missing documentation to the Plaintiff and confirmation by the Plaintiff that the recertification is complete, the Defendant shall execute the completed recertification documents.
4. This case shall remain open through March 31, 2025 to ensure that all annual tax credit recertifications are completed.

Dated: November 20, 2024

  
Jonathan J. Kane, First Justice



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24CV0930

RONALD TABB

PLAINTIFF(S)

v.  
EVAN CIOFFI

DEFENDANT(S)

ORDER

After hearing at which  both parties  plaintiff only  defendant only appeared, the Court orders the following:

Based on the evidence elicited at the hearing on November 20, 2024 on Plaintiff's motion for injunctive relief, the Court finds that Defendant is not a tenant and his right to reside in the subject premises derives through his mother. Defendant's mother and Plaintiff are in the process of getting a divorce. Although Defendant's mother is a joint owner of the home, she has moved out of state with no intention of returning. Plaintiff, who resides in the home with Defendant, seeks an order that Defendant vacate the subject premises.

Although Defendant's mother is a co-owner pending the outcome of the divorce proceedings, she voluntarily left the home and it would be inequitable to require Plaintiff to continue to house Defendant, who pays no rent or costs, indefinitely.

After evaluating in combination Plaintiff's claim of injury and chance of success on the merits (see *Packaging Industries Inc. v. Cheney*, 380 Mass. 609, 617 (1980)), the Court finds that a preliminary injunction should issue on the following terms:

1. Defendant must vacate the subject premises no later than January 1, 2025.
2. Defendant shall not cause any property damage and maintain sanitary conditions in the premises.
3. The parties shall return for further order on January 3, 2025 at 2:00 p.m. If Defendant has not vacated, Plaintiff may seek an order from this Court to enforce the vacate date. No further motion is required.

SO ORDERED: */s/ Jonathan J. Kane* DATE: 11/20/24  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 23CV0016

TOWN OF HATFIELD BOARD OF HEALTH, )  
Plaintiff )  
v. )  
ESTATE OF DANICA PERRY, )  
Defendant )  
BANK TRUST NATIONAL ASSOCIATION, )  
NOT IN ITS INDIVIDUAL CAPACITY BUT )  
SOLELY AS TRUSTEE OF LSRMF MH MASTER )  
PARTICIPATION TRUST II )  
Interested Party )

This receivership case came before the Court on November 18, 2024 on the receiver's motion to enforce its priority lien by sale to a third party. Only the receiver's counsel and counsel for the interested party ("U.S. Bank") appeared. The property in question is located at 16 North Street, Hatfield, Massachusetts (the "Property").

The court-appointed receiver, Pioneer Valley Redevelopers LLC, demolished the structure on the Property, which had been severely fire damaged. The Property is now a vacant lot. The receiver was offered \$120,000.00 in cash by an unrelated third party. No broker fees have been incurred. The receiver obtained an opinion of a licensed real estate broker, who estimated the value of the lot to be between \$110,000.00 and \$125,000.00. The receiver seeks court approval to accept the offer to secure payment of its lien. The amount of the lien was not provided to the Court.

U.S. Bank contends it was not properly served in this matter and was not aware of the motion for appointment of a receiver. Counsel for the receiver stated that she provided notice to the address on the mortgage on record on more than one occasion. U.S. Bank now seeks an order that the receiver sell the property at a commercially reasonable sale, such as auction, to maximize profits for the lienholders.

The Court is satisfied that reasonable attempts were made to give notice to U.S. Bank and that any prejudice suffered by the bank's absence from the process can be ameliorated by this order. Moreover, there is no reason to believe that a public auction would yield a higher sale price after auction fees are considered, especially considering that no broker's fees are involved. Accordingly, the following order shall enter:

1. U.S. Bank shall have until November 29, 2024 to match the offer of a cash purchase in the amount of \$120,000.00.
2. The receiver shall have until November 29, 2024 to file with the Court and serve on counsel for U.S. Bank (a) an affidavit itemizing its lien and (b) the opinion of the broker establishing the value of the land.
3. The parties shall return for further hearing at 9:00 a.m. on December 2, 2024, at which time, provided that the receiver has filed the required documents, the Court will approve the sale of the Property.

SO ORDERED.  
November 20, 2024

  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2166

\_\_\_\_\_  
CHICOPEE HOUSING AUTHORITY, )  
Plaintiff, )  
v. )  
HECTOR CRUZ, )  
Defendant )  
\_\_\_\_\_)

This for cause summary process case came before the Court for a bench trial on October 8, 2024. Both parties were represented by counsel. The residential premises at issue is located at 68 Riverview Terrace, Unit G, Chicopee, Massachusetts (the "Premises").

The parties stipulated to several relevant facts; namely, that Defendant has been a tenant since April 5, 2021 under a written lease, he is disabled, he was served with a 30-day notice to quit on March 8, 2024, and he continues to reside at the Premises. Based on the credible testimony and the other evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

Defendant is 63 years old and is the only authorized resident of the Premises. He receives SSDI, which is his sole source of income. The lease requires him to "cause all household members and guests to conduct themselves in a quiet and peaceful manner, not make unreasonably loud noises in or outside the unit [and not to] harass or unreasonably disturb other residents."

Neighbors have made many complaints about Defendant's visitors.<sup>1</sup> The weight of the evidence supports a finding that Defendant's visitors have significantly interfered with the quiet enjoyment of other tenants.<sup>2</sup> His neighbors testified credibly about numerous people regularly coming and going from the Premises, often shouting, banging on doors, buzzing doors and loudly arguing, sometimes in the middle of the night. The activity takes place in and around the Premises, including in the hallways where other residents live and in the parking lot outside the building. The activity can be intermittent but has occurred repeatedly over for a sustained time period.

Although the evidence at trial was primarily focused on the behavior of Defendant's guests, Defendant admitted that he is a smoker. Smoking is prohibited at the property, and Defendant signed a lease addendum requiring him and his guests to comply with the no smoking policy.

Although Defendant testified that some of the visitors are family members and friends who provide support in various ways, Plaintiff demonstrated by a preponderance of the evidence that Defendant is in material breach of his lease as a result of the conduct of his visitors and his smoking. Defendant's counsel argues that Mr. Cruz successfully complied with a prior court order curtailing visitors and deserves another opportunity to avoid homelessness.

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

1. Judgment for possession and court costs shall enter for Plaintiff.

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<sup>1</sup> Four neighbors testified at trial.

<sup>2</sup> The Premises are part of a complex for elderly and disabled residents.

2. Issuance of the execution shall be stayed until the next court date.<sup>3</sup> The three-month period for issuance of the execution set forth in G.L. c. 235, § 23 shall be tolled until further court order.
3. In the interim between the date of receipt of this order and the next court date, Defendant shall comply with the following terms:
  - a. He shall engage in a diligent housing search and keep records of his efforts to move.
  - b. He may not have any visitors other than family members and service providers identified in advance to Plaintiff. Unless he provides Plaintiff with a letter from a health professional indicating that he needs in-home care between the hours of 8:00 p.m. and 7:00 a.m., Defendant may not have any visitors during those hours. Defendant is responsible for the conduct anyone who comes to the Premises.
  - c. He must abide by the terms of property's no-smoking policy, and he must inform his guests that they are not allowed to smoke in the Premises, in the building where the Premises are located, or in any common area or adjoining grounds of the building, including steps, patios and yards.<sup>4</sup>
4. If Plaintiff alleges a material violation of any of the foregoing terms, it may file a motion to lift the stay on issuance of the execution. The

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<sup>3</sup> Although Massachusetts law does not provide for a stay in a for-cause eviction case, the Court is exercising its equitable authority to allow an elderly and disabled individual an opportunity to find replacement housing to avoid homelessness provided he complies with certain conditions set forth herein.

<sup>4</sup> Nothing in this order is intended to excuse Defendant from complying with any other terms of his lease, including payment terms.

motion shall include the specifics dates, times and nature of the violations.

5. The parties shall return for review of Defendant's housing search on February 6, 2025 at 9:00 a.m. Plaintiff may not ask the Court to lift the stay at this review date unless a motion has been filed and scheduled for the same day. At the hearing, the Court will consider whether and on what conditions to extend the stay.

SO ORDERED.

DATE: November 21, 2024

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

cc: Court Reporter





housing. Plaintiffs did not consent to combining the trial with a hearing on a request for a stay, so if Defendant seeks a stay on use of the execution, she must file and serve on Plaintiffs' attorney a motion to that effect.

Considering the foregoing, the following order shall enter:

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

SO ORDERED.

DATE: November 22, 2024

  
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Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPT.  
WESTERN DIVISION  
DOCKET NO. 23-CV- 586

TOWN OF WEST SPRINGFIELD HEALTH DEPARTMENT  
Plaintiff

v.

HEIRS AND ASSIGNS OF FRANCES HAAS (OWNER);  
Defendant

ANTHONY HAAS (OCCUPANT);  
PIII MORTGAGE CORPORATION; (MORTGAGEE) AND  
SECRETARY OF HOUSING AND URBAN DEVELOPMENT (LENDER).  
Interested Parties

RE: 831 MORGAN ROAD, WEST SPRINGFIELD, MA

ORDER

After a hearing on November 22, 2024, in which counsel for the Town of West Springfield appeared, counsel for the Receiver appeared, counsel for the Mortgagee, PIII Mortgage Corporation, appeared, Attorney Jake Picard appeared on behalf of the Owner and Occupant Anthony Haas appeared, the following order shall enter:

1. The Parties shall return for a review of this matter on December 6, 2024 at 9:00 A.M. at which time the prospective purchaser's Motion to Approve the Sale of the subject property shall be heard.
2. Proposed buyer shall provide a rehabilitation plan and proof of funding to all parties and this court no later than the end of business day on December 2, 2024.
3. In advance of the hearing, the Receiver shall file a report of the expenses accrued to date.
4. Until further court order, the Receiver shall continue to monitor the property in accordance with the previous orders of the court.
5. Counsel for the bank, PIII Mortgage Corporation may present a rehabilitation plan for consideration should the proposed sale not materialize or not be authorized by this Court.
6. Attorney Hasselbacher and Attorney Picard are permitted to attend this review via zoom.

So ordered this 22nd day of November, 2024.

  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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VALLEY OPPORTUNITY COUNCIL,

Plaintiff,

-v.-

DOCKET NO. 24SP03278

SHERLY RIVERA & JAMIL CARRASQUILLO,

Defendant.

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ORDER

This matter came before the court on November 22, 2024 for a hearing on the defendant's motion to stop the move-out scheduled for November 26 2024 at 10 a.m. The plaintiff appeared through its attorney. Defendant Sherly Rivera appeared; her son defendant Jamil Carrasquillo did not appear. Both defendants are self-represented.

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

This eviction case is based on cause. Judgment entered for possession and costs on October 17, 2024. In addition there is \$6,948.12 unpaid rent/use and occupancy plus costs. Because it is a cause case and the tenancy was not terminated "without fault of the tenant", the defendant is not eligible for a stay pursuant to G.L. c. 239 §9. G.L. c. 239 §15 does not apply because the case is not based solely on non-payment of rent. The court finds that the defendant did not present grounds that would justify a stay of the execution on equitable grounds pursuant to G.L. c. 239 §10. She argued that she needs time to find another apartment because her ten-month old grandchild now lives with her.

The court finds no grounds to stop the move-out or stay the execution further. The plaintiff may proceed with the move-out as scheduled.

November 22, 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-3598

A.P. I LIMITED PARTNERSHIP,  
Plaintiff

v.

ANELIS RODRIGUEZ OLMEDA,  
Defendant

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

This summary process case came before the court for a bench trial on November 21, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of the residential premises located at 200D Allen Park Road, Springfield, Massachusetts from Defendant for nonpayment of rent.

The parties stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit. Defendant's share of the monthly rent is \$1,498.00. Defendants did not file an answer raised no defenses at trial except that she recently filed an application for rental assistance. The Court finds that she meets the criteria for a stay under G.L. c. 239, § 15. Accordingly, the following order shall enter:

1. Trial shall be continued to January 2025. The Clerk's Office will schedule a date for trial.
2. Plaintiff shall complete its portion of the RAFT application and include all court costs on the ledger.

3. Defendant shall pay December rent in full by December 5, 2024 and January rent in full by January 5, 2024.

SO ORDERED.  
November 24, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss.

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

THEODORE BURRELL,

Plaintiff

v.

KELLY JACKMAN,

Defendant

RULING ON PETITION FOR  
ATTORNEY'S FEES

This matter is before the Court on Defendant's post-trial motion for an award of statutory attorney's fees and costs. Defendant is entitled to recover attorney's fees in this action on all counterclaims for which statutory attorney's fees are awarded, namely, G.L. c. 186, § 18, G.L. c. 186, § 14, G.L. c. 93A, and G.L. c. 151B.

The court may use the "lodestar" method to calculate the amount of a statutory award of attorney's fees. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorney's fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978).

In determining an award of attorney's fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." *Linthicum v. Archambault*, 371 Mass. at 388-89. See *Heller v. Silverbranch Const. Corp.*, supra. at 629 ("the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth . . . Absent specific direction from the Legislature, the crucial factors in making such a determination are: (1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney"). A judge is not required to "review and allow or disallow each individual item in the bill but [may] consider the bill as a whole." *Berman v. Linnane*, 434 Mass. 301, 303 (2001). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005).

I have reviewed the affidavits, time records and memorandum submitted by Defendant's attorney, Raquel Manzanares. Attorney Manzanares is seeking an attorney's fee of \$31,440.00 for 104.8 billable hours at a rate of \$300.00 per hour. Defendant does not seek to recover any costs.

Attorney Manzanares has been practicing law since 2013 and has extensive experience litigating landlord-tenant matters in Housing Court. She represented her client with competence and professionalism. The case was tried over six (partial) days

and Defendant offered dozens of exhibits. Given the nature of the claim, counsel's experience and my knowledge of the case and familiarity with the fees charged in similar cases, I find that Attorney Manzanares is entitled to compensation at a reasonable hourly rate of \$250.00.

After reviewing the affidavit and time records and considering that this case involved numerous days of trial and lengthy examination of witnesses, and further considering Attorney Manzanares' representation that she did not include time spent communicating with colleagues, traveling and waiting in court (among other activities), I find that Attorney Manzanares is entitled to compensation for 75 hours that I conclude represents a fair and reasonable amount of compensable time for legal work pertaining to this case.

Accordingly, I award Defendant a reasonable attorney's fee totaling \$18,750.00. The award of attorney's fees and costs is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.*, 394 Mass. 270, 272 (1985).

SO ORDERED.

November 24, 2024

  
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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-3617

CHRISTOPHER MALLOY,  
Plaintiff

v.

TRICIA REYNOLDS AND ANTONIO RIVERA,  
Defendants

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

This no-fault summary process case came before the court for a bench trial on November 21, 2024. Both parties appeared self-represented. Plaintiff seeks to recover possession of the residential premises located at 8 Berkshire Street, 1<sup>st</sup> Floor, Indian Orchard, Massachusetts (the "Premises").

Prior to trial, Defendants filed a motion to file a late answer. When the Court probed as to the defenses Defendants would assert at trial, they said they were simply looking for more time to move. The parties have stipulated that monthly rent is \$1,300.00 and that no rent has been paid for four months.

By agreement of the parties, the following order shall enter:

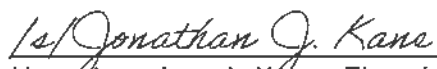
1. Defendants withdraw their motion to file a late answer.
2. Entry of judgment shall be stayed through the next court date, provided that Defendants pay \$1,300.00 each month beginning in December by the 5<sup>th</sup> for the duration of the stay. If payment is not made, Plaintiff may file a motion for entry of judgment after the payment date passes.

3. Both Defendants and their respective children are authorized to occupy the Premises pending further court order. Plaintiff states that both Defendants are on the lease.
4. Defendants shall engage in a diligent housing search and be prepared to demonstrate their search at the next court date.
5. The parties will return for a status hearing on February 20, 2025 at 9:00 a.m. If Defendants are still in possession of the Premises at that time, Plaintiff shall be entitled to request entry of judgment at this hearing without further notice or pleading.

SO ORDERED.

November 24, 2024

cc: Court Reporter

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2732

DEBORAH PIERRE,

PLAINTIFF

v.

PEARL MWANGI,

DEFENDANT

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ORDER FOR ENFORCEMENT  
OF AGREEMENT

This case came before the Court on November 19, 2024 on Defendant tenant’s motion to enforce an agreement. Plaintiff landlord opposes the motion. Both parties were represented by counsel.

This case was scheduled for trial on October 30, 2024. Both parties were represented by counsel.<sup>1</sup> On the day of trial, instead of seeing a judge, the parties agreed upon the terms to settle the case. The parties left the courthouse and, shortly thereafter, tenant’s counsel sent landlord’s counsel an email memorializing the agreed-upon terms. Landlord’s counsel responded that it “looks good.” The court clerk noted in the file that landlord’s counsel subsequently informed the court that the case could be dismissed in 30 days because the parties would be filing a written settlement agreement.

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<sup>1</sup> Counsel appearing today is replacement counsel; he was not counsel when the settlement terms were agreed upon.

The email sent by tenant's counsel is comprehensive, and it includes all of the necessary and material terms for a settlement of this type.<sup>2</sup> The Court finds that the parties expressed a clear intention to be bound by their agreement when they agreed to settle the case in the courthouse in lieu of trial. See *Basis Tech. Corp. v. Amazon.com, Inc.*, 71 Mass. App. Ct. 29, 39 (2008), citing *McCarthy v. Tobin*, 429 Mass. 84, 87 (1999) (intention to be bound is the "controlling fact"). This finding is supported by several important facts: the parties did not proceed to trial or seek a continuance, landlord's counsel reported the case settled, and landlord's counsel, upon receiving an email containing the terms of settlement, expressed acceptance of them without qualification. See *Massachusetts Mun. Wholesale Elec. Co. v. Danvers*, 411 Mass. 39, 45-46, (1991) ("To ascertain intent, a court considers the words used by the parties, the agreement taken as a whole, and surrounding facts and circumstances.").

Landlord's replacement counsel argues that the landlord was not aware of the settlement terms reached on the day of trial and would not have agreed with them had she been asked. The Court does not believe that the landlord, who traveled from out-of-state to attend the trial and who was present in the courthouse when the settlement was being negotiated, was unaware of the terms. The Court finds it much more likely that the landlord simply had a change of heart after the agreement had been reached.

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

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<sup>2</sup> In the Housing Court, most cases settle by agreement of the parties, and the email in question here sets forth terms commonly found in the agreements the Court reviews every day.

1. Judgment for possession enter for Defendant.<sup>3</sup>
2. Plaintiff shall comply with the terms of the agreement memorialized in the October 30, 2024 email from tenant's counsel to then-landlord's counsel.
3. The writ of attachment that issued on November 12, 2024 shall not be modified at this time.

SO ORDERED.

DATE: November 24, 2024

  
Hon Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>3</sup> The negotiated terms included an agreement for judgment with an order for the landlord to make repairs.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-3020

WILMINGTON SAVINGS FUND SOCIETY, FSB, )  
NOT INDIVIDUALLY BUT SOLEY AS TRUSTEE )  
FOR FINANCE OF AMERICA STRUCTURE )  
SECURITIES ACQUISITION TRUST 2019-HB1, )  
Plaintiff )

v. )

EUGENE BLANCHETTE, JR., )  
Defendant )

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

This post-foreclosure summary process matter came before the Court for a bench trial on November 18, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. The property in question is located at 65 Daniel Square, Belchertown, Massachusetts (the "Premises"). Defendant's mother is the former owner of the Premises.

Defendant did not file an answer and did not raise and defenses at trial. He reports that family members are interested in trying to purchase the home from Plaintiff. Plaintiff submitted certified copies of the foreclosure documents showing that Plaintiff recorded a deed to the Premises and an affidavit of sale in compliance with statutory foreclosure requirements. See *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011).

Considering the foregoing, the following order shall enter:

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

2. Issuance of the execution (the eviction order) shall be stayed for 30 days for Defendant to negotiate for the purchase of the Premises.
3. After 30 days, Plaintiff may file a motion for issuance of the execution and a hearing will be scheduled where Defendant will be able to make a request for a further stay if circumstances warrant.

SO ORDERED.

DATE: November 24, 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. 23-SP-5598

CHARLES BURGESS, JR.,

Plaintiff

v.

ABBIE TAYLOR AND KEISHLA SANTIAGO,

Defendants

ORDER AWARDING STATUTORY  
ATTORNEY'S FEES

This matter is before the Court on Defendants' post-trial motion for an award of statutory attorney's fees and costs. Defendants are entitled to recover attorney's fees in this action only for work performed by their attorney on the one statutory counterclaim upon which they prevailed, G.L. c. 186, § 14. Plaintiff was the prevailing party on Defendants' statutory counterclaims under G.L. c. 186, § 18 (retaliation) and G.L. c. 93A.

The court may use the "lodestar" method to calculate the amount of a statutory award of attorney's fees. Under the "lodestar" method, "[a] fair market rate for time reasonably spent in litigating a case is the basic measure of a reasonable attorney's fee under State law as well as Federal law." *Fontaine v. Ebtac Corp.*, 415 Mass. 309, 325-26 (1993). However, the actual amount of the attorney's fees is largely discretionary with the trial court judge. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). An evidentiary hearing is not required. *Heller v. Silverbranch Const. Corp.*, 376 Mass. 621, 630-631 (1978).



In determining an award of attorney's fees, the Court must consider "the nature of the case and the issues presented, the time and labor required, the amount of the damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." *Linthicum v. Archambault*, 371 Mass. at 388-89. See *Heller v. Silverbranch Const. Corp.*, supra. at 629 ("the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth . . . Absent specific direction from the Legislature, the crucial factors in making such a determination are: (1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney"). A judge is not required to "review and allow or disallow each individual item in the bill but [may] consider the bill as a whole." *Berman v. Linnane*, 434 Mass. 301, 303 (2001). "No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required." *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005). Further, "[a]s a rule, where a single chain of events gives rise to both a common law and a [statutory] claim, apportionment of legal effort between the two claims is not necessary ..." *Hanover Insurance Company v. Sutton*, 46 Mass. App. Ct. 153, 176-77 (1999), quoting from *Industrial Gen. Corp. v. Sequisia Pac. Sys. Corp.*, 849 F. Supp. 820, 826 (D. Mass. 1994).

I have reviewed the affidavits, time records and memorandum submitted by Defendants' attorney, Patrick Nicoletti. Attorney Nicoletti is seeking an attorney's fee

of \$15,750.00 for 52.50 billable hours at a rate of \$300.00 per hour. Defendants do not seek to recover any costs.

Attorney Nicoletti has been practicing law since 2009 and has been practicing in Housing Court for over ten years. He represented his clients with competence and professionalism. Given the nature of the claim, counsel's experience and my knowledge of the case and familiarity with the fees charged in similar cases, I find that Attorney Nicoletti is entitled to compensation at a reasonable hourly rate of \$275.00. After reviewing the affidavit and time records and considering that this case did not involve difficult or complex legal/factual issues, I find that Attorney Nicoletti is entitled to compensation for 31.5 hours that I conclude represents a fair and reasonable amount of compensable time for legal work pertaining to Defendants' G.L. c. 186, § 14 claim.<sup>1</sup>

Accordingly, I award Defendants a reasonable attorney's fee totaling \$8,662.50.<sup>2</sup> The award of attorney's fees and costs is without interest. See *Patry v. Liberty Mobilehome Sales, Inc.*, 394 Mass. 270, 272 (1985).

SO ORDERED.

November 25, 2024

  
Hon. Jonathan J. Kane, First Justice

Cc: Court Reporter

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<sup>1</sup> Neither Attorney Nicoletti's billing records nor his affidavit segregate the hours spent on those counterclaims where his clients did not prevail from the counterclaims where his clients did prevail. Likewise, Attorney Nicoletti does not identify or segregate from his fee request the hours spent only on claims that carry statutory attorney's fees. I conclude that sixty (60%) percent of Attorney Nicoletti's pre-trial and trial time was related to the counterclaim upon which Defendants and for which statutory attorney's fees are awarded.

<sup>2</sup> This figure is calculated by reducing the 52.5 hours by 40% (31.5 hours) and multiplying by \$275.00 per hour = \$8,662.50.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-3516

GUARDIAN PROPERTY MANAGEMENT,

Plaintiff

v.

NICOLE MARTIN-BILADEAU AND  
THOMAS BILADEAU,

Defendants

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

This no-fault summary process case came before the court for a bench trial on November 18, 2024. Plaintiff appeared through counsel. Defendant Nicole Martin-Biladeau appeared self-represented. Defendant Thomas Biladeau did not appear.<sup>1</sup> Plaintiff seeks to recover possession of the residential premises located at 177 West Street, Apt. 2, West Hatfield, Massachusetts (the "Premises").

The parties stipulated to sufficient facts to establish Plaintiff's prima facie case for possession, including service of notice to quit and that monthly rent is \$1,300.00. Defendant did not file and answer, and although she alluded to possible defenses, she did not have any documents with her and simply wanted time to move because she has a severely disabled child and is a victim of domestic violence.

By agreement of the parties, the following order shall enter:

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<sup>1</sup> Nicole Martin-Biladeau asserts that she has an active restraining order against Thomas Biladeau.

1. Judgment for possession only shall enter in favor of Plaintiff.
2. Issuance of the eviction order (execution) shall be stayed through the next court date, provided that Ms. Martin-Biladeau pays \$1,300.00 each month beginning in December by the 5<sup>th</sup> for the duration of the stay. If payment is not made, Plaintiff may file a motion for entry of judgment after the payment date passes.
3. Ms. Martin-Biladeau shall engage in a diligent housing search and keep a log of her efforts, including a list of any agencies that she is working with to find new housing.<sup>2</sup>
4. The parties will return for a status hearing on January 13, 2024 at 9:00 a.m. Either party may ask the Court for further relief at that time.

SO ORDERED.

November 25, 2024

cc: Court Reporter

  
\_\_\_\_\_  
Hon. Jonathan J. Kane First Justice

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<sup>2</sup> Ms. Martin-Biladeau is encouraged to work with domestic violence services as they may offer assistance.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2881

_____	)	
EMMANUEL MASSENAT,	)	
	)	
Plaintiff	)	
	)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
KAREN KRESS AND ALICIA HUNTER,	)	AND ORDER FOR JUDGMENT
	)	
Defendants	)	
_____	)	

This no-fault summary process case came before the Court on October 8, 2024 for a bench trial. Plaintiff appeared with counsel. Defendants appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 20 Wareham Street, 1<sup>st</sup> Floor, Springfield, Massachusetts (the "Premises").

At the outset of trial, the parties stipulated to Plaintiff's prima facie case for possession, including Defendants' receipt of the notice to quit. The last agreed-upon monthly rental rate is \$900.00. The parties agree that no money is owed as of the date of trial. Defendants filed an answer with defenses and asserted certain counterclaims.

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:

Defendant Kress has lived at the Premises for over 20 years. Defendant Hunter moved into the Premises in July of 2021. Plaintiff purchased the Premises in January

2024. On February 18, 2024, Ms. Kress emailed Plaintiff a list of needed repairs. She did not bring the list to trial. She could only recall mentioning issue of peeling paint and various windows that do not operate properly. She testified that, in addition to conditions of disrepair, the common area lighting is wired to her electric panel.<sup>1</sup>

After purchasing the Premises, Plaintiff sought a rent increase to \$1,300.00 per month. When Defendants would not sign a new lease with a rental increase, Plaintiff served them with a notice to quit on April 4, 2024. On April 5, 2024, Defendants contacted the Springfield Code Enforcement Department (“CED”).

Although it is clear that Plaintiff did not serve the notice to quit in retaliation for Defendants’ report to CED, Plaintiff’s property manager acknowledged that Defendants notified him in writing of the need for repairs in the Premises in February 2024. He admits that he refused to do an inspection unless Defendants agreed to sign a new lease, and when they refused, he served them with a no fault notice to quit. Pursuant to G.L. c. 186, § 18, when a tenant complains to the landlord in writing within six months of receiving a no fault notice to quit, it creates a rebuttable presumption that such notice is a reprisal against the tenant for engaging in such activities. The burden then shifts to Plaintiff to rebut by clear and convincing evidence that it 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, regardless of tenants’ actions. Although Plaintiff’s property manager testified that he simply wanted to increase the rent to \$1,300.00, Plaintiff did not rebut by clear and convincing evidence that the decision to serve a notice to

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<sup>1</sup> She claims that when her panel is turned off, basement and hallway lights turn off.

quit was not related to Defendants' demands for improved conditions. Therefore, pursuant to G.L. c. 186, § 18, the Court awards damages in the amount of one months' rent, or \$900.00.

The Court finds that Plaintiff did not violate the implied warranty of habitability. The only CED inspection report offered into evidence was dated August 15, 2024. It cites a missing bedroom door, paint peeling, minor water damage to a wall and ceiling, and a broken screen and ceiling fan. The Court finds that conditions issued cited by the CED and depicted in the pictures attached to the citation are not significant defects or substantial violations of the State Sanitary Code. Not every breach of the State Sanitary Code supports a warranty of habitability claim. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999).

Defendants did, however, sustain their burden of proof with respect to the cross-metering of electricity. Pursuant to the State Sanitary Code, in a two or three family home, common area lighting may be wired to an adjacent apartment provided that the arrangement is documented in a written rental agreement at the commencement of a new tenancy. See 105 C.M.R. 410.300(F). Here, Plaintiff's property manager admitted that the house where the Premises are located does not have an owner's meter. The CED's August 15, 2024 notice of violations confirmed that common area lighting was wired to Defendants' meter and no action has been taken to correct the issue. Therefore, the Court rules that the cross-metering of electricity constitutes a violation of the covenant of quiet enjoyment. Pursuant to G.L. c. 186, § 14, Defendants are entitled to statutory damages in the amount of \$2,700.00 (three

months' rent).<sup>2</sup>

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

1. Judgment for possession and \$3,600.00 in damages shall enter in favor of Defendants.
2. Plaintiff is ordered to install an owner's meter for all common area electricity within thirty days or, in the alternative, immediately transfer the electricity service to the first floor to its name until it can comply with 105 C.M.R. 410.300(F).

SO ORDERED.

DATE: November 25, 2024

  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>2</sup> Pursuant to the Attorney General's landlord-tenant regulations, it is an unfair or deceptive act or practice where a landlord fails to comply with the State Sanitary Code within a reasonable time after notice of a violation of such code. See 940 C.M.R. 3.17(1)(i). Damages for violation of G.L. c. 93A would be duplicative of the three months' rent award under G.L. c. 186, § 14 as the claims are based upon the same set of facts. See *Wolfberg v. Hunter*, 385 Mass. 390, 401 (1982).



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-1828

MAGDA RILEY,

Plaintiff,

v.

ANABEL GARCIA,

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 28, 2024 and August 30, 2024. Both parties appeared with counsel. The residential rental premises in question is a single-family home owned by Plaintiff ("Plaintiff" or "Ms. Riley") located at 82 Waldorf Street, Springfield, Massachusetts (the "Premises"). Defendant ("Defendant" or "Ms. Garcia") and her daughter occupy the home.

The parties filed a joint pre-trial memorandum incorporating numerous agreed-upon facts, which the Court hereby adopts. These agreed-upon facts establish Plaintiff's prima facie case for possession.

Ms. Garcia filed an answer asserting various defenses and counterclaims. After trial, based on the credible testimony and the other evidence presented at trial, as well as the reasonable inferences drawn therefrom, the Court makes the following findings of fact and conclusions of law related to Ms. Garcia's defenses and counterclaims:

## I. FINDINGS OF FACT

1. Ms. Garcia and Ms. Riley's mother are long-time friends. Several years ago, Ms. Riley decided to sell the Premises. Ms. Garcia was interested in purchasing it but did not have the finances to do so immediately. On March 1, 2021, the parties signed a document entitled "Rental Lease Agreement with Option to Purchase Property" with the details of the option terms reserved for later discussion (the "original lease").
2. The option provision in the original lease does not include the option price, the date by which the option must be exercised, the terms of purchase or the method of exercising the option.
3. Both parties entered the original lease with the idea that Ms. Garcia would try to purchase the Premises at some point in the future.
4. In the original lease, Ms. Garcia agreed to pay \$1,500.00 per month plus utilities. Ms. Garcia did not pay a security deposit or a last month's rent deposit.
5. Soon after moving into the Premises, Ms. Garcia purchased and installed 13 windows in 2021 at a cost of \$3,250.00. She also purchased five doors the same year for \$915.68 and paid a contractor \$900.00 to install them.
6. Ms. Garcia paid an unlicensed plumber \$450.00 in cash to replace a toilet and to repair some faucets and valves. She paid \$126.44 for the toilet. She also paid approximately \$200.00 to install two new steps.
7. The original lease contains a term prohibiting alterations without written permission of the landlord. Ms. Garcia did not ask Ms. Riley to make

these improvements, nor did she ask permission of Ms. Riley to make the improvements.

8. The parties did not explicitly agree that money Ms. Garcia invested in the Premises would be credited toward the purchase price. From text messages, the Court finds by inference that the parties contemplated crediting Ms. Garcia for the work she put into the house when determining a purchase price.
9. In October 2021, Ms. Garcia obtained a Section 8 Housing Choice Voucher administered by the Springfield Housing Authority (“SHA”). Pursuant to the Housing Assistance Payments Contract (“HAP contract”), the contract rent was set at \$1,300.00 per month and Ms. Riley agreed to pay for all utilities. Initially, Ms. Garcia’s share of the rent was \$271.00.
10. Prior to approving the Premises, the SHA conducted a housing quality inspection. On September 7, 2021, the SHA issued a letter of compliance indicating that the Premises had passed inspection. Prior to the inspection, Ms. Garcia told Ms. Riley in a text message that “whatever they ask you to fix I can fix fine [sic].”
11. The original lease required Ms. Garcia to accept the Premises in “as is” condition and further recited that “the tenant is and will be responsible for any issues that arises [sic] while renting the premises at no cost in any way to the Landlord.”
12. The original lease required Ms. Garcia to pay for all utilities and to be “100% responsible for any issues at the time the lease is sign [sic] and

thereafter.” Moreover, it included a provision that “major maintenance and repair of the Property involving anticipated or actual costs will be the sole responsibility of the tenant.”

13. Despite the terms of the HAP contract, Ms. Garcia continued to pay for utilities after obtaining the rent voucher. Ms. Garcia continued to pay for utilities not out of generosity but because she thought she had to pay utilities or else she might be evicted. She continued to pay for the utilities until October, 2023.
14. Ms. Garcia sent many text messages to Ms. Riley, but few reported conditions of disrepair. On June 29, 2023, she mentioned that she was dealing with fixing leaks and short circuits, but the message came in the context of her challenges in making the payments due for rent and utilities. She repeatedly communicated about payment of rent and utilities but in none of the text messages introduced into evidence is there a clear written request for repairs.
15. In the fall of 2023, Ms. Garcia mentioned to Ms. Riley in passing that she was having issues with the heating and with mice. Ms. Riley responded promptly by replacing the thermostat batteries and cleaning the furnace, and by giving Ms. Garcia mouse traps. Ms. Garcia did not subsequently ask for additional traps or for exterminations prior to receiving the notice to quit.
16. There is no credible evidence that Ms. Garcia made Ms. Riley aware of roaches in the Premises until after receiving the notice to quit. When

Ms. Garcia informed Ms. Riley about roaches, Ms. Riley scheduled exterminations. From the first visit by an exterminator on April 1, 2024 to the third visit on May 9, 2024, the exterminator found moderate or heavy roach activity, and the exterminator found light activity on May 29, 2024 and June 18, 2024. The exterminator saw no roach activity (although many nymphs) as of June 26, 2024, the last report admitted into evidence.

17. On April 2, 2024, the SHA housing quality inspection failed due to evidence of mice and roaches, broken electrical outlets and a dripping sink. The report indicates that the tenant reported that the heat was not working, but there is no evidence to support the claim. The SHA reinspected on May 9, 2024, and the unit failed only for mice droppings. The Premises passed inspection on June 11, 2024.
18. Ms. Riley wrote a letter stating that, as of September 1, 2022, the rent would not include utilities. She apparently asked Ms. Garcia to bring it to SHA, but the letter was never delivered. SHA did not approve a change to the contract transferring the responsibility to pay for utilities to the tenant.
19. Ms. Riley first sent Ms. Garcia a notice to quit dated October 30, 2023. Ms. Garcia had been late making rent. Ms. Riley did not pursue an eviction at that time.
20. After receiving the notice to quit, Ms. Garcia asked Ms. Riley to put the electric and gas bills in her name to get fuel assistance.

21. The notice to quit that serves as the basis of this case is dated February 28, 2024. Ms. Riley claims she sent the notice to quit because she was having financial difficulty and wanted to sell the house.
22. Ms. Garcia owes no rent as of the date of trial.
23. Ms. Garcia made payments of \$500.00 in October, November and December of 2021 at a time her rent was \$271.00, and the overpayments were credited toward utilities in early 2022. Ms. Garcia made a payment of \$240.00 toward utilities in December 2021.
24. From September 1, 2022 through February 28, 2023, the cost of gas and electric at the Premises was \$2,932.47 and the cost of water was \$596.15.
25. From March 2023 through October 2023, Ms. Garcia paid \$2,834.28 for gas, electric and water.
26. Ms. Riley did not comply with G.L. c. 186, § 22 and therefore is not entitled to charge Ms. Garcia for water.

## II. CONCLUSIONS OF LAW

### A. Conditions

There is little evidence that the Premises were in a state of disrepair when Ms. Garcia moved in. She testified that she had to address some plumbing issues, including replacement of a toilet, and repair steps. These repairs were made soon after she took possession, and she did not report them to Ms. Riley. Even though a landlord has constructive notice of conditions of disrepair at the inception of the

tenancy, the evidence does not support a finding that significant defects existed when Ms. Garcia moved into the Premises.

With respect to windows and doors, Ms. Garcia did not demonstrate by a preponderance of the evidence that these items were defective and needed to be replaced. Because she expected to purchase the home, Ms. Garcia replaced the doors and windows of her own accord. She did not ask Ms. Riley to do any work on the house at the outset but instead took it upon herself to improve the home for her own benefit as the future owner. The evidence does not support a conclusion that Ms. Garcia was fraudulently induced to invest in the house.<sup>1</sup>

There is no credible evidence that Ms. Garcia requested repairs or that Ms. Riley refused to undertake repairs prior to June 2023. The items Ms. Garcia mentioned in text messages in 2023 -- tripping breakers, mice, and heat problems -- were not substantial and do not warrant a rent abatement. 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). This conclusion is supported by treatment records from the exterminator that show little or no rodent activity in the Premises as of April 2024, and the lack of credible evidence as to the cause or impact of any disruption in the provision of heat or electricity.

The one condition that warrants an abatement of rent is the roach infestation. Ms. Garcia gave Ms. Riley notice in February 2024. The evidence shows that the infestation was significant through May 2024 and then light through June 2024. The

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<sup>1</sup> Each party operated under a mistaken belief: Ms. Garcia thought she would be able to buy the home in the future and Ms. Riley thought she could rent the Premises to Ms. Garcia and absolve herself from all responsibilities as a landlord.

Court finds that the presence of roaches diminished the fair rental value of the Premises by 10% for four months and by 5% for one month.<sup>2</sup> The total amount of damages for breach of the warranty of habitability is \$585.00.<sup>3</sup>

Although the presence of roaches can constitute a breach of the covenant of quiet enjoyment, such a finding requires evidence of negligence on the part of the landlord. See *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997) (a tenant must show some negligence by the landlord to recover under the statute). Here, upon being informed of a roach infestation, Ms. Riley promptly contracted with a licensed exterminator and took reasonable steps to address the problem. The evidence does not support a finding that Ms. Riley was negligent in the way she addressed the report of roaches.

B. G.L. c. 93A

1. *Illegal lease provisions regarding repairs.*

Because the parties agreed that Ms. Riley would rent the home to Ms. Garcia on the condition that Ms. Garcia absorb all the expenses, Ms. Riley unlawfully transferred the responsibility to make repairs to Ms. Garcia. Pursuant to the Attorney General's regulations regarding landlord-tenant relationships, it is an unfair and deceptive practice to include unlawful provisions in a lease agreement. See 940 C.M.R. § 3.17(3)(a).

In calculating damages, the Court looks at the amount of money Ms. Garcia spent making repairs that should have been made by Ms. Riley. Here, the only expenses that Ms. Garcia paid for necessary repairs, as opposed to upgrades, are the

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<sup>2</sup> In determining the abatement, the Court takes into consideration that Ms. Garcia lived in a single-family home and, therefore, Ms. Riley is not responsible for the infestation.

<sup>3</sup> The Court finds that Ms. Riley's actions did not violate 940 C.M.R. 3.17 and that she is not otherwise liable under G.L. c. 93A with respect to the way she addressed the roach infestation.



plumbing issues and repair of steps. The court finds that Ms. Garcia paid \$126.44 for a new toilet and approximately \$450.00 for a plumber to do work in the home. She also paid approximately \$200.00 to repair the steps. The total is \$776.44. Because Ms. Riley willingly and knowingly transferred the responsibility to make repairs to Ms. Garcia, the Court doubles the damages to \$1,552.88.<sup>4</sup>

With respect to the windows and doors, the Court is not convinced that these items were in a state of disrepair such that Ms. Riley had an obligation to make repairs. Ms. Garcia elected to make upgrades to the home under the belief that she would soon own the home. She was under this impression, not because Ms. Riley induced her to make the upgrades by dangling the possibility of ownership, but because the parties had a mutual understanding that Ms. Riley would be willing to sell Ms. Garcia the house in the future subject to negotiation as to price and timing. The evidence shows that Ms. Garcia paid \$5,515.68 for the installation of windows and doors.

But for the anticipation of owning the home, Ms. Garcia would not have made improvements to the Premises. Ms. Riley would be unjustly enriched if she was able to gain the benefit of the upgrades without paying for them. However, Ms. Riley's conduct was not unfair or deceptive given the parties' mutual understandings at the outset of the tenancy. Therefore, the Court awards Ms. Garcia her out-of-pocket expenses of \$5,515.68 but does not award multiple damages.

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<sup>4</sup> Given that Ms. Riley did not reside in the Premises but rented it to an unrelated third party, she was engaged in the trade or practice of being a landlord, and therefore is subject to G.L. c. 93A.

2. *Requiring the tenant to pay utilities.*

Ms. Riley violated c. 93A by charging Ms. Garcia for the utilities despite agreeing to be responsible for them in the HAP lease and by charging Ms. Garcia for water without complying with G.L. c. 186, § 22. The only period that Ms. Garcia was obligated to pay utilities costs was from March 1, 2021 to September 30, 2021. Once the parties signed the HAP contract, Ms. Riley was obligated to pay for utilities.<sup>5</sup>

The weight of the evidence supports a finding that Ms. Garcia paid for utilities because she believed she had an obligation to do so, not voluntarily. The Court does not credit Ms. Riley's testimony that Ms. Garcia only sporadically paid for utilities after the HAP contract was signed. To determine the amount of utilities Ms. Garcia paid when it was not her responsibility, the Court uses the following calculations:

- Ms. Garcia paid a total of \$240.00 prior to April 2022.<sup>6</sup>
- Ms. Garcia paid \$1,800.00 between April 2022 and the end of August 2022.<sup>7</sup>
- Ms. Garcia paid \$3,529.00 for the six-month period from September 2022 to February 2023.<sup>8</sup>
- Ms. Garcia paid \$2,835.00 between March 2023 and October 2023.

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<sup>5</sup> Despite her desire to change that situation, Ms. Riley failed to get approval from SHA to charge Ms. Garcia for water.

<sup>6</sup> The evidence shows that Ms. Garcia overpaid rent for several months in 2021, and the Court finds that the excess amounts were credited toward utilities into early 2022.

<sup>7</sup> There is no actual evidence of the amount Ms. Garcia paid during this period. Ms. Garcia asks the Court to use the average monthly utility charge of \$600.00 between September 2022 and February 2023 and apply it to the six-month period from April 2022 to August 2022; however, utility bills can fluctuate significantly depending on the season, and therefore the Court discounts the monthly average by 50%.

<sup>8</sup> The parties stipulated that Ms. Garcia paid \$2,932.47 for gas and electric and \$596.15 for water during this time frame.

In total, Ms. Garcia paid \$8,404.00 in utility charges that were not her responsibility to pay. Ms. Riley knowingly asked Ms. Garcia to pay for the utilities when she knew or should have known that it was her responsibility to do so.<sup>9</sup> The actual damages suffered by Ms. Garcia therefore shall be doubled to \$16,808.00.<sup>10</sup>

C. Emotional Distress

The Court rejects Ms. Garcia's contention that she is entitled to damages for emotional distress as a component of actual damages in this case. The evidence does not support a finding that Ms. Riley acted in bad faith or engaged in unfair or deceptive practices when she served a notice to quit on Ms. Garcia. Ms. Garcia's emotional distress is a product of her misplaced belief that she would own the home in the future. Her distress could have been avoided had she entered into an enforceable option agreement or taken other steps to ensure that she could achieve her goal of purchasing the Premises.

Accordingly, given the foregoing, and considering the governing law, the following order shall enter:

1. Pursuant to G.L. c. 239, § 8A, judgment for possession and damages in the amount of \$24,461.56 shall enter in favor of Defendant.
2. Defendant is entitled to an award of reasonable attorney's fees on all claims for which attorney's fees are awarded by statute. Within fifteen

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<sup>9</sup> Ms. Riley claims that she thought she had a right to charge for utilities after September 1, 2022 based on her request to SHA for a rent change and blames Ms. Garcia for not delivering the request. The Court finds her conduct willful and known because she should have known that it is the landlord's obligation to request a rent change from the subsidy administrator and that she had to wait for approval before charging the tenant a different amount.

<sup>10</sup> The Court declines to award separate damages for violation of G.L. c. 186, § 22, as the water charges are included in the figure calculated for reimbursement. Further, any damages that might be awarded under G.L. c. 186, § 14 would be duplicative (and less than) the damages awarded under G.L. c. 93A.

(15) days from the date judgment enters, Defendant may file a petition for reasonable attorney's fees and costs, along with supporting documentation. Plaintiff shall then have fifteen (15) days from receipt of Defendant's petition to file any opposition, after which time the Court will assess attorney's fees without need for further hearing, unless the Court so requests.

SO ORDERED.

November 25, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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KATHY M. RIVERA & KAYLA RIVERA,

Plaintiff,

-v.-

DOCKET NO. 24CV00919

ISMARIE RODRIGUEZ & JORGE MERCADO,

Defendant.

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ORDER

This matter came before the court on November 22, 2024 for a hearing on the plaintiffs' request for an emergency order. The plaintiff-tenants appeared. Defendant-landlord Ismarie Rodriguez appeared but defendant Jorge Mercado did not. All parties are self-represented.

Kathy M. Rivera and Kayla Rivera rent a room in a single-family home owned by the defendant and located at 139 Pendleton Avenue in Springfield, Massachusetts. They reported that there has been no heat for several months and that they do not have a key to the main door. Ms. Rodriguez reported that she ordered a new boiler which was delivered four months ago, but it has not been installed yet. She has now made arrangements to have it installed by December 1.<sup>1</sup> Ms. Rodriguez reported that the tenants keep losing the key to the main door, but that it is usually left open for another tenant.

There is also a dispute between the parties regarding rent. After trial in the eviction case referenced below, judgment entered for the landlord for possession and \$7,200 in unpaid rent/use and occupancy with costs on April 19, 2024. (\$7,200 was the amount that remained after the

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<sup>1</sup> There was a trial on March 7, 2024 in a nonpayment of rent eviction case between the parties, *Ismarie Rodriguez v Kathy Rivera & Kayla M. Rivera*, No. 23SP05832. After trial, the judge found that there had been no central heat for some months and that the landlord was waiting to install a new boiler. The judge awarded statutory damages (three months rent) for the lack of heat. The issue of the key to the main door was raised in the tenants' answer, but not at trial.

judge deducted the \$2,400 in damages to the tenants on their no heat claim.) The landlord did not request the execution within three months after the date that judgment entered as required by G.L. c. 235 §23. Therefore, the time to request the execution for possession has expired, but not the execution for the unpaid rent/use and occupancy with costs. In their request for an emergency order the plaintiffs ask to revisit the \$7,200 owed and to address the rent issue. The court notes that neither party appealed the April 19, 2024 judgment within the ten day appeal period as noted in the judge's order. That judgment is final. The court does not revisit or amend that judgment. The tenants remain responsible for the amount of that judgment.

However, with respect to the rent owed and any claims by the tenants *since* the trial, those issues have not been raised or decided. The parties are urged to consult an attorney about their rights and responsibilities with respect to these issues. They cannot be addressed as part of the request for injunctive relief. However, the parties may wish to meet with a housing specialist of this court to mediate their remaining differences to avoid further litigation.<sup>2</sup>

#### Orders

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

1. The defendant, Ismarie Rodriguez, will restore the central heat to the premises by having the boiler installed and operational no later than December 1, 2024.
2. The defendant, Ismarie Rodriguez, will furnish a key to the main door of the premises to the plaintiffs no later than December 1, 2024 at no cost to the plaintiffs. If the plaintiffs lose this key, they will be responsible for the cost of replacing it.

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

November 25, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CC: Housing Specialist Department

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<sup>2</sup> The parties may schedule such a mediation by calling the Clerk's Office.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2983

_____	)	
MARIA ROMAN,	)	
	)	
Plaintiff	)	
	)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
AMAYA RODRIGUEZ AND	)	AND G.L. c. 239, § 8A ORDER
PATRICK DESRUISSEAU,	)	
	)	
Defendants	)	
_____	)	

This summary process case came before the Court on October 10, 2024 for a bench trial. Plaintiff appeared with counsel.<sup>1</sup> Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 13 Furrow Street, 1<sup>st</sup> Floor, Westfield, Massachusetts (the “Premises”).

At the outset of trial, the parties stipulated to certain facts; namely, that Defendants received the notice to quit and have not vacated. They agree that the Premises are a single-family home and that they took possession in December 2021.<sup>2</sup> Defendants filed an answer with defenses and asserted counterclaims.

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:

<sup>1</sup> Attorney Mickey Harris appeared on behalf of Plaintiff and represented that he would be filing an appearance. He shall do so forthwith.

<sup>2</sup> Defendants questioned whether Plaintiff still owns the Premises because they were asked to speak to a prospective buyer at some point. There is no evidence that Plaintiff is no longer the owner.

The parties entered into a written month-to-month rental agreement dated January 31, 2022. Text messages indicate that Defendants signed the lease on December 24, 2021 and began moving into the Premises soon thereafter. Defendants reside there with their six children. Initially, rent was \$1,850.00 per month. WayFinders paid first and last month's rent and a security deposit.<sup>3</sup>

Plaintiff increased the rent to \$1,950.00 as of March 2023 and Defendants paid this amount at least four times thereby agreeing to the rent increase by assent. Plaintiff asserts that Defendants have not paid rent since July 2023, leaving 15 months unpaid through the date of trial in the amount of \$29,250.00. Defendants claim he paid through September 2023 and part of October 2023. The Court credits Defendants' evidence showing that they paid \$1,250.00 in August 2023, \$1,900.00 in September 2023 and \$925.00 on October 10, 2023, leaving a balance of unpaid rent of \$25,175.00.

The Court finds that there were no significant defects in the Premises when Defendants moved in.<sup>4</sup> Defendants claim that they suffered a burst pipe (resulting in water escaping into the Premises) and a failed heating system, and that Plaintiff placed them in a hotel for approximately ten days. Their testimony was confusing and sometimes contradictory, however, and the Court cannot determine exactly when each event occurred, or which happened first. The evidence shows that Defendants complained about the lack of heat on or about January 15, 2022. Plaintiff hired a HVAC company to install a new heating system which was installed on or about

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<sup>3</sup> In their answer, Defendants assert that Plaintiff mishandled the deposits in violation of G.L. c. 186, § 15B but they offered no testimony or evidence at trial. The Court dismisses these counterclaims.

<sup>4</sup> To the extent that Mr. Desruisseaux testified to the contrary, there is insufficient evidence to support his claim.



February 1, 2022. Although Mr. Desruisseaux claims the system did not work properly at first and that the contractor had to return within a few days, there is no credible evidence to support the claim that Defendants were without heat after the heating system was replaced.

To hold Plaintiff liable for violation of the covenant of quiet enjoyment, the Court must find that she acted at least negligently. See *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997). To the contrary, the Court finds that Plaintiff responded promptly and reasonably after being notified of the problems in the Premises at the beginning of the tenancy. She paid over \$7,500.00 to replace the furnace and paid for a hotel when Defendants were unable to use the Premises.

The warranty of habitability, on the other hand, which is implicit in every residential rental contract, does not incorporate a fault element. See *Berman & Sons v. Jefferson*, 379 Mass. 196, 200 (1979). Plaintiff is liable under this legal theory for material defects in the Premises regardless of the efforts she made to address them. The evidence clearly demonstrates that Defendants suffered uninhabitable conditions for at least the period between January 15, 2022 and February 1, 2022. Having no heat in the middle of the winter significantly reduces the fair rental value of a dwelling. The Court applies a 75% abatement for 15 days. At a rental rate of \$1,850 at that time, the warranty damages are \$693.75.

In mid-2023, a storm caused a large tree to fall in the yard, which restricted the space available for Defendants' kids to play and which broke a section of the fence. In June 2023, Plaintiff said that she would send someone to clear the tree, but she did not do so for at least a couple of months. Plaintiff was not negligent in

causing the damage, but she was slow to take steps to address the problem. There is not enough evidence to demonstrate that the fallen tree caused a serious interference with Defendants' tenancy (especially considering the Board of Health's notation that there was still sufficient yard space available); however, the issue with the tree appears to have soured the relationship between the parties.

On September 15, 2023, Defendants filed a complaint with the City of Westfield Health Department complaining about several issues, including a mold-like substance in the home, electrical issues, water leaks, clogged drains, broken toilets, a mouse infestation, and broken baseboards, in addition to the fallen tree. The Court credits Plaintiff's testimony that she did not receive a copy of Defendants' complaint.

On or about September 21, 2023, Defendants suffered a clogged pipe that caused water to back up through the toilet and shower stall. Water escaped the bathroom and apparently damaged a ceiling and wall below. Plaintiff contacted a plumbing company to address the issue. Although Plaintiff claims that the backup was due to hair ties in the pipe, there is no admissible evidence on this issue. Regardless of where the responsibility lies, the incident caused additional friction between the parties.

Defendants paid \$950.00 toward rent on October 10, 2023. They claim they told Plaintiff that they were withholding the rest of the rent until she made necessary repairs. There is no evidence that Defendants were withholding rent, and the evidence shows that they had paid rent in several partial payments in the past, so payment of \$975.00 is consistent with past practices. Nonetheless, whether Defendants told Plaintiff they were withholding rent, and regardless of whether

Plaintiff knew that Defendants had filed a complaint with the health department, the complaints about the tree and water back-up occurred within six months of the date Plaintiff served Defendants with a notice to quit on October 13, 2023.

Pursuant to G.L. c. 239, § 2A, service of the notice created a rebuttable presumption that her action was a reprisal against Defendants for exercising their legal rights. To rebut the presumption, Plaintiff must be able to show by clear and convincing evidence that her action was not a reprisal against Defendants and that she had sufficient independent justification to terminate the tenancy and would have in fact taken such action, in the same manner and at the same time, even if Defendants had not complained about the conditions of the Premises. See G.L. c. 239, § 2A. Plaintiff did not rebut the presumption of reprisal by clear and convincing evidence. She did not adequately explain why she decided to send the notice to quit when she did, particularly given that she had allowed Defendants to make partial rent payments in the past. Pursuant to § 2A, therefore, the Court finds in favor of Defendants on Plaintiff's claim for possession.

Separate from their retaliation defense, Defendants have established an affirmative cause of action for retaliation under G. L. c. 186, § 18. Although there is no rebuttable presumption of retaliation in proceedings based on the nonpayment of rent (see *Youghal v. Entwistle*, 484 Mass. 1019, 1024 (2020)), Defendants demonstrated by a preponderance of credible evidence that one of Plaintiff's principal motives for serving the notice to quit was their complaints about the Premises. See *Scofield v. Berman & Sons, Inc.*, 393 Mass. 95, 114-15 (1984). As damages for violation of G.L. c. 186, § 18, Defendants are entitled to damages of two

month's rent in the total amount of \$3,900.00.

After Plaintiff served the notice to quit on Defendants, the Westfield Health Department inspected the Premises and found numerous violations, including defects in the siding and foundation, damaged door jams and baseboards, dangling wires, non-working outlets, broken exterior stairway and handrail broken, broken toilets in both bathrooms, a clogged shower, a mold-like substance in the tub, evidence of water leaks, a lack of proper ventilation in one bathroom, rodents and insufficient heat. When the Board of Health returned for reinspection on January 5, 2024, it found that most of the violations remained outstanding.<sup>5</sup>

On February 6, 2024, the City of Westfield filed a complaint against Plaintiff in Housing Court to compel her to make repairs. See Docket No. 24H79CV000083. After the initial court date, Plaintiff did not make the necessary repairs. On May 7, 2024, she entered into an agreement to make all corrections within 30 days. On June 6, 2024, when the City found that some repairs remained, the parties entered into an agreement requiring Plaintiff to complete the balance of the work within ten days. The Health Department issued a letter of compliance after a final inspection on June 24, 2024.<sup>6</sup>

The totality of the circumstances related to the housing conditions cited by the Board of Health warrants a finding that Plaintiff violated the covenant of quiet enjoyment. She was clearly negligent in not addressing the code violations promptly,

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<sup>5</sup> In an unrelated development, the main drain the basement backed up on January 21, 2024. Plaintiff hired a contractor to address the problem, but when Defendants complained about the resulting smell and damage, Plaintiff told them that they would have to hire their own cleaning company to address the issue.

<sup>6</sup> Defendants disagreed that the work was complete. They filed an application for an emergency order for repairs in this Court on June 27, 2024 (Docket No. 24H79CV000487). They did not offer evidence sufficient for the Court to rule that the Board of Health was incorrect in issuing the compliance letter.

and the conditions constituted a substantial interference with the tenancy. As damages for breach of quiet enjoyment, Defendants are entitled to statutory damages equal to three months' rent in the amount of \$5,850.00.<sup>7</sup>

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 Defendants pursuant to G.L. c. 239, § 2A.
2. Defendants are entitled to damages in the amount of \$10,443.75 on account of their counterclaims. This amount shall be set off against the \$25,175.00 in unpaid rent due Plaintiff.
3. Judgment for damages shall enter in favor of Plaintiff in the amount of \$14,731.25.

SO ORDERED.

DATE: November 25, 2024

  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>7</sup> Although Plaintiff's conduct could also result in liability under G.L. c. 93A, the treble damages component of G.L. c. 186, § 14 serves the same purpose of the treble damages available under c. 93A and would be duplicative.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampshire , ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24SP3134

Veloz & Associates LLC ,

PLAINTIFF(S)

v.  
Benjamin Ring ,

DEFENDANT(S)

ORDER

After hearing at which [] both parties [] plaintiff only [] defendant only appeared, the Court orders the following:

Defendant's motion to dismiss is ALLOWED for the following reason:

According to the summons and complaint filed with the court, the deadline for filing the pleading was Monday, August 5, 2024. The summons and complaint was entered by the court on August 6, 2024, after the deadline. A late filed pleading cannot be accepted without the assent of the other side, which was not obtained here.

The plaintiff offered evidence that it attempted to file the summons and complaint on August 5, 2024, but that it was rejected by the e-filing system. The court rejects the plaintiff's argument that because the filing was rejected, the accepted filing should date back to the date of the rejected filing. There is no basis for the court to conclude that the rejection the fault of the court or the e-filing system, and is likely due to error on the part of the filer.

The parties agreed that a companion case, 24SP3133, Veloz & Associates LLC v. Edward Ring, would be consolidated for the purposes of the motion to dismiss. In 24SP3133, the summons and complaint lists the filing deadline as July 29, 2024 and the pleading was not entered with the court until August 6, 2024.

Accordingly, both 24SP3133 and 24SP3134 are hereby DISMISSED.

SO ORDERED: 1st Jonathan J. Kane DATE: 11/25/24  
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-928

**ROBERT ARCOTT,**  
  
**Plaintiff,**  
  
**v.**  
  
**JAMES MORIN and TYLER MORIN,**  
  
**Defendants.**

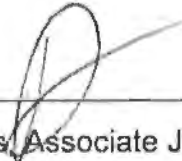
**ORDER for entry of judgment  
against Tyler Morin**

After hearing on October 31, 2024, on the landlord's motion to enter judgment at which all parties appeared, the following order shall enter:

1. After an evidentiary hearing, the court is satisfied that the landlord met his burden of proof that he should be issued entry of judgment for possession as against Tyler Morin.
2. Accordingly, judgment shall enter for the landlord for possession (with no costs) as against Tyler Morin but not as against the co-defendant James Morin.

3. Additionally, though Tyler Morin is permitted to visit the premises he must not reside therein and James Morin shall not allow Tyler Morin to reside at the premises.

So entered this 26 day of November, 2024.

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

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-4291

AVALON PROPERTIES, LLC,

Plaintiff,

v.

MYRNA OQUENDO,

Defendant.

ORDER

After hearing on November 7, 2024, on the landlord's motion for issuance of the execution, the following order shall enter:

1. The landlord asserts that the outstanding balance of unpaid use and occupancy is \$7,095 through November 7, 2024, plus court costs.
2. A representative from Way Finders, Inc. joined the hearing and confirmed that there is a RAFT application currently pending and that the tenant may be eligible for \$7,000.

3. The tenant shall pay her November 2024 rent by no later than November 26, 2025, and rent for December 2024 by no later than the first week of December 2024.
4. Given the possibility of a RAFT payment of \$7,000, the tenant shall be responsible for paying the landlord \$50 each month in addition to her monthly rent for any outstanding arrearage not covered by RAFT starting in JANUARY 2025. The additional payment should be considered to be a "repayment plan" for RAFT purposes.
5. In accordance with G.L. c.239, s.15, the motion for issuance of the execution is denied, without prejudice.
6. This matter shall be scheduled for review on **December 12, 2024, at 9:00 a.m.**

So entered this 26 day of November, 2024.

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

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No: 23SP3546

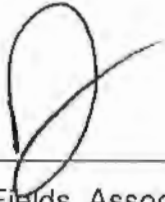
**Baltimore City Properties**  
  
**Plaintiff,**  
  
v.  
  
**Donald Muller**  
  
**Defendant.**

ORDER

After hearing on Friday, November 15, 2025 for which a representative of both parties appeared. The following order shall enter:

1. Defendant's counsel is dismissed from this case.
2. The plaintiff's motion for issuance of execution is denied. The landlord has continued to neglect the premises and failed to make repairs to the water in the kitchen.
3. Defendant's motion for more time is allowed. The tenant may continue to occupy the premises for an additional 3 months from the date of this order.

So entered this 26 day of November, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

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

DM PROPERTY, LLC,  
  
Plaintiff,  
  
v.  
  
KIANNA CLAUDIO,  
  
Defendant.

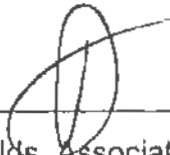
ORDER

After hearing on November 7, 2024, on the tenant's motion to stay the use of the execution, the following order shall enter:

1. The landlord alleges that the total balance owed through November 2024 is \$2,737 plus court costs.
2. The representative from Way Finders, Inc. joined the hearing and confirmed that there is a pending RAFT application and that the tenant may be eligible for \$3,400.

3. The tenant is reminded that because her tenancy has a project-based subsidy, she will have to provide "hardship" documentation for her RAFT application.
4. Based on the pending nature of a RAFT application and the possibility that the RAFT funds could pay for all of outstanding arrearage, the motion is allowed and there shall be a stay on the landlord's use of the execution.
5. The tenant shall pay the landlord her recalculated rent in full by November 14, 2024, and then again by December 14, 2024.
6. This matter shall be scheduled for further hearing on **December 19, 2024, at 9:00 a.m.**

So entered this 26 day of NOVEMBER, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 23-SP-5200**

**HMR,**  
  
**Plaintiff,**  
  
**v.**  
  
**HATHAWAY,**  
  
**Defendant.**

**ORDER**

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

1. This hearing was scheduled by the court after hearing on September 27, 2024, which also ordered entry of judgment for possession the plaintiff.
2. The order also required payment by the tenant of \$377 which was paid (albeit a few days late).
3. A representative for the RAFT program reported that there is an application pending which, if successful, could pay six months of the tenant's portion of the rent plus court costs. The tenant has also applied to Catholic Charities for

rental arrearage and is currently working with CHD on other sources of rental arrearage payments.

4. Given the pending nature of the RAFT application, the fact that this is a project-based subsidized tenancy, that the tenant is working with CHD, and that she paid the payment ordered by the court's earlier order, this matter shall be continued further to the date noted below to afford the tenant a further chance in paying the arrearage and avoiding eviction.
5. The tenant shall pay her December 2024 rent (use and occupancy) prior to the next hearing plus \$25. The additional payment (\$25) should be considered by RAFT as a "repayment plan" for any arrearage not covered by a RAFT payment.
6. This matter was referred to the Tenancy Preservation Program (TPP) but the tenant was not comfortable working with a man and the agency was not able to afford the tenant a female staff member. TPP has now informed the court that it should be able to designate a female staff member by the next hearing.
7. This matter shall be scheduled for **December 27, 2024, at 9:00 a.m.** for further hearing.

So entered this 26 day of November, 2024.

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Robert Fields, Associate Justice

Cc: Bekki Craig, TPP  
Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-SP-4391

LIBRARY COMMONS, LP,

Plaintiff,

v.

SHAKIRA ORTIZ and JULIA SANTIAGO,

Defendants.

ORDER

After hearing on November 14, 2024, the following order shall enter:

1. The parties reported to the court that RAFT has authorized a payment of \$7,000 to the landlord which will reduce the rent arrearage to \$2,516.
2. The tenant shall pay her November 2024 rent (use and occupancy) by November 22, 2024, plus \$50 (towards arrearage) and pay December use and occupancy by December 16, 2024, plus \$50 (towards arrearage).
3. The tenant has obtained a new job and anticipates being able to pay her rent plus an additional monthly payment that is higher than \$50 and this shall be discussed at the next hearing.

4. This matter shall be scheduled for further review on **December 30, 2024, at 9:00 a.m.**

So entered this 26 day of November, 2024.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke and a diagonal line extending upwards and to the right.

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Robert Fields, Associate Justice

Cc: Court Reporter

LUDLOW HOUSING AUTHORITY  
PLAINTIFF(S)

v.  
ROSEMARY REILLY  
DEFENDANT(S)

ORDER

After hearing at which  both parties  plaintiff only  defendant only appeared, the Court orders the following:

This summary process case for failure to complete mandatory recertification processes came before the Court on November 26, 2024. Defendant did not appear.

At the prior hearing, a referral was made to TPP to assist with the missing recertification paperwork (the past two years are outstanding) and to apply to RAFT to pay the eviction cancellation fees.

TPP was not present, but Plaintiff's counsel reported that no RAFT application was pending and no further work had been done to complete the missing recertification paperwork.

In light of the foregoing, the Court shall issue a new execution (the original was returned today). The Court will stay its use for 30 days (and toll the period under c. 235, s. 23) to give TPP another opportunity to assist Defendant in applying to RAFT and completing the missing recertification paperwork.

Under the circumstances, despite indicating from the bench that the Court would not appoint a GAL, the Court will appoint a GAL for the purposes of investigating the obstacles to recertification and assisting Defendant in completing that process. If the paperwork for recertification is collected and only needs Ms. Reilly's signature, the GAL may ask the Court for further authority.

The Court shall schedule a further hearing on December 19, 2024 at 9:00 a.m.

SO ORDERED: 1s/ Jonathan J. Kane DATE: 11/26/24  
Jonathan J. Kane, First Justice

cc: ACM Cunha (for appointment of a GAL)  
Tenancy Preservation Program Pioneer Valley

**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 24-SP-3601**

**KEVIN MICHELSON,**  
  
**Plaintiff,**  
  
**v.**  
  
**FAUSTIN CORREA,**  
  
**Defendant.**

**ORDER**

This matter came before the court for a trial at which the plaintiff appeared with counsel and the defendant appeared self-represented. The trial was continued as part of the following order:

1. The defendant tenant received responses to his discovery demand after they were due and with insufficient time for him to properly review them and determine if he will need to file a motion to compel.

2. Additionally, the plaintiff landlord is a petitioner (debtor) in bankruptcy court and the tenant is challenging whether the landlord is required to be granted leave from that court before brining an action in another court.
3. The parties shall have until December 6. 2024, to file and serve legal memoranda on whether the landlord as a petitioner/debtor in bankruptcy court is permitted to bring this summary process action without first getting leave from the bankruptcy court.
4. The tenant shall also have until December 6, 2024, to file and serve a motion to compel if he is seeking more extensive responses to his discovery demand. If such motion is filed it shall include the discovery request number (interrogatory, document request, etc.), the response, and argument as to why the response is deficient.
5. This matter shall be scheduled for hearing on properly filed motions, for consideration of the bankruptcy issue, and possibly for trial on **December 16, 2024, at 10:00 a.m.**

So entered this 26 day of NOVEMBER, 2024.

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

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-SP-5656**

<p><b>RELATED MANAGEMENT COMPANY, LP,</b></p> <p style="text-align:center"><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>DIANA ORTIZ,</b></p> <p style="text-align:center"><b>Defendant.</b></p>
---

**ORDER**

After hearing on November 6, 2024, on the tenant's motion to stop a physical eviction, the following order shall enter:

1. A representative from Way Finders, Inc. joined the hearing by Zoom and reported that there is a RAFT application pending.
2. This is a project-based subsidized tenancy and the landlord reports that \$2,935.90 is outstanding in use and occupancy through November 2024.
3. Given the pending nature of the RAFT application and that there may be funds sufficient to pay a half of the outstanding balance plus court costs and

cancellation costs, and given the tenant's partial payments since the agreement and the loss of a subsidized unit if evicted, the physical eviction currently scheduled shall be cancelled.

4. The matter was re-referred to the Tenancy Preservation Program (TPP) and the matter was recessed to allow for TPP to meet with tenant and share their assessment.
5. TPP met with the tenant and reported that they will open a case for the tenant due to a concern that the tenant may be challenges to the tenant's cognitive abilities which may have resulted in her difficulties navigation these proceedings. The tenant shall work cooperatively with TPP and follow its recommendation.
6. There shall be a stay on the use of the execution which shall trigger a tolling of time on the use of the execution in accordance with G.L. c.235, s.23.
7. The tenant shall pay her use and occupancy (\$266) by December 8, 2024. Going forward, the tenant shall pay her rent plus \$50 per month. This extra payment should be considered a repayment plan for RAFT purposes (and the parties should provide Way Finders, Inc. with a copy of this Order).
8. The landlord may provide the tenant (and TPP) copies of invoices for the cancellation costs incurred from the sheriff and the moving company relative to the cancelled eviction and same shall be added to the tenant's debt.
9. This matter shall be scheduled for further hearing on **December 10, 2024, at 9:00 a.m.**

So entered this 26 day of NOVEMBER 2024.



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Robert Fields, Associate Justice

Cc: TPP, Alisha White

Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CASE NO. 24CV829

SERVICENET, INC. )  
Plaintiff )  
v. )  
GEORGE DOSH )  
DAVID BERGEN )  
PATRICK SHEA )  
DAVID MORELLO )  
Defendants )

**ORDER OF THE COURT**

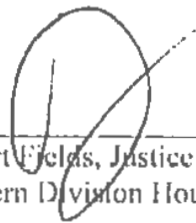
After a hearing on Plaintiff's Motion to Enforce prior Order of this Court, on November 25, 2024, at which Plaintiff was present with Counsel and Defendants David Morello and David Bergen failed to appear, the following is ORDERED:

1. Defendants Morello and Bergen will again allow access to their units to Tenancy Preservation Project ("TPP") representatives and their agents on December 4, 2024 and will cooperate fully in cleaning, removal of trash, and general preparation for a bedbug treatment. Such preparations include removing excess items or clutter in a manner which is approved for disposal of infested items and/or allowing TPP and its agents to remove and dispose of any item in the premises which TPP or its agents determine to be infested, and which otherwise cannot be treated.
2. On December 5, 2024, Defendants Morello and Bergen will allow access to their units to ServiceNet and its vendors for bedbug extermination treatment. In order to do so, Tenants and all pets must vacate the unit for a four-hour period. ServiceNet will provide exact times and instructions for preparations no later than Wednesday November 27, 2024.
3. If Defendants fail to cooperate with TPP in cleaning and preparing as directed above and if ServiceNet's extermination contractor indicates that treatment will not be effective because of the failure to be prepared, this Court will further order Defendants to vacate their unit, at Tenant's own expense, until such time as ServiceNet is able to independently clean, dispose of untreatable items and refuse, prepare, and effectively treat unit.

4. The Court has scheduled further hearing on the Motion to Enforce and this Order for December 2, 2024 at 9:00AM at the Hadley Courthouse, 116 Russel Street, Hadley, MA. Should any Defendant wish to be heard on this matter or the Court's order, they may appear on that day and time to address the Court.
5. Plaintiff shall serve copies of this Order on Defendants Morello and Bergen at their units no later than Wednesday November 27, 2024 at 4:30PM.

SO ORDERED

Dated: 11/26/2024



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Robert Fields, Justice  
Western Division Housing  
Court

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5182

**SHP MANAGEMENT CORP.,**

**Plaintiff,**

**v.**

**ANGIE EDWARDS,**

**Defendant.**

**ORDER**

After a status hearing on November 25, 2024, at which the plaintiff appeared through counsel and the tenant appeared along with the G.A.L. (Attorney Timothy Ryan), the following order shall enter:

1. By agreement of the parties and by order of the court, the G.A.L. Timothy Ryan shall act as "trial counsel" at the trial that is scheduled to commence on December 2, 2024.
2. This shall include conducting direct and cross-examination of witnesses and making evidentiary objections when called for, as well as any legal argument,

request for reasonable accommodations, and motions (including for directed verdict).

3. The for-cause trial shall commence at **9:00 a.m. on December 2, 2024.**

So entered this 26 day of November, 2024.



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Robert Fields, Associate Justice

Cc: Tenancy Preservation Program, Bekki Craig  
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 24-SP-2640**

**SPRINGFIELD HOUSING AUTHORITY,**  
  
**Plaintiff,**  
  
**v.**  
  
**OLGA ROBLES CARRASQUILLO,**  
  
**Defendant.**

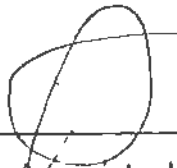
**ORDER**

After hearing on October 11, 2024, on the landlord's motion for entry of judgment at which the tenant failed to appear but for which the landlord and a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. TPP reported to the court that they have opened a case and are working well with the tenant.
2. Though TPP's recommendation is that the tenant use a Representative Payee going forward, the agency that TPP has been using for that purpose is no longer doing so. TPP shall continue to investigate

3. The landlord reported that the tenant made partial payments under the terms of the Agreement but did not pay in full (\$17 short).
4. The landlord reported that the outstanding balance through October 2024 is \$1,662 plus court costs.
5. TPP shall investigate and work with the tenant and the landlord to see if arrangements can be made to have the tenant's rent paid automatically (electronically) through the parties' bank accounts as a reasonable accommodation to the tenant's disabilities. TPP shall also investigate options for Representative Payees through the Social Security Administration.
6. A representative from Way Finders, Inc. joined the hearing and reported that the RAFT application is pending and is awaiting the landlord's portion. The application had an incorrect contact email for the landlord that was corrected during the hearing.
7. It is understood that the tenant will be eligible for RAFT funds as of November 1, 2024, and that the amount of eligibility may pay for the entire outstanding balance including court costs.
8. This matter shall be scheduled for further review on **December 6, 2024, at 9:00 a.m.**

So entered this 26 day of November, 2024.



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Robert Fields, Associate Justice

Cc: TPP, Ms. Battista  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-1319

202-212 PEARL STREET APT., LLC,  
  
Plaintiff,  
  
v.  
  
SHAMAL REDD,  
  
Defendant.

ORDER

After hearing on November 14, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. The tenant, Shamal Redd, is presently hospitalized [REDACTED] and attended the hearing by Zoom.
2. Mr. Redd explained that he has always used a Representative Payee, but that person ended their service and he is looking for an alternative Representative Payee.

3. The Tenancy Preservation Program (TPP) has expended a great deal of time trying to reach the tenant, but the tenant has not responded.
4. The tenant shall work cooperatively with TPP and follow their recommendations including on how to obtain an alternative Representative Payee and on a new RAFT application (for which there is a maximum of \$492 remaining in funds).
5. Given the tenant's [REDACTED] hospitalization, the court shall continue the landlord's motion for entry of judgment to the hearing scheduled below.
6. The tenant shall pay his rent for December 2024 prior to the next court date.
7. This matter shall be scheduled for hearing on **December 19, 2024, at 9:00 a.m.**

So entered this 27 day of November, 2024.

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Robert Fields, Associate Justice

Cc: Tenancy Preservation Program, Bekki Craig  
Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2944

_____	)	
AARON BAXTER,	)	
	)	
Plaintiff	)	
	)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
SALEEMA RAYMOND (BAXTER),	)	AND ORDER FOR JUDGMENT
	)	
Defendant	)	
_____	)	

This no-fault summary process case came before the Court on October 15, 2024 for a bench trial. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 50 Coffey Hill Road, Ware, Massachusetts (the "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:

The parties divorced some time prior to 2022 and Defendant moved out. In May 2022, concerned about his children's living conditions, Plaintiff offered Defendant to move back into the Premises. The parties did not enter into a written rental agreement and Defendant did not pay rent or make other payments in lieu of rent on a regular basis. There was no meeting of the minds as to the formation of a landlord-tenant relationship, as the parties intended to reside as a family unit. The Court finds that no landlord-tenant relationship was formed.

On November 8, 2023, Defendant obtained a G.L. 209A abuse prevention order against Plaintiff in District Court. Other than a single visit to retrieve belongings, Plaintiff has not been in the Premises and Defendant has had exclusive use of it. On January 10, 2024, Plaintiff served Defendant with a 90-day notice to quit which Defendant acknowledges receiving.<sup>1</sup> Defendant has not vacated.

Because there is no landlord-tenant relationship between these ex-partners, the warranty of habitability does not apply. The warranty of habitability requires a landlord to deliver and maintain rented premises in habitable condition. To the extent that a residential lease is a contract between landlord and tenant, there is no question that only a tenant can recover for economic loss caused by a breach of the implied warranty of habitability. See, e.g., *Cruz Mgt. Co. v. Thomas*, 417 Mass. 782, 787 (1994).<sup>2</sup>

Likewise, claims for breach of the right to quiet use and enjoyment arise from residential landlord-tenant law. G. L. c. 186, § 14, imposes penalties against "any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant." See *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 284-285, 630 N.E.2d 248 (1994). Plaintiff is not Defendant's landlord and, thus, Defendant cannot seek statutory relief under G.L. c. 186, § 14.<sup>3</sup>

Even if Defendant could establish a counterclaim in this case, she could not defeat Plaintiff's claim to possession. Although G.L. c. 239, § 8A does acknowledge

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<sup>1</sup> Pursuant to G.L. c. 186, § 12, if rent is not payable in regular installments, a notice to quit must give three months' notice.

<sup>2</sup> This is not to say that Plaintiff could not have tort liability to Defendant, but tort liability was not alleged.

<sup>3</sup> The outcome is the same regarding Defendant's claims for reprisal and retaliation. Both G.L. c. 186, § 18 and G.L. c. 239, § 2A, both of which protect the rights to tenants.

that “occupants” have rights, § 8A is only applicable in the context of “any action to recover possession of any premises rented or leased for dwelling purposes.” The purpose of § 8A is to keep rental housing stock safe and sanitary, and the Premises were not rented or leased to Defendant.<sup>4</sup>

Plaintiff and Defendant are parties to ongoing proceedings in Probate and Family Court and in District Court where some of the issues raised here (allegations of harassment and destruction of property) can be addressed. This Court can and will, however, ensure that for so long as Defendant occupies the Premises, the home (and its pool, yard, and garage) remains in a safe and sanitary condition.

Accordingly, 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. Issuance of the execution (the eviction order) shall be stayed through January 10, 2025, which will mark one year since the notice to quit was served. After this date, execution may issue upon written application.
3. Plaintiff shall correct the violations cited by the Quabbin Health District in its July 24, 2024 order (and in any subsequent order) forthwith.
4. Defendant may not unreasonably deny access to the Premises for the purposes of repairs. Any contractors working at the Premises must provide Defendant with no less than 24 hours' advance written notice.

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<sup>4</sup> The term “occupants” in § 8A applies to tenants at sufferance and occupants at sufferance residing in premises rented or leased for dwelling purposes such as a tenant who fails to vacate after expiration of a notice to quit or term lease. Such “occupants” may be able to defeat a landlord’s claim to possession. See *Hodge v. Klug*, 33 Mass. App. Ct. 746, 754 (1992).

5. To the extent Plaintiff remains subject to an abuse prevention order that bars him from the Premises, he must hire third party contractors to undertake the work.<sup>5</sup>
6. If Defendant contends that Plaintiff is not making the necessary repairs, she may file a motion to enforce this order.

SO ORDERED.

DATE: November 27, 2024

  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>5</sup> If Plaintiff requires that the house be vacant for a short period of time to complete the repairs, he may file a motion to that effect with this Court.

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-SP-1078**

**BG MASSACHUSETTS I, LLC,**

**Plaintiff,**

**v.**

**MADLINE MATEO,**

**Defendant.**

**ORDER**

After hearing on November 14, 2024, on review at which the plaintiff appeared through counsel and the defendant appeared through Lawyer for the Day counsel (James Mooney), and also at which a representative from the Tenancy Preservation Program (TPP) also appeared, the following order shall enter:

1. The tenant paid her rent since the last court hearing, as required by the court's order from that hearing.
2. Community Legal Aid is assisting the tenant with her RAFT application which is pending (Application #: [REDACTED])

3. A representative from Way Finders, Inc. joined the hearing and was able to confirm that the RAFT application is pending and that the tenant is eligible for approximately \$2,500 of rental arrearage and also the costs associated with the cancellations of physical evictions and court costs, leaving an approximate balance in total of \$500.
4. This matter shall be continued for further review on the date noted below. In the meantime, the tenant shall continue to work with CLA on her RAFT application. She shall also make a use and occupancy payment for December 2024 by the first week of December 2024 and also shall pay \$50 towards monies owing and not anticipated to be paid by RAFT by no later than the next court date noted below and by the third week of each month thereafter. This extra payment should be considered by RAFT as a "repayment plan" for its programmatic purposes.
5. The tenant shall also cooperate with TPP.
6. This matter shall be continued for further review on **December 19, 2024, at 9:00 a.m.**

So entered this 27 day of November, 2024.

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Robert Fields, Associate Justice

Cc: James Mooney, Esq., Community Legal Aid (Lawyer for the Day)  
Bekki Craig, TPP  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24CV0630

FRANCES BUTLER,  
Plaintiff

)  
)  
)  
)  
)  
)  
)

v.

ORDER ON MOTION TO DISMISS

KIMBERLY ANDERSON, ET. AL,  
Defendants

This matter came before the Court on October 31, 2024 for hearing on a motion to dismiss under Mass. R. Civ. P. 12(b)(6). The plaintiff and the moving defendants appeared through counsel. Defendant Kimberly Anderson did not appear.

The plaintiff is a tenant residing at 58 Colony Road, Unit 2B, West Springfield, Massachusetts (the "Premises"), a condominium unit owned by Defendant Anderson (the "landlord") located at Wentworth Estates Condominiums. Defendant Trustees of Wentworth Estates Condominium Trust (the "Trust") is the unit owners' association owned by the unit owners and used by them to manage and regulate the condominium, Defendant Nicholas Boccio is a trustee of the Trust and Defendant Martinelli, Martini & Gallagher Real Estate, Inc. (the "Manager") is the property manager for the Trust. Together, the Trust, Mr. Boccio and the Manager shall be referred to as the "Association Defendants."

The standard that a court applies to a motion to dismiss for failure to state a claim under Mass. R. Civ. P. 12(b)(6) is well established. The plaintiff must allege, through more than labels and conclusions, factual allegations plausibly suggesting (not

merely consistent with) an entitlement to relief. The court accepts these factual allegations as true and draws all reasonable inferences in the plaintiff's favor. Review is confined to the four corners of the complaint, with consideration of other materials given only where the complaint attaches them or where judicial notice is appropriate.

In this case, Plaintiff alleges that she has suffered from conditions of disrepair in her unit (insufficient heat) and in the basement where she has personal storage (water damage and sewage). She brings claims not only against her landlord, Ms. Anderson, but also against the Association Defendants. The complaint alleges breach of the implied warranty of habitability (Count I) and breach of the covenant of quiet enjoyment due to bad conditions, interference with utilities, "attempted ouster" from the Premises, and removal of a portion of the leased premises (the basement) (Counts II-V). The complaint also alleges violations of G.L. c. 186, § 15B (the security deposit law) (Counts VI and VII), discrimination (Count VIII), retaliation (Count IX) and G.L. c. 93A (Count X).

The implied warranty of habitability and the statutory protections for occupants of residential housing set forth in G.L. c. 186, § 14 (quiet enjoyment), G.L. c. 186, § 18 and G.L. c. 239, § 2A (reprisal and retaliation) and G.L. c. 186, § 15B (security deposit) apply only to the residential landlord-tenant relationship. The Association Defendants are neither the lessor or landlord with respect to Plaintiff, and they have no contractual privity with Plaintiff.<sup>1</sup> Therefore, the Court dismisses Counts I-VII and IX as to the Association Defendants.

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<sup>1</sup> Plaintiff contends that the basement storage area is part of the common area of the condominium and therefore the Association Defendants can be held liable for defects in common areas. Storage spaces are not intended for human habitation, and therefore breach of warranty and quiet enjoyment claims against the Association Defendants must fail.



Massachusetts courts have ruled that G.L. c. 93A is inapplicable to a private dispute between a condominium unit owners' association and a member of that association for failure to pay condominium fees. *Berish v. Bornstein*, 437 Mass. 252, 274 (2002). The same reasoning applies here in a dispute between a tenant of a member of the unit owners' association and the association. The Association Defendants are not in trade or commerce as a lessor or landlord of residential housing. The Court therefore dismisses Count X as to the Association Defendants.

The remaining count, Count VIII, seeks relief based on violation of anti-discrimination laws related to housing. Massachusetts law broadly prohibits discrimination in the selling, leasing, and management of most housing accommodations. See G.L. c. 151B. The Association Defendants are not exempt, so the Court must examine at the specific allegations in the complaint alleging discrimination.

Massachusetts law makes it unlawful “[f]or any person furnishing credit, services or rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.” G.L. c. 151B, § 4(10). The sole allegation in the complaint related to discrimination is that Mr. Boccio made false allegations to the administrator of Plaintiff's Section 8 rental voucher and therefore engaged in hostile environment harassment and discrimination based on receipt of public assistance.

Taken in the light most favorable to Plaintiff, the allegations of the complaint cannot support a claim of discrimination based on receipt of public assistance. Neither Mr. Boccio nor the other Association Defendants provides rental accommodations or any other services to Plaintiff, and thus § 4(10) does not provide grounds upon which relief can be granted.<sup>2</sup> Accordingly, the Court dismisses Count IX.

For the foregoing reasons, the motion to dismiss is ALLOWED with respect to all counts of the complaint to the extent they assert claims against the Association Defendants.

SO ORDERED.

November 27, 2024

  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>2</sup> In any event, the complaint does not allege that the Section 8 administrator received the letter or took any adverse action related to Plaintiff or her tenancy.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-122

**SIMEON P. EUSTAQUIO,**  
**Plaintiff,**  
**v.**  
**NELLIE ROSARIO,**  
**Defendant.**

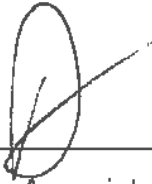
**ORDER**

After hearing on October 23, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. Attorney James Mooney appeared and satisfied the court that he is no longer an attorney of record in this matter and he was permitted to leave.
2. The tenant paid \$1,100 to the landlord during the hearing in money orders.
3. The tenant shall pay \$410 to the landlord by the first week of November 2024, and another \$410 by the first week of December 2024.

4. The tenant must, in accordance with the agreement of the parties, vacate the premises by December 31, 2024.
5. The landlord's motion for entry of judgment for possession is denied, without prejudice.

So entered this 27 day of November, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2765

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LONGHILL GARDENS, LLC,  
Plaintiff

v.

RULING ON DEFENDANTS'  
MOTION TO CERTIFY A CLASS

ANTHONY MESSINA AND SARAH FRANGAKIS,  
Defendants

---

This summary process case brought for nonpayment of rent came before the Court on October 31, 2024 on Defendants' motion to certify a class. Both parties appeared through counsel.

Pursuant to Rule 23 of the Rules of Civil Procedure, a class action may be certified if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In this case, Defendants are tenants residing at Longhill Gardens in Southamptton, Massachusetts, a property owned by Plaintiff. The property has approximately 60 units. Defendants allege that Plaintiff has engaged in unfair and deceptive practices by demanding rent in excess of the monthly amount due and unlawfully charging late fees. Because these appear to be standard business practices

employed by Plaintiff (and perhaps affiliated companies operating rental properties in Massachusetts), it is likely that many tenants (current and former) have been harmed. Therefore, the Court finds that the numerosity and commonality requirements for class certification have been satisfied.

The claims asserted by Defendants are representative of the claims that all tenants and former tenants of Longhill Gardens have as they relate to unlawful late fees and excess rent charges. As Defendants were allegedly charged both unlawful late fees and excess rent, the Court finds that they will fairly and adequately protect the interests of the class. Accordingly, the Court concludes that Defendants have established all elements for class certification.

For the following reasons, Defendants' motion to certify a class is ALLOWED.

SO ORDERED.

November 27, 2024

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-2765

---

LONGHILL GARDENS, LLC,  
Plaintiff

v.

RULING ON DEFENDANTS'  
MOTION TO DISMISS

ANTHONY MESSINA AND SARAH FRANGAKIS,  
Defendants

---

This summary process case brought for nonpayment of rent came before the Court on October 31, 2024 on Defendants' motion to dismiss and sever counterclaims. Both parties appeared through counsel.

Plaintiff terminated Defendants' tenancy by a notice to quit dated May 22, 2024. The basis for termination was nonpayment of rent. Plaintiff notified Defendants that \$5,925.00 was due based on a monthly rent of \$1,975.00. Defendants contend that they never agreed to a rent increase to \$1,975.00 per month nor ever paid rent in that amount. Defendant argues that the notice to quit is therefore defective and "completely chilled the ability of Defendants to cure."

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. *Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 130 (2019). Had Defendants continued to pay the last agreed-upon monthly rent, a notice to quit for

failure to pay the increased amount would have been defective and ineffective to terminate the tenancy. Here, however, Defendants paid no rent for the months in question and made no effort to cure. The Court rules that the inclusion of a rental amount higher than the last amount agreed upon, in the circumstances presented here, does not render the notice defective on its face and the issue of the amount of rent due each month can be resolved at trial.<sup>1</sup>

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

SO ORDERED.

November 27, 2024

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>1</sup> The legal adequacy of the notice to quit is an element of the landlord's prima case at trial, and based on the evidence presented, the Court could still find that the notice did not properly terminate the tenancy.



**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-CV-951**

**LORD JEFFERY APARTMENTS,**

**Plaintiff,**

**v.**

**KIM BROWN and RAYMOND FRAZIER,**

**Defendants.**

**ORDER**

After hearing on November 25, 2024, on the plaintiff landlord's motion for injunctive relief at which the landlord appeared through counsel and the tenant, Kim Brown, appeared by Zoom, the following order shall enter:

1. The landlord is seeking an order regarding the restoration of the electrical service at the premises.
2. The tenant reported that both tenants are presently hospitalized. Ms. Brown reports that she is anticipating having the electrical utility restored today or

tomorrow and is planning to return to the premises on Wednesday, November 27, 2024.

3. The tenants are not permitted to reside at the premises until they have the electrical services restored. The tenants are permitted to be at the premises during daylight hours but may not use candles or sources of heat not connected to the apartment's electric utility.

So entered this 27 day of November, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-2966

RELATED MANAGEMENT COMPANY, LP,  
  
Plaintiff,  
  
v.  
  
MARCHELLO HAMILTON,  
  
Defendant.

ORDER

After hearing on November 6, 2024, on the tenant's motion to stop a physical eviction, the following order shall enter:

1. At the end of July 2024, after RAFT paid \$7,000 the balance was \$1,030.
2. The tenant defaulted, judgment entered, execution issued, and a physical eviction has been scheduled for November 7, 2024. He reported that he failed to engage in the court process due to an misunderstanding that because RAFT made a payment he believed the court process would not continue.

3. The landlord reports that \$5,318 is outstanding in use and occupancy through November 2024.
4. The tenant shall pay his monthly rent by the first week of each month beginning December 2024.
5. The tenant shall pay the landlord an additional \$200 towards the rental arrearage by the 15 of each month (beginning in December 2024).
6. The tenant shall also apply his 2024 tax returns to the rental arrearage.
7. The physical eviction shall be cancelled and the landlord shall provide the tenant with invoices for the costs it incurred in scheduling and cancelling the physical eviction and such sum shall be added to the tenant's ledger.
8. This matter shall be dismissed upon a \$0 balance.
9. The execution shall be tolled in accordance with G.L. c.235, s.23 by this order.

So entered this 27 day of November, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-1836**

**U.S. BANK TRUST,**

**Plaintiff,**

**v.**

**DEVON FLOREK, et al.,**

**Defendants.**

**ORDER**

After hearing on October 15, 2024, on the tenant's motion to stay the use of the execution, the following order shall enter:

1. The defendants reported at the hearing that they have been approved by RAFT for moving expenses (and first month's rent, last month's rent, and security deposit) and is seeking more time to move out.
2. The defendant, Ryley White, reported to the court that he was a tenant of the former mortgagor since 2020. As such, the court is concerned that the

plaintiff may have been required to treat him as a *bona fide* tenant and comply with G.L. c.186A.

3. The physical eviction scheduled for October 28, 2024, shall be cancelled. As detailed on the record, this cancellation is due to the fact that Race Street Properties does not have a licensed to move the defendants' belongings.
4. The defendants shall pay \$500 per month to the plaintiff starting November 2024, plus pay the electricity bill.
5. The plaintiff shall not reschedule the move-out until it is granted the right to by the court. This stay tolls the use of the execution in accordance with G.L. c.235, s.23.
6. This matter shall be scheduled for further review on **January 9, 2025, at 9:00 a.m.**<sup>1</sup> Counsel for the plaintiff may appear by Zoom for this hearing. If the defendants vacate prior to the next hearing date, they should so inform the plaintiff's counsel.

So entered this 27 day of November, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter

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<sup>1</sup> An earlier return date was scheduled for December 3, 2024, but thereafter the parties filed a joint motion to extend the return date to January 6, 2025, or later.

**COMMONWEALTH OF MASSACHUSETTS**

**TRIAL COURT**

**Hampden, ss:**

**HOUSING COURT DEPARTMENT**

**WESTERN DIVISION**

**Case No. 24-SP-3085**

**MOSELEY APARTMENTS, LP,**

**Plaintiff,**

**v.**

**ROBERT OUIMETTE, JR.,**

**Defendant.**

**ORDER**

After hearing on November 7, 2024, on the plaintiff landlord's motion for appointment of a G.A.L. at which the tenant did not appear, the following order shall enter the following order:

1. A representative from the Tenancy Preservation Program (TPP) reported that they have been working with the tenant but only with intermittent success.
2. The tenant is urged to work cooperatively with TPP.

3. The landlord's motion for appointment of a Guardian Ad Litem (G.A.L.) is allowed and the Clerks Office shall identify and appoint a G.A.L. for Mr. Ouimette and upon such appointment also schedule this matter for review.
4. The G.A.L. shall communicate with the parties and TPP and shall be aware that both TPP and the landlord report that the tenant has informed them that he believes that he is moving to alternate accommodations (possibly assisted living) [REDACTED]  
[REDACTED].
5. TPP is requested to continue to reach out to the tenant and also attempt to visit him at his home.

So entered this 29 day of November, 2024.

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

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



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 23-SP-2261

RELATED MANAGEMENT COMPANY, LP,

Plaintiff,

v.

LUREYMI RIFAS,

Defendant.

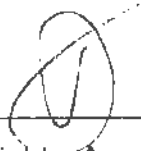
ORDER

After hearing on November 14, 2024, on the landlord's motion for entry of judgment, the following order shall enter:

1. Community Legal Aid attorney Gordon Shaw appeared as Lawyer for the Day for the tenant.
2. There is a RAFT application pending and CLA will work with the tenant on that application.
3. The tenant was a victim of domestic violence, and a referral was made to the Tenancy Preservation Program.

4. The motion is denied, without prejudice, to allow for the tenant's RAFT application to be processed and for her to make certain payments in the interim.
5. The tenant shall pay her rent for November 2024 by November 22, 2024, and thereafter shall pay her rent plus \$200 starting in December 2024. The extra \$200 should be considered by RAFT as a "repayment plan" for its programmatic purposes.
6. This matter shall be scheduled for further hearing on **December 19, 2024, at 9:00 a.m.**

So entered this 29 day of November, 2024.



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Robert Fields, Associate Justice

Cc: Bekki Craig, TPP  
Gordon Shaw, Esq., CLA LFD  
Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-CV-969

**JASON TORRES and ANGLICA CARTAGENA,**  
  
**Plaintiffs,**  
  
**v.**  
  
**DALTON ALEXIS,**  
  
**Defendant.**

**ORDER**

After hearing on November 29, 2024, on the plaintiff tenants' emergency motion for injunctive relief, at which the landlord did not appear, the following order shall enter:

1. Despite several efforts by the Clerks Office to reach the defendant landlord he was not able to be reached and did not appear.
2. When the tenants initiated this matter their unit had been condemned due to a lack of electrical service and heat. By the time of the hearing, the tenants reported that the electricity and heat had been restored.

3. The defendant landlord shall make all necessary repairs listed by the City Code Enforcement. Any such work that requires a licensed professional or permit issued shall be effectuated in that manner.
4. The landlord shall investigate any possible cross-metering with the tenants' electric service and remedy same forthwith.
5. This matter shall be scheduled for further hearing on **December 4, 2024, at 9:00 a.m.**

So entered this 29 day of November, 2024.

---

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-2719

DILERBY CRUZ BAUTISTA,  
  
Plaintiff,  
  
v.  
  
ENEIDA MEDINA,  
  
Defendant.

ORDER

This matter came before the court on November 7, 2024, for trial, at which each party appeared without counsel. After consideration of the facts admitted therein, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, Dilerby Cruz Bautista (hereinafter, "landlord") owns a two-family dwelling located at 25 Wilbraham Avenue in Springfield, Massachusetts. The defendant, Eneida Medina (hereinafter, "tenant"), has resided on the first floor (hereinafter, "premises") since many years prior to the landlord's purchase of the premises in September of 2023.

2. After serving the tenant with a no-fault notice to quit, the landlord commenced this eviction proceeding. The tenant filed an Answer with Counterclaims, including a claim for retaliation, a claim for breach of the warranty of habitability and covenant of quiet enjoyment, and a violation of the consumer protection act.
3. **The Landlord's Claim for Unpaid Use and Occupancy and Possession:**  
The parties stipulated that the monthly rent is \$1,200 and that the tenant received the no-fault notice to quit. The landlord met his burden of proof that the tenant owes \$13,200 in use and occupancy.
4. **The Tenant's Claim: Conditions of Disrepair:** Based on the City's Notice of Violations dated September 24, 2024, there existed conditions of disrepair including the shower backing peeling from the wall and mold-like substance accumulating along tub and shower, a leaking sink in bathroom, a hole in the wall behind the toilet, rotten kitchen sink cabinet floor, kitchen countertop trim peeling, rear right and front left burners non-functional, and missing light fixture covers in kitchen and living room.
5. The court credits the tenant's testimony that these conditions cited by the City existed for the entirety of the first year of the landlord's ownership (from September 2023 to September 2024) and that the landlord did not make repairs until they were cited by the City in September 2024.
6. These conditions violated the minimum standards of fitness for human habitation as established by Article II of the State Sanitary Code, 105 CMR 410.00 et seq. Although it is well settled law that a landlord is strictly liable for

breach of the implied warranty of habitability irrespective of the landlord's good faith efforts to repair the defective condition [*Berman & Sons, Inc., v Jefferson*, 379 Mass. 196 (1979)], all of these conditions all existed at the commencement of the tenancy and knowledge of them starting September 2024 is imputed. Additionally, the court finds the tenant credible when she testified that she personally told the landlord about these conditions of disrepair.

7. It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907, (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v Gonzalez*, 410 Mass. 855 (1991). I find that the average rent abatement of 20% fairly and adequately compensates the tenant for the diminished rental value of the premises resulting from these conditions from the commencement of the tenancy until the repairs were made directly after the City's September 2024 list of violations. As such, the damages shall be for 12 months of 20% abatement, totaling **\$2,880**.
8. **The Tenant's Claim: Quiet Enjoyment/Harassment:** The tenant failed to meet her burden of proof on her claim for breach of the covenant of quiet enjoyment and/or harassment.

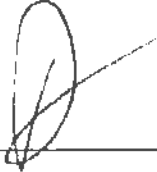
9. **The tenant's Claim: Retaliation:** The tenant failed to meet her burden of proof on her claim of retaliation. The city inspection took place in September 2024 and the Notice to Quit was served in May 2024.

10. **Conclusion and Order:** In accordance with G.L. c.239, s.8A, the tenant has ten days from the date of this order noted below to deposit

\$ 11,380.81 with the Court. This sum represents the award of damages for unpaid rent, use, and occupancy of \$13,200 MINUS the award to the tenant for breach off warranty of habitability damages totaling \$2,800 plus court costs of \$ 481 26 and interest \$ 499 55. If the tenant makes said deposit with the Court timely and in full, judgment shall enter for the tenant for possession and the deposited funds shall be disbursed to the landlord by the Court.

11. If the tenant fails to make said deposit with the Court, judgment shall enter for the landlord for possession plus \$10,400 plus court costs and interest.

So entered this 2 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

BERKSHIRE, SS  
FRANKLIN, SS  
HAMPDEN, SS  
HAMPSHIRE, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Docket No. 24-SP-03712

\*\*\*\*\*  
Montcalm Associates, LP \*  
PLAINTIFF \*  
\*  
v. \*  
\*  
Timothy Brown \*  
DEFENDANT \*  
\*\*\*\*\*

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

This is a summary process action in which the plaintiff seeks to recover possession of the premises from the defendant and damages for unpaid rent. The defendant appeared for trial and declined to testify.

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

The defendant, Timothy Brown, has resided at 419 Montcalm Street, M218, Chicopee, MA ("the premises") as a tenant under a written lease from July 2019 until its expiration, and as a tenant at will thereafter. The plaintiff, Montcalm Associates, LP, is the owner of the premises and is the defendant's landlord. The rent for the premises is \$1,375.00 per month and is due on the first day of the month. The defendant has failed to pay the plaintiff any rent for the months of September 2024 through November 2024, owes a balance of \$1,335.00 for the month of August 2024, and currently owes the plaintiff a total of \$5,460.00 in unpaid rent.

The Court finds that, on July 8, 2024, the plaintiff served the defendant with a legally

sufficient 30 Day Rental Period Notice To Quit.

The Court finds that the plaintiff has established its case for possession of the premises, plus costs.

**ORDER FOR JUDGMENT**

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

1. Judgment enter for the plaintiff for possession of the premises and damages for unpaid rent in the amount of **\$5,460.00**, plus costs.

2. Execution issue ten (10) days from the date that judgment enters, upon written request of the plaintiff.

  
**ANNE KENNEY CHAPLIN**  
**ASSOCIATE JUSTICE**

**Date:** December 2, 2024

**cc:** Colleen A. Hodge, Esq.  
Timothy Brown

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-2663

A.P. I, LP,  
  
Plaintiff,  
  
v.  
  
JESSICA COLON,  
  
Defendant.

ORDER

After hearing on December 2, 2024, on the landlord's motion for entry of judgment at which the tenant failed to appear, the following order shall enter:

1. The tenant violated the Agreement of the Parties dated August 20, 2024 (Agreement), and judgment for possession and for \$3,392 in unpaid rent, use, and occupancy plus court costs shall enter for the landlord.
2. Because the tenant made significant payments since the Agreement, there shall be a stay on the landlord's being able to seek issuance of the Execution so long as the tenant returns to the terms of the Agreement by paying her use

and occupancy for December 2024 by December 15, 2024, and the extra monthly payment by December 25, 2024, and thereafter adheres to the terms of the Agreement.

3. These stay terms shall toll the time contemplated by G.L. c.235, s.23.

So entered this 3 day of December, 2024.

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

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-3422

ROMAN AUVGANG,  <b>Plaintiff,</b>  v.  ODELYS DIAZ,  <b>Defendant.</b>
--

ORDER

After hearing on December 2, 2024, on the landlord's motion to amend the pleadings to correct the tenant's address---at which only the landlord (moving party) appeared, the following order shall enter:

1. The landlord's scrivener's error caused this case to be opened with a subject premises erroneously listed as "279 Suffolk Street, Unit Flr. 2 Mid., Holyoke". The actual address is 271 Suffolk Street.
2. Every pleading and/or notice since the service of the summons has been to the incorrect address. No actual notice of any proceedings, including the

landlord's instant motion to correct the subject premises address was ever served to the tenant's actual address.

3. The record of this matter reflects a default judgment entering against the tenant for possession plus \$2,500 plus costs and interest, likely due to her never receiving notice of these proceedings.
4. As such, this order shall be sent to the tenant at her actual address of 271 Suffolk Street, Floor 2 Mid, Holyoke, Massachusetts.
5. A hearing shall be scheduled on the landlord's motion to have the tenant's address corrected in the court records for **December 19, 2024, at 9:00 a.m.**

So entered this 3 day of NOVEMBER, 2024.

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

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 22H79SP0003493

BERKSHIRE HOUSING SERVICES, INC., AS AGENT FOR BENTLEY  
APARTMENTS, LLC,

Plaintiff,

v.

FLORDALIZA PIMENTEL,

Defendant

Order for Judgment

This matter came before the court on November 20, 2024 for hearing to review whether the defendant had complied with the court's November 4, 2024 order.

The plaintiff commenced this summary process action against defendant Flordaliza Pimental based upon allegations of nonpayment of rent. On June 8, 2023 judgment entered for the plaintiff for possession and unpaid rent damages and costs totaling \$3,944.82.

On July 5, 2023 the parties entered into an agreement that would allow the defendant to remain in possession of the premises provided she paid her monthly rent (\$964.00) commencing in August 2023 and paid an additional \$400.00 that would be applied to her rent arrearage. The defendant did not comply with the first agreement. On December 13, 2023 the parties entered into a second agreement that afforded the defendant time to apply for RAFT rental assistance. At the time of the second agreement the defendant owed \$4,329.45 in unpaid rent and costs. On April 10, 2024 the parties entered into a third agreement. Under the terms of that agreement a new judgment entered for possession and damages in the amount of \$4,329.45. The defendant remained obligated to pay her monthly rent and make additional monthly payments of \$400.00 that would be applied to her rent arrearage. The defendant was granted additional time to obtain RAFT rental assistance. On June 5, 2024 the parties entered into a fourth agreement. The amount owed by the plaintiff had increased to \$5,371.45. The defendant remained obligated to pay her

monthly rent when due plus beginning in July 2024 she would pay an additional \$811.00 towards her rent arrearage. The agreement again allow the defendant time to obtain RAFT rental assistance.

The defendant did not comply with her payment obligations under the fourth agreement. The plaintiff filed a motion to issue execution for noncompliance with the payment agreements.

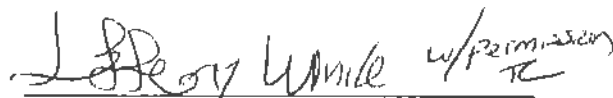
In an order dated November 4, 2024 the court (Fields, J.) issued an order that stayed issuance of execution based upon a pending RAFT application. The stay was conditioned upon the defendant's compliance with her obligation to pay her monthly rent to the plaintiff by November 6, 2024 and to pay an additional \$150.00 to the plaintiff by November 12, 2024.

The defendant has not complied with material terms of the June 5, 2024 fourth payment agreement or with the payment terms set forth in the court's November 4, 2024 stay order. As of November 20, 2024 the defendant's rent arrearage had increased to \$9,227.02. At most, the amount of funds that would be available from RAFT amounted to only \$3,144.00. The plaintiff stated it was unwilling to enter into a fifth payment agreement given that the defendant had failed to comply with the prior four agreements.

Accordingly, the plaintiff's motion to issue execution is **ALLOWED**. It is **ORDERED** that:

1. The stay of execution set forth in the November 4, 2024 order is vacated.
2. Execution for possession and damages in the amount of \$9,227.02, plus costs of \$213.55 shall issue forthwith; however, the plaintiff shall not levy on the execution prior to January 10, 2025.

**So entered this 3<sup>rd</sup> day of December, 2024.**

  
Jeffrey M. Witik  
Associate Justice (Recall Appt.)



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 and KASSANDRA RIVERA,  
  
Defendants.

ORDER SETTING THE  
APPEAL BOND

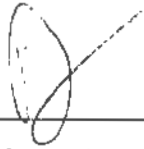
After hearing on November 15, 2024, at which all parties appeared, the following order shall enter:

1. **Tenants' Motion to Waive the Appeal Bond:** In accordance with G.L. c.239, s.5---with a judgment having entered for the plaintiff landlord for possession and for \$6,720 in use and occupancy arrearage through October 2024, plus court costs and interest---the Court must determine the amount of the Appeal Bond or waive same if the tenants are indigent and have non-frivolous defenses or claims.

2. After consideration of the affidavits of indigency filed by the tenants and inquiry with the tenants on the record, and with a combined income of \$70,000 and no dependents, the Court finds that the tenants are not indigent under the provisions of G.L. c.261, s.27A-27G.
3. Additionally, the Court finds that the tenants do not have non-frivolous defenses or claims as they are asserting that the Federal Reserve Act and UCC apply to their relationship with the landlord and that it is a legal basis for the proposition that they do not owe any use and occupancy. That position, as a matter of law, is wholly frivolous.
4. Accordingly, the tenants' motion for waive of the appeal bond is *denied*.
5. **Appeal Bond:** In accordance with G.L c.239, s.5, the Court may establish the bond to be in the amount of "all rent accrued at the date of the bond, all intervening rent, and all damage and loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession thereof to the plaintiff".
6. The landlord here is seeking the bond to be equal to the judgment plus costs and for monthly payments equal to monthly use and occupancy of \$1,120. That request is granted, and the bond shall be payment of the judgment (\$6,720) plus court costs (\$218.01) totaling **\$6,938.01** made payable to the landlord by no later than December 15, 2024, and for monthly payments of **\$1,120 each month beginning December 2024**, also to be paid timely directly to the landlord. Given that the date of this order is after December 1,

2024, December 2024's rent shall be paid by December 15, 2024 (and all subsequent months' rent shall be paid by the first of each month pending appeal).

So entered this 3 day of December, 2024.



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Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-2743**

<b>MARSHALL GABRIEL,</b>	
	<b>Plaintiff,</b>
<b>v.</b>	
<b>MARY DEWBERRY,</b>	
	<b>Defendant.</b>

**ORDER**

After hearing on November 14, 2024, at which each party appeared self-represented and at which a representative from the Tenancy Preservation Program (TPP) also appeared, the following order shall enter:

1. The tenant's motion for late filing of an Answer and Discovery Demand is allowed. The tenant was found credible that she did not understand that she could have file the Answer at an earlier time and she has asserted colorable counterclaims and defenses.

2. TPP reported that it is working with the tenant and that the tenant has paid the rent plus an extra payment and applied for RAFT as required by the last court order.
3. A representative from RAFT joined the hearing and confirmed that there is a RAFT application currently pending and that the tenant is eligible for \$7,000.
4. The landlord has three weeks (until December 5, 2024) to serve and file a Discovery Demand upon the tenant.
5. The tenant shall have 15 days from receipt of said discovery to serve her responses.
6. The tenant's Answer and Discovery Demand have been filed and served. The landlord shall respond to said discovery 15 days from today (November 14, 2024).
7. The parties shall continue to work with TPP on, among other things, the RAFT application.
8. The tenant shall pay her rent plus \$100 towards the arrearage pending the trial date noted below. This extra payment should be considered by the RAFT program as a "repayment plan" under its programmatic requirements.
9. This matter shall be scheduled for trial on **January 30, 2025, at 9:00 a.m.**

So entered this 3 day of December, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter

AK

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-2565

**VLADIMIR GARGUN,**  
  
**Plaintiff,**  
  
v.  
  
**CHRISTINA GAUDREault and MATTHEW MYERS,**  
  
**Defendants.**

**SUPPLEMENTAL ORDER**

The Court issued an Order dated November 12, 2024, which allowed for a late payment of the sums due in accordance with G.L. c.239, s.8A, and after the court received some of the funds due pursuant to that Order the following supplemental order shall enter:

1. After trial, the court required payment by the tenants totaling \$3,444.61. The tenants' motion to allow for them to pay \$1,245 directly to the landlord, \$900 from Community Action, and \$1,300 from Salvation Army, to pay this total was allowed.

2. The \$900 check sent to the court from Community Action Pioneer Valley and received by the Court on November 27, 2024, shall be deposited by the Clerk's Office.
3. The Court has not yet received the \$1,300 that was reported to be paid by the Salvation Army. If such funds should arrive at the Court, same shall be deposited by the Clerk's Office.
4. Release of any funds deposited with the Court shall only be by motion and after hearing.

So entered this 3<sup>rd</sup> day of December, 2024.

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Robert Fields, Associate Justice

Cc: Kate Shapiro, Community Resources & Advocacy Program Manager  
Community Action Pioneer Valley  
393 Main Street, Greenfield, MA 01301

Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24H79SP000876

PITTSFIELD HOUSING AUTHORITY,

Plaintiff,

v.

SARAH EDWARDS,

Defendant

Order for Judgment

This matter came before the court on November 20, 2024 for hearing on Plaintiff Pittsfield Housing Authority's *Motion for Issuance of Judgment and for Execution for Possession*.

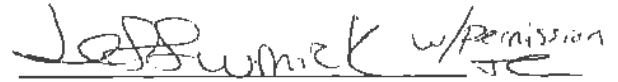
The plaintiff commenced this summary process action against defendant Sarah Edwards based upon allegations of nonpayment of rent. On August 7, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that she owed \$10,669.00 in unpaid rent (plus 239.65 court costs) as of the date of the agreement. The monthly rent was \$139.00. The defendant agreed to pay her monthly rent each month by the 5<sup>th</sup> day of each month commencing in September 2024. Further, the defendant agreed to pay 300.00 commencing in September 2024 that would be applied towards the rent arrearage (\$100.00 due by the 5<sup>th</sup> and \$200.00 by the 17<sup>th</sup> day of each month). The agreement provides that if the defendant fails to comply with either the rent or arrearage payment provision the plaintiff may move for entry of judgment.

The plaintiff has not complied with material terms of the August 7, 2024 agreement. She has failed to make any payments for rent or arrearages for the months of September, October or November 2024. As of November 20, 2024 the rent arrearage has increased to \$11,086.00. Accordingly, the plaintiff's motion is **ALLOWED**.



It is **ORDERED** that judgment enter for the plaintiff for possession and unpaid rent totaling \$11,086.00, plus costs of \$239.65. Execution shall issue in due course.

So entered this 3<sup>rd</sup> day of December, 2024.



Jeffrey M. Winik  
Associate Justice (Recall Appt.)

OK

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24CV0175

MELISSA SANTOS,  
Plaintiff

ORDER

v.

POAH BAYMEADOW APTS,  
Defendant

This came before the Court on December 3, 2024 on Defendant's motion to modify a court order. Plaintiff did not appear. Defendant appeared through counsel.

By order dated November 1, 2024, this Court ordered that Defendant commence mold remediation in Plaintiff's unit at 1288 Bay Street in Springfield (the "premises") during the week of November 4, 2024 and place Plaintiff in a hotel during the remediation. Defendant reports that remediation began and Plaintiff was placed in the La Quinta Hotel. Defendant represents that, on or about November 21, 2024, hotel management ejected Plaintiff and her family members for smoking in the hotel room. Plaintiff thereupon returned to the premises, which were then in the midst of remediation. The remediation cannot be completed unless the premises are vacant.

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

1. Plaintiff and her household members shall vacate the premises within 24 hours of receipt of this order.
2. As soon as Plaintiff and her household members vacate, Defendant shall complete the remediation as quickly as possible.
3. Defendant shall not be responsible for providing alternative housing.

4. Neither Plaintiff nor any other person other than those performing remediation may return to the premises until the remediation is complete.
5. If Plaintiff and anyone claiming rights to possession through Plaintiff refuse to vacate or return to the premises prior to the completion of remediation, Defendant may file a complaint for contempt. If the Court finds that Plaintiff is in contempt of court, Defendant may request that the locks be changed until remediation is complete.
6. Defendant's remediation contractor will determine when remediation is complete. Defendant shall immediately inform Plaintiff when remediation is complete.

SO ORDERED.

December 3, 2024

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

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24H79SP002493

CHARLIE SHAW,

Plaintiff,

v.

HEATHER MACKIE,

Defendant

Order for Judgment

This matter came before the court on November 20, 2024 for hearing on Plaintiff Charlie Shaw's *Motion to Enter Judgment*.

The plaintiff commenced this summary process action against defendant Sarah Edwards based upon allegations of nonpayment of rent. On July 31, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that she owed \$4,063.00 in unpaid rent through July 2024. The monthly rent was \$1,171.00. The defendant agreed to pay her monthly rent each month commencing in August 2024. Further, the defendant agreed to pay \$100.00 commencing in August 2024 that would be applied towards the rent arrearage.

The plaintiff received a \$3,550 payment from RAFT that reduced the amount owed as of August 1, 2024 to \$513.00. However, the plaintiff has not complied with material terms of the July 31, 2024 agreement.


In August she made a partial payment of \$700.00. However, the payment that was due totaled \$1,271.00 (\$1,171.00 rent; \$100.00 arrearage). Accordingly, as of August 31, 2024 the defendant's rent arrearage had increased to \$984.00. In September the defendant made a \$1,275.00 payment. Accordingly, as of September 30, 2024 the defendant's rent arrearage had been reduced to \$880.00. In October the defendant made a \$780.00 payment. However, the payment that was

due totaled \$1,271.00 (\$1,171.00 rent; \$100.00 arrearage). Accordingly, as of October 31, 2024 the defendant's rent arrearage had increased to \$1,271.00. The defendant failed to make her rent or arrearage payment due in November 2024. Accordingly, as of November 20, 2024 the defendant's rent arrearage has increased to \$2,441.00.

Because the defendant has not complied with her payment obligations under the July 31, 2024 agreement, plaintiff's *Motion to Enter Judgment* is **ALLOWED**.

It is **ORDERED** that judgment enter for the plaintiff for possession and unpaid rent totaling \$2,441.00, plus costs. Execution shall issue in due course.

**So entered this 3<sup>rd</sup> day of December, 2024.**

  
Jeffrey M. Winik  
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
CIVIL ACTION  
NO. 24H79SP002089

**STEVEN L. WENNINGER and MARIE B. WENNINGER, TRUSTEES of the  
NORTH SUMMER STREET REALTY TRUST,**  
Plaintiffs  
VS.  
**MICHAEL SULINSKI II,<sup>1</sup>**  
Defendant

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

This is a summary process action in which the plaintiffs are seeking to recover possession of residential premises based upon an allegation of unpaid rent. The defendant did not file a written answer; however, at trial the defendant asserted a G.L. c. 239, § 8A defense based upon purportedly defective conditions.

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

The apartment at issue in this case is located at 45 North Summer Street, Apartment C, Adams, Massachusetts ("Apartment C").

Defendant Mike Suleski II has occupied Apartment C as residential tenant since early 2020. Apartment C included two bedrooms, a living room, kitchen and one bathroom. The defendant has been the sole tenant and occupant. The monthly rent was \$750.00 due on the first day of each month.

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<sup>1</sup> In an agreement dated September 11, 2024 the parties agreed that the defendant's name in the complaint would be amended to read "Michael Suleski II." The clerk is directed to make this change on the docket.

Plaintiffs Steven L. Wenninger and Marie B. Wenninger, Trustees of the North Summer Street Realty Trust, purchased the 45 North Summer Street property in June 2020. John Chaquette, Jr. managed the property for the plaintiffs.

The defendant paid his rent each month when due from July 2020 through November 2023. In December 2023 the defendant did not make a rent payment to the plaintiffs. However, the Town of Adam made a partial \$500.00 rent payment to the plaintiffs on behalf of the defendant. This left a \$250.00 balance due as of December 2, 2023. The defendant did not make any rent payments for the eleven-month period from January to November 20, 2024 (the trial date). As of November 20, 2024 the amount of unpaid rent totaled \$8,500.00.

On March 25, 2024 the plaintiffs had a deputy sheriff serve the defendant with a legally sufficient notice to quit based upon nonpayment of rent. The defendant did not surrender possession of the premises.

On May 20, 2024 the plaintiffs commenced this summary process action against the defendant. The complaint includes a claim for damages based upon nonpayment of rent.<sup>2</sup>

I find that the defendant was in arrears continuously since December 2, 2023. There is no credible evidence that the plaintiffs knew or should have known of any defective conditions at Apartment C that required repair prior to December 2, 2023 (the date on which the defendant was first in arrears in his rent). Accordingly, I rule as a matter of law that the defendant is not entitled to a defense to possession pursuant to G.L. c. 239, § 8A, para. 2.<sup>3</sup>

The plaintiffs have established their claim for possession and damages for unpaid rent in the amount of \$8,500.00.

The defendant did not present any evidence that he had an application for RAFT assistance pending on the trial date. See G.L. c. 239, § 15.

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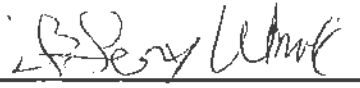
<sup>2</sup> As part of the September 9, 2024 agreement the parties agreed that: (1) as of that date \$6,250.00 the defendant owed in past due rent; (2) the plaintiffs had incurred \$269.18 in court cost; (3) the defendant agreed to submit a RAFT application by September 25, 2024; (4) the defendant reported that the pilot light for his heater would stay lit, and that the plaintiffs would inspect and repair if needed; (5) the case would be dismissed if the rent balance was reduced to zero upon receipt of RAFT funds; and (6). The defendant was not approved for RAFT funds (it is unclear if the defendant did not apply for RAFT, or if the defendant's RAFT application was denied. In any event, because the rent balance was not reduced to zero, the court scheduled the trial to commence on November 20, 2024.

<sup>3</sup> Paragraph 2 of Section 8A states in relevant part, "[w]henver 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; . . ."

**ORDER FOR JUDGMENT**

Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** this 3<sup>rd</sup> day of December 2024 that:

1. Judgment shall enter for the plaintiffs on their claim for possession and damages in the amount of \$8,500.00.00 plus costs in the amount of \$269.18.
2. Execution shall issue in due course.

 w/permission  
TC

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



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-1925

**LEBREC RELATY SOLUTIONS, LLC,**

**Plaintiff,**

**v.**

**ANTINIQUE VENEY, ANAIDA ORTIZ,  
EPHRIAM MORALES, MICHAEL ATTANASIO,  
and BRENDA LAVERGNE,**

**Defendant.**

**ORDER**

After hearing on December 2, 2024, at which the landlord and its attorney appeared as well as Ephriam Morales (a recent occupant of the premises), the following order shall enter:

1. Recently, Ephriam Morales, Michael Attanasio, and Brenda Lavergne paid money to the defendant Anitinique Veney and took occupancy of the subject premises without any knowledge or approval of the landlord.

2. Though the court credits Mr. Morales' testimony about how he and his household came to occupy the premises, no tenancy was established with the owners of the property.
3. Mr. Morales' motion for relief from the court was triggered by the sheriffs attempting to levy on the execution against the two original defendants.
4. The sheriffs have informed the landlord that they will need a new execution with the names of the current occupants.
5. Accordingly, a new execution for **possession only** shall issue against the occupants: Ephriam Morales, Michael Attanasio, and Brenda Lavergne.
6. The landlord may also have the sheriffs levy on the existing execution against the original defendants Anitnque Veney and Anaida Ortiz.

So entered this 04<sup>th</sup> day of December, 2024.

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

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-1119

LUMBER YARD NORTHAMPTON, LP,  
  
Plaintiff,  
  
v.  
  
KELLY KANE and EMMA MORGAN  
(Intervenor),  
  
Defendants.

ORDER

After hearing on November 25, 2024, at which the plaintiff appeared through counsel and the Intervenor, Emma Morgan (Personal Representative of Kelly Kane's estate), appeared self-represented, the following order shall enter:

1. The parties reported on the record that Intervenor Morgan was successful in emptying the contents of the subject premises and returned possession to the plaintiff.
2. What is before the court is the Intervenor's motion for reconsideration. More specifically, Ms. Morgan is seeking enforcement of "the agreement" reached

in open court on August 19, 2024, and is seeking the full return of Ms. Kane's security deposit. Ms. Morgan explained that the plaintiff has recently sent a letter "regarding disposition of security deposit" dated November 5, 2024, which claims deductions from the security deposit for unpaid rent, use, and occupancy. Ms. Morgan argues that at the August 19, 2024, hearing in this court, counsel for the plaintiff agreed on the record to waive any and all monies owed by Ms. Kane. As such, Ms. Morgan is also seeking treble damages as the security deposit has not been returned.

3. After review of the recording of the August 19, 2024, hearing, counsel for the plaintiff agreed to have an execution issue for possession only and waived its claim for money damages as part of this summary process action. This is distinct from Ms. Morgan's argument that the plaintiff waived any monies allegedly owed to it by Ms. Kane.
4. That said, there is nothing in this summary process action barring Ms. Morgan from filing a separate action (perhaps a Small Claims action in this court) against the plaintiff for violation of the security deposit laws nor anything barring the plaintiff's defense to such an action.
5. Accordingly, Ms. Morgan's motion is denied *without prejudice*.

So entered this 04 day of December, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-2405

**M A ORANGE PLEASANT, LLC,**

**Plaintiff,**

**v.**

**RICKY BARRON, JR. and TA'ASIA GORDON,**

**Defendants.**

**ORDER**

After hearing on December 2, 2024, on the landlord's motion for entry of judgment at which the tenant appeared in court and landlord's counsel appeared by Zoom, the following order shall enter:

1. Due to the tenants' failure to vacate the premises by October 31, 2024, as agreed to in the parties' Agreement of the Parties (Agreement) dated July 30, 2024, judgment shall enter for the landlord for possession *only*.



2. Given that the tenants have made all payments agreed to in the Agreement and based on the payments due below, there shall be a stay on the issuance of the execution until after January 1, 2024.
3. The tenants shall pay the increased rent of \$1,600 for November 2024 by December 6, 2024, and \$1,600 for December 2024 use and occupancy by the third week of December 2024.
4. If the tenants fail to make these payments or fail to vacate the premises by January 1, 2024, the landlord may motion for issuance of the execution.

So entered this 04<sup>th</sup> day of December, 2024.

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

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

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

NICOLE WINN,  
  
Plaintiff,  
  
v.  
  
SHAUN ROBINSON,  
  
Defendant.

ORDER AWARDING  
REASONABLE ATTORNEY  
FEES

After the court conducted a Contempt Trial on June 5, 2024, and thereafter finding the defendant property owner in contempt of the court's orders in a written decision issued on July 23, 2024, the court ruled that the plaintiff may file a petition for reasonable attorney's fees and costs. Upon consideration of said petition for fees and the opposition filed thereto, the following order shall enter:

1. **Reasonable Attorney's Fees:** The determination of reasonable attorney's fees is within the discretion of the judge. *Fontaine v Ebtac Corp.*, 415 Mass. 309, 324 (1993). In ruling on a petition for statutory attorney's fees, a court "should

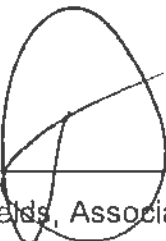
consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). Time spent on unnecessary work, duplicative work, or claims on which the party did not prevail, should be excluded. *Simon v. Solomon*, 385 Mass. 91, 113 (1982).

2. **Hourly Rate:** Counsel for the plaintiff, Patrick Nicoletti, has petitioned for an hourly rate of \$300 and in his opposition, the defendant does not dispute the hourly rate. Attorney Nicoletti provided with his petition an affidavit in support of his hourly rate from Attorney Patrick Goodreau, who practices in Springfield District Court and Hampden County Superior Court. In addition, this court is very aware of the quality of Attorney Nicoletti's litigation skills as he has litigated extensively in this court. Based on the above considerations, the court finds \$300 to be a reasonable hourly rate.
3. **Number of Hours:** The petition seeks compensation for \$5,910, representing 19.7 hours of work in this matter.
4. **Analysis of Hours:** Although the legal issues were not unusually complex, the factual evidence was considerable and, as they say, had a lot of moving parts with a recalcitrant defendant property owner asserting that he was making repairs or being prevented from doing so and then involving a third party claiming to be purchasing the property and needing access of his own for repairs.



5. Though the defendant's opposition to the petition suggests that plaintiff's counsel is seeking "seven hours of time for preparation of this matter" the petitioner's June 5, 2024, entry indicates that it includes "Trial Prep; Final trial prep, court waiting tie, contempt trial" and, as such, not entirely for "trial prep". The opposition suggests that other entries were excessive, but the court finds that those entries included varied work and that they were not excessive given the work performed.
6. The court finds that the number of hours sought for compensation (19.7) is appropriate given the work performed by the petitioning counsel.
7. **Award of Attorney Fees and Costs:** Based on the foregoing, counsel for the plaintiff, Patrick Nicoletti, shall be awarded **\$5,910** in attorney's fees<sup>1</sup>.
8. **Conclusion and Order:** In accordance with the above, as well as the court's July 23, 2024, contempt trial decision, the following final judgment shall enter:  
Judgment for the plaintiff, Nicole Winn, for a finding of contempt and for **\$5,910** for attorney's fees.

So entered this 4 day of December, 2024.

  
\_\_\_\_\_  
Robert Fields, Associate Justice  
Cc: Court Reporter

<sup>1</sup> The petition did not seek any costs.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-395

ROBERT GRAZICK,

Plaintiff,

v.

MOLLY PETERS and MARK WHEELER,

Defendants.

ORDER FOR  
ENTRY OF FINAL  
JUDGMENT WITH  
ATTORNEY FEE  
AWARD

This matter came before the court for trial in April 2024 and the court issued a written decision on July 24, 2024, in which the defendants (tenants) were the prevailing parties in their claims for Warranty of Habitability, Quiet Enjoyment, Cross-Metering, and the Consumer Protection Act. As prevailing parties on said claims, they were afforded the opportunity to petition the court for reasonable attorney's fees and costs. Additionally, the tenants filed a motion to amend the findings and order and a hearing was conducted on October 15, 2024. The following ruling on said motion, on the petition for attorney's fees and opposition thereto, and final judgment shall enter as follows:

1. **The Defendants' Motion to Amend Findings and Order:** Those portions of the motion regarding awarding the "full amount of damages" on the

defendants' claim for cross-metering of the electric service, seeking an award for an alleged cross-metering of gas service, award for an alleged violation of the retaliation statute, are hereby denied and the court's trial decision and order shall stand as to those issues.

2. The last part of the motion is for clarification of the court's damages calculations which shall be treated as a motion to correct a clear mathematical mistake made by the court in its decision.
3. More specifically, when writing the conclusion section of the court's July 24, 2024, order, the Court neglected to include all the damages awarded to the tenants. The proper damages calculation should have included \$26,610 in warranty damages (\$13,305 doubled by 93A), \$2,400 in breach of the covenant of quiet enjoyment damages, and \$2,189.59 in cross-metering damages totaling \$31,199.59. When offset by the award of damages for rent, use, and occupancy totaling \$12,000, the award of damages to the tenants totals \$19,199.59 and the court's order for such damages shall be amended accordingly.
4. **Reasonable Attorney's Fees:** The determination of reasonable attorney's fees is within the discretion of the judge. *Fontaine v Ebttec Corp.*, 415 Mass. 309, 324 (1993). In ruling on a petition for statutory attorney's fees, a court "should consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of

awards in similar cases." *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). Time spent on unnecessary work, duplicative work, or claims on which the party did not prevail, should be excluded. *Simon v. Solomon*, 385 Mass. 91, 113 (1982).

5. **Hourly Rate:** Counsel for the defendants, Paul Schack and Jennifer Alpert, have petitioned for an hourly rate of \$325 and \$240 respectively. The Court finds that Attorney Schack's request for an hourly rate of \$325 is more than reasonable given his 40-year career and expertise in housing law. Given this court's previous awards of attorney's fees between \$300 and \$400 for veteran housing attorneys, Attorney Shack's requested hourly fee is appropriate. Attorney Alpert is seeking an hourly rate of \$240. The Court was not familiar with Attorney Alpert before this matter and though she did an excellent job in all aspects of the litigation the petition describes an attorney of three years and seemingly new to Massachusetts Housing Law. The Court finds that the appropriate hourly rate for Attorney Alpert is \$200 (the amount argued by the landlord in his opposition to the petition) and not the \$240 she is requesting.
6. **Number of Hours:** The petition seeks compensation for Attorney Schack for 37.2 hours<sup>1</sup> and 69.9 hours for Attorney Alpert.<sup>2</sup>
7. **Analysis of Hours:** Although the legal issues were not unusually complex, the factual evidence was considerable, and the trial was conducted over three days. The plaintiff's concerns about the time expended by the tenants'

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<sup>1</sup> The petition lays out 134.9 hours expended for Attorney Schack but only seeks 37.2 hours, accounting for many hours he spent supervising Attorney Alpert for which he is not seeking compensation.

<sup>2</sup> The petition lays out 148.6 hours expended for Attorney Alpert but only seeks 69.9 hours, accounting for many hours she spent consulting with Attorney Schack for which she is not seeking compensation.

attorneys---that Attorney Schack should not seek compensation for time spent supervising co-counsel and that Attorney Alpert should not seek more time than is reasonable given her lack of experience---have been sufficiently addressed by the reductions made--and evidenced--by the petition and the court is satisfied that the hours sought (37.2 hours for Attorney Schack and 69.9 hours for Attorney Alpert) are reasonable and shall be compensated.

8. **Award of Attorney's Fees:** Based on the foregoing, counsel for the defendant-tenants shall be awarded \$26,070 (representing \$13,980 for Attorney Schack and \$12,090 for Attorney Alpert) in attorney's fees<sup>3</sup>.
9. **Conclusion and Order:** In accordance with the above, as well as the court's July 24, 2024, trial decision<sup>4</sup>, the following final judgment shall enter:  
Judgment for the defendant-tenants Molly Peters and Mark Wheeler, for possession and \$19,199.59 in compensatory damages and for \$26,070 for attorney's fees.

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

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Robert Fields, Associate Justice

Cc: Court Reporter

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<sup>3</sup> No "costs" were petitioned for in this matter.

<sup>4</sup> The July 24, 2024, decision and order has been amended herein to correct mathematical error so that the award of compensatory damages for the defendant-tenants is \$19,199.59.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-CV-975

NICOLE WINN,  
  
Plaintiff,  
  
v.  
  
SHAUN ROBINSON,  
  
Defendant.

ORDER FOR ALTERNATE  
ACCOMMODATIONS UNTIL  
HEAT IS RESTORED

After hearing on December 4, 2024, on the plaintiff's emergency motion for injunctive relief at which counsel for both parties appeared, the following order shall enter:

1. The defendant property owner shall provide hotel accommodations for the plaintiff tenant and her household that has cooking facilities until the heat is restored at the premises.
2. If said accommodations do not have cooking facilities, the landlord shall provide a daily food stipend off \$125 per day.

So entered this 5 day of December, 2024.

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

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
Case No. 24-SP-2421

GARAND COURT ASSOCIATES, LP,  
  
Plaintiff,  
  
v.  
  
ELYANI MATOS,  
  
Defendant.

ORDER

After hearing on December 5, 2024, on the landlord's motion for reissuance of an Execution at which the tenant failed to appear, the following order shall enter:

1. The landlord reports that the tenant paid the \$450 required by the court's September 16, 2024, order.
2. The landlord also reports, however, that the tenant has failed to pay the outstanding court costs and costs associated with the scheduling and cancellation of the September 17, 2024, physical eviction.
3. The landlord asserts that the total amount of those "costs" is \$1,177.40.

4. The matter was recessed until the afternoon session and the court staff attempted to reach the tenant by phone and email to no avail.
5. The tenant shall diligently apply for RAFT for the costs described above and the landlord shall cooperate with such efforts.
6. The tenant is urged to reach out to Community Legal Aid (413-781-7814) at One Monarch Place in Springfield and/or Springfield Partners for Community Action (413-263-6500) at 721 State Street in Springfield for assistance with her RAFT application.
7. The tenant shall also pay her rent each month plus \$5 towards the court costs pending the RAFT application process.
8. The landlord shall provide the tenant and the court forthwith with the invoices from the Office of the Sheriff—Hampden County and from Goldvine Moving and Storage for the costs being asserted.
9. The time until the next court hearing shall be tolled relative to the underlying judgment in accordance with G.L. c.235, s.23.
10. This matter shall be scheduled for review and further hearing on the landlord's motion for re-issuance of the Execution and for review on **February 27, 2024, at 9:00 a.m. The tenant shall appear at this hearing.**

So entered this 6<sup>th</sup> day of December, 2024.

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Robert Fields, Associate Justice

Cc: Court Reporter



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 21-SP-2533

HOME SAVERS COUNCIL OF GREENFIELD )  
GARDENS, INC. )

PLAINTIFF )

v. )

JAYME JORDAN, )

DEFENDANT )

ORDER ON DEFENDANT'S  
MOTION FOR RECONSIDERATION

This summary process case came before the court on December 6, 2024 for a hearing on Plaintiff's motion for reconsideration. Both parties were represented by counsel.

Plaintiff makes several arguments as to why the Court's May 3, 2024 order should be reconsidered. The Court rejects the arguments and thus denies the motion for reconsideration. Moreover, no motions having been filed by August 3, 2024, the judgment in this case shall be vacated and Plaintiff's claim for possession shall be dismissed.<sup>1</sup>

The Court finds it necessary to clarify its May 3, 2024 order as follows:

1. Despite Plaintiff's claim for possession being dismissed, this case will remain open for six months to permit enforcement of the terms of this order.

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<sup>1</sup> Defendant's appeal thus becomes moot and shall be dismissed.

2. Plaintiff shall permit Defendant to recertify retroactively for 2003 and, if necessary, 2024.
3. Plaintiff shall permit Defendant to recertify retroactively for 2019, 2020, 2021 and 2022.<sup>2</sup> If Plaintiff contends that it cannot comply with this order for any reason, it must schedule a hearing to present evidence as to why it cannot comply.

SO ORDERED.

December 6, 2024

  
\_\_\_\_\_  
Jonathan J. Kane, First Justice

cc: Court Reporter

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<sup>2</sup> Plaintiff's counsel reports that in each of these years, the tenant's recertification was late, leading to her being charged market rent for the months of September 2019, October 2020, November and December 2021 and January 2022.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. <sup>23</sup>24-SP-3005

**KENQUAD LIMITED PARTNERSHIP,**

**Plaintiff,**

**v.**

**KELLENA PINKNEY,**

**Defendant.**

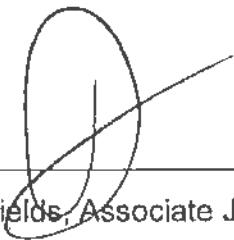
**ORDER**

After hearing on December 5, 2024, on the landlord's motion for issuance of the execution, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The tenant has breached the payment terms of the parties' Agreement dated May 31, 2024.
2. The landlord asserts that \$6,763 is outstanding in rent through December 2024 plus court costs of \$245.06.

3. Beginning in January 2025, the tenant shall pay her rent by the first week of each month plus \$100 two weeks later towards arrearage.
4. The tenant shall reapply for RAFT and the landlord shall cooperate with this effort.
5. The "extra payment" above (\$100 per month) towards arrearage should be considered to be a "repayment plan" for RAFT purposes.
6. This matter shall be scheduled for review and possibly for the continuation of the landlord's motion for issuance of the execution to **February 27, 2025, at 9:00 a.m.** The time that elapses during this period shall be tolled in accordance with G.L. c.235, s.23.
7. **ADDITIONALLY:** The tenant is urged to meet with Community Legal Aid regarding the loss of her rent subsidy, which was reported to have been terminated. The tenant was directed to the Resource Room to meet with CLA and that agency can also be reached at their office at One Monarch Place in Springfield and at (413) 781-7814.

So entered this 6<sup>th</sup> day of December, 2024.

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

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION  
DOCKET NO. 24-SP-3900

JUDITH KUNDL,

Plaintiff

v.

MICHAEL ARIETTA,

Defendant

ORDER FOR ENTRY OF JUDGMENT  
AND STAY PURSUANT TO G.L. 239,§9

This no-fault summary process case came before the court for a bench trial on December 6, 2024. The plaintiff appeared with counsel. The defendant appeared self-represented. The plaintiff seeks to recover possession of a rented bedroom in a single-family home located at 22 Lee Road, South Deerfield, Massachusetts (the "Premises").

Prior to trial, the parties stipulated to the plaintiff's prima facie case for possession. The defendant received the notice to quit terminating the tenancy as of September 1, 2023. He has not vacated. The parties agree that monthly use and occupancy (rent) is \$773.00. Although not a nonpayment case, the defendant acknowledges that he owes \$3,865.00 in rent arrears.

The defendant filed an answer; however, he informed the court that he was not seeking to bring claims against the plaintiff and simply needed more time to vacate. He has a letter of intent from the RAFT program and is working with CSO to locate other housing.

The court has discretion in a no-fault eviction case to grant a stay on use of the execution. See G.L. c. 239, § 9. The court finds that the defendant meets the requirements for a statutory stay, conditioned paying the plaintiff for use and occupation for the duration of the stay. See G.L. c. 239, § 11.

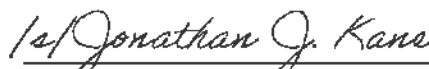
In light of the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of the plaintiff.
2. Issuance of the execution shall be stayed, and the three-month period in G.L. c. 235, § 23 tolled, provided that:
  - a. The defendant pays \$773.00 each month for the duration of the stay, with payment for December 2024 due by December 20, 2024 and thereafter by the 5<sup>th</sup> of each month (or the first business day after the 5<sup>th</sup>).
  - b. The defendant makes diligent efforts to locate and secure replacement housing and document those efforts, including identifying any agency assisting him with a housing search and keeping a log of all inquiries made and applications submitted.
3. If the defendant has not already vacated the Premises, the parties appear on January 24, 2024 at 9:00 a.m. for review of the defendant's housing search log and to determine whether and under what conditions the court may extend the stay on issuance of the execution.

SO ORDERED.

December 6, 2024

cc: Court Reporter

  
\_\_\_\_\_  
Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

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MING TSANG,

Plaintiff,

-v.-

DOCKET NO. 23SP02012

YAREMI CEDANO,

Defendant.

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**ORDER**

This matter came before the court on December 6, 2024 for a hearing on the defendant's motion to amend the agreement<sup>1</sup> and her motion to stop the move-out scheduled for December 10, 2024 at 11:00 a.m. The plaintiff appeared and was self-represented. The defendant appeared with her attorney.<sup>2</sup>

In this no fault eviction case, the plaintiff seeks possession of the subject rental premises. Since the case was filed on May 5, 2023, the parties have entered into two Agreements and have appeared in court on numerous motions filed by each party. After a hearing on October 23, 2024 on the plaintiff's motion for entry of judgment, a judge of this court issued an order that judgment would enter for possession and \$5,750 for unpaid rent/use and occupancy through October 2024, but that the defendant could continue to live at the premises until January 1, 2025 on condition that she pay rent/use and occupancy (\$1,250) for November and December by the third week of each month. Judgment entered accordingly.

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<sup>1</sup> In fact, the defendant asks the court for relief from the terms of the November 1, 2024 order of a judge of this court (#21). The court deems her first motion to be such.

<sup>2</sup> As stated at the hearing, defendant's counsel is asked to file a notice of appearance (Limited Assistance Representation) forthwith.

On November 13, 2024, the plaintiff requested the execution. It issued on November 15, 2024. The plaintiff had a constable serve a forty-eight hour notice that the execution would be used to move the defendant out of the premises on December 10, 2024 at 11:00 a.m.

The defendant now argues that the plaintiff's request for the execution was premature because the deadline for payment of the November use and occupancy had not yet arrived. In any event, if the plaintiff sought to use the execution before the expiration of the stay of the execution as ordered by the judge, the plaintiff should have done so by motion.

The parties agree that eventually the defendant did not pay the November use and occupancy as ordered. She reported that she tried to return to work after she was injured in a car accident, but could not do so. This is the basis for her motion for relief from the judge's November 1, 2024 order regarding payment of use and occupancy. While the court understands the reason for her nonpayment, it does not find that this is sufficient legal or equitable grounds to alter the order. The court does not grant relief from the November 1, 2024 order.

The defendant reported that she has definite plans to move in with her mother on December 31, 2024. She needs until that date to transition her minor children to a new school, which they will attend after the holiday break. She offered to pay one month use and occupancy (\$1,250) by December 31, 2024.

Because the scheduled December 10 levy on (use of) the execution is based on an execution which was requested prematurely, it cannot proceed. That execution must be returned to the court. The defendant is now in breach of the November 1, 2024 order because she did not pay the November use and occupancy as required. However, the court does not order a new execution to issue at this time, in light of the short timeframe until the December 31, 2024 stay of the execution included in the November 1 order and the defendant's definite plans to move by that date.

### **Orders**

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

1. The defendant's motion deemed to be a motion for relief from the November 1, 2024 order is **DENIED**.
2. The defendant's motion to stop the move out scheduled for December 10, 2024 at 11:00 is **ALLOWED**.
  - a. The plaintiff will notify the constable of this order immediately.



- b. In light of the circumstances of this case, the defendant is *not* responsible for the cancellation fee for the stopped move-out.
3. The plaintiff will return the original execution which issued on November 15, 2024 to the court immediately.
  - a. The plaintiff will not make any further attempt to use the November 15, 2024 execution for any purpose.
4. The plaintiff may file a written application for an execution based on the November 1, 2024 judgment *after* December 31, 2024, if needed.
  - a. If the plaintiff files such a written request timely, the Clerk's Office will issue the execution promptly.
  - b. The stay of the execution included in this order is within the meaning of G.L. c. 235 §23.
5. The defendant will pay \$1,250 use and occupancy to the plaintiff on or before December 31, 2024, as she agreed to do.

December 6, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)